

NEW JERSEY COURT OF ERRORS AND APPEALS

LOUIS J. MALONE, et als.,
Appellant.
and
FRANCESCO ROMANO, et als.,
Defendant.

} PETITION.

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

The petition of Francesco Romano, the appellant, in the above entitled cause shows that your petitioner finds himself decreed by a final decree made in the Court of Chancery by Edwin R. Walker, Chancellor of the State of New Jersey, dated April 8, 1922, wherein the said Louis J. Malone, et als., were complainants and the said Francesco Romano, et als., were defendants in this respect, to wit:

1. That the learned Court adjudged as follows: I will advise a decree for the payment of Romano to the three boys of these moneys, to the return of which they are both legally and equitably entitled, from which however certain deductions are to be made. As to Louis, he received back \$30.00 from Romano. This leaves \$120.00 due him. Albert received board and lodging from about May 1, 1921, to September 27, 1921—twenty-one weeks at \$7.00 a week (which I fix as a fair price under all the evidence) equals \$147.00, leaving \$483.00 due him. Anthony received board and lodging from about June 11th to September 27th, fifteen weeks, or \$105.00, leaving \$375.00 due him.

2. That the bill of complaint in this cause appeared that the Court decreed that the property which was the subject matter of this cause be a resulting trust in favor of Louis J. Malone, Albert I. Malone, and Anthony E. Malone, and the Court by its opinion said: The conclusion then, from the facts as I find them to be, necessarily is that complainants are not entitled to any relief in the way of decree for conveyance or establishment of a trust or reformation of the original deed.

3. That the learned Court found that by virtue of a promise made by defendant to complainant that he conveyed an interest in the land and premises mentioned and described in the bill of complaint in this cause having received moneys from the said Louis J. Malone, Albert I. Malone and Anthony E. Malone, which Court decreed that the defendant should pay to these plaintiffs the sum of One Thousand Twenty-one Dollars and Ninety cents (\$1,021.90), holding that they were entitled to that amount of money from the defendant and making the same a lien upon the premises in question; that the learned Court refused to decree a resulting trust in favor of the plaintiff but gave a decree in favor of the plaintiffs on an entirely different matter than that prayed for in the bill; that the

learned Court erred in not dismissing the bill of complaint in this cause; that the learned Court's decree was contrary to the evidence presented in this cause.

Your petitioner therefore prays that the said decree of the Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden and that your petitioner may have such further relief in the premises as this Honorable Court shall seem meet.

ROBERT PEACOCK,
Solicitor for and of counsel with Appellant.

NEW JERSEY COURT OF ERRORS AND APPEALS

Between
LOUIS J. MALONE, et als.,
Petitioner,
and
FRANCESCO ROMANO,
Defendant.

ON PETITION OF APPEAL.
AMENDED PETITION.

To the Honorable Court of Errors and Appeals,
in the last resort in all causes.

The petition of Francesco Romano, the appellant, in the above entitled cause shows that your petitioner finds himself decreed by a final decree made in the Court of Chancery by Edwin R. Walker, Chancellor of the State of New Jersey, dated April 8, 1922, wherein the said Louis J. Malone, et als., were complainants and the said Francesco Romano, et als., were defendants in this respect, to wit:

1. That the learned Court adjudged as follows: I will advise a decree for the payment by Romano to the three boys of these moneys, to the return of which they are both legally and equitably entitled, from which however certain deductions are to be made. And to Louis, he received back \$30.00 from Romano. This leaves \$120.00 due him. Albert received board and lodging from about May 1, 1921, to September 27, 1921—twenty-one weeks at \$7.00 a week (which I fix as a fair price under all the evidence), equals \$147.00, leaving \$483.00 due him. Anthony received board and lodging from about June 11th to September 27, fifteen weeks, or \$105.00, leaving \$375.00 due him.
2. That the bill of complaint in this cause appeared that the Court decreed that the property which was the subject matter of this cause be a resulting trust in favor of Louis J. Malone, Albert I. Malone, and Anthony E. Malone, and the Court by its opinion said: The conclusion then, from the facts as I find them to be, necessarily is that complainants are not entitled to any relief in the way of decree for conveyance or establishment of a trust or reformation of the original deed.
3. That the learned Court found that by virtue of a promise made by defendant to complainant that he conveyed an interest in the land and premises mentioned and described in the bill of complaint in this cause having received moneys from the said Louis J. Malone, Albert I. Malone and Anthony E. Malone which Court decreed that the defendant should pay to these plaintiffs the sum of One Thousand Twenty-one Dollars and Ninety cents (\$1,021.90), holding that they were entitled to that amount of money from the defendant and making the same a lien upon the premises in question; that the learned Court refused to decree a resulting trust in favor of the plaintiff but gave a decree in favor of the plaintiffs

on an entirely different matter than that prayed for in the bill; that the learned Court erred in not dismissing the bill of complaint in this cause; that the learned Court's decree was contrary to the evidence presented in this cause.

4. That the said Court in its opinion and conclusions did not decide according to the prayer of the bill in said cause.

5. Because the said Court of Chancery rejected legal evidence offered by the defendant.

6. Because the Court of Chancery admitted illegal evidence offered by the defendant.

7. Because the Court of Chancery in its decision stated as follows: The conclusion then, from the facts as I find them to be, necessarily is that the complainants are not entitled to any trust or reformation of the original deed. Which is contrary to equity and the statute in such case made and provided.

8. Because the bill of complaint in this cause prayed for a decree that said Frank Romano held said lands as Trustee for the complainants and that the money paid under said agreement may be decreed to pay the first and paramount mortgaged lien on said premises which the said Court of Chancery failed to decree.

9. Because the said complainant prayed that the resulting trust arising from the purchase of lands with the wife's money the title, being not taken in her name and there being no intended gift of the lands or a partial interest therein to the husband which the Court of Chancery failed to decide in favor of the complainants.

10. Because the complainants failed to set forth any agreement as prayed for in their bill.

11. Because the complaints failed by a preponderance of evidence to show that they were entitled to equity or any decree in their favor.

12. Because the complainants failed to show that the wife paid the cash consideration for which complainants asked a resulting trust to be decreed in their favor.

13. Because the testimony does not show any money due complainants under the bill of complaint and the evidence offered in this case.

14. Because the said judgment of the Court of Chancery was in divers other respects illegal, unjust, oppressive and contrary to law.

Your petitioner therefore prays that the said decree of the Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden and that your petitioner may have such further relief in the premises as this Honorable Court shall seem meet.

ROBERT PEACOCK,
Solicitor for and of counsel with Appellant.

IN CHANCERY OF NEW JERSEY

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

The complaint of:

Louis J. Malone, Albert I. Malone, Anthony E. Malone, of Riverside, Burlington County, New Jersey, respectfully shows:

1. That they are brothers and their ages are as follows: Louis J. Malone, age 25 years, born October 17, 1894; Albert I. Malone, age 23 years, born November 12, 1895; Anthony E. Malone, age 22, born February 18, 1896.

2. That Edward Malone, minor, age 16 years, born November 26, 1902, is their brother, and Mary Morella, minor, nee Malone, wife of Frank Morella, Riverside, N. J., age 19, born May 11, 1900, is their sister.

3. In 1909 complainant's mother, Raffaella Malone, with the five children, herein mentioned, being widow, then intermarried with Francesco Romano, of 321 Fillmore Street, Riverside, Burlington County, New Jersey, and lived with him there as his wife until she died, February 13, 1917.

4. That the said Raffaella Malone Romano received from Italy, her native country, over \$1000 about the time of her said marriage to Romano, and an agreement was entered into between them that if the said Raffaella Malone Romano would put the money in the Riverside property, hereinafter more particularly described, that they would live together with the said five children, accumulate and improve the property herein described, and in the event of the death of either of them, then one-half of the property should forthwith belong to said children; and in the event of the death of both of them, the property should belong to the said children outright, share and share alike; and the said Francesco Romano agreed to give said children one-half of said property in the event of the death of the said Raffaella Malone Romano, and his entire rights in said property at his death, and agreed to have the papers made in that way.

5. That the property herein referred and so purchased is described as follows:

All that certain house and eight lots on tracts of land, situated in Riverside in the Township of Riverside, in the County of Burlington and State of New Jersey, bounded and described as follows and marked and numbered in the old Plan of Riverside as lots numbered eight hundred and thirty-one (831), eight hundred and thirty-two (832), eight hundred and thirty-three (833), eight hundred and thirty-four (834), eight hundred and fifty-five (855), eight hundred and fifty-six (856), eight hundred and fifty-seven (857) and eight hundred and fifty-eight (858).

Being the same premises which Charles H. Ziegler (widower) granted and conveyed unto the same Eugene Cachielin by deed dated January 21st, 1907, and intended to be recorded in the Clerk's Office of Burlington County at Mount Holly.

Subject, however, to the operation of a certain indenture of mortgage executed by Eugene Cacheilin and Jeanne Cacheilin, his wife, to the Riverside Building and Loan Association, dated January 29, 1907, recorded in the Book of Mortgages B-5 of the County of Burlington, on page 227, etc., which said mortgage, with the interest thereof, the party of the second assumes and agrees to pay off as part of the consideration above expressed.

(2.) Mortgage

Francesco Romano, et ux and his wife Raffaella Fusilla to Riverside Building and Loan Association	}	Date June 23rd, 1913 Recorded June 27th, 1913 Book V-5 Page 416 Cost \$900 @ 6%
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Covers land in No. 1.

(3.) Mortgage

Francesco Romano to Stefano Verrocchio	}	Date March 15th, 1919 Recorded March 28th, 1919 Book 140 Page 226 Cost \$1000 @ 6%
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Covers land in No. 1 plus:

And the said Raffaella Fusilla Romano having departed this life, thereupon the said Francesco Romano became seized in fee simple of said premises.

(4.) Mortgage

Francesco Romano (widower) to Riverside Building and Loan Association	}	Date July 31st, 1917 Recorded Aug. 7th, 1917 Book 135 Page 20 Cost \$4200 @ 6%
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Covers land in No. 1 plus:

All that double brick dwelling house and all that frame dwelling house and eight lots or tracts of land, etc. And the said Raffaella Fusilla Romano departed this life February 13th, 1917, leaving the said Francesco Romano sole owner by survival.

6. That the said Raffaella Romano contributed over \$1000 of the money received from family sources to the said property, under said agreement, and said agreement was ratified and confirmed by the said Francesco Romano, with each of these complainants, from time to time and often repeated and reiterated to and with each of them, and he collected large

sums of money on account of said agreement during their minority and since they have respectively come of full age.

7. That the amounts of money turned over to the said Francesco Romano under said agreement were:

8. Louis J. Malone entered the service of the United State Government 1914, and during the time of his service caused an allotment to be made to the said Francesco Romano amounting to the sum of \$375.00 of the said Louis J. Malone's earnings while in service, and previous to that time has contributed towards paying for the said property the sum of \$1456.00, amounting in all to \$1831.00.

9. Albert I. Malone entered the service of the United State Government in 1917, and during the time of his service caused an allotment to be made to the said Francesco Romano and also sent cash money to the said Francesco Romano, amounting to the sum of \$380.00, and previous to such service paid to said Francesco Romano the sum of \$2564.00.

9. Anthony E. Malone, during the time of his service in the United States Government, turned over to the said Francesco Romano \$375.00, and previous to that time turned over to him \$2454.00, making a total of \$2929.00 paid to said Francesco Romano under said agreement.

10. Edward Malone, minor, 17, has for two years last passed worked in factories and turned over his wages to the said Francesco Romano under the said agreement amounting to \$1200.00.

11. The said Mary Morella, married minor, age 19, always worked at housework for the said Francesco Romano up until the time of her marriage May 10, 1917.

12. That the said Raffaella Romano was unable to read or understand the English language, and she always trusted the said Francesco Romano to make and prepare proper papers, under said agreement, to carry it out, and the said Francesco Romano fraudulently and with the intent to defraud complainants had the deed for said lands made out in the joint name of himself and his wife, Raffaella Romano.

13. That on or about July 3, 1913, said Francesco Romano intermarried with Cecsanine Rinspantine.

14. And she claims an inchoate dower interest in said land, but complainants charge that the said Francesco Romano holds same as Trustee for complainants, and that his title affords no dower claims for the said Cecsanine Romano to said property as against complainants; and if any such claim she might or could have, they are subsequent to the rights of complainants, and subject thereto.

15. Francesco Romano owed to Stefano Verrocchio a small sum of money and after it was incurred, and without any consideration at the time, he executed to the said Stefano Verrocchio a mortgage on said premises for \$1000.00, dated March 15th, 1919; recorded March 28, 1919; book 140, page 226. But complainants charge that the full face of said mortgage is not just, and that the said Stefano Verrocchio knew that the said Francesco Romano held said lands as trustee, when he accepted said mortgage as security for an old claim, and that said mortgage is and of right and equity should be subsequent to and subject to the rights and claims of complainants.

16. Two of the mortgages of record against the said lands are given to the Riverside Building and Loan Association, but complainants are informed and believe that the first mortgage for nine hundred dollars, dated June 23rd, 1913, in book 140, page 226, has been and is merged into the second mortgage, held by said Riverside Building and Loan Association, and the amount due on both of said mortgages is admitted to be the face of the second one, to wit: \$4200.00 less such subsequent periodical stock payment credits as may be due thereon.

17. Complainants respectfully charge that the said lands are subject to said agreement; that the said Francesco Romano holds title thereto as Trustee under said agreement, for the benefit of complainants, and their minor brother and sister; that the undivided one-half thereof is by right and equity vested in complainants outright and that he has, at most, only a liferight in the remaining one-half interest.

18. Complainants are without other adequate remedy in the courts of law and therefore humbly pray that:

19. That a decree of this honorable Court may be made, decreeing that the said Francesco Romano hold said lands as Trustee for them and for Edward Malone and Mary Morella, nee Malone, as minors aforesaid, or that the money paid under said agreement may be decreed to be a first and paramount mortgage lien on said land and premises.

20. That the Riverside Building and Loan Association may declare the amount due on both of their mortgages, and cancel aforesaid the first of said mortgages if paid or merged as complainants charge.

21. That the said Stefano Verrocchio may declare the actual amount now due thereon, and such amount as may be found to be due thereon, may be decreed to be a special lien on any share found to belong to the said Francesco Romano, prior to the share of complainants and that in default of proof of amount due, his mortgage be ordered to be cancelled of record.

22. That the said Cecsanine Romano may be decreed to have no dower rights in said land inchoate or otherwise, that said Francesco Romano may rendered and account of moneys collected from or in behalf of complainants and the said Edward Malone and Mary Morrella, minors, and Raffaella Malone Romano as herein alleged.

23. And that they may have such other relief as is just and equitable.

24. That a writ of subpoena may issue commanding said defendants Francesco Romano, Cecsanine Romano, Stefano Verrocchio and the Riverside Building and Loan Association to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

GEORGE M. BACON,
Solicitor and Counsel for Complainants.

IN CHANCERY OF NEW JERSEY

Between
LOUIS J. MALONE, et als.,
Complainants,
and
FRANCESCO ROMANO, et als.,
Defendants.

ON BILL, Etc.
ANSWER OF FRANCESCO ROMANO.

The answer of Francesco Romano, one of the above named defendants:

This defendant answering says:

1. He admits the ellegations of paragraphs one, two and three of said bill.
2. He denies the ellegations of paragraph four of said bill.
3. He admits the ellegrations of paragraph five of said bill.
4. He admits the contribution by the said Raffaella Romano, but denies the agreement set forth in paragraph six of said bill.
5. He admits that certain sums of money were given to him by the said Louis J. Malone, Albert I. Malone, Anthony E. Malone and Mary Morrella, but denies that the various sums alleged in paragraphs six, eight and nine were ever given to this defendant, but avers the fact to be that said sums of money were paid to this defendant for the board and keep of the said complainants, and this defendant further avers that he was entitled to the earnings of the said complainants, they being minors, and he being in loco parentis.
6. He admits the allegations of paragraphs thirteen and fourteen of the bill.
7. He admits the allegation of paragraph fifteen, as to the execution of the mortgage therein mentioned, but denies that the same was given or executed for any consideration, except the amount named in said mortgage.
8. This defendant admits the two mortgages set out in paragraph sixteen, but denies that the same have become merged.
9. This defendant denies the allegations of paragraph seventeen.

JAMES MERCER DAVIS,
Solicitor of Francesco Romano.

IN CHANCERY OF NEW JERSEY

ON FINAL HEARING

MR. GEORGE M. BACON and MR. WILLIAM J. CONNOR,
for Complainants.

MR. JAMES MERCER DAVIS and MR. CHARLES M. ATKINSON,
for Defendants.

BUCHANAN, V. C.

The bill is filed by the five children of Raffaella Malone (later Raffaella Romano), deceased, and alleges an agreement between their mother and Francesco Romano (the mother's second husband), in 1909, whereby the mother was to invest about \$1000.00 in the purchase of a house and lots of land and "would live together with the said five children, accumulate and improve the property and in the event of the death of either of them one-half of the property should forthwith belong to the children and in the event of the death of both of them the property should belong to the said children outright, share and share alike." The bill further alleges that the arrangement was carried out, the property purchased (though the deed was made to Raffaella Romano and Francesco Domano) and all lived together until the mother's death in 1917, and the entry of the boys into military service—the daughter helping about the household and the boys contributing their earnings.

After the mother's death the boys made allotments to the step-father. It is contended that they did this relying on his statements that the property was theirs.

The prayer of the bill is that Francesco (or Frank) Romano be declared to hold the property in trust for complainants or that the moneys paid by them "be decreed to be a first and paramount lien on said land and premises."

The theory of complainants' counsel is that the case is one where a resulting trust arises from the purchase of lands with the wife's money, the title being not taken in her name and there being no intended gift of the lands or a partial interest therein to the husband. *Irick v. Clement*, 49 N. J. Eq. 592, is relied upon as an analogous case.

Let us examine the facts as established by the proofs or admissions.

At the time of the purchase Frank Romano and complainants' mother were husband and wife, and had been for nearly a year. The wife could not read or understand the English language—neither could the husband, apparently (for the testimony was through an interpreter).

The bill alleges that the wife, about the time of her marriage, received about \$1000.00 from Italy. The husband's answer denies this. The bill alleges that the wife contributed over \$1000.00 of the money received from family sources, to the said property, under the "agreement." The answer "admits the contribution," but "denies the agreement set forth in paragraph six." No agreement is set forth in paragraph six, though one is referred to. The pleadings are reprehensibly slipshod and careless, on both sides, and it is difficult to determine what is intended to be admitted and what denied. I cannot say from the bill and answer that it is admitted that the wife paid \$1000.00 on the original purchase of the property, though it is certainly admitted that she at some time contributed

\$1000.00 to the property. (Improvements and other buildings were later added). The husband in his testimony denies that the wife gave anything toward buying the property or towards the property, but says she later got \$500.00 from Italy which she gave him.

Louis Malone, one of the complainants, testifies that his mother put \$1562.68 into the property; that with it she bought the property; that he was present at the purchase and the money paid was brought by his mother and turned over by her to the vendor's agent. It does not appear how he knew this exact amount was paid by his mother (he was not cross-examined on the point), except inferentially from his statement that he was present at the purchase; he was only fifteen years old at the time (though he had been working for a year), nevertheless the testimony is positive and would probably control as against the thoroughly unsatisfactory testimony of the husband, were it not for the fact that the deed recites a total consideration of \$2900.00, of which \$1600.00 was by assumption of an existing mortgage—so that the balance paid could not have been more than \$1300.00. The husband says \$900.00 of the \$1300.00 was paid by execution of a second mortgage, and he also says that he paid \$600.00 in cash, whereas there would have been only \$400.00 cash paid, if a \$900.00 second mortgage were given.

Albert Malone, who was thirteen years old at the time, and just starting to work, says he also was present at the purchase, and that his mother paid the purchase money; that it was about \$1500.00.

Ziegler, the vendor's agent, was dead, and hence his testimony could not be had. Petro Volpe, an Italian friend of the family, testified that he was present at Ziegler's office at the purchase; he confuses the pronouns "he" and "she," but I think his testimony means that Mrs. Romano bought the property with money of her own received from Italy; he doesn't remember seeing the money pass; doesn't know how much money Mrs. Romano paid; thinks the total purchase price was \$2500.00, but an advance payment had been made and a "second mortgage" was given (though he says nothing about a "first mortgage").

George Barcia, a friend of the family, was present at the transaction as an interpreter. He saw the money on the table, but doesn't remember how much it was, or who bought it or turned it over to Ziegler—though there is some slight corroboration, from the testimony as a whole, that the money paid was Mrs. Romano's.

Among the exhibits offered in evidence were a bond and mortgage of even date with the conveyance, given by Mr. and Mrs. Romano to the vendor, Cachelin, payable two years from date, but in the principal sum of \$1050.00, not \$900.00. This was not paid, according to endorsements thereon, until at least four years afterwards, when a mortgage for \$900.00 was given to the Building and Loan Association. A second mortgage of \$1050.00 leaves only \$250.00 actually paid in cash.

This documentary evidence conclusively controverts on the one hand the husband's statement that he paid a cash consideration of \$600.00 at the time of purchase, and also on the other hand, the story of the two boys that their mother paid a cash consideration of some \$1500.00.

By virtue of no reliance on the testimony of the husband therefor (for from this and other parts of his testimony, he proves himself unworthy of credence), but because of an equal inability to rely upon or place credence in the testimony of the two boys, in this behalf, I am constrained to hold that complainants have failed to prove that the wife paid the cash consideration.

And even if she had paid the \$250.00 cash—that was not the whole consideration. There was the first mortgage of \$1600.00 which the husband as well as the wife obligated himself to pay; and there was the second bond and mortgage of \$1050.00 made by the husband as well as the wife.

The theory of resulting trust fails.

If the case be examined from the angle of the question of mistake, the result is the same. It is possible that Mrs. Romano believed that by the deed to herself and her husband each would take a half interest, and that her half would go to her children at her death (and that her husband either believed likewise, or fraudulently concealed his knowledge of the truth). There is some basis for such a conclusion from the testimony of the witnesses Volpe and Barcia (apparently disinterested), which testimony it is unnecessary to quote. The difficulty is that it is by no means conclusive. To warrant a decree that the deed be reformed from a deed to the grantees as husband and wife into a deed to them as tenants in common, requires proof that is practically conclusive. The evidence must be satisfactory, beyond a reasonable doubt. *Hupsch v. Resch*, 45 N. J. Eq. 657; add'd 46 N. J. Eq. 609. "The proof must be clear and convincing, and upon testimony that is unexceptional." *Green v. Stone*, 54 N. J. Eq. 387, at 399.

Moreover there is another fatal obstacle in the way of relief by reformation, and that is that the grantors (or their representatives) in the deed are necessary parties in an action for such relief, and they are not in this case before the Court. *Thiefes v. Mason*, 36 Atl. 946.

There is some testimony to the effect that Romano represented or stated to the complainants that the title was, as to a one-half part, in the children and it is contended that they paid moneys to him relying upon such representation. One answer to this is that from the entire testimony of the complainants, the weight thereof is to the effect that what was said by Romano was not a **statement** that the title was in such condition, but a **promise** that he would put it in such condition. And the promise, being merely verbal, cannot be enforced because of the Statute of Frauds.

Another answer, equally cogent, is that I am satisfied from the testimony of the complainants themselves that their wages and allowances during minority were given to their mother. Albert, for instance, says "My money that I have earned, I brought to him; I gave it to my mother and step-daddy." And Louis, after repeatedly saying that he gave his wages to his step-father, later on in answer to a question of mine said, as to giving to the step-father all his wages from 1908 to 1914, "Yes, to him and my mother; they were both together." One of them said the mother was "leading the family." It is clear that they all lived together, the mother received the boys' wages, and the services of the daughter, and some, at least, of her husband's wages—and the children received their food and clothes and other requirements from the mother. The mother, under those circumstances, was entitled to the boys' wages and the daughter's services. *Osborn v. Allen*, 26 N. J. L. 388.

The conclusion then, from the facts as I find them to be, necessarily is that complainants are not entitled to any relief in the way of decree for conveyance or establishment of a trust or reformation of the original deed. Are they entitled to any relief whatever? If there were moneys paid by complainants to Romano after attaining majority, in consideration of an oral promise by him to convey an interest in the lands, and that promise has been broken, then they are entitled to the return of such moneys. The pending suit having been properly brought in this Court for relief obtainable here only, decree may be made herein for the return of such moneys, notwithstanding such relief could be had at law. *Bullock v. Adams*, 20 N. J. Eq. 367, Cf.; also *Gilleh v. Headley*, 75 N. J. Eq. 602; and Sections 8, 9, Chancery Act of 1915.

I think the proofs do establish the fact of such payments under the circumstances mentioned, although I might hesitate to reach such conclusion aside from the testimony of defendant Romano himself. The daughter

paid no moneys, and her services ceased at her marriage while still a minor. Edward is also still a minor. As to the others (without going into detail as to the evidence) Louis paid \$150.00; Albert, \$630.00, and Anthony, \$480.00. These payments (which exclude all payments made during minority and the life of the mother) are not denied by Romano—indeed in large part they are specifically admitted in his testimony. His contention is that they were not paid pursuant to the oral contract alleged; that he made no such contract or promise; that the payments were made “to keep the family” and that the family consisted of four children, the mother and himself. The falsity of this is apparent; the mother was dead during the period covered by the payments in question; the daughter was married and living with her husband; Albert, Anthony and Louis were away in the army (until the last few months of the period) and the “family” consisted solely of himself and Edward, who was working and turning over his wages to Romano, who also was earning good wages as he says—\$40.00 to \$45.00 per week. The moneys then were not paid to keep the family. For what purpose were they paid? No other reason is suggested except complainants’ claim that it was in pursuance of an oral contract for them to do so and that he would convey to them an interest in the property. There is other testimony to support this claim, and I find it to be the fact. The refusal to convey such interest or any interest is admitted by Romano. I will advise a decree for the payment by Romano to the three boys of these moneys, to the return of which they are both legally and equitably entitled, from which however certain deductions are to be made. As to Louis, he received back \$30.00 from Romano. This leaves \$120.00 due him. Albert received board and lodging from about May 1, 1921, to September 27, 1921—twenty-one weeks at \$7.00 a week (which I fix as a fair price under all the evidence) equals \$147.00, leaving \$483.00 due him. Anthony received board and lodging from about June 11th to September 27th, fifteen weeks, or \$105.00, leaving \$375.00 due him.

No costs.

NEW JERSEY COURT OF ERRORS AND APPEALS

Between
LOUIS J. MALONE, et als.,
Petitioner,
and
FRANCESCO ROMANO,
Defendant.

ON PETITION OF APPEAL.

REASONS.

The defendant, Francesco Romano, by his attorney, Robert Peacock, comes and prays that the judgment of the Court of Chancery of the State of New Jersey rendered against him wherein Louis J. Malone and others were complainant and the said Francesco Romano was defendant in which the Court of Chancery decreed that the said Francesco Romano should pay to Louis Malone, One Hundred and Twenty Dollars; to Albert Malone, Four Hundred and Eighty-three Dollars, and to Anthony Malone, Three Hundred and Seventy-five Dollars will be reversed and set aside for the following reasons:

1. That the said Court in its opinion and conclusions did not decide according to the prayer of the bill in said cause.

2. Because the said Court of Chancery rejected legal evidence offered by the defendant.

3. Because the Court of Chancery admitted illegal evidence offered by the said plaintiff.

4. Because the Court of Chancery in its decision stated as follows: I will advise a decree for the payment by Romano to the three boys of these moneys, to the return of which they are both legally and equitably entitled, from which however certain deductions are to be made. As to Louis, he received back \$30.00 from Romano. This leaves \$120.00 due him. Albert received board and lodging from about May 1, 1921, to September 27, 1921—twenty-one weeks at \$7.00 a week (which I fix as a fair price under all the evidence) equals \$147.00, leaving \$483.00 due him. Anthony received board and lodging from about June 11th to September 27th, fifteen weeks, or \$105.00, leaving \$375.00 due him; which is contrary to equity and the statute in such case made and provided.

5. Because the Court of Chancery in its decision stated as follows: The conclusion then, from the facts as I find them to be, necessarily is that complainants are not entitled to any relief in the way of decree for conveyance or establishment of a trust or reformation of the original deed. Which is contrary to equity and the statute in such case made and provided.

6. Because the Court of Chancery in its opinion decided as follows: By virtue of a promise made by defendant to complainant that he conveyed an interest in the land and premises mentioned and described in the bill of complaint in this cause having received moneys from the said Louis

J. Malone, Albert I. Malone and Anthony E. Malone which Court decreed that the defendant should pay to these plaintiffs the sum of One Thousand Twenty-one Dollars and Ninety cents (\$1,021.90) holding that they were entitled to that amount of money from the defendant and making the same a lien upon the premises in question; that the learned Court refused to decree a resulting trust in favor of the plaintiff, but gave a decree in favor of the plaintiffs on an entirely different matter than that prayed for in the bill; that the learned Court erred in not dismissing the bill of complaint in this cause; that the learned Court's decree was contrary to the evidence presented in this cause.

7. Because the bill of complaint in this cause prayed for a decree that said Frank Romano held said lands as Trustee for the complainants and that the money paid under said agreement may be decreed to pay the first and paramount mortgaged lien on said premises which the said Court of Chancery failed to decree.

8. Because the said complainant prayed that the resulting trust arising from the purchase of lands with the wife's money the title being not taken in her name and there being no intended gift of the lands or a partial interest therein to the husband which the Court of Chancery failed to decide in favor of the complainants.

9. Because the complainants failed to set forth any agreement as prayed in their bill.

10. Because the complainants failed by a preponderance of evidence to show that they were entitled to equity or any decree in their favor.

11. Because the complainants failed to show that the wife paid the cash consideration for which complainants asked a resulting trust to be decreed in their favor.

12. Because the testimony does not show any money due complainants under the bill of complaint and the evidence offered in this case.

13. Because the said judgment of the Court of Chancery was in divers other respects illegal, unjust, oppressive and contrary to law.

ROBERT PEACOCK,
Attorney for Defendant.

IN CHANCERY OF NEW JERSEY

Between
LOUIS J. MALONE, et al.,
Complainants,
and
FRANCESCO ROMANO, et al.,
Defendants.

ON BILL, Etc.
TESTIMONY.

Testimony taken in the above-entitled cause, at the State House, Trenton, New Jersey, on Monday, April 25th, 1921, at 11 o'clock A. M., Before Hon. MALCOLM G. BUCHANAN, Vice Chancellor.

APPEARANCES: George M. Bacon, Esq., and William J. Connor, Esq., for complainants;

James Mercer Davis, Esq., and Charles M. Atkinson, Esq., for defendants.

THOMAS L. WILKINSON, a witness produced on behalf of the complainants, being duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. BACON:

MR. ATKINSON: Objected to; we object to the value of the property, as it will have nothing to do with the case.

THE COURT: Objection overruled.

- Q. Your name, please?
A. Thomas L. Wilkinson.
Q. Business?
A. Real estate and insurance.
Q. Length of time you have been in the business?
A. About four years.
Q. Have you any other profession or occupation?
A. Surveyor, and associated with my father in the collection of taxes.
Q. As surveyor, are you a graduate surveyor?
A. Yes.
Q. What institution?
A. State College of New Jersey and Massachusetts Institute of Technology.
Q. Do you know the property occupied by Francesco Romano?
A. Yes, sir.
Q. State the value of the property, including the adjacent lots, on which there is a brick house built?

A. The two properties, a double brick dwelling and a single frame dwelling, with the lots, I am estimating has a value of about \$10,500.00.

CROSS EXAMINATION

BY MR. DAVIS:

Q. What are they assessed at, Mr. Wilkinson?

A. I don't know, Mr. Davis; I might say that the assessed value of the property in Riverside is not any criterion as to their value.

Q. You say you assist your father in the collection of taxes; do you assist him in the collection of the taxes on these properties?

A. I said I have been associated with him; I don't help him to collect any of the taxes.

Q. Do you write up his transcript?

A. I am familiar with his books and the valuation of the properties.

Q. What is the assessed valuation of this property?

A. I don't know; I told you that once.

Q. Do you know what it rents for?

A. The double brick, I think, rents at the present time for \$25.00 a side.

Q. And the other?

A. I believe that is occupied by Mr. Romano.

RE-DIRECT EXAMINATION

BY MR. BACON:

Q. What would be the rental value of the house occupied by Mr. Romano?

A. I should say about \$20.00.

HARRY J. ZIEGLER, a witness produced on behalf of the complainants, being duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. BACON:

Q. Your occupation, please?

A. Real estate and insurance.

Q. Where?

A. Riverside, New Jersey.

Q. How long have you been connected with that business, either for yourself or others?

A. About nine years.

Q. Do you know the property occupied by Frank Romano?

A. I do.

Q. Give us the value of it, will you, please?

A. \$10,400.00; that includes the double house and the single house and the four lots.

MR. DAVIS: No questions.

LOUIS J. MALONE, Jr., a witness produced on behalf of the complainants, being duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. BACON:

THE COURT: You want an objection to what?

MR. ATKINSON: I want an objection upon the theory that the Statute of Frauds controls in this case; and if there is any agreement in writing it would bring it within the Statute of Frauds—

MR. ATKINSON: I would like to amend my answer to that extent. I think we are not prepared to meet that; we are meeting the issue that has been brought before the Court, and it seems to me to await the day of trial we have no opportunity to meet that issue.

MR. DAVIS: If I may call your Honor's attention to the fact that the third paragraph of the answer denies the agreement, and under the decisions I understand that really puts into effect the Statute of Frauds.

THE COURT: Objection overruled.

Q. Your name, please?

A. Louis Joseph Malone.

Q. Residence?

A. Riverside, New Jersey.

Q. Do you know Frances Romano, the defendant?

A. Yes, sir.

Q. Do you know that he was married to some person in 1909?

A. Yes, he married my mother,

Q. What was her name?

A. Raffaella Malone.

Q. About the date of the marriage?

A. The date of their marriage I was in St. Michael's Orphan Asylum; my brother knows better.

Q. What year was it?

A. 1907.

Q. Do you know whether your mother had money at that time?

A. She had plenty of money at that time, but it was in Italy.

Q. Do you know what amount of money she put in the property at Riverside?

MR. DAVIS: That is objected to unless he shows how he knows; he says he was in an orphan asylum.

THE COURT: Objection overruled.

A. I do know.

Q. What was the amount?

A. The amount of money—the property wasn't—

Q. What was the amount which she put in the Riverside property?

A. \$1562.68.

Q. Immediately after the marriage, where did they go to live?

A. They went to live in the house where mother bought.

Q. How long did she live there?

A. She lived there till February 13, 1917, she departed her life.

Q. Who lived there during that time with her?

A. All us children, Louis, Albert, Anthony, Edward and Mary, mother's children.

- Q. Did you work?
 A. We worked, yes, sir.
 Q. What became of the proceeds?
 A. Our money, do you mean?
 A. Yes.
 A. Our money was turned over under the intention—
 MR. DAVIS: Objected to.
 Q. What became of it?
 A. It was put on the property.

MR. DAVIS: I move to strike out the answer of the witness.

THE COURT: The answer will stand, except as to what his intention was.

- Q. Do you know what your mother did with the money that she put in that property, the actual money?
 A. I don't understand that thoroughly.
 Q. Where did she get the money?
 A. From Italy; she sold her property.
 Q. How did it come to her, by money or cash?
 A. By money order, post office.
 Q. What did she do with that, do you know?
 A. She bought the property.
 Q. From whom did she buy the property?
 A. From Gena and Eugenia Cachelin.
 Q. Who transacted the business?
 A. Mr. Ziegler, Charles Ziegler.
 Q. Was he the father of the last witness?
 A. Yes.
 Q. Is he living?
 A. No, he is dead.
 Q. Was there anyone present when that business was transacted?
 A. Yes.
 Q. Who?
 A. We have an interpreter by the name of George Barcia.
 Q. He is present?
 A. He is present.
 Q. Any other persons present?
 A. Yes.
 Q. Who?
 A. Mr. Peter Volpe.
 Q. Who else was present?
 A. The wife and husband that sold the property, and another officer was present at the time.
 Q. Do you know who that officer is?
 A. No, I don't know, and he is not living in town.
 Q. Well, how was the money paid over?
 A. The money was turned over—

MR. DAVIS: Was this witness there?

- Q. Were you there?
 A. Yes, I was present.
 Q. Proceed.
 A. The money was turned over.
 Q. How was the money turned over; was there any money there?
 A. Yes, the money was turned over by my mother to Squire Ziegler.

- Q. How?
- A. I dont understand.
- Q. Was the money handed over or cash money transferred?
- A. Cash money was transferred.
- Q. Who brought the cash money to that interview?
- A. My mother.
- Q. At the end of the interview what became of the cash money—
after the business was over, where was the cash?
- A. It went to the woman that sold the property, and then a policeman took her home.
- Q. How long did you live in that family?
- A. All the time after I come back from the orphan asylum.
- Q. Until when?
- A. 1914, April 28th.
- Q. Did you leave then?
- A. I left and went to the Mexican War; I went to the service.
- Q. Have you ever returned?
- A. Yes, sir.
- Q. How long?
- A. For two or three days; I returned for two or three days in six months; the next time I didn't return for two years.
- Q. How long were you in the Mexican service?
- A. I was in the American Marines, five years.
- Q. During that time you were away practically all the time?
- A. I was away practically all the time.
- Q. And during that time did you continue to send money?
- A. I sent money.
- Q. To whom?
- A. When my mother was living I sent it to her to put on this property, and at her death I sent it to Frank Romano to be put on this property.
- Q. In all, how much?
- A. From the time I commenced to work, \$1861.00 or twenty-one dollars.
- Q. What was said and done in Squire Zeigler's office the time you were there with your mother and Romano about the transfer of this property?

MR. DAVIS: Objected to on the ground, if your Honor please, that it can have no force and effect as between these people, unless it enters in the nature of a contract or agreement, and if it was it must be in writing, or it must be inhibited by the statute.

THE COURT: I will hear the testimony.

- Q. Answer the question.
- A. My mother bought this property—

MR. DAVIS: I move to strike that out.

THE COURT: Strike it out.

- Q. What was the agreement talked over at that time?

BY THE COURT:

- Q. What was said and done?
- A. This agreement was said, in case one should die it would be my children half, and in case both should die it

would be outright both the children's of mine; that was what mother said.

Q. Who was present?

A. The interpreter, the wives, Mr. Zeigler, an agent, and an officer which I don't remember, and my sister and a daughter—

Q. What reply did Frank Romano make to that talk?

A. He said, "Yes, it is satisfactory to me."

Q. Did anyone else participate in the discussion there?

THE COURT: Go back and let him tell the entire transaction.

Q. Tell us what happened in the office at that time?

A. The deed was drawn out—

BY THE COURT:

Q. When you and your mother and the rest got there, what was the first thing that happened?

A. Talked over the property and make an agreement for that property.

Q. What was said, and who said it, first?

A. Mother.

Q. What did she say?

A. I told mother myself to let's buy over here in America.

Q. At the time you got to this office on this day when the deed was made, when you got there to Zeigler's office, what was the first thing said?

A. Mother brought the witness to the interpreter and said, "I want to buy this property."

Q. What property?

A. 321 Fillmore Street, with eight lots.

Q. Whom did she tell that to?

A. Squire Zeigler she told it to at the time.

Q. And the people who owned the property, were they there?

A. Before we got there, yes, sir.

Q. Go ahead; what else was said; tell what happened right straight through. She told the Squire she wanted to buy this property?

A. Yes, and they said in case one would die the children would get half and the other half to Frank Romano as long as he lived, and after his death to the children.

Q. What else? Tell the whole story. What else took place?

A. And the interpreter told the Squire and also the witness told the Squire.

Q. What do you mean by the witness?

A. Mr. Peter Volpe.

Q. Go ahead; tell what happened.

A. The paper was drawn up; the agreement was drawn up right that night.

Q. Tell what was done.

A. And then we went home after everything was settled that way.

Q. Who got the money?

A. Mr. Zeigler got the money and handed it over to the woman, from mother.

Q. And who got the paper; did anybody take any papers away from there?

A. I don't remember that, Mr. Bacon. I don't remember because I never seen the papers until later.

Q. And Frank Romano made a statement about it and said something about it?

A. He said it was all right.

Q. What nationality was your mother?

A. Italian.

Q. Where did this money come from?

A. Italy.

Q. And could she speak English?

A. My mother couldn't read or write English; she could read Italian, but neither write English nor Italian.

Q. How long had she been in the country?

A. Two years.

Q. Has anything been said between you and Mr. Romano about doing what he has agreed to do?

A. Yes.

Q. What has he said to you, if anything, on that subject?

A. Before going to the service he said, "You boys bring all the money you can on this property, and this property is all yours, because your mother made it out to you," and I made an allotment to support this property, and my brother was bringing home their envelopes.

Q. Your brothers brought their envelopes?

A. Yes, closed.

MR. DAVIS: That is objected to as not responsive.

THE COURT: It doesn't lie in your mouth to make that objection.

Q. And what did he say on those occasions?

A. He said, "The property is all you children's, because your mother made it out unto you that in case she died you would have half," and if he died it was to be outright to us childrens.

Q. Did you talk on that same subject at any other time?

A. Very often.

Q. Can you remember any other occasion?

A. Yes, sir; I went to the service and when I came back on a furlough two or three days, we talked about this matter over, and one day while I was in the service, my sister wrote to me and said, "I went over to Mr. Zeigler's office—"

MR. DAVIS: Objected to.

THE COURT: Objection sustained.

Q. Did you say anything to Mr. Romano about it?

A. Yes.

Q. Tell what you said to him about it.

A. I told him, is this property getting along all right; are we doing everything? He said, "Yes, keep it up, we would do all we can, and it is all your property." So I done this before I went over to France. I had an allotment, and I come home and didn't have no money; I said, "I might as well go home and see the folks before I go over"; I asked him to send me \$30.00 to come home, and he did; and then we talked about this matter again and everything was satisfactory; the two brick houses was built then, and I sent the money for the foundation.

- Q. Do you know when they were built?
 A. In 1917 mother built the foundations.
 Q. Where did the money come from?
 A. From me in the service, and my brother's pay.
 Q. And is that double brick house the house that is now rented—
 A. For \$25.00 a month a side, yes.
 Q. What else did Frank Romano say or do to you, in your presence?
 A. And after I returned from the service from France, I didn't have no money; I was six months at the war, and I asked for \$25.00, and he didn't send it to me right away, and I wrote to my sister, and she sent it to me, and then I got his, and I paid back my sister—
 Q. About this property?
 A. And I come back and I found out by my uncle, Julius Consorti, that he borrowed—

MR. DAVIS: Objected to.

- Q. What did you and Frank Romano say, if anything, about Frank Romano's doing what you asked him to do?
 A. He said, "It is all your property."
 Q. Any other occasion?
 A. All the time until two days before he ordered me out of the house.

CROSS EXAMINATION

BY MR. DAVIS:

- Q. How old do you say you are?
 A. 27 years old, will be in October.
 Q. You say your mother was married in 1907?
 A. About 1907; I was in the orphan asylum at the time.
 Q. How old were you at the time.
 A. I was going on 14 years old.
 Q. And you had been here since you were twelve, in the United States?
 A. I was in the United States since I was eleven years old; beg your pardon.
 Q. Were you present at the time your mother married Frank?
 A. No, sir.
 Q. You don't know where the marriage took place then?
 A. No, sir.
 Q. How long after they were married was it before you came?
 A. I came back when I was of age, and worked.
 Q. No; when did you come back; when you were 16?
 A. I was over 14 years old when I came back; then I went to work.
 Q. Now, what other brothers and sisters were in the orphan asylum with you?
 A. Three brothers—Albert and Anthony.
 Q. So there were three brothers in the orphan asylum?
 A. Three brothers.
 Q. Your sister, was she there?
 A. She was helping mother.
 Q. Was there any other brother that was not in the orphan asylum?
 A. Yes.
 Q. Was he older or younger?
 A. The youngest one at present.
 Q. Was the girl younger than you?

- A. I am the oldest one.
- Q. The two younger children were with your mother?
- A. Yes.
- Q. And you two older ones were in the orphan asylum.
- A. Yes.
- Q. Do you know when you left the orphan asylum?
- A. I am pretty positive in November; I was fourteen in October.
- Q. What year?
- A. Let's see—
- Q. Well, it has been thirteen years ago, if you are 27?
- A. I will be 27 in October.
- Q. You are 26 now?
- A. I will be 27 in October.
- Q. Well, can you tell what month and what year you came out of the orphanage?
- A. In 1908.
- Q. Then she had been married a year before you came out; is that right?
- A. When she got married I don't know; I said it.

BY THE COURT:

- Q. She was married before you came home?
- A. She was married before I came home.
- Q. Aren't you wrong about that, and didn't she marry in January, 1909?
- A. I don't know when she married, but she was married before I came home.
- Q. You say you came home in 1908, and yet you say she was married before you came home, so I ask you weren't you wrong in answering me that you came out of the orphanage in 1908?
- A. No, I am not wrong.
- Q. And you are sure of that?
- A. I am positive.
- Q. My information is, she was married in 1909; if she was married in 1909, you are wrong, aren't you?
- A. She wasn't married in 1909, because that is the time we bought the property.
- Q. Where were you living when you came home?
- A. 45 Cass Street, Riverside, New Jersey.
- Q. And when did you go to the orphanage?
- A. That was after the death of my dear father.
- Q. When did he die?
- A. In 1906.
- Q. From his death up until, you say, 1908, you stayed in the orphanage; is that not right?
- A. After his death we were sent up there by the Catholic Priest.

BY THE COURT:

- Q. You were up there two years?
- A. Yes.
- Q. So that you were a little more than fourteen when this property was bought, weren't you?
- A. I was over fifteen when this property was bought.
- Q. When was it bought?

- A. In November, I am pretty sure, 1909.
- Q. So that you had been home a year at the time the property was bought?
- A. I was home a year working at the time—
- Q. Working or loafing, or what? You had been home a year?
- A. Over a year.
- Q. Were the other children home at the same time?
- A. Mary and Edward, the two youngest.
- Q. Where were the other two?
- A. Still up there until they were fourteen.
- Q. Did they come out when they were fourteen years of age?
- A. No, they both came out together.
- Q. When the oldest one was fourteen?
- A. When the second one was fourteen.
- Q. Then, all five children and your mother and Frank Romano lived together there, did they not?
- A. We lived together with 18 boarders.
- Q. And you kept house as one family?
- A. A pretty big family.
- Q. That is the way you kept house, didn't you, all lived together as one family?
- A. We lived together.
- Q. All ate at the same table and all the bills paid as one family bill, were they not?
- A. It was paid by my mother; he wasn't working at the time.
- Q. The fact is, that all the money was paid out as one family, and you lived together as one family, didn't you?
- A. She was leading the family.

BY THE COURT:

- Q. No matter who was the leader of the family, you lived as one family?
- A. We lived together.
- Q. What did you live on?
- A. We were working and mother had eighteen boarders, and he wasn't working at the time.
- Q. Did you cook your own food?
- A. Mother did.
- Q. And she cooked the food for the rest of your brothers and sisters?
- A. For everybody.
- Q. Boarders and all?
- A. Boarders and all.
- Q. That continued up until what time?
- A. Until I told mother, I said—
- Q. When did it stop, when did you go away from home?
- A. Away from home?
- Q. When did you leave that house?
- A. I didn't leave, I was ordered out.
- Q. You went?
- A. I was ordered out by law, I had to go out.

BY THE COURT:

- Q. When was it?
- A. I don't recall the date; I am pretty sure it is September 27th, 1919.

- Q. Now, before that, you had been in the service?
 A. Five years.
 Q. When did you go away from home to go in the service?
 A. April 28, 1914.
 Q. 1914?
 A. Yes, in the Mexican War.
 Q. You never came back to live at that house after April 28, 1914, until you returned from France, did you?
 A. I did, I returned occasionally.
 Q. When you came out of the Mexican service, did you go directly in the service of the last war?
 A. I was there four years.
 Q. Answer the question.
 A. I was continuously in the service all the time.
 Q. That is, from April 28, 1914, until what time?
 A. Until March 24, 1919.
 Q. Now, during that time, of course, you were away except when you returned home on a visit, were you not?
 A. Yes.
 Q. Up until March 28, 1914, when you went in the Mexican Army, you continued to live there with your mother and your step-father as one family, didn't you?
 A. I was in the service then.

BY THE COURT:

- Q. Up until 1914?
 A. Oh, yes, yes.
- Q. How old were you when you went in the the army?
 A. I was in the middle between 18 and 19, or 19½, or something like that.
 Q. And this money that you said you gave to Frank Romano, the \$1821.00, you count as part of that money the money that you gave to him between November, 1909, when you came home, and the time you went in the Mexican Army?
 A. I came home in 1908?
 Q. All right; from that time, from 1908 until April 28, 1914, you say you continued to give Frank Romano your wages?
 A. My closed envelope, all the money in it.
 Q. You are counting that money that you have just testified to as a part of the money that you gave him, which made up the sum of \$1821.00, are you?
 A. From the time when we bought this property I am counting up—
 Q. One minute. You testified that you gave him \$1821.00, didn't you?
 A. Altogether.
 Q. When did you give him the first of it?
 A. The first year.
 Q. That was 1908?
 A. 1908; I was getting \$4.00 a week, that's all.
 Q. When did you give him the first money. Now tell us?
 A. I give him the first money in November, 1908.
 Q. And you continued to give him money from time to time, as you earned it, from 1908 until 1914?
 A. Under this agreement.

THE COURT: Strike that out.

- Q. (Stenographer repeats the question).

- A. Yes, sir.
- Q. And that money that you gave him between November, 1908, and April 28, 1914, is a part of this \$1821.00, isn't it?
- A. A part of it.
- Q. You went in the army and saw service, you say, on the Mexican border?
- A. Vera Cruz.
- Q. In 1914?
- A. I entered the service then.
- Q. Did you enter the army in 1914?
- A. Yes.
- Q. And you saw service in Mexico, did you not?
- A. I did.
- Q. Now, did you give him money after April 28, 1914?
- A. Yes, sir.
- Q. And do you know how much you gave him?
- A. Yes, sir.
- Q. How much did you give him in April, 1914?
- A. Until when?
- Q. Until you became of age, 21?
- A. I counted that in, \$160.00.
- Q. How do you figure that out?
- A. And then some more.
- Q. How did you figure that out?
- A. I had an allotment.
- Q. How did you figure it out?
- A. Sixteen months' allotment, besides that I sent money orders home.
- Q. Have you got them?
- A. Yes (producing them). I have tore it in half there; I sent it to mother.
- Q. Well, now, this is the paper; that is a letter which is sent to you from the Navy Department?
- A. Yes, the Allotment Bureau Office.
- Q. What records have you got that Frank Romano got any money after April 28, 1914?
- A. It would get back to me—

MR. DAVIS: I move to strike that out.

THE COURT: Strike that out, and I will ask the question.

BY THE COURT:

- Q. How do you know that Romano got the money?
- A. Otherwise, I would have got it back; the money would surely come back to me.
- Q. Did you ever talk to him about it?
- A. Yes; every time I come home on a visit, I talked it over to him.
- Q. Did he say anything about getting it?
- A. Yes, sir; he said, "I received your money, and keep doing your good work."
- Q. How much was it?
- A. \$160.00, and once \$15.00; I sent it in any way; and another time, ten, besides the one hundred and sixty.
- Q. That was for the sixteen months after you went in the army, after April 28, 1918?

A. Yes.

Q. That was all before you became 21 years of age?

A. That was when mother died.

Q. Answer my question. That was all before you became 21 years of age; you were 21 when you left the Mexican service, were you?

THE COURT: That can be arrived at by mathematical calculation.

A. I came out of the service when I was 25.

Q. When you came out of the service down in Mexico and went across—

THE COURT: He said he was in the service continuously until 1919.

Q. When did you become 21 years of age?

A. October 17.

Q. What year; 1915, wasn't it?

A. I was born 1894, October 27th.

Q. Do you have a memorandum or any record of the money that you sent Frank Romano after October 17, 1915?

A. October 17, 1915?

Q. Yes.

A. Yes; right here; I just showed you.

Q. Tell us since October 17, 1915, what money you sent to Frank Romano?

A. I had this allotment made to mother, and he cashed the money after her death.

Q. You had the allotment made to your mother?

A. On these properties.

Q. Did you have the allotment made to your mother?

A. And he cashed it afterwards.

Q. You were not there, were you?

A. Witnesses were there.

Q. Were you there?

A. No.

Q. Then you don't know?

A. I do know. When I went home I asked him.

Q. Oh, yes, I understand that; so that your allotment was made to your mother, was it?

A. Before her death.

Q. Answer my question; did you make your allotment to your mother alone?

A. Alone, before her death.

Q. When did she die?

A. She died March 24, 1917, if I am not mistaken; or April—I was in the service.

Q. 1917?

A. Or February.

Q. 1917?

A. 1917, in the first part of the year.

Q. Now, after your mother's death, did you make any allotment to Frank Romano?

A. Yes, personally, to him.

Q. How long did that allotment continue?

A. It continued for six months, \$25.00 per month.

Q. So that what you allotted to Frank Romano and what he received, was \$25.00 a month for six months?

- A. Yes.
- Q. Now, during that six months did you receive any money back from him?
- A. I received money before I went across on the other side, in November, \$30.00 to come home, because I had an allotment to him.
- Q. During the six months in which you made an allotment to Frank Romano, if during that time you received any money from Frank Romano you can tell, can't you?
- A. Yes, I did.
- Q. How much did you receive?
- A. I received \$30.00 to come home; I had an allotment to him.
- Q. Is that all?
- A. At that time to come home and visit the folks, and I was going across then.
- Q. Understand me, after you made the allotment to Frank Romano, you said he received it after six months; I am asking you during that six months what money did you receive from Frank Romano?
- A. During those six months I received \$30.00 from him, and over in France, I don't know if my allotment expired or not, I received one carton of Bull Durham which I wanted to smoke.
- Q. During the last three years of your mother's life did you see her frequently?
- A. Not frequently.
- Q. How many times?
- A. I am sure I seen her three times.
- Q. She was in poor health, was she not?
- A. She was not.
- Q. Wasn't she sick during the last three years of her life?
- A. The time I was home she was in excellent health.
- Q. On all three times?
- A. On all three times, yes.
- Q. How long before her death was it that you saw her last?
- A. Five or six or seven months, something like that.

RE-DIRECT EXAMINATION

BY MR. BACON:

- Q. Will you tell us if you gave Frank Romano any more money at any time?
- A. Yes, sir.

BY THE COURT:

- Q. You say you gave him \$1821.00 altogether?
- A. Yes, Sir.
- Q. How do you count that up?
- A. From the time I was ordered out of the house.
- Q. How do you make that up?
- A. From the time I was ordered out of the house—
from the time I commenced to work to the time I was ordered out of the house.
- Q. How did you get it?
- A. What I was getting the first year and the second year.
- Q. The first year you came from the orphan asylum?
- A. Yes, the first six months I was getting \$4.00.
- Q. And after that?
- A. \$4.50 a week.
- Q. What did you do with that?
- A. Gave it to him.

Q. How long did you get that much?

A. For the following five or six months after; and then I was on piece work after, and it is hard to tell.

Q. You got \$4.50 a week for six or seven months; then the rest—

A. I was put on piece work, all I could make.

Q. How much did you make?

A. Nothing under \$7.00 or \$12.0 a week for two years.

Q. What did you do with that money?

A. Give it all to him.

Q. All of it?

A. All of it, yes, sir.

Q. And that lasted for how long?

A. Till a year before I went to the service; then I was raised more, and I give all that up.

Q. What did you make during the last year?

A. From ten to fourteen.

Q. What did you do with that?

A. Give it all up.

Q. So that during all this time, from the time you came back in 1908 to the time you entered the service in 1914, you gave all your wages to your step-father?

A. Yes, to him and my mother; they were both together.

Q. You didnt keep any for yourself?

A. No, sir—in a closed envelope.

Q. You entered the service in April, 1914; what money did you give him after that?

A. One time, before I made this allotment, I sent him \$10.00.

Q. When did you make the allotment?

A. I made the allotment (looking at paper) in 1917, I am pretty positive; January, 1917.

Q. Well, now, between the time you went in the service in April, 1914, and the time you made the allotment in 1917, how much did you send to your step-father?

A. One time \$10.00; another time \$15.00, and \$30.00, before I made my allotment.

Q. That was during this two and a half years, nearly three years, all you gave him was \$10.00, \$15.00 and \$30.00?

A. Until I made this allotment.

Q. Did you send your mother any during that time besides this \$10.00, \$15.00 and \$30.00.

A. No, I wasn't getting hardly any.

Q. After you made the allotment in January, 1917—that allotment was \$10.00 a month?

A. That allotment was \$10.00 a month for sixteen months.

Q. That brings you down to May of 1918; and what happened to the allotment in 1918, after the sixteen months?

A. My mother died, and I cancelled it and made a new allotment to him.

Q. For sixteen months it was your mother?

A. To my mother.

Q. You made the allotment first in January, 1917?

A. Yes, that was first.

Q. And your mother died in February, 1917?

A. My mother died in February, 1917, and I had to

change my allotment; I had to stop this allotment and make out a new one.

Q. Your mother died just a month after you made this allotment?

A. Yes, and he got the money afterwards.

Q. For how long?

A. For sixteen months.

Q. Then what?

A. Then I came home.

Q. From Mexico?

A. Before I went across on the other side.

Q. That was in May, 1916?

A. No, that was in November, 1917.

Q. That wasn't sixteen months?

A. No, that's when I came home.

Q. You started the allotment in 1917 and that continued for sixteen months?

A. Yes.

Q. That would bring it up to May, 1918?

A. Yes, but I came home during that time.

Q. I don't care anything about that. You started the allotment in January, 1917, and you continued it for sixteen months?

A. Yes, sir.

Q. That was May, 1918?

A. Yes, but after, I changed this allotment; I changed it from mother to him.

Q. But he went on after you changed it for fifteen months, and the sixteen months was up in May, 1918; why did it stop at the end of the sixteen months?

A. I stopped it to renew it for \$25.00 a month.

Q. At the end of sixteen months you changed it from ten to twenty-five?

A. Yes.

Q. How long was it twenty-five?

A. Six months.

Q. That would bring it down to November, 1918; then what happened?

A. I found out he didn't pay that money, and I stopped the allotment altogether.

Q. Did you give any of that money to Frank Romano as a free gift?

MR. DAVIS: That is objected to on the ground that the allotment in 1917 was made to his mother, and subsequently the allotment had nothing to do with the property, and until he was 21 years of age.

THE COURT: I will allow the question.

A. Always for the property.

ALBERT I. MALONE, a witness produced on behalf of the complainants, being duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. BACON:

Q. Your age, please?

A. 25 years of age in November; I am 24 at present, and will be 25 in November.

Q. Are you the brother of the preceding witness?

A. Yes, sir.

Q. Were you present when these papers were arranged to buy this property?

A. Yes, sir.

Q. Were you in the squire's office when the papers were made?

A. Yes.

Q. What do you know about it?

A. I know we had an interpreter and a witness, and Eugene Cachelin and his wife and my mother and step-father and sister, and my brothers, were in the squire's office when the agreements were made out.

Q. Did you see any money pass hands at that time?

A. Yes.

Q. Tell us about it?

A. The money was passed in the squire's hands to buy the property situated on Fillmore Street, by my mother.

Q. Do you know anything about the amount of it?

A. About \$1500.00.

Q. Did you see any papers made out?

A. Yes, I saw the papers made out; I could read a trifle at the time, but I saw the papers when they were made out.

Q. Did your mother take any papers home with her?

A. I don't quite recollect whether it was him or her that took the papers back home.

Q. What did you do after that agreement was made; where did you go to live?

A. After the agreements were made we went to live to out new property, situated on Fillmore Street, 321.

Q. How long did you live there?

A. I lived at Fillmore Street from the time it was bought till I enlisted in the army, and that was 1917, the 28th of May.

Q. Did you work?

A. Yes, I have worked ever since I was 13.

Q. What became of your money?

A. My money that I have earned I brought it to him; I gave it to my mother and step-daddy.

Q. Do you know what became of it?

A. They put it on the property and eatables.

Q. Did you make any allotment to your step-father?

A. Yes.

Q. Tell us about it?

A. In 1917, in November, before going abroad, I made an allotment of \$15.00 a month, and the allotment was in progress until I was discharged, and that was April 23, 1919.

BY THE COURT:

Q. To whom?

A. To my guardian; I had Edward Malone, guardian of the allotment; the guardian was Frank Romano.

Q. What became of the money eventually?

A. The money?

Q. The allotment money, who got it?

A. Well, they got it.

Q. Do you know whether or not Frank Romano got any of it?

- A. I do.
- Q. How much?
- A. He got about \$270.00.
- Q. Did you ever talk to him about it afterwards?
- A. Yes.
- Q. What did he say about it, if anything?
- A. He told me he got it.
- Q. Did you ever talk to him about the condition on which the property was held?
- A. I did, after I heard my uncle tell another man that—
- MR. DAVIS: Objected to.
- Q. Did you ever hear Frank talk about it; if so, what did Frank say about it?
- A. Talk about the property?
- Q. Talking about the pay the property was held?
- A. Yes.
- Q. What did Frank say about it?
- A. He said it was all ours at the death of both parties; if mother died, half the property would go to the children, and the other half after his death.
- Q. When was the last time you ever heard him talk that way?
- A. Just before I was throwed out of the house.
- Q. When?
- A. In 1919, four or five months after I came back from the service, probably in September.
- Q. Before or after the second marriage?
- A. Yes, after the second marriage.
- Q. You refer to his present marriage?
- A. I refer to his present marriage, yes.
- Q. Well, what did he say to you at that time?
- A. Why, he told us that the property was ours and his until his death, when it would be all ours.
- Q. Did anybody hear him talk that way in your presence?
- A. Yes.
- Q. Who?
- A. Carmello Pittito, I think, and Lena, I don't know her last name.
- Q. Did he get any money from you after he came out of the army?
- A. Yes.
- Q. How much?
- A. After I came out of the army I have loafed for about a week; finally I went to work and worked in the shipyard, and have earned ranging from \$25.00 to \$28.00 a week in the shipyard.
- Q. Did you give any of it to Frank Romano?
- A. Every bit of it, sir, with the exception of a quarter for spending money; that's all he give me.
- Q. What year was that?
- A. 1919, after I came back from the service.
- Q. How much of that money was there?
- A. The shipyard work?
- Q. Yes.
- A. About a month and a half; then I went back and worked in the Keystone Watchcase Company, Riverside, New Jersey, and was working piece work, making from \$18.00 to \$23.00, and I gave him out of that an average of \$15.00.
- Q. How much altogether?
- A. After I got back from the service?
- Q. Yes.
- A. I worked in the Watchcase after I came back from the service,

until we went out on strike, and that was in September, right after I was thrown out of the house.

Q. How many weeks was there, do you know?

A. I judge there was about fourteen weeks.

Q. At \$18.00?

A. No, \$15.00.

Q. And how many weeks in the shipyard?

A. Six weeks in the shipyard.

Q. Any other money you gave him after you came back from the army?

A. Yes, when I worked.

Q. How much did you give him?

A. I gave in all from the time I started to work till I was thrown out of the house; I gave \$2,564.00 in all.

Q. Was there any other occasion when he recognized some rights you might have in this property?

A. Yes, very frequently he told me, very frequently.

Q. If you can remember when, or what the remark was, give it to us?

A. What I told you.

Q. No, other times when he said it.

A. Other times?

Q. When Frank talked in your presence about who owned the property and what was to be done with it.

A. Was anybody present?

Q. Tell us about some other time he said it?

A. Oh, he said it every other day, or every week, very frequently.

Q. When did you first find out the deed was as it is?

A. After I came back from the service.

Q. What did he say about it, if anything?

A. He said, "No, it's a lie."

Q. How did he come to say that?

A. I don't know how he come to say that, but my uncle told me—

MR. DAVIS: That is objected to.

Q. You asked him about it?

A. No, sir; they told me about it.

Q. Was Frank present?

A. No, sir.

Q. Tell us what Frank said or did to you at the time that he told you that it was a lie about the property being in his name; how did he come to tell you that?

A. I heard from my uncle that the property was fixed that way; then I went and asked him if that is true; he said, "No, it's a lie." I told my brothers about it, and we went to the Notary Public, Squire Hickel.

BY THE COURT:

Q. And asked if what was true?

A. If the property was fixed under his name and my mother's name.

Q. And did he say that you children didn't have anything in the property?

A. He didn't tell us that; he said all of us children—

Q. You heard something from your uncle?

A. Yes.

Q. What was it?

A. My uncle told me that Frank Romano told him that the papers was all under his name and my mother's name.

Q. And nothing in the children's name?

A. Nothing in the children's name.

Q. You went and asked Romano whether that was true or not?

A. Yes.

Q. What did he say?

A. He said, "No."

Q. He said it was not true?

A. Yes, sir. So I went to Squire Hickel to make sure, and I asked Squire Hickel if he would show us the deed; he told us he didn't have it. I went back and told Frank Romano about it, and he said, "I haven't got the deeds"; he said "Squire Hickel has got them"; I said, "Let's go over and find out"; and he wouldn't go over, and he insisted that Squire Hickel had the deeds, and he didn't have them, and I went back to Squire Hickel's office and inquired again if he had the deeds and he said, "No, sir." I said, "Squire"—

MR. DAVIS: That is objected to.

A. Squire Hickel wouldn't show it to us, and I told him I would have a warrant sworn out to see whether he would or not, and he said, "Yes, it's in the safe"; and he showed us the deeds; and that was my mother's name and then his.

Q. Have you ever seen the deed at any other time or place?

A. No, sir; the first time I saw it was then and when they made it out.

Q. And when Frank Romano learned that you had seen the deed in Squire Hickel's office, what did he say to you?

A. He chased us out.

Q. Mr. Romano?

A. Yes.

BY THE COURT:

Q. You saw this deed in the Squire's office; then what did you do?

A. I went back to him and told him about it.

Q. What did he say?

A. He said, "What of it?" I said, "What of it?" I said, "How was it the papers are fixed that way, when you and mother told me they were fixed the other way?" He said, "If you keep on talking like that, I will kick you out of the house." We went to bed; I didn't say anything more that night. The following morning he said, "Who told you about this; how did you come to find it out?" I told him, and he started an argument right away; I told him "I got to see the deeds and see how it is, and if it is the way I heard it, I got to fight this case; that's all there is to it"; so he kicked me out of the house. I didn't want to leave, but he had his hand in his pocket, and I thought probably he had got a stiletto or something, and I thought it would be better policy to leave than get stabbed or shot.

Q. How long after that did you start your suit?

A. Immediately after that I went over to Lawyer Bacon's office.

CROSS EXAMINATION

BY MR. DAVIS:

Q. You say you are now 24 and will be 25?

- A. The 12th of November.
- Q. You must have been born about 1897, weren't you?
- A. No, sir.
- Q. '96?
- A. '96.
- Q. When did you come out of the orphan asylum?
- A. I came out of the orphan asylum when I was 13 years of age.
- Q. That would be about 1909, then, wouldn't it, the same year your mother was married?
- A. Yes, about 1909.
- Q. Did you come out the same year that your brother did?
- A. No, sir.
- Q. How long—
- A. Which brother?
- Q. Your older brother, Louis?
- A. He got out ahead of me.
- Q. Do you know how much ahead of you?
- A. I can't recollect.
- Q. What time in 1909 did you come out of the orphanage?
- A. I can't recollect what time it was in 1909.
- Q. What month?
- A. In the spring.
- Q. You were fully 13, weren't you?
- A. Yes, past 13.
- Q. You didn't become 13 until November, 1909?
- A. Yes.
- Q. You were born in November, 1896?
- A. Yes.
- Q. And 13 years after that would be November, 1909, wouldn't it?
- A. What?
- Q. If you were born in November, 1896, 13 years after that would be November, 1909, would it not?
- A. Yes, sir.
- Q. So that if you didn't come out until the spring after you were 13, you must have got out in the spring of 1910?
- A. No, sir; it was 1909.
- Q. How could that be if you were more than 13 years old?
- A. Well, I know I wasn't 14 years of age when I came out of the home.
- Q. But you were more than 13?
- A. Yes, sir.
- Q. Now, there is no doubt that you were born in 1896, is there?
- A. I can show you here the discharge papers.
- Q. They only show what you told them, do they?
- A. I haven't got it here.
- Q. You will be 25 years old this coming November, is that right?
- A. The 12th of November, yes.
- Q. Then you must have been born in 1896?
- A. Yes, sir.
- Q. Now, you didn't leave the orphanage until you were past 13; that's what you said?
- A. Well, I'll tell you, I wasn't 14 years of age when I got out of it; I can't recollect the month, the day, the hour or the minute.
- Q. But you were more than 13?
- A. I think it is more than 13 years old.

BY THE COURT:

Q. You say you came out in the spring of 1909?

A. Yes, sir.

Q. Then, you would not have been 13 years old at that time?

A. No, it wasn't 13 years old.

Q. You were not 13 until November, 1909?

A. Yes.

Q. So that you were not 13 years old when you came out; is that right?

A. Yes.

Q. Well, now, you have been telling us you were more than 13 years old?

MR. BACON: That is objected to.

A. Well, I can't be positive; it's pretty hard to recollect 13 or 14 years back.

Q. What time of the year did you come out?

A. The spring of the year.

Q. What do you mean; give us the month?

A. I think it was May, June, or somewhere along them.

Q. Then you came out somewhere around May or June, but you are not certain whether it was 1909—

A. I am certain it was nineteen hundred and—no, I am not certain whether it was 1908 or 1909.

Q. You know it couldn't be 1908, because you were there long after your brother was there; that is a fact, isn't it?

A. Not long, no.

Q. Your brothers didn't come out until—

A. Anthony and I came out together.

Q. That is your next brother?

A. Yes.

Q. After you came out you went to work, did you?

A. After I came out, yes, sir, I went to work; I don't mean I went to work the next day or month, but I was 13 when I went to work; I recollect that part.

Q. How soon after you came out did you go to work?

A. I can't recollect, but I am positive I was only 13 when I went to work; I was discharged from the Keystone Watchcase Company for not being 14 years of age.

Q. You went to live at home with your mother and your brothers and sisters, didn't you?

A. Yes, sir.

Q. And you had something to eat, didn't you?

A. I wouldn't be living if I didn't.

Q. And you got it from home, and you had clothes, did you not?

A. I had clothes on me; I brought clothes back with me.

Q. And you had clothes bought for you from that time on, from time to time, as you needed them; that is a fact, isn't it?

A. Yes.

Q. You lived at home and you were taken care of all that time?

A. Yes.

Q. And were a member of the family?

A. Yes, sir.

Q. Were you 21 when you went in the service or not?

- A. Yes, I was 21.
 Q. How much more?
 A. Since November 12th to the 28th of May.
 Q. Now, what money did you give to your step-father from November until May, before you became 21 years of age?
 A. Before I came of age?
 Q. Yes, when you were in the army, before you became of age, what was the allotment made to your mother?
 A. The allotment was made to my guardian and brother.
 Q. To both of them?
 A. When I went in the army I was to make an allotment, and they asked me who to allot it to, and I told them my guardian; they said, "Do you have any mother?" I said, "No." "Do you have any father?" I said, "A step-father."
 Q. Well, he's a guardian, isn't he?
 A. I told them I had a brother by the name of Edward Malone, so he had a guardian, Frank Romano, and Edward Malone—
 Q. Was your mother dead at that time?
 A. Naturally, I enlisted in the army the 28th of May, 1917, and the 13th of February, 1917, my mother died.

RECESS UNTIL 2 P. M.

AFTER RECESS

EDWARD MALONE, a witness produced on behalf of the complainants, being duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. BACON:

- Q. Where do you live?
 A. 205 Bridgeboro Street.
 Q. Are you a brother of the last witness?
 A. Yes, sir.
 Q. Do you know anything about the receiving of allotments from him while he was in the service?
 A. Yes, sir.
 Q. What do you know?
 A. I know he sent his allotment every month.
 Q. How much?
 A. \$15.00, I think.
 Q. What became of it?
 A. It came to me, and I handed it over to Frank Romano.
 Q. Do you know for what purpose it was given to him?
 A. Yes, sir.

BY THE COURT:

- Q. How do you know, of your own knowledge?
 A. From what Frank Romano told me.
 Q. What did he tell you?
 A. He told me I should give him the money as soon as I received it.

Q. What did he tell you about the money having to do with the property?

A. He told me it was for that one purpose, to help along the property.

Q. Do you know how much money Mr. Romano got in that way from Albert?

A. I can't exactly tell the date.

Q. How much money; do you know?

A. \$15.00 per month.

Q. Do you know how many months?

A. No, I don't.

Q. Do you know whether or not it was for the entire time he was in the service?

A. I couldn't say if it was for the entire time, because that has been a long time ago, now.

Q. Were you present when your brother Louis or Albert had any of these conversations with Frank Romano?

A. Yes, sir.

Q. Tell us about them.

A. He said we all should stick together and the property would be ours, nobody would take it away from us.

Q. Did you hear him say anything about that to Louis?

A. Yes, sir.

Q. What?

A. The same thing.

Q. And in Albert's presence?

A. The same thing.

CROSS EXAMINATION

BY MR. ATKINSON:

Q. When you handed this money over to Frank Romano, what were his exact words?

A. I handed it to him every month, and he didn't say anything; of course, the first few times he said it was for the property, and after that, I imagine for the same thing; of course, he knew for what purpose it was.

Q. Did he make any statement to you as to what purpose it was for?

A. Of course, to help the house along.

Q. Did he tell you that?

A. Sure.

Q. How many times did he tell you that?

A. Quite often.

Q. How old are you, Edward?

A. Eighteen.

Q. How long has it been since you lived with Frank Romano?

A. Ever since I got throwed out of the house.

Q. When was that?

A. I can't recollect the date; about three months after he got married.

Q. And when was he married?

A. I couldn't say; I don't know.

Q. Can you give me some idea, approximately, how long ago that was?

A. I don't know.

BY THE COURT:

Q. Was it a year, or five years, or ten years?

A. About two years, I guess.

Q. Two years ago?

A. Yes, sir.

Q. And with whom have you been living since then?

A. My sister.

Q. What is her name?

A. Mary Morella.

Q. What is her husband's name?

A. Frank Morella.

Q. Now, at the time you claim you heard these conversations between Frank Romano and Louis and Albert, who else was present?

A. I couldn't just say.

Q. Was there anyone present?

A. Only my three brothers and my step-father, that's all I can remember.

Q. No strangers and no outsiders?

A. No, sir; it was said right in the house.

Q. How many years has it been since you heard those conversations?

A. Four years ago.

Q. Then you were either 14 or 15 at that time?

A. 15.

Q. Well, now, Albert was in the service, wasn't he, about three years ago?

A. Yes, sir.

Q. Well, was it while he was in the service that you heard these conversations between him and Frank?

A. No, while he was home on a furlough.

Q. When? How long was he home on a furlough?

A. He was home for ten or fifteen days one time; I can't just remember.

Q. How many times did he and Frank talk about it while he was on his furlough?

A. Nearly every day.

Q. Nearly every day for ten or fifteen days?

A. Yes, sir; they were always talking about the property.

Q. When was it before the furlough that you heard him and Frank discuss it?

A. I can't remember; I was too young then.

Q. So that the only time you remember was the time he was home on a furlough?

A. And after he got discharged it was mentioned quite often.

Q. When was that?

A. He got discharged in 1919.

Q. In 1919?

A. Yes, sir.

Q. Well, how long did he stay at home after he was discharged?

A. Until he got put out.

Q. That was about how many months?

A. I can't remember.

Q. How about these conversations between Louis and Frank; when did they occur?

A. That was after Louis got discharged.

Q. And he was discharged also in 1919, wasn't he?

A. Yes, sir.

Q. And that was the conversation between the time he was discharged and the time he was thrown out, as you put it?

A. Yes, sir.

Q. How many times did you hear such a conversation?

A. Quite often; I can't recollect the times.

BY THE COURT:

Q. How old are you now?

A. I will be 19 in November.

Q. You want to have your brother Louis represent you in this suit as your next friend, to bring the suit for you?

A. Yes.

ANTHONY E. MALONE, a witness produced on behalf of the complainants, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BACON:

Q. Where do you live?

A. 204 Bridgeboro Street, Riverside.

Q. Are you a brother of the preceding witness?

A. Yes, sir.

Q. Have you paid to Frank Romano any money?

A. Sure.

Q. What for?

A. For a property.

Q. How much?

A. Since when—all the time since I started to work.

Q. What is your present age?

A. 24, I will be 25.

Q. Have you paid him anything since you were of age?

A. Yes.

Q. How much?

A. \$480.00.

Q. Were you living home at that time?

A. Not since I was of age.

Q. What did you pay him that \$400.00 for?

A. For the property.

Q. What, if anything, did he say to you about it?

A. He said, "All right"; he always told me, he said, "Your mother died, half of it is yours; when I die it is all yours"; he always told me that.

Q. To whom was he speaking when he said "It is all yours"?

A. He was speaking to me, and my brothers were there.

Q. Who did he say would get the property?

A. He said the children would get it.

Q. Whose children?

A. My mother's children.

Q. Has he any children of his own?

A. No, sir.

Q. Has he married since the death of your mother?

A. Yes.

Q. Do you know the name of his present wife?

A. I don't know her.

Q. When did your mother die?

- A. February 13, 1917.
- Q. When did you first learn that the papers didn't provide anything for you children out of that property?
- A. As soon as we got back from the army, from France.
- Q. How did you learn it?
- A. We wanted to see the deeds, and he wouldn't show it to us, and my brothers told me about it when he took them out.
- Q. Have you ever seen those paper?
- A. Never seen them.
- Q. Did you ever say to him that you now knew that there was no provision in that deed for the children?
- A. I never said that to him, but he told me that.
- Q. Were you present when Albert said anything to him about that?
- A. Yes.
- Q. What did Albert say, and what did he reply?
- A. Well, he wanted to see the papers, and he wouldn't show him, and he said, "Your name is on there," and when he died, everything is ours, and he wouldn't never show us the papers.
- Q. Did you hear him make that remark about their being a liar; he said the name was not on it?
- A. No, he always said it was ours.
- Q. On what particular occasion did you ever hear him say that?
- MR. ATKINSON: That is objected to.
- THE COURT: Objection overruled.
- Q. Upon what particular occasion did you hear Mr. Frank Romano speak about the interest that the boys had in the property?
- A. What particular—
- Q. Did you hear him any one time?
- A. All the time.
- Q. Can you remember some one time?
- A. Ever since I started to work, he told us that when I was 14.
- Q. Were you present when either of the boys were asked to leave the house?
- A. Yes.
- Q. Which one?
- A. Louis, the oldest one; they had a warrant or something from the squire.
- Q. What did you hear him say at that time about this property?
- A. Frank Romano?
- Q. Yes.
- A. Well, my brother wanted to know, and he said, "Go over to the Squire and you will find out"; and he went, and that's what he seen. He always told us our names were on there, and the children should get all of it when he died; so my brother went and seen our names wasn't on, and he had an argument and put him out of the house.

CROSS EXAMINATION

BY MR. ATKINSON:

- Q. How did you come to send Frand Romano \$480.00; did you give it to him or send it to him?
- A. I enlisted in the army June 4, 1917; from June 4, 1917, until November, I was giving him \$20.00 a month, while I was in the army; from November, 1917, up until June 11, I allotted \$15.00 a month.
- Q. How did you come to make the allotment?
- A. How did I come to make the allotment?

Q. Yes.

A. Well, we couldn't send money very well from France, so they told us we had to make an allotment.

Q. Isn't it a fact that the officers encouraged you in making an allotment to someone?

A. No, sir.

Q. Didn't say anything to you about it?

A. They said to us, if we wanted to, all right; if we didn't, we didn't have to.

Q. When you got this allotment where were you stationed?

A. At Allentown, Pennsylvania.

Q. And you had talked to Frank about making the allotment?

A. Yes.

Q. When did you talk to him about it?

A. Before I went over to France.

Q. How long before you went to France?

A. I guess about several months.

Q. Well, the allotment was made June 4, 1917?

A. No, that allotment was made November, 1917, from June to November I was coming home and giving him \$20.00 a month.

Q. Did you come home monthly?

A. I came home, perhaps, weekly, sometimes.

Q. And you would talk to him every time you gave him this money?

A. I always talked to him.

Q. What about?

A. Well, he told me to send him money when I was going away; I told him I was going away in a few months, and he said, "Well, you can send me so much, and we will put it on the property; it's all for the boys; I don't get anything out of it; it's for the boys."

Q. How much did he tell you to send him?

A. He didn't tell me to send him anything; he said, the best I could do, and the best was half our pay.

Q. Can you tell us any particular time when you heard these conversations with Frank?

A. I can't remember the dates, but I know very well he has been saying that since I started to work, 14 years old.

Q. Did he talk about it almost daily?

A. No, I won't say daily; every once in a while we would bring up the case.

Q. At the time that—when did you come out of the service?

A. June 11, 1919.

Q. Did you return home to live?

A. Yes.

Q. How long did you stay there?

A. I stayed there from June 11 until around August, I judge, or the first part of September, or something like that.

Q. Then, what did you do?

A. I got a job and started to work in the Watchcase; I was getting \$18.00 or \$20.00 a week and handing it to him.

BY THE COURT:

Q. All of it?

A. Yes; didn't open my envelope at all.

Q. How many weeks did that continue?

A. I started to work within three weeks since I came back, up until they had a strike there August 22nd.

- Q. Did you take part in that strike?
 A. Well, we were—yes, I took part in the strike—we were ordered—
 Q. Then, from August on where did you stay?
 A. At my sister's.
 Q. When did you go to live with her?
 A. Well, about the latter part of August.
 Q. And is that the sister, Frank Morella's wife?
 A. Yes, sir.
 Q. Well, had you had any difficulty with Frank Romano about the part you were taking in the strike?
 A. No, sir.
 Q. He didn't criticize you about it?
 A. No, he didn't, but he got kind of sore there; we stayed there not over two weeks after that, and that's when we got out of the house; he ordered my brothers out.
 Q. You got out before your brothers?
 A. No, we went out the same time.
 Q. Did all of you go at the same time?
 A. Yes.
 Q. Hadn't there been some harsh words between Frank Romano and your brothers about the strike?
 A. No, there was something wrong on the deeds, and he wouldn't show it to us.
 Q. The strike didn't have anything to do with it?
 A. Nothing at all.

BY THE COURT:

- Q. What does Frank Romano do?
 A. Works in the Riverside Metal Works.
 Q. How long has he been working there?
 A. Well, he has been working off and on there ever since he married my mother, that I can remember; sometimes he wouldn't work for five or six months, and other times he would work steady.
 Q. What is his trade?
 A. I think he is a lather.
 Q. You made this allotment in November, 1917, until when?
 A. Until June 11, 1919.

HELEN A. LANDREOTTI, a witness produced on behalf of the complainants, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CONNOR:

- Q. Where do you live?
 A. Where am I working?
 Q. Yes.
 A. Vineland, New Jersey.
 Q. Did you know Mrs. Malone when she lived?
 A. Yes, sir.
 Q. Do you know Frank Romano?
 A. Yes.
 Q. Did you ever work for Frank Romano?

- A. Yes, sir; I have been his housekeeper for 17 months.
- Q. When did you go to work for him?
- A. He asked me.
- Q. What day, if you remember?
- A. The 5th of October, 1917, and I worked until the 19th of March, 1919.
- Q. Was his wife living at the time you went to work for him?
- A. Oh, no.
- Q. Then, you went to work there shortly after she died?
- A. Well, the wife died in February, and I went in October of the same year.
- Q. Which of the children were at home at that time?
- A. Edward, the youngest.
- Q. Just one at home?
- A. Yes.
- Q. Where were the other boys?
- A. In France; I went in October, and I think they went in France the same month; I don't remember.
- Q. They were in the army?
- A. Yes.
- Q. Do you know of your own knowledge, Louis and Albert and Anthony, or any of them, sent any money to the step-father?
- A. Oh, yes; they sent every month?
- Q. Did you see it?
- A. Yes, I seen the check.
- Q. Do you know how much they sent him?
- A. \$15.00 Albert, and \$15.00 Tony.
- Q. And how long did they come, do you know?
- A. Well, it come for several months every month; then it stopped for a while, and Mr. Romano wrote to Washington; he had no answer; but after a while a check came for \$105.00.
- Q. Were you there when any of the boys came back from the army?
- A. No; I was there when Louis, he came for Thanksgiving Day, for one day, but when Louis came back—he was the first one to come back—I wasn't there; he went in and went away again.
- Q. Louis was home on Thanksgiving Day?
- A. Yes.
- Q. Did you hear him and Frank Romano have any conversation about any property?
- A. Yes, sir; it was always the same time; they were talking about it all the time.
- Q. Tell us what the conversation was.
- A. About the property, and the father always said, "All right, sometime I will fix the papers; I will do what you want," always saying for another time, and never settled the papers.
- Q. What else did you hear him say to Louis or any of the other boys?
- A. I heard more to Louis than the others; and Albert said, "Papa, you want to settle this paper"; and the father said, "All right, I will, I will."
- Q. There were some disputes about the papers, as far as you know?
- A. Yes.
- Q. Did Frank Romano ever tell you anything about the property?
- A. He was telling me that the property belonged to the children now—this man—I have a little money, and this man he intend to marry me; that was the idea; so he always used to tell me, "You put out the money and I will marry you," that way. Of course, I see everything was wrong; I couldn't see right in that, so I said to him, "Here, I don't put my money if you don't put something in my name"; so I said to him one

day, "You know what we got to do; I will put the money and let me buy one of those two houses, the new ones"; he said, "No, I can't do that"; I said, "Why not?" He said, "That belongs to my children."

Q. Whom did he mean by his children?

A. Louis and Albert and Tony—

Q. His wife's children?

A. Yes.

Q. Is this what you mean, that he said he couldn't sell you the property because it belonged to the children?

A. Yes, sir.

Q. Do you know whether or not he ever had any children of his own?

A. No.

Q. Didn't have any children?

A. No.

Q. And he didn't sell you the property?

A. No.

CROSS EXAMINATION

BY MR. ATKINSON:

Q. How long have you been living at Vineland, Mrs. Landreotti?

A. I have been down there seventeen months.

Q. Did you go directly there from Riverside?

A. I was in Riverside then; I was in Riverside; I had been in Riverside about nine years.

Q. After you left Riverside, did you go directly—

A. No, I went back in Vineland where my folks are.

Q. How long have you been married?

A. I have been married nine months.

Q. Then what was your name when you were at Riverside?

A. Helen Landreotti, but people called me Lena, and my name is Helen.

Q. What was your name before you were married?

A. Helen Malandri.

Q. Where did you marry your husband?

A. Down in Vineland

Q. Is he alive—

A. Certainly; I am divorced.

Q. You are divorced?

A. Sure.

Q. Where were you divorced?

A. I got a divorce in 1913.

Q. You used to write to Mr. Romano, didn't you?

A. I used to write Mr. Romano, I used to write. I have nothing to do against him, only I thought everything was right, and I find out after.

Q. Didn't you write a number of letters to Frank Romano?

A. Sure, I have.

Q. Won't you look at that letter (handing witness paper) and tell me whether or not that is one of your letters?

A. (Looking at paper). Sure, certainly; it's my writing.

MR. ATKINSON: I ask to have it marked.

Said letter is marked Exhibit D-1 for identification.

Q. How about this one (handing witness another paper)?

A. Yes, that's mine.

MR. ATKINSON: I ask to have that marked.

Said letter is marked Exhibit D-2 for identification.

Q. Is that also one of your letters (showing witness still another paper)?

A. Yes, sir.

MR. ATKINSON: I ask to have that marked.

Said letter is marked Exhibit D-3 for identification.

Q. Now, when was the first that you had ever heard Frank talk about this property?

A. He was always talking about the property.

Q. Talking about it to whom?

A. He was always talking about his property.

Q. What about it?

A. Everything belonged to him.

Q. He always said everything belonged to him?

A. Belonged to him, yes, sir.

Q. When was the first you had ever heard him say anything contrary to that?

A. No, only that time that I asked him to give me that house, then he said, "No, it belonged to the children." Then after besides that time, he always had said that everything belonged to him, that he is the boss, only the time that he didn't want me to buy that house.

Q. Did you hear him talk to Louis on Thanksgiving Day?

A. What?

Q. You said you heard him talk to Louis on Thanksgiving Day?

A. Yes, sir.

Q. What, if anything, did he say about the property?

A. I don't pay any attention; it wasn't my business; I was only the housekeeper.

Q. And when you heard him talk to Louis, as a matter of fact, he didn't say anything about the property, did he?

A. I don't know.

Q. Did you understand the question?

A. Eh?

Q. When you heard him talk to Louis, he didn't say anything about the property, did he?

A. They were talking about the property; I knew by the way they were talking, but it wasn't my business to interfere.

Q. Did Frank say anything about the property?

A. When?

Q. Didn't he speak about the papers.

A. I guess so, about that deed.

Q. So that you didn't hear him say anything about the property?

A. The deed is the property, that's what I thought.

Q. That's what you thought?

A. Sure.

Q. I want to know what he said?

A. I can't tell you what they were saying.

Q. You used to be quite friendly with Mr. Romano, didn't you?

A. I used to be before, because I don't know nothing by living in the house; I find out a lot, so when the boys come home I would find out something, and when the boys were going out he said, "It is better you go; they are going to kill you." That's the reason I went; and somebody can't do something else.

Q. Who told you that?

- A. About what?
Q. About killing you?
A. Mr. Romano; he scared me to death; I have been about a week in bed after.

RE-DIRECT EXAMINATION

BY MR. CONNOR:

- Q. Do you know while you kept house for Frank Romano how much he made a week—what did he work at?
A. \$18.00 or \$20.00, I am not sure, not over twenty.
Q. Do you know what he used it for?
A. No.
Q. What did he do with his week's wages, with the money he earned?
A. Oh, what did he do with the money? He spent it; he spent it in a good time.
Q. For what?
A. Why, Saturday and Sunday was a full good time all the time, drinking and eating and calling on his friends; that was Saturday and Sunday; every Saturday and Sunday for seventeen months they had drinking there and got drunk; that was my trouble.

PETRO VOLPE, a witness produced on behalf of the complainants, being duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. CONNOR:

- Q. Where do you live?
A. I am living at Palmyra, New Jersey.
Q. Do you know Frank Romano?
A. Yes, sir.
Q. Did you know his wife, Mrs. Malone?
A. Yes.
Q. Were you present when Mrs. Malone negotiated or purchased some property in Mr. Zeigler's office?
A. Yes.
Q. When was that, if you know?
A. I think it was in 1909.
Q. Did you know Mrs. Malone personally?
A. Yes, sir.
Q. Could she read?
A. No.
Q. Could she write?
A. No, neither.
Q. What was the purpose of your being with them that night?
A. I was working in the Watchcase, and I got friends with them, and he—
Q. Why were you there; did they ask you to go?
A. No, I went there when I was living in Spring Garden, to visit, because he was my good friend and christened my baby, and we visited one another, and I went there, and Mrs. Romano says, "Good thing you come; we go buy property," and I said I couldn't be—
Q. You went with them?

- A. Yes.
 Q. Where?
 A. Over to Squire Zeigler's office.
 Q. Tell us what was said by Mrs. Romano when she was buying that property.
 A. He bought that property; he had some of the money from the old country, because he owned the property, and he sold the property in the old country and buy over here.
 Q. You say "he"; do you mean "she"?
 A. She, he owned the property.

BY THE COURT:

- Q. Who owned the property in the old country?
 A. Mr. Romano.
 Q. Mister?
 A. Mrs., the wife.
 Q. Well, she owned the property?
 A. She owned the property.
- Q. Go on.
 A. And he wanted to buy this property here, and when he make out the deed, I couldn't tell exactly, but she said, "That property goes to my children and for my husband half, and if he died it goes all to my child."
 Q. She told that to the Squire?
 A. Yes, sir.
 Q. Did you see her get a deed?
 A. I see he write a deed, yes, but I never handle the deed in my hands.
 Q. You didn't see the deed?
 A. I seen the deed when they make the deed or contract.
 Q. Did you see either Mr. Romano or Mrs. Romano take a deed out with them when they were going away?
 A. No, I don't see nothing; I seen them signing the contract; when they bought this property, Mr. Romano put his name, and his wife, they put a cross, because he don't know how to read and write.
 Q. Have you ever talked to Frank Romano about this matter since that time?
 A. Well, sometime we talked over it belonged to him and the child.
 Q. Did he tell you that?
 A. Yes, sir.
 Q. How many times did he tell you that?
 A. Well, a good many times, when we had occasion to talk; but a good many times I don't pay attention, because it wasn't any of my business.
 Q. What, if anything, did Romano say in Zeigler's office when the transaction was made?
 A. I couldn't tell; it's a good many years ago; I never think about there would be a trial; I couldn't remember.
 Q. But you were there and heard Mrs. Romano say she wanted this property?
 A. For the child, the protection of the child and the husband.
 Q. The protection of the children?
 A. Yes.
 Q. That was said in the husband's presence?
 A. Yes.
 Q. He didn't say anything back about it?
 A. No.

CROSS EXAMINATION

BY MR. ATKINSON:

Q. How much money did they pay for the property?

A. I don't know.

Q. How much money did Mrs. Romano pay at that time?

A. I don't know; I couldn't tell you.

Q. Did you see the money pass hands?

A. I don't see; I couldn't remember I seen the money; if I seen it or not seen it; I went to visit them, but I couldn't remember if I seen any money or not; if I say "Yes," I say it wrong; I couldn't remember.

Q. Did you at any time see Frank Romano and his wife sign their names to a paper?

A. Yes; I don't know if it was a deed or a contract.

Q. Don't you know, as a matter of fact, that it was a contract?

A. I don't know, because there was everything made when I went over.

Q. Do you know whether they paid for the property in full at that time?

A. I don't know, I think \$2500.00 is charged.

Q. Did they pay all the \$2500.00 at that time.

A. Oh, they ain't paid that cash; pay some in advance, and the wife had some property and sold it, and he give so much more for a second mortgage, and they pay \$16.00 a month on the mortgage.

Q. Did you hear that discussed at that time; did you hear that talked about at that time?

A. Sure, I hear, because he pay \$16.00, something like that.

Q. Who was present there at the time this took place?

A. The people that sold the property and them people that bought, and Mr. Romano's wife and me and the interpreter, and a few kids, a few childs of Mr. Romano, and I couldn't remember.

Q. Did Squire Zeigler say anything about the property?

A. I don't know; I don't remember.

Q. Did you hear the interpreter say anything to Squire Zeigler?

A. Yes, the interpreter was there.

Q. Did he say anything to Squire Zeigler?

A. He says he wants the property for the child, if she die, protection for the child if she died.

Q. Did you hear Squire Zeigler explain to them what they had done?

THE COURT: Strike that question out and ask another; he doesn't seem to understand.

Q. Do you remember whether or not Squire Zeigler—

A. He was there.

Q. Do you remember whether he talked about the deed?

A. Don't remember.

Q. You don't remember?

A. Don't remember; I couldn't tell; a good many years ago, I couldn't remember.

GEORGE BARCIA, a witness produced on behalf of the complainants, being duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. CONNOR:

Q. Mr. Barcia, where do you live?

A. 2218 Federal Street, Camden.

Q. Where did you live in 1909?

A. Fillmore Street, 927.

Q. Where?

A. Riverside.

Q. Did you know Mrs. Malone?

A. Yes, sir.

Q. Did you know her second husband, Frank Romano?

A. Yes, sir.

Q. Were you with Mrs. Malone and Frank Romano on the occasion when they purchased some property in Riverside?

A. Which property?

Q. The property in question, the property that Frank Romano now owns in Riverside; were you with them when they bought it?

A. Yes, sir.

Q. Where was that transaction?

A. The transaction took place in Squire Zeigler's office.

Q. Did you act as interpreter for Mrs. Romano?

A. I did.

Q. She couldn't talk English.

A. Nothing at all.

Q. Could she write English?

A. No, sir.

Q. And she couldn't read English?

A. No.

Q. Now, what instructions did you receive from Mrs. Romano in reference to this property that she was about to purchase?

A. The night when this transaction took place, I was coming from Philadelphia and there was a big snow, and I came home late, and Mr. Romano came after me and told me to rush over to Squire Zeigler's office, because everything was ready for closing this here deed. I went there, together with Mr. Romano, and the instruction I received from Mrs. Romano, or Malone, was to buy the property, but the children should be saved, because she said that money, some of the money belonged to her from a property she sold in Italy, and she intended to sell some more. I explained to Squire Zeigler every word that the woman told me, word by word.

Q. She wanted the children represented in this property as far as you know?

A. Positively.

Q. Did her husband hear her say that?

A. Sure.

Q. What did he say, if anything?

A. Well, at first he had a kind of objection that she wanted the property in case she would die, to go to the children, and Mr. Romano didn't like that; in fact, he said, "I have to work hard," he said to me, "and I can't see my way through; I want to be safe some way or other." Then she had the idea to make it, if she lived and he lived, the property shall belong to both, but in case she died, half the property shall go to the children, so the children will be safe as well as Mr. Romano will be safe.

Q. Where was the other half to go?

A. I can't remember.

Q. That was while he lived; was there anything said about the property after he died?

A. I don't remember.

BY THE COURT:

Q. You say when either one of them died, half of the property was to go to the children?

A. Yes. No, if she would die before Romano, why, half half the property should go to the children.

Q. Suppose Romano died before she died?

A. No, there was no agreement about that?

Q. Didn't she say anything about that?

A. No, sir.

Q. They were to have it half and half, as long as both of them lived?

A. Yes.

Q. But it was only if she died that the children were to get half?

A. Half.

Q. Not if he died?

A. Yes.

Q. You are sure of that?

A. That is as far as I can remember; half her property was to insure the children in case she would die; if Frank Romano will die, I don't remember she give me any instructions about that at that time.

Q. You say that Mrs. Malone furnished some of the money, or all of the money—

A. She told me she sold some property in Italy, and she had some money, and she wanted to invest this money

Q. Did she have money in the office?

A. I don't know who got the money out, because when I got there everything was ready; I was late; I didn't know anything about the transaction, and Mr. Frank Romano came to me and said everything was ready; he was rushing.

Q. Did you ever hear either of them say whether Frank Romano put up any money?

A. Well, no.

Q. Do you know how much money she got from the old country?

A. No, sir.

CROSS EXAMINATION

BY MR. ATKINSON:

Q. At the time you were there was the deed delivered?

A. No, sir; I don't know; I don't know.

Q. Or was that the time that the agreement was made for the purchase of the property?

A. I don't know. Now, Eugene—the second name I don't know the name.

Q. Cachelin?

A. Yes; he was a sick man and was ordered to go away from Riverside, so I heard from Mr. Romano, or from Mrs. Romano, that he signed the deed before he went away.

Q. But you don't know, as a matter of fact, whether at the time you were there, the deed was delivered?

A. No, sir.

Q. Now, did Mr. Zeigler take any part in the conversation?

A. We was merely supposed to follow instructions the way the woman told him.

Q. After you gave him the instructions, did he tell you what he had done?

A. Yes, sir; he showed us some kind of agreement which every child appeared in that agreement name by name, and every child's name was there.

Q. He did show you such an agreement?

A. Yes, sir; I read the name of each child.

Q. Did you sign that as a witness?

A. I don't remember.

Q. And when was the date of that visit?

A. I don't remember.

Q. Who signed that agreement, if anybody?

A. I don't remember.

Q. Did you see any of the money pass hands?

A. I seen the money on the desk in Squire Zeigler's.

Q. Do you know who paid the money over?

A. No, sir.

BY THE COURT:

Q. How much money?

A. I don't know, sir.

Q. Did Mrs. Romano tell you anything about the property that she had sold or was to sell?

A. Well, she said that she sold a property in Italy and got this little money, and that is why she invested the money—

BY THE COURT:

Q. Did she say how much it was?

A. No; she told me in Italian, but I didn't pay much attention to it.

Q. Do you remember how much it was in Italian money?

A. No, sir.

Q. Did Frank say anything to you about his putting up any money?

A. What Frank?

Q. Frank Romano?

A. No, sir; no, sir.

Q. Didn't you testify that he spoke to his wife and said that he had to work hard?

A. Sure.

Q. And what led to that conversation; why made him say that;

A. Because the woman wanted to have the house deed directly to her, and then if she would die it would go to the children.

RE-DIRECT EXAMINATION

Q. Do you know whether or not Frank Romano had any money at this time?

A. No, sir.

Q. You don't know.

A. No, sir.

- Q. Did you ever see this paper (handing witness a paper)?
 A. No, sir.
 Q. Did you ever see that (handing witness another paper)? Were either of those papers there that night?
 A. I don't remember, sir.
 Q. This is written in Italian; can you tell us how much money is mentioned there?

MR. ATKINSON: That is objected to, unless the paper is admissable.

MR. CONNOR: We will leave it until later.

DOMINICK CORISORTE, a witness produced on behalf of the complainants, being duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. CONNOR:

- Q. Mr. Corisorte, did you know Mrs. Romano and Frank Romano?
 A. Yes, sir.
 Q. Did you live at their house?
 A. Yes; five years.
 Q. During what time?
 A. From 1913 until 1918.
 Q. Did you know the boys?
 A. Yes, sir.
 Q. Where were the boys during that time, or any part of it?
 A. Working.
 Q. Working?
 A. Yes.
 Q. Living at home?
 A. Yes.
 Q. Do you know whether or not any of them went to the army?
 A. Yes, I know when they went in the army.
 Q. Which one?
 A. Lou went first, and after the war started—the United States started war with Germany—the other two boys went and enlisted, Anthony and Albert.
 Q. Do you know whether or not Mrs. Romano or her husband, or both of them, bought any property during the time you lived there?
 A. The time I was there they bought, and after they started to build on one property the new two houses alongside of the old house they bought before.

BY THE COURT:

- Q. They started to build?
 A. Two houses alongside the old house.
 Q. They bought the land before?
 A. Yes, sir; they had one of the houses before, and after that they built another two houses.
 Q. They didn't buy any more land?
 A. Yes, they did buy land; they bought land in Cambridge—

Q. That is not in connection with this, though?
A. I don't know.
Q. Did you ever hear any conversation between Frank Romano and Mrs. Romano about this property?
A. Yes; many times.
Q. What did you hear?
A. Well, I heard them talking about a property all the time, and Mrs. Romano said to Mr. Romano said all the time, "The property goes to the children"; and told them to work and keep the house and bring the money home, the property belonged to them after they died.
Q. What did he say about it?
A. He said, "Yes."
Q. That the property belonged to the children?
A. Yes, sir.
Q. After he was dead?
A. Yes, sir.
Q. Do you know whether or not any of these boys gave him any money to pay on this property?
A. Yes; every one gave him money?
Q. Do you know how much?
A. No, I don't know; but all the money they made in the factory they gave it to him.
Q. Did you ever hear him have any conversation with the boys as to what would be done with this money?
A. Yes.
Q. What?
A. He said all the money they brought home they pay for the property, they pay to the Building Association on the property, all the expenses he got.
Q. Do you remember the time Mrs. Romano died?
A. Yes, sir.
Q. Were you present?
A. Yes, sir.
Q. Did you hear anything said by her before she died?
A. Yes.
Q. What?
A. She said she left some property in Italy and she said, "This property belonged to all my children."
Q. Which property did she mean?
A. In the United States, and the property she had in Italy she left only to the three boys, Edward, Anthony and Albert.
Q. That was the Italian property?
A. Yes, sir.
Q. What did she say was to be done with the property where she was living, and that next to it?
A. To all the children.
Q. Was Frank Romano there?
A. He was right there.
Q. What did he say?
A. He said "Yes." Nobody denied that.
Q. Did you ever talk to Frank Romano about this property since his wife died?
A. Many times, yes.
Q. What was the conversation.
A. The conversation was about it, one time he wants to give money when Mrs. Andrew come in the house and said why didn't he marry Mrs. Andrew until my boys come home, "because the property doesn't belong to me; I can't marry any woman without the consent of my boys."

- Q. Whom did he mean by his boys?
 A. Those children, Louis and Albert—
 Q. Did you ever hear him make any further reference in regard to this property?
 A. What do you mean?
 Q. Did you ever hear him say anything more?
 A. All the time the same story.

CROSS EXAMINATION

BY MR. ATKINSON:

- Q. Dominick, how old was the first of the children when you went to live there?
 A. Well, I don't remember.
 Q. Well, Louis is the oldest, is he not?
 A. Well, I know he is the oldest.
 Q. Was he 21 when you first went there?
 A. I don't know.
 Q. Well, do you know whether any of the boys have given Frank money since they have become 21?
 A. Yes.
 Q. Which boy?
 A. All three.
 Q. Do you know how much they have given him since they have been 21?
 A. No, sir.
 Q. When you went to live there who was in the family?
 A. Mrs. Romano, Mr. Romano, Louis and Albert, Mary and Anthony, in the family, me and my father.
 Q. Was Frank Romano working at that time?
 A. Yes, sir.
 Q. Where did he work?
 A. The Metal Company, Riverside, New Jersey.
 Q. When was it they started to build the new property?
 A. Why, the new property was build when Mrs. Malone, before she died, they started the foundation after Mrs. Malone got sick, and she died about a month—I ain't sure—about a month or more, and he started to build that property, and Mr. Romano said, "I am going to build this property now, and you boys go in the army now, and I am not able to buy this property," and those boys said, "We will go in the army and help the home, and we make an allotment for this property to be paid."
 Q. He built the property?
 A. When the boys was home.
 Q. Do you know the name of the contractor?
 A. No, sir.
 Q. Do you know the amount of the contract price, how much it cast?
 A. Well, I am not sure; I heard a couple of times, but, of course, that thing is \$4200.00, it cost Mr. Romano.
 Q. Do you know where Mr. Romano got the money to pay for it?
 A. Yes.
 Q. Where?
 A. He got the money from the boys, because the boys was working at that time and he working, too, that time he making money; he got the first money to this man that built this property; I don't know if he bought, but I know he got it from the children.

Q. Do you know whether he borrowed any money from the Building and Loan Association?

A. I don't know if he borrowed it from the association or from the other people.

MR. BACON: That is admitted.

JOSEPH FALCONE was here sworn as interpreter.

FLORENCE PITTITO, a witness produced on behalf of the complainants, being duly sworn, testifies, through the interpreter, as follows:

DIRECT EXAMINATION

BY MR. CONNOR:

Q. Mrs. Pittito, where do you live?

A. Fillmore Street.

Q. Do you know Mrs. Romano?

A. Yes, sir.

Q. How long did you know her before she died?

A. Three or four years.

Q. Did you see her frequently or often?

A. Yes.

Q. Did you ever hear her and her husband talking about their property?

A. No, sir.

Q. Were you present when Mrs. Romano died?

A. Yes, sir.

Q. Did you hear her say anything to her husband before she died with reference to her property?

A. I heard him say that all the property was for the children.

Q. Who said that?

A. She says that the property in this country was to go to all the children and the property in Italy was for the three sons, Tony, Albert and Edward.

Q. What did she say, if anything, at that time?

A. I don't remember anything.

Q. Who was there at that time?

A. I don't remember anything, it has been so many years.

Q. Was he not there when his wife was dying?

A. I don't know; I wasn't present when she actually died.

Q. While this conversation or this remark you hear her make, was going on, was her husband present at that time?

A. I don't remember.

MR. ATKINSON: I move that all that testimony be stricken out.

THE COURT: I will deny your motion.

BY THE COURT:

Q. Was Dominick Coristore there at that time?

A. Yes, sir.

CROSS EXAMINATION

BY MR. ATKINSON:

Q. Who was present at the time that you heard this statement by Mrs. Romano?

A. Dominick, and I don't remember who else was present.

Q. How long was this before Mrs. Romano died?

A. She died that same day.

Q. And what time in the day was this?

A. About ten o'clock.

Q. Did she tell you where the property was located in Italy?

A. No.

Q. Did she say anything as to the value of the property in Italy?

A. No, I don't know anything.

Q. Did she say anything to her husband about the property in the United States?

A. No.

Q. Did she mention about his having any interest in the property in the United States?

A. No, I don't know anything.

Q. Did she mention her husband in any way during this conversation?

A. No, sir.

Q. Was he present at that time?

A. Who?

Q. Her husband, Frank Ramono.

A. No, I don't know if he was present.

AGNES LAFFRADA, a witness produced on behalf of the complainants, being duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. CONNOR:

Q. Mrs. Laffrada, where do you live?

A. I live Taylor Street, 512, Riverside, New Jersey.

Q. Do you know Mrs. Romano?

A. Yes.

Q. How long did you know her before she died?

A. I know her when I was 13 or 14 years, when I come from the other country; I come in the other country; he told me a lot of times, "I got a property in the other country, I want to buy another house; I going to sell it."

(The witness, from this point on, testifies through the interpreter.)

Q. How long have you known Mrs. Romano?

A. 13 or 14 years.

Q. How often were you in her house?

A. Once or twice or three times a week, sometimes two or three times a month.

Q. Did you work for Mrs. Romano before she died?

A. I used to help her do the washing.

Q. Did you ever hear Mrs. Romano and her husband say anything about her property?

A. Only when I was a child, that they were to sell to property in Italy and buy a house here.

Q. Were you present when Mrs. Romano died?

A. Yes, sir.

Q. Who else was there on that day?

A. Dominick, I don't know his second name.

Q. Dominick?

A. Dominick.

BY THE COURT:

Q. Dominick Coristore?

A. Yes, and a lot of men; I didn't take much notice because I had to go downstairs.

Q. Did you see the last woman up on the witness stand?

A. Yes, sir; I did.

Q. Was she there?

A. I don't know whether she was there or not.

Q. What, if anything, did you hear Mrs. Romano say to her husband about the property before she died?

A. She said, "Frank, don't forget the property belongs to my children," and he answered, "Yes, it is the property of our children."

Q. Was there anything else said about it?

A. That is all.

CROSS EXAMINATION

BY MR. ATKINSON:

Q. What time of the day was this?

A. I don't know.

Q. At this time, did she mention anything about the property in Italy?

A. No, sir.

Q. Well, did she say whether she meant the property in Italy or the property in the United States?

A. At that time she meant the property in the United States.

Q. How do you know she did?

A. Because she sent for me to wash the clothes.

Q. Well, what did she say to you that let you to believe she was talking about the property in the United States?

A. I understand Italian very well.

Q. Well, when she spoke to Frank about the property, not to forget the children, did she say the Italian property or the property in the United States?

A. That of America.

Q. Had you ever talked to her before about it?

A. No.

Q. Did she tell you how much she got for the property in Italy?

A. No, sir.

MARY MORELLA, a witness produced on behalf of the complainants, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CONNOR:

- Q. Mrs. Morella, you are the daughter of Mrs. Romano?
A. Yes, I am.
And are you the sister of Louis, Albert and Anthony?
A. Yes, I am.
Q. Were you present when your mother died?
A. Yes, I was.
Q. When did she die?
A. She died February 13, 1917.
Q. Who else was present at that time?
A. All these people at the witness stand.
Q. Tell who they are?
A. Philomena Pittito and Agnes—I forget her last name—and my brothers were there and I was there.
Q. Was Dominick Coristore there?
A. Yes.
Q. Was your step-father, Frank Romano, there?
A. Yes.
Q. Did your mother say anything in the presence of your step-father with reference to the property in Riverside?
A. Yes, she said, "Frank, remember I am going to die; the property is the children's after my death; it is half for them"; and after his death it is all for the children; and he agreed; he said, "It is all the children's."
Q. Is that all?
A. She mentioned about the property in Italy and said it was for the three boys.
Q. Mentioned their names?
A. Albert, Anthony and Edward.

CROSS EXAMINATION

BY MR. ATKINSON:

- Q. Who else was present?
A. I can't remember, besides these that are here.
Q. There were many others present?
A. Yes, many others.
Q. About what time of the day was this statement made?
A. This was made in the afternoon, and mother died in the evening.
Q. Were you living at home at that time?
A. Yes, I was.
Q. And that was before you were married?
A. Yes.
Q. When were you married?
A. May 10, 1917, three months after my mother's death.
Q. Did you continue to live at home?
A. For three months, yes.
Q. Until you were married?
A. Yes, sir.

MR. BACON: The deed by which the property was conveyed to these folks is dated November 24, 1909, and recorded December 4, 1909, at the Burlington County Clerk's office in Mount Holly, in Deed Book 453, page 455; the considera-

tion being mentioned as \$2900. I now ask the other side to produce for us the original of that deed.

MR. ATKINSON: I don't have the original, but I have no objection to the copy.

THE COURT: Why wasn't it brought here today?

MR. ATKINSON: I forgot it; I thought I had it.

MR. BACON: We requested the other side to have all papers here, if possible.

MR. ATKINSON: You may have it.

MR. BACON: I offer a certified copy of the deed from the Burlington County Clerk's office.
Said deed is marked Exhibit C-1.

FRANK ROMANO, the above,named defendant, being duly sworn on behalf of the defendants, testified, through the interpreter, as follows:

DIRECT EXAMINATION

BY MR. ATKINSON:

Q. What is your name?

A. Francesco Romano.

Q. Where do you live?

A. 321 Fillmore Street, Riverside.

Q. How long have you lived there?

A. About ten years.

Q. Are you one of the defendants in this suit?

A. Yes, sir.

Q. Did you marry the mother of the complainants?

A. I did.

Q. When?

A. The 3rd of January, 1909.

Q. After you were married, where did you go to live?

A. Beverly.

Q. Did you afterwards purchase some property in Riverside?

A. Yes, sir.

Q. When did you buy the property?

A. I don't know, the deed speaks for itself.

Q. How many children did your wife have with her at the time you were married?

A. Five.

Q. Were they living with her?

A. Only two of them, the youngest boy and the daughter; the other three were at the Children's Home in Hopewell.

Q. How long after you were married did the other three join you?

A. About a year or two afterwards.

Q. And after they came from the children's home, did you live with them in Riverside?

A. Yes, sir.

Q. And was it after they came from the children's home that you bought the property?

- A. No, it was before.
 Q. Whom did you buy the property from?
 A. A man by the name of Cachelin.
 Q. How much did you pay for it?
 A. \$2900.00.
 Q. Did you pay all cash for it?
 A. I first gave him \$100.00 and \$600.00—
 Q. Was there a mortgage on the property at that time?
 A. It was a \$1600.00 building and loan mortgage and \$900.00 second mortgage.
 Q. Where did you make your settlement?
 A. The Riverside Building Loan.
 Q. Did you make your first agreement with Squire Zeigler?
 A. Yes.
 Q. Who was present at that time?
 A. Peter Volpe and George Barcia.
 Q. At that time how much money was paid down?
 A. \$100.00.

BY THE COURT:

- Q. Cash?
 A. Cash.
 Q. Who paid that?
 A. I did.
 Q. Was your wife present at that time?
 A. Yes, sir.
 Q. Did you get your deed at that time?
 A. No, sir.
 Q. When did you get your deed?
 A. After it was registered.

BY THE COURT:

- Did you get any paper that night?
 A. Zeigler kept them all.
 Q. After you paid the \$100.00 what was the next amount, if any, you paid?
 A. \$500.00.
 Q. Where did you pay that?
 A. At Zeigler's.
 Q. Where did you get that money from?
 A. With my work.
 Q. How much, if any, did your wife give toward buying the property?
 A. She gave nothing.
 Q. Did she ever give you anything toward the property?
 A. No, sir.

BY THE COURT:

- Q. Did she give Zeigler anything?
 A. No, sir.
 Q. Did she ever get any money from Italy which she gave to you?
 A. Yes, sir.
 Q. How much was that?
 A. \$500.00.

- Q. When did she get that?
A. After I bought the house.
Q. Do you remember how long after?
A. I don't remember.

BY THE COURT:

- Q. A year, two years or five years?
A. About six years.

- Q. Your wife got \$500.00 from Italy and gave it to you six years after you bought this house?
A. I don't remember.
Q. Why did you say six years, then?
A. I just said that; I don't remember.

MR. CONNOR: It is admitted in the answer that this man's wife contributed \$1,000.00 to the purchase of this property.

THE COURT: I understand that.

- Q. How was this money sent to your wife?
A. By mail.
Q. Do you know whether there is any record of the amount?
A. No, sir.
Q. Do you know who sent it to her from the old country?
A. They say her brother-in-law sent it to her; I don't know.
Q. Do you know what this money represented or what it came from?
A. It represents the property of my wife.
Q. Did you know whether she had any other property in the old country?
A. Yes, sir.
Q. And did she still own the other property at the time of her death?
A. Yes, sir.
Q. And have you ever made any claim for this other property?
A. No, sir.
Q. Now, after you purchased this property in Riverside, how long was it before you built the double brick house?
A. After the death of my wife.
Q. Who was the contractor?
A. Miller, of Edgewater Park.
Q. What was the contract price?
A. \$4200.00.
Q. Where did you get the money to pay for that with?
A. The Riverside Building and Loan Association.
Q. How much did you borrow from the Building and Loan Association?
A. \$4200.00.
Q. Now, after you purchased the Riverside property, where did you go to live?
A. I lived there.
Q. And who was in your family?
A. Me and my wife, Mary, Edward, Albert, Tony, Louis.
Q. How long did they continue to live there?
A. I don't remember.
Q. How old was Albert when he first came to live with you?
A. He wasn't quite thirteen.
Q. How old was Louis?

- A. He wasn't thirteen.
- Q. How old was Anthony?
- A. 11 or 12 years of age.
- Q. How old was Mary?
- A. I don't remember.
- Q. After you were married did you work?
- A. Always.
- Q. Where did you work?
- A. The mill work.
- Q. What mill?
- A. Riverside Metal Company, rolling mill.
- Q. What were your wages there at the time you were married?
- A. Between \$40.00, \$44.00 and \$45.00 per week.
- Q. Were you making that much at the time you were married?
- A. Yes, sir.
- Q. And from the time you were married up to the time your wife died, had you had steady work?
- A. Yes, sir.
- Q. How long did the children continue to live with you?
- A. Up until the time they went into the service; Albert, Edward and Mary always lived with me.
- Q. When did Albert and Edward leave home?
- A. When I put Louis out of the house, that he wanted to kill me, they all went.
- Q. What was the trouble between you and Louis?
- A. He insisted on giving him the property, and he said if I didn't give it to him he would kill me, or get someone else to do it.
- Q. Had he been working at that time; had Louis been working at that time?
- A. Yes, sir.
- Q. Where had he been working?
- A. He was a motorman.
- Q. Where was Albert working?
- A. Nowhere.
- Q. Where had he been working?
- A. Bristol.
- Q. Were the others working at that time?
- A. Only Edward was working.
- Q. Where was Edward working?
- A. At the shipyard.
- Q. At the time this property was purchased did you have any conversation with your wife or Squire Zeigler about it?
- A. No, sir.
- Q. Did either you or your wife give any instructions to Squire Zeigler as to how you wanted the deed?
- A. Yes.
- Q. What instructions were given?
- A. We had an interpreter there.
- Q. Well, what were the instructions which were given to the interpreter or Squire Zeigler?
- A. My wife says to put the property in her name and my name.
- Q. Did anyone explain to you what would happen if you put the property that way?
- A. Yes, sir.
- Q. Who?
- A. Mr. Barcia.
- Q. What did he tell you would happen if you put the property that way?

A. If my wife died the property would all go to me, and if I died the property would all go to my wife.

Q. When was it that your wife died?

A. February 13, 1917.

Q. Were you present in her room at that time?

A. Yes, sir.

Q. And did she make any statement or say anything to you about the property?

A. Yes, sir.

Q. Who else was present at that time?

A. Mrs. Pittito, Mary DeLusa, Joseph Roucheli.

Q. How long were you in your wife's room that day?

BY THE COURT:

Q. Is that all?

A. Frank Lapano, Mary Villa; that's all; Jule Coristore.

Q. Dominick?

A. No, sir.

Q. Mary Morella?

A. No, sir; Albert Malone and Edward Malone.

Q. They were there or not there?

A. They were there.

Q. At any time during the time you were in the room, did your wife say to you that the property in the United States belonged to the children, and that the property in Italy was to go to Albert, Edward and Tony, or words to that effect?

A. No, sir.

Q. Did she at any time say anything to you with reference to the property in Italy?

A. She told me she had property in Italy?

Q. Did she say anything to you before she died as to what she wanted done with it?

A. She said she wanted to give it to Albert, Edward and Anthony.

Q. When did Louis go into the service?

A. The month of April, but I don't remember the year.

Q. Was it before his mother died?

A. Yes, sir.

Q. And while he was in the service did he make an allotment to either you or your wife?

A. For six months I received \$25.00 per month.

Q. Had he made an allotment at any time to his mother?

A. No, sir.

Q. How much money, if any, did you receive while Anthony was in the service?

A. He didn't send it to me, he sent it to his brother, \$15.00 per month.

Q. What did his brother do with it?

A. His brother gave it to me to keep the family.

Q. How many were living at home at that time?

A. Four, six, four, and they and me and my wife made six.

Q. Have you at any time ever told Louis that the property all belonged to the children?

A. No, sir.

Q. Have you at any time told him that the property belonged to you and your wife as long as you lived, and when she died half was to go to the children, and when you died all was to go to the children?

- A. No, sir.
- Q. Had you ever made such an agreement with your wife?
- A. No, sir.
- Q. Did you at any time ever make such a statement to Tony?
- A. No.
- Q. Had you at any time ever made the statement to any person that the property was to be disposed of half to your wife's children when she died, and all to them when you died?
- A. No, sir.
- Q. Did you ever make a statement to Mrs. Landcoetti that you couldn't sell the property because it belonged to the children?
- A. No, sir.
- Q. And did she ask you to sell her one of the properties and you replied that it belonged to your children and you couldn't?
- A. No, sir.
- Q. When was it that you married the second time?
- A. July 13, 1919.
- Q. You mean by that your present wife?
- A. Yes.
- Q. Had you ever had trouble with the boys up until the time they left home?
- A. Yes, sir.
- Q. And what was that about?
- A. The first was Louis and the second was Albert.
- Q. What was your trouble with Albert about?
- A. Albert wanted me to give him everything or he would have me killed.
- Q. Did you ever have any trouble with Mary?
- A. Yes, sir.
- Q. What was that about?
- A. She didn't want to go out of the house after she got married, because she was living on me.
- Q. Before she got married had you had any trouble with her?
- A. Yes, sir; Morella insisted on coming to my house every day when I wasn't there.
- Q. Wasn't Morella the man she afterwards married?
- A. Yes, sir.
- Q. What was the condition of your wife's health before she died?
- A. She was sick seven years.
- Q. Did you have to have medicine or a doctor for her during that time?
- A. Yes, sir.
- Q. And who paid the expenses?
- A. I did.
- Q. After you married your wife and you were all living together, who ran the house?
- A. My wife.
- Q. And did you have a common table?
- A. Yes.
- Q. Who clothed the children and provided food for them?
- A. I provided for them.

CROSS EXAMINATION

BY MR. BACON:

- Q. Who was your housekeeper from the time your wife died until you married the second time?

- A. Lena Landroetti.
- Q. From the time of your wife's death up until Mary Morelli went to live with her husband?
- A. Lena Landroetti.
- Q. Did Mary Morella do your housework after her mother died?
- A. No, sir.
- Q. Did you have a housekeeper from the time of your wife's death until the time Lena came to keep house for you?
- A. I had a colored lady.
- Q. What part of the housework, if any, did Mary Morella do?
- A. None of it.
- Q. Did she ever do any of your housekeeping?
- A. No, sir.
- Q. Did she ever work in and around your house?
- A. No, sir.
- Q. Was there any talk of marriage between you and Lena?
- A. When?
- Q. At any time.
- A. Not before, but after Mary married there was some talk.
- Q. Was there any talk about money connected with the marriage, to you?
- A. She told me she had \$3000.00.
- Q. And did she talk about putting it in the Fillmore Street property?
- A. No, sir.
- Q. Did she offer to put some money in the Riverside, to let you have some money, if she could have a right in the Riverside property?
- A. No, sir.
- Q. Did she say anything about letting you have that money under any circumstances?
- A. She said she would let me have the money, provided the deed was in both names.
- Q. Was that done?
- A. No, sir.
- Q. Do you know why not?
- A. I do not.
- Q. Now, who told you that the allotments were given to keep the family?
- A. The persons to whom Edward sent the money.
- Q. Who are they?
- A. The four boys, Edward, Albert, Louis, Anthony.
- Q. Do you mean to tell me that Albert said that the \$15.00 a month was to keep anybody?
- A. He never sent me the money.
- Q. Do you mean to tell me that Louis ever told you that the allotment money he sent home was to keep the family with?
- A. Yes, sir.
- Q. When and where did he tell you so?
- A. When he was home on a pass.
- Q. Who was present when he said it?
- A. He and I.
- Q. Who was present when Albert said anything of that sort to you?
- A. Albert, myself and Anthony.
- Q. Did Anthony ever tell you that his allotment was meant for family support?
- A. Yes, sir.
- Q. And who was present when he told you that?
- A. Myself, Edward and Anthony.

- Q. Did you see the deeds, or deed, for that Fillmore Street property, actually signed?
- A. Yes, sir.
- Q. Whom did you see write their names on it?
- A. Myself, my wife, Barcia, Zeigler and Louis Johnson.
- Q. Did you ever see Mr. or Mrs. Cachelin sign that deed?
- A. I saw them sign it.
- Q. When and where?
- A. When we made the first contract and when the deed was signed.
- Q. Where is the first contract?
- A. My counsel has everything.
- Q. How many agreements were signed?
- A. Three, I think.
- Q. Are you positive that Mr. and Mrs. Cachelin were both present at the same time when these deeds were signed?
- A. Yes, sir.
- Q. Do you know which of the two signed their names to the deed first?
- A. I don't remember.
- Q. Did they get any money when they signed it?
- A. Yes, Zeigler gave him a check.
- Q. To whom did he hand it, Mrs. or Mr. Cachelin?
- A. To the wife.
- Q. And where was Mr. Cachelin at that time?
- A. I don't remember.
- Q. And don't you know that he was not in that room at all?
- A. I don't remember.
- Q. And don't you know that he was out West in some sanitarium for his health at that time?
- A. I do.
- Q. And yet you say you saw him sign these deeds; now, did you?
- A. I don't know if he was sick before or after the first contract.
- Q. Was he present when these deeds were signed?
- A. I think so, but I am not sure.
- Q. Who told you Louis wanted to kill you?
- A. He said so himself.

(Witness withdrawn for the present.)

HELEN LANDROETTI, being recalled, testified in rebuttal as follows:

DIRECT EXAMINATION

BY MR. BACON:

- Q. Did you write a letter to Louis Malone, something about being killed by Frank Romano?
- A. Frank Romano made me write his letter; I wrote his letter, yes.
- Q. What was in the letter about killing?
- A. He said he is going to kill all those people, they were going against him and he was the first one—Louis would be the first one.
- Q. Whose name was signed to that letter?
- A. Frank Romano.
- Q. How did Frank Romano's name come to be signed to the letter?
- A. He said for me to sign for him; I used to sign always for him.

- Q. Did any answer come from Louis Malone from that letter?
A. I don't know.

MR. DAVIS: No questions.

Continued to Monday, September 19, 1921, at 10.30 A. M., daylight saving time, at the State House, Trenton, New Jersey.

IN CHANCERY OF NEW JERSEY

Between
LOUIS J. MALONE, et al.,
Complainants,
and
FRANCESCO ROMANO, et al.,
Defendants.

ON BILL, Etc.
TESTIMONY.

Testimony taken in the above-entitled cause, at the State House, Trenton, New Jersey, on Monday, September 19th, 1921, at 10.30 o'clock A. M.,

Before HON. MALCOLM G. BUCHANAN, Vice Chancellor.

APPEARANCES: George M. Bacon, Esq., and William J. Connor, Esq., for complainants;
Charles M. Atkinson, Esq., for defendants.

MR. BACON: At the previous hearing the complainant produced a certified copy of the deed to the land in question, and asked both defendant and counsel for the production of the original and we wish to repeat that request to the counsel that the original deed be now produced with other papers.

MR. ATKINSON: What other papers?

MR. BACON: Agreements and memorandums concerning these complainants, and insurance policies, if any.

FRANK ROMANO, resuming stand, testified, through interpretation, as follows:

CROSS EXAMINATION (Continued)

BY MR. BACON:

Q. When you were under cross examination at a previous hearing of this case, you stated what your wages were at the time that the deed in this case was made, about November, 1909; do you now recall what you said you wages were at that time?

A. I don't recall.

Q. Did you then state that your wages in 1909 were \$40.00, \$44.00 and \$45.00 per week?

A. I don't remember.

Q. What were you then making?

A. I don't remember.

Q. Did you make \$40.00 a week, or over, at the time you were married?

A. I don't remember.

Q. And from the time you were married up to the time your wife died, did you have steady work and make those wages?

A. I worked every day except when I was sick.

Q. And what wages did you make then?

A. I don't remember.

Q. Was it as much as \$40.00 per week?

A. I don't remember.

Q. Was it more than \$25.00 a week?

A. I don't remember.

Q. Was it more than \$12.00 a week?

A. I don't remember.

Q. Is it not true that your wages from June 16, 1910, to December 31, 1910, amounted to \$236.61?

A. I don't remember.

Q. In the year 1911, which was the second year after the making of that deed, did you make over \$600.00?

A. I said that I don't remember.

Q. And were your wages for that year not the sum of \$546.07?

A. I said that I don't remember.

Q. And for the next year, 1912, were your wages not the sum of \$639.62?

A. I don't remember.

Q. 1914, were they not \$669.48?

A. I don't remember.

Q. Have you at any time since this deed was made, excepting the year 1918, ever made \$1000.00 in any one year?

A. I don't remember.

Q. Is this a correct list of your wages from June 16, 1910, to the present time? Is that the correct list of your wages (handing witness papers)? Look at it and please tell us.

A. I don't know how to read.

Q. The wages given—

THE COURT: Dou you expect to prove that that is a list of his wages?

MR. BACON: I hoped to prove it by cross-examination and then by—

THE COURT: You can't prove it by cross-examination, because he said he can't remember.

Q. Did you carry any money to Squire Zeigler in this matter?

A. Yes.

Q. Who was present when you took it?

A. George Barcia.

Q. Anyone else?

A. I don't remember.

Q. Do you know what money it was you paid at that time?

A. I paid \$100.00 first, and \$500.00 on that day.

Q. And did you get that money from your wife?

A. No, sir.

Q. Where did you get the money to give to Squire Zeigler?

A. I borrowed it from Charlie Shoemaker.

Q. Where is he?

A. In Court.

CHARLES SHOEMAKER, a witness produced on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ATKINSON:

Q. Mr. Shoemaker, you live at Riverside, New Jersey?

A. Yes, sir.

Q. Do you know the defendant, Frank Romano?

A. Yes, sir.

Q. How long have you known him?

A. 16 years coming, pretty near—or 17 years; I got him off the train at Piola, in 1906, November 1st.

Q. How long has he worked with you?

A. About two years.

Q. Do you know whether he worked for you after he was married, or not?

A. Well, I think he did; a very short time, though, because I left there; I went to work for another firm.

Q. Are you familiar with the property in Riverside that he purchased?

A. Yes, sir.

Q. Do you know anything about the transaction of his buying it?

A. Well, I never seen any money turned over, that is, between the boys and Mrs. Romano, nor to Frank, either, not to my recollection.

Q. Did Frank borrow any money from you?

A. Yes, sir.

Q. How much?

A. 1909, November 4th, \$500.00 (referring to book).

Q. And did he borrow any from you before that?

A. \$100.00.

Q. When was that?

A. 1909, November 4th; that was \$500.00, and a couple of years ago I loaned him another \$100.00 to pay the taxes on the property.

Q. The last one you loaned him was after he bought the property?

A. Yes, sir.

BY THE COURT:

Q. Two years ago?

A. Two years ago, yes, the last, but that first money I loaned him was when he negotiated for these lots and the house he is living in.

Q. At that time did you have any conversation with Mrs. Romano about loaning him the money?

A. She knew all about it, but I never said nothing to her because it was none of my business, I thought.

BY THE COURT:

Q. How do you know she knew about it, then?

A. Well, I suppose Mr. Romano, Frank, must have told her, because she said it would be all right.

- Q. Did you have any conversation with her about loaning \$500.00?
 A. No, not exactly.
 Q. Well, had you ever told her that you were going to loan Frank \$500.00?
 A. Oh, quite a lot knowed it, that I loaned Frank money.
 Q. Did she know anything about it?
 A. She said, "Charlie, it will be all right; you will get it, and Frank will make it good." 1910 he paid \$250.00, and 1911, he paid me \$250.00.
 Q. Did you take a note from him at that time?
 A. Of course, we had a note made out for a year and then he paid me \$250.00, and then we made another note.
 Q. What became of those notes?
 A. I gave them to Frank.
 Q. Did you advance him this money in cash or by check?
 A. In cash.

CROSS EXAMINATION

BY MR. CONNOR:

- Q. When did you first meet Mr. Romano?
 A. Up in Piola.
 Q. When?
 A. 1906, November 1st, on the Thursday morning.
 Q. Where was he working at that time?
 A. On the wreck train.
 Q. Where did he live?
 A. At Magnolia Hollow.
 Q. Where is that?
 A. Up in Piola, across from the Green Tree.
 Q. Any place near Riverside?
 A. No, sir.
 Q. Do you know when he moved to Riverside?
 A. I don't recollect that.
 Q. Were you living at Riverside at that time?
 A. No, I was in Beverly and Riverside now about twelve years.
 Q. Do you know how much money he got during 1906, '07 and '08?
 A. The wages was pretty small then; I was paying Frank \$2.00 a day and \$2.25 a day; when I used to go away, I was getting night messages and telegrams, and I had to go on jobs; I would generally give Frank cards of the whole works, and I always give him a quarter a day more than the rest.
 Q. Did he ever work for you after he moved to Riverside?
 A. No, sir.
 Q. Where did he work after he moved there?
 A. Down at the oil works, as near as I can recollect.
 Q. What was the occasion of his borrowing this \$500.00 from you?
 A. He wanted to buy the lots from Zeigler, the lots, I guess.
 Q. Do you know anything about it of your own knowledge?
 A. Well, he told me he wanted them lots and that property; that is the frame building, all right, all right.
 Q. Was there anybody there but you and himself at the time?
 A. No.
 A. No.
 Q. He has paid back this \$500.00?
 A. Yes.
 Q. How long after he made the loan did he make the first payment?

- A. 1910 he paid half.
 Q. What month?
 A. I think it was in November.
 Q. About a year after?
 A. Yes.

FRANK RAPAGNO, a witness produced on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ATKINSON:

- Q. Where do you live, Frank?
 A. Beverly, New Jersey, Magnolia Street.
 Q. How long have you lived there?
 A. I lived there 11 years and a half, and before I lived in—
 Q. Do you know Frank Romano?
 A. Yes, sir.
 Q. How long have you known him?
 A. Before he came to this country.
 Q. You knew him in the old country. Did you know his wife?
 A. Yes, sir.
 Q. How long had you known her before she died?
 A. The first day he come to this country.
 Q. How many years is that?
 A. I think he come up in 1905; I don't know the month; I think he come up in 1905.
 Q. Her name originally was Malone, wasn't it?
 A. Yes.
 Q. Where did they live after they were married?
 A. Home.
 Q. No, but where did Frank and Mrs. Malone live?
 A. I don't know the place—
 Q. What place did Frank and his wife live—what town?
 A. Before they were married?
 Q. You knew Mrs. Malone, didn't you?
 A. Yes, Mr. Malone lived next to my house, three years they lived in Beverly and then to Riverside.
 Q. They moved to Riverside?
 A. Yes.
 Q. Did you buy any property in Riverside?
 A. Yes.
 Q. Do you know anything about their buying that property?
 A. I don't know; I seen he buy the property; I seen they buy the properties, the wife and husband all together.
 Q. Did you ever talk to Frank and his wife about the way they bought the property?
 A. Buying the property?
 Q. Yes.
 A. They buy in Riverside place, they buy in Riverside.
 Q. Did you ever talk to Mrs. Romano about it? Did Mrs. Romano ever tell you how the property had been bought?
 A. Yes; "I buy the property in Riverside place," she said.
 (From this point on the witness was examined through the interpreter).

Q. (Interpreter repeats the question as follows): Did Mrs. Romano ever tell you how the property had been bought?

A. Mrs. Romano said that she and her husband Frank bought the property.

Q. Did she ever tell you anything about the deed?

A. The day that she was dying, I went there to give her several injections, and she, Mrs. Romano, made the request to her husband, Frank, that she wanted to see her friends, and I asked Mrs. Romano what she was going to do about the deeds. She answered, saying, that the property was fixed so if the husband died the wife would get all, and if the wife died the husband would get all.

Q. Who else was present at that time?

A. No one else was there; I was the only one there.

Q. How many days was that before she actually died?

A. The same day that she died.

Q. Did you send for any of her friends, as she asked you to?

A. I sent for the friends that she requested.

Q. Did they come?

A. Some came there and some didn't.

Q. Do you know what ones came?

A. I do.

Q. Who were they?

A. Gus Atorti and Frank Valicone, that's all; the others were far away.

Q. Did you hear Mrs. Romano say that the property in Riverside was to be half Frank's and half the boys, after her death?

MR. CONNOR: I object to the form of the question; it is leading. Some allowance can be made on account of the man's not understanding English, but I think he should ask the witness what she said; I object to the form of the question.

THE COURT: That is the substance of what was testified to.

A. I didn't hear her say that.

Q. Do you remember the time that Frank bought the property?

A. I think it was in 1909, but I don't know the month.

Q. Did either Frank or his wife tell you where the money came from that they were buying the property with?

A. No, sir, they didn't.

CROSS EXAMINATION

BY MR. CONNOR:

Q. Do you remember the day of the month that you were there?

A. What?

Q. Do you remember the day of the month that Mrs. Romano died, that you were in the house?

A. February 17th.

Q. What year?

A. I don't know whether it was in 1914 or '15.

Q. What?

A. I don't remember the precise year.

Q. What time did you go to her house that day?

A. In the afternoon.

- Q. About what time in the afternoon?
 A. About half-past one.
 Q. How long did you stay there?
 A. Five o'clock.
 Q. Did she die during the time you were there?
 A. She died at seven o'clock; no.
 Q. Who else was there while you were present; anybody with you?
 A. There were people there; some were coming up stairs and some were going out.
 Q. Were any of the children there?
 A. I think there were two there.
 Q. Was that man there? (Domonick Corisorte stands up).
 A. No, he was in the service.
 Q. Was her daughter there?
 A. She was downstairs.
 Q. She was not upstairs at all?
 A. She was up one time and went down.
 Q. Was he there at that time? (Edward Malone stands up).
 A. There were three in the house.
 Q. Was that boy in the room while you were there?
 A. Sometimes he would come in and sometimes he would go out.
 Q. Was Mary Morella there?
 A. When I went downstairs I saw the daughter; the mother was calling for Mary, and when I went downstairs I told Mary that her mother wanted her.
 Q. Was Albert, this boy, there? (Albert Malone stands up).
 A. No.
 Q. Was this boy, Anthony, there? (Anthony Malone rises).
 A. No.
 Q. None of them was there?
 A. No.

GUISEPPE RIUSCILLO, a witness produced on behalf of the defendants, being duly sworn, testified, through intepretation, as follows:

DIRECT EXAMINATION

BY MR. ATKINSON:

- Q. Where do you live now, Joseph?
 A. Wayne, Pennsylvania.
 Q. Did you formerly live in Riverside, New Jersey?
 A. Yes, sir.
 Q. How long did you live there?
 A. On the 21st of January will be three years that I have been away from Riverside.
 Q. And how many years did you live in Riverside before you moved away?
 A. Nine years.
 Q. Did you ever know Frank Romano?
 A. I boarded with him.
 Q. When did you go to board with him?
 A. Just as soon as I came from Italy.
 Q. And did you board with him at the time he was married to Mrs. Malone?
 A. No.
 Q. Well, how long did you continue to board with him?

- A. Not quite four years.
 Q. Were you boarding with him at the time his wife died?
 A. No, I had got married and gone away.
 Q. Were you boarding with him at the time the property was bought in Riverside?
 A. No.
 Q. Did you ever talk with Mrs. Malone or Frank about the property they bought in Riverside?
 A. I never talked to them about this matter.
 Q. Were you present at the time, or about the time, that Mrs. Romano died?
 A. I was there in the afternoon and she was very seriously ill.
 Q. Well, do you know how long after that it was that she died?
 A. I left at six o'clock, and she died after six.
 Q. Do you remember who else you saw there that day?
 A. From the time that I was there, there were five or six in there.

BY THE COURT:

- Q. How long were you there?
 A. About an hour and a half.
 Q. Were you in the room where Mrs. Romano was?
 A. Yes.
 Q. Did you have any conversation with her?
 A. We talked together and she sent for her boy and husband.
 Q. Did she talk to them while you were there?
 A. Yes.
 Q. Was there anything said to her about making a will?
 A. There was nothing said about a will.
 Q. Was there anything said about any papers while you were there?
 A. No.

BY THE COURT:

- Q. Was there anything said about who would get the property?
 A. She sent for the three boys and for the husband and she said that the property in Italy should go to the three children, and the property in America should go to the husband.
 Q. What three boys were present at that time?
 A. Albert, Tony and Edward.
 Q. Was Frank there at that time?
 A. Yes.
 Q. Was there anyone else present?
 A. There were some people present there, and among them was one named Frank, but I don't remember.

CROSS EXAMINATION

BY MR. CONNOR:

- Q. What did she say about the property?
 A. That the property in this country would be good for the husband.
 Q. Didn't she say that the property in Italy was to go to three boys, and the property in this country was to go to all her children?
 A. No.

- Q. What day was this?
 A. I don't remember the day it was.
 Q. What time of the day were you there?
 A. After dinner.
 Q. What time after dinner?
 A. I didn't have any watch in my pocket, but I judge it was about two o'clock.
 Q. Whom did you see there?
 A. There were people there?
 Q. How many people were there?
 A. I didn't count them.
 Q. Did you see Mary Morella there?
 A. Yes, sir.
 Q. She was there in the room with you?
 A. No, downstairs.
 Q. Did you see this boy there? (Edward Malone).
 A. Yes.
 Q. Where was he?
 A. Upstairs.
 Q. During all the time you were there?
 A. No, he was not.
 Q. Was this boy there? (Albert Malone).
 A. He would go up and down.
 Q. How about Tony; was he there?
 A. The same thing.
 Q. And they were all in the house?
 A. They were.
 Q. Was Dominick Coristore there?
 A. I saw him when he went in the kitchen.
 Q. Did you see Julius Coristore there?
 A. I don't remember; I don't think I saw him.

JULIUS CORISORTE, a witness produced on behalf of the defendants, being duly sworn, testified, through interpretation, as follows:

DIRECT EXAMINATION

BY MR. ATKINSON:

- Q. Do you speak English?
 A. No.
 Q. Do you know Frank Romano?
 A. Yes.
 Q. How long have you known him?
 A. Since I came from Italy in 1913.
 Q. Did you know his wife, who was formerly Mrs. Malone?
 A. Yes.
 Q. And how long did you know her?
 A. From the time that I came from Italy I boarded with them all the time.
 Q. How long did you continue to board with them?
 A. After she died I left.
 Q. You were boarding there when she died?
 A. Yes, sir.
 Q. Were you boarding with them when the property was bought in Riverside?
 A. No, sir.

- Q. Were you present the day that Mrs. Romano died?
 A. No, I was working.
 Q. Did you see her at any time during her last sickness?
 A. I used to see her all the time.
 Q. And when was the last time that you saw her before she died?
 A. I left in the morning to go to work, and I went home at noon and visited her and saw she was in a very serious condition. After I went to work, about three or four o'clock, my boy came and called me and told me that "Your sister is dying."
 Q. Did you go back to the house to see her then?
 A. Yes.
 Q. When you went in to see her at noon did you have any conversation with her about who was to get the property after her death?
 A. She said when I went there, that the property in Italy she would leave to Albert, Edward and Anthony, "and this that I have in America will leave Frank pretty good."
 Q. Who was present at that time?
 A. There was a lot of confusion and a lot of people, and I began to cry, and I went down—

BY THE COURT:

- Q. When was this, at noon or in the afternoon?
 A. This was after my boy came and called me, which was about four o'clock.
 Q. What relation was Mrs. Romano to you?
 A. We were first cousins.

CROSS EXAMINATION

BY MR. BACON:

- Q. You had been intimately acquainted with your cousin for a long time?
 A. I knew her in Italy.
 Q. And you knew that she was interested in real estate there?
 A. Yes, sir.
 Q. Of what did the property consist that she was going to give to her three sons after her death?
 A. One house.
 Q. And the property that was turned into cash for her benefit, of what did that consist?
 A. I don't know; I was in America then.
 Q. Did she receive \$500.00 or more for her Italian property in 1909?

MR. ATKINSON: That is objected to as not proper cross examination.

THE COURT: Objection overruled.

- A. I don't know.
 Q. Did she ever receive any money in cash from her Italian Property?
 A. I don't know.
 Q. Or any money from Italy from any source?
 A. I don't know.
 Q. Now, did Mrs. Romano speak to you, or in your hearing, more than once, about what her husband Frank was to get from her estate?

- A. Only once.
- Q. And that time she stated that her American property would leave Frank pretty good?
- A. Yes.
- Q. Did she say anything—well, who else was present?
- A. There were a lot of people there, some was going out and some was coming in.
- Q. Was Dominick Corisorte there?
- A. My boy?
- Q. Yes.
- A. He was downstairs in the kitchen.
- Q. Was there anyone who heard the statement she made about Frank?
- A. There were people there.
- Q. Who else was present to hear that particular remark at that time?
- A. There were people there, but I can't say who they were.

NICOLA DI LUCA, a witness produced on behalf of the defendants, being duly sworn, testified, through the interpreter, as follows:

DIRECT EXAMINATION

BY MR. ATKINSON:

- Q. You live in Ambler, Pennsylvania, do you now?
- A. Yes.
- Q. And before that you lived in Riverside?
- A. Yes.
- Q. How long did you live in Riverside?
- A. Eight or nine years.
- Q. Were you living there at the time that Frank Romano's wife died?
- A. Yes.
- Q. And were you at Frank's house the day she died?
- A. No.
- Q. Did you see her at any time while she was in her last sickness?
- A. They sent for me two or three times, but I didn't go because I had a business.
- Q. Did you see her at any time shortly before she died?
- A. I didn't see her while she was ill in bed.
- Q. How long was it before she died that you saw her?
- A. About a week before, or nine or ten days before; I had had breakfast in her house in the morning.
- Q. Was there anything said at that time about the property in Riverside?
- A. I don't know anything about the property.
- Q. Were you living in Riverside at the time that Frank bought this property?
- A. No, I lived in Philadelphia.

MR. ATKINSON: I would like to withdraw this witness at this time.

THE COURT: Is there any cross examination?

MR. BACON: No.

THE COURT: You may withdraw the witness.

CARLO CENTIARRO, a witness produced on behalf of the defendants, being duly sworn, testified, through interpretation, as follows:

DIRECT EXAMINATION

BY MR. ATKINSON:

Q. Can you speak English?

A. Not much.

Q. Where do you live?

A. Beverly, New Jersey.

Q. Do you know Frank Romano?

A. Yes, sir.

Q. Did you know his wife in her lifetime?

A. Yes, sir.

Q. How long have you known them?

A. Since fifteen years ago.

Q. Do you remember the time they bought the property at Riverside, New Jersey.

A. I remember the time, but I don't remember the day.

Q. Did you have any conversation with either Mrs. Romano or with Frank about it?

A. No.

Q. After they had bought the property, did either Mrs. Romano or Frank ever talk to you about it?

A. No, they never talked to me about property.

Q. Did you ever loan Frank any money to be used on the property?

A. I loaned it to him after he bought the property.

Q. And who was present when that loan was made?

A. Nobody.

Q. And how much was it he borrowed?

A. Once I loaned him \$20.00, and another time ten, in all about \$30.00.

Q. How long ago has that been?

A. After he bought the property.

MR. BACON: No questions.

MATTEA MARCELLEISI, a witness produced on behalf of the defendants, being duly sworn, testified, through the interpreter, as follows:

DIRECT EXAMINATION

BY MR. ATKINSON:

Q. Can you speak English?

A. No.

Q. Where do you live?

A. Riverside.

Q. Do you know Frank Romano?

A. I knew him from a boy, when he was in Italy.

Q. Did you know his wife before she died?

A. I knew her when I first came to this country, before he married her, when her other husband died.

- Q. Did you board with Frank at any time?
 A. I boarded with him five or six times.
 Q. Were you boarding with him at the time when he bought the property in Riverside?
 A. No.
 Q. Do you remember the time the property was bought in Riverside?
 A. I don't remember exactly, but it was about 1909 or '10.
 Q. Did you ever have any conversation with either Frank or Mrs. Romano about it?
 A. I loaned \$15.00 to Frank Romano before he bought the property.
 Q. What was the fifteen dollars for, if you know?
 A. I don't know.
 Q. Did you ever loan him any money afterwards that was used for the property?
 A. Five or six years ago—about seven years ago, when I came the second time from Italy, Frank Romano said to me that he needed money to pay the building loan rent; another time he placed a tank in the cellar; another time he said he had to pay because he had built two new houses, and that another person had loaned him the money.

MR. BACON: I move to strike that out; this question now leading to an answer, in which this witness has undertook to tell what Frank Romano told him, not only what he told him about the borrowing of his own money but somebody else's money.

THE COURT: The answer is rather involved, but that part which is hearsay will not be considered; the witness may finish the answer.

A. And that the person who had loaned this money to him was a man by the name of William Reich, and that this man needed the money and he wanted it; and I asked him what he was going to do with the money, and he said he had to pay a little more money in order to get the key for the new house; he told me that; of course, I don't know.

Q. What I wanted to know was, did you loan any money to Frank that was used about the property; that is, did you personally loan him any money?

A. Not for the first house, no.

Q. But for the second house?

A. I only loaned it to him for the first few days, because he said he needed it in order to get the key from the new houses.

Q. Was Mrs. Romano present when you made that loan?

A. She was dead then.

CROSS EXAMINATION

BY MR. BACON:

Q. Whom did you pay your board to?

A. To Frank and his wife, both of them.

Q. And who did the housework?

A. The wife did the cooking.

Q. Did you see Mary Morella there doing a great deal of the housework?

A. She used to do some housework in the home.

WILLIAM BELENTO, a witness produced on behalf of the defendants, being duly sworn, testifies, through the interpreter, as follows:

DIRECT EXAMINATION

BY MR. ATKINSON:

- Q. You live at Riverside?
A. Yes, sir.
Q. You can speak English?
A. Not very much; I understand a little.
Q. Do you know Frank Romano?
A. Yes, sir.
Q. How long have you known him?
A. About twelve years.
Q. Did you know Mrs. Romano?
A. Yes, sir.
Q. Do you remember the time that the property was bought in Riverside?
A. No, I wasn't there.
Q. Did you ever loan Frank Romano any money?
A. My brother loaned him money?
Q. Were you present when he loaned him the money?
A. I was not present.

MR. ATKINSON: I would like to withdraw this witness; I thought it was the brother I had called.

DEFENDANTS REST.

DOMINICK CORISTORE, being recalled on behalf of the complainants, testified, in rebuttal, as follows:

DIRECT EXAMINATION

BY MR. CONNOR:

- Q. Dominick, were you present the day that Mrs. Romano died?
A. Yes.
Q. Were you home about the house all that day?
A. Yes, I was home.
Q. You were not in the service at that time?
A. No, sir.
Q. How long before that had you come from the service?

THE COURT: Hasn't he already testified to this?

MR. ATKINSON: He has testified he was there.

- Q. Who was present on that occasion the day Mrs. Romana died?

THE COURT: Hasn't he already testified to that?

MR. CONNOR: Yes, but I wanted to show that those witnesses who testified here just now were not present on that day.

THE COURT: He has already been asked about that.

Q. Was your father present on that day?

A. No, sir; he was in the factory.

Q. He was working?

A. He was working.

Q. Was a man by the name of Rapagno, who testified here, present?

A. No.

Q. Were any of the witnesses you heard testify here today present during that day?

A. During that day I saw Mary Morrella and Frank Morella was there, and we had a couple of visitors there, but she ever had any conversation about the property with the visitors.

Q. Was Lena there?

A. No, sir.

CROSS EXAMINATION

BY MR. ATKINSON:

Q. Julius Coristore is your father, isn't he?

A. Yes, my father.

Q. And you went to see him about testifying for Louis, didn't you? Didn't you go to see your father about being a witness for Louis?

A. I never did; I never told my father about the witnesses; I am doing my best.

Q. You and your father are not on very good terms, are you?

A. I get along fine with my father; I never had any trouble with him.

Q. You have not had a quarrel about his being a witness here?

A. No, I am here to say the truth, and I want him to say the truth.

Q. As a matter of fact, didn't you go to him and talk to him?

A. We was talking about it, everything; I said he could prove it before the Court.

Q. He told you he was going to tell the truth?

A. Yes, sir.

Q. Then you did talk to him about being a witness, didn't you?

A. I said, "You going to be a witness, all right." I don't care what he did.

GEORGE BARCIA, being recalled in rebuttal, testified as follows:

DIRECT EXAMINATION

BY MR. BACON:

Q. I show you a bond and warrant and mortgage, Francesco Romano and Rafaela Fusilla Romano to Eugene Cachelin, and I ask you whose signatures are thereunto attached as witnesses?

A. I have mine.

Q. And did you sign your name as a witness to those papers?

A. I see my name; I don't remember.

Q. Is it your signature?

A. Yes.

Q. And were you present when that paper and the accompanying deed were executed?

THE COURT: What is the purpose of this?

MR. BACON: I want to prove that this witness was actually present when the papers were signed.

A. When I got there those papers—

Q. Were you present when these papers were signed and executed?

A. Certainly, I was.

Said papers, being a deed dated November 24, 1909, by Eugene Cachelin and wife to Raffaella Fusilla Romano and Francesco Romano, recorded in Book 453 of Deeds for Burlington County, pages 455, &c.; a bond and warrant from Raffaella Fusilla Romano and Francesco Romano, of the same date; and a mortgage between the same parties, bearing the same date, to secure \$1050.00, and unrecorded, are marked "Exhibits C-2, C3 and C-4," respectively.

Q. Did you see the money paid?

A. From Squire Zeigler to the lady, yes.

Q. You don't know how Squire Zeigler got it?

A. No, sir.

Q. And he didn't get it on that occasion while you were present?

A. I don't remember; I seen him hand the money to the lady.

Q. Was anything said then about Frank Romano having borrowed the money; was there anything said at that time about Frank Romano having borrowed that money from any individual?

MR. ATKINSON: I object to the form of the question.

THE COURT: Objection overruled.

A. No, sir.

Q. Do you know the witness who testified here this morning that he loaned Frank Romano \$500.00?

A. I never saw him before.

Q. Do you know his name?

A. No, sir.

Q. Was there anything said about William Shoemaker on that occasion?

A. No, sir.

Q. Did you see him or any of the transactions?

A. No, sir.

MR. ATKINSON: I object to this line of testimony; there is nothing to show whether Frank was there or had any knowledge about it, so I can't see how any conversation at that time would be material; certainly, it couldn't bind the defendant.

Q. Was Frank Romano present when you signed those papers?

A. I think so.

Q. Who was present?

A. Squire Zeigler, and, of course, Mrs. Romano.

Q. And some of the boys?

A. Some of the children; I don't know whether they were boy or girl.

Q. And did anyone then and there state where the money came from?

A. Well, they were talking about some property they had in Italy, but I don't know exactly where the money came from, Italy or from where.

Q. Who was it was supposed to have that property in Italy?

A. She claimed to have a property.

Q. Did it turn into money?

A. I don't know.

Q. Was it there stated, in the presence of Mr. and Mrs. Romano, yourself and Squire Zeigler, that Mrs. Romano had received some money from a property in Italy?

A. Yes, something was said about that.

CROSS EXAMINATION

BY MR. ATKINSON:

Q. When was this conversation, at the time before they really bought the property?

A. Before the deeds were—

Q. That was when the property was first purchased, wasn't it?

A. They said they had some money coming from Italy.

Q. And these papers that Mr. Bacon showed you were the papers that were executed at that time, were they not? These are the papers that were signed at that time?

A. Yes, sir.

Q. Now, you didn't hear Mrs. Romano say at that time that it was the money that she got from Italy that was buying this property, did you?

Q. They were talking about—

Q. Did you hear Mrs. Romano say at that time that the money that was buying the property was the money that she got from Italy?

A. Not all, but that she was talking about some money of a property that she sold in Italy, or she was supposed to sell; I don't know whether it was a part of the money or not.

Q. Sold or supposed to sell?

A. Either sold or supposed to sell; I don't know whether it was all or part of the money, but they were talking about selling the property in Italy.

Q. Mr. Zeigler had the money at that time?

A. I don't know.

Q. You didn't see Mrs. Romano produce any money there, did you?

A. No, sir.

Q. Who was present at that time?

A. When?

Q. At the time of the settlement.

A. Mr. Romano and Mrs. Romano, and Peter Volpe, and another gentleman, in Squire Zeigler's office, and a few children of Mrs. Romano.

MR. BACON: I have here a list of the wages of Mr. Romano, and we sent for a man from the company, and they say they are enroute here; we would like to put in that testimony, and I want the privilege of cross-examining this man Shoemaker, and Frank Romano, the defendant, upon this question of the \$500.00. He said previously it came from his wages; I would like to cross-examine those two witnesses separately as to that \$500.00.

THE COURT: You may do so.

(Mr. Shoemaker is excluded from the room).

FRANK ROMANO, being recalled for further cross-examination, testifies as follows (through interpretation):

FURTHER CROSS EXAMINATION

BY MR. BACON:

Q. At a previous hearing of this case, you were asked, "Where did you get that money from," meaning the \$500.00, and you said your gave Zeigler—do you know what you answered?

THE COURT: What difference does it make?

Q. At a previous hearing you said you got the \$500.00 paid to Zeigler from your wages?

A. I don't remember.

Q. Did you have any money saved up at that time?

A. Charlie Shoemaker gave it to me.

Q. Is it not a fact that your wife bought even the suit of clothes you were married in?

MR. ATKINSON: Objected to.

THE COURT: Objection overruled.

A. No.

Q. Who first spoke to Mr. Shoemaker about loaning you money?

A. I did.

Q. When and where?

A. At Riverside.

Q. When?

A. November 1, 1909.

Q. What part of the town?

A. At my house.

Q. Upstairs or down?

A. Upstairs.

Q. Who was present?

A. He and I.

Q. What hour of the day or night was it?

A. It was in the daytime; I don't remember the time.

Q. Was it before or after noon?

A. After noon.

Q. Was it before dark?

A. Yes, sir.

Q. Was the money advanced on that occasion?

A. Yes, sir.

Q. Was it received open or in any kind of a wrapping?

A. It wasn't wrapped; he just gave me the money.

Q. Where did the money come from when you first saw it?

A. Shoemaker gave it to me.

Q. Where did he get it?

A. I don't know where he got it.

Q. Did he take it from his pocket or from a pocketbook?

- A. He gave them to me in my hand.
 Q. From where did he take it?
 A. From his pocket.
 Q. Was there any bag or pocketbook or wrapping in connection with it?
 A. Just the money, no wrapping or paper or anything.
 Q. Was it taken from Shoemaker's coat or pantaloons?
 A. I don't know whether he took them from his pantaloons or coat.
 Q. What became of it when it left Shoemaker's hands?
 A. I put it in my pocket and gave it to Zeigler when he made the deed for the house.
 Q. Did Zeigler count it?
 A. Certainly, he did.
 Q. Did you count it?
 A. Yes.
 Q. When did you count it?
 A. I counted it when I gave it to Zeigler.
 Q. Did you count it when Mr. Shoemaker gave it to you?
 A. Certainly, I did; I counted it the same.
 Q. Tell us the denomination of the bills?
 A. They were all qualities.
 Q. Were there any one hundred dollar bills there?
 A. I don't remember.
 Q. Were there any fifty dollar bills?
 A. I don't remember.
 Q. Were there any twenty dollar bills?
 A. I don't remember.
 Q. Were there any ten dollar bills?
 A. I don't remember.
 Q. Were there any five dollar bills?
 A. There were, yes.
 Q. Were there some one dollar bills?
 A. There were some one dollar bills.
 Q. What proportion of the bills were five dollar bills?
 A. I don't remember.
 Q. Or one dollar bills?
 A. I don't remember.
 Q. Was there any silver?
 A. No.
 Q. Or gold?
 A. I don't remember.
 Q. What is the present position of the real estate dues, are they paid up or not, the building loan dues?
 A. No.
 Q. How far behind are they?
 A. I don't remember.
 Q. How about the taxes?
 A. I have to pay them.

CHARLES SHOEMAKER, being recalled for further cross-examination, testifies as follows:

FURTHER CROSS EXAMINATION

BY MR. BACON:

- Q. Mr. Shoemaker, when, if ever, did you at any time loan Frank Romano money?

- A. 1909, November 4th.
- Q. Was there anyone present at the time you made the loan?
- A. Well, not particularly, only my second wife.
- Q. What is her name?
- A. Mrs. Shoemaker; her first name is Mary Henderson.
- Q. Where does she live?
- A. 21 and 22—in Cuspard Street.
- Q. Do you live with her there?
- A. Yes.
- Q. Where was it this money was loaned to Frank Romano?
- A. He come to the house and I give it to him in the house.
- Q. In your house?
- A. Yes, sir.
- Q. Whereabouts?
- A. Cuspard Street.
- Q. What city?
- A. Philadelphia.
- Q. Do you know the time of day or night?
- A. Well, it was on November 4th, 1909.
- Q. Do you know the time of day?
- A. Yes.
- Q. What time of day?
- A. As near as I can recollect, I think it was sometime in the afternoon; I didn't keep track of it exactly.
- Q. And had he asked you to loan him the money previous, or was that the first time he talked to you about it?
- A. That's the first time.
- Q. Did he ever talk to you about borrowing it before?
- A. No, sir.
- Q. Did he ever talk to you about borrowing it at any other place?
- A. Not that I can recollect.
- Q. And where did you get the money that Frank got from you?
- A. Well, I have always had money on me; I was working then for the Pinkerton Construction Company.
- Q. Did you keep the money upstairs in a box?
- A. Yes, I always had four or five or six hundred dollars with me, because I had men to pay off.
- Q. What room did you keep the box in?
- A. In my bed room.
- Q. What kind of a box was it?
- A. I had a tin box.
- Q. Did you go upstairs to the tin box to get it when Romano asked you for it?
- A. Well, I went up and got it.
- Q. Where was he while you were getting the money?
- A. Downstairs.
- Q. What did you do while you were upstairs?
- A. Went in and got the money.
- Q. Where did you go to get it?
- A. Downstairs.
- Q. Where did you go to get it?
- A. Upstairs in my bedroom.
- Q. In what part of the bedroom did you keep it?
- A. The second story front.
- Q. Did you keep it in a bureau or under the bed, or where?
- A. I kept it in my trunk.
- Q. Was the trunk locked when you went upstairs that day?
- A. Yes, I always keep it locked.

- Q. Who had the key?
 A. Me.
 Q. The first time when you went upstairs after the money, what did you do?
 A. I opened the trunk and took the money out of the box.
 Q. Where did you put it?
 A. In my pocket till I gave it downstairs to Frank.
 Q. Did you count it?
 A. Yes.
 Q. How much was there of it?
 A. \$500.00.
 Q. And was there a one hundred dollar bill among the pile?
 A. No, sir, not that I know of; I think there were fifties and twenties.
 Q. How many fifties were there there, do you remember?
 A. Two or three.

BY THE COURT:

- Q. The whole \$500.00 was in fifties and twenties?
 A. Yes.
 Q. No fives?
 A. Well, I didn't get them—I paid them off every Saturday; I had 30 or 40 men and lots of them were—
 Q. This money that you gave to Romano was made up of fifties and twenties?
 A. Yes.
 Q. There were no one hundred bills among them?
 A. No.
 Q. And no fives and no ones?
 A. No, sir.
 Q. They were all fifties and twenties?
 A. Yes.
- Q. What was done with the money when it left your hands?
 A. I don't know.
 Q. Didn't you change your mind and take the money upstairs and lock it up again, and not let Frank have it?
 A. No, sir, I didn't take the money upstairs again and lock it up.
 Q. What did you do with it?
 A. Gave it to Frank.
 Q. What did he do with it?
 A. I don't know what he done with it.
 Q. And do you mean to tell us that when Frank Romano entered your house on Cuspart Street in Philadelphia, in the presence of your wife, that you had \$500.00 more in the house than you had when he left?
 A. What do you mean, \$500.00 more?
 Q. Yes.
 A. No, there was \$500.00 less.
 Q. Isn't it true that all the money that was in your house when he came there was in your house when he went away?
 A. No, sir; how could it be?
 Q. I am asking you what is the difference before and when he left?
 A. After I gave Frank \$500.00 there wasn't as much there as when he—
 Q. Did you ever say anything to Squire Zeigler about this loan?
 A. No, sir.
 Q. Or anybody else?

A. No, sir—well, a few of them among my friends, but that is only lately here.

Q. Will you kindly give us the name of any friend that you told you had loaned Frank Romano \$500.00?

A. That has only been here the last couple of weeks; if I loan money or anything I don't publish it in the paper.

Q. Did you take any receipt or memorandum of any kind for the \$500.00?

A. Yes, I took a note.

Q. Where is it?

A. I don't know what Frank done with it; I guess burned it up; no use keeping a note after it is paid.

MR. ATKINSON: No questions.

RECESS UNTIL 2 O'CLOCK.

AFTER RECESS

FRANK MORELLA, a witness produced on behalf of the complainants, being duly sworn, testifies, in rebuttal, as follows:

DIRECT EXAMINATION

BY MR. CONNOR:

Q. Mr. Morella, you are the husband of Mary Morella, are you?

A. Yes, sir.

Q. And Mrs. Romano was your mother-in-law?

A. Yes, sir.

Q. Were you present at the time that Mrs. Romano died?

A. Yes, sir.

Q. Were you in the house that day?

A. Yes, sir.

Q. What time of day were you in the house?

A. All day long, from morning until night.

Q. Were you there the day before?

A. Yes, every day she was sick until she died.

Q. The day she died, did you see Frank Rapagno there?

A. No, he wasn't there.

Q. Was Joseph Riuscillo there?

A. No, sir.

Q. Was Julius Corisorte there?

A. I didn't see him; he was at work.

Q. Was he or not?

A. He worked that day.

Q. Was George Centiarro there?

A. Who is he?

Q. Were you in Court this morning?

A. Yes, sir.

Q. And you heard the men testify on the witness stand that said they were in the house on the day your mother-in-law died; were any of those men there that day?

A. They were not there; everybody was working; I know, sure.

CROSS EXAMINATION

BY MR. ATKINSON:

- Q. It was a working day, you say?
A. It was through the week; everybody was working, I suppose.
Q. You know they were not there, because it was a working day?
A. Sure.
Q. Don't you work?
A. Yes, but I got a job, I'm a barber; I leave my men in my shop and I go there.
Q. This particular day she died, you didn't go to the shop at all?
A. I didn't go.
Q. You stayed home all day?
A. Yes; if I don't want to go I needn't go, because I got somebody to attend to my business.
Q. The only reason you know these people were not there is because it was a working day?
A. I know they are not there, sure.
Q. You and Frank Romano had some words, didn't you?
A. Never had a word until my mother-in-law died; I was an angel to him when my mother-in-law was living; after she died, because he know why I was his enemy.
Q. You had a quarrel with him some time?
A. After my mother-in-law died.
Q. And you know, as a matter of fact, that Frank objected to your going to see your wife before you were married?
A. That was an excuse.
Q. Didn't he object to your going to see your wife before you were married?
A. No.

MR. BACON: We will admit that, if necessary.

- Q. Have you ever been convicted of crime?
A. No, sir.

LENA ROTHMELL, a witness produced on behalf of the complainants, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BACON:

- Q. Do you remember the time Frank Romano's wife died?
A. I don't remember the time she died, no.
Q. Where were you living when she did die?
A. Next door.
Q. How long had you been living there when she died?
A. I don't know how long Mrs. Romano has been dead, but I have been living in that house ten years.
Q. Do you know what part, if any, Mary Morella took in the house-keeping before her mother's death?
A. I guess she done everything, washing and all, as far as I could see.
Q. What did you see her do?
A. All kinds of work, sweeping and washing and everything.

Q. And who helped her?

A. Her mother.

Q. Did she have any other help?

A. No, sir.

Q. And who did the biggest portion of the work?

A. Well, I guess the mother and her in the house; I never was in the house; Mary would wash in the mornings before she went to school and after she came home from school.

Q. Was she a big enough girl to do the housework?

A. I don't know whether she was; I don't think I would like to make my child work as hard as that girl did at the age she was.

Q. How long did that keep up?

A. Until she got married.

Q. Was it kept up even after her mother's death?

A. Yes, for a while, until she left there.

Q. Was there any other woman about the house doing the housework except Mary and her mother?

A. No, sir.

Q. Was there any woman there waiting on Mary's mother besides Mary?

A. No; there was an old lady there after her mother's death, and I was told she was there to take care of Mary.

Q. Is she in Court?

A. I don't think so.

Q. Do you know her?

A. No; she was there about a week after Mary's mother died.

Q. Was she there before Mary's mother died?

A. I didn't see her; I seen her there the day after Mary's mother was dead.

Q. Were you on speaking terms with Mary's mother?

A. I couldn't talk to them; her mother couldn't talk English; I used to talk to the children.

Q. You were friendly?

A. Yes, with the children.

MR. ATKINSON: No questions.

WALTER CAMENISCH, a witness produced on behalf of the complainants, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BACON:

Q. I show you a paper purporting to be a list of the wages of Frank Romano, from June 16, 1910, to the present time; will you please examine it and see if it is correct?

A. (After looking at paper). To the best of my knowledge and belief, I believe it is correct.

Q. What is your position?

A. Cost accountant.

Q. Where at?

A. The Keystone Watchcase Company and the Riverside Metal Company.

Q. How was that statement furnished?

A. By reason of my being instructed by the Riverside Metal Company to prepare it, and I had my clerks prepare it.

Q. You say it's correct?

A. Yes, sir.

MR. BACON: I offer it in evidence.

MR. ATKINSON: No objection.

Said list is marked Exhibit C-5.

CROSS EXAMINATION

BY MR. BACON:

Q. Can you tell from that paper how many days Frank Romano worked for the Riverside Metal Works?

A. Yes; June 16, 1910, to December 31, 1910, and beginning in January, 1911, to the end—

Q. He worked every day from one date to the next?

A. No, I will withdraw that; that means that is what he earned during the time he was there; but he was there with the exception of a few days, or being sick; if he had left our employ we would show as we show it further. He left our employ on November 3, 1917, and did not return until April 8, 1918; then he worked till December 14, 1918; then he left on August 30, 1919, and didn't return until May 15, 1920.

Q. It only shows the amount of money and does not show the actual time he worked?

A. No, it wouldn't give you the days or hours.

Q. Do you know what his rate of pay was?

A. I don't have it with me, sir.

(Upon application, Mr. Bacon was given permission to file an answer in behalf of Louis Malone, guardian ad litem for Mary Morella and Edward Malone).

CASE CLOSED.

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decision for relief where there was an adequate remedy at law.

The Court of Chancery, according to the Chancery Act of 1915, Section 8, specifically states that the Court shall have power to give relief in all questions where the circumstances of the case gave the Court jurisdiction. Inasmuch as the original bill of complaint in this cause was for the purpose of determining whether or not a resulting trust existed according to evidence and all the circumstances of the case, my contention is that the Vice-Chancellor had the power and authority, inasmuch as the Court acquired jurisdiction of the cause, to determine what relief might be granted under all the circumstances of the case, notwithstanding the fact that the complaints had an adequate remedy at law to recover any moneys that might be due.

Chancery Act, 1915, sections 8 and 9.

But in all cases referred to in this section the Court of Chancery shall retain the cause until the legal question shall be determined or until an adequate opportunity to determine the same shall have been given, unless justice or the public interest requires a dismissal of the cause.

Questions of Law to be Determined. Any question, ordinarily determinable at law, arising in a suit of which the Court of Chancery has jurisdiction, other than a question requiring a jury trial or a determination upon certiorari, mandamus or quo warranto, shall be determined by the Court of Chancery in that suit.

When a Court of Chancery acquires jurisdiction for any purpose, it will, as a general rule, proceed to a determination of the whole cause, although in so doing it might decide questions which, standing alone, would furnish no basis of equitable jurisdiction, for example:

Courts of Equity have no jurisdiction to give damages or compensation when these constitute the sole ground of the bill. But where the bill seeks other relief which can be had in equity alone, and damages are

incidental to this relief, Equity, having proper possession of the cause for the purpose of relief, which is purely equitable, will proceed to determine the whole case.

Wiswall v. McGowan, 2 Barb. 270.

Lyle v. Addicks, 62 N. J. Eq. 123.

Cutting v. Dana, 10 C. E. Green 265-270.

Dunn v. Hastings, 9 Dick. Ch. Rep. 503.

1. The decree of the Court of Chancery did not give to the complainants all the money they paid their mother and stepfather, but only such an amount as was paid by each of them while they were not members of the household.

Louis Malone testified that he gave his mother and stepfather \$1,861.00 (Case, page 31) and the decree gave him \$120.00.

Albert Malone gave \$2,564.00 in all (Case, page 34) and received by the decree \$483.00.

Anthony Malone contributed \$480.00 (Case, page 41) and received by the opinion \$375.00.

2. These amounts were allowed by the Vice-Chancellor as the amount over and above what they paid for board while they were at home and members of the family.

The defendant Romano admits that this money was paid but it was used for the support of the family, but most of the time after the complainants became of age they were away from home and could not be charged with support.

It is quite clear from the testimony of Helen A. Landreotti. (State of Case, page 44) that the defendant Frank Romano had some understanding with his wife and the complainants in regard to the property, and that there existed between them some kind of an agreement.

Mrs. Landreotti testified that Romano wanted to marry her, but she refused unless he conveyed to her

one of the properties. That he refused to do, because, as he stated, it belonged to the children.

Now, if there was an understanding as to this point, then the boys gave him the money for that purpose and when he failed or refused to give them any interest in the property, he retained their money without giving them any value for it.

There was no other reason for their giving it to him, as they were not living with him and claimed no support. So a Court of Equity had the power and the right to decree the repayment of this money to the complainants.

The statement that the Court of Chancery gave a decree to the complainants for something never prayed for in their bill has no bearing on the case for the reason that the Court under the general prayer in the bill had power to grant whatever relief the learned Vice-Chancellor might deem equitable and just.

The Court of Chancery, having once acquired jurisdiction of a cause, had authority to determine any other cause allied or connected or being a part of the said action because, if the Court of Chancery once acquires jurisdiction, it can grant such relief as it may think equitable.

The point raised by the defendant or appellant that the only prayer made in the bill of complaint and the only relief sought for was a resulting trust, and inasmuch as a question of resulting trust having failed, the complainants were not entitled to any other relief, we contend that the general prayer in the complainants' bill, which prayed for any other relief which might be equitable and just, gave us the right to any relief that the learned Vice-Chancellor may have determined we were entitled to.

WILLIAM J. CONNOR,
*Solicitor and of Counsel with
Complainants and Appel-
lees.*

New Jersey Court of Errors
and Appeals

Between

LEWIS J. MALONE, ET ALS.,
Complainants,

and

FRANCESCO ROMANO,
Defendant.

} On Appeal.

} BRIEF OF
DEFENDANT.

ROBERT PEACOCK,

Solicitor and of Counsel
with Defendant—Appellee.

THE FIRST PART OF THE
AND SECOND

New Jersey Court of Errors and Appeals

Between

LEWIS J. MALONE, ET ALS.,
Complainants,

and

FRANCESCO ROMANO,
Defendant.

On Appeal.

BRIEF OF
DEFENDANT.

The defendant, Francesco Romano, appeals to the Court of Errors and Appeals from a decision of the Court of Chancery in which said Court decreed a payment by defendant Francesco Romano to Louis Malone of \$120; to Albert Malone of \$483; and to Anthony Malone of \$375.

The complainants in this cause filed a bill in the Court of Chancery asking the Court to decree a resulting trust in their favor against the defendant contending that there was an oral agreement between their mother, Raffaele Romano, and the defendant, whereby the mother invested One Thousand Dollars in the purchase of House and Lots in Riverside, New Jersey; and they would live together with the children, accumulate and improve the property and in the event of the death of either of them one

half of the property should forthwith belong to the children outright share and share alike. The deed to the property in question was made to Raffaele Romano and Francesco Romano, husband and wife, and the wife died in 1917, survived by the husband, Francesco Romano, the defendant in this cause.

It is alleged by the complainants that the boys made payments to their mother in her life time and to the father, which money was used in the purchase of the property in question.

The theory of the complainants is that the case is one where a resulting trust arises from the purchase of lands with the wife's money, the title not being taken in her name and there being no intended gift of the lands or a partial interest therein to the husband. This theory is denied by the Court in its opinion.

SEE PAGE 10—Paragraph 4.

Now the fact that the theory of resulting trust has failed, can the Court decree the complainants a sum of money where they have asked that a resulting trust be decreed in their favor, or is it not a question for the law courts to decide by issue before the Court and jury for the return of money paid to the defendant by complainants after attaining their majority?

The fact that the deed to this property was made to Raffaele Romano and Francesco Romano, under our law the survivor takes all.

WASHBURN V. BURNS—34 N. J. Law 18.

THOMAS V. DEBAUM—14 N. J. E. 37.

The complainants having made payments to their mother and father during the lifetime of the mother, the parents would be entitled to this money as a matter of gift, the children being minors.

OSBORNE V. ALLEN—26 N. J. Law 388.

The defendant denies that there was ever any agreement made during the lifetime of the wife, that the children were to get one-half of the property outright at the mother's death. In order to have a resulting trust decreed the case must be proven and cannot be implied in favor of the complainants.

Clear and satisfactory proof is necessary to establish a trust resulting from the payment of purchase money.

PARKER V. SNYDER—21 Eq. 164.

CUTLER V. TUTTLE—19 Eq. 549.

SHROSER V. ISAACS—28 Eq. 320.

The complainants in this cause certainly have not shown clear and satisfactory proof to establish a resulting trust or to have a decree in their favor because the Court that heard the cause said "Because of no reliance on the testimony of the husband and because of an equal inability to rely on or place credence in the testimony of the two boys in this behalf, I am constrained to hold that the complainants have failed to prove the wife paid the case consideration, and the theory of resulting trust fails," yet the Court decreed a sum of money for complainants on the same testimony that it failed to place credence in on a decree for a resulting trust.

A resulting trust may be proved by parol, but the proofs must be full, clear and satisfactory.

KRAUTH V. THIELE—45 N. J. Eq. 407.

The Court held in this case that the facts were not full, clear and satisfactory on the resulting trust, and the same principle that applied to a resulting trust applied to the testimony of complainants in the payment of the money to defendant, and they were not entitled to a decree of money consideration against the defendant, Romano.

Complainants' mother, and the defendant, and these children lived together in Riverside and defendant received their money, admitted he received it, and he was entitled to it, as he was the head of the family and boarded them and supported them, and the complainants were not entitled to this decree.

Our Court said in a similar case "That certain persons lived in defendant's family and were supported by him is not to charge him with the care of their interests in an encumbered estate, or on his purchase of the same and a foreclosure sale to charge him with a trust in behalf of such persons, where he denies that any agreement whatever existed between him and them on the subject of the trust, or that any confidence existed between him and them in respect to the property in question, or that he was ever clothed with any trust in their favor in relation to the property especially when nontrust is claimed for more than twenty years after such purchase.
BARNES V. TAYLOR—27 N. J. Eq. 259.

The deed to this property was made on November 24, 1909, and the complainants never made any claim to the same until this case was commenced in the Court of Chancery and the complainants are in laches in making such an application for a decree in their favor, or having a money verdict as was decreed to them in this cause.

The Court said in this cause that "one answer to this is that from the entire testimony of the complainants, the weight thereof is to the effect that what was said by Romano was not a *Statement* that the title was in such condition, but a *Promise* that he would put it in such condition, and the promise being merely verbal, cannot be enforced because of the statute of frauds."

PAGE 12—Paragraph 3.

The statute of frauds declares "that all declarations of trust or confidences, etc., shall be in writing."

COMPILED STATUTES 2611—Section 3.

No such statement of testimony has been made in this cause and the same principle applied to the money verdict awarded by the Court as to the decree for a resulting trust and cannot be enforced in the court as was done in this cause. The complainants' bill should have been dismissed, and no verdict rendered against the defendant.

The defendant in this cause says that the money received from complainants in this cause was to keep the family and there is nothing to controvert this statement and must be construed as a gift.

The complainants contend that the money used in the purchase of the property was to be used by defendant and at their mother's death they were to get one half outright. This is denied by the mother on her death bed when she made the statement that the property in America was for her husband, the defendant in this cause.

Frank Rapagno testified that Mrs. Romano on her death bed said "If the husband died the wife was to get all and if the wife died the husband was to get all."

STATE OF CASE, PAGE 75—Lines 5 to 10.

Guiseppe Ruicillo testified in answer to the questions of the Court "She sent for the three boys and for the husband and she said that the property in Italy should go to the three children and the property in America should go to the husband."

STATE OF CASE, PAGE 77—Line 30.

Julius Corisorte said "That I have in America will leave Frank (meaning the defendant) pretty good."

STATE OF CASE, PAGE 79—Line 14.

If any agreement was ever made that these boys should receive one half of the property at the death of their mother or should be remunerated by the defendant for what money they paid to the mother in her life time would she have made the above statements on her death bed, so the defendant is corroborated in his statement that no agreement was ever made such as claimed by the complainants.

These children paid the money to their parents in the natural course of events and the defendant says it was for their support, which is a plausible and possible explanation, and which is a logical conclusion from the facts testified to in this case.

The Court of Chancery has given a decree to the complainants for something they never prayed for in their bill of complaint and which the complainants never sought in that court.

From the facts in this case the verdict against the defendant should be reversed, as the Court has clearly decreed a verdict entirely contrary to the prayer of the bill and contrary to the law and evidence in this case.

ROBERT PEACOCK,

Solicitor and of Counsel
with Defendant—Appellee.



