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BILL.

(Filed Dec. 15, 1919.)

IN CHANCERY OF NEW JERSEY.

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

The complainant, Daniel R. Lean, Jr., of the City
of Atlantic City, in the County of Atlantic and State
of New Jersey, respectfully shows: 10

1. That on or about October 15, 1919, Annie Leeds
was, and still is, the owner of all that certain tract
or parcel of land and premises, situate, lying and
being in the City of Atlantic City, County of At-
lantic and State of New Jersey, more particularly
bounded and described as follows:

BEGINNING at a point in the West line of Con- 20
necticut Avenue, in the line of a nine feet street or
alley, distant two hundred and thirty-two feet South-
wardly of the Southerly line of Arctic Avenue and
runs thence; (1) Southwardly, along the Westerly
line of Connecticut Avenue, 48 feet; thence, (2)
Westwardly, parallel with said Arctic Avenue, 175
feet; thence, (3) Northwardly, parallel with said
Connecticut Avenue, 48 feet to the Southerly line of
the above mentioned street or alley; thence, (4) 30
Eastwardly, along the Southerly line of said alley
and parallel with Arctic Avenue, 175 feet to the place
of beginning.

2. That on October 15, 1919, your complainant and Annie Leeds, owner of the land and premises aforesaid, negotiated and finally concluded an agreement for its sale, wherein and whereby the said Annie Leeds agreed to sell the land and premises above described, together with the linoleum in the kitchen and bath room, awnings, screens, porch rockers, storm door and glass enclosure, for the sum of \$10,700.00, payable in the following manner; five
10 hundred dollars in cash, upon the signing of the agreement, which amount was paid by your complainant to the said Annie Leeds, and the balance was to be paid when the search of the said land and premises had been completed by the West Jersey Title and Guaranty Company of Atlantic City, N. J., a copy of which memorandum of agreement for said sale is hereto attached and made part of this complaint by this reference thereto.

20 3. That in pursuance to the agreement aforesaid, the said complainant having received the search from the West Jersey Title and Guaranty Company, for the land and premises in question, did tender to the said Annie Leeds the balance of the purchase price for the said property, but that the said Annie Leeds contrary to her undertaking refused and still refuses to accept the same or in any wise perform her agreement and undertaking and has entirely
30 repudiated her agreement and has informed your complainant of her determination not to carry the said agreement into effect.

4. Your complainant has performed his undertaking under the said agreement and stands ready and willing and able to perform all the requirements on his part to be performed but that the said Annie

Leeds refuses to make the conveyance of the aforesaid property to the complainant as she rightfully ought to do.

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

1. That the said Annie Leeds be specifically enforced to perform her agreement, above referred to, and that she be decreed to convey to the complainant the land and premises above described, together with the goods and chattels heretofore more fully described, in accordance with her undertaking upon the payment of the balance of the purchase price still due and owing. 10

2. And that the complainant may have such other and further relief as may be equitable and just.

3. That a writ of subpoena may issue out of this Court commanding the said defendant, Annie Leeds, to answer this bill of complaint and to abide by such decree as the Court may make in the premises. 20

JOSEPH B. PERSKIE,
*Solicitor and of Counsel
with Complainant.*

10/15/19.

For the consideration of Ten Thousand and Seven Hundred Dollars, I do hereby agree to sell property located at 22 N. Connecticut Avenue, Atlantic City, N. J., to D. R. Lean, Jr. Linoleum in kitchen and bath room, Awnings, Screens, Porch rockers, Storm Door, Glass enclosure included. 30

(Signed) ANNIE LEEDS.

ANSWER.

(Filed Dec. 27, 1919.)

IN CHANCERY OF NEW JERSEY.

10	Between DANIEL R. LEAN, JR., <i>Complainant,</i> and ANNIE LEEDS, <i>Defendant.</i>	}	On Bill, &c. Answer.
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20 Annie Leeds, the defendant, of Atlantic City, answering the bill of complaint, says:

1. She admits paragraph 1 of the bill.

30 2. She admits the signing of the paper writing referred to in the bill but she denies that \$500 or any other sum was paid to her upon the signing of the agreement. She admits that a check for \$500 was handed her which check was returned and the agreement repudiated by her. She says that at the time the paper writing was signed she did not appreciate and understand what she was doing, that she signed without seeking anyone's advice and at the time was in such a mental condition as not to understand the nature of her act.

3. She admits-paragraph 3 of the bill.

4. She denies that complainant has performed his undertaking but admits that she has refused to make conveyance.

Further answering the bill she says that complainant did not pay to her at the time of the signing of said paper the alleged consideration of \$10,700 nor any other sum in cash; that the agreement is indefinite and uncertain as to the property to be conveyed and is indefinite and uncertain as to when and upon what terms it was to be conveyed and that the complainant did not tender himself ready, able and willing to perform for a long period of time after the making of said writing and not until about the first day of December, 1919, before which time defendant had repudiated the agreement and refused to perform.

C. L. COLE,
Solicitor for Defendant. 20

REPLICATION.

(Filed Jan. 5, 1920.)

IN CHANCERY OF NEW JERSEY.

10

Between
 DANIEL R. LEAN, JR.,
Complainant,
 and
 ANNIE LEEDS,
Defendant.

} On Bill.
 Replication.

20 The complainant joins issue on the answer of the defendant.

JOSEPH B. PERSKIE,
*Solicitor for and of Coun-
 sel with Complainant.*

30

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Between
DANIEL R. LEAN, JR.,
Complainant,
and
ANNIE LEEDS,
Defendant.

On Bill, &c., for 10
Specific Perform-
ance.
Final Hearing.

Before his Honor, E. B. LEAMING, Vice-Chancellor,
at the Chancery Chambers, Atlantic City, New Jer-
sey, on Monday, April 5th, 1920. 20

APPEARANCES:

JOSEPH B. PERSKIE, Esq., for complainant.
HON. C. L. COLE, for defendant.

ANNIE M. LEAN, a witness produced in behalf of the complainant, being duly sworn according to law, on her oath says:

By Mr. Perskie:

Q. What is your name?

A. Annie Madara Lean.

Q. Where do you live?

10 A. I live now at 122 North Massachusetts Avenue.

Q. How long have you lived in Atlantic City?

A. Why, we ventured about two years ago to make a home here, couldn't find any property until last fall; we have lived now permanently since last fall.

Q. And where did you come from?

A. Why, from Pittsburg.

Q. What is your condition of health, Mrs. Lean?

20 A. Why, I came here, I understand, with the sinus trouble, in fact a bad case of catarrh, you might say.

Q. On or about October 15th of last year were you looking for a piece of property in Atlantic City?

A. I was.

Q. And was your attention directed to 22 North Connecticut Avenue, Atlantic City?

A. It was.

Q. By whom?

A. By Miss Minnie Leeds.

30 Q. And do you know whether or not she is in any way related to Annie Leeds, the defendant in this case?

A. She told me she was a sister-in-law.

Q. As a result of the conversation that you had with Minnie Leeds did you go to see Annie Leeds, the defendant in this case?

A. I did.

Q. And when was that, to the best of your recollection, Mrs. Lean?

A. It was either the very last of September or the early part of October, I can't say positive, but the son was on his vacation at that time and she wouldn't talk about the property to me until the return of the son.

Q. Wait a minute. Just answer my questions, please. Then it was the latter part of September or the early part of October that you went to see Mrs. Leeds, the defendant in this case? 10

A. Yes, sir.

Q. What did you go to see her for?

A. To see if the property was for sale.

Q. And did you commence negotiations for the purchase of the property the very first time that you saw her?

A. Why, I asked her if the property was for sale and she said yes. I suppose you would call that —

Q. Well, just answer the questions. We will draw the conclusions,—the Court will draw the conclusions. 20

A. Yes.

Q. As a result of that first interview did you again speak to her at a subsequent time about buying the property?

A. I did.

Q. When was that?

A. Why, about ten days later, I surmise.

Q. And was that the time when the negotiations were finally concluded? 30

A. Why, the negotiations—I don't know whether you would call them concluded or not, I wouldn't call them even now concluded.

Q. Did they give you a receipt then?

A. Why, not then, not until that night, that was on the 15th of October.

Q. Then you were there again on the 15th of September?

A. I thought you were speaking now of the 15th of October. I was there two or three times before the agreement was drawn up.

Q. Two or three times before the agreement was actually signed?

A. Yes.

Q. Then on the 15th of October who went with you
10 to the defendant's house?

A. Mr. Lean.

Q. And who was present at the home of Mrs. Leeds when you finally concluded the arrangement?

A. Why, Mr. Charlie Leeds, her son, and Mrs. Leeds, Charlie Leeds' wife.

Q. And the defendant herself, Mrs. Leeds?

A. And the defendant herself, yes.

Q. Did you have quite some conversation with her prior to the consummation of this deal?

20 A. We did.

Q. What was the nature of the conversation?

A. Well, talking about Atlantic City being a nice place to live, and the people were nice, and so on, I don't know just exactly the whole conversation.

Q. Did she seem anxious to sell the property?

A. Why, yes, she was very anxious that night to sell it for \$11,000; I offered her ten thousand five hundred, she wanted eleven thousand that night but that afternoon she told me I could have it for ten
30 thousand five hundred.

Q. And finally you agreed to pay her ten thousand seven hundred, didn't you?

A. Yes, just because she included a few articles.

Q. And after the arrangements were concluded was it reduced to writing?

A. Beg pardon?

Q. After you had agreed to pay her ten thousand seven hundred for the property was that reduced to writing?

A. Yes.

Q. I show you a memorandum dated October 15th, 1919, and ask you who wrote that memorandum?

A. Mr. Charlie Leeds wrote that memorandum.

By the Vice-Chancellor:

10

Q. Who wrote it?

A. Mrs. Leeds' son, who is a note clerk in the Second National Bank. Mrs. Leeds signed this herself, after her son asked her if it was all right, he read it to her.

By Mr. Perskie:

Q. Now, that paper reads as I have outlined to the Court and as attached to the bill. Now, there is a writing on the other side of that paper: In whose handwriting is that? 20

A. Why, Mr. Charlie Leeds wrote it?

Q. And who signed it?

A. Mrs. Annie Leeds.

Q. And in pursuance of that signature was the check for \$500 given?

A. Why, the check was given before this was made and this was made afterwards.

Q. Do you happen to know what is the occupation of Charlie Leeds? 30

A. Why, I understood he was a note clerk in the Second National Bank.

Q. In this city?

A. Yes.

Q. And he was present at the time these negotiations were concluded?

A. Yes.

Q. What, if anything, was said by Mr. Leeds, your husband and Mrs. Leeds which resulted in your husband giving her a check? How did you come to give her a check?

10 A. Why, he asked Mrs. Leeds how she wanted the money, in cash or by check, she said, "Mr. Lean, your check is perfectly all right; you may let me have the check." He asked her how much she wanted, if she wanted five hundred or five thousand, she could have just as much as she wanted, but he could only give her that the following day because he only had his check on him, he didn't have no cash. She said, "Mr. Lean, just give me a check, it is all right."

Q. As a result he gave her a check?

A. Yes.

20 Q. When subsequent to October 15th did you first ascertain that there was some difficulty about this matter?

30 A. Why, the following night Mrs. Leeds was sitting on the porch when Mrs. French and I came home from the moving pictures, she had been there a little earlier talking to Mr. French and Mr. Lean about wanting us to take the check back, wanting Mr. Lean, rather, to take the check back, and he told her that he couldn't do it, that this wasn't a play-thing, that he wanted a home, she had a home to sell and we wanted a home, we were out of a home, and she said well, she was sorry, and went away.

Q. By-the-way, Mrs. Lean, do you know whether Mrs. Leeds gave your husband the deed to take down to the Title Company?

A. Yes, sir, I do.

Q. Did she give it to him?

A. She did.

Q. And what did your husband do with the deed?

A. Why, he took it to a real estate—not a real estate but a title company, to have them read up the title and see if it was clear.

Q. You say that Mrs. Leeds saw these people the following day, did I understand you to say?

A. Saw what people?

Q. That you just testified about.

10

A. Mr. French and Mrs. French and Mr. Lean and myself?

Q. Yes.

A. Yes, the following day, that was late in the evening, on Mr. French's porch.

Q. Did she offer the check back?

A. I didn't see the check that night, she just asked Mr. Lean if he would take it.

Q. When was it next that you heard from Mrs. Leeds?

20

A. The following morning her daughter-in-law came over and said her mother-in-law was crying and wanted to know if he would take the check back; I said Mr. Lean was off to Pittsburg to draw in a mortgage to meet the deed and that it was impossible.

Q. Had Mr. Lean gone to Pittsburg the next day?

A. Yes, Mr. Lean had gone to Pittsburg.

Q. To arrange for the balance?

A. I beg your pardon, I don't know that he had gone the next day or not but I think he had, I am positive—I couldn't ask Mr. Lean the question? I am sure I couldn't.

30

Q. No, he will testify.

A. No, I won't say positive that next day now but I think—I am pretty sure he went the very next day.

Q. It was either the next day or day following?

A. Yes, it was very close, either he had gone to Pittsburg the following day or gone to make arrangements, he had sent a telegram asking a man to pay off a mortgage, for we expected to spend about three thousand for repairs on the property.

Q. When subsequent, again, did you hear from Mrs. Leeds?

A. I think the following day Mrs. Leeds came
10 over.

Q. Did she then offer the check back?

A. I am not positive about the check, she came one day with the check, I won't be positive whether it was the following day or not, but I know that it was very shortly after the agreement; she came over with the check one morning, at least, and I sat on the rocking chair and she came and sat on my lap and hugged and kissed me and asked me to please
20 please not to say that, that it was impossible, she had the property for sale and wanted to sell it for a long time and it was impossible.

Q. Do you know whether she had tried to sell it to some one else?

A. She told me herself Mr. Wagenheim wanted to buy it.

Q. Do you know whether any one else—did she tell you whether any one else tried to buy it?

A. Why, the son said an Italian man —

30 Q. Never mind what the son said. Was that in the hearing of Mrs. Leeds,—in the presence of Mrs. Leeds that the son told you that?

A. No.

Q. You can't testify to that, but you do know that she herself had told you that she herself had tried to sell that property to Mr. Wagenheim?

A. Yes.

Q. Of course the subsequent handling of the matter was by your husband, was it not—Mrs. Leeds—the return of the check?

A. Why, it was Mr. Lean that made the check out to Mrs. Leeds.

Q. Do you know whether Mrs. Leeds had in fact commenced to advertise for the public sale of some of the goods and chattels in the property subsequent to your purchase of it?

A. I don't know that she started to sell before the purchase of the property but right after that the daughter-in-law came to the house and asked me if I wanted to buy some of ——— 10

Mr. Cole: I object to that.

A. —of the furniture.

Q. Well, did she say she came for herself or Mrs. Leeds?

A. No, for Mrs. Leeds. 20

The Vice-Chancellor: On what theory would you give the daughter-in-law's statement?

Mr. Perskie: If she came and represented herself as the agent of Mrs. Leeds, ———

The Vice-Chancellor: An agent cannot testify to her own agency.

Mr. Perskie: No. 30

Q. Do you know whether any public advertisement was inserted in the newspapers by the defendant?

A. Why, I don't know by the defendant but the daughter-in-law told me ———

Q. Never mind that. Did a public notice of a public sale come to your attention of certain goods and chattels to be sold in the property subsequent to October 15th, 1919?

A. Yes.

Q. At the time you were having these negotiations with Mrs. Leeds what was her demeanor?

A. Why, she acted just as naturally as any one could act.

10 Q. Was there anything by her words or by her actions which would indicate that she did not know the character of the things she was saying or the things she was doing?

A. Why, no, I thought she was very intelligent.

Q. She discussed, you say, in addition to the matters of this sale what else?

A. Why, that evening, you mean?

Q. Yes.

A. Or other times?

20 Q. During the several interviews.

A. Oh, just personal matters, that is all; simply that she wanted us to have the property in preference to Jewish people. She said that in the presence of the daughter-in-law as well as of the son.

Q. Is that why she said she didn't want to sell it to Mr. Wagenheim?

A. She said she didn't want to sell it to Mr. Wagenheim because he had a lot of children and she didn't want dirty Jews in the neighborhood.

30 Q. That part wasn't very intelligent, was it?

A. Why, no, it sounded very ignorant.

Q. Mrs. Lean, since this answer has been filed and your attention has been called to the fact that Mrs. Leeds might claim that she didn't quite understand the gravamen of the act that she did, have you been watching Mrs. Leeds to any extent?

A. I have.

Q. And have you known other people to watch her for you?

A. I have.

Cross-examination.

By Mr. Cole:

Q. How long have you been watching Mrs. Leeds?

A. Why, since you said she was too nervous to be approached. 10

Q. Who told you that Mr. Cole said she was too nervous to be approached?

A. My attorney.

Q. When did he tell you that?

A. I don't remember just when.

Q. Fix the time as nearly as you can.

A. I don't think that I could.

Q. Have you personally been watching her since then? 20

A. I have.

Q. In what way have you watched her?

A. Why, I have used the street as a thoroughfare to see her coming and going out of the house, I have used her street, rather, North Connecticut Avenue, as a thoroughfare so that I could see her once in a while at least.

By the Vice-Chancellor:

Q. So that you could what? 30

A. So that I could see her going in and out of her house.

By Mr. Cole:

Q. Have you seen her?

A. I have.

Q. Talked with her?

A. No, I never spoke to her.

Q. Who have you had to watch her?

A. Beg pardon?

Q. Who else have you had to watch her?

A. I don't know that I had anyone else just to watch her but I had her approached.

Q. Who have you had to approach her?

10 A. I had Mrs. Williams.

Q. Have you had anybody write her letters?

A. No, I never had anybody write her letters.

Q. Have you written any yourself?

A. No, I haven't written any myself.

Q. Anybody written any for you?

A. No, no one has written any for me.

Q. Have you yourself or have you caused anybody to write her a letter or letters telling her that if she didn't agree to convey this property to you
20 that she would lose it?

A. No, sir.

Q. Will you look at this letter and envelope and read it and say whether you know anything about its contents?

A. No, sir, I know nothing about it.

Q. Never heard of it before?

A. No, sir.

Q. Did you ever hear the subject-matter in this letter discussed by anybody?

30 A. No, sir, I did not.

Mr. Cole: Mark that for identification, please, as one exhibit.

(Said letter and envelope marked D1 for identification.)

Q. Well, as a result of your having watched Mrs. Leeds what did you discover?

A. Why, I discovered that Mrs. Leeds was going out of her house apparently well.

Q. Did Mrs. Williams make reports to you from time to time?

A. Only once she made the report to me, that was when I had her approached to see if she was perfectly fit to be approached.

Q. Now, how long have you lived in Atlantic City? 10

A. Why, I have been here since the 15th of last September.

Q. You mean continuously?

A. Yes, continuously since then, but we have been calling her for five years, and two years ago we ventured to make a home here but we couldn't find a property to buy.

Q. Where have you lived continuously since last September?

A. Mrs. French's house. 20

Q. Now, were you present when Mrs. Leeds called on the evening following the day when the option was signed?

A. Why, I wasn't present, no; we came later in the evening, Mrs. French and I; I wasn't present when she called, but when we came home from the movies she was sitting on the chair on the porch.

Q. What was the conversation that took place on that occasion?

A. Why, she asked me if I would agree to Mr. 30 Lane taking the check back, and I said, "Why, no, it is too late to take the check back."

Q. Is that all that was said?

A. As far as I can remember, there may have been a word or two, but I don't remember anything else except that she was sorry.

Q. Didn't she seem to be concerned?

A. Well, she was sorry that she had sold her property.

Q. Did she tell you that?

A. Why, I don't remember that she said that evening—the most I remember is ——

Q. Pardon me, I want to keep your mind for the moment on the particular evening. I asked you whether she seemed to be concerned. Now what do
10 you say to that?

A. Why, she seemed to be annoyed at herself for making the sale.

Q. What did she say about it?

A. Asked us if we could take the check back.

Q. Was that all she said?

A. I don't remember anything else.

Q. Did she give any reason for wanting you to take the check back?

A. That evening?

20 Q. Yes.

A. She was sorry she sold the property.

Q. Then she did say that to you?

A. Why, yes, she said that.

Q. Well, when she told you that she was sorry that she had sold the property what did you or your husband say?

A. It was too late to accept the check back.

Q. Now, is that all that you think occurred that evening?

30 A. That is all I remember.

Q. Did she tell you why she was sorry?

A. I told you she said she was sorry she made the sale.

Q. Well, did she give any reason other than that for being sorry?

A. No.

Q. Did she tell you that she had sold the property to somebody else?

A. Why, no.

Q. Did she tell you that she wasn't getting money enough for it?

A. No.

Q. Well, when she said that she wanted the check back didn't you ask her why she didn't want to sell?

A. She didn't say she wanted the check back, she asked Mr. Lean to take it back.

10

Q. Now, did you ask her why she didn't want to sell?

A. No, I didn't ask her.

Q. Were you interested in knowing?

A. Why, she said why and that was enough.

Q. Well, from what she said what was the inference or conclusion you drew,—that she didn't want to give up her home?

A. Why, no, I surmised some one had offered her more money, just surmised so.

20

Q. I see. Then you surmised from what she said she had a better bargain?

A. I surmised so, yes.

Q. Having surmised that did you ask her whether she had or not?

A. No, not at that time I didn't, I asked her later.

Q. Have you yourself made an effort to have Mr. Wagenheim here or have you known of an effort to have him here to testify that she did have a better bargain from him?

30

A. Why, I don't know Mr. Wagenheim.

Q. Then you don't know anything about that?

A. No.

Q. You say you don't know Mr. Wagenheim?

A. I don't know Mr. Wagenheim, no, I am not acquainted with him.

Mr. Perskie: I have Mr. Wagenheim here as a witness.

Q. When did you say you next saw her?

A. I don't know the exact day but a few days later than the agreement.

Q. You say on the first visit she didn't exhibit the check?

A. Not as I remember.

Q. But she simply wanted you to take it back?

10

A. Yes.

Q. What happened the second visit?

A. The second day the daughter-in-law came over, I think it was either the third or fourth day the mother-in-law came back again and she tried to force the check on me one day.

Q. Yes. You mean Mrs. Leeds or the daughter-in-law?

A. Mrs. Leeds.

20

Q. You said the daughter-in-law came back the next day. Now, what did the daughter-in-law say?

A. She asked me if I would ask Mr. Lean to let the mother-in-law have the property back and I said that it was too late.

Q. Well, now, you said that she told you that her mother-in-law was crying about it?

A. Yes.

Q. Did she tell you why she was crying?

A. Because she wanted the property back, said she couldn't live without it.

30

Q. Couldn't live without it?

A. Couldn't live without it, she was sorry she sold it.

Q. Anything else you recall she said?

A. Oh, I don't just remember what else she said, she may have said other things.

Q. What did you tell her in reply to all that?

A. I told her it was too late, that the deal was made.

Q. Now, when was it that Mrs. Leeds tried to force the check on you?

A. I don't know just exactly when but sometime later than the agreement I know that she came and asked me to take the check back, and I said I couldn't take the check back because Mr. Lean gave it to her and that it wasn't proper that I take it back, 10
and then she folded the check lengthwise and said, "I can get mean and make you take this check." Instantly I got up and asked Mrs. French if she would come downstairs and be a witness to the fact that Mrs. Leeds was trying to force the check on me, and Mrs. French came down and when she came down Mrs. Leeds then was calm and simply said she was sorry that I wouldn't take the check, and I told her that I brought Mrs. French down as a witness to the fact that I refused to take the check that Mr. 20
Lean made out to her, and then said, "Ella May, isn't that awful?"

Q. Who said this?

A. Mrs. Leeds.

Q. Said it to whom?

A. Mrs. Leeds said to Mrs. French, "Ella May, isn't this awful?" And she got up and went away.

Q. Later on did your husband send another check?

A. Why, no, my husband didn't send another 30
check.

Q. Didn't he send a check certified?

A. Why, he sent the same check back that some one sent to us, I don't know if Mrs. Leeds sent it to us but the check was sent back.

Mr. Perskie: There is the original letter, it came back, the one that was registered has never been opened; I want it opened in court at this time.

Q. Didn't your husband or you receive a check and take it and have it certified?

A. I opened the letter, as I thought it was a letter, and I found that it was the check folded between a piece of paper with no writing on, and I asked
10 Mr. Lean then to go see an attorney, and we went to the attorney and the attorney said, "Well," he said, "just have that check certified, Mr. Lean, and we will send it back to her. Perhaps she wants it certified."

Q. Now then, I show you an envelope postmarked Atlantic City, November 10th, 1919, addressed to Mr. D. R. Lean, from which I have taken a sheet of paper unwritten upon, and ask you whether that is the envelope that contained the check?

20 A. Why, I don't know, to tell you the truth, if that was the envelope that contained the check or not. That came to our house, you mean?

Q. Yes.

A. It doesn't look like it but I really don't know. I wouldn't surmise that you would have it, at least.

Mr. Perskie: I just gave it to Judge Cole.

A. I see. We gave it to Mr. Perskie, I know.

30 Q. Now that you know that I didn't have it, that it came from your lawyer, I repeat the question.

A. I couldn't say, I don't remember.

Mr. Cole: Do you agree that it is?

Mr. Perskie: Yes.

(Said envelope marked D2 for identification.)

Mr. Perskie: Now, I want this other one opened in open court.

Q. I am now opening a letter that has been produced here, addressed to Mrs. Annie Leeds, in the envelope of Joseph B. Perskie, and there is in that a letter from Mr. Perskie and a check, Mrs. Annie Leeds, for \$500. Now, will you look at that check and say whether that is the original check for \$500 that was given by your husband and which was returned from Mrs. Leeds and which you took to Mr. Perskie? 10

A. Why, as far as I know it is, because Mrs. Leeds told me she was going to have her son mark on the check for deposit only to herself, that she didn't intend to cash it, as she didn't intend to accept the money on the house, as long as she didn't the check didn't mean money. 20

Mr. Cole: All right. We will have the check marked for identification. Do you want it put in evidence?

Mr. Perskie: Yes.

Mr. Cole: Then we will put it in evidence.

(Said check marked Exhibit D3.)

30

Mr. Perskie: Do you want to offer that letter?

Mr. Cole: Yes; I don't object to the letter going in evidence.

(Said letter marked Exhibit D4.)

Q. When you were at Mrs. Leeds' home on the 15th of October, at the time the option was signed, what, if anything, was said as to when the \$10,700 was to be paid?

A. Well, there was only a balance of \$10,200 to be paid, because she had accepted a check for five hundred, and she said she would accept the balance
10) on completion of the reading of the title.

Q. When?

A. On completion of the reading of the title, in fact she said it in very plain words, she said, "When you find out the title is clear."

Q. Now, at that time did your husband actually have \$10,200 to pay over?

A. I don't know just what Mr. Lean had in the bank but he told her —

Q. All right; I only want to know what you know.

20) A. I don't know.

Q. So that there was some agreement that the remainder of the consideration wasn't to be paid until some later date, was there?

A. Until the title was read clear.

Q. Do you know why that wasn't put in the agreement?

A. Why, I think it was overlooked, because I asked the son if he would insert that, and the mother looked at me and said, "Do you doubt my honesty,
30) Mrs. Lean?" I said no, just leave it go at that, because she wouldn't deal with a real estate man, we had to take it just as they would choose to make it for us.

Q. Now then, you said it was overlooked, didn't get in, then you say you asked the son to put it in, he didn't put it in. Now, which was it? Why didn't the terms of payment go into the written agreement?

Mr. Perskie: I object to that as irrelevant, immaterial, if the Court please.

The Vice-Chancellor: I think she had better explain, because the two answers are not in harmony.

A. Why, I surmised it was overlooked by the son who drew up the agreement for the mother at her request, and when he read this out, to see if it was satisfactory to the mother, I said, "Why, you haven't specified any time to accept the balance of the money or to vacate." And Mrs. Leeds looked at me and she said, "Mrs. Lean, do you doubt my honesty?" I said, "No." So I didn't then insist on having the new agreement drawn up. 10

Q. So that it was left out of this agreement which you now offer in evidence,—the terms or time of payment, is that right?

A. Yes, but I don't think it was done purposely.

Q. Well, irrespective of that it was left out, wasn't it? 20

A. I am sure it was.

Q. And if you hadn't been able to have had a title company in some way insure the title you weren't obliged to buy, were you?

A. Why, I felt that we were obliged to buy, because we had given our first payment on the property and I didn't suppose we could have gotten our five hundred back had we wanted it.

Q. Why did you insist, then, that there be inserted in this writing the provision about the title company giving an insured title? 30

A. Why, we sold our property through a real estate man and I remembered that he had all of those things inserted.

Q. How long was it after the 15th of October, if you know, before your husband was prepared to pay the remainder of the consideration?

A. Why, in a few days, in about three or four days. He had drawn in his mortgage from Pittsburg.

Q. And had he actually received the money?

A. Why, he received a check which was certified.

Q. How long was it after the 15th of October before he was assured by the title company that the title was good?

A. I think the 6th of December we were notified.

Q. 6th of December?

A. 6th of December, as far as I can remember.

(At this point defendant uttered cries and moans and was removed from the court room.)

20 Mr. Perskie: If your Honor please, I don't want to appear uncharitable in my statement to the Court, much less do I desire to interfere, but in view of the facts I have in my possession as representing the complainants I believe I have more than sufficient proof to show to your Honor that this is more of a malingering condition than an actual ill health condition.

30 Mr. Cole: It so happens that there is a physician in the room here in another case, I understand, who saw this woman, at least he was here but he is out in the other room with her now. I asked him to please report to me what the real situation was, so we will have somebody's opinion better than counsel's.

DANIEL R. LEAN, JR., the complainant, being duly sworn according to law, on his oath says:

By Mr. Perskie:

Q. Now, Mr. Lean, direct your voice so the Court can hear everything you say. Where do you live, Mr. Lean?

A. At the present time 122 North Massachusetts Avenue.

10

Q. Atlantic City?

A. Yes, sir.

Q. And have lived here how long?

A. Since September 15th.

Q. And where did you come from?

A. Pittsburg, Pennsylvania.

Q. Were you present with your wife at any time when you were negotiating with Mrs. Leeds for the purchase of 22 North Connecticut Avenue?

A. At the second time.

20

Q. This second time was how many times before the final time when you concluded your deal?

A. The second time was the final time, as far as I understood.

Q. And at or about what time was it, and what year, when that took place?

A. October 16th, 1919.

Q. 15th or 16th?

A. 15th or 16th.

Q. What conversation, if any, did you have, together with your wife, with Mrs. Leeds?

30

A. The whole conversation?

Q. Yes, with Mrs. Leeds, either you or your wife, before the agreement was concluded?

A. Do you want me to give the whole conversation?

Q. Every word of it, as near as you can remember.

A. In the afternoon of the 15th I drove Mrs. Lean over to Mrs. Leeds' property, and I informed my wife that Minnie Leeds ——

Q. Now, don't testify to any conversation between yourself and your wife; we want the conversation between you, your wife and Mrs. Leeds, the defendant.

10 A. I see. Well, the conversation was that we were to make sale of the house for \$10,500, and she said that she would like to confer with her son, who wouldn't arrive until evening, in regard to the matter. I told her I thought that was right, and if it would be all right I would see her that evening at nine o'clock, at which time we went, and after considerable conversation over the difference in price, and so forth, we agreed to buy the property for \$10,700, inclusive of a few little articles in the house.

20 Q. And who wrote out the memorandum of agreement?

A. Mr. Charlie Leeds, her son.

Q. Did you see her sign it?

A. I did.

Q. So that at least from the afternoon of the 15th until nine o'clock at night Mrs. Leeds apparently had an opportunity to discuss it with whoever she wanted, and she said she was going to discuss it with her son, is that right?

30 A. Yes, sir.

Q. And at the time you saw Mrs. Leeds did she say anything or do anything which indicated that she was not in perfectly normal condition?

A. No, sir.

Q. Did she complain about not feeling well or not being in a normal condition?

A. No, sir.

Q. Now, Mr. Lean, there has been offered in evidence here a letter addressed to you at 122 North Massachusetts Avenue, which has been produced, with a sheet of paper, and you are asked whether that is the letter which contained the original check of \$500 which you had made out to the order of Mrs. Leeds?

A. I am not certain about the envelope, it looks like it.

Q. And was that the first time that the check was returned to you after you had first given it to her on the 15th of October? 10

A. It was.

The Vice-Chancellor: What is the date?

Mr. Perskie: November 10th, 1919.

Q. And the check which has been offered in evidence, Mr. Lean,—is that the check which you gave on account of the purchase price? 20

A. I will have to see it first.

Q. Is that it (exhibiting check to witness)?

A. Yes, sir.

Q. Mr. Lean, where do you deposit your moneys in Atlantic City?

A. Atlantic City National Bank.

Q. Have you got the pass-book?

A. Yes, sir.

Q. Let me direct your attention to the deposits subsequent to October 15th, and tell the Court whether there is any time or—how soon after October 15th, 1919, did you have sufficient moneys in that bank to pay the balance of the purchase price? 30

A. October the 22nd.

Q. October the 22nd?

A. October the 22nd.

Q. And how soon after you had made arrangements on October 15th to buy the property was it that you made arrangements to get the balance of the purchase price?

A. Next morning at nine o'clock.

Q. And what did that arrangement consist of?

A. Writing to Pittsburg, allowing one of my mortgages to be paid off, and I made arrangements with the railroad for a sleeping car, parlor car, that
10 is all.

Q. You went back to Pittsburg?

A. On the 17th.

Q. And came back how soon after that?

A. About three days.

Q. And had the money at that time?

A. Had a certified check.

Q. And since that time—has there been a time since October 22nd when you had less than \$10,200 in the Atlantic City National Bank?

20 A. No, sir.

Q. And what is your present balance in the Atlantic City National Bank?

A. Over \$15,000.

Mr. Perskie: I want to offer that pass-book in evidence.

Mr. Cole: No objection.

30 (Said book marked Exhibit C1.)

Q. Mr. Lean, did you buy this home for speculative purposes or for a home?

A. For a home.

Q. Where are you living now?

A. 122 North Massachusetts Avenue.

Q. With some other people?

A. With Mr. and Mrs. C. Stanley French.

Q. Have you seen Mrs. Leeds since you got that memoranda from her on October 15th?

A. No, sir;—yes, I beg your pardon, I have.

Q. When was it that you saw her?

A. Saw her the next evening, that is, October 16th.

Q. Where was it you saw her?

A. On Mr. French's porch.

10

Q. Talk to her?

A. Yes, sir.

Q. What was the conversation that passed between you?

A. She was sorry she had sold the house, wanted to know if I wouldn't turn it back to her.

Q. Do you know of your own knowledge, Mr. Lean, whether prior to the time she had sold you this property she had been trying to sell it to others?

A. By her own say-so.

20

Q. What did she say about that?

A. Told me that a Mr. Wagenheim was wanting to buy it.

Q. How long a time intervened, Mr. Lean, between the time when first either you or your wife thought of buying 22 North Connecticut Avenue and its actual purchase by you?

A. From ten to twelve days.

Q. Were you ever present, Mr. Lean, when there was some suggestion made, before its purchase, that Mrs. Leeds didn't know whether she would have anywheres to go, and she was told that if she didn't have anywhere to go you wouldn't buy it from her, or something like that?

30

A. We made a proposition in regards to that matter.

Q. What was the proposition?

A. The proposition was that we would allow Mrs. Leeds for a very small amount to live with us until springtime, at which time she said she would be very well satisfied to give the property up.

Q. When was that conversation had?

A. The same night as the agreement was drawn up.

Q. That was an offer made by you folks —

10

Mr. Cole: Don't lead him, please.

Q. How did that conversation come up, Mr. Lean?

A. In her statement that she didn't know where she was going, that is, she knew where she was or where she could go but she didn't like to go, she would rather stay in her home, she wouldn't feel it so badly, so we told her that if she felt like not selling the property not to place herself in the position
20 that we were at that time,—without a home.

Q. And what else was said?

A. Then we made an offer that if that was all that we would give her a room with the use of the home as her own for a very small amount and stay until springtime with us.

Q. Was there any acceptance or refusal by her of that proposition, or anything further said about it?

A. Well, she wouldn't accept it.

Q. She wouldn't accept it?

30

A. No.

By the Vice-Chancellor:

Q. Was that before the agreement was signed or after?

A. After the agreement was signed.

Q. On the same occasion, same interview?

A. I think this happened the night after.

Q. Oh, I thought you said the same night.

Mr. Cole: He has already testified it was the same time. I don't know whether he is going to change his testimony or not.

A. I am not positive as to dates.

Mr. Cole: You only saw her once.

10

Mr. Perskie: He said he saw her twice.

Q. You first said it was on the same evening, now you say you think it might have been the night after?

A. I am not positive, it may have been the same evening.

Q. If it was the same evening was it before or after the agreement was signed?

20

A. After, it must have been after.

Cross-examination.

By Mr. Cole:

Q. You did see her at Mr. French's home the night after the option was signed, didn't you?

A. Yes, sir.

Q. And what did you hear her say?

30

A. She would like to have the property back.

Q. Eh?

A. She would like to have her property back.

Q. Well, tell us all that she said and all that was said by you.

A. I told her it was too late, that I had notified my parties that had some of my money to have it ready for me the next night, I told her it was too late for me to make any deal like that.

Q. Did she tell you why she wanted it?

A. Nothing more than she was sorry that she had sold the property.

Q. Did you ask her why she was sorry?

A. No, sir.

10 Q. Were you interested in knowing why?

A. I was.

Q. Why didn't you ask her?

A. I couldn't get any satisfaction, so I understood her brother-in-law —

Q. Wait a minute; one thing at a time. Keep your mind on that night. I asked you whether at that time you were interested in knowing why she was sorry that she had agreed to sell and you said you were. Now I ask you if you were interested why
20 you didn't ask her why she was sorry?

A. Not at that time I wasn't.

Q. You mean you weren't interested then in knowing?

A. Not at that time.

Q. Did you know that she wanted you to take the check back?

A. Not until it was sent through mail.

Q. But she did ask you to relieve her from the contract, didn't she?

30 A. Yes.

Q. And that was the evening following the 'day of the signing of the paper?

A. It was.

Q. So that you knew then she didn't want to sell?

A. Yes, sir.

Q. Did your wife tell you or Frenches tell you that she had asked that you take the check back?

A. No, sir.

Q. You heard your wife's testimony, didn't you?

A. She didn't—Frenches didn't tell me, she asked me that night about getting her property back.

Q. Did you hear Mrs. Leeds say that night that she would like you to take the check back?

A. If she did I didn't hear it.

Q. And did your wife tell you that she was around 10
the next day after that and asked that the check be taken back?

A. After I came back from Pittsburg.

Q. When was that?

A. I left the 17th of October for Pittsburg.

Q. Well, when did you come back?

A. About three or four days after that.

Q. Then you heard that she had been trying to force the check on your wife?

A. Yes, sir. 20

Q. You finally received it through the mail?

A. Yes, sir.

Q. And you had it certified?

A. Yes, sir.

Q. And sent it back in this registered letter,—is that correct?

A. No, I handed it to my lawyer.

Q. All right; he did it, then?

A. Yes.

Q. Now, what was said on this occasion of the 30
signing of the option about when you were to pay the remainder of the money?

A. There was a verbal agreement between Mrs. Leeds and myself, on account of the inability of the title company telling me when the papers would be

satisfactory, come back, and the agreement was that she would accept the money when the papers came back.

Q. Papers came back in what condition?

A. Came back satisfactory.

Q. To whom?

A. To the South Jersey or West Jersey Title, I forget, to Mr. Robbins, of the title company in the Guarantee Trust Company building.

10 Q. Then was it the agreement that you were to take the title only upon it being satisfactory to the West Jersey Title Company?

A. No, sir, that was the way we were to make settlement, final settlement.

Q. Well, was it your understanding that you had to have a title that was satisfactory to the West Jersey Title Company?

A. I cannot grasp that question.

20 Q. Who put the matter in the hands of the West Jersey Title Company for investigation?

A. I did.

Q. And what did you tell them to investigate?

A. I told them to investigate the title to the property.

Q. When did they tell you the property was all right?

A. I got notice from my lawyer on the 6th of December.

30 Q. Now, what was the discussion that night about the title to this property and about the title company?

A. The night which—the night the title came back?

Q. No, the night the option was signed.

A. There was no discussion in regards to the title outside that she gave me the original deeds to have them examined.

Q. Well, the original option says you are to pay her \$10,700. Now, you didn't pay it?

A. I paid her five hundred on account and ten thousand two hundred was to be paid on receipt of the papers.

Q. Receipt of what papers?

A. The deeds from the—at least, the title, the title papers.

Q. Title what?

A. Papers that are generally read up when a man 10
buys property, in technical—the words I cannot tell you.

Q. Was the \$10,200 to be paid when you had the West Jersey Title Company assure you the title was all right?

A. Yes, sir.

Q. It wasn't to be paid until then, was it?

A. No, sir.

Q. And the first intimation that you had that the title company was satisfied was on December 6th? 20

A. Yes, sir.

Q. Now, coming to this question of a place to go. You say on that night there was a discussion as to where she was going to go to live?

A. No, there was no discussion where she was going to live, she had places to go.

Q. Now, outside of whether she had places to go, you have already testified, Mr. Lean, that there was some talk about where she was going to go to live, and that there was some proposition she might live 30
with you until spring if she paid a certain rent. Now, did that happen or not?

A. Yes, sir, it did.

Q. Tell us how that came about and what was said?

A. Well, after the agreement was made she just said she felt in leaving the home—she just felt badly about it, and we told her that she could stay with us until springtime for a very small amount of money.

Q. Did you mention any figure?

A. I did, yes.

Q. What figure did you mention?

A. \$5 a week for a room and use of the house as her own.

10 Q. You say that wasn't accepted by her?

A. No, sir.

Q. Wasn't that a part of the whole discussion?

A. No, that wasn't part of the discussion at first but came up afterwards, after the agreement was signed.

Q. Well, when you saw that the son had drawn this paper without any reference to when you were to pay the \$10,200 did you say anything to her about that?

20 A. I did not.

Q. Did the wife?

A. Yes, sir.

Q. What did you hear the wife say?

A. I heard her stipulate about time, and she said she was a woman of her word, she always stuck up to what she said.

Q. You didn't insist on that going in the agreement?

A. Not under those conditions.

30 By Mr. Perskie:

Q. Who gave you the original deeds to take to the title company?

A. Mrs. Annie Leeds.

Q. And how soon after you got them did you take them down to the title company?

A. About half-past nine the next morning.

Mr. Perskie: I want, in order to have the record straight, Vice-Chancellor, to offer in evidence the check of Mr. D. R. Lean, Jr., under date of October 15th, check number 8, on the Atlantic City National Bank, certified by it, for \$500.

(Said check marked Exhibit C2.)

Mr. Perskie: Together with the envelope and its enclosure. Also the envelope addressed to Mr. D. R. Lean, 122 North Massachusetts Avenue, Atlantic City, N. J., under date of November 10th, 1919. 10

(Said envelope marked Exhibit C3.)

Mr. Perskie: As well as the receipt of October 15th, 1919, signed by Mrs. Leeds, and the endorsement on the back of it signed by Mrs. Leeds, concerning which this litigation is about.

(Said receipt marked Exhibit C4.)

20

(At this point a recess was taken until 1.40 P. M.)

(Hearing of the cause resumed after recess, in the presence of the respective counsel heretofore noted.)

Mr. Perskie: It is stipulated and agreed between counsel that on or about November 13th, 1919, Joseph B. Perskie, counsel for the complainant, tendered to C. L. Cole, as counsel for defendant, the sum of \$500 in cash; that Judge Cole refused to accept it. And it is further stipulated that it be not

30

necessary to make any further tender of the purchase price, as the defendant would not accept it. It is also stipulated and agreed between counsel, subject to its relevancy, that the assessment for this property as shown on the city records is as follows: For the year 1919, \$4,000 for the land and \$1,800 for the building. And it is further stipulated and agreed between counsel that the description of the premises contained in the bill of complaint describes the premises in question, designated as 22 North Connecticut Avenue, Atlantic City. It is further stipulated and agreed between the counsel of the respective parties in this suit that the following is a copy of an advertisement which appeared in the Atlantic City Daily Press, under date of November 3rd, 1919: "Hall rack, sideboard, extension table, dining-room chairs, ice chest, laundry table. (No dealers.) Apply 22 North Connecticut Avenue." It appeared under the sale column in the Press.

20 The Vice-Chancellor: And that those are articles of furniture in this house?

Mr. Perskie: Well, I didn't discuss that feature of it with Judge Cole.

Mr. Cole: I don't know a thing about it. It was all news to me. Mr. Perskie asked me whether I would admit that was in the Press. Of course, looking at it it seemed to be so natural to admit it that I said I would admit that it was in the Press. Anything more than that I don't know.

Mr. Perskie: I had the bookkeeper of the Press here, he was anxious to get away, and rather than keep him waiting Judge Cole agreed to that for whatever probative force it had.

Mr. Cole: The probability is Mrs. Leeds will be able to explain that. I am going to ask her about it.

The Vice-Chancellor: Is that all, Mr. Perskie?

Mr. Perskie: That is all at the present time.

TILLIE LEEDS, a witness produced in behalf of the defendant, being duly sworn according to law, on her oath says: 10

By Mr. Cole:

Q. Now, Mrs. Leeds, you be sure to speak loud enough for the Court to hear you, and look up and just listen to what I ask you and answer the questions. Did you marry Charles Leeds, the son of Mrs. Leeds? 20

A. I did.

Q. How long have you been married?

A. It was eight years the 30th of last October.

Q. And are you and your husband living in the home with Mrs. Leeds?

A. Yes, sir.

Q. Has she been in the possession of this property even since the option was signed on October 15th last?

A. Yes, sir. 30

Q. Were you present any of the time when the talk was going on about selling this property?

A. What do you mean?

Q. Were you present in the house when the talk was going on about Mrs. Leeds selling to Mr. Lean?

A. The night it was done?

Q. Yes.

A. Yes, sir.

Q. Did you, on that occasion or any other time, hear Mrs. Leeds say to Mrs. Lean, or in her presence, that she didn't want to sell this property—no, that Mr. Wagenheim wanted to buy this property but that she didn't want to sell it to a dirty Jew?

A. No, sir; she wouldn't say that, because I am a Jewess and I am her daughter-in-law.

10 Q. Did you hear any such conversation?

A. No, sir.

Q. Did you ever hear that she had wanted to sell this property to Mr. Wagenheim? Did she ever talk to you about that?

A. Well, there was parties after it, he was one of them, but there was no decision as to who was going to buy it, as to who she was going to sell it to, they all wanted it but that was left to be seen who was going to get it, I know I didn't know.

20 Q. Now, were you there at the time the paper was signed?

A. Yes, sir.

Q. Were you there all the time the talk was had just before it was signed?

A. Well, I don't think I left any time, unless I went upstairs or something, I don't remember.

Q. On that occasion did you hear any conversation about where Mrs. Leeds was going to live after she had sold the property?

30 A. Where she was going to live?

Q. Yes.

A. She didn't have any place to go to, to my knowledge.

Q. I know, but was there anything said about that at that time?

A. I don't know that we just simply spoke of that

particular question at the time being, where she would go, anything like that.

Q. You don't remember that?

A. No.

Q. Now, when was it for the first time after this paper was signed that you heard Mrs. Leeds make objection to the fact that she had signed it and wanted to be relieved of it?

A. Why, almost immediately after she had gone upstairs to her bed that night, but of course we went to bed, naturally, it was rather late, and the very next morning she came down and she cried bitterly to her son and myself. (At this point witness exhibited emotion.) Folks, you will have to excuse me, I can't help it, I have been under a terrible strain. 10

Q. Don't do that unless you have to; make yourself perfectly quiet.

A. I will try.

Q. Did she seem to be affected by the fact that she had signed this option? 20

A. She was, almost had lost her mind.

Q. Now, what, if anything, did she do after that, —the next morning, after she told you, what did she do?

A. What do you mean? Why, she just kept pacing up and down the home and carried on. She says, "Oh, why did I sell my home? I wanted it. I love it. I have no place to go. I am a woman up in years." Continued on that way. She says, "I don't want to sell it. I didn't want to sell it." It was my husband and myself that persuaded her to sell. 30

Q. You mean you and Charlie?

A. Charlie and I were the ones that persuaded mother to sell the home, and she thought —

Q. Had she ever herself wanted to sell it?

A. Well, I don't know; she might have passed a remark before, don't you know, say, "Oh, well, I think I would like to sell." Something like that, that anyone is liable to say, but we were the ones that persuaded her to sell, and of course at the time being she thought maybe she wanted to, but when she realized the night after she had gone to bed that she had did it why it almost drove her insane.

10 Q. Now, did you notice any change in her condition of mind and her conduct after she signed this paper?

Mr. Perskie: I object to that as irrelevant.

A. I surely did.

Mr. Perskie: I don't think that is the issue.

20 The Vice-Chancellor: Well, it may give light upon what her condition of mind was when she signed the agreement of sale. I don't know that it will.

Q. What was your answer?

30 A. It was immediate, the very day—as I told you, from that morning on, you couldn't say the woman was—well, you could see that she was almost losing her mind, getting worse all the time, I was in the home with her four weeks in succession, straight, I didn't know whether she would use a knife, I didn't know from minute to minute what she would do, she had no control of her mind whatsoever.

Q. Has she been under the doctor's care?

A. She has been under the doctor's care since.

Q. What doctor?

A. Why, the first physician that I called was Dr. Shimer.

Q. And then who after that?

A. And then we got Dr. Stern shortly after that and he has been attending her ever since.

Q. Dr. Stern?

A. The one that we had just here.

Q. Today?

A. Yes.

Q. Now, do you know whether your mother-in-law went over to see Mr. Lean or Mrs. Lean to turn the check back?

10

A. I do.

Q. Did you yourself go over?

A. I went over a couple of times and pleaded with the woman and begged with her.

Q. When was the first time you went?

A. I went, I think, the second morning, because the day after it occurred mother herself went, but if I remember right I think it was the second morning I went over.

Q. Did you have the check with you?

20

A. No, I didn't have the check.

Q. Do you know whether she had the check the time she went,—the first night?

A. Mother had the check with her, yes, I didn't have the check.

Q. Now, have you heard of your mother-in-law trying to sell this property to anyone else after she signed this paper to Mr. Lean?

A. Positively no, she wouldn't sell it if she got a million for it.

30

Q. Well, have you heard any discussion in the house about her wanting to sell to anybody else?

A. No, sir.

Cross-examination.

By Mr. Perskie:

Q. Mrs. Leeds, you say that there were several people that were coming in about buying this property, is that right?

A. Yes.

Q. About how many other than the Leans?

10 A. I don't know their name, an Italian family.

Q. At least one other party other than the Leans were there?

A. Yes, sir.

Q. That was an Italian family, is that right?

A. Right.

Q. Mr. Wagenheim tried to get it, didn't he?

A. Well, he came in and looked through the house, that is all, furthermore I don't know because I didn't hear it.

20 Q. Well, that is two parties other than Mr. Lean. Was there a party from the Glenn Fisher Company that tried to get it that you know of?

A. No, sir.

Q. You don't know?

A. He was the agent for that Italian party that I spoke of, I believe.

Q. For how long a period prior to October 15th, 1919, of your own knowledge, was that property for sale?

30 A. It wasn't for sale at any special time, only that she at sometime would say, "Well, I think I will sell," when we would speak—suggest the selling to her, that is the only time she would speak of selling, when her son and myself would say it.

Q. Now, how long a period prior to October 15th, 1919, was Mrs. Leeds reconciled with the fact that she might be willing to sell that property?

A. Well, to my knowledge she wasn't reconciled at any time positively, for she never did know whether she wanted to or not.

Q. When did the first discussion come up about Mrs. Leeds selling that property,—do you recall?

A. No.

Q. Was it a month before the Leans got it?

A. I really couldn't say just what time.

10

Q. Will you say it wasn't a month?

A. Well, I really don't know, I really can't specify any time, for I don't know.

Q. And when you discussed these things with Mrs. Leeds you knew that she would have no home to go to,—isn't that right?

A. Sure, I knew it.

Q. And yet you thought it was advisable for her to sell it?

A. Well, yes.

20

Q. How much did Mr. Wagenheim offer her for the property, Mrs. Leeds?

A. I don't know; he discussed that with Mrs. Leeds.

Q. Don't you know?

A. No.

Q. Don't you know that he only offered eighty-five hundred for the property?

A. Eighty-five hundred?

Q. Yes.

30

A. Eighty-five hundred?

Q. Yes.

A. Why, that is a lie.

Mr. Cole: The question is whether you know that.

Q. You know that, don't you?

A. Know what?

Q. Whether Mr. Wagenheim hadn't offered but \$8,500 for the property?

A. I don't know that, no.

Q. Do you know whether Mr. Wagenheim was in the house on the very night that the Leans bought
10 the property?

A. Yes.

Q. And do you know why he didn't buy it?

A. Well, there was no decision, because she didn't know whether she wanted to sell it.

Q. What was the conversation between Wagenheim and Leeds?

A. I wasn't in the room.

Q. Didn't your husband tell you or Mrs. Leeds tell you?

20 A. I was out in the kitchen, I don't know as I heard anything special but he was there.

Q. But you do know that Mr. Wagenheim was there on the very night before the Leans bought the property?

A. Yes, sir.

Q. And didn't he come there at the suggestion of Mrs. Leeds, who told him that your husband was out of town, wait until he came back that night, and he came back after your husband came in town?

30 A. I don't remember.

Q. You don't remember that?

A. No.

Q. And of course you are very dutiful to Mrs. Leeds?

A. Well, I try to be.

Q. And you are very much concerned about it, aren't you?

A. Yes.

Q. Where are you going to live this summer, Mrs. Leeds?

A. Where are we going to live this summer?

Q. Yes, the coming summer.

A. Well, at the present time I really don't know, because my husband has changed his position and he is out of town and may not have to be in Atlantic City. 10

Q. You say you lived with Mrs. Leeds for the last eight years,—haven't you?

A. Since we were married.

Q. Wherever her home has been?

A. Only in the summer when she rents the cottage.

Q. She has rented the cottage, has she?

A. She has rented for the eight years I have lived in the house.

Q. Did she rent it this year? 20

A. To my knowledge, yes.

Q. Subsequent to this law-suit?

A. Well, yes, I don't know any different.

Q. And do you know where she is going to go?—you are so concerned about her welfare.

A. No, I don't know where she is going to go, unless she goes out of town, that is all, she has no place.

Q. And with the possibility of having to go out of town, and being in this horrible nervous state, where she is in danger of going crazy, you let her rent the house for the summer, is that right? 30

A. Well, yes, because she wouldn't have to live in the street, she would go where we go, she can go anywheres, you know, if she is able to.

Q. Do you know she is able to go? Where are you going to go this summer?

A. I don't know that part, that is, really I don't know what we will do this summer; as I say, there has been no decision made, on account of the change in Mr. Leeds' position.

Q. Were you to get any of the proceeds of this sale if your mother-in-law had made it?

A. Me?

10 Q. Yes.

A. No.

Q. So you had no direct concern in getting your mother-in-law to sell this property, had you?

A. Well, direct—no, but at the same time we wanted her to sell.

Q. Why did you want her to sell it?

A. Because we wanted to get a home of our own.

20 Q. And she was getting a mighty good price for it, wasn't she, Mrs. Leeds, and that is why you suggested, with your husband, that she should sell it?

A. The price wasn't discussed between Mr. Leeds and I.

Q. You were perfectly willing she sell it for any price?

A. Oh, no.

Q. You mean to sit here and tell this Court that as far as the price of that property was concerned it didn't make any difference to you and your husband what she sold it for?

30 A. Why, certainly the price made a difference, but she knew what she wanted, it was her home, not ours.

Q. She knew what she wanted, didn't she, Mrs. Leeds?

A. I suppose, I don't know.

Q. Well, don't you know that she knew what she wanted?

A. Why, no, I thought she knew.

Q. What was there about her action that leads you to the conclusion that you don't think she knew what she wanted about selling this property?

A. Because of the condition she was in.

Q. Subsequent to the signing of the memoranda,— isn't that right? All this that you are talking about happened after October 15th, 1919?

A. Yes.

Q. Prior to that time she didn't have any spells of any kind, did she? 10

A. Well, she hadn't been very well all summer, off and on.

Q. But she didn't go into any scenes like she did here in court this morning?

A. She has since this occurred.

Q. I am talking of prior to October 15th?

A. Prior to that no, not to my knowledge.

Q. Does her own housework, with your help?

A. Yes, we ourselves do it. 20

Q. Does her own cooking?

A. Yes, but not since she has been sick.

Q. When was the first time Dr. Stern was called in this case?

A. Why, right after this occurred.

Q. This occurred October 15th, 1919.

A. Right about that.

Q. How soon after that?

A. Well, maybe five or six days, I really don't know whether it was that long, I can't just remember. 30

Q. Will you say it was five or six days?

A. Yes, we will say that. I really can't remember just what day it might be.

Q. Who ran that advertisement in the Atlantic City Press to dispose of some of the household goods at 22 North Connecticut Avenue?

A. I did.

Q. At whose suggestion?

A. My own, I took matters in my own hands, because she wasn't in good condition.

Q. What did you want to sell them for?

A. Well, I didn't know, I thought we had to get out.

Q. You inserted that advertisement with the idea that you had to move out of the property, is that right?

A. Sure; as I say, I took those privileges.

Q. Did you sell any of them?

A. Well no, the family mostly decided on the things, there was no stranger got in.

Q. Some of the family bought some of the things?

A. Yes, at least they said they would take them.

Q. Do you know whether they have taken them?

A. Eh?

(Question repeated.)

20

A. No.

Q. How much did your mother-in-law get for this property for the summer season?

A. I think—that is, I don't know that I should answer that question.

Q. Do you know?

Mr. Cole: If you know, certainly, answer it.

30

A. \$600.

Q. For how long a period?

A. Four months.

Q. Beginning when?

A. Well, I don't know whether it is just commencing from the first of June until the first of October or whether it will be a few days before June, they hadn't decided.

Q. And now, only about seven or eight weeks off, you haven't the least idea where you are going for the summer?

A. Well, as I say, owing to the change of the position that my husband has just recently made, within the last few weeks, he is out of town, traveling so much, I can't say, unless I go to my sister, take mother with me, or to her sister and take her with me.

Q. Do you have a place to go, to your sister, and 10
take your mother-in-law with you?

A. Or her sister's.

Q. What sort of position did your husband occupy in Atlantic City on the 15th of October?

A. He was note teller at the Second National Bank.

Q. And had been for how long a period?

A. Well, this coming June would have been ten years.

20

By Mr. Cole:

Q. And how long since he left the Second National Bank?

A. Why, he made the change the 15th of February.

Q. Where does he now work?

A. Why, he has taken a position as a bank examiner.

Q. Where does he work?

30

A. Well, the main office is in Philadelphia.

Q. So he is up there working every day, isn't he?

A. Well, he goes out of town occasionally, they are sent out of town to examine the banks, you see, different places.

Q. The headquarters is in Philadelphia?

A. The headquarters is in Philadelphia, at the post office.

Q. Now, when you or your husband advised your mother-in-law to sell this property, tried to get her to sell it, did she have any other advice in the matter at all besides you and your husband?

A. No.

Q. Did she ever seem anxious to sell this property herself?

10 A. No, no, she never seemed anxious. Sometimes she would think she did, don't you know, and then she says no; you see, it was just that way, she never seemed crazy about selling it because she didn't have to.

Q. You spoke about the work being done at the house, she had done no work, certain kind of work, since she has been sick. Who has done it?

20 A. Myself, and at the time that I broke down, she was so sick, you know, my nerves got so bad they had to send me away, why then Miss Sutton took charge of mother while I had to be away, because I had a complete breakdown.

Q. You had Miss Sutton helping you?

A. She was there when I had to go away, she has been there quite a good while.

By Mr. Perskie:

Q. By the way, do you know Mr. Lewis Evans?

30 A. Yes.

Q. What position does he occupy in Atlantic City?

A. Well, he is president of the Second National Bank.

Q. And do you know whether Mrs. Leeds had not been in consultation with him about this property constantly?

A. I don't know, that I couldn't tell you.

SAMUEL STERN, a witness produced in behalf of the defendant, being duly sworn according to law, on his oath says:

By Mr. Cole:

Q. Are you a practising physician in Atlantic City?

A. Yes, sir.

Q. How long have you been practising here? 10

A. In Atlantic City?

Q. Yes.

A. Since 1911.

Q. And how long have you been practising all together?

A. Since 1905.

Q. Did you come to this building, the Real Estate and Law Building, this morning?

A. Yes, sir.

Q. In answer to some call? 20

A. Yes, sir.

Q. Do you know who called you?

A. No, sir.

Q. And why were you asked to come?

A. On account of Mrs. Leeds' nervous condition.

Q. Mrs. Annie Leeds, the defendant in this suit?

A. Yes, sir.

Q. And when you arrived here did you see her?

A. Yes, sir.

Q. Was there a doctor then in the room where she was? 30

A. Yes, sir.

Q. Do you know who he is?

A. He did tell me his name, but in the excitement I didn't remember it, I just don't recall.

Q. I see. Do you know how he happened to be here?

A. In conversation with him he said that he was in court here in another case.

Q. Is he in the room now?

A. I don't see him at the present time.

Q. Now, in what condition did you find Mrs. Leeds when you came in this morning?

A. Extremely nervous.

Mr. Perskie: I object to that as irrelevant and
10 immaterial. I don't think that is the point in the case.

The Vice-Chancellor: I think it is competent. It seems to me, if I am obliged to pass upon the sanity of this woman, I shall have to have the entire history of her case, that is what the doctors always say, I assume that I will have to have it too.

Q. Tell us what you discovered this morning, and
20 then I will go a little further after that.

A. Why, she was extremely nervous, excited, desiring to pace the floor, and in trying to question her—she was rather incoherent, not able to give any satisfactory reply.

Q. Was the condition in which you found her a feigned or real condition?

A. Real.

Q. Have you been attending her?

A. Yes, sir.

30 Q. For how long?

A. About six months.

Q. And how often? How frequently?

A. Well, I saw Mrs. Leeds every day for—over a period of about ten days, and about two to three times a week for a period of about a month, and off and on once or twice a month.

Q. Is she still in your charge?

A. Yes, sir.

Q. And when was your first visit?

A. About the 15th of October, as near as my memory serves me.

Q. And what was her trouble then, if any?

A. Do you mean at my first visit?

Q. Yes.

A. On my first visit she had profound melancholy, or deep melancholy, if you care to have it that way. 10

By the Vice-Chancellor:

Q. What does that adjective mean? I don't get the force of it.

A. Well, any melancholy may be profound, that is, it may be very pronounced.

Q. By profound you mean intense?

A. Intense, yes, sir; although it might be just a mild form, may be any of the intermediate states. 20

Q. Well, profound relates to the degree?

A. Yes, sir.

Q. And not to any particular ——

A. No, sir.

Q. —characteristic or quality?

A. No, sir, just the degree.

By Mr. Cole:

Q. Now, Doctor, can you tell us in a practical way, 30
or in a way we can understand, just how that manifested itself?

The Vice-Chancellor: The 15th of October was the date of the contract.

A. I said on or about that date, I don't just remember the date.

Q. It may have been a little after that?

A. If I recall correctly it was four or five days after the supposed sale transaction, whatever it may have been.

Q. Now then, speaking about the proposed sale: How was your attention drawn to that?

A. Statements of the family principally.

10 Q. Did she refer to it?

A. Only that she had lost her house, she had no home.

Q. Did the fact that, as she put it, she had lost her house and had no home affect her?

A. Yes, sir; she would wring her hands, moan, pace the floor, and ask me, or any one that entered the room, what she was to do, she had no home, that is all she would repeat.

Q. Now, was that real or feigned?

20 A. Real.

Q. What is her general condition, Doctor?

A. At the present time?

Q. Yes.

A. I would say fair at the present time.

Q. In your opinion would the taking of this property from her, making her leave it, injure her health?

A. I do.

Q. Affect her mind?

A. I do.

30 Q. Do you think it would be serious or not?

A. It would be pretty hard to tell; it probably would be; it would have an effect, just exactly how serious of course time will only tell.

Q. Had you known her before your call in October?

A. No, sir.

Q. In your opinion might the fact that it had dawned upon her fully that the effect of making this agreement to sell land was the losing of her home, and having no place to go, have brought on the condition you found?

A. I don't quite understand your question.

(Question repeated.)

A. I think so.

10

Cross-examination.

By Mr. Perskie:

Q. Doctor, who was the physician that treated Mrs. Leeds before you got on the case?

A. I have no knowledge.

Q. And finding the woman in a profound melancholy state did you ask her whether she had any medical attention before you arrived? 20

A. No, sir.

Q. Is that the usual routine, to determine the history of a patient who is about to become insane or is insane?

A. Not unless you are going to commit them.

Q. In other words, you don't ask your patients—get the patient's history, as to prior treatment, medical attention, unless you want to commit them to an asylum? 30

A. Oh, we obtain the history, yes, sir, but not necessarily who has been in attendance.

Q. Do you mean to tell the Court that when you came and found this woman in a profound melancholy state that you didn't have sufficient interest to find out when was the last time this woman had had any medical attention or medication?

A. I do.

Q. Did you try to find out what had caused this melancholy state?

A. I did.

Q. And who did you converse with?

A. I tried to converse with the patient and found that impossible and then conversed with members of the family.

Q. Well, to what extent was it impossible?

10 A. She would wring her hands and mumble, "I have lost my home. I have no home. What am I going to do?" That is all the information I could obtain from her.

Q. Well, would you say that when a woman moans and wrings her hands that that is any evidence of melancholy?

A. It is decided evidence, yes, sir.

Q. Was it to such decided point that she didn't know what she was doing?

20 A. At that time, no, she didn't.

Q. How long did that condition continue?

A. About ten days.

Q. About ten days?

A. Yes, sir.

Q. And then she resumed—seemed to be in a normal condition again?

A. No; she quieted down under drugs, sedatives and suggestion.

30 Q. You called there regularly every day for ten days and then I understand you went there about once or twice a week?

A. Yes.

Q. What was her condition after the end of the ten days?

A. It was improving.

Q. What was it after the end of twenty days?

A. Improving.

Q. When, about, did she seem to be normal again?

A. About six weeks.

Q. That is, about the middle of December?

A. Yes.

Q. Now, from the middle of December when was the next time you saw her again?

A. I have seen her about once in two weeks, without referring to my —

Q. Did you ever make a statement to anybody that from the middle of December you didn't see her again for a period of five or six weeks? 10

A. No.

Q. Did you ever treat a certain Mrs. Williams?

A. Mrs. Williams?

Q. Yes.

A. Not to my knowledge.

Mr. Perskie: Is Mrs. Williams in the court room? Please stand up.

(A woman in the court room stands up.)

20

Q. A lady by the name of Mrs. Williams is now standing. Do you recognize her?

A. Yes, I think she is a lady I seen on New Jersey Avenue once.

Q. Did you ever treat her for anything?

A. I treated her for supposed rheumatism.

Q. And did you ever discuss with her the condition of Mrs. Annie Leeds?

A. Discuss it with her?

30

Q. Yes.

A. Now that I recall it, Mrs. Williams sent for me and professed to have rheumatism, after discussing the subject with her she asked about her son —

Q. Just answer the question. Did you ever discuss with Mrs. Williams the case of Mrs. Leeds?

Mr. Cole: He is trying to answer it now, isn't he?

Mr. Perskie: No, he is going off on some other conversation.

A. You asked me to describe what I did for Mrs. Williams, didn't you?

10 Q. No, I asked you whether or not you ever discussed with Mrs. Williams the Mrs. Leeds case.

A. I never discussed it with her, no.

Q. Well, did you talk about Mrs. Leeds?

A. As my memory serves me now she casually asked ——

Q. Did you or didn't you? That is subject to a yes or no answer.

The Vice-Chancellor: Can't you tell what you said, Doctor? It matters little how it came about.

20 A. I believe that Mrs. Williams asked me who Mrs. Leeds was.

Q. What did you say?

A. And it is my custom to say, when I have no knowledge of whom I am discussing it with, my patient is doing fine, particularly nervous people.

Q. Did you tell her that your patient—that she was perfectly all right?

A. No, sir.

30 Q. And if you told her that the patient was perfectly fine you weren't telling her the truth, were you, Doctor?

A. It is my privilege to tell patients ——

Q. I am asking you whether it is the fact?

Mr. Cole: What did you say, Doctor?

Q. I direct your attention to the lady sitting directly back of Mrs. Williams and ask you whether you recognize her as being present at the time you had this conversation with Mrs. Williams?

A. I think I recall her presence in the house, yes.

Q. Wasn't that on or about the 14th of February, 1920?

A. I would have to look at my records to determine that date.

Q. Have you your records with you?

A. No, sir, I don't carry my books with me.

Q. And you deny that you told her at that time, if it was the 13th or 14th, that you hadn't seen Mrs. Leeds for a period of five or six weeks and that she was perfectly all right?

A. Mr. Perskie, I think I have the right to make any statement to a patient.

Q. I am asking you whether you did or not. You know, don't you?

The Vice-Chancellor: You are required to answer Mr. Perskie's questions responsively, and he has asked you whether you stated what he just stated. Your counsel will protect you if you need it.

A. I believe I did make that statement, yes.

Q. Doctor, in one of your treatments of Mrs. Leeds did you advise her to take walks only at night time?

A. No, sir.

Q. Did you advise her take walks only in the back section of the city?

A. No, sir.

Q. Did you know during the time that you were treating Mrs. Leeds who was doing her housework?

A. No, sir.

Q. Did you ever inquire?

A. No, sir.

Q. Did you ever caution her against doing any housework?

A. No, sir.

Q. She wasn't harmful in any manner, was she?

A. No, sir.

Q. Had no violent tendencies?

A. Melancholias never do.

Q. And you believe if she thought she had the property she would be perfectly all right?

10 A. When she was informed by her Judge—by Judge Cole that she was going to get it why she immediately began to improve and the improvement was most pronounced following that.

Q. In other words, a lawyer seems to have a better effect on her than a doctor?

A. Well, you can call it law or Chistian Science, anything you want to.

Q. Did you know, Doctor, she was going to live in the summertime out of her home?

20

Mr. Cole: I object. This is not cross-examination.

Mr. Perskie: I just asked him if he knew that.

Mr. Cole: All right.

A. Probably in the course of conversation I found out that they usually rented it.

30 Q. Do you think, Doctor, if a person was suffering from melancholy as the result of fearing to lose their home that they would be apt to move out of it at any time?

A. I ordered her away several times.

Q. You think she is better out of the house, do you?

A. Better out of the house under the conditions as we find them, yes.

Q. So that if the property is taken away from her it won't have the effect that you told Judge Cole it might have on her?

A. I believe it will,—the difference in losing a property and just renting it.

Q. Do you call paying for a property twice what it is worth losing it?

Mr. Cole: I object to that.

10

A. I have nothing to do with it.

By Mr. Cole:

Q. Doctor, since it has been introduced, would the fact that she had been told by someone in whom she had a measure of confidence that she probably would not lose the property have a tendency, in the condition you found her, to improve rather than not to improve her condition?

20

A. Yes, sir; that is the method of Christian Science today, auto-suggestion, anything you care to call it.

Q. And had you learned that she had been told she could probably stay in the property?

A. Yes, sir.

Q. From that time did she improve or get worse?

A. Shortly after that she showed an improvement, when it was impressed upon her by myself and her family that she would retain the property.

30

ANNIE LEEDS, the defendant, being duly sworn according to law, on her oath says:

By Mr. Cole:

Q. Mrs. Leeds, how long have you been living in the property that you are now living in?

A. I was either nineteen or twenty, I forget which.

10 Q. How old are you?

A. I will be fifty-eight years old the 9th of July.

Q. And this property has been your home during all those years, has it?

A. Yes, sir.

Q. Tell us how you came to sign this paper to sell your property?

A. Well, I really can't tell you, I was so nervous.

Q. Well, do you mean that you do not now remember how it was that you agreed to sell it?

20 A. Well, my boy and his wife—they wanted me to sell it, and I was doing it to please them.

Q. Did you want to sell it yourself?

A. Oh, no, not to her; it is breaking my heart.

Q. Now, just be careful now, don't get concerned at all; you don't have to get excited.

A. No, God knows I didn't.

Q. Do you want to sell it now?

A. No.

30 Q. Have you since you signed this paper to sell to Mr. Lean agreed to sell the property to anybody else?

A. No, sir.

Q. Has anybody else ever offered you any more money for it?

A. No, sir.

Q. Are you refusing to sell to Mr. Lean because you want more money?

A. No, sir.

Q. Have you any other home to go to if you lose this?

A. No, sir.

Q. How soon was it after you had signed this paper when you changed your mind about selling it?

A. Just the minute I laid my head on my pillow, 10
I never slept all night.

Q. Why did you worry about it?

A. Oh, I thought I did wrong; I didn't want to do it but I was persuaded to do it.

Q. Who persuaded you?

A. My boy, my son and his wife.

Q. Why did you think you had done wrong?

A. Oh, because I wanted it; I want it, it is my home.

Q. All right. Now then, did you go see Mr. and 20
Mrs. Lean the next day?

A. Yes.

Q. Did you have the check that they had handed you? Did you have that check with you (exhibiting check to witness)?

A. That isn't the check.

Q. You look at it.

A. Well, my son took it, I can't tell you. Let me see the back of it. (After examination.) Yes, but it wasn't certified. 30

Q. But as you had it originally from him, did you have that check with you the night when you went to Mr. French's?

A. Yes, sir.

Q. And who did you see?

A. The night after I just saw—Mr. Lean and Mr. French was there but I didn't then show the check to them.

Q. What did you say to Mr. Lean?

A. "Mr. Lean," I said, "won't you please give me my home back? I don't want to sell it."

Q. What did he say to you?

A. Well, he said if I had come in the morning he would have willingly given it back but he couldn't.

10 Q. Did he tell you why he couldn't?

A. I don't remember.

Q. Did you go to see him again?

A. Yes, I went to see Mrs. Lean.

Q. When was the next time you went to see him?

A. The next morning, I think, and I had the check then and I asked Mrs. Lean to take it.

Q. You had the check with you then, did you?

A. And she seemed to be a lovely woman.

Q. Did you show the check at that time?

20 A. Yes.

Q. What did they say?

A. She wouldn't take it.

Q. And then did you afterward—you or your son—mail the check to her, or to him?

A. Yes, sir.

Q. Mrs. Lean says that you said, the night that you signed this paper, that Wagenheim wanted to buy the property but you didn't want to sell it to dirty Jews. Did you say that?

30 A. No, sir. I have a daughter-in-law a Jew.

Q. Well, did you say that? That is the point.

A. I didn't, I didn't, thank God.

Q. Has anybody offered you more money for this property since?

A. No, sir; if they would give me ten million dollars—I want my home.

Q. Mrs. Leeds, how have you been since you signed this paper?

A. Never been well. I can't get my thoughts together, I can't think of nothing but my home.

Q. Now, be quiet; don't get excited; you don't have to get excited. Were you in the habit of renting this house every summer?

A. Every summer, I had to rent it for my expenses, I am a widow.

Q. Have you any income except what you get out of the property? 10

A. Just a little, not very much. I took all my—I had a little money and I put—give it to the Government to help the boys along.

Q. And do you have to use the rent you get from the property during the summer to keep you going?

A. Yes, sir.

Q. That has been going on for how many years?

A. Seven years, the 19th day of this month, my husband died and I have had to do that. 20

Q. So that since then you have had to rely largely upon this property to get a living?

A. Yes, sir.

Q. Now, have you rented it for this summer?

A. Yes, sir.

Q. Where do you go to live in the summertime?

A. Well, I don't know just exactly where.

Q. Where have you been going heretofore?

A. Well, I have been living out at 419 North Massachusetts Avenue. 30

Q. With whom?

A. By myself, and my son sometimes.

Q. Do you know where you are going this summer yet?

A. Well, I haven't decided.

Q. You mean you haven't any place to go yet?

A. Yes, I have got two or three places in view.

Q. Now, coming back to this night when you signed the paper, do you recall whether there was anything said then as to where you were going to live?

A. No, sir.

Q. Was there any talk about that?

A. No, sir.

10 Q. Mr. Lean says that on that night there was some talk as to where you were going and you said—or, rather, he said that you might stay there until April by paying \$5 a month, I think, but you declined that. Do you remember that talk?

A. Oh, no, no. I might have stayed in my own house?

Q. Yes.

A. Oh, no.

Q. You didn't say that?

20 A. No, sir.

Q. Well, when were you to get the \$10,700?

A. I don't know; there was nothing said about that.

Q. Nothing said about that in the writing at all when you were to get the money?

A. No, sir.

Q. Well, don't you know when you were to get it?

A. No, sir, I don't know. I am very ignorant about business, I don't know nothing about it.

30 Q. Well, he says that the understanding was, although it wasn't put in the writing, that you were to get the remainder of this money when the West Jersey Title Company, or some other title company, notified him that your title was all right. Do you recall that?

A. Never nothing was said about when I would get the money.

Q. Have you really been sick since you have made this bargain to sell?

A. Yes, sir.

Q. You had a doctor attend you in court this morning?

A. Yes, sir.

Q. What was the matter with you?

A. I don't know.

Q. Were you excited?

A. No; I don't know what is the matter with me. 10

Q. Do you know Mr. Evans?

A. Yes, sir.

Q. Did you see him after you had signed this paper,—talk to him about it at any time?

A. Yes, sir; I told him I wanted my home back.

Q. Have you been as well, either in your body or in your head, since you signed this paper as you were before?

A. No, sir.

Q. Were you told sometime after this man, Mr. 20 Lean, wanted the property that probably he couldn't get it away from you? Were you given advice that maybe you might keep the property?

A. I don't remember.

Q. How long was it, if you can remember, after you had signed this agreement when you turned the matter over to Mr. Cole?

A. I can't remember; I can't remember nothing.

Q. Well, did you turn it over to Mr. Cole or did your son do it? 30

A. Well, I turned it, I sent him.

Q. You sent him to see Mr. Cole?

A. Yes, and then I came.

Q. Now, was that after you had tried to return the check?

A. No, sir,—yes, sir, yes, sir.

Q. Now, had you tried to sell this property to any one before you sold it to Mr. Lean?

A. Well, there was two different people there but I didn't try, I didn't want to sell it, I didn't try very hard.

Cross-examination.

By Mr. Perskie:

10 Q. Mrs. Leeds, how long did you say that you have been managing that property?

A. Seven years, the 19th day of April, my husband died.

Q. That is the date of his demise?

A. Yes, sir.

Q. How many children have you, Mrs. Leeds?

A. One.

Q. Is that Charlie Leeds?

20 A. Yes, sir.

Q. What is the date of his birthday?

A. 30th of September.

Q. Do you know what year?

A. Well, he will be thirty-five years old next September.

Q. Does Charlie have any children?

A. One.

Q. What is the date of that child's birthday?

A. It is deceased.

30 Q. Died?

A. Yes.

Q. Do you remember the date it was born?

A. I can't think.

Q. Did you have lunch today, Mrs. Leeds?

A. No.

Q. Did you have breakfast this morning?

A. Yes, a cup of coffee.

Q. When is the last time you ate anything before you came to court, Mrs. Leeds?

A. My breakfast, a cup of coffee this morning.

Q. Did you have dinner last night,—supper last night?

A. Yes.

Q. Who arranged these two or three places that you have in view to go in the summer? Who looked them up?

A. Who looked them up? I don't know what you mean. 10

Q. Did you go to find places that you are apt to go this summer?

A. No; my brain hasn't been—I haven't thought of nothing but my home.

Q. I know but what two or three places have you in mind to go to this summer?

A. Well, we have to look for a place when we rent.

Q. You testified, in response to a question of Judge Cole, that you had two or three places in view that you were apt to go for the summer,—is that right? 20

A. Yes; one is to my sister's.

Q. Yes. Where does she live?

A. In Bloomfield, New Jersey.

Q. In Bloomfield, New Jersey?

A. Yes, sir.

Q. Do you know her address in Bloomfield? 30

A. It is Waverly Terrace but I don't remember the number.

Q. And where is the other place that you have in view?

A. My brother.

Q. Where does he live?

A. He lives on Drexel Avenue.

Q. In Atlantic City?

A. Yes, sir.

Q. Where is the other place that you have in view?

A. I have to think. Well, my son would take me with him.

Q. Did you go to Judge Cole's office yourself?

A. Yes.

Q. Did you have any one accompany you?

10 A. Yes.

Q. Who accompanied you?

A. Why, once my daughter-in-law and once Mrs. Reed.

Q. And were you in the like condition that you are this morning—or this afternoon?

A. I have been this way ever since I had signed the paper.

Q. Do you know a certain lady by the name of Mrs. Conover?

20 A. Miss Conover?

Q. Yes.

Mr. Perskie: Miss Conover, will you please rise.

(A lady in the court room rises to her feet.)

A. Yes.

Q. How long have you known her?

A. Oh, ever since she was a little girl.

30 Q. Ever since childhood?

A. Yes, sir.

Q. Did you ever speak to her about this case?

A. Not that I know of.

Q. Do you know where she works?

A. No; I know she did work in a candy store, and then she worked in Wahl's shoe store.

Q. Did you ever talk to her in Wahl's shoe store about this case?

A. I can't remember.

Q. But you do know that she worked in a candy store and worked in a shoe store?

A. Yes.

Q. Who was your doctor before Dr. Stern commenced to treat you?

A. Well, Dr. Eugene Reed used to be my doctor, he is deceased, and then we called in Dr. Shimer once. 10

Q. How long is it since Dr. Reed has been dead?

A. I think it is two years the 15th day of December, I think.

Q. December 15th, two years ago?

A. I think it is, I don't know.

Q. And from December 15th, two years ago, when Dr. Reed died, you have only had Dr. Shimer visit you once,—is that right?

A. Oh, no; this is after I had the transaction with my house. 20

Q. I am talking about before October 15th, when you had the transaction with the house. Did any one treat you after Dr. Reed's death?

A. Oh, yes.

Q. Who was it?

A. Shimer.

Q. How frequently did he see you?

A. I can't tell you that, I don't know.

Q. Did he see you more than twice or three times? 30

A. Oh, yes.

Q. Do you know what particular ailment you were suffering with when he came to see you?

A. No.

Q. You don't?

A. No.

Q. But he was your regular physician before you made this deal,—isn't that right?

A. No, I never have had a regular physician since Dr. Eugene Reed died.

Q. But have you called any doctor at all? You called Dr. Shimer, didn't you?

A. I don't remember.

Q. Well, do you remember any other doctor treating you but Dr. Shimer and Dr. Stern?

10 A. I don't remember.

Q. You think you would be all right if you were allowed to keep this home, do you?

A. I want my home.

Q. Did you ever tell Mrs. Lean that the reason you wanted to sell your home was because you were a widow and you didn't have sufficient income to keep you on the rental of it and wanted to use the money?

A. No, sir; no, sir.

20 Q. You remember that positively, don't you, Mrs. Leeds?

A. I do; yes, I do.

Q. No doubt about it?

A. No.

Q. Did you ever tell her—when you made this reflection on the Jews did you turn around to your daughter-in-law and say, "You know I don't mean you," did you ever do that?

A. No, sir, I don't remember that.

Q. Don't remember that?

30 A. No, sir; I rent my house to Jews always.

Q. Do you know Mr. Wagenheim?

A. Yes.

Q. What business is he in?

A. Butcher.

Q. Where is his place of business?

A. Atlantic Avenue.

Q. Uptown or downtown?

A. Well, uptown.

Q. Did you agree one time to sell him the house for \$8,500?

A. Oh, no; no, sir.

Q. Was Mr. Wagenheim in the house on the very night that you made this deal with the Leans?

A. Yes, sir.

Q. Do you know what he was doing there?

A. He was talking to my son.

10

Q. How is that?

A. He was talking to my son.

Q. Did you hear the conversation between them?

A. Some of it I did.

Q. What was some of the conversation?

A. I don't remember.

Q. Don't remember any of it?

A. No.

Q. Do you know how Wagenheim happened to be in your house that night?

20

A. Come to see my son.

Q. Had you tried to sell this property to some Italian fellow?

A. I didn't try, they were after it.

Q. Well, did you tell them that you wanted your home, you didn't want to sell it for ten million of dollars, or anything like that?

A. The lady came up and said that she would take the house. "No," I said, "I feel so bad in here I don't want to part with it."

30

Q. Didn't want to part with it?

A. No.

Q. Why didn't you tell Mr. Lean and Mrs. Lean the night they were there to buy it that you felt bad about it and didn't want to sell the house?

A. I don't know.

Q. You were perfectly well that night, weren't you?

A. Very nervous.

Q. Well, what made you nervous?

A. I don't know.

Q. Why didn't you tell them you were very nervous and you weren't in a condition to make any real estate transaction?

A. I don't know.

10 Q. Do you know Mr. Evans?

A. Yes.

Q. What position does he hold in Atlantic City?

A. Second National Bank, president.

Q. See him frequently?

A. Yes, he is my brother-in-law.

Q. How is that?

A. Brother-in-law.

Q. Do you discuss your affairs with him?

A. Sometimes.

20 Q. Have you been in consultation with him about the sale of this property?

A. I don't remember.

Q. So that you had a brother-in-law, a president of a bank, that you could go to and confer with, and you had a son, a note teller, now working for the United States Government, that you could confer with about these things, hadn't you, Mrs. Leeds?

A. Well, but I was persuaded to do it, I didn't want to do it.

30 Q. Well, your son wouldn't do you any harm, would he, Mrs. Leeds?

A. Oh, he just wanted me to sell it.

Q. Did you tell Mr. Lean the next day that you went over to see him that your son had persuaded you to do it?

A. No.

Q. Well, why didn't you?

A. I don't know; I was so upset.

Q. Well, there have been times since October 15th when you haven't been upset. Did you ever go to Mr. and Mrs. Lean and tell them that the reason you didn't want to make this conveyance is because your son persuaded you to do it?

A. I don't remember nothing; I don't remember nothing.

Q. Do you know what your property is assessed for? 10

A. No.

By Mr. Cole:

Q. Mrs. Leeds, was your son Charlie born in this property?

A. Yes, sir.

Q. And has he lived with you there ever since he was born?

A. Ever since he was born, only in the summer when we rented. 20

Q. Do you know where he is today?

A. He is Philadelphia, I don't know just where.

Q. He is working for the United States Government, is he not?

A. Yes, sir.

Q. In some banking department?

A. Yes, sir.

LEWIS EVANS, a witness produced in behalf of the defendant, being duly sworn according to law, on his oath says:

By Mr. Cole:

Q. Senator, how long have you known Mrs. Leeds?

A. Ever since she was married to Charlie Leeds, I can't tell you how many years it was.

10 Q. How long have you lived in Atlantic City?

A. Fifty-two years.

Q. You are president of the Second National Bank, are you not?

A. Yes, sir.

Q. Now, do you remember that you received word in some way that Mrs. Leeds had agreed to sell her home, the property on North Connecticut Avenue,—that fact came to your notice?

A. Yes.

20 Q. Did she talk with you about it after she had sold?

A. After she had sold?

Q. Yes, mention it in any way,—the fact that she had sold it?

A. I don't remember her saying—the first one that said anything to me, my recollection of it is, after it was sold, was Mr. Lean who came in the bank one day and told me that he had bought, I am pretty sure that is right; she talked to me about it
30 before the sale.

Q. I see. Did you observe any change in Mrs. Leeds after you learned that she had agreed to sell the property?

A. Surely.

Q. Well, now, won't you tell the Vice-Chancellor as well as you can in what way you think there was a change in her condition?

A. The first time that I saw her after the sale, after I heard that she had sold, was—she came to my house and she was—I told my wife she was crazy, I didn't mean that she was entirely out of her head but she was so demonstrative, she would take my hands and rub them and say, "Won't you try to do this?" and "Won't you try to do that?" 10
And I would say to her, "Now, Annie, you have asked me my advice, before you sold this property you asked me—you told me you was going to sell it and I advised strongly against it." And my reasons was she had lived there ever since she was married, her husband left it to her, and that she was getting along in years and that she ought to keep it for a home, and about the only excuse she would make to me was that Charles and Tillie wanted her to sell, and when she left me that night, after telling me 20
this, told me more than once, I was perfectly surprised when Mr. Lean came in and told me that they had closed the deal.

Q. Now, then, you have been telling us about her manner, what she was doing and saying after you found out, now since that time what has seemed to be her condition?

A. Oh, she hasn't been herself ever since. I see her, I presume,—oh, well, I don't know how often I do see her, but she comes to the house once in a 30
while, I go to my daughter's and find her there, and I have never been to her house, I think, but twice since it happened and then I didn't talk about it.

Q. Now, in your opinion are these manifestations real or are they mere pretenses, mere fakes, excuses?

A. No pretense about her; I shouldn't think that she would put this on when there was no one there but she and I, we were private; it has always been the same thing.

No cross-examination.

Mr. Cole: I think that is our case.

10

SUSIE CONOVER, a witness produced in behalf of the complainant, being duly sworn according to law, on her oath says:

By Mr. Perskie:

Q. Miss Conover, you live in Atlantic City?

A. I do.

20 Q. Have lived here all your life?

A. I have.

Q. Do you know the defendant, Annie Leeds?

A. I do.

Q. How well do you know her, Miss Conover?

A. Ever since I have been a child.

Q. How frequently during the course, say, of a week or so do you see her?

30 A. Well, I haven't seen her very lately, since I have been earning my own living, before that I used to see her quite often.

Q. And how long has it been since you started working for a living?

A. I have been working for my own living for about five years.

Q. But you see her occasionally even now?

A. Yes.

Q. Where are you working now?

A. Wahl shoe store, 1018 Atlantic.

Q. And before you worked at Wahl shoe store what did you do?

A. Bowker's candy store, 605, I think it is, Atlantic Avenue.

Q. Did you ever talk with Mrs. Leeds about this case?

A. I did.

Q. Since October 15th?

A. Yes.

Q. How did it come that you talked to her about it?

A. I was in Wahl's shoe store and she came in and bought a pair of shoes, and I wrapped them, and she says to me, she says, "Susie," she says, "I have sold my home," I says, "Yes, so I hear," she says, "and I have almost lost my mind over it." And when she went to go out of the door she says, "I am going to try to get it back." And that is the last time—that is the last I have seen of her until I seen her in court this morning. 20

Q. And when she was in the store talking to you was she nervous?

A. Didn't seem to be.

Q. Seemed to be perfectly normal?

A. Yes.

Q. She didn't conduct herself as she did in court here this afternoon, did she?

A. No. 30

Q. Or this morning?

A. No.

No cross-examination.

ELLA MARY FRENCH, a witness produced in behalf of the complainant, being duly sworn according to law, on her oath says:

By Mr. Perskie:

Q. Mrs. French, you live in Atlantic City?

A. Yes, sir.

Q. Where?

10 A. 122 North Massachusetts.

Q. And do Mr. and Mrs. Lean live at your house?

A. Yes.

Q. And have lived there how long?

A. Since September 15th.

Q. Do you know the defendant, Annie Leeds?

A. Yes, I do.

Q. How long have you known her?

A. Since I was a child.

20 Q. Prior to October 15th, 1919, did you ever notice anything about her condition which would indicate that she was not mentally right?

A. I have known Mrs. Leeds only just casually, to speak to, I have never had very much to do with her, only in a friendly way, that is, I couldn't say

Q. But you know of her very well?

A. Yes.

Q. Know other people that know her?

A. Certainly, my relations all know her.

30 Q. Did she ever talk to you about this case?

A. Mrs. Leeds?

Q. Yes.

A. She came to our house to try to get the Leans to let her have the house back, yes.

Q. And what was her demeanor at that time?

A. She was very nervous and upset.

Q. Was she anything like she was in court here this morning?

A. No, but she cried a little and was very upset.

Q. Did she say she had been persuaded to sell the property against her will,—anything like that?

A. Why, no, I can't say that she did.

Q. Just tried to get the Leans to take the check back and release her, is that it?

A. Yes.

10

No cross-examination.

CHARLES S. FRENCH, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath says:

By Mr. Perskie:

20

Q. Mr. French, you live in Atlantic City?

A. I do.

Q. And have lived here how long?

A. Twenty-two years.

Q. Do you know Mrs. Annie Leeds, the defendant in this case?

A. I do.

Q. How long have you known her?

A. From fifteen to twenty years.

Q. Have you ever observed her do anything or say anything which would indicate that she was not mentally right?

30

A. Not in my lifetime.

Q. Have you had occasion to observe her recently?

A. Well, the night after the bargain was made she came to our house, I happened to be on the porch with Mr. Lean, and she wanted him to take the property back—or to let her have the property back.

Q. What did she say?

A. Just asked him if he wouldn't let her have the property back.

Q. Did she say anything about her son or daughter-in-law persuading her to sell it against her will?

10 A. Not that I heard.

Q. Did she behave herself like she did in court today the time she was on the porch?

A. No, I didn't see any carrying on at all.

Cross-examination.

By Mr. Cole:

Q. Was she crying?

20 A. Not that night.

Q. Did she come there afterwards and cry?

A. Three or four days after that she came by the lumber yard and her eyes were red; she asked if I wouldn't use my influence to try to help her get the house back, and I told her I would. Her eyes were red as if she had been weeping, that was all.

Q. When she was there the first night did she say why she wanted to have the property back?

A. Not to my knowledge.

30 Q. Did anybody ask her why?

A. No, I didn't ask her why, because I knew, or imagined I did.

Q. Why did you think you knew?

A. Well, I thought from living there all of her life, and, knowing her as I do, that probably it was the association.

Q. In other words, what you thought that night was that she thought she was losing her home,—that is why she didn't want to sell?

A. Yes.

BOTH SIDES REST.

The Vice-Chancellor (After argument): I shall not undertake at this time to dispose of this matter finally; further reflection or suggestion of counsel by way of brief, if counsel desire to be heard further, may change my views. At this time, however, I wish to outline my views sufficiently to enable counsel to at least apprehend the present condition of my mind in the matter. 10

I am unable to see at this time any possible defense to this case, unless, perchance, it be a defense growing out of the mental condition of the defendant,—the want of intelligent and voluntary action upon her part at the moment she signed the contract of sale. The contract in its terms embodies all the essential elements of a contract for the sale of real estate and is signed by the party to be charged. The only element ordinarily embodied in such contracts which is absent in this is the element of time for final payment and final delivery of the deed, but that element is not essential so far as the express terms of the written contract is concerned, because in its absence a reasonable time will be implied. The receipt discloses that part of the contract price was paid at the time the contract was made; the balance was necessarily to be paid later, and a reasonable time for such payment is necessarily implied. Where, as here, a title company is employed at once to ex- 20 30

amine the title and that company finishes its examination in the time that the examination of title was finished in this case, and the vendee at that time tenders performance he has, in my judgment, made his tender within a reasonable time.

I am unable to see how complainant is in any way either aided or injured by his attempt to show that a stipulation was made that the money should be paid and the deed delivered after the title company had passed the title. The claim is made and denied that such a stipulation existed, and that it was a part of the agreement and was made at the time the writing was signed; it is incompetent for complainant to supplement the contract in that manner, because the writing cannot be added to or subtracted from or contradicted in any way, it must be taken on its face for what it says, either expressly or by adequate implication. As already stated, the writing discloses a partial payment of the price; the privilege to pay the balance in a reasonable time is adequately implied.

The circumstance that the contract is in form unilateral is not, in my judgment, a possible source of defense. Where the owner of property signs a writing in which he agrees to convey upon adequate consideration and terms it is unnecessary that the vendee should sign the contract. It is true the vendee is not at that time bound to perform, because he has not in writing bound himself to perform, but when his bill is filed for specific performance of a contract he does become bound and is equally bound with the vendor.

So, so far as I can at present see, the only question involved in this case which to my mind presents any doubt is whether at the time the contract was signed defendant vendor acted with intelligence,

whether the contract represents intelligent and voluntary action upon her part. I confess that on that question it seems to me there cannot be very much doubt. There is no evidence in this case that indicates that the vendor was not entirely normal and capable of normal action at that time. It is true she says, and her daughter-in-law also says, that she was largely influenced by her son and daughter-in-law desiring her to agree to sell, but even that, it seems to me, would in no way render the contract, otherwise unobjectionable, unenforceable. Obviously she would be necessarily more or less influenced in her action by the wishes of those around her who were near and dear to her, her son and her daughter-in-law. It is right, proper and natural that she should be. Indeed, she had asked the vendee to await further negotiation until her son returned, in order that she could consult him. Unless she was wanting in mental capacity or was subject to the influence of those around her to an unreasonable degree, and I do not think the evidence discloses either, it seems to me that the contract is enforceable. 10 20

The other question which Judge Cole has presented very elaborately and very forcefully relates to matters arising subsequent to the contract. It appears to be true that this contract has been the cause of almost mentally unseating defendant; its existence has brought her to an extremely nervous condition. After signing the contract further reflection upon the subject led her to feel that she had done wrong, not in agreeing to sell the property for less than it was worth but in that she had done wrong in parting with an old home that she had inherited from her husband and had occupied for so many years. That thought, that purely sentimental thought, worked upon her nerves until she has al- 30

most gone into melancholia. There may be a danger, if the doctor is not extreme in his views, that an adverse decree in this case may be more or less dangerous to her mental condition, and I confess that if there is to be found any field of discretion in a court of equity in granting relief in this case that will justify the refusal of a decree because of its possible effect on defendant's nerves, the court is inclined to avail itself of that discretion in circumstances of that kind; but I shall need to be convinced

10 that the sound discretion which is regarded as a prerogative of a court of equity in granting a prayer for a decree of specific performance extends so far. The consequences of a decree, it is true, should in some circumstances be considered; but the mere fact that a defendant has allowed herself to get worked up to such a nervous state over her contract cannot, it seems to me, afford justifiable grounds for a court of equity to exercise a discretion in refusing a de-

20 cree which complainant would otherwise be clearly entitled to. The sound discretion which is so frequently referred to in cases for specific performance I understand to be largely a technical term; it is essentially the exercise of a sound judgment based upon right and justice in accordance with defined equitable principles as established by precedents in cases of this class; the established principles must control the discretion. A court of equity is not permitted to disregard established equitable rules in

30 the exercise of its discretion in cases of this class, the discretion to be exercised must be a judicial and not a capricious discretion; and unless counsel can convince me by some authorities which may be cited, in case a brief is sought to be filed, that the exercise of a discretion of this Court in refusing this decree can find legal justification because of its possible

and, I perhaps may say, probable detrimental influence upon the mental condition of defendant, owing to the nervous state she has reached in contemplating the loss of her old home, it presently seems to me I shall be obliged to advise a decree for performance.

Mr. Cole: Now, Vice-Chancellor, shall the brief be limited to that latter question?

The Vice-Chancellor: Brief the whole subject. I shall hold my mind open on the whole case. 10

Mr. Perskie: Will your Honor designate any special time?

The Vice-Chancellor: If you can do it within a week, say by the middle of next week.

Mr. Cole: I am willing to hand Mr. Perskie a brief within a week or ten days. 20

SUPPLEMENTAL.

I am satisfied that complainant is entitled to a decree for specific performance. The contract was intelligently and fairly made and is just, reasonable, fair and equitable in all its parts. Complainant has come into court with perfect propriety of conduct and cannot, in my judgment, be dismissed merely because defendant has changed her mind and reached a highly nervous condition because, for purely sentimental reasons, she does not now wish to perform her contract. 30

Mr. Fry, in his work on specific performance, states the rule to be, without limitation or exception, that if a contract is fair and unobjectionable at its inception, no change of circumstances or relations or events however unexpected, and however much inequality and hardship they may produce in the operation of the agreement, shall constitute a sufficient ground for denying the remedy of specific performance. Fry on Spec. Per., Secs. 235, 252.

10 There appear to be some cases affording exceptions to the rule thus broadly stated, but I find no authority that tends to support the view that matters arising subsequent to the contract with which complainant is in no way connected or responsible for, and which alone concern the personal interests, as distinguished from the pecuniary interest, of defendant, can be made the basis of defense to a suit for specific performance.

I feel obliged to advise a decree pursuant to the prayer of the bill.

20 Submitted April 28th, 1920.
Determined May 11th, 1920.

FINAL DECREE.

(Filed June 7, 1920.)

IN CHANCERY OF NEW JERSEY.

<hr style="width: 10%; margin: 0 auto;"/> <p>Between DANIEL R. LEAN, JR., <i>Complainant,</i> and ANNIE LEEDS, <i>Defendant.</i></p>	}	<p>On Bill, Etc. Final Decree.</p>	10
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This cause coming on to be heard upon bill, answer, replication and proofs, before the Hon. Edmund B. Leaming, the Vice-Chancellor to whom the same had been regularly referred to by the Chancellor, in the presence of Joseph B. Perskie, of counsel with the complainant, and Clarence L. Cole, of counsel with the defendant, and the pleadings and proof having been read and the arguments of counsel heard and considered, and it appearing that the defendant on the fifteenth day of October, nineteen hundred and nineteen, signed and delivered to the complainant a writing as follows: "For the consideration of Ten Thousand and Seven Hundred Dollars, I do hereby agree to sell property located at 22 N. Connecticut Avenue, Atlantic City, N. J., to D. R. Lean, Jr. Linoleum in kitchen and bath room, awnings, screens, porch rockers, storm door, glass

enclosure included;" that the complainant paid to the defendant at the time of the signing and delivery of said writing on account of the sum of ten thousand seven hundred dollars therein mentioned, the sum of five hundred dollars leaving thereof unpaid a balance or sum of ten thousand two hundred dollars, that thereafter on the 13th day of November, nineteen hundred and nineteen, the complainant tendered himself ready and willing to comply on his part with the terms of said writing and to pay to the defendant the balance or sum remaining due of said sum of ten thousand seven hundred dollars upon the defendant executing and delivering to him the complainant, a proper deed conveying to him the title to land and premises referred to, and delivering to him the personal property mentioned "in said writing; that the said offer so made by the complainant was, under all the circumstances of the case, a reasonable time within which to comply with the terms of the said writing; that the defendant refused to receive said balance and convey said land and premises and deliver said personal property to the complainant and wholly refused to abide and perform the terms of said writing, and the Court being of opinion that the complainant is entitled to relief against the defendant and entitled to specific performance of the said writing according to the prayer of the said bill of complaint;

It is thereupon, on this 4th day of June, nineteen hundred and twenty, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, that the said defendant, Annie Leeds, within 30 days from the date of service upon her or upon her solicitor, of a certified copy of this decree, do make, execute, acknowledge in due form of law, and deliver to the complainant,

Daniel R. Lean, Jr., his heirs, executors, administrators or assigns, a good and sufficient deed conveying the fee simple of the land and premises described in the bill of complaint, to wit;

All that certain tract or parcel of land and premises, situate, lying and being in the City of Atlantic City, County of Atlantic and State of New Jersey, more particularly bounded and described as follows: BEGINNING at a point in the West line of Connecticut Avenue, in the line of a nine feet street or alley, distant two hundred and thirty two feet Southwardly of the Southerly line of Arctic Avenue, and runs, thence, (1) Southwardly, along the Westerly line of Connecticut Avenue, 48 feet; thence, (2) Westwardly, parallel with said Arctic Avenue, 175 feet; thence, (3) Northwardly, parallel with said Connecticut Avenue, 48 feet to the Southerly line of the above mentioned street or alley; thence, (4) Eastwardly, along the Southerly line of said Alley and parallel with Arctic Avenue, 175 feet to the place of beginning, and at the same time deliver possession of the said premises together with the linoleum in the kitchen and bath room, awnings, screens, porch rockers, storm door, glass enclosure included, to the said complainant.

And it is further ordered, adjudged and decreed, that upon the making, executing, acknowledging and delivering of the said deed, above mentioned, and upon the giving possession of the said premises together with the personal property aforesaid, the said complainant, Daniel R. Lean, Jr., his heirs, executors, administrators or assigns, do pay or cause to be paid to the said Annie Leeds, the defendant, her executors, administrators or assigns the sum of Ten Thousand Two Hundred Dollars with interest at the rate of six percentum per annum, from the

13th day of November, nineteen hundred and nineteen, less the rents, issues and profits received by the said defendant and less the rental value for the occupancy of the said premises by the defendant, on and after November 13, 1919, in excess of any taxes, insurance premiums, sewerage and water rent paid by the defendant since said date.

10 It is further ordered, adjudged and decreed that unless the amount due from the defendant to the complainant for the receipts of said rents, issues and profits together with interest thereon can be agreed upon within 5 days from the date of service as aforesaid of a certified copy of this decree, or upon disagreement as to the amount prior to that time, that it be referred to Wm. M. Clevenger, one of the special Masters of this court, to ascertain and determine the amount, which amount when determined, shall be deducted from the sum of Ten Thousand Two Hundred Dollars and interest, to be paid
20 by the complainant to the defendant.

And it is further ordered, adjudged and decreed that in the event the said defendant failing to make, execute, acknowledge and deliver a deed for said land and premises and said personal property, then and in that case the complainant shall and may pay the amount so found to be due into this court to the clerk thereof, and that upon payment of said amount, the complainant, Daniel R. Lean, Jr., his heirs and assigns shall have a good and sufficient
30 title and estate, in fee simple, to the lands and premises above mentioned and described, free from any encumbrances.

It is further ordered, adjudged and decreed that the complainant have his costs of suit to be taxed against the defendant including a counsel fee of

seventy-five dollars and that he have execution therefor according to law and the practice of this court.

E. R. WALKER,
C.

Respectfully advised:
E. B. LEAMING, V. C.

NOTICE OF APPEAL.

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(Filed June 16, 1920.)

IN CHANCERY OF NEW JERSEY.

<p>Between DANIEL R. LEAN, JR., Complainant, and ANNIE LEEDS, Defendant.</p>	}	<p>On Bill, &c. Notice of Appeal.</p>	20
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The defendant, Annie Leeds, hereby appeals from the whole and every part of the decree made in the above stated cause on June 4, 1920, to the Court of Errors and Appeals in the last resort in all causes. 30

C. L. COLE,
Sol'r. for Defendant.
C. L. COLE,
Of Counsel.

I conceive there is good cause for appeal in the above-stated cause.

C. L. COLE,
Of Counsel.

10

PETITION OF APPEAL.

(Filed June 16, 1920.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

	Between	
20	DANIEL R. LEAN, JR.,	}
	<i>Complainant-Respondent,</i>	
	and	
	ANNIE LEEDS,	
	<i>Defendant-Appellant.</i>	On Bill, &c. Petition of Appeal.

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

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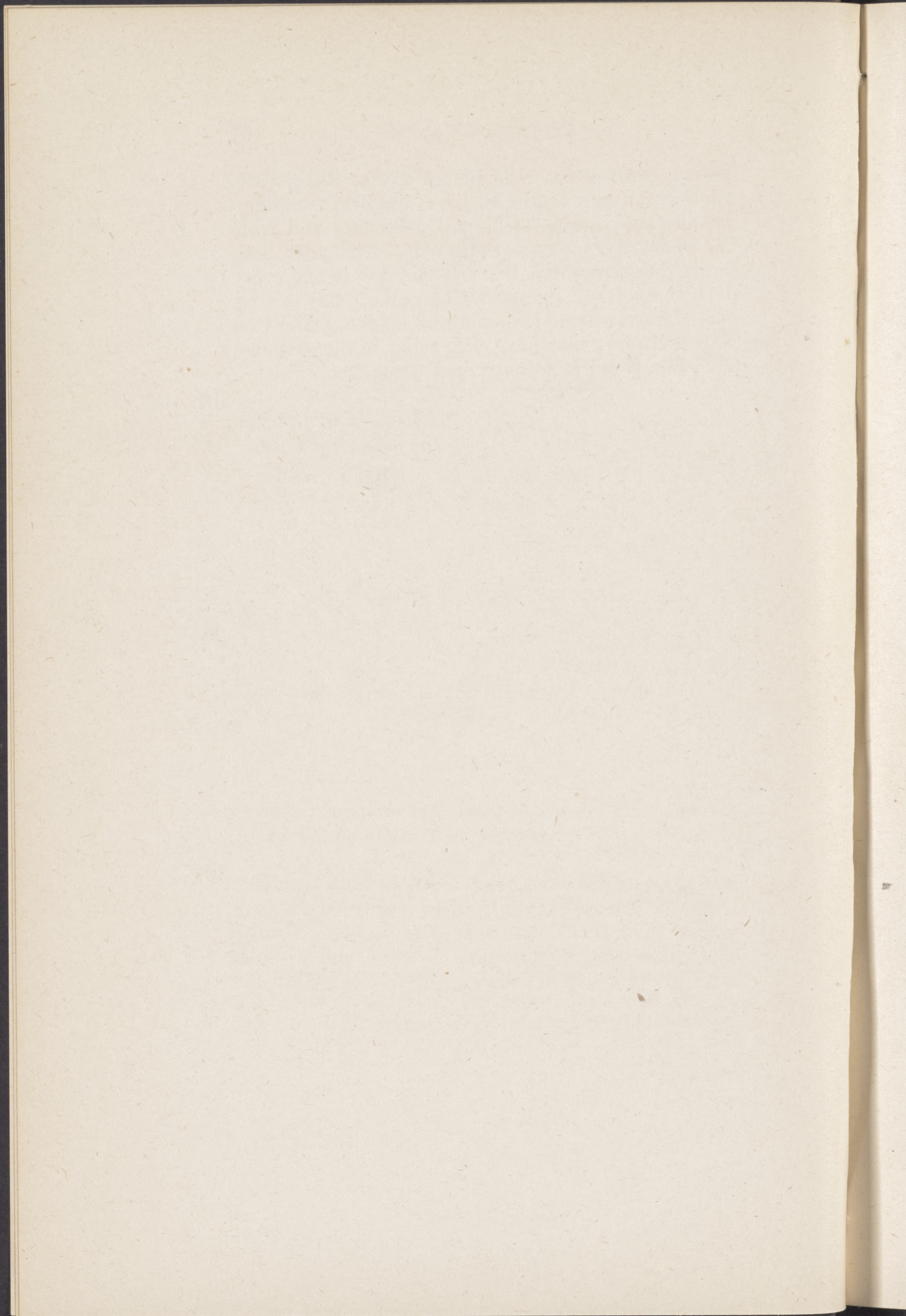
The petition of Annie Leeds, the appellant in the above-stated cause, respectfully shows that your petitioner finds herself aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New

Jersey, bearing date the fourth day of June, 1920, wherein the said Daniel R. Lean, Jr., was complainant and said Annie Leeds was defendant and from the whole and every part thereof. And your petitioner therefore prays that the said decree and every part thereof, of the said Chancellor, may be reversed, set aside and for nothing holden. And that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

C. L. COLE, 10
Sol'r. and of Counsel
with Appellant.

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New Jersey Court of Errors and Appeals

Between
Daniel R. Lean, Jr.,
Complainant-
Respondent,
and
Annie Leeds,
Defendant-
Appellant.

On Appeal from
Chancery.

RESPONDENT'S BRIEF.

The State of Case in the above entitled cause discloses the following:

FACTS.

That on October 15, 1919, the defendant, Annie Leeds, agreed to sell the property situate at 22 North Connecticut Avenue, Atlantic City, New Jersey, to the complainant for the sum of \$10,700.00, and signed the following memorandum:

“10/15/19.”

“For the consideration of Ten Thousand and Seven Hundred Dollars, I do hereby agree to sell property located at 22 North Connecticut Ave. Atlantic City, N. J. to D. R. Lean, Jr.

Linoleum on kitchen and bath rooms, Awnings, Screens, Porch rockers, Glass enclosures included.

Annie Leeds."

That on the date of the signing of the memorandum the complainant paid to the defendant, by check, as per the defendant's request (State of Case, page 12), the sum of five hundred dollars, as is evidenced on the back of the receipt in the manner following:

"10/15/19.

Received of D. R. Lean, Jr. Five Hundred Dollars as first payment on property located at 22 North Connecticut Avenue, Atlantic City, N. J.

Annie Leeds."

(See also State of Case, page 41.)

That prior to the signing of the memorandum aforesaid, the complainant and the defendant had been negotiating for a period of about ten or twelve days (State of Case, page 33) relative to the consummation of the said sale. That during the aforesaid period the defendant had consulted one, Lewis Evans (State of Case, pages 82-83), a relative of hers and president of the Second National Bank of Atlantic City, N. J., who advised her against the sale of the property, as did her son, Charles Leeds, before she would close the deal (State of Case, page 30). That at the time of the actual signing of the agreement there were present besides the complainant and his wife, the defendant and her son, Charles Leeds, note clerk and teller of the Second National Bank of Atlantic City, N. J. (State of Case, pages 11-55), and now in the employ of the United States Government (State of Case, page 55) as well as the

wife of the said Charles Leeds; that the said property was assessed by the City of Atlantic City for the year 1919, in the manner following: Lot \$4000.00; Building \$1800.00; Total \$5800.00. For the year 1920, as follows: Lot \$4600.00; Building \$1800.00; Total \$6400.00.

(State of Case, page 42.)

That on November 10, 1919, (State of Case, page 31) the defendant returned to the complainant the check for \$500.00 by mail; that immediately thereafter, November 11, 1919, complainant by his attorney, caused the check to be certified and sent the same by registered mail to the defendant, which registered letter the defendant refused to accept; that immediately thereafter, November 13, 1919, complainant, by his attorney, tendered \$500.00 in cash to the defendant by tendering said sum to her attorney, C. L. Cole, which the defendant's attorney refused to accept and it was agreed that there was no need of making any further tender of the balance of the purchase price because defendant would not accept the same (State of Case, pages 41-42); that the complainant had ^{no} deposit with the Atlantic City National Bank, Atlantic City, N. J., at all times, within a few days after the memorandum of sale, more than sufficient moneys with which to pay the balance of the purchase price, having called in some mortgages that he owned in Pittsburgh, Pa. (State of Case, page 32); that on the 3rd day of November, 1919, the following advertisement appeared in the Atlantic City Daily Press, a newspaper printed in the City of Atlantic City:

“Hall rack, side board, extension table, dining room chairs, ice chest, laundry table. Apply 22 N. Connecticut Avenue.” (State of Case, page 42.)

ARGUMENT.

It is contended that since the agreement is silent as to when the entire consideration should be paid, that it is defective and unenforceable in equity. The facts above stated show that the complainant was ready and willing to perform, within a reasonable time, and the defendant by her conduct and stipulations made it unnecessary for a further tender of the balance of the purchase price. For it has been held that:

“There is no want of certainty in the contract by reason of the omission to fix a time for the payment of the balance of the purchase money and the delivery of the deed, equity will construe the contract as providing for the delivery of the deed on demand, within a reasonable time, accompanied by a tender of the balance of the purchase money.”

Reynolds vs. Neil, 26 N. J. Eq. 223.

It is next contended that since the agreement is signed only by the defendant it is purely a unilateral one and therefore unenforceable. It is a well established principle of law that

“The contract ceases to be a unilateral one the moment vendee files a bill for specific performance.”

Richards vs. Green, 23 N. J. Eq. 526.

Cited in

Stengel vs. Sergeant, 74 N. J. Eq. 30.

Krah vs. Radcliffe, 78 N. J. Eq. 305.

Krah vs. Wassmer, 75 N. J. Eq. 109.

The next and only point and this a novel one, raised by the defendant, is that a decree for specific performance might seriously affect the mental condition of the defendant and thus the rule of hardship and oppression is sought to be invoked. A careful examination of the cases in our State on the subject of specific performance fails to disclose any adjudication of this novel point. The rule of hardship and oppression deals with that class of cases where the contract is unfair, unreasonable, unjust and unequal in its parts. In the case at bar the evidence discloses that during the year in which the defendant agreed to sell the property it was assessed for only \$5800.00 (lot and building) and this through a rising market, the likes of which has been almost without precedent. Surely there is nothing unfair about an arrangement when it shall bring \$4300.00 in excess of the valuation, especially when the defendant has had such able advice as that of Lewis Evans, President of the Second National Bank, defendant's brother-in-law, and that of her son, a former note clerk and teller in a National Bank and now a National Bank Examiner, and had from ten to twelve days within which to consider it. The evidence is clear, assuming what the defendant says to be true, that it was *after she had signed the contract*, with full knowledge and understanding of what she did, that for the first time it commenced to worry her to the extent that she testified to.

Direct examination by C. L. Cole of Tillie Leeds, daughter-in-law of the defendant (State of Case, page 45):

“Q. Now, when was it for the *first time after this paper was signed* that you heard Mrs. Leeds make objection to the fact that she had signed it and wanted to be relieved of it?”

A. Why, almost immediately after she had gone upstairs to her bed that night, but of course, we went to bed, naturally, it was rather late, and the very next morning she came down and cried bitterly to her son and myself."

Defendant knew well what she was doing at the time she signed the agreement and just what she wanted.

Cross-examination of Tillie Leeds, by Joseph B. Perskie (State of Case, pages 52-53):

"Q. You mean to sit here and tell this Court that as far as the price of that property was concerned it didn't make any difference to you and your husband what she sold it for?

A. Why, certainly the price made a difference, but *she knew what she wanted, it was her home, not ours.*

Q. She knew what she wanted, didn't she, Mrs. Leeds?

A. I suppose, I don't know.

Q. Well, don't you know that she knew what she wanted?

A. Why, no, I thought she knew.

Q. What was there about her action that leads you to the conclusion that you don't think she knew what she wanted about selling this property?

A. Because of the condition she was in.

Q. *Subsequent to the signing of the memorandum—isn't that right? All this that you are talking about happened after October 15, 1919?*

A. *Yes.*

Q. Prior to that time she didn't have any spells of any kind, did she?

A. Well, she hadn't been very well all summer, off and on.

Q. But she didn't go into any scenes like she did here in court this morning?

A. She has since this occurred.

Q. I am talking of prior to October 15th?

A. Prior to that, *no*, not to my knowledge."

In this respect it is interesting to note the testimony of Dr. Stern, on cross-examination, as to just how seriously, if at all, Mrs. Leeds, the defendant, was mentally affected (State of Case, pages 64-65):

"Q. No, I asked you whether or not you ever discussed with Mrs. Williams, the Mrs. Leeds case?

A. I never discussed it with her, no.

Q. Well, did you talk about Mrs. Leeds?

A. As my memory serves me now she casually asked——

Q. Did you or didn't you. That is subject to a yes or no answer.

The Vice-Chancellor: Can't you tell what you said, Doctor? It matters little how it came about.

A. I believe that Mrs. Williams asked me who Mrs. Leeds was.

Q. What did you say?

A. And it is my custom to say, when I have no knowledge of whom I am discussing it with, my patient is doing fine, particularly nervous people.

Q. Did you tell her that your patient—that she was perfectly all right?

A. No, sir.

Q. And if you told her that the patient was perfectly fine, you weren't telling her the truth, were you, Doctor?

A. It is my privilege to tell patients——

Q. I am asking you whether it is the fact?

Mr. Cole: What did you say, Doctor?

Q. I direct your attention to the lady sitting directly in back of Mrs. Williams and ask you whether you recognize her as being present at the time you had this conversation with Mrs. Williams?

A. I think I recall her presence in the house, yes.

Q. Wasn't that on or about the 14th of February, 1920?

A. I would have to look at my records to determine the date.

Q. Have you your records with you?

A. No, sir, I don't carry my books with me.

Q. And you deny that you told her at that time, if it was the 13th or 14th, and that you hadn't seen Mrs. Leeds for a period of five or six weeks and that she was perfectly all right?

A. Mr. Perskie, I think I have the right to make any statement to a patient.

Q. I am asking you whether you did or not. You know, don't you?

The Vice-Chancellor: You are required to answer Mr. Perskie's questions responsively, and he has asked you whether you stated what he just stated. Your counsel will protect you if you need it.

A. I believe that I did make that statement, yes."

This happened on February 14th, 1920, and the case was submitted on April 5th, 1920.

The Court's attention is most respectfully directed, particularly to the examination and cross-examination of Mrs. Leeds (the defendant) herself,

as to how well she remembered dates, names, addresses and the like. The Court's attention is likewise directed to the testimony of Susie Conover, Ella May and Charles S. French, people who have seen the defendant (Mrs. Leeds) for years, prior to October 15, 1919—and have had almost daily opportunity to observe her condition (physical and mental) both before and after October 15, 1919, and all disclaim any knowledge or any evidence of any mental derangement on the part of the defendant.

The authorities agree that even were a person to become insane after an agreement to convey real property had been entered into if sane at the time of the execution of the contract, equity will decree specific performance.

See 36 *Cyc*, 791.

This interpretation has received careful judicial analysis in our State in the case of *Younger vs. Skinner*, 14 N. J. Eq., page 389. The Chancellor in the opinion held:

“Where the vendor is found a lunatic subsequent to the time of the contract to purchase, but prior to the execution of the conveyance, the purchaser may enforce the completion of the contract by a bill for specific performance.

If the proof is clear that an executory contract to purchase was made in good faith, and for a full and fair price, where the lunacy of the vendor was neither known or suspected, and the contract was afterwards executed on the part of the purchaser without the knowledge or belief of the existence of incapacity on the part of the grantor, the contract will be upheld and enforced, even though the incapacity of the grantor at the date of the conveyance should be established.”

If it is the law that the court of equity will decree specific performance where the defendant actually becomes insane after the signing of the contract what merit, if any, can there possibly be in the contention that the decree might seriously affect the mentality of the defendant against whom a decree is sought. The contract in this case being fair and reasonable, just and equal in all its particulars it is clear that the complainant is entitled to the relief sought. Nor is there any merit in the contention that because the agreement of sale included some of the personalty incidental to the property in question, that equitable relief should be denied.

Curtice Bros. vs. Catts, 72 N. J. Eq., page 831.

The contract is, as stated above, sought to be evaded solely by reason of the mental condition of the defendant subsequent to the date of the agreement and not for any equitable causes.

As concluded by the learned Vice-Chancellor, Hon. Edmund B. Leaming:

“The contract was intelligently and fairly made and is just, reasonable, fair and equitable in all its parts.”

The decree should be affirmed with costs.

JOSEPH B. PERSKIE,
*Solicitor and of Counsel with
Complainant-Respondent.*

New Jersey Court of Errors and Appeals

Between

Daniel R. Lean, Jr.,
Complainant-Respondent,
and
Annie Leeds,
Defendant-Appellant.

On Appeal from
Chancery.

STATEMENT.

The bill prays specific performance of an alleged contract to convey land and grant chattels. From the decree in favor of complainant, defendant appeals. The agreement, page 3, is optional in character and wholly lacking in mutuality. It is silent as to when performance is to be had and how payment is to be made. The bill states (page 2) that the consideration was to be paid when the search of the said land and premises had been completed by the West Jersey Title and Guaranty Company, of Atlantic City, N. J.

Within twenty-four hours after signing the option, and before complainant had search made or tendered the balance of consideration, defendant returned check of complainant for \$500.00 paid on account, and rescinded the option.

ARGUMENT.

By the terms of the option, no time being named for payment, the payment was due immediately:

“Where nothing is said about a credit to be given, and there are no circumstances from which an inference can be made that it was the intention of the parties that the time of payment should be postponed, the money is payable immediately.”

Richards vs. Green, 23 Eq. 540.

Defendant tendered the check and rescinded the option before complainant tendered the balance of the purchase price. Defendant has a right to rescind if exercised promptly. Unilateral contracts are not favored and specific performance will generally be denied.

The equities of the parties in such an agreement are fully discussed in *Ten Eyck vs. Manning*, 52 Eq. 47, with many citations. It is said:

“As a general rule, specific performance will not be decreed in any case where mutuality of obligation and remedy does not exist.”

Complainant was not obligated to purchase. By his bill he adds terms to the option which extended his time to pay until a title company could make a search.

Complainant did not tender the balance of consideration until December 6, (p. 28) notwithstanding defendant rescinded the day after the option was signed.

The right to specific performance rests in sound discretion.

Brown vs. Brown, 33 Eq. 655;
Chubb vs. Peckham, 13 Eq. 207;
Plummer vs. Keppler, 26 Eq. 482;
St. John vs. Baron, 73 Atl. R. 422;
Ten Eyck vs. Manning, 52 Eq. 47.

This is a hard case and one where an action at law will compensate the complainant. The property is the home of the defendant and has been during her married life and she has nowhere to go. Complainant has never been in possession, and if the doctrine that the Chancellor has a discretion means anything, that discretion ought to be exercised in this case. There is no question that the son of the defendant was responsible for his mother's having signed the option and she saw almost immediately that she had committed a grave mistake, and that mistake has without doubt affected her mentally. The medical testimony is that it may be serious if she is compelled to surrender her home.

This case appears to be one where equitable discretion should be exercised. The indefiniteness of the option, the fact that it includes chattels (Courts are not inclined to decree performance of contracts for sale of chattels, 5 Eq. 26) the injection of a new element by complainant, and his long delay in tendering payment are elements which might well move the Court to deny equitable relief.

Taking all the circumstances into consideration, it would seem that no hardship will be visited upon the complainant if a decree is refused him, whereas great hardship will fall upon the defendant if the decree goes against her. Failure of the complain-

ant to bind himself to buy and the refusal of the defendant to perform before tender of the consideration are elements which ought to appeal to the Court's discretion.

Respectfully submitted that the decree should be reversed.

C. L. COLE,
Solicitor for Defendant.

New Jersey Court of Errors and Appeals

Complaint Respondent
against

Bank, Inc. a Corporation
Indebted Applicant

STATE OF NEW JERSEY
COURT OF ERRORS AND APPEALS

Page 1

The Court of Chancery had jurisdiction to make complete disposition of the matter in suit.

Debitors, applicants objected to the jurisdiction of the Court in favor of the theory that complainant had a remedy at law. He might, it is true, have recovered a judgment against the respondent, and an order of the court to pay the same. But having obtained an assignment of the stock of the respondent, and having been placed in possession of the same, he was not bound to pay the same to the respondent, but to the assignee, who was the true owner of the stock. The Court of Chancery has jurisdiction of the matter in suit, and the Court of Errors and Appeals has no jurisdiction to review the judgment of the Court of Chancery. The Court of Errors and Appeals has jurisdiction of the matter in suit, and the Court of Chancery has no jurisdiction to review the judgment of the Court of Errors and Appeals.

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