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I

(Filed July 7, 1923)

In Chancery of New Jersey

To His Honor Edwin Robert Walker,
Chancellor of the State of New Jersey.

The complainants Nathan Rabinowitz and David Laderman, both residing in the City of Paterson, County of Passaic and State of New Jersey, respectfully show that:

1. On or about the 19th day of April, 1923, and prior to that date and at the present time, the defendants, John Rooney, Thomas C. Rooney, Bridget Rooney, Elizabeth Rooney, Annie Rooney, Mary Rooney and Mary A. Rooney, all of whom live in the County of Passaic aforesaid, were seized in fee simple and possessed as tenants in common, of all that certain lot, tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the City of Clifton, County of Passaic and State of New Jersey, being known as Block 164 K, Plot Lot 240, Main Avenue, Clifton, New Jersey, and being 6¼ acres, Building 2 H. B. as described and set forth on the City of Clifton Tax Certificate, 1922, No. 3356, Estate of James Rooney, consisting of said block, together with the buildings thereon and appurtenances thereto.

2. On or before the date last aforesaid, all of the said defendants above stated, except the defendant, John Rooney, duly authorized and empowered the said John Rooney, as their agent and attorney-in-fact to make and execute for them and on their behalf, the articles of agreement made the 19th day of April, 1923, hereinafter more particularly set forth.

3. Pursuant to the power and authority as aforesaid, on the 19th day of April, 1923, the said John Rooney, as such attorney-in-fact for said other defendants, and individually for himself, as such owners of real estate, entered into and executed an agreement for the sale of said lands and premises to the said complainant, David Laderman and Morris E. Frishman, both of the City of Paterson aforesaid, wherein and whereby the said defendants, as parties of the first part therein, among other things, covenanted and agreed with the said David Laderman and Morris E. Frishman as parties of the second part therein that in consideration of the sum of Twenty Thousand Dollars, to be paid and satisfied as thereinafter mentioned and also in consideration of the covenants and agreements thereinafter mentioned, that they the said parties of the first part would well and sufficiently convey to the said parties of the second part, their heirs and assigns, by deed of warranty, free from all encumbrances, on or before the 1st day of July, next ensuing the date thereof, all of the said premises hereinbefore mentioned and set forth and the said parties of the first part therein, for themselves, their heirs, executors and administrators, did covenant, promise and agree to and with the said parties of the first part, their heirs, executors, administrators and assigns, that the parties of the second part would pay and satisfy or cause to be paid and satisfied unto the said parties of the first part the said sum of Twenty Thousand Dollars, as and for the purchase money of the said land and premises in the following manner, that is to say; on the execution of said agreement, for which said agreement was also agreed to be a receipt, the sum of One thousand dollars

and on the delivery of said deed mentioned in said agreement, cash for the sum of Nineteen thousand dollars, making a total purchase price of Twenty thousand dollars. And it was therein further covenanted and agreed between said parties thereto that the said parties of the second part, their heirs and assigns, might enter into and upon said land and premises on the said first day of July, next ensuing the date thereof and from thence take the rents, issues and profits to them and their use and that said deed of warranty shall be delivered and received at the office of Albin Smith, Room 504, 152 Market Street, Paterson, New Jersey, on the first day of July, next ensuing the date hereof. A copy of said last named agreement is hereto annexed and forms part hereof and is marked Exhibit No. 1, to which complainants refer for a more particular statement of the matters therein contained.

4. Prior to the making of said last named agreement, the said John Rooney having full power and authority from all of the said owners of said property, except himself, to make the option hereinafter stated on behalf of the said last named owners, on April 16, 1923, gave an option to the said Morris E. Frishman and David Laderman to purchase said land and premises for the said sum of Twenty thousand dollars, which option by its terms, was to expire on the 27th day of April, 1923, and the said agreement hereinbefore set forth, was made while said option was in full force and effect; a copy of said option is annexed hereto and forms a part hereof and is marked Exhibit No. 2, to which the complainants refer for a more particular statement of the matters therein set forth.

5. Although the said John Rooney had full power and authority as aforesaid to make said agreement of the 19th day of April, 1923, on behalf of himself and the other said defendants, nevertheless, in order that said power and authority might be expressed in writing and that the said agreement of April 19, 1923, might be confirmed and ratified, the said John Rooney and all of the other said defendants agreed and expressed in writing, made and signed by each of them, and confirmed and ratified the said power and authority of said John Rooney and the said agreement made by him, which last named writing was made on the 20th day of April, 1923, a copy of which signed by all of the said defendants, is hereunto annexed and made a part hereof, and is marked Exhibit No. 3, to which complainants refer for a more specific statement of the matters therein contained.

6. At the time of the making of said agreement of the 19th day of April, 1923, the said Morris E. Frishman and David Laderman each gave his check to said John Rooney for himself and as attorney as aforesaid, for the said other defendants for the sum of Five Hundred Dollars each, which checks were received by said John Rooney for himself and as attorney as aforesaid, and have been collected by him, retained for the said defendants who still retain the same, which checks are in the possession of the complainants and ready to be produced on the hearing before this Honorable Court, if required.

7. On or about the 1st day of June, 1923, the said Morris E. Frishman duly assigned, transferred and set over unto the said David Laderman, all the right, title and interest of the said Morris

E. Frishman in and to said contract dated April 19, 1923, on the date last aforesaid, for a good and valuable consideration, and the said David Laderman on the said 1st day of June, 1923, assigned, transferred and set over unto the complainant, Nathan Rabinowitz, all the undivided one-half interest of said David Laderman in and to the said contract, dated April 19, 1923, which assignments are in the possession of complainants and ready to be produced at the hearing hereof, if necessary. By reason of said last named assignment the said complainants now have equal rights and interest in said agreement dated the 19th day of April, 1923.

8. After the making of said written agreement dated the 19th day of April, 1923, the said John Rooney informed the complainant, David Laderman, that one of the said defendants, Elizabeth Rooney, stated to him that she was dissatisfied because said agreement had been made, and the said John Rooney then stated to him that the said Elizabeth Rooney had denied to him that she had properly authorized him to make said agreement on her behalf. The said John Rooney, however, then stated to said complainant, David Laderman, that the said Elizabeth Rooney and all the other defendants had in fact given him, said John Rooney, full power and authority to make said agreement. The said John Rooney then further said that said Elizabeth Rooney after the said agreement had been signed, had been thinking the matter over and concluded that she did not wish to leave the old home where the family lived for fifty years and that he thought she would be unwilling to sign the deed. The said John Rooney

has never denied to the said David Laderman, Morris E. Frishman or Nathan Rabinowitz that he had full power and authority to make said agreement according to its terms, dated April 19, 1923, on behalf of himself and all the said defendants. The said John Rooney also asked the said David Laderman whether the said David Laderman would not agree to cancel and put an end to the said agreement if the said defendants would give them a consideration for so doing and named the sum of Eight Hundred Dollars as such consideration, to which the said complainant, David Laderman emphatically refused and stated that he would stand strictly on the terms of said agreement and require complete fulfillment thereof by all of said defendants. Thereafter the said complainant, Nathan Rabinowitz, who had acquired a one-half interest in said contract as aforesaid, in company with the said David Laderman, saw the said defendants, John Rooney and Thomas Rooney and were then informed by said John Rooney that all of the said defendants, except Elizabeth Rooney, were willing to carry out said agreement according to its terms, and that all of the said defendants had personally signed his and her name to said writing, of the 20th day of April, 1923, except Elizabeth Rooney and that the name of Elizabeth Rooney had been signed by the defendant, Bridget Rooney. Thereupon the said John Rooney stated that the said Elizabeth Rooney denied that she had authorized her signature to said last named paper. Thereafter the complainant, Nathan Rabinowitz and the said complainant, David Laderman, saw the said Bridget Rooney and the said Elizabeth Rooney at their

home at Clifton, on the said premises and said Nathan Rabinowitz then asked the said Elizabeth Rooney whether or not she intended to fulfill the said agreement on her part and the said Elizabeth Rooney then replied that she had not signed the said paper dated April 20, 1923. Said Nathan Rabinowitz then asked her whether or not she was not present when it was signed and she stated that she was present when it was signed but said that Bridget Rooney had signed her name for her and Elizabeth Rooney then admitted, in the presence of said complainants, Nathan Rabinowitz and David Laderman, that the said Bridget Rooney had signed said writing for the said Elizabeth Rooney. When the said Nathan Rabinowitz asked the said Elizabeth Rooney whether she would fulfill said agreement of April 19, 1923, and sign said deed, she did not say whether she would fulfill said last named agreement and sign said deed or not but stated that the matter ought to be in some way settled. Thereafter the said Thomas Rooney, in a conversation with the said Nathan Rabinowitz in Paterson, stated to the said Nathan Rabinowitz that the said defendants did not intend to fulfill said agreement dated April 19, 1923.

9. Thereafter after said conversation with said Thomas Rooney and Nathan Rabinowitz the said Nathan Rabinowitz and David Laderman caused to be served on each of the said defendants in writing a notice, stating among other things, that the said complainants were ready and willing to perform in every respect all the terms and provisions of said agreement dated the 19th day of April, 1923, a copy of which was annexed to said notice, and that they would insist that each of

said defendants should perform its terms and conditions on their part, which said notice further stated that inasmuch as the 1st day of July, 1923, the day on or before which the said deed was to be delivered, fell on Sunday and the law provided that the said transaction should be performed on the day following, namely, July 2, 1923, the subscribers were ready and willing to pay the full amount required by them, to be paid as provided in said agreement and to fully perform in every respect everything required by them as required in said agreement, and that they would insist that each of said defendants should duly execute and deliver said deed for the property and that each should perform what was required in said agreement and that, if the said defendants preferred to execute and deliver said deed at any time prior to July 2, 1923, and to fulfill the terms of said agreement, said complainants stood ready and willing to pay said sum as provided in said agreement and to do everything on their part as provided in said agreement and that unless each of the said defendants performed said agreement on their part as therein provided or refused or neglected to do so, the said complainants should take such proceedings and enforce such remedies against the defendants as they were entitled to. And said notice further stated that Maurice E. Frishman had duly assigned all his right, title and interest in said agreement to the said David Laderman and that the said assignment of said interest of the said David Laderman had been duly assigned to the said complainant, Nathan Rabinowitz, and that thereby the whole interest of said agreement was in said David Laderman and

Nathan Rabinowitz and that the said deed should therefore be made to the said David Laderman and Nathan Rabinowitz as grantees, to which the said David Laderman agreed and directed that said deed should be made to said David Laderman and Nathan Rabinowitz as grantees, and said notice further requested that the said defendants should advise the said complainants of the intention of said defendants with reference to said matter; which notice so served upon said defendants was annexed to a copy of said agreement of the 19th day of April, 1923. Said last named notice and agreement was duly served personally upon each one of the said defendants on or about June 22, 1923, and June 25, 1923, a copy of which said notice is hereto annexed and marked Exhibit 4, to which the said complainants refer for a more particular statement of the matters therein contained.

10. None of the said defendants have expressed to the complainants or either of them what their intentions would be with reference to their fulfillment of said agreement, as requested in said notice since the service of said notice.

11. The complainant, Nathan Rabinowitz, having learned that the said defendants had retained Michael Dunn, Esquire, of the City of Paterson, as their attorney and counsel, informed said Michael Dunn as such counsel that the complainants would insist upon the strict fulfillment of the said agreement of April 19, 1923, in every respect and that they were ready and willing on their part to fully perform in every respect what they were required to perform under the terms of said agreement and asked the said Michael Dunn what the intentions of said defendants was in that respect

and that the said Michael Dunn stated that he was acting as their lawyer and counsel in said matter for said defendants and that some of the defendants were unwilling to perform said contract and some of them said that they had not signed the papers dated April 20, 1923, and had not authorized said agreement of April 19, 1923, to be made and he stated that he was unable to say what their intentions were about the matter.

12. Thereafter on June 30, 1923, Nathan Rabinowitz and David Laderman wrote and delivered to the said Michael Dunn a letter, repeating their attitude in the matter and stated, among other things, that they would be ready and willing and would insist upon the performance of said agreement and be ready and willing to do everything on their part to be done according to its terms, a copy of which letter is hereto annexed and marked Exhibit 5 and to which complainants refer for a more particular statement of the matters therein contained.

13. Neither of the said defendants or their counsel have made any response whatsoever to said letter or in any respect stated what their intentions were with reference to carrying out said agreement. None of the said defendants or their said counsel appeared at the office of Albin Smith at any time during the second day of July, 1923, or sent any word to the complainants or either of them with reference to their intentions as to carrying out said agreement. The said complainants during all of said second day of July, 1923, were present at the said office of the said Albin Smith, ready and willing and desirous on their part of paying the remaining consideration, for said deed,

which they then had in hand for said payment and were ready and willing to receive the said deed and to do everything on their part that they were required to do according to said agreement dated April 19, 1923.

14. The said defendants and each of them have failed and refusel to execute said deed according to said agreement or to carry out its terms and still refuse so to do.

15. Complainants charge that each of said defendants, other than said defendant John Rooney, duly authorized said John Rooney to sign and execute said agreement of April 19, 1923, as aforesaid, and also duly affirmed and ratified same as aforesaid and that each of said defendants are bound to specifically perform the same.

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

1. That said John Rooney, Thomas C. Rooney, Bridget Rooney, Elizabeth Rooney, Annie Rooney, Mary Rooney and Mary A. Rooney, who are defendants in this suit, may answer this bill of complaint without oath and each and every statement therein made, fully and particularly.

2. That the said defendants and each of them may be compelled by the decree of this court specifically, to perform the said agreement of April 19, 1923, with the complainants, the complainants being willing and ready and hereby, offering specically to perform said agreement on their part.

3. The complainants pray in the alternative that if it should be held by this court that the said Elizabeth Rooney, or any one or more of said defendants did not authorize the making and execution of said agreement of April 19, 1923, so that

she or they may not be liable to specifically perform the same, then that the same may by the decree of this court be specifically performed by the defendant John Rooney and all other defendants, who shall be found to have authorized the making and execution thereof, and liable to the specific performance thereof; and that said defendant, John Rooney who signed said agreement of April 19, 1923, as attorney for said other defendants, and any other defendant who signed the name of any defendant other than himself or herself to said writing of April 20, 1923, may by the decree of this court be compelled to pay to the complainants all just compensation or damages, as the principles of equity may require, which said complainants may sustain by reason of the inability of the said complainants to compel each specific performance by all or any of the defendants, on account of the unauthorized act of said defendant, John Rooney, or any other defendant or defendants, in case such act shall be held by the decree of this court to be unauthorized.

4. That the defendants and each of them be restrained and enjoined by the decree of this court, from selling, leasing, encumbering or in any wise charging or disposing of said land and premises or any part thereof, other than to perform said agreement of April 19, 1923, with the complainants.

5. That a writ of subpoena may issue, commanding said defendants to answer this bill of complaint and to abide by such decree, as this court may make in the premises.

6. That the complainants may have such other and further relief as may be equitable.

John W. Harding,
Solicitor and Counsel with
Complainants.

Articles of Agreement, made the nineteenth day of April, in the year of Our Lord One Thousand Nine Hundred and Twenty-three, between Estate of James Rooney, by John Rooney, attorney-in-fact, of the City of Clifton, in the County of Passaic and State of New Jersey, party of the first part, and David Laderman and Maurice E. Frishman, of the City of Paterson, in the County of Passaic and State of New Jersey, party of the second part, Witnesseth:

That the said party of the first part, for and in consideration of the sum of Twenty Thousand Dollars, to be paid and satisfied as hereinafter mentioned, and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, doth agree to and with the said party of the second part, that he the said party of the first part, will well and sufficiently convey to the said party of the second part, their heirs and assigns, by Deed of Warranty, free from all encumbrance, on or before the first day of July, next ensuing the date hereof, all that certain lot, tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Clifton, in the County of Passaic and State of New Jersey.

Being known as Block 164 K, plot lot 240, Main Avenue, Clifton, New Jersey, and being six and one quarter acres, building 2 H. B. as described and set forth on the City of Clifton Tax Certificate, 1922, No. 3356, Estate of James Rooney.

And the said David Laderman and Maurice E. Frishman, for themselves, their heirs, executors and administrators, doth covenant, promise and agree to and with the said party of the first part,

New Jersey State Library

his heirs, executors, administrators and assigns, that they the said party of the second part, will pay and satisfy, or cause to be paid and satisfied, unto the said party of the first part, the said sum of Twenty Thousand Dollars, as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say:

On execution of this agreement for which this is also a receipt $ 1,000.00

On delivery of deed, cash 19,000.00

On Bond and Mortgage, same containing usual interest, tax, assessment, insurance and default clauses, and an agreement not to claim credit on the interest payable on the bond and mortgage, by reason of any tax assessed, or to be assessed against the premises, with interest, at $ payable for years $

Total $20,000.00

And the said party of the first part agrees to pay to a commission of % on the purchase price aforesaid, said commission to be paid in consideration of services rendered in consummating this sale; said commission to be paid upon delivery of deed.

And it is further agreed, by the parties to these presents, that the said party of the second part, their heirs and assigns, may enter into and upon the said land and premises on the first day of July, next ensuing the date hereof, and from thence take the rents, issues and profits to them and their use.

And it is further agreed, by the parties hereto,

that the said Deed of Warranty shall be delivered and received at the office of Albin Smith, Room 504, 152 Market Street, Paterson, New Jersey, between the hours of in the noon and o'clock in the noon on the said first day of July, next ensuing the date hereof.

The rents of said premises, insurance premiums, water rents, taxes and interest on mortgage, if any, shall be adjusted, apportioned and allowed as of the day of delivery of said deed.

Gas and electric fixtures, gas stoves, hot water heaters and chandeliers, carpets, linoleum, mats and matting in halls, screens, shades, awnings, ash cans, heating apparatus, if any, and all other personal property appurtenant to or used in the operation of said premises is represented to be owned by seller and is included in this sale.

The risk of loss or damage to said premises by fire or otherwise until the delivery of said deed is assumed by the parties of the first part.

In case the premises shall suffer injury beyond the ordinary wear and tear, the party of the first part, shall repair the damage before the date set for delivery of said deed, or make an appropriate deduction from the purchase price herein stated.

It is understood and agreed that the buildings upon said premises are all within boundary lines of the property as described in the deed therefor, and that there are no encroachments thereon and that the buildings comply with municipal ordinances and regulations and the provisions of the New Jersey State Tenement House Act as enforced by the State Board of Tenement House Supervision, to be shown by the report of the de-

partment or board enforcing the same where such ordinances, regulations and said act apply.

It is expressly understood and agreed that the title to the land and premises hereby agreed to be conveyed is not derived from any Martin Act proceedings or any Act for the Sale of Land for non-payment of the municipal taxes or assessments.

If at the time for the delivery of the deeds, the premises or any part thereof, shall be or shall have been affected by an assessment or assessments which are or may become payable in annual installments of which the first installment is then due or has been paid, then for the purposes of this contract all unpaid installments of any such assessment, including those which are to become due and payable after the delivery of the deed, shall be deemed to be due and payable and to be liens upon the premises affected thereby and shall be paid and discharged by the seller thereof, upon the delivery of the deed.

And for the performance of all and singular the covenants and agreements aforesaid, the said parties do bind themselves and their respective heirs, executors and administrators, and they hereby agree to pay, upon failure to perform the same, the sum of which they hereby fix and settle as liquidated damages therefor.

In Witness Whereof, the said parties have hereunto interchangeably set their hands and seals the day and year first above mentioned.

Estate of James Rooney
John Rooney, Atty. (L. S.)
David Laderman (L. S.)
Maurice E. Frishman (L. S.)

Signed, sealed and delivered
in the presence of
Albin Smith.

In consideration of ($) Dollars to in hand paid hereby assigns to this contract and all rights thereunder.
Witness hand and seal this day of A. D. 19

State of New Jersey
County of Passaic ss.

Be it remembered, That on this nineteenth day of April, in the year of Our Lord One Thousand Nine Hundred and Twenty-three, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared John Rooney, attorney in fact, of the Estate of James Rooney, who, I am satisfied is the grantor mentioned in the within Instrument, to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

A Master in Chancery of N. J.

To: Thomas C. Rooney, Bridget Rooney, Elizabeth Rooney, Annie Rooney, Mary Rooney, John Rooney and Mary A. Rooney.

You and each of you are hereby notified that the undersigned are ready and willing to perform in every respect, all the terms and provisions of the contract dated the nineteenth day of April, Nineteen Hundred and Twenty-three, a copy of which is hereto annexed, and will insist that you and each of you shall on your part perform all the terms and conditions therein contained.

The said contract provides that the deed therein mentioned shall be delivered and received at the office of Albin Smith, Room 504, 152 Market Street, Paterson, New Jersey, on the first day of July, 1923. Inasmuch as the first day of July falls on Sunday, the law provides that said transaction shall be performed on the following day, namely, July 2, 1923, at which time the subscribers are ready and willing to pay the full amount required by them to pay, as provided in said contract and to fully perform in every respect everything required by them as provided in said contract. And they will insist that you and each of you shall duly execute and deliver the deed for the property mentioned in said agreement, and that you and each of you do and perform what is required of you under said agreement.

And you and each of you are hereby further notified that if you prefer to execute and deliver said deed at any time prior to July 2, 1923, and fulfill and carry out the terms of said contract, that we stand ready and willing to pay said sum as provided in said agreement and do everything on our part as provided in said agreement.

Unless you and each of you perform on your part said agreement as therein provided and refuse or neglect so to do we shall take such proceedings and enforce such remedies against you as we are entitled to.

Maurice E. Frishman duly assigned on June 1, 1923, all his right, title and interest in said agreement to David Laderman since the making of said contract and since said assignment of said interest said David Laderman was duly assigned on June 1, 1923, the undivided one-half interest in

said agreement to the subscriber, Nathan Rabinowitz, whereby the whole interest in said contract is in David Laderman and Nathan Rabinowitz and said deed should therefore be made to said David Laderman and Nathan Rabinowitz as grantees and the subscriber, David Laderman, hereby agrees and directs that said deed should be so made to said David Laderman and Nathan Rabinowitz as grantees.

Kindly advise us of your intentions with reference to the matter.

Yours truly,
Nathan Rabinowitz,
152 Market St., Paterson, N. J.
David Laderman,
26 Bridge St., Paterson, N. J.

June 30, 1923

Michael Dunn, Esquire,
Romaine Bldg.,
Paterson, N. J.

Dear Sir:-

In order that there may be no possible question as to our attitude in the matter of the Rooney contract, this is to put in writing what Mr. Harding and myself expressed verbally to you today; that I and David Laderman shall be ready and willing and insist on the performance of the contract on Monday, July 2, 1923, at the office of Albin Smith, 152 Market Street, Paterson, N. J., and shall be ready and willing to pay the consideration and do everything on our part to be done according to the terms of the contract; that we will not agree to postpone its performance in any respect or make any agreement or do anything whatsoever by

which you or your clients can consider that we are in any respect whatever to modify its performance according to its terms. The suggestion made by you that you would report your clients' decision on Tuesday next is of course entirely unacceptable to us, and you are not to consider such suggestion as acceptable to us, and you are not to consider that by your said suggestion we in any respect whatever are to depart from our attitude of having the contract performed according to its terms, as above stated.

We repeat that we are putting in writing our attitude as already clearly expressed to you verbally a short time ago today in order that there may be no possible dispute or question as to our attitude in the matter.

Yours truly,
Nathan Rabinowitz,
David Laderman.

April 16th, 1923.
Paterson, N. J.

This is to certify that I, John Rooney, of the City of Clifton, hereby agrees to give an option to Maurice E. Frishman and David Laderman of the City of Paterson, on my property, consisting of six acres of land and two houses running from Main Avenue to Day Street for the sum of Twenty Thousand dollars ($20,000). This option expires April 27th, 1923.

John Rooney.

April 20, 1923.

We, the undersigned heirs of James Rooney, do appoint John Rooney with power of attorney, and do invest him with full power to act in our behalf on sale of estate of the late James Rooney.

Thomas C. Rooney
Bridget Rooney
Elizabeth Rooney
Annie Rooney
Mary Rooney
John Rooney
Mary A. Rooney

(Filed August 3, 1923)

IN CHANCERY OF NEW JERSEY

Between
Nathan Rabinowitz and David Laderman,
Complainants,
and
John Rooney, Thomas C. Rooney, Bridget Rooney, Elizabeth Rooney, Annie Rooney, Mary Rooney and Mary A. Rooney,
Defendants.

On Bill, etc.

ANSWER

The answer of the defendants, John Rooney, Thomas C. Rooney, Bridget Rooney, Elizabeth Rooney, Annie Rooney, Mary Rooney and Mary A. Rooney, of the City of Clifton, County of Passaic and State of New Jersey.

These defendants answering the Bill of Complainant say that:

1. They admit paragraph 1 of the complaint.
2. Paragraph 2 is denied.
3. As to paragraph 3 of the bill of complaint these defendants, with the exception of John Rooney, deny that the said John Rooney was their attorney in fact, and deny that on the 19th day of April, 1923, the said John Rooney had power or authority from them to enter into and execute the agreement set forth in the bill of complaint, a copy

of which agreement is annexed to the bill of complaint.

The defendant John Rooney admits that he signed the contract referred to in paragraph 3 of the bill, but that at the time of executing the said contract he did not have authority so to do from the other defendants, and so informed the complainant David Laderman and Morris E. Frishman, the assignor of the complainant, Nathan Rabinowitz.

4. As to paragraph 4 of the bill of complaint, these defendants, with the exception of John Rooney, deny that the said John Rooney had power or authority from them or any of them to execute the option referred to in paragraph 4 of the said bill of complaint, and they say that they had no knowledge of the execution of said option by the defendant, John Rooney, and say that they never consented to the execution of the alleged option. The defendant John Rooney admits that he signed the option referred to in paragraph 4 of the bill, but that at the time of executing the said option he did not have any authority so to do from the other defendants, and that he did not purport to act for them as an inspection of the option will show.

5. As to paragraph 5 of the bill of complaint, these defendants deny that John Rooney had power or authority to make the agreement referred to as Exhibit No. 1 annexed to the bill of complaint, and they deny that they ratified or confirmed the alleged agreement dated April 19, 1923, and referred to as Exhibit No. 1 annexed to the bill of complaint; and say that the said defendants, Elizabeth Rooney and Mary Rooney did

not sign the writing dated April 20, 1923, referred to as Exhibit No. 3 in the bill of complaint, nor did they authorize any one to sign their names to said writing for them; that the defendants, Bridget Rooney and Annie Rooney signed the said paper writing upon the representation to them made by one Joseph Rooney, that the purpose of the signing was to obtain a list of the names of all the heirs having an interest in the property; that the defendants, Thomas C. Rooney, John Rooney and Mary A. Rooney admit that they signed the said paper but deny that by so doing they ratified the agreement dated April 19, 1923, and referred to as Exhibit No. 1 in the bill of complaint.

6. As to paragraph 6 of the bill of complaint, these defendants deny that said two checks for $500 each were given to John Rooney as attorney for them, and deny that said checks were received by John Rooney as attorney for them and deny that the said checks were collected by him as their attorney and the proceeds thereof retained by him as their attorney.

7. As to paragraph 7 these defendants have no knowledge or information sufficient to form a belief respecting the matters therein set forth.

8. As to paragraph 8 of the bill of complaint, these defendants, with the exception of John Rooney, say that they have no knowledge or information sufficient to form a belief as to the matters therein set forth except as hereinafter specifically stated, but they aver the fact to be that the said John Rooney was not authorized by them or any of them to represent them or to make any statement by their authority.

The defendant, John Rooney, denies that he informed the complainant David Laderman that

Elizabeth Rooney stated to him that she was dissatisfied because said agreement had been made, but admits that he told said Laderman that said Elizabeth Rooney had denied that he had been authorized by her to make said agreement on her behalf. This defendant denies that he stated to complainant Laderman, that all the other defendants had in fact given him full power or authority to make said agreement and he also denies that he stated that "Elizabeth Rooney after the said agreement had been signed had been thinking the matter over and concluded that she did not wish to leave the old home where the family had lived for fifty years and that he thought she would be unwilling to sign the deed" and says that said Elizabeth Rooney never authorized him to enter into said agreement and that said Elizabeth Rooney never intended to sell her interest in the said property, and did not authorize anyone to act for her to do so. This defendant avers that he informed said David Laderman and Morris E. Frishman that he did not have full power or authority to execute the agreement dated April 19, 1923, for the other defendants. This defendant admits that he requested said Laderman to cancel said agreement and admits that he offered them $800 as consideration therefor, in addition to the return of the deposit of $1000. which he had previously received, but denies that the said Laderman refused on the ground that he would require complete fulfillment of the contract according to its terms, and avers the fact to be that he made the said offer in order to avoid litigation, and that said Laderman demanded $1000. in addition to the

return of the deposit of $1000 as consideration for cancelling the contract which the said John Rooney refused to pay. This defendant denies that he informed Nathan Rabinowitz that all the said defendants except Elizabeth Rooney were willing to carry out the agreement according to its terms and denies that all of said defendants had personally signed his or her name to the writing referred to as Exhibit No. 3 in the above complaint, except Elizabeth Rooney and that her name had been signed by Bridget Rooney, and avers the facts to be as set forth in paragraph 5 of the Answer. This defendant admits that he stated that Elizabeth Rooney denied that she had authorized her signature to the paper referred to as Exhibit No. 3.

Defendant Elizabeth Rooney admits that she informed Nathan Rabinowitz that she had not signed the paper referred to as Exhibit No. 3 and admits that she informed him that she was in the house at the time the paper was signed, and that the words "Elizabeth Rooney" were written by Bridget Rooney, but avers the fact to be that Bridget Rooney had no authority to sign her name the said Nathan Rabinowitz that the matter or bind her in any way, and admits that she told should be settled.

The defendant, Thomas C. Rooney, admits that he informed said Nathan Rabinowitz that said defendants would not fulfill the agreement dated April 19, 1923.

9. As to paragraph 9 of the bill of complaint these defendants admit that they were personally served with a copy of the notice referred to as Exhibit No. 4, to which notice was annexed a copy of

the agreement dated April 19th, 1923, referred to as Exhibit No. 1 in the bill of complaint.

10. Paragraph 10 is admitted.

11. As to paragraph 11 of the bill of complaint these defendants admit that they retained Michael Dunn as their counsel, but say that they have no knowledge or information sufficient to form a belief as to the allegations set forth in the remainder of the paragraph.

12. As to paragraph 12 of the bill of complaint these defendants say that they have no knowledge or information sufficient to form a belief as to the allegations therein set forth.

13. As to paragraph 13 of the bill of complaint these defendants admit the allegations in so far as they refer to them but say that they have no knowledge or information sufficient to form a belief as to the allegations made with reference to their counsel, or as to the allegations relating to the complainants on the second day of July, 1923, as set forth in said paragraph.

14. As to paragraph 14 of the bill of complaint these defendants admit that they did not execute a deed to complainants and deny that there was any agreement by which they were bound to execute the said deed.

15. Defendants deny the charge set forth in paragraph 15 of the bill of complaint.

Michael Dunn,
Solicitor for and of Counsel
with Defendants.

XXVIII
Replication

(Filed August 25, 1923)

IN CHANCERY OF NEW JERSEY

Between
David Laderman and Nathan Rabinowitz,
Complainants,
and
John Rooney, Thomas C. Rooney, Bridget Rooney, Elizabeth Rooney, Annie Rooney, Mary Rooney and Mary A. Rooney,
Defendants.

REPLICATION

Complainants join issue on the answer of the defendants.

John W. Harding,
Solicitor for Complainants.

XXIX
Memorandum-Opinion

(Filed May 12, 1925)

IN CHANCERY OF NEW JERSEY

Between
Nathan Rabinowitz and David Laderman,
Complainants,
and
John Rooney et als.,
Defendants.

MEMORANDUM-OPINION

On pleadings and proofs.

Mr. John W. Harding, for complainants.

Mr. Michael Dunn and Arthur C. Dunn, for defendants.

Lewis, V. C.:

This is on bill for specific performance. An option was given by John Rooney to sell his property April 16, 1923. On April 19, 1923, there was a formal contract to sell, signed by John Rooney, as attorney in fact for the estate of James Rooney. On April 20, 1923, power of attorney was given to John Rooney to act for the heirs on the sale of the property, which was signed by some of the heirs for themselves, and also signed for the others but without authority. John and Thomas Rooney undoubtedly signed these agreements and are bound by them. The other heirs claim that they never authorized or ratified the contract of April 19, 1923; and that those who signed the power of attorney of April 20th (which complainants refer

to as the "ratifying agreement") did not know its contents, and that they supposed that they were furnishing a list of the heirs only.

Specific performance is only to be exercised in the sound discretion of the court, and is not a matter of right.

To warrant specific performance the proof must be clear and convincing.

If the proof is substantially evenly balanced, or if the court is left in doubt because of the lack of clearness of it, it denies specific performance and leaves the parties to their remedy at law.

Lindley v. Keim, 54 N. J. Eq., 418.

The testimony seems to be sufficient for the court to decree specific performance against John Rooney and Thomas Rooney, but is very insufficient and doubtful with relation to the other heirs. They deny having ever authorized the contract, or that they ratified it. The complainants have tried to make out a case based upon inferences and possibilities, and circumstantial deductions, to fasten the contract upon the other heirs; but in the face of their positive denials, it is difficult to see how this testimony is to prevail against them.

Farrier v. Shaw, 118 Atl. Rep., 339.

The relief of specific performance is discretionary, and when the testimony is substantially in balance, or weighs about evenly, or when it leaves the court in doubt, the undoubted rule is, that specific performance will be denied, and the parties will be left to their remedy at law.

Under these circumstances it would seem the complainants are entitled to specific performance as against John and Thomas Rooney, if they de-

sire it, for their interest in the land, but upon payment of the full purchase price.

I do not see where the court has the power to force a new contract on the parties and say that they should take less than the purchase price agreed upon; particularly where it is clear, as it is in this case, that the purchasers knew that there were outstanding interests which might not have authorized the making of the contract.

If complainants do not see fit to take a decree for specific performance against John and Thomas, for their interests, upon payment of the full consideration agreed upon, then they may elect to have the bill dismissed.

As to the other defendants, I think that specific performance should be denied.

In order that there may be a ratification of a preceding act or document, all the details of the act, and all the terms of the document must be brought home to the attention of the party whose ratification is sought. He only ratifies those things which are brought home to him as having already been done. That principle is well established.

The first instrument executed by John Rooney, as has been stated already, was an agreement to sell his property. A few days later the second document as executed by John Rooney as attorney for the estate of the decedent. That was the printed, formal agreement to sell the property in question. Almost immediately after that was executed the prospective purchasers appeared to have conceived the idea that it was not binding upon the other co-owners for they at once sought out the other heirs and endeavored to obtain from

them a ratification of that agreement. If there was no question as to the validity of that agreement why should these purchasers have been so fearful of it, and why should they have taken such immediate and aggressive steps to secure a ratification of it?

The last paper executed was this so-called ratification, on April 20th, 1923. The testimony clearly shows that only a part of the owners actually signed it, and some of those signed for the remaining owners, upon the statement, they say, made by the purchasers, that they simply wanted to secure a list of the names of the heirs. However that may be, it is difficult to see how this paper of April 20, 1923 (marked "Exhibit C-5½") can be called a ratification. There is nothing in the testimony to show that the precedent acts of John Rooney, and the agreement of April 19 ("Exhibit C-4"), with all its terms, were brought to the attention of these parties whose ratification was sought. Nor does this paper of April 20, 1923, in terms purport to be a ratification of anything. It is rather an authorization, at that point, to John Rooney to act in behalf of the purported signers, on the sale of the estate of the late James Rooney. Its exact language is: "We, the undersigned heirs of James Rooney, do appoint John Rooney with power of attorney; and do invest him with full power to act in our behalf on sale of estate of the late James Rooney." This power of attorney could, of course, be revoked at any time. The most that could be said for it is, that it might have been a sufficient authorization to John Rooney to act for those who had become parties to it in the future, subsequent to its execution. But there is nothing

in the testimony to show that any action was taken by John Rooney, subsequent to its execution, to effectuate a conveyance of the property in question, pursuant to its authority. Had there been, there might be a different situation presented for adjudication, but even then it could not go beyond the point of being regarded as an authorization to sell the interests of those who were parties to it. Certainly, it could not bind those whose names were signed without their knowledge and without their assent.

I shall so advise.

(Filed July 23, 1926)

IN CHANCERY OF NEW JERSEY

Between Nathan Rabinowitz and David Laderman, Complainants, and John Rooney, Thomas C. Rooney, Bridget Rooney, Elizabeth Rooney, Annie Rooney, Mary Rooney and Mary A. Rooney, Defendants.	On Bill, etc.

FINAL DECREE

This cause coming on to be heard in the presence of John W. Harding of Counsel with the complainants, and Michael Dunn and Arthur C. Dunn of Counsel with the defendants and the pleadings and proofs having been read and the arguments of the respective counsel having been heard and considered and the Court having duly considered the same and having in its opinion filed herein held and decided that the complainants are entitled to specific performance of the contract set forth in the said bill of complaint as against the defendants, John Rooney and Thomas Rooney if the complainants so desire it for their interest on said land mentioned in said bill of complaint, but upon payment of the full purchase price of $20,000., and that if said complainants should not see fit to take a decree for

specific performance against said defendants John Rooney and Thomas Rooney for their interest upon payment of the full consideration agreed upon, then they may elect to have their said bill of complaint dismissed, and that as to the defendants other than said John Rooney and Thomas Rooney specific performance should be denied; and the said complainants having elected and expressed to the Court that they did not desire to have such specific performance of said contract as against the defendants, John Rooney and Thomas Rooney for their said interests in said land upon payment of the said full purchase price of $20,000;

It is on this 22nd day of July, 1926, by Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor by virtue of the power and authority of this Court, doth hereby order, adjudge and decree that specific performance of the contract dated April 19th, 1923, alleged to have been made by and between the Estate of James Rooney, by John Rooney, Attorney in Fact, and David Laderman and Morris E. Frishman be and the same is hereby denied as to all of the said defendants and that said bill of complaint be dismissed without costs to any party thereto and without prejudice to the complainants' remedy in the courts of law. And it is further ordered, adjudged and decreed that the complainant Nathan Rabinowitz shall be paid by said John Rooney the sum of $500., together with legal interest from the time when the same was paid by Morris E. Frishman whose interest in said contract was assigned to Nathan Rabinowitz and that the complainant, David Laderman, shall be paid by said John

XXXVI

Final Decree

Rooney the sum of $500., together with legal interest from the time when the same was paid by said David Laderman to said John Rooney, in case said complainants do not appeal from this decree and when they express, in writing to said John Rooney their determination that they will not so appeal, and in case said complainants so appeal and in case this decree shall be affirmed then the said sum of $1,000. and interest so paid shall immediately upon such affirmance be paid by said John Rooney to said complainants.

E. R. Walker,
C.

Respectfully advised
Vivian M. Lewis,
V. C.

We hereby consent to the entry of the above decree without prejudice to the complainants' right to appeal thereupon to the Court of Errors and Appeal in the last resort of all causes.

John W. Harding,
Solicitor of Complainants.
Michael Dunn
Arthur C. Dunn
Solicitors of Defendants.

A true copy,
Thomas Barber,
Clerk.

XXXVII

Amended Notice of Appeal

(Filed September 22, 1926)

IN CHANCERY OF NEW JERSEY

Between
Nathan Rabinowitz and David Laderman,
Complainants,
And
John Rooney, Thomas C. Rooney, Bridget Rooney, Elizabeth Rooney, Annie Rooney, Mary Rooney and Mary A. Rooney,
Defendants.
} On Bill, etc.

AMENDED NOTICE OF APPEAL

The complainants hereby appeal to the Court of Errors and Appeals in the last resort in all causes, from so much of the final decree made in this Court by the Chancellor on the advice of Vice Chancellor Lewis, in the above stated cause as declares complainants to be entitled to specific performance of the contract set forth in the bill of complaint only as against the defendants, John Rooney and Thomas Rooney, if complainants so desire, for the interests of said John Rooney and Thomas Rooney in said land described in said bill of complaint, upon payment of the full purchase price of $20,000.00, and as declares complainants to be dis-entitled to specific performance as against the defendants other than said John Rooney and Thomas Rooney, and (complainants having determined and expressed to the Court that

they did not desire to have such partial specific performance upon said terms) as denies specific performance of said contract as against all the defendants and as dismisses the bill of complaint.

Dated September 20th, 1926.

Rosenkrans & Rosenkrans,
Solicitors for and of Counsel with complainants.

I conceive there is good cause for appeal in the above stated cause.

Addison P. Rosenkrans,
Of Counsel with Complainants.

A true copy.

Thomas Barber,
Clerk.

(Filed September 29, 1926)

NEW JERSEY COURT OF ERRORS AND APPEALS

Between Nathan Rabinowitz and David Laderman, Complainants, and John Rooney, Thomas C. Rooney, Bridget Rooney, Elizabeth Rooney, Annie Rooney, Mary Rooney and Mary A. Rooney, Defendants.	On Bill, etc.

PETITION OF APPEAL

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

The petition of Nathan Rabinowitz and David Laderman, the appellants in the above stated cause, respectfully shows that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of New Jersey, bearing date the twenty second day of July, 1926, wherein the said Nathan Rabinowitz and David Laderman were complainants and the said John Rooney, Thomas C. Rooney, Bridget Rooney, Elizabeth Rooney, Annie Rooney, Mary Rooney and Mary A. Rooney, were defendants, in this respect, to wit, that the said decree declares complainants to be entitled to specific performance of the con-

tract set forth in the bill of complaint, only as against the defendants, John Rooney and Thomas Rooney, if complainants so desire, for the interests of said John Rooney and Thomas Rooney in said land described in said bill of complaint, upon payment of the full purchase price of $20,000.00, and declares complainants to be disentitled to specific performance, as against the defendants other than said John Rooney and Thomas Rooney, and (complainants having determined and expressed to the Court that they did not desire to have such partial specific performance upon said terms), denies specific performance of said contract as against all the defendants and dismisses the bill of complaint.

And your petitioners humbly appeal from the part of the decree of the Chancellor which declares and decrees as aforesaid, upon the ground that the same is erroneous, for that the Chancellor should have decreed that the complainants are entitled to specific performance of the contract set forth in the bill of complaint against all the defendants, upon payment of the full purchase price of $20,000.00, or, that the Chancellor should have decreed, at the least, that complainants are entitled to specific performance of said contract only as against the defendants, John Rooney, Thomas Rooney, Annie Rooney and Bridget Rooney, for the interests of said John Rooney, Thomas Rooney, Annie Rooney and Bridget Rooney, in said land upon payment to each of the said John Rooney, Thomas Rooney, Annie Rooney and Bridget Rooney, of the one-seventh part of said full purchase price of $20,000.00, and, in such case, that complainants are entitled also to damages against said defendants, John Rooney,

Thomas Rooney, Annie Rooney and Bridget Rooney, if the said John Rooney, Thomas Rooney, Annie Rooney and Bridget Rooney, had no authority to act in the premises for the remaining defendants.

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

Rosenkranz & Rosenkrans,
Solicitors for Appellants.
Addison P. Rosenkrans,
Of Counsel with Appellants.

In Chancery of New Jersey

Between
David Laderman and
Natan Rabinowitz,
Complainants,
and
John Rooney, Thomas C. Rooney, Bridget Rooney, Elizabeth Rooney, Annie Rooney, Mary Rooney and Mary A. Rooney,
Defendants.

On Bill for Specific Performance

10

TESTIMONY

Transcript of testimony taken in the above-entitled cause, at the Chancery Chambers, Paterson, New Jersey, on the twenty-second day of October, 1923, before Hon. Vivian M. Lewis, Vice Chancellor.

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Appearances:

John W. Harding, Esq.,
For the Complainants.
Michael Dunn, Esq.,
For the Defendants.

Mr. Harding—This is a bill for specific performance. (Continues opening.) This is a case that will require a lot of parol testimony and proof all the way through.

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Mr. Dunn—States the defence.

DAVID LADERMAN, sworn in his own behalf, testified as follows:

Direct Examination by Mr. Harding:

Q. You are one of the complainants? A. Yes, sir.

Q. In this case? A. Yes, sir.

Q. What is your business? A. I am in the cleaning and pressing business, and I have a millinery store on Broadway in this city.

Q. How long have you been engaged in that business? A. I have been engaged in one ten years and in the other, about a year and a half in Paterson.

Q. How old are you? A. Thirty.

Q. Are you acquainted with Morris E. Frishman? A. Yes, sir.

Q. Where does he live? A. He lives on Governor Street.

Q. You became interested in the property that has been referred to in this bill of complaint? A. Yes, sir.

Q. How did you come to get interested in it? A. It was the middle of March, I should judge; Mr. Frishman came to my place of business on Bridge Street, and said to me that he had a young man employed by him by the name of Joseph Rooney, whose mother and these other people owned the piece of property in question, and asked me whether I would be interested in a piece of property of that sort, going in with him on a deal of that sort; and I said "Yes;" and he said, "Let us go up and see it;" and we made an appointment to go up and see it, which we did.

Q. Tell us what took place. A. Two days later we went up to the place.

Q. Where was the place? A. Out in Clifton, opposite the Henry Doherty Silk mills.

Q. Proceed. A. We drove all around the place and we managed to get through, and park Mr. Frishman's car.

Q. Was it this land that you went through that is in question? A. Yes, sir, it is a big piece of ground.

Q. What buildings are on there? A. There is a house where the Rooneys live at, and there was another house there.

Q. What Rooneys lived in the house? A. I understood that John lived there, Elizabeth and Mary; that was all; Thomas did not live there, and Mary A. Rooney did not live there, either, but Bridget lived there. There was a gate in front of the house, and we opened the gate and rang the bell in front of the door; and then John Rooney came out and Mr. Frishman introduced me to John Rooney, and told John Rooney—asked him how things were—and we went inside; he asked us to come into the house where the Rooneys lived, and we went in the house, and Mr. Rooney introduced me to two of his sisters, Elizabeth and Bridget, I think they were—this lady here with the glasses, and that other one over there, two ladies were there. We sat down there and talked about different things; Mr. Rooney asked Mr. Frishman how business was in general; then after a while, Mr. Frishman said to Mr. Rooney that we were interested in buying the property that Joseph had spoken to him about. Mr. Rooney said, "We want to sell it;" that is what he said; "we want

we did not go into the house; I think Mr. Rooney said; he said, "We want to sell it;" and the ladies were sitting in the house.

Q. How near were the ladies to you? A. It was just in one room there.

Q. They could hear what was said? A. Yes, sir; we spoke so that everyone could hear, and they sat there, and they were pretty much interested, and I wanted them to hear what was going on. Frishman then said, "What is the price of the property?" and John Rooney said $20,000 was the best price they would consider; I said, "Then $20,000 is the best price;" and he said "Yes;" and I think one of the women then said, if they had wanted to sell the property while their mother was living, they could have gotten considerably more, but at that time they did not want to sell the property. I said, "Mr. Rooney, I have not seen the ground;" and there was an entrance in the back of the house that led to the meadow part of the ground, and Mr. Rooney showed us how far it extended, and showed us Day Street; and we looked the place over and Day Street is pretty well populated, and we looked it over, and then I said, "If $20,000 is your price, we will think it over and let you know." We went back to our place of business, and Mr. Frishman asked me what I thought of the property.

Mr. Harding—Don't give conversations between Frishman and somebody else to encumber the record.

A. We went away that day and we decided to go up a few days later, which we did, but at that time

we di dnot go into the house; I think Mr. Rooney was in front of the house, and he was smoking a cigar, and we spoke to him, and we said, "What is what on the property, Mr. Rooney?" and Mr. Rooney said that he had spoken it over with the heirs and that they were willing to sell the property for $20,000; that if we did not want to pay that much they would not consider selling it for less; they would not sell it for any less.

Q. You said that he said he had talked it over with the heirs; who were they? A. John Rooney told me that he only owned one-seventh of that property, and that before he could do anything, there were five living on the place, and he had to talk it over with the five, and also go to Mary A. Rooney, and also speak to a brother of his, Thomas, and that to give us an answer we would have to give him two days' time. And I said, "Mr. Rooney, how do you want the money?" and he said he wanted $10,000 in cash and $10,000 on first mortgage.

Q. You did not get my question. You said that he said he had talked it over with the heirs; I asked you whether he mentioned how many heirs there were and their names? A. He told me there were seven heirs interested, and that he had spoken it over with all of them.

By Mr. Dunn:

Q. Did he say all of them? A. Yes, sir.

Further Direct:

Q. Proceed. You came to the point where you were telling us about the price? A. I asked him

what was the option price for the property, and he said $20,000; and I said, how did they want the money, and he said he wanted $10,000 on first mortgage and $10,000 in cash. I said, "You people want as much cash as you can possibly get;" and he said, "We do." I said, "How would you like to take a $5,000 second mortgage, and $15,000 in cash?" because I felt I might be able to go to the bank and get a first mortgage of $10,000, and $5,000 on second mortgage, and it would not require so much cash for us, because we intended to improve the property; he said, "In order for me to do that, I have to talk it over with the heirs and let you know how they stand on a second mortgage." Then I said, "Will you let us know?" and he said, "Yes, come up here in a few days." I went up there again alone a few days later; Mr. Frishman was busy that time; and I asked Mr. Rooney what was what; whether he had spoken to the other heirs; and he said he had had a meeting of the heirs over at his house, and that they had decided that it did not pay them for to take a $5,000 mortgage, or any mortgage, and he said "My portion is only $3,000 of this, and we could never divide the money equally," and he said, "We decided at a meeting at my house to ask that we want the entire thing in cash." I said, "That is an entirely different thing;" I said "You are throwing us over now;" I said "We shall have to talk it over and see what is what." We went up there three days later and went up to the house; Mr. Frishman was with me that morning.

Q. You said Mr. Frishman was with you? A. Yes, sir; Mr. Frishman and I went up there and we spoke to them again and asked them what was what

on that property. I spoke to John Rooney. Every time I went there the two women were there. The next time we went up we asked if they would give us an option so we could go to the bank; we had to show the bank an option; so we went in the house and asked John Rooney whether he would give us an option, so that we could take it up to our bank, and John Rooney said, "I guess so;" and the lady said, "Why, sure, there is no harm in that."

Q. Who said that? A. I think Miss Elizabeth Rooney and Bridget, they both said that. They said, "There is no harm in that; we will send John down, and he can give you a written option." We went away that time and everything was all right. Then two days later John Rooney came to my place of business with Mr. Frishman and he said, "You know I have come to give you that option you spoke about;" so Mr. Frishman said to me, "Give me a sheet of paper and I will make out an option and you can have John Rooney sign it;" and I took a sheet of paper and handed it to Mr. Frishman and he made out the paper.

Q. I show you a paper and ask you if that is the option? A. Yes, sir.

Q. It purports to be signed by John Rooney; did you see John sign that?

Mr. Harding—I offer that in evidence.
(Mr. Dunn looks it over.)
Mr. Dunn—I object to it.
The Court—It will be received.

Q. Now, then, when John signed that option what took place? A. Mr. Frishman was over at

my place of business, and we told them that we would have to take an option to the bank, and he said "That is what I was sent down for, to give that written option."

Q. Did he say anything about the heirs?

Mr. Dunn—Objected to.

The Court—Objection sustained.

Q. Where were you when John came with this option? A. John did not come with the option; it was made at my place of business; Mr. Frishman wrote the option out and John Rooney signed it.

Q. It was made at your place of business? A. Yes, sir.

Q. About how long were you there when that option was signed? A. We were there about twenty minutes.

Q. How long was that after you had had this conversation with John and Elizabeth and Bridget, in which it was understood that John was to see the rest of the heirs about signing the option? A. About three or four days before; I spoke to him three or four days before, and then he came to my place of business, and came there with the understanding that he was going to give me the option; that is what I understood he was there for.

Q. Was anything said between you and him as to whether or not he had seen the heirs about it? A. He told me they had sent him down there to give us the written option that we spoke about, so that we could take it to our bank.

Q. Now, after that option was signed, then what happened? A. Then I took the option over to the

United States Trust Company and showed it to Mr. Benson, the Vice President, and told him that Mr. Frishman and myself were buying the piece of property in question, and asked them whether they would take a mortgage on that property. Mr. Benson told me—

Q. Never mind that. As a result of that conversation that you had with the officers of the bank, was anything done by the bank? A. Mr. Harman, the appraiser of the United States Trust Company, was sent along with Mr. Frishman and myself—

Q. Did you do anything with the officials of the bank with respect to their looking at the property and their willingness to make you a loan; was anything done by way of their making an agreement? A. We gave them the necessary papers, and they went and had a search made of the property.

Mr. Dunn—I object to this—do you know they had a search made?

Mr. Harding—I will withdraw the question.

Q. After you had had these negotiations with the United States Trust Company with reference to the search and the proposed loan which you wanted to make from them, did you then see any of the Rooneys again? A. Well, I went up there, I think it was the day before the making of our contract; that was April 18, in the morning, and I went up there and rang the bell; Mr. Frishman stood outside. I went to see if Mr. Rooney was in, because we wanted to exercise the option we were holding on the property, and Miss Elizabeth Rooney opened the

door, and she said to me, "Do you want to see John Rooney?" and I said, "Yes, we have come to exercise the option that we are holding on this property;" I said that to Elizabeth Rooney.

Q. Was Bridget there then? A. While we were talking, Bridget came to the door, also, I believe, and I asked her where John was, and she said he was gone to Passaic to have his horse shod. She said, "Is there anything important?" and I said, "We wanted to close this deal;" and she said, "Then I will send John down;" and I said, "Do that, please." And she said, "All right." And I went away from the door and I told Mr. Frishman, and then Mr. Frishman said he knew the horse-shoers in Passaic, and he said there were very few horse-shoers in Passaic, and that we could easily find him; and Mr. Frishman and I found Mr. Rooney, who was standing outside, and he was surprised to see us.

Q. Did he say anything? A. He said, "How did you know I was down here?"

Q. You said that Bridget said, "We will send them down to your place of business;" now, you have come to the point where you went to Passaic to meet John, and you met him and you told him you wanted to make final arrangements on this property? A. Yes, sir, so that we could go to a lawyer and draw the necessary papers, and he asked us how we knew he was there, and we told him that Elizabeth and Bridget told us he had gone to Passaic to get his horse shod, and that Mr. Frishman said to me, "There are not many horse-shoers in Passaic now," and he guessed you would be here, and we made an appointment to meet him the following day at Senator Smith's office; he said that the heirs wanted to

know how long we would let them stay there after they had sold the property, after the making of the contract; I said, "We would like to get the property as soon as possible—how would June 1st do?" and he said, "That is too soon;" he said "They decided they must have until July 1st, because it will take them a little time to find a piece of property suitable for them to get into."

Q. When you told the girls before you went to see John, that you were ready to exercise the option, what reply did they make to that? A. They did not say anything.

Q. Well, then, that was the 18th of April when you had this last conversation with the heirs and John? A. Yes, sir.

Q. When you left John what understanding did you say you had? A. He was satisfied to meet us the following afternoon at Senator Smith's office to make a written contract for the property.

Q. Was that talk between you and John? A. Yes, sir, sure.

Q. Well, now, just what next took place? A. The following day, about 1:30, Mr. Frishman came to my place of business and said, "Are you ready to go to the lawyer's office?" and I said "Yes," and we went to Senator Smith's office and waited awhile, and then John Rooney and Thomas Rooney came in.

Q. On April 19th, before you saw John or Thomas Rooney at all, you went to the office of Mr. Smith? A. Yes, sir.

Q. At what time? A. About 1:45.

Q. After you had been there, how long was it that John came? A. Ten or fifteen minutes; and Thomas Rooney came with him.

Q. He came then pursuant to the agreement you had had with him? A. Yes, sir.

Q. Was the hour fixed by you? A. Yes, sir, at two o'clock.

Q. Then what? A. Senator Smith had not returned from dinner; John Rooney introduced me to his brother; he said, "Meet my brother Tom Rooney;" and I spoke to him and he said, "My sister sent me here to see that everything was properly taken care of;" Thomas Rooney told me that.

Q. Did he say which sister? A. No, sir, he said, "My sister sent me down here to see that everything was properly taken care of;" and then Senator Smith came in, and I said, "We are waiting for you;" and he said, "Come in the office;" and we went in, and I introduced the Rooneys to Senator Smith, and I told him that we were buying the piece of property in question known as the Rooney Estate, and that we wanted him to draw up the necessary papers, and he took down a piece of paper and marked down the facts. I think he asked the gentlemen who owned the property and Mr. Rooney said, "There are seven own this piece of property," and Senator Smith said, "Who is the one that is going to make this contract?" and Thomas Rooney said, "John Rooney has the power of attorney to make this contract for all the heirs;" Senator Smith asked him the question whether or not he had the power in writing, and he said, I don't know about that;" and Thomas Rooney then said that their father had died and left no will; and by mutual consent they had always exercised that judgment in John Rooney, and that he always took charge, and they wanted him to do the same thing right now.

Q. After that conversation between Senator Smith and the Rooneys, what was done? A. Senator Smith took down different papers and asked how old Miss Mary Rooney was, and how old this one was and that one, and whether they were married; and he said, "This is a peculiar affair, none of them married;" and then after a while he read the contract to all of us.

Q. Who prepared the contract? A. Senator Smith sent for his stenographer, and she came inside and took the notes and then went in the other room, and then we sat and talked.

Q. What was done after the contract was prepared? A. The contract was then read to all of us that were there; Mr. Thomas Rooney was there and John Rooney was there, and Mr. Frishman and myself were there; he read the contract to us, and he said to John Rooney, "You are the power of attorney in fact;" and he said, "Yes, I am;" and Thomas Rooney said, "Yes, that is so, Senator." And then the Senator said, "You gentlemen had better draw a check as a deposit for this property;" and we made out a check for $500.00 apiece, and we made out the check.

Q. Did Mr. Frishman give a check also? A. Yes, sir.

Q. How much was his? A. $500.00.

Q. I show you a check— A. Yes, sir, that was the check that I signed; Senator Smith made this out.

Q. "April 19, 1923—Pay to the order of John Rooney, Attorney for Estate James Rooney—$500.00;" that check has been returned to you? A. Yes, sir.

Q. Did it come back to you in the shape it is now in, so far as indorsements are concerned? A. Yes, sir, I did not touch it.

Q. It is signed "John Rooney, Attorney for Estate of James Rooney"? A. Yes, sir.

Q. That check was then paid? A. Yes, sir.

Mr. Harding—I offer that in evidence. Market "Exhibit C-2."

Q. I show you another check and ask you if you saw that check made out, signed and delivered by Frishman in the same way? A. Yes, sir.

Mr. Dunn—In reference to this check we admit the endorsement of John Rooney on the check of Laderman, but we deny the writing "Attorney for Estate of James Rooney." (Mr. Dunn was speaking about "Exhibit C-2.") And I make the same objection as to the endorsement on the back of the Frishman check, the words "Atty. for Est. of James Rooney;" the words "Atty for Est. of James Rooney" were written, I should say, by Albin Smith, (looking at the writing.)

Mr. Harding—There is no claim that he wrote it.

Marked Exhibit C-3.

Q. Well, you say these checks were drawn, and Senator Smith drew the contract, and then what happened? A. Then Mr. John Rooney signed the contract, and Mr. Frishman signed it, and I also signed the contract.

Q. I show you a contract dated the 19th of April, 1923, between the Estate of James Rooney, by John Rooney, Attorney in Fact, and David Laderman and Maurice Frishman, and I ask you if that is the paper that was signed by you? A. Yes, sir.

Q. Did you see John Rooney sign it? A. Yes, sir.

Q. And David Laderman is your signature? A. Yes, sir.

Q. Did you see Frishman sign that also? A. Yes, sir.

Mr. Harding—It is witnessed by Mr. Smith; it is admitted by the complainants.

Mr. Dunn—We object to the contract, sir.

The Court—Who is the witness for the contract?

Mr. Harding—Mr. Albin Smith.

The Court—Let it be marked for identification.

Mr. Harding—It is admitted in the complaint.

Mr. Dunn—I object to it as not being properly proved.

The Court—Mark it for identification.

(Marked "Exhibit C-4" for identification.)

Mr. Harding—You saw this acknowledged? That is this acknowledgment taken before Senator Smith.

Q. After this contract was signed and executed, then what happened? A. Then we left Senator Smith's office and went downstairs, Mr. Thomas Rooney and John Rooney and Mr. Frishman and myself.

Q. Was anything said about a sign on the property? A. Yes, sir, I said to John Rooney, "That sign you have got," I said, "What is that doing there?" He said, "We got a certain amount of money for it;" and I said, "Have it taken off there;" and he said, "The man that put that sign up there is the man that has an office round the corner;" and we went over to the United Advertising Company, and Mr. Rooney told the gentleman in the office there that the Rooneys had sold the property, and that he wanted him to remove the sign from that place. Mr. Rooney then told me he had signed a lease for one year, with the privilege on their part if they wanted to renew it for another year, and that the lease was up any day, pretty nearly up; and we went over there and John Rooney told the manager of the United Advertising Company to remove the sign of James Gavin.

Q. Now, was anything said about a lease on the property? A. I asked Mr. Rooney if the people next door who occupied the small house had a lease on the property, and he said "No;" and I said, "The best thing to do will be for you to see that they move, because we want to make alterations in the place;" and he said "All right;" and we left them; and Mr. Frishman and I went back to our places of business. Then I said to Mr. Frishman, I said—

Q. I want to come to the point. Now, when you had another paper drawn and signed by the different heirs, tell us about that. A. I told Mr. Frishman that we wanted—

Q. Never mind that; did you and Mr. Frishman consider that inasmuch as these seven heirs—

Mr. Dunn—Objected to as leading.

The Court—The objection will be sustained.

Q. Did you and Mr. Frishman cause another paper to be drawn signed by all the heirs?

Mr. Dunn—Objected to on the ground that it does not imply that he was present when there was any paper signed.

The Court—Who?

Mr. Dunn—This man.

The Court—Objection overruled.

Q. (Question read.) A. Yes, sir.

Q. Just tell us, inasmuch as the other side is objecting to leading questions, etc.—I show you a paper which purports to be signed by the seven heirs, dated April 20, 1923, and ask you if that is the paper you caused to be signed? A. Yes, sir.

Mr. Dunn—Objected to.

By Mr. Dunn:

Q. Did you have it prepared? A. Mr. Frishman had it prepared.

Q. When did you first see it? A. When Mr. Frishman brought it to my place of business and gave it to me.

Q. When? A. About two days after the signing of this—about the 22nd of April.

The Court—I will allow it.

Further Direct:

Q. Tell us what you know about that paper. A. Frishman brought that to me and said, "Dave, keep that."

Mr. Dunn—Objected to.

The Court—Objection overruled.

Mr. Harding—Now you object to having this witness testify as to the purpose of having this paper prepared?

Mr. Dunn—Yes.

Mr. Harding—I make the offer. Our offer is to show the purpose and the reason why this paper was prepared.

Mr. Dunn—We deny the paper was signed by the parties whose names appear there.

The Court—I sustain the objection for the present.

Q. Now, then, you say this paper was brought back to you by Mr. Frishman as it now is? A. Yes, sir.

Mr. Harding—I ask that that be marked for identification.

(Marked "Exhibit C-5 1-2 for identification.")

Q. Did Mr. Frishman tell you who had written the paper and who had caused it to be signed; did he tell you who?

Mr. Dunn—I object to that.

The Court—Objection sustained.

Q. Now, then, after that paper was brought to you by Frishman in the first place, the paper is dated April 20, 1923—can you state when it was with reference to April 20, 1923, when it was brought to you by Frishman as it now is, purporting to be signed by the seven heirs?

Mr. Dunn—Objected to.

The Court—Objection overruled.

A. About two or three days after it was signed—about the 23rd of April.

Q. Have you had it ever since? A. Yes, sir, I have had it in my vault.

Q. After that paper came to you when did you next see any of the Rooneys? A. It must have been about the first or second of April.

Q. I am talking about after this paper was signed; I am asking you how long after this paper was signed, which was April 20th, was it that you saw any of the Rooneys? A. It must have been about the latter part of April or the first or second of May. John Rooney came to my place of business with Mr. Frishman, and he told me that the City of Clifton was going to put in sewers right in back of that property, and that in order to put sewers there they would have to infringe on that property, which was a point on Day street, and they would have to take a part away from the property, and that an official representing the City of Clifton asked Mr. Rooney whether he would be willing to sell that part of the ground.

Q. What Mr. Rooney? A. Mr. John Rooney.

Q. Well? A. And Mr. John Rooney said, "Well,

what would you give me for a piece of that property of that sort?" and he said, "We value a lot about $400.00 apiece," and Mr. Rooney said to Mr. Frishman and myself, he said, "The property don't belong to us any more, and it would be no more than proper for you gentlemen to go up to the Municipal Building and take it up with the engineer and straighten the whole matter out, because you own the property, and it is up to you to look after it now;" that is what Mr. John Rooney said, and he said the city had offered him $400.00 a lot.

Q. Did you see any officer of the city about it? A. We went up to the property a few days after that, and we went up to the City of Clifton to the Municipal Building, and the man we wanted to see I don't think was in that morning, and so we went away without accomplishing anything. Then John Rooney came down again.

Q. What happened then? A. He said to us, "Well, they have been after me again; they want to lay these sewers, and I wish you would straighten that matter out, because you see the position I am in. I have no right to act for you people; it is up to you to straighten it out." I said, "All right, we will go up there again with you."

Q. After that, when did you see him? A. We went up to Mr. Rooney's place again, and we saw him, and he said that he was not in a position to come with us; that he would have to change his clothes; and we went into the house there and waited for him to change his clothes; and Mr. Rooney went into a bedroom to change a pair of pants; and I then asked the women who were there if they had found a place where they were going to move to, and they

said they had seen one or two places, but they were kind of high, and they had made no preparations yet.

Q. Can you tell us who the ladies were? A. Miss Elizabeth Rooney and Miss Bridget.

Q. You say you saw them and had this conversation? A. Yes, sir, and I said, "Why is it you have no gas, water or electricity in the house?" and she said, "We are old fashioned, and that is the reason we want to sell this place, because it is getting too city for us."

Q. What took place after that? A. About that time Mr. Rooney was ready; I went up with Mr. Rooney to the Municipal Building and we went upstairs, and he asked to see a gentleman named Captain Pugh or Major Ross; and owing to the fact that it was the day after the election of the Commissioners of Passaic, neither of these gentlemen were in the place, so we could not see them again.

Q. You went with John Rooney to the municipal authorities of Clifton with reference to their purchasing property for sewage purposes? A. Yes, sir.

Q. Nothing came of that? A. No, sir.

Q. Take what next occurred with the Rooneys. A. The next time he came over to my place of business again—

By Mr. Dunn:

Q. When was this? A. This must have been about the middle of May, the latter part of May; he came back then and said he was having a little trouble with Elizabeth; that after the making of the contract she realized that she had never worked

for the property, that she had inherited it from her parents, and she did not feel that she wanted to get out of the place now; and I said that I was up to the place and spoke to her several times and she never objected; and he said, "You know how women are;" he said, "That is her idea;" I said, "She will have to go on with the original contract; she has signed the paper authorizing you to act in her behalf, and I think she ought to be lady enough to go on with the contract;" and he said, "I will go back and tell her what you say;" and he went away, and two days later he came over again.

Q. Did he say anything on that occasion as to anything said about the City of Clifton offering the $400.00 a lot? A. He said, that if the City of Clifton was offering $400.00 a lot, he was mighty foolish for having sold it so cheap; and he said there was a man building a house on Main Avenue; as we were going to the Municipal Building he pointed out the house, and he said this man had said to him that he would have given him considerably more for the property; so I said to Mr. Rooney, I said, "You know we did not buy this property for our own house, we bought it on speculation." I said, "Why don't you get after this man, and if he will give you a good offer, we will sell it and give you a commission;" and he said, "All right;" and he went away with that.

Q. When he spoke about the city offering $400.00 a lot, and that he sold it too cheap, was that on the occasion when he said that Elizabeth did not wish to sign the paper? A. No, sir, he did not say anything that time about that.

Q. I want to know when he spoke to you about

your having an offer of $400.00, did he say that on the occasion you spoke of in the middle of May? A. Yes, sir; Mr. Rooney said they had sold us the property mighty cheap, and they should give us some consideration—

By the Court:

Q. What consideration? Did he refer to money? A. No, sir, not at that time.

Q. After that, when did you see any of them? A. Then he came back a few days later, about the 24th or 25th of May; he came over to me and said he was having his hands full with Elizabeth, with his eldest sister; that must have been about the 25th of May; he said he had his hands full with Elizabeth; he said she was sorry over the making of the contract and and she did not want to get out of the place; he said she did not want to get out; I said, "This is no time to come down and tell us these things;" I said "We have put a lot of time on this thing;" I said, "You said she authorized you to make this written contract for her;" and he said, "Women are awfully fickle;" he said "Women change their minds every minute of the day;" so I said, "Mr. Rooney, you will have to go back and tell Elizabeth that she will have to go ahead with the original contract;" then he said, "I will go back and tell her that;" and he did.

By Mr. Dunn:

Q. How do you know he did? A. He came back two days later.

Further Direct:

Q. He came back again? When was this? A. He came back two days later and he told us again; he said he had told Elizabeth what we had said, and he could not seem to convince her; that day he was with some other gentleman.

Q. Proceed. A. And he asked me whether I would not be willing to take some consideration and release him from the contract; and I said "No, I want you to go ahead with the original contract;" I said "We have spent a lot of time;" and he said, "I will tell you what I will do with you," he said, "you are pretty hard," he said "I will give you $500.00 if you will release us from the contract;" and I said, "No, no, I intend to have you fulfill your original contract."

Q. Then what happened after that? A. He said, "I am telling you, Mr. Laderman, you are going to have a lot of trouble; Miss Elizabeth Rooney says there is no law in this country that will make her get out of that place, and I cannot seem to convince her."

Q. Then what happened after that? A. The same day?

Q. No; tell us the story; is that all that took place on that day? A. Yes, sir.

Q. Then what happened afterwards? A Then I think he came back once more; I think Mr. Joseph Rooney brought him over to my place of business, but Joseph left right away; and we were arguing again, and could make no headway; and he said he would give me a little more, and I said, "I will tell you what I will do," I said "I realize you have got yourself into a lot of trouble;" he said, "They are

trying to crawl out of it," and he said "I will tell you this thing is going to shorten my life a whole lot;" and I said, "I will go up to the place and see if I cannot convince Elizabeth Rooney and show her that she entered into this contract and she ought to stick to the original contract. I went up the following morning, and there was Miss Elizabeth Rooney and Miss Bridget, and a gentleman, and I said "What is what with this property?" and she got excited, and she said, "There is no law in this country that will make me sell;" and I said, "You knew this contract was signed; you knew we had the option; you knew the property had been sold; why didn't you kick then?" She said, "I never worked for this property, and I am too old to dicker in real estate now;" I said, "You have authorized John Rooney to sell this property, and I tell you this, you don't farm the back of the land;" and she said "No;" and I said, "I will sell you back this house to live in, and as much ground as you want;" I said "You can select any two or three real estate men and let them settle the fair value of this property, and I will sell it to you for that." She said, "That sounds pretty reasonable;" and all of a sudden Elizabeth walked to John Rooney and this whole thing dropped; and she said, "No, I am too old; I don't want to dicker in real estate, and there is no law that will make me get out of this house;" and then Mr. Barney, the gentleman who was there, he said to me, "Why don't you release these women?" and I said, "Oh, no;" and he said, "The case will drag in the courts for years;" and I said, "I will take my chances."

By the Court:

Q. Why didn't you release them from the contract? A. I had a man who wanted to buy the property from me, and I could get $5,000 profit on it, and I am not a rich man. So I left that morning again, and I said to them, I said, "How about going to Senator Smith's office and see if we can straighten this thing out?" then the following morning, I went to Senator Smith's office and Mr. Barney was up there and Mr. John Rooney and Senator Smith and myself.

Further Direct:

Q. Who is Mr. Barney? A. He came with Mr. Rooney; he said he had been a lifelong friend of the Rooneys; there is the gentleman (indicating). He acted as an arbitrator between us and wanted to straighten it out; he was very kind to me all the way through. Senator Smith came in and said, "Come inside;" so they started to yell, and the Senator said, "Sit down and talk it over;" he said, "Let us see what is what;" and Mr. Rooney said, "I am giving him $800.00 for his offer to release us out of this contract;" and he said that Mr. Frishman was so much easier. I said, "That is because Mr. Frishman has been a lifelong friend to the Rooneys," but I said "I bought this thing on speculation, and I want to make all I can out of it; and Mr. Barney called me all kinds of names and told me I was a Shylock; and Senator Smith said, "This man bought this property and is justly entitled to receive the property."

Q. You said a few moments ago, you said this

man Barney was acting very friendly to you? A. That was sarcasm; he told me that he wanted to be an arbitrator but he could only see one side of the question.

Q. Then you were simply speaking in a sarcastic way? A. Yes, sir, he would not give me the least bit of consideration.

Q. What happened then? A. Well, we could not seem to make any headway.

Q. Then that ended it? A. No, sir; they pounded away at me, and I did not know what to do; I was up a tree; I said, "I will not consider releasing you out of this contract at all;" then Senator Smith said, "You are going to let this thing drop;" and I said "Yes, I shall have to take the matter up in court;" but after a while they nagged at me so long that I said, "If you will settle this proposition," I said "you know I have a $5,000 offer, but if you will settle to-day, I will accept a thousand dollars;" and Mr. John Rooney said, "I have not got that much money to give you;" and I said, "If you are willing to settle it tonight so that I can go into a different investment, I will settle;" but we could not make any headway.

Q. Did you then secure Mr. Frishman's interest? A. That was right after that time; Mr. Barney said, "I will buy Mr. Frishman's half," and I said, "No, you won't; where do you get that stuff?" I said, "Mr. Frishman and I are partners;" I said, "If Mr. Frishman is going to sell that half to anyone he will sell it to me;" and I went over to Mr. Frishman and he said, "Those Rooneys have been lifelong friends of mine, and I don't want to go to court;" and he said, "They offered me $250.00 for

my half;" and I took out my check book, and I made out a paper, and I said, "Sign this paper, selling me your half;" and that is just what I did, and I gave him a check.

By Mr. Dunn:

Q. Where is the paper? A. The lawyers have got it.

Further Direct:

Q. I show you a paper purporting to be signed by Maurice E. Frishman, in consideration of $750.00 by which there is sold to David Laderman all his right, title and interest in this contract— A. That is the paper that was drawn.

Q. I show you another paper here dated June 1st, 1923, on the same page, on the latter half of the page of the assignment of Mr. Frishman, an assignment of David Laderman to Nathan Rabinowitz of your undivided one-half interest in that contract? A. Yes, sir.

Q. That is dated June 1st, 1923? A. Yes, sir.

Q. So that you first got from Mr. Frishman his assignment of his half-interest to you, and then afterwards you assigned an undivided half-interest in it to Mr. Rabinowitz? A. Yes, sir.

Marked "Exhibit C-7" and "C-8."

Note: This is all one paper, but Mr. Harding had each part marked.

Q. The last question was with reference to the assignment which was made by you to Nathan Rabinowitz for the undivided half-interest in this contract? A. Yes, sir.

Q. I wish you would state to the court in your own way, what arrangement you made with Mr. Rabinowitz about that piece of property and what you and Mr. Rabinowitz did if anything, with the Rooney heirs. Did you call on the Rooney heirs? A. Before Mr. Rabinowitz purchased the one half interest, he first went up to see the farm.

Q. Without giving anything in the way of hearsay evidence, did you and Mr. Rabinowitz have a talk about his going in with you and taking a half-interest? A. Yes, sir.

Q. You went up to the place? A. Yes, sir.

Q. Now, tell me just what took place when you and Mr. Rabinowitz went there? A. After Mr. Rabinowitz and myself looked the place over, we came back to the farm, and there was Mr. Rooney right at the gate, and he saw me, and I went over and introduced Mr. Rabinowitz. Mr. Rabinowitz at that time had consented to buy the half-interest in this place. I introduced Mr. Rabinowitz to Mr. John Rooney.

Q. Did you say anything to Mr. Rooney as to why Mr. Rabinowitz came there? A. I introduced Mr. Rabinowitz as my new partner; that Mr. Rabinowitz had gone in with me on this transaction, and Mr. Rooney said, "For God's sake, take $800.00 and let it drop;" and I refused, and then we went away.

Q. Did you afterwards see Elizabeth Rooney and Bridget Rooney? A. The next morning Mr. Rabinowitz and I saw Miss Elizabeth Rooney there; Bridget was also there; and Mr. Rabinowitz asked

her what she intended to do about the contract; and she said she did not sign the contract. He said, "Your name is on the paper;" she said, "I don't know how my name got on there, but I did not sign it."

Q. Who said this? A. Elizabeth Rooney said she did not sign it. Then Mr. Rabinowitz said, "Your name is on the paper;" and she said, "I don't know how it got on there;" but Bridget then said, that she had signed Elizabeth's name; so Mr. Rabinowitz said, "Were you in the room?" and she said "Yes, but I did not authorize her;" and he said, "Your name is on the contract, and you ought to go ahead with the contract;" and she said, "I don't know about that at all; all I can say is, that this thing ought to be straightened out one way or another."

Q. Well? A. Mr. Rabinowitz then gave one of the ladies a card, and told them to send John Rooney to his office, or to Senator Smith's office the following day, so that we could have an understanding and straighten the thing out. The following morning I went up to Mr. Rabinowitz's office, and there was Mr. Thomas Rooney and John Rooney there; they were in Senator Smith's office; the door was open, and instead of going into Mr. Rabinowitz's office I went into the Edom Brothers'; John and Thomas were there, and Senator Smith was there, and Mr. Rabinowitz walked in after we had spoken about several minor things. Then Mr. Rabinowitz said to everyone that was in the room, Mr. John Rooney and Mr. Thomas Rooney, he said: "Gentlemen, I have purchased the one-half interest in this contract, and I intend to have the thing fulfilled, this contract, the way it was originally made." Then Mr. John Rooney said, "Elizabeth claims she never

signed and she won't go on it." Then Mr. Rabinowitz said, "Her name is on the paper;" and John said, "I cannot help that;" he said, "From what I have learned, Bridget signed it." Then Mr. Rabinowitz asked Thomas and John, "Are all of you others willing to go on?"

Q. Was Bridget present? A. No, sir; he said, "Are all the other heirs willing to go on?" and Tom and John said, "Yes, all the others except Elizabeth;" then Mr. Rabinowitz said, "Supposing we take six-sevenths of this property, give you the money, and we will take the other one-seventh in court to see if we can compel Miss Rooney to give us her interest."

By the Court:

Q. Elizabeth Rooney? A. Yes, sir. Mr. Rabinowitz suggested he would take six-sevenths and sue for the one-seventh belonging to Elizabeth Rooney, and see what we could do on that. Then they said the best thing for us to do was to consult counsel; and that was the end of the conversation that took place that morning. Then on July 1st, I was notified by Mr. Rabinowitz to be in Senator Smith's office; I was in Senator Smith's office all day with the money, waiting to fulfill our contract.

Further Direct:

Q. This year? A. Yes, sir.

Q. How about July 2nd? A. July 1st fell on a Sunday, so it was the second that I was there, but almost the day of the making of the contract Mr. Rabinowitz—

Q. Were you in Mr. Smith's office on Sunday all day? A. No, sir, I was there on Monday all day long.

Q. And you stayed there all day? A. Yes, sir.

Q. Did you have your money when you were waiting in the office? A. No, sir.

By the Court:

Q. Did anyone appear? A. No, sir, no one appeared.

Further Direct:

Q. You don't have personal knowledge as to the letters which Mr. Rabinowitz sent to the Rooneys. I show you a letter addressed to the seven Rooneys, which purports to be signed by Nathan Rabinowitz and David Laderman, and I ask you if you signed that notice? A. I did.

Q. And that notice is annexed to a copy of the agreement dated the 19th of April, 1923? A. Yes, sir.

Marked "Exhibit C-8 1-2."

Mr. Dunn—I wish to ask a few questions here.

Cross Examination by Mr. Dunn:

Q. Did you read that paper over when you signed it? A. Yes, sir, I did.

Q. And before you signed it? A. Yes, sir.

Q. Did somebody else read it to you? A. I read the paper myself.

Q. The whole four or five pages? A. Yes, sir.

Q. Did you read each one of the other papers you signed? A. Yes, sir.

Q. You read this one and then you read another one—I am speaking of this occasion—you were shown that paper—did you read each one of the papers that you served upon the different members of the family? A. Mr. Rabinowitz called me up—

Q. Did you read that? A. Yes, sir, I did.

Mr. Harding—The paper which was the letter written to the seven heirs by Mr. Rabinowitz and Mr. Laderman, was a duplicate of the one that was served upon Mr. Dunn. We called upon Mr. Dunn to produce his; he has a memorandum of his, so we will use this duplicate instead of the copy which Mr. Dunn has.

Further Direct:

Q. I also show you letter which is dated June 30th, 1923, addressed to Michael Dunn, and purporting to be signed by Nathan Rabinowitz and David Laderman; did you sign that paper? A. Yes, sir.

Q. You signed two papers in duplicate? A. Yes, sir.

Mr. Harding—I will offer that in evidence. Marked "Exhibit C-9 1-2."

Q. This paper I show you again, which is marked "Exhibit C-9 1-2 for identification, which is dated April 20, 1923, did you have a conversation with John Rooney or Elizabeth Rooney or Bridget Rooney, with reference to the paper that was signed, and

if so, what was it? A. I never had a conversation with reference to that paper.

Q. With any one of the three? A. Not with any of the Rooneys.

Q. So far as you know, then, this paper was prepared and signed and brought to Mr. Frishman by somebody other than yourself? A. Yes, sir.

Q. You have only heard who it was that did it? A. Yes, sir.

Q. That is the idea? A. Yes, sir.

Q. Was it your understanding that the person who obtained this was Joseph Rooney to send by mail to Annie Rooney?

Mr. Dunn—Objected to.
The Court—Objection sustained.

Q. Do you personally know whether Joseph Rooney obtained it or not?

Mr. Dunn—Objected to.

A. Joseph Rooney told me he did.

The Court—I will let it stand.

Q. What did he tell you?

Mr. Dunn—Objected to.
The Court—Objection overruled.

A. He told me.

Mr. Dunn—Joseph Rooney is not a party to this case.

The Court—Strike it out. Who is Joseph Rooney?

Mr. Harding—His father is dead, and he is a son of Mary A. Rooney, who was one of the defendants.

The Court—I thought he was a party.

Cross Examination by Mr. Dunn.

Q. Now, you are in business where? A. 26 Bridge Street.

Q. How long have you been in business there? A. I moved.

Q. What is the business? A. Cleaning and pressing.

Q. Your attention was called to this property where Mr. Rooney lived; who first spoke to you about that? A. Mr. Frishman.

Q. He was engaged in business? A. Yes, sir.

Q. What business? A. Wholesale druggist.

Q. Where is his store located? A. Paterson and Governor Streets.

Q. And then after you had the conversation with him, where did you go? A. We went up to see the place.

Q. When was that? A. That must have been about the 20th; well, I should judge about the middle of March.

Q. And after looking at the place, what next did you do in reference to it? A. We rode all around the place to look the size of the place over, and then we went over to the house, and there was a bell in the door, and we rang that bell several times, and John Rooney came out, and he knew Mr. Frishman.

Q. Then you had a conversation there with Mr. Frishman? A. Not on the outside.

Q. You had a conversation on the inside? A. Yes, sir.

Q. What was said about selling the property then, if anything? A. Mr. Frishman said, "Mr. Laderman and myself are interested in buying your property."

Q. Had there then been a price fixed on it? A. Yes, sir.

Q. In March? A. There was no price fixed, no, sir, not at that time.

Q. You want us to understand, then, that you were interested in buying the property? A. Joseph Rooney was employed by Mr. Frishman, and he told him—

Q. Joseph Rooney is the nephew? A. Joseph Rooney told Mossis Frishman—

Mr. Dunn—Objected to.
The Court—Proceed.

A. I had not seen Joseph Rooney at that time at all.

Further Cross:

Q. That was in March? A. Yes, sir.

Q. Was that the first time you saw the property? A. Yes, sir.

Q. Had you dealt in any real estate before that? A. Yes, sir, I owned a piece of property in Paterson before.

Q. A house and lot? A. A house.

Q. After this trip up there to look the farm

over and coming back, what was the next that your attention was called to the matter, and by whom— A. By Mr. Frishman.

Q. Did you afterwards have any conversation with John Rooney, and if so, whhere? A. Several times.

Q. Where was the first that you had after that with Mr. Rooney? A. Right on the farm.

Q. When? A. A few days after the first time we had gone up, we went up there again.

Q. What was the conversation then between you and Mr. John Rooney? A. Mr. Frishman and I wanted to know what was what on the property.

Q. What was the information that you asked him to give you? A. At that time we did not ask for any information then; we were thinking it over.

Q. You went up the second time to find out what was what about the property? A. Yes, sir.

Q. What did you do when you got there, and whom did you see? A. I spoke to Mr. John Rooney.

Q. What was the conversation then between you? A. We asked him whether $20,000 was the best price on that property and also asked how he wanted the money, because Joseph Rooney had told us he wanted $10,000 on mortgage and $10,000 in cash.

Q. What did he say? A. He said, "We want $10,000 on mortgage and $10,000 in cash."

Q. What other conversation did you have with John Rooney? A. Then I said to John Rooney, I said, "How would you like to get $15,000 in cash and $5,000 on a second mortgage?"

Q. Why did you want to offer the second mort-

gage to him who was the owner of the property? A. The man who sells the property generally takes the second mortgage.

Q. What did he say then? A. He said he would talk it over with all the heirs.

Q. What was the response to that? A. He told me he had spoken it over with all the heirs; he held the meeting at his home. He said he had held the meeting at his home, and that the heirs had changed their minds, that they did not want to take any mortgage at all, that there were seven involved, and that the amount they were to receive was entirely too small to bother with mortgages, and that they had changed their minds and wanted the whole thing in cash.

Q. Can you give us the date of that conversation at Mr. Rooney's house? A. That was the early part of April.

Q. The early part? A. Yes, sir.

Q. Do you know that the contract had then been signed or not; do you know whether Mr. John had signed the contract at that time for the sale of the property? A. No contract had been signed yet.

Q. Had he at this time given you this option that had been spoken of? A. No, sir.

Q. That had not been given? A. No, sir.

Q. After this conversation then what was done further next by you? A. When he told me he wanted the entire thing in cash, I told him I would have to see whether I could get a mortgage on the property; I stated to him that I would have to think it over and see if I could get the money; that was the end of that.

Q. When did you next see him? A. Then I went up there again.

Q. When was that? A. About two days later.

Q. That was in April, too? A. Yes, sir, because I found out that in order to go and get a mortgage from a bank—

Q. When you went up there, had there then been an option signed by him? A. No, sir.

Q. When you saw him the second time, what was done in reference to the property? A. I went up there to the farm and went in the house, and the girls were there, and Mr. John Rooney was there, and I asked whether they would give us an option so that we could take it to the bank and try and secure a mortgage on the place. The three of them that were present said that they would think it over, and if they were satisfied on giving us an option, they would send John Rooney down town to give us a written option, so that we could take it to our bank and try and see if we could raise a mortgage on the place.

Q. They did not repeat all that long verbiage, did they? A. Yes, sir.

Q. Which of the ladies that are here on the front row did you have that conversation with? A. Miss Bridget Rooney and Miss Elizabeth Rooney.

Q. Now, then, did you have it with Bridget and her sister Elizabeth? Any other of the girls there? A. No, sir.

Q. And John was there? A. Yes, sir.

Q. What was next done? A. Then John Rooney came over to my place of business on the morning of April 15 or 16, and told me that he had come

to give me the option which we had spoken about. Mr. Frishman said, "Do you want to make out the option, Dave?" This was at my place of business, and Mr. Frishman was there; and Mr. Frishman said, "Do you want to make out the option, Dave?" and I said, "I think you had better make it out;" and Mr. Frishman asked me for a sheet of paper, and I gave him a sheet of paper and he made out the option, and John Rooney signed the option.

Q. That is the paper annexed to your bill, dated April 16, "Exhibit No. 2," isn't it? A. Yes, sir.

Q. Which reads as follows: "This is to certify that I, John Rooney, of the City of Clifton, hereby agree to give an option to Frishman and Laderman, of the City of Paterson, on my property, consisting of six acres of land, two houses, running," etc., "for the sum of $20,000." (Signed) "John Rooney." A. Yes, sir.

Q. What did you do with it? A. Mr. Rooney said "We don't need an option;" but he said if we wanted an option he would give it to us, and he did so, and we took it to the United States Trust Company.

Q. Then did he go away? A. Yes, sir.

Q. And then, after that, when did you next see John Rooney? A. I think it was on the morning of April 18th down in Passaic.

Q. And you had a conversation with him there? A. Yes, sir.

Q. That is two days after the date of this paper? A. Yes, sir.

Q. What was the conversation there? A. Mr. Frishman and myself told Mr. John Rooney that we had come to exercise the option that we were holding on the property, and he said "All right, when do you want to go to a lawyer?" So we decided to go to Senator Smith's office the next day. Then he said to me, "Now, the heirs want to know how long they can stay on this property after the making of this written contract," so I said, "Well, Mr. Rooney, we would like to get the property as soon as possible." He said, "What do you call that?" and I said, "This is the middle of April," I said, "supposing we give you until June 1st?" and he said, "Oh, now, the girls want until at least July 1st, because it will take them considerable time to find the place to move to;" and I said, "If that is the best they can do, I guess we shall have to be satisfied to allow you to stay there until July 1st."

Q. After that talk, you saw him down at Mr. Smith's office? A. We met him at Senator Smith's office, by appointment.

Q. Then was there a contract drawn in Senator Smith's office? A. Yes, sir.

Q. That was the contract that was offered in evidence? A. Yes, sir.

Q. Then there was a contract drawn by Mr. Smith? A. Yes, sir.

Q. And did you read it over? A. Senator Smith read it to all of us.

Q. Then it was signed? A. And then Senator Smith asked Mr. John Rooney whether he had the power to make a written contract for all the heirs and Mr. Rooney said, "Yes, for all of them." Mr. Thomas Rooney also said, "Yes, for all of them."

Q. Just think what you are saying, and then will you explain to us why Mr. Smith drew the contract between the estate of James Rooney and John Roo-

ney, attorney in fact, and allowed him to sign it as "John Rooney"? A. I don't get that question—

Q. John Rooney signed it before you did, didn't he; he was the party of the first part? A. Yes, sir.

Q. Now, I show you this paper and ask you to look at it; is that your signature? A. Yes, sir.

Q. And that is Mr. Frishman's? A. Yes, sir.

Q. You saw Mr. Rooney sign? Was that word "attorney" at the end of John Rooney's name when he signed it; was that written by John Rooney? A. I did not watch how they signed.

Q. Did you sign that paper after John Rooney signed it? A. I did not watch the way the paper was signed, but after, I signed my name, when I was told to do so by Senator Smith.

Q. Did not John Rooney sign it before you did? A. I don't know.

Q. You signed it in the same office? A. Yes, sir.

Mr. Dunn—I would like to have this marked for identification.

Marked "Exhibit D-1 for identification."

Q. Now, after that paper was signed, what was done? A. Mr. John Rooney and Mr. Thomas Rooney and Mr. Frishman and myself—

Q. What, if anything, was said before that paper was signed—before that paper was signed do you remember seeing Mr. Thomas Rooney there? A. Yes, sir.

Q. Now, then, what, if anything, was said by Thomas Rooney before the paper was signed, as to

John Rooney having authority to sign that paper? A. Senator Smith asked John Rooney whether he had the power to make a written contract for the sale of this property for all the heirs; he also asked him whether that power of attorney was in writing.

Q. What power of attorney? A. He asked him whether he had the power of attorney, and Mr. Rooney said that he did not know, but Thomas Rooney was sitting in the corner, and he said that the father had died and left no will, so by mutual consent, Mr. John Rooney, who was living right in the house with those women, that Mary A. Rooney, Miss Elizabeth Rooney, Bridget Rooney and the four of them, that they had appointed him to act as power of attorney for them.

Q. You mean to say that Thomas Rooney said that there in your presence? A. Yes, sir.

Q. Where was his power of attorney, did he produce it? A. Senator Smith thought it was not necessary, that as long as there was a mutual understanding, he felt satisfied, and I felt the same.

Q. What did Thomas Rooney say? A. He said he had the power of attorney.

Q. Did Thomas Rooney say that he himself had it? A. Thomas Rooney said that John Rooney had the power of attorney.

Q. Didn't he say right there that John had no power on behalf of the heirs to make any contract? A. No, sir.

Q. And was the contract then signed there? A. Yes, sir.

Q. After that contract was signed, was anything else said there that day, after the contract was signed? A. Not that I can recall.

Q. Now, then, after that, you had arranged there in that contract to complete the purchase by a certain date? A. Yes, sir.

Q. Now, what, if anything, did you learn, or when did you first learn that John Rooney was not able to carry out the contract and had no authority to do so? A. I never learned that at all, at no time, but I learned that John Rooney did not have the power to fulfill that contract.

Q. And you don't know it now? A. Absolutely not.

Q. You have had copies of these papers served on you, and you have sworn to them, haven't you; you have heard the bill read and you heard the answer read? A. Yes, sir.

Q. And the answer makes certain statements with reference to his not having power—not having authority at Mr. Smith's office at the time this contract was signed. You say at the time John Rooney signed this contract as attorney, that he did not tell you—meaning Mr. Smith—there, that he did not have authority from the heirs to sign? A. No, sir, I never would have gone into the contract then.

Q. You learned afterwards that he did not have authority, didn't you? Now, then, if you did not learn the next day that he did not have authority to sign, will you explain to the court why Jack was sent down with a paper to get the signatures thereon of all the other heirs, dated April 20th, the day after the contract had been signed? A. I don't understand you.

Q. On April 19th the contract was signed by you and Mr. Frishman and Mr. John Rooney? A. Yes, sir.

Q. Now, the next day, you stated in your direct examination, Joe Rooney was sent down to the homestead where Elizabeth and Bridget lived, and John Rooney, to get the signatures to the paper; now, did you know he was in there for that purpose? A. Well, the only thing I know is, that I talked it over with Mr. Frishman after we were coming home, and I spoke about making a different proposition about what we were going to do to improve the property, and we felt the best thing to do would be, to have us safe, was, I suggested to Mr. Frishman, who has in his employ Joseph Rooney, to see whether he would get all the heirs to sign a piece of paper, so that we would be well protected, because, if there is anything I hate it is trouble—

Q. You had been told at that time, hadn't you, that Mr. John Rooney's signature did not bind the other heirs? A. I had never been told that.

Q. What suggested to you that you should get the signature of the girls and the other heirs to any paper, if the contract you had just signed the day before was good? A. Because we felt we were going to turn the property over to several real estate people to see if we could sell it, and if we could not sell it immediately, we would make improvements in the place, and they had to stay there for ten weeks, and we felt that the summer time was the best time of the year for a small town like that to do things; so we wanted to have each and every one of the heirs sign a paper, so that there could never be a dispute.

Q. And didn't you do that in pursuance of the advice of your counsel? A. No, sir.

Q. And as far as that was concerned, that was

a suggestion on your part? A. Yes, sir.

Q. Then you learned that the heirs would not sign? A. Mr. John Rooney informed me on two different occasions that Elizabeth was not willing to go ahead to fulfill the contract, that she had changed her mind.

Q. Was not that the reason you sent down to try to get her signature to the paper? A. That was weeks and weeks after the signing of those papers.

Q. April 20th this was sent down by Joe; the next day after the contract was signed? A. Yes, sir, then weeks afterwards John Rooney came over to my place of business in the middle of May, and told me then that he was having a little trouble with Elizabeth Rooney; that she had changed her mind and had thought it over.

Q. Do you remember that when you were at Mr. Smith's office, that Mr. Thomas Rooney said that Mr. John had no authority to make a contract for the sale of that property? A. I never heard that.

Q. Then after this paper of April 20th was obtained, what was the next thing you did in the way of consummating the contract, for carrying it out? A. I did not think there was anything necessary.

Q. You went to Mr. Smith's office to complete the transaction? A. We went up to see if Senator Smith could straighten out the affair for us.

Q. Did not Senator Smith tell you you needed the signatures of these other people? A. No, sir.

Q. Did you ask Senator Smith if you did not need the signatures of all the heirs to this contract? A. No, sir.

Q. How long after April 20th was it that you saw this paper signed by the seven names, marked "Exhibit C-5"? A. Mr. Frishman brought it to my place of business about three days afterwards and told me to put it away.

Q. Did you put it away? A. Yes, sir, I put it in the vault.

Q. And so far as these heirs are concerned, you have no other paper with their names on except as stated here? A. No, sir.

Q. And you knew when Joe went over there that day, that the contract had been signed by John on the 19th? A. Yes, sir, I did.

Q. You paid the money to him? A. Yes, sir.

Q. So that when Joe Rooney was sent up there to take this paper up to the house to get the signatures, why was it done? A. Just merely to give us assurance that they could never change their minds.

Q. Now, you spoke about Mr. Rabinowitz being up to the house? A. Yes, sir.

Q. Was he there with you to the Rooney house? A. I don't think Mr. Rabinowitz went in the house at all.

Q. And did Mr. Rabinowitz have any conversation with Bridget in your presence? A. He had a conversation with Bridget and Elizabeth, in my presence.

Q. How far away was he from them when the conversation took place? A. A few feet.

Q. Was he outside the house? A. Yes, sir.

Q. And they were outside also? A. Yes, sir, there is a gate in front of the house.

Q. What was the conversation? A. Mr. Rabin-

owitz told them he had purchased a one-half interest; I had told him that we were having a little trouble with Elizabeth.

Q. What happened? A. Mr. Rabinowitz thought we could go up there and talk it over with the Rooney sisters, and he went up there with me in the morning, and he met them in front of the gate, Elizabeth and Bridget, and he said to them, "What do you intend to do about this contract?" and Elizabeth right off-hand said, "I did not sign that paper and I don't intend to go ahead with it."

Q. What date was that? A. It must have been either the 31st or the last day of May or the first of June.

Q. What did you say when she said that? A. I did not have much to say that time at all; I let Mr. Rabinowitz do all the talking.

Q. Had he at that time obtained his assignment from Mr. Frishman? A. Yes, sir, the night before.

Q. You obtained it from Mr. Frishman? A. Yes, sir.

Q. When you obtained it from Mr. Frishman you were obtaining it from Mr. Rabinowitz? A. I did not know that exactly, but they tried to get Mr. Barney to buy the half, and I felt that I would be better off if I had a friend of mine in with me, and I thought I would ask Mr. Rabinowitz to come in with me.

Q. The Rooneys had made you an offer to settle and surrender the old contract? A. Yes, sir.

Q. At the time this conversation was going on in reference to Mr. Rabinowitz then, did he know that you had bought out Mr. Frishman, or had

bought out your partner; did Mr. Rabinowitz know? A. Yes, sir; I told him that Mr. Frishman had told me he would sell it to me—that he would give me first preference if I wanted to buy it.

Q. And then you saw more money in it than $800.00, and you were going to stand pat? A. I felt I had bought the place and was still entitled to get it.

Q. Mr. Rabinowitz knew that these signatures were not made by the people and were not binding upon them? A. How did Mr. Rabinowitz know if no one else knew that?

Q. You knew it on April 20th, but they disputed their signatures? A. I did not; I was under the impression that John Rooney had the power of attorney to make a contract for all the heirs.

Q. But you never saw such a power in writing? A. No, sir.

Q. And your lawyers never told you they had seen such a power? A. No, sir.

Q. Then after this proposition was settled and you turned it down, and then when you sold out to Mr. Rabinowitz he knew that there was a dispute when he bought? A. He knew that Elizabeth Rooney had changed her mind.

Q. Didn't he know that she denied ever consenting, and Bridget denied ever consenting?

Mr. Harding—Objected to.

By the Court:

Q. Did you hear him say anything? A. He had told me once or twice that Elizabeth was dissatisfied—that she had changed her mind—

Further Cross:

Q. Did he say that Bridget was dissatisfied? A. No, sir.

Q. How had Elizabeth changed her mind? A. That she had thought it over and she felt she should not sell it—that she felt she wanted to spend the rest of her days on the farm.

Q And she was unwilling to sell it—Mr. Rabinowitz knew that fact? A. No, sir.

Q. When did you learn that Elizabeth refused to recognize the contract? A. The latter part of May, 1923.

Q. And Mr. Frishman assigned his interest over to you when? A. Mr. Frishman told me they had been lifelong friends of his, and that he would not go ahead with the contract, and that he would not take them to court.

Q. When did he assign his interest to you? A. It must have been about the first of June.

Q. Can you tell us? A. Not the exact date, no, sir.

Q. I show you "Exhibit C-8," which bears date June 1st, 1923, and ask you if that is the date? A. Yes, sir.

Q. So you knew it at that time that there was going to be trouble? A. I did not think there would be any trouble.

Q. Afterwards you served notices and demanded that they proceed to deliver deeds for the property, didn't you? A. We just notified them we would be willing and ready to take it up July 1st.

Q. When this notice was sent out to them by Mr. Rabinowitz and yourself, was not that done because you understood they were not going to close the title? A. No, sir.

Q. I will read to you the following paragraph from that notice: "Unless you and each of you perform on your part said agreement as therein provided, and refuse or neglect so to, we shall take such proceedings and enforce such remedies against you as we are entitled to;" didn't you know that clause was in there? A. Yes, sir.

Q. Wasn't that put in because they had refused to comply with your request to make the deed? A. No, sir.

Q. After this notice was served what else occurred in reference to making the deed or not making it? A. There was nothing that occurred on our part—

Q. The deed was not made, and after July 1st what did you do? A. Mr. Rabinowitz and myself engaged counsel to start a suit for specific performance.

Q. Mr. Rabinowitz was counsel before that? A. No, sir, he is a personal friend of mine and I just had him as the partner in this proposition.

Q. You did not need a lawyer? A. No, sir.

Q. After you served this notice—didn't you learn before that that you would not get the deed? A. No, sir.

Q. Did not Mr. Rabinowitz know when Mr. Frishman signed that paper over to you, that the girls would not give a deed for the property? A. Mr. Rabinowitz told me he had found out that they had retained Michael Dunn as their counsel, and that he had had a conversation with you, and he also told me that you had said that you would try and show

them to go ahead with the contract; that was the time he came over to my place of business and said he was going to send Mr. Dunn a letter to the effect that we would not wait any longer than July 1st.

Q. Didn't he also tell you that I would not take any action in your behalf in the matter; didn't he also tell you that my people would not sign a deed? A. No, sir, he did not tell me that at all.

Q. You and Mr. Frishman are pretty intimate? A. Not very well, just belong to an organization together.

Q. He is a man of means? A. Yes, sir.

Q. You have been in business how long? A. Twelve years.

Q. He has been in business a long time? A. Yes, sir.

Q. Now, then, don't you know that Mr. Frishman told you that he had learned it through John that the girls would not sign that deed— A. No, sir.

Q. You knew that Mr. Frishman was willing to sell out for $250.00, didn't you; you knew that, didn't you? A. The only way I knew that was that he had told me that John Rooney had offered him $250.00 for his trouble, and that he said he did not want to have any trouble at all, that he would sell his.

Q. And then he assigned half his interest to you? A. Yes, sir.

Q. How much did you pay him for his interest? A. I gave him the $250.00 profit which the Rooneys had offered him.

Q. He took from you the same price he was willing to take from John? A. Yes, sir.

Q. And they offered you $800.00? A. Yes, sir.

Q. And you wanted a thousand dollars? A. I told them if they wanted to settle the deed to-day, or to buy another piece of property on Graham Avenue, two houses, that if they would settle it to-day I would release them from the contract for a thousand dollars, but that I would not consider it after that day.

Q. What did John say to that? A. He said that he did not have that money, that I was asking entirely too much from him; he said, "These women have no money, and I cannot go to them individually and ask for money." I said, that "They were the ones that told you to make this written contract for them;" and he said, "I know they did."

Q. Do you swear before this court that John Rooney there told you that these girls asked you to make this contract? A. I do.

ALBIN SMITH, sworn in behalf of the complainants, testified as follows:

Direct Examination by Mr. Harding:

Q. You are an attorney and counsellor at law? A. Yes, sir.

Q. How long have you been such? A. 18 years.

Q. Practicing here in the City of Paterson? A. Yes, sir.

Q. Are you acquainted with David Laderman? A. Yes, sir.

Q. And Nathan Rabinowitz? A. Yes, sir; he has adjoining offices to mine in the same building.

Q. What were your relations with Mr. Frish-

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man; did you know him? A. Yes, sir, very well.

Q. Maurice Frishman? A. I have acted as his attorney in several matters.

Q. Any other relations besides acting for him as attorney? A. Not him personally, no, sir.

Q. He was one of your clients then? A. Yes, sir, at one time.

Q. Do you remember drawing a contract between the estate of James Rooney, by John Rooney, attorney in fact, and David Laderman and Maurice Frishman? A. Yes, sir.

Q. Had Mr. Laderman ever had any business relations with you before that? A. Not business relations, it was more of a favor on my part.

Q. Did they come to you for the purpose of drawing a contract? A. Yes, sir.

Q. I wish you would state to the court—you are a lawyer—just exactly, as near as you can recall it, what took place in your office at the time this contract was drawn?

Mr. Dunn—Objected to as too general.

Q. What was said by—first of all, who were present? A. Mr. John and Thomas Rooney, Mr. Laderman, Mr. Frishman and myself.

Q. I ask you to state the conversation that took place at the time this contract was made. A. I asked Mr. Rooney and Mr. Laderman and Mr. Frishman and Mr. John Rooney the conditions of the sale, and took a memorandum on a separate piece of paper.

Mr. Dunn—One moment—the result of

what the Senator did is in this paper—

The Court—He says he made a memorandum at the time.

Mr. Harding—It is part of the res gestae.

Mr. Dunn—I withdraw the objection.

A. The terms of the contract were made on a memorandum, and I gave it to my stenographer to draw up. After the contract in duplicate was made, before signing, I said to John Rooney, in fact, I asked him a series of questions; I asked him before the contract was drawn, and after, if he had the power of attorney to act for all the heirs of the estate, and he said he had. I said, "Have you the authority in writing to make a contract for your sisters and brothers?" and he said, "I have." I said, "Is this contract or power of attorney on record?" He said, "I don't know." At that time Mr. Thomas Rooney spoke up and verified what was said, and we proceeded to have the contract signed under those conditions; I made it the Estate of James Rooney, representing everyone who was interested as an heir. The contract was signed, and the money was passed, and the gentlemen left my office.

Q. When you asked him, just what was it you said to John Rooney with reference to his power—A. I first asked him the question, did he have the power of attorney for all the heirs of the estate, and he said he did; then the next question was: "Have you a written power of attorney to make a contract for all the heirs of this estate," and he said he had. I asked him particularly if he had a written authority to make a contract in writing, and he said he did; it occurred to me immediately that it must be

on record, and I asked him if it was on record, and he said, "I don't know." Then Mr. Thomas Rooney spoke up and said that his father had died and they all practically lived together, and that Mr. John Rooney always had authority to act for all the heirs.

Q. Verbal authority? A. John was the man who said he had the writing.

Q. After you asked these questions that you have spoken of, did you right in their presence prepare this contract in writing which is dated the 19th of April, 1923? A. After I had taken the memorandum I sent it in to the girl and she prepared it and then brought it back, and I read it back to them.

Q. You read it all over? A. I did not read all these particular things that are in every contract, but I read most everything, the particulars.

Q. And then the contract was signed; I show you this contract that is dated the 19th of April, 1923? A. Yes, sir.

Q. And it was marked "Exhibit C-4 for identification"? A. Yes, sir.

Q. And you witnessed it? A. Yes, sir.

Q. That is your name that appears there as the witness? A. Yes, sir.

Q. Did you see John Rooney sign it? A. Yes, sir.

Q. And David Laderman? A. Yes, sir.

Q. And Maurice E. Frishman? A. Yes, sir.

Q. Whose handwriting is that, "Estate of James Rooney, by Attorney"? A. Mine, and was placed there before John Rooney signed it; I noticed the omission, because the girl probably omitted putting that in typewriting—

Q. When it comes to the clause— A. It was omitted by her and I put it in there.

Q. That is the way it was signed? A. Yes, sir.

Q. Did you take the acknowledgment? A. Yes, sir.

Q. And in the acknowledgment it says, "personally appeared John Rooney, attorney in fact of the Estate of James Rooney"? A. Yes, sir.

Q. And you signed that acknowledgment? A. Yes, sir.

Q. Was this contract executed in duplicate? A. Yes, sir.

Q. It does not say that, but there were two made? A. Yes, sir.

Q. And each contract was signed? A. Yes, sir.

Q. Now, turn to that portion—by the way, is this copy I hold the original? A. The copy you hold is the original, and the other is a carbon of it.

Q. Now, I notice in the contract which you hold in your hand, which is the carbon copy, the words "Estate of James Rooney, by John Rooney, Attorney," that is different from the original? A. I just omitted putting it on the carbon copy.

Q. You put "Attorney" on the carbon copy? A. Yes, sir.

Q. I notice also, that you also took the acknowledgment? A. Yes, sir.

Q. In the carbon copy as well? A. Yes, sir.

Q. But in the acknowledgment in the carbon copy is this exactly the same as the original copy, and it says, "John Rooney, Attorney in Fact of the Estate of James Rooney"? A. Wherever the typewriting is it is exactly the same, but the girl omitted putting the words "Estate of James Rooney," and I supplied

the omission by writing it in ink on the original contract.

Q. Now was a copy of that contract taken by each of the parties? A. As far as I know, each took their contract and went.

Q. Now, Senator, after that contract was made on the 19th of April, 1923, did you again—were you present at a conversation between Mr. Laderman and the Rooneys or any of the Rooneys in your office? A. Yes, sir.

Q. Tell us what took place then? A. I presume you are referring to the time when they came to my office to see if I could help adjust the matter?

Q. Yes; about when was it? A. I cannot give you the date; it might have been the first of June, around that time, or the latter part of May; I don't just recall the date in particular.

Q. Well, what was it? A. Mr. John Rooney and Mr. Thomas Rooney came to the office, and they told me in the presence of Mr. Laderman that their eldest sister, who, I found later, is named Elizabeth, would not join in a deed for the transfer of this property. I think it was John Rooney who said that his sister had lived there a long while, and she sort of wanted to spend her days there; and I said, "Well, you signed the contract; I am afraid you will have to go through with it;" and there was a dicker to settle with Mr. Laderman for $500.00, and then they raised it a little bit, and finally Mr. Laderman said he wanted $1,000 or else it was all off.

Q. In the meantime had you heard about the confirmation of the contract which was made on the 20th of April, the day after the contract was made? A. The only way I heard about that, Mr. Frishman

called at my office a day or two after the contract was made.

Q. Had you heard about it? A. Yes, sir.

Q. Did you in this conversation refer to that fact of all the heirs having signed this paper? A. Yes, sir.

Q. What was said about that? A. I said, "You signed a paper;" I said "Your brothers and sisters signed a paper authorizing you to go through with this deal;" and he said "They did not all sign;" and I said, "Who did not sign it?" and he said, "Elizabeth did not sign it." I said, "How did it come about that her name was on that paper?" and he said, "One of the other sisters signed it for her;" he said, "She was in the kitchen and the other sister took it in to her." I said, "She was present when it was signed?" and he said, "Yes, she was present;" I said, "Certainly, this sister would not sign the other sister's name without her authorizing her to do it," and he said, "I don't know; she claimed she did not sign it."

Q. Do you recall whether there was a man named Barney was present on that occasion? A. Yes, sir.

Q. Were John and Thomas present when you had this conversation about all the heirs having signed the paper on April 20th? A. Yes, sir, Thomas and John were both present in my office at that time.

Q. Did Thomas Rooney say anything in response to your statement that Elizabeth as well as all the rest had signed this paper? A. I don't recall that he said anything with regard to that, but Thomas and John said, "We are all willing except Elizabeth to carry out the contract;" they both asserted up to the last that they were willing to carry out their

part of the contract, and they said that every one of the heirs were willing except Elizabeth.

Q. Tom said that? A. Yes, sir.

Q. Did not John say something about his paying Laderman something to release them from the contract? A. Yes, sir, they dickered there, and he offered $500.00; that was the first offer he made.

Q. After that, was there another conversation in your office between Tom and John Rooney and Mr. Laderman, and in which Mr. Rabinowitz was present? A. Yes, sir.

Q. How long after this conversation was it? A. I was speaking about the last conversation we had with Mr. Thomas and John Rooney.

Q. You have first stated to me the conversation that you had in the presence of Mr. Barney; how much of this conversation took place on that first occasion when Mr. Barney was there, before the conversation in which Mr. Rabinowitz was there? A. When Mr. Barney was there, that was the time when there was a dicker to pay off Mr. Laderman his interest in the contract, and it was also the time when both Mr. John and Mr. Thomas Rooney told me that everybody was willing and ready to carry out the contract except Elizabeth.

Q. What took place at the time Mr. Rabinowitz came in? A. Mr. John Rooney and Thomas Rooney and Mr. Laderman were present, and Mr. Rabinowitz came in shortly after we had started, and he told them that he was interested now, that he had purchased Mr. Frishman's interest in the contract, and that he would expect them to carry out the terms of the contract.

Q. Well? A. Then again, Mr. Tom and John

Rooney both said that everybody was willing to carry out the contract except their eldest sister Elizabeth.

Q. Did either Tom or John say to you, that Elizabeth had not given John authority to make this contract? A. No, sir, I was led to believe at all times that John had the power of attorney. I believed him when he said that; but I also realized that in the passing of this title we had to get the signatures to a deed; I did not believe at any time that John did not have this power of attorney which he told me he had—

Q. When John said they were all ready and willing to carry out that contract that had been made, except Elizabeth, was Thomas present? A. Yes, sir.

Q. What did he say? A. He said the same thing.

Q. He repeated it, too? A. Yes, sir, and they were both standing up at the time; the minute before they left one was standing on one side of the table, and the other on the other side. They said, "We are all willing, and all the other heirs except my eldest sister, is ready to carry out the contract."

Q. Do you recall at that time whether Mr. Rabinowitz made any suggestion to them as to six of them executing the contract? A. Mr. Rabinowitz made the proposition that they would proceed to take the six-sevenths interest and get Elizabeth's later, either through court proceedings or otherwise.

Q. What reply then was made to that? A. Not so much of a reply as a discountenancing of that proposition by the brothers.

Q. What did they do? A. They said, "We shall have to see our lawyer about it."

Q. This contract provided that the deed should be passed and finally consummated on the first of July, 1923? A. I did not know the first of July was Sunday.

Q. So then, on the second of July were you present in your office? A. No, sir, not until the afternoon, the second of July, if that is a Monday, every Monday and Friday I go to a doctor in New York, but I told my stenographer on the Saturday preceding that that contract would probably be consummated on Monday, and that if Mr. Rooney or Mr. Dunn or anyone representing them came in and asked for me, to immediately notify Mr. Rabinowitz next door, and he would keep his office open; and she told me later that no one called.

Mr. Harding—That contract was offered and admitted in evidence.

Mr. Dunn—Yes.

Q. I show you a check that has been referred to? A. Yes, sir.

Q. Made payable to the order of John Rooney, attorney of the estate of James Rooney, for $500.00? A. Yes, sir.

Q. Signed by David Laderman? A. Yes, sir.

Q. Marked "Exhibit C-2" in this case? A. Yes, sir.

Q. Whose handwriting is that "John Rooney, attorney for estate of James Rooney" in? A. Mine.

Q. At that same time did you put those words in the check? A. At his request I wrote the wording in the check, at Mr. Laderman's request.

Q. Then I see also on the chack, it is endorsed—is that in your handwriting, "Attorney for Estate of James Rooney"? A. Yes, sir.

Q. And I show you also a check dated April 19, 1923, made by Maurice E. Frishman? A. That is exactly the same way; I drew both those checks the same way, and the words "John Rooney, Attorney for Estate of James Rooney," is in my handwriting.

Q. And also the endorsement on the back of it is in your handwriting? A. Yes, sir, so as to make that proper, and there would be no trouble about it.

Q. You spoke of making a memorandum at the time when you drew the contract, and inasmuch as you referred to it, I will ask you if that is the memorandum? A. Yes, sir.

Q. That is the memorandum of the conditions upon which the contract was drawn? A. Yes, sir.

Cross Examination by Mr. Dunn:

Q. Looking at your memorandum that you had your attention called to, I see that on the second sheet you have the following: "John Rooney, single; Elizabeth Rooney, single; Mary Rooney, single; Joseph J. Rooney, boy, living still; Mary A., wife." Then follows "Thomas C. Rooney, widower, and Bridget Rooney, single, and Annie Rooney, single." Now that represents the seven Rooney heirs. Now, did you at the time, in drafting the agreement, learn that James Rooney, the father of these children whose names I have just read, had died intestate years before you drew this contract? A. Yes, sir, they told me so.

Q. And also that there was no will? A. Yes, sir, I think that is so.

Q. And that the children had continued to occupy the property left by the father from that time on down? A. Yes, sir.

Q. Did you not realize at the time you drew this contract in the name of the Estate of James Rooney, by John Rooney, Attorney in Fact, that John Rooney, as an individual, could not make a contract to sell that property? A. I knew as an individual he could not, but I asked him the question so as to satisfy myself that he could as attorney.

Q. Did you tell him he would have to produce the letters of attorney? A. No, sir, I took Mr. Rooney's word, and his brother Thomas sat right there.

Q. Did you anticipate or realize that he could not make a deed in this form conveying the property? A. That is one of the reasons why I took all the names; I thought I would probably draw the deed and everything would pass off as it ought to have done in the original.

Q. Do you realize also, in inspecting the contract that you drew, that it was to be closed at your office and a warranty deed to be given? A. Yes, sir.

Q. And it was to be delivered on the first day of July; I call your attention to the different verbiage contained in the contract which you had signed "By John Rooney, as attorney," all the various covenants therein stated, "and also, in consideration of the covenants and agreements hereinafter mentioned, made and entered into, and the said party of the first part doth agree to and with the said party of the second part," that is, with Mr. Laderman and Frishman, "that he, the said party of the first part will well and sufficiently convey to the said party of

the second part, their heirs and assigns, by deed of warranty, free from all encumbrances, on or before the first of July next ensuing the date hereof, all lot, part or parcel of land described in the contract." Now, did you realize at the time the contract was made, that Mr. John Rooney, who is the party of the first part, had no title which he could convey in keeping with the agreement? A. No, sir, he did have title, according to my estimation, and that is grammatically correct.

Q. In order for John Rooney to carry out this contract he would have to have title vested in him, the whole title, wouldn't he? A. Provided he had to do it himself, yes; he would have to have title in order for him to give the title.

Q. To give a deed for that property at the time mentioned, he could not do so under the name that the contract is made in, "Estate of James Rooney, by John Rooney, Attorney in fact?" A. You say he could not; if he had the power of attorney, he could.

Q. Supposing he did not have the power of attorney? A. But he told me he did.

Q. Now, I call your attention to the language of the covenants contained in this deed, in reference to the giving of warranty deed and against encumbrances: "It is understood and agreed, that the buildings on the said premises are all within the boundary lines of the property as described in the deed therefor, and no encroachment, etc., and that they are built in compliance with certain ordinances, and that the title is not acquired under the Martin Act." You realize now, that if Mr. John Rooney did not have sole ownership of the property he could not fulfill the covenants; the question is, whether Mr.

John Rooney could give good title? A. Yes, sir, or they would have to make it good.

Q. Did John say at the time he was there in your office, that he had power to make these contracts, these agreements? A. He said he had power of attorney to act for all the heirs of that estate.

Q. And that he had the power to make deeds? A. Yes, sir.

Q. And warranty deeds? A. He did not use those words; he said, "I have the power of attorney," and I asked him if it was in writing, and he said, "Yes."

Q. Didn't you realize then where this property had come to him from? A. Yes, sir.

Q. Didn't you realize then, also, that he being a one owner out of seven, that he had to have something of record? A. Under the power of attorney he had the right to sign that contract.

Q. But did you know personally about a paper that was a power of attorney that would give him that authority? A. I did not, but I took his word; I asked him if it was on record, and he said, "No." I was going to find out if it was on record.

Q. Do you want the court to understand that when that contract was drawn in favor of Frishman and Laderman, that they were in a position to force from John Rooney a deed in keeping with its terms? A. I don't understand your question.

Q. In other words, when they got a warranty deed from him, that would be good?

Mr. Harding—Objected to.
The Court—The question is immaterial.

Q. How soon after this contract was signed did you learn that the girls had an interest in the property; how soon after this contract was signed in your office did you learn that his sisters had an interest in the property? A. I understood at all times that they were tenants in common, when I took the memorandum.

Redirect Examination by Mr. Harding.

Mr. Harding—I think I shall have to ask the witness a number of questions, and we have not time.

Adjourned to November 8, 1923, tentatively.

Continuation of the taking of testimony in the above-entitled cause, at the Chancery Chambers, Paterson, New Jersey, on the eighth day of November, nineteen hundred and twenty-three, before Hon. Vivian M. Lewis, Vice Chancellor.

APPEARANCES:
John W. Harding, Esq., for the complainants;
Michael Dunn, Esq., for defendants.

MR. ALBIN SMITH resumes the witness stand.

Further Cross Examination by Mr. Dunn:

Q. Senator, was Thomas Rooney present when any instructions were given for the contract, and at the time that you made these memorandums? A. Yes, sir, when the contract was signed Thomas Rooney was present.

Q. Was he present when you took down these notes which were offered here as your memorandum the other day? A. Yes, sir, I think he was.

Q. Can you tell from this? A. I cannot tell from this.

Q. Those notes were taken down, were they, before the girl was sent out to draw the deed? A. Yes, sir, this was the first memorandum that I took when they came in to talk about it—

Q. Now, then, you say that Thomas was present at that time? A. I think he was.

Q. You won't be positive that he was? A. No, sir.

Q. Don't you recall he came in—do you remember whether Thomas was there when the contract was signed by John? A. Yes, sir, positively.

Q. Was he there before the contract was dictated to your stenographer? A. Yes, sir.

Q. Then you heard the conversation between John and Thomas, that John had no authority to sign as attorney? A. There were no such words between them.

Q. Is there anything on your memorandum there to show that the contract was drawn, from anything contained in it? A. No, sir.

Q. Then this contract was drawn—from what source was the data obtained? A. While we were there at my table.

Q. Where did you get the description that you put in that contract of the property? A. I think, probably, I had the deed.

Q. I call your attention to the description. A. All I recall now, I think that was taken from a tax receipt; I don't think we had the deed, and Mr. John Rooney had a tax receipt with him.

Q. A receipt or a bill? A. It might have been a bill.

Q. And that was the only description you had of the property? A. Yes, sir.

Q. Did you get that before or after Thomas came in? A. That was before.

Q. And had that data with the other data, given to your stenographer, been dictated to her before Thomas came in? A. Yes, sir; understand, my stenographer was in another room.

Q. Do you remember whether or not you asked John any questions about the relatives, in the presence of Thomas, after Thomas came in? A. My recollection was, that probably Thomas answered to some of my questions, as he was sitting there; but my conversation was directed all to John Rooney.

Q. I want to know whether or not Thomas was present when you took down any of that data? A. He was.

Q. Can you tell what part of the data he was present at? A. At all of it.

The Court—Is that data offered?

Mr. Harding—No, it was used to refresh his memory.

Q. Now, did you hear Thomas say that John had no authority to sell the property? A. Thomas never said that; to the contrary, he led everybody to believe that John did have the authority.

Q. State anything that Thomas said that led you to believe that he had authority to sign the contract to sell on that day. A. As near as I can re-

call, Thomas said—I don't know whether he called me "Senator" or not, but he called me something, "Lawyer," probably. He said, "It is this way, the estate belongs to all the children, and we all left it to John." I don't know whether he said to sell or handle, but I inferred that whatever John did was their wish.

Q. Might be approved? A. No, sir, that John had the authority to go ahead and do what he was doing.

Q. Thomas said that? A. I don't say he said those words, but what he did say, that was the impression that I got; I don't know the exact words he used.

Q. Did he say anything about written authority? A. I don't know that Thomas used the word "written."

Q. Do you remember that John said he had any written authority? A. John told me he did.

Q. Do you remember that after John said that, it was when Thomas spoke up and said, "No, he has no authority?" A. He never said that in my presence.

Q. Now, who was present at the meeting when that conference took place in your office with Laderman and Barney in reference to a settlement, and John Rooney? A. I think I was the only one present besides.

Q. Thomas Rooney was not there then? A. I won't be positive about that.

Q. This is the time there was an offer made of $500.00 by John, and Laderman wanted $1,000 to settle? A. I rather think that Thomas was present.

Q. Well, now, was Mr. Barney there, too? A. Yes, sir, I think he was.

Q. Now, what was said in reference to the reasons why John could not carry out the contract at that time when they were offering the settlement? A. Because Elizabeth, the elder sister he called her, said that she was not willing to go ahead with the contract.

Q. What did he say about the others? A. He said they were all willing.

Q. And that was said by John and also by Thomas, in your presence? A. Yes, sir.

Q. Was Mr. Barney present at the same time? A. Yes, sir.

Q. Later, you remember a meeting with Mr. Rabinowitz at your office? A. Yes, sir.

Q. And John and Thomas Rooney? A. Mr. Rabinowitz was there at a time when they were there.

Q. What was said then as to the carrying out of the contract or settlement? A. Mr. Rabinowitz, I think, said that if Elizabeth would not sign, he would purchase all the other interests that would sign, and run his chance; he would take his chances of going into court, and either beating her or allowing her to stay there.

Q. Didn't you know that day that the others would not sign? A. At no time did John or Thomas say anyone would not sign, except Elizabeth; to the contrary, they always reiterated that all were willing except the eldest sister.

Q. Do you remember that Mr. Rabinowitz, that day when he was present, told John he had made himself liable to a suit for heavy damages, for sign-

ing a contract because he had taken money under false pretences? A. In the conversation that might have been said, but I do not recall that so readily.

Q. Did you hear him tell John he was guilty of embezzlement and unless he obtained a deed for the property, he would take him to the court for the sale? A. I know he said he would take him to the court, but whether he said he was guilty of embezzlement, I don't recall that.

Q. And don't you remember your saying you would go on the witness stand against John? A. I probably said that I should be called as a witness, or something of that kind.

Q. And that you would go on the witness stand against John to enforce it? A. No, sir.

Q. Now, at the time this deed was signed—the contract was signed by John—what was said, if anything, in reference to risks that John was assuming by making the contract? A. I don't remember.

Q. No explanation made of it? A. I don't think he asked for one.

Q. You were the agent and special agent acting in behalf of the parties? A. But the attorney does not as a rule suggest information unless it is sought.

Q. You knew John was a special agent at that time? A. I would not call him a special agent; he told me he had a power of attorney in writing, and I believe to this day that he must have a written power of attorney.

Q. Did not Thomas tell you there that day he did not have any? A. No, sir.

Q. Do you remember whether or not there was

any talk as to adjustment of unpaid taxes and assessments upon the property? A. It was read to him from the contract.

Q. Was there any talk about it? A. I think I said to him that unpaid taxes were to be adjusted; I said the taxes would be adjusted between them as of the day of the sale.

Q. You just read the paper? A. No, sir, I might have spoken to him particularly about the taxes.

Q. Was there anything said about a warranty deed, except what was done in the contract? A. No, sir, only what was said; I read that in the contract to him.

Q. In the ordinary way that these instruments are read? A. Of course, I read that out to him.

Q. Was there anything said to him in reference to John—that in case the buildings were within the boundary lines, if they were not they would have to— A. No discussion as to that.

Q. Was there any discussion as to whether or not the buildings were erected in compliance with ordinances? A. No, sir, only what the contract contained.

Q. You did not stop to discuss that? A. No, sir.

Q. Was anything said about the title was not derived from the Martin Act commission—any explanation made of that? A. No, sir, only what was said in the contract.

Q. There was nothing said by him that he had any power to bind the owners of this property in reference to the assumption of risk—the adjustment of taxes—

full covenants of warranty? A. He did not have to say that when he told me he had the written power of attorney; that was all that was necessary.

Q. When did you first learn he did not have any written power of attorney? A. Up here in this court, the first day of the hearing.

Q. When these men called at your office, Laderman and these fellows, and John made an offer of $500.00, you learned he had no power to sell? A. No, sir, it was particularly because the eldest sister would not sign, he said; would not agree to what they had done.

Q. And nothing was said at all about the other sisters being unwilling? A. John and Thomas said they were all willing to let them go ahead with the contract.

Q. And you say you supposed they were, but not having had any direct contact with them? A. I never met any of the Rooneys, only John and Thomas; those are the only Rooneys I met.

Q. And when was it you first learned that Thomas did not have authority? A. I did not know them; I am only assuming from your case that probably he has not got it; I don't know that he has not got the authority; when he told me he had the power of attorney, I believed him.

Q. So you deny positively that Mr. Thomas Rooney made that statement in your presence? A. He never made such a statement.

Redirect Examination by Mr. Harding:

Q. Senator, just tell us a little more particularly how you read the contract to John and Thomas. A. I took the contract after it was drawn, and I

started off by saying, "Articles of Agreement," etc., and said "Estate of James Rooney, by John Rooney," leaving out his residence, City of Clifton, County of Passaic and State of New Jersey, and then went on and said, "David Laderman and Morris E. Frishman," and leaving out where they reside, and then I went on and read all the particulars of the contract.

Q. Did you read it aloud just as it is in the contract? A. Yes, sir.

Q. And slowly and distinctly in their presence? A. Well, I don't know how slowly I read it, but I believe that it was read in such a manner that they understood exactly what I said.

Q. Did either of them make any dissent in any way to it, or ask for any further explanation or anything of the kind? A. No, sir.

Q. And then John signed it? A. Yes, sir.

Q. Now, you are referring to the contract signed by John, dated the 19th of April, 1923; that is "Exhibit D-1?" A. Yes, sir.

Q. You have explained that one contract did not have "the Estate of James Rooney" on; that was inadvertently omitted? A. Yes, sir.

Q. You have been all over that? A. Yes, sir.

Exhibit already marked "C-4" for identification is now offered and marked in evidence.

NATHAN RABINOWITZ, being duly sworn, testified as follows:

Direct Examination by Mr. Harding:

Q. You are one of the complainants in this case? A. Yes, sir.

Q. And you became interested in a contract that has been referred to as "Exhibit C-4?" A. Yes, sir.

Q. Made between the Estate of James Rooney, by John Rooney, attorney in fact, of the first part, and David Laderman and Morris E. Frishman, of the second part? A. Yes, sir.

Q. You bought out Frishman's interest, did you? A. Yes, sir.

Q. When? A. June 1, 1923.

Q. Did you see, after that, the defendant, John Rooney? A. Yes, sir.

Q. Give us the circumstances leading up to that. A. I went to Mr. Laderman's place on Bridge Street, that is Bridge and Tyler Street, just for some business purpose, and while there he discussed the purchase he had made with one Frishman, of a tract of land in Clifton. As a result of our conversation, I went up to the property in Clifton, and as we approached the gate—

Q. Did you agree to take the interest? A. I first wanted to see the property, and I went up with Mr. Laderman to look the property over, and as we approached the gate, Mr. John Rooney came forward and said to David Laderman, "Take $800.-00." Mr. Laderman then introduced me to John and said, "Mr. Rabinowitz is going to purchase a one-half interest;" at that time I said I was going to purchase a half interest in the contract.

Q. Before this purchase, did you have the interview at the gate? A. Yes, sir, and I said I was going to purchase the half interest in the contract

and expected that John Rooney and everybody else that had signed the paper which Mr. Laderman had shown me, signed by all the heirs—

Q. What paper was that? A. The paper I have here.

By the Court:

Q. Signed by all the heirs? A. Yes, sir.

Q. Every one of them? A. Yes, sir.

Further Direct:

Q. Refer to what that paper is, so the stenographerwill get it.

Mr. Dunn—There is no evidence here of any source on your side so far, that that was signed by all the heirs.

Mr. Harding—It purports to be signed by all the heirs.

By the Court:

Q. Who gave it to you? A. Mr. Laderman; before I went up there he handed me this paper.

Further Direct:

Q. Identify what the paper is; it is marked for identification. A. It is marked "C-5 1-2 for identification." Mr. Laderman showed me the contract, as I remember, and also this paper, and I felt satisfied from the legal position that Mr. Laderman was in, that I would be perfectly safe in purchasing the half-interest in that contract. He told me the cir-

cumstances under which the paper was obtained, and as a result—

Q. These are the papers he showed you before you went up to the house? A. Yes, sir, he showed me this paper, as well as a copy of the contract.

Q. You had not paid any money when you went up to the house? A. No, sir; then I went up to the house.

Q. You spoke about seeing John Rooney, one of the defendants? A. Yes, sir.

Q. Now, then, what was said? A. I told him I was interested—that I intended to purchase one-half of the interest in that contract; that was just after he offered Mr. Laderman $800.00 to release him out of the contract—to call it off; and I said, "I expect, Mr. Rooney, to hold you to the strict terms of that contract, and insist that you carry it out." Well, he did not say anything to this; I said, "I understand, however, from Mr. Laderman, Mr. Rooney, that Elizabeth is—that one of the girls is unwilling to carry out the terms of their contract;" "Yes," he said, "Elizabeth has signed Bridget's name to that paper;" I remember distinctly that he said Elizabeth had signed Bridget's name; well, later on he changed the story at Mr. Smith's office; and when we left I said, "We are going to stand pat on the contract, and we expect you to carry it out;" and he did not say anything, but went back. He seemed to be rather disturbed over it. The following day I suggested to Mr. Frishman that it would be a good idea to go up to the farm and get to the bottom of this whole business. I gave Mr. Laderman a check for $750.00 for a half interest—

Q. You paid $750.00— A. $500.00 deposit and

$250.00 on the purchase price. Mr. Laderman had purchased a half interest from Mr. Frishman just previously; and Mr. Laderman, in turn, sold me a half interest of the whole property that he had acquired by the purchase from Frishman, for which I gave him a check for $750.00.

Q. In this first conversation with John was anything said as to whether the paper had been signed by all the heirs, the paper being in your hands? A. Yes, sir, he said that all the heirs were satisfied to go on, but he said that Elizabeth had signed Bridget's name; everybody was perfectly satisfied to go on with the contract; all the heirs were perfectly satisfied to go on. Well, I wanted to find out exactly what this trouble was about one of these heirs, and I suggested to Mr. Laderman to go up to the farm.

Q. Who told you about the trouble? A. Mr. Laderman had said to me, that one of the heirs was unwilling to go on and carry out her contract; but John told me they were all right; and John said Elizabeth had signed Bridget's name. I went up to the farm the following morning, June 2nd, 1923; that is my second visit, and I went to the back of the house and saw two women, who were introduced to me as Bridget and Elizabeth; Mr. Laderman introduced me. I said that I had purchased a half-interest in the contract, and expected them to carry out the terms of their contract. Elizabeth turned to him and said, "Why, Bridget has signed my name to this contract." I said, "Bridget, did you sign Elizabeth's name?" and she said, "Yes;" I said, "Was Elizabeth there at the time you signed the contract?" and she said, "Yes, she was in the kitchen;" and she said, "I signed it in good faith;" "You are

satisfied to go on with this contract?" I said to Bridget, and she said "Yes." I said, "We expect you to carry out the terms of that contract, and I think it would be well if you can possibly have John to come down to my office, or Senator Smith's office, so that we can discuss this matter, because I intend to go on and fulfill the terms of the contract, and I expect you to do likewise."

Q. I understood you to say first, that John told you that one— A. John said at first, that Elizabeth had signed Bridget's name; and Bridget said that Elizabeth had accused Bridget of signing her name.

Q. So when you bought your interest in the property, you knew of this difficulty? A. At the time I purchased my interest in the property, I knew from John; John had told me that Elizabeth had signed Bridget's name; but from the story that I got from Mr. Laderman as to the circumstances under which this paper was obtained I felt that it was perfectly all right.

By the Court:

Q. What was your object in buying an interest in that? A. Just for investment purposes; that is all.

Further Direct:

Q. Now, you said, I think, that something was said about meeting John at Senator Smith's office the next morning? A. Yes, sir, the following morning I met John and Tom; I was introduced to Thomas; this was, I should think, on June 3rd.

Q. Did you say anything to Elizabeth or Bridget on that occasion about wanting John to meet you at Senator Smith's office? A. Yes, sir, I left my card and told them to come down to my office, and instead of that, they went to Senator Smith's office, and somebody told me, and I went there, and I told them that I had purchased a half-interest in the contract, and I expected them to carry out the terms of the contract; and John said, "I did not mean what I said the other day, that Elizabeth had signed Bridget's name—what the truth of the thing is, that Bridget had signed Elizabeth's name—I made a mistake." I said, "It is a very strange case, Mr. Rooney, I understood that all the heirs were satisfied to go on with their contract;" and he said, "All the heirs were satisfied." Thomas interrupted and said, "I am satisfied, too, so far as I am concerned, in having this contract carried out, but," he said, "Elizabeth is the only one that seems to hold out, but everybody else is perfectly satisfied to go on with their contract." I said, "Well, if that is the situation, I will be willing to take that six-sevenths of the property and see what we can do about the other one-seventh through the court."

Q. What happened then? A. Why, John became very angry over that suggestion, and he said he was going out to see a lawyer. Senator Smith tried to persuade him to remain and see if this thing could not be reasoned out; but he rushed out; and the first thing I heard was, that he had engaged Mr. Dunn as his counsel.

Q. Did you ever meet Joe Rooney in reference to the matter? A. Yes, sir, I wanted further confirmation that this paper was all right.

Mr. Dunn—We object to any conversation with Joe.

Q. Did you see Joe Rooney about it? A. Yes, sir.

Q. Without stating any conversation that you had with him, do you know whether or not Joe Rooney had anything to do with obtaining the paper which purports to be signed by all these heirs? A. Yes, sir, I do.

Mr. Dunn—Objected to.

The Court—He may answer "Yes" or "No."

A. I do.

Q. What do you know about it?

Mr. Dunn—Objected to.

The Court—Objection overruled.

A. I went up to the home of Mary A. Rooney with Frederick C. Barnes, who was connected with the sheriff's office.

Q. Did you see Joe's mother? A. Yes, sir.

Q. One of the defendants? A. Yes, sir, on June 25th, 1923; I know that from the affidavit of Mr. Barnes, that he had served notices on the heirs, calling on them to comply with their contract, and I discussed the matter with Mary A. Rooney, one of the defendants; and I told her I had purchased a half interest in the contract, and she said "Oh!" I went down on the place the morning John went to Senator Smith's office to sign the contract, and I said, "Was it perfectly all right that John had

authority to enter into that contract?" and she said, "It was perfectly all right as far as I was concerned."

By Mr. Dunn:

Q. She was a widow? A. Yes, sir, but she had obtained her interest through a will, and I asked her in the presence of Mr. Barnes, "What did John tell you he was going to sell the property for?" and she said, "$20,000;" I said, "So far as you are concerned, it is perfectly all right;" and she said, "Yes." In October of this year I went up again with Mr. Barnes to Mary A., when Mr. Barnes served her with a subpoena, and she reiterated what she had stated to me on the afternoon of June 25, 1923. She told me that Joe had gotten this paper signed by all the heirs. Joe was an employee—

Mr. Dunn—Objected to; that is not evidence here.

The Court—Objection overruled.

A. She told me that Joe, as I remember, was sent up by Mr. Frishman to get all the heirs to sign a paper in which they were satisfied with that sale that John had made; and she said that paper had been obtained and Joe brought it back to Mr. Frishman; that is this paper right here—"C-5 1-2 for identification." I further confirmed that that paper was obtained properly.

The Court—Wait a minute—there is no question on the record.

Further Direct:

Q. Proceed. A. Going back to the time when we were in Senator Smith's office, when I met John and Thomas at Senator Smith's office on June 2, 1923, I referred to this paper being obtained with all the heirs confirming what John had done.

Q. What paper? A. The one marked "Exhibit C-5 1-2" for identification.

Mr. Dunn—I object to that part of his statement that the paper confirmed all that was done.

A. They said it was all right—John and Thomas both said it was all right. I said, "There is no doubt about everybody signing that paper?" I had the paper there, and I showed it to them, and they said, "That is all right; but the only one that does not want to go ahead with the contract is Elizabeth."

Q. Did they then say nothing about whether Elizabeth had signed it or not? A. John said that he had mis-stated to me two days previously that Elizabeth had signed Bridget's name; he said, "What I meant to say was, that Bridget had signed Elizabeth's name." Now, I met Thomas Rooney shortly after that, after I had learned from Joe Rooney that he had gotten this paper signed by all the heirs, and I said to Tom, "I heard from Joe Rooney;" I think it was after Mr. Dunn was engaged as counsel; I should think it was about the 15th of June, 1923.

By the Court:

Q. How long before the filing of this bill? A. Just about a week or two weeks. I met Tom Rooney in front of the Second National Bank Building, and I said, "Mr. Rooney, Joe told me that he had sent up to the farm to get all the heirs to sign, and that you dictated the paper to him;" I remember Joe said, "Anna and Mary were both there at the time."

Mr. Dunn—I object to what Joe said.

Further Direct Examination:

Q. Proceed. A. I said, "Joe told me you dictated this paper to him up at the farm;" and Joe said that Anna and Mary were there, and that this paper was taken into a room, and all the heirs had signed it, and it was taken out and given to Joe; and Joe went over to his mother, Mary, and she signed that paper.

Q. What did Thomas say to that? A. He refused to talk; he said, "I have nothing to say;" I said, "Do you intend to go on with your part of the contract?" and he said, "I do not;" Thomas said that.

Q. Did you have any other conversations with any of the heirs, Thomas, John, or any of the other heirs of James Rooney, except what you have told us? A. No, sir, I don't think I did, no, sir.

Q. Where was it you had this conversation with Mary A. Rooney? A. At her home, in the presence of Mr. Barnes.

Q. Did you at that time know that Mr. Dunn had been employed to look after your interests? A.

Yes, sir, the first time I saw Mary was on June 25, 1923. The bill was not filed until the 3rd of July, 1923.

Q. After you learned of their refusing to go on with the contract, did you learn that Mr. Dunn had been engaged? A. Yes, sir.

Q. How did you learn that? A. Why, I don't know.

Q. Was it through Mr. Dunn, or how? A. I think I happened to be in Mr. Dunn's office and happened to see the Rooneys, Mr. John Rooney and Tom Rooney—

Q. Did you have any conference with Mr. Dunn about this matter? A. With Mr. Dunn as counsel for the defendants? Yes, sir.

Q. Tell us what it was. A. Mr. Dunn asked me for a copy of this paper signed by all the heirs, and I furnished him with a copy of it, and I asked him what seemed to be the trouble—why they did not want to go ahead; and he said he would see what he could do. I explained what I had done in the matter and what my investigation brought out; "Yes, but" he said, "one of the heirs said she did not sign it;" I said, "That is what I learned here the other day on the farm."

Q. Well, before you filed the bill what took place between you and Mr. Dunn with reference to what they were going to do about the matter? A. I went over to Mr. Dunn several times, and told him I had prepared to go on and complete the contract, carry out the terms of the contract, and I had arranged with the United States Trust Company to obtain a mortgage on the property and arranged with Mr. Barton to have everything in

readiness to tender the money at Mr. Smith's office on the second day of July, 1923—the first day of July falling on Sunday; and I was led to believe from Mr. Dunn's attitude, that the heirs were not going on to comply with the terms of their contract. At first, I thought from Mr. Dunn's conversation with me, that it was only a question of trying to see what he could do, but after a while he took the position that they were not going on to comply.

Q. After you took the matter up with Mr. Dunn, did you cause to be served some notice on the heirs; and did you also give a notice by writing either a letter or otherwise to Mr. Dunn? A. Yes, sir.

Q. Just get those papers that are referred to in the bill? A. Now, this notice—it has not been marked—

Q. I show you the original bill of complaint—you see this notice: "Elizabeth Rooney, Annie Rooney, Mary Rooney, John Rooney and Mary A. Rooney, being all the heirs of the Estate of James Rooney?" A. Yes, sir.

Q. Which is signed by Nathan Rabinowitz and David Laderman? A. Yes, sir.

Q. I notice that that notice does not pretend to be dated; can you state when that was? A. I can tell you when it was served; I accompanied Mr. Barnes while he served some of them.

Mr. Harding—You don't dispute when it was, Mr. Dunn?

Mr. Dunn—No.

A. I accompanied Mr. Barnes when he served it

on Mary A. Rooney, which was June 25, 1923, and on Bridget Rooney, June 25, 1923.

Mr. Dunn—I admit the bill was served on the date named.

Q. Now, on June 30th, did you and Mr. Laderman write the letter that is annexed to the bill? A. Yes, sir.

Q. This letter was served on Mr. Dunn on June 30th, 1923, at 4:30 P. M.? A. Yes, sir.

Q. Now, I wish you would read—I will read it—this letter is as follows—addressed to Michael Dunn,—"Dear Sir:" (reads letter dated June 30, 1923). Do you recall writing that letter? A. Yes, sir.

Q. State to the Court that conversation that was had between Mr. Dunn and Mr. Harding; what is the fact that is referred to in that letter in respect to that matter?

Mr. Dunn—Objected to.
The Court—I will allow it.

Q. Tell us what took place in that conversation. A. Mr. Harding and I went to Mr. Dunn's office.

Q. At whose request? A. My request; I went over to Mr. Dunn's office with you to inform Mr. Dunn that we were ready to go on and perform the terms of our contract.

Q. Had you and Mr. Dunn had a conversation in which he wanted to delay the matter? A. Yes, sir, Mr. Dunn had requested that the matter be held in abeyance; I asked him if the Rooneys

wanted to go on with the terms of the contract; and he said "I will let you know on Tuesday;" I said, "That is not satisfactory, Mr. Dunn; we are going ahead with the terms of our contract as it provided, Sunday being the time the contract was to be consummated, Monday is the time we will be ready to go on with the terms of the contract." And he said, "I will let you know a day or two later"—words to that effect. So I came back to your office and told you what Mr. Dunn had stated, and you said, "I think we had better go right over there;" I told Mr. Dunn I would take it up with Mr. Harding, and I accompanied Mr. Harding to Mr. Dunn's office, and Mr. Harding stated to Mr. Dunn that Mr. Laderman and myself would stand on the contract, and expect its compliance according to its terms; and that we would not, under any circumstances, consider any delay or postponement of the terms of that contract.

Q. That was the point of the conversation? A. Yes, sir.

Q. We stated we would not delay it over until after July 1st? A. I sailed for Europe on the second of July, and he wanted to lay it over until after I had left for Europe.

Q. At about that time, did you again see Thomas Rooney? A. I have already referred to that conversation.

Q. And that is the time he said nobody was going to carry out the contract? A. Yes, sir, and he said he would not go on with it himself, either.

Q. When was that? A. That was about June 15, 1920; just about a week or two before the time set for the performance of the contract.

Q. Now, the day set for executing the deed was July 1st? A. Yes, sir, that was a Sunday.

Q. So then, in your notice you referred to that fact, and that by law the deed should then be delivered on the second? A. Yes, sir.

Q. When the second of July came around, what did you and Mr. Laderman do with reference to being ready to perform? A. On the second of July, or on the Saturday previous to the day set for the performance of the contract, I went in to Mr. Smith and said that the money was in readiness, and we were going to tender for the carrying out of the contract. Mr. Smith said he would not be in his office on Monday. While I was there he called Miss Rose and gave her specific instructions to call my attention (my office is immediately next door—they actually adjoin—there is a door between us) to call my attention just as soon as the Rooneys or Mr. Dunn called at the office to carry out the terms of the contract they had entered into on the Clifton property; and I was there all day on the second of July, going into Mr. Smith's office at least eight to ten times to find out whether or not they were there, ready and willing to perform, and prepared to pay the money.

Q. Did you do all that out of abundant precaution? A. Yes, sir. The money was there at the United States Trust Company to be turned over; I sent to the Rooneys as well a registered letter, requesting personal receipts, that I had purchased a half-interest in the contract. Every one of the registered letters was returned as not accepted, except the letter to Mary A. Rooney, and she received it, and I have her acknowledgment of the return registered receipt in my folder.

Q. The registered letters you sent were all returned unopened? A. Yes, sir; I think they are all marked "Not accepted."

Cross Examination by Mr. Dunn:

Mr. Harding—I would suggest that as we are about to adjourn, that it would be better to let it go far enough, so that the next time we can finish it; it will take three days.

The Court—I will give you three days in February, and you may move to advance it.

Mr. Dunn—We have a witness we would like to take as early as possible, as he is going away.

The Court—Bring him here on November 19, 1923, and we will take his testimony at that time. This case will be adjourned to January 3, 1924.

THIRD DAY

Continuation of the taking of testimony in the above-entitled cause, at the Chancery Chambers, Paterson, New Jersey, on the nineteenth day of November, nineteen hundred and twenty-three, before Hon. Vivian M. Lewis, Vice Chancellor.

Same appearances as before noted.

CORNELIUS S. BONNEY, being duly sworn, testified as follows:

Direct Examination by Mr. Dunn:

Q. Where do you reside? A. In the City of Clifton.

Q. How long have you lived there? A. 47 years.

Q. Are you acquainted with John and Thomas Rooney and their sisters? A. Yes, sir.

Q. Do you live near their property? A. I live about half to three-quarters of a mile from them.

Q. You have known them intimately during the time you have lived there? A. Yes, sir.

Q. Did you hear about some real estate transaction that was alleged to have taken place by John at Mr. Smith's office? A. Yes, sir.

Q. Do you know Mr. Laderman? A. I do now; I did not at that time.

Q. Did you know his partner, Mr. Frishman? A. I became acquainted with him.

Q. When did you first have your attention called to the sale of that property to Frishman and Laderman? A. Some time in May.

Q. When did you take any part in behalf of the Rooney people with Laderman? A. I met Mr. Laderman on the 24th of May at Mr. Rooney's, and he was there to talk over the purchase of the property. I understood at that time that the contract had been made, and it was later discovered that Mr. Rooney had not authority to make such a contract.

Q. State what the conversation was about that you there had with Laderman and Rooney. A. I talked the matter over with Mr. Laderman and John Rooney at the home to the effect that two of the sisters, I believed had refused to sign the deed for the purpose of carrying out the contract that had been made, and that Mr. John Rooney was unable to deliver the deed that he had made this agreement to deliver. Mr. Laderman was very

anxious that it should be done, and I tried to persuade the Misses Rooney to go ahead and make the transfer, but they were dead set against it, and Mr. Laderman also was opposed to relinquishing any claims that he supposed he had under his contract; and with the object of talking it over at a later date, I made a date at that time to meet Mr. Laderman and Mr. Frishman and Mr. Rooney at Mr. Smith's office on the 31st of May; that date was later changed to the 29th. Mr. Rooney and I were there on the 29th, but the office was closed, the office of Senator Smith; and later, we met Mr. Laderman at Senator Smith's office on the 31st of May.

Q. Tell us what the conversation was there between you. A. The conversation was carried on principally between Laderman and Rooney, with the idea of wiping out the contract because it could not be carried out.

Q. State what was said. A. Mr. Laderman was very much opposed to considering any such proposition.

Q. What did he say? A. He said that he had spent a lot of valuable time and money, and that he had an opportunity to sell that property at a profit of six or eight thousand dollars, and he wanted the contract carried out. Mr. Rooney said he could not carry it out, and the best thing to do under the circumstances would be to call it off.

Q. What facts did he state why he could not carry it out; state what he said. A. He said that he could not get the sisters to sign the deed, that one of the two of them had refused absolutely to sell the place, and for that reason he could not go ahead; under the circumstances he offered—

Q. Just tell us the conversation. A. Mr. John Rooney offered to return to Mr. Laderman and Mr. Frishman the amounts of money that they had paid on account of the contract.

Q. In what form? A. In the form of two certified checks for $500.00 each—

Q. That represented what had been paid? A. That was the amount that had been paid on the contract; Mr. Laderman indignantly refused to accept that.

Q. Tell us what he said. A. He said he would not accept it; he said he could make a lot of money out of that property and he wanted to make it, and he argued along the line of six or eight thousand dollars profit that he expected to make out of it.

Q. What reply did John Rooney make to that? A. Mr. Rooney told Mr. Laderman that he would return to him his deposit of $1,000 and pay him for any trouble and expense he had been put to, and Mr. Laderman said he would not accept that, that he wanted the property, and that he wanted big damages if he did not get it.

Q. Now, then, did you meet Mr. Frishman there? A. No, Mr. Frishman did not appear; and after our conference with Mr. Laderman and Senator Smith, we went down to see Mr. Frishman.

Q. Tell us what was the conversation you had with him. A. Mr. Frishman said that he was disinterested in the matter; that he did not care whether he got the property or not, and that his trouble and expense had not been much, and he was willing to settle on any fair basis; and later

on he said he would accept $250.00 as a settlement, and then proposed—

Mr. Harding—I object to it on the ground that it does not bind our client.

The Court—Your objection will be noted. Mr. Rabinowitz is the assignee.

Q. Proceed. A. Somebody proposed that we go around and see Mr. Laderman, and we did so, Mr. Rooney, Mr. Frishman and myself went.

Q. What took place there? A. Mr. Laderman argued that he could not afford to settle that for any such money as had been proposed, and he at first would not fix any amount that he wanted, but before we left him he finally settled on $1,000; he said he would expect $1,000 for himself, and that Mr. Frishman could make a settlement to suit himself.

Q. Did you tell him that Frishman was willing to take $250.00? A. Mr. Frishman told him himself.

Q. And then what did he say in response to that? A. With the idea of having that part of it settled, and Mr. Laderman objected strenuously to that, with the result that Mr. Frishman declined to accept it.

Q. What offer, if any, was there made, to Laderman? A. Mr. Rooney offered, after considerable argument, to pay the two of them $800.00 to settle any claims they might have for time, loss and damages, and expenses, etc. Mr. John Rooney did that.

Q. What was done in reference to that proposition? A. Mr. Laderman refused to accept it.

Q. Was Thomas present at Senator Smith's office at the time you and John met Mr. Laderman? A. No, sir, we went there alone, and met Senator Smith and Mr. Laderman there.

Q. Thomas Rooney was not present? A. was not.

Q. Was there anything else said by them as why they refused to accept this tender made that gentleman? A. Mr. Laderman argued th his time that he had spent on it and expenses w too great, and that he had an opportunity to ma an amount of money out of it.

Cross Examination by Mr. Harding:

Q. How long have you known the Rooneys? A. I have known the Rooneys for practically the whole time that I have lived in the Lake Vic section.

Q. You live near them? A. Half a mile away from them.

Q. I think you said some time in May your attention was first called to the sale that had been made between the Rooneys and Mr. Laderman and Mr. Frishman? A. Yes, sir.

Q. Can you tell about what time in May your attention was first called to that sale? A. It was just a rumor that the property had been sold; it had been on the market for some time, and that at last it had been sold.

Q. Had it ever been placed with you up to that time in any direct or indirect way? A. It had been offered to me.

Q. Before this sale? A. Yes, sir.

Q. What was the price, do you know?

Mr. Dunn—Objected to.

The Court—Objection overruled.

A. The price that was asked me was $20,000.

Q. That was some time before this sale? A. That was within thirty days before I understood it had been sold.

Q. Who offered that to you? A. Mr. John Rooney.

Q. Anyone else? A. Thomas was present; I met them at their home one day, and John told me he would like to sell the property and that he wanted $20,000 for it, and Thomas was present, but took no part in making any tender of any kind.

Q. Can you state about when it was that John put the property in your hands to sell for $20,000? A. He offered it to me for $20,000; I think it was probably in April; it was only a short time before they finally made this contract.

Q. You mean to say then, that John did tell you that he would sell it to you for $20,000 some time before this contract was made? A. Yes, sir.

Q. It was some time prior to the 19th? A. Yes, sir.

Q. This contract was made April 19? A. Yes, sir.

Q. Did you make any effort to sell it? A. No, sir, I did not want to sell it; I was not there for the purpose of selling it; he offered it to me as a prospective buyer.

Q. Was that his house? A. Yes, sir.

Q. And Thomas was present? A. Yes, sir.

Q. Who else lived there at that time? A. It was not in the house; it was out on the premises; there was no one else present.

Q. Had you ever talked to any of them before that about selling it? A. No, sir.

Q. Neither the girls nor Thomas? A. No, sir.

Q. Did you put that upon the list of your properties for sale? A. I have no list of properties for sale except my own properties.

Q. What do you mean? A. Those I own myself.

Q. Do you do a real estate business? A. For myself, that is all; only for my own property; I don't sell other people's.

Q. You buy and sell? A. Yes, sir.

Q. Do you develop property and sell it? A. Yes, sir.

Q. You buy a large piece and divide it up and sell it to different other persons? A. Yes, sir.

Q. And I suppose that on account of your being in that position was the reason why this property was offered to you? A. I suppose John thought I was a prospective buyer when he offered to sell it to me.

Q. Now, you first heard, did you, that the sale had taken place some time in May, you said? A. Yes, sir.

Q. Can you tell when in May it was that you first heard that? A. No, sir, I could not. I did not fix my mind with the fact that it had been sold; it was just a rumor that I heard through others.

Q. State how the rumor arose? A. My brother heard it somewhere and told me about it.

Q. What is May 24th—what particular date was that that you refer to; what happened then? A. On May 24th I went to Mr. Rooney's house, and there I met Mr. Laderman.

Q. How did you happen to go on this particular day in May to Mr. Rooney's house to meet

Mr. Laderman? A. Mr. Laderman was coming down there to talk over with him the matter of the contract, and he asked me—

Q. Where did you get that information from? A. John Rooney, and he asked me to come over there and see Laderman and talk with him about it.

Q. You had the talk with Mr. Laderman on May 24th? A. Yes, sir.

Q. How long before that was it that Rooney came and asked you to go there? A. I think it was the day before.

Q. Can you give me any special reason why Mr. Rooney called you in in this matter? A. Only that I have had some dealings with the Rooneys in real estate matters, and probably he thought I could talk to Mr. Laderman a little better than he he could himself.

Q. He brought you, then, in, so to speak, as a friend to see what you could do? A. I presume so.

Q. To get him out of this transaction? A. Not exactly that, but to talk it over with Mr. Laderman.

Q. Then John told you the contract had been made? A. Yes, sir.

Q. And just what did he say had been done? A. John said that he had made a contract to sell the property to Laderman and Frishman for $20,000; after it had been made he had found that he had no legal authority to make it, and that under the circumstances his sisters refused to sign a deed.

Q. I thought you said a few minutes ago, that he said that two of his sisters refused to sign the

deed? A. Yes, sir, I believe there were two of them refused to sign the deed.

Q. He told you that two of his sisters had refused to sign the deed? A. Yes, sir.

Q. Did he say whether he was willing to sign it or not? A. He said that he thought he was getting a good price for the property and that he wanted to sell it.

Q. And they all wanted to sign it except two—
A. I believe that is what he said; it amounted to that, that there were two sisters that had refused to sign a deed, and consequently, he could not deliver it.

Q. He called upon you to find out if you could not in some way act as a sort of arbitrator to settle the matter?

Mr. Dunn—Objected to, upon the ground that he injects into the question a whole lot of "thought."

The Court—Strike out the word "arbitrator".

Mr. Harding—The purpose of cross examination is leading always, to test the accuracy of the witness.

Q. The object, wasn't it, as you understood it, of John calling you in, was to act in some way to assist him to settle this matter up; is not that so, if you could? A. No, sir; I don't think that Mr. Rooney intended to have me act in any settlement.

Q. He called you in, then, in an advisory way; he wanted your advice? A. I think more so; I believe that was more his object—

Q. And he told you the situation, and then I

understood you to say—I have taken down what I understood you to say on your direct examination: "I talked the matter over; I tried to persuade Miss Rooney to go on and give the deed?" A. Yes, sir.

Q. Which Miss Rooney was it that you tried to persuade to do this? A. That was the one that claimed she was not willing; I am not well enough acquainted with the four Rooney sisters to know one from the other by their names—by their first names, and I could not tell you the name of the one that refused to sign; I could not identify her.

Q. But so far as you know, there was only one that refused to sign? A. There was only one in the room, and she said she had not signed and would not sign; she said that her sister had signed some sort of a paper for her.

Q. Can you state whether that was Elizabeth or Bridget? A. I am not positive.

Q. Is she here today? A. I don't think so.

Q. Can you describe her? A. They all look more or less alike, and while I have known them for many years, I never knew them as individuals, except as the Rooney girls. The boys, John, Thomas and Joseph, I have known very well.

Q. Now, when you told this one—advised her to go on and give the deed and carry out the contract, who was present, if anyone, besides John? A. Mr. Laderman.

Q. Was Tom present? A. No, sir, he was not present on that occasion.

Q. Now, Mr. Bonney, have you any option on this property now? A. No, I never have had.

Q. Directly or indirectly? A. Not in any way.

Q. You did know all of these girls, did you? A. By sight I did, yes, sir.

Q. Now, this particular one,—can you tell whether it was Bridget or Elizabeth? A. I could not.

Q. Describe her. A. I think she is the eldest one of the four.

Q. Did she say that one other of her sisters had signed for her? A. She did.

By Mr. Dunn—Signed a paper for her.

Q. Did she say somebody signed something for her? A. She told me that after the contract was made, that a power of attorney had been given to John and that she had not signed that power of attorney.

Q. And did you say anything to her about John signing the contract before the power of attorney was made? A. No, sir.

Q. I take it, then, that that is about all she said to you on that occasion? A. Yes, sir.

Q. That she herself had not signed this power of attorney, but that one of her sisters had signed it for her? A. Yes, sir.

Q. Did she give any other reason than that? For instance, did she say that she had special reasons why she wanted to stay up on the old place? A. She said it had always been her old home, and since she had always lived there she was going to continue to live right there.

Q. Did she say she differed from the rest of them in not wanting to sell it? A. She did not make any remark about that.

Q. She did not say she had ever been opposed

to selling it before? A. She did say she never had agreed to sell it.

Q. Have you ever seen any of the other sisters about the matter since? A. Not to talk to them; I talked to the two at the home.

Q. When this one said she had not signed the power of attorney, there was another sister present at the time? A. Yes, sir.

Q. Did she say anything? A. She did not say anything.

Q. Did she say whether or not she signed the paper for this one who said she had not signed it? A. There was nothing said about that; I don't know which it was that signed it, only that one of the sisters had signed it for the eldest one.

Re-direct Examination by Mr. Dunn:

Q. When you used the words, one of the sisters said that another sister had signed for her, what did you understand to be meant?

Mr. Harding—I object.

The Court—Objection sustained.

Q. Had signed what for her? Did she say? A. Had signed the power of attorney.

Q. Had signed without her knowledge? A. I don't think there was anything said about that.

Q. Did she say she was present when the other sister signed it and saw her sign it?

Mr. Harding—Objected to.

The Court—Objection sustained.

Adjourned to the date already set, January 3, 1924.

Continuation of the taking of testimony in the above entitled cause, at the Chancery Chambers, Paterson, New Jersey, on the second day of January, 1924, before Hon. Vivian M. Lewis, Vice Chancellor.

Appearances: John W. Harding, Esq., for the complainants; Michael Dunn, Esq., for the defendants.

NATHAN RABINOWITZ resumes the witness stand.

Cross Examination by Mr. Dunn:

Q. Mr. Rabinowitz, when did you first learn anything about this transaction between Laderman and the Rooneys? A. In April, 1923.

Q. In what way did you become interested in it at that time? A. I was in Laderman's store on Bridge Street, and went down to get some clothes pressed, and it was Mr. Laderman that brought out the fact that he purchased a piece of property up in Clifton with a Mr. Frishman, and he asked me if I would be interested in purchasing Mr. Frishman's half-interest, he being ready to sell his half-interest to Mr. Laderman, and I told him that I would go up there and look at the property, and if I thought it was worth while buying, I would go into it, and we went up by automobile and looked around the property; and I told him that if I thought it was all right, I would go into it; and after looking into the property, I thought it was a fair purchase, and I told him I would purchase the half-interest if he was able to get the half-interest from Frishman—he was to purchase

it from Frishman and I was to purchase it from him; he told me it was to be sold for $20,000.

Q. That was the first time you had ever seen the property? A. No, sir, I had passed it going up and down Main Street.

Q. You went and looked at the property? A. Yes, sir.

Q. How soon after that did you become interested in the transaction? A. As soon as I looked it over I said, "I will look into this thing, and I will take that half, and if you"—

Q. At that time did you know anything about —had he said anything to you about the terms of payment? A. He showed me the contract in his place of business on Bridge Street, before I went up; he showed me the contract, the contract which was dated April 18, 1923, executed by John Rooney as attorney in fact, as well as a paper marked "Exhibit C-5½", purporting to be signed by all the heirs.

Q. Why did he show you that paper marked "Exhibit C-5½"? A. He showed it to me.

Q. Why? A. He showed it to me to show that the transaction was complete, that there was no question about all the heirs being satisfied about the carrying out of this transaction.

Q. Had you raised any question at that time, simply because the contract of purchase was signed by John Rooney? A. No, sir, he brought out both papers; he brought out the contract and this paper marked "Exhibit C-5½", and showed them both to me at the same time.

Q. What did he say about the exhibit "C-5½" paper? A. I asked him the circumstances under which that paper was obtained; he told me, as I remember it, that Joe Rooney, who was in the em-

ploy of Morris Frishman, the man that he had purchased that property with, he told me that Joe Rooney, a son of Mary A Rooney, had gone up to the farm at the suggestion of Morris Frishman to obtain the signature of all the heirs.

Q. Did he say signatures? A. Yes, sir, the signatures; that was the word he used.

Q. Did he say why he had sent him there for that purpose? A. I guess he wanted, probably, to be doubly sure.

Q. Did he tell you why he had sent him there? A. He said that he thought it would be best to be absolutely sure that there was not going to be any question raised about the fact that John Rooney had the power.

Q. Didn't he tell you there was a dispute, and that the Rooneys did not want to carry the contract out? A. He said Elizabeth was quibbling about the contract, that she was trying to get out of the contract if she could.

Q. That she denied that she had signed it; didn't he tell you that? A. I don't think it went that far, at that time; he did not say—I don't think Mr. Laderman said at that time to me, that Elizabeth had denied signing that contract.

Q. Will you say he did not? A. I won't say that, but I will say he did raise the question about Elizabeth's signature at that time.

Q. He showed you these papers, and then what did you do? A. After I examined those papers I said to him, "Why, it looks to me that this contract has been executed, and all the heirs are satisfied with the execution of that contract;" and I said, "Let us go up there and look it over;" and we went up to the farm and looked it over.

Q. At that time did he retain you in this matter in his behalf? A. There was no relationship of attorney and client at all; there was no relationship of attorney and client in this case at all—

Q. You went up to the farm? A. Yes, sir.

Q. What did you do there? A. I looked around the place and I said, "I am going into this thing; I think I will buy your half-interest if you can get it from Mr. Frishman;" he said, "Let us go over and see John."

Q. Did you know John? A. No, sir; John was at the gate, and Mr. Laderman introduced me to John; John approached Mr. Laderman and he said, "Take $800.00;" Mr. Laderman said it was too late; he said that he had already agreed to sell one-half the interest in that contract.

Q. But you had not yet agreed to take it? A. Yes, sir, I had; after I had looked around that property, I told Mr. Laderman I would take a half-interest in that contract.

Q. You just went up and looked over the acreage? A. Yes, sir.

Q. The outlines of it? A. Yes, sir.

Q. And you want this court to understand that you then and there, knowing there was a controversy about the property, you deliberately became responsible for half the offer of $20,000 for the property? A. From my investigation, I felt I was safe in going on and entering into a half-purchase of that contract.

Q. What experience had you in reference to the value of land in that territory, that character of land, before this transaction? A. I had spoken to Charles Sachs, who had been in my office on numerous occasions, and I had discussed with him

the values of Clifton property; I spoke to him about property along Main Avenue, and he gave me his opinion that acreage developed along proper lines would bring about $300 to $500 a lot; and in calculating the number of lots that would come out of the acreage, I believed that the investment was a fairly good one if the property was developed, including the cost of development. You asked me how I came to a conclusion—I had spoken to Garret Van Cleve—

Q. The day that you made this bargain, had you communicated with Garret Van Cleve on this particular transaction? A. No, sir, I don't think so.

Q. Had you a communication with anyone in reference to any other piece of land in the vicinity of this tract, as to value, before this day— A. From my information I learned that the High School was going to be built where the old Clifton race track was, and I also learned that the tendency of the municipality of Clifton was to go up in that direction; and I felt for investment purposes that the piece of property might be worth something in time; I did not know it was going to be worth any more than $20,000, but I was ready to go into it.

Q. You want the Court to believe that at that time you knew there was a dispute; you knew litigation was likely to be pending, and that you, deliberately, in the face of all that, and this little knowledge, became connected with this contract? A. From my investigation, and considering the source of the information I had obtained, I felt that that contract and the execution of that paper marked "Exhibit C-5½," had been legitimately obtained.

Q. You did not know at that time, that these signatures were the genuine signatures of the parties? A. The fact that Joe Rooney had obtained that—

Q. At the time you were making this bargain, you had not seen him? A. I had every reason to believe it was all right.

Q. And you believed, at the time you got this bargain, that Elizabeth claimed she had not signed it? A. Mr. Laderman did not go that far; Mr. Laderman said that Elizabeth was trying to get out of the contract.

Q. You said a moment ago, that the moment that Mr. Laderman came in contact with John Rooney, when you were with Mr. Laderman that day, that Mr. Rooney immediately said "Take $800.00?" A. Yes, sir; I wanted to know all about this myself before I would turn over the money to Mr. Laderman; and I said, "What seems to be the difficulty, Mr. Rooney?" He said, "Well, you know Elizabeth has signed Bridget's name to this contract;" I said, "That is rather a strange thing;" I said, "Are you having trouble with her?" And he said, "Yes, I am having a lot of trouble with her." That is about the substance of what I said at that time; but he said that all the other heirs were satisfied to go on with the contract—John Rooney said that; he said, that as far as he was concerned, he was perferctly willing to go on; but he tried to get Mr. Laderman to take the $800 and let him out.

Q. Did he say that day, that all the other heirs were satisfied? A. Yes, sir, he reiterated that.

Q. What did Mr. Laderman say when he offered him $800.00? A. He said, "Mr. Rooney,

I am going to stand on the contract; I have gone on to make arrangements for a loan in getting money from the United States Trust Company to carry out this contract, and I am ready to fulfill my terms."

Q. Had you, before this, had anything to do with the sale of any lots between the old Clifton race tract and this point; had you had anything to do with the sale of lots in that territory? A. No, sir.

Q. At the time you went there, you did not go over the land to see the character of the soil? A. Yes, sir, I made particular note of that, because I had been warned that where these tracks of land were there was considerable water.

Q. Tell me what you did that day in reference to going over the surface of the land to see what its condition was. A. I think before I went up to the farm, I inquired about the surface of the land from Mr. Harmon, of the United States Trust Company.

Q. What day was that that you saw Mr. Harmon? A. That was the day I went up there about the surface of the land; I particularly inquired about that; I went over to Mr. Harmon, the appraiser of the United States Trust Company,—I don't know the exact date—I went to Mr. Harmon, who was the appraiser of the United States Trust Company, and he had been sent there over the obtaining of a mortgage loan; that was after Mr. Laderman and Mr. Frishman had gone into the contract; they had made their application, and I went to Mr. Harmon and asked about the surface of the land, and he said, that he went on that property and that it was perfectly even—there were no rocks, everything seemed to be just so; he said

he picked up twigs to find out if there was any water.

Q. Was that the day you went up there to see John, or was it afterwards? A. I think Mr. Harmon had been there before.

Q. The question is, was it done by you the day you went up to John Rooney's? A. I think after examining the property, right after I came back; I wanted to get further proof as to the value of that land.

Q. You had decided to take it before you came back? A. Yes, sir.

Q. Then you learned, of course, that the Rooney girls were not willing to sell when you were up there? A. I say that John told me that; he said that Elizabeth had signed Bridget's name to that contract.

Q. Did you see Elizabeth? A. The next day I did.

Q. Did you see Bridget? A. Yes, sir, the following day I went up there. I figured that it was all right.

Q. You thought there was a chance to speculate? A. I bought it like anybody else might buy it, just as you might do yourself.

Q. Did you see Bridget and Elizabeth? A. Yes, sir, the following day.

Q. When you saw them the following day, did you pay over any money? A. I paid $750.00 to David Laderman; I drew a check.

Q. The check had not been cashed? A. I gave him the check that evening.

Q. Don't you know the check had not been cashed? A. Mr. Laderman had paid out $750.00 to Mr. Frishman; he demanded $250.00; Mr. La-

derman was willing to take $750.00 and turn that $750,000 over to Mr. Frishman.

Q. Mr. Frishman only got $250.00? A. That is all he got.

Q. You did not have to pay more than he had paid for it? A. He and Laderman each contributed $500.00 a piece, but in order to sell his one-half interest to Laderman, he wanted $250.00 profit, and Laderman told me he did not want to make anything on me, and he said he would take $250.00 from me; he said "Give me $250.00."

Q. That is the price you paid for your interest in the contract? A. Yes, sir, over the deposit of $500.00 that Frishman had made; Frishman had paid a deposit of $500.00, and Laderman had paid a deposit of $500.00; they paid $1,000 on account of the contract.

Q. How much cash did you pay for your interest in that contract out of your pocket? A. $750.00, representing $500.00 paid by Morris Frishman to the Rooneys, and $250.00 profit; I gave Mr. Laderman a check for $750.00, which he turned over to Frishman.

Q. Do you mean to say here before this court, that Mr. Frishman got back $750.00 out of that property? A. From what Mr. Laderman told me.

Q. You were there? A. Mr. Frishman was not there; Mr. Laderman told me that Mr. Frishman wanted $250.00 to get out.

Q. I ask you how much money you gave for your interest in the contract? A. $750.00.

Q. That you gave to the— A. That I gave to Mr. Laderman.

Q. Didn't you know Laderman had not given to Frishman but $250.00? A. I don't know anything that happened there.

Q. Did you learn it afterwards, and that Frishman would not take it? A. I never heard that before. I understood Mr. Frishman got his $750.00.

Q. You testified here you had conference with these people? A. Yes, sir.

Q. And you were unable to make a settlement? A. Yes, sir.

Mr. Harding—We have wandered away from the question—the question was, did you or not have a conversation with Bridget and Elizabeth.

Q. Now, Mr. Rabinowitz, after you learned this dispute was on, at that time was Mr. Harding retained in this case? A. No, sir, Mr. Harding never came into this case—well, he came into this case after I had gone up to the farm the next day, when I met Bridget and Elizabeth; that was June 2, 1923.

Q. That is when you went up to the farm? A. That is the second time, and Mr. Harding was retained shortly after that.

Q. And when you saw them on June 2nd— A. After I had seen them in Mr. Smith's office, Tom and John, and after I had spoken to you, and there was very little encouragement from your end, I felt it was about time to engage counsel.

Q. And you discovered you had bought a lawsuit? A. I saw I had to make the best of it.

Q. Up to that time, didn't you also learn, before this bill was filed, that the girls, Elizabeth and Mary, denied that they signed any contract? A. I say, that on the 2nd of June, 1923, I went up to the farm, and I was introduced to Bridget and Elizabeth by Mr. Laderman.

Q. Didn't you learn the fact that I have just asked you, that Elizabeth and Mary did not sign the contract? A. I never learned that at all, no.

Q. Never heard of it? A. Well, I heard first from John that Elizabeth had signed Bridget's name, and when I went up on the farm on the 2nd of June, there was a change in the story, to the effect that it was not Elizabeth who had signed Bridget's name, but that it was Bridget who had signed Elizabeth's name.

Q. Now, then, after that, did you do anything— A. Pardon me—

Q. After that you then learned that the Rooney heirs would not make the deed? A. Yes, sir.

Q. Then you retained counsel? A. Yes, sir.

Q. Notwithstanding you are a lawyer yourself, and that Mr. Smith had been the person who had drawn the contract? A. Yes, sir.

Q. And then this bill was filed? A. Yes, sir.

Q. And you started in on this litigation? A. Yes, sir.

Q. Now, then, before that was done, were you present when John Rooney tendered back to Frishman and Laderman the money that they had paid? A. No, sir, I was not there.

Q. You were present when John Rooney had offered $800.00 to Laderman to drop the work? A. Yes, sir, at the gate.

Q. He offered to repay him the money? A. No, sir, he said, "Take $800.00;" he did not say anything about offering back his money; he said "Take $800.00."

Q. Did you, at any time, hear John Rooney offer him back the money and $800.00? A. No, sir. $800.00, that is all he seemed to have in his mind.

Q. Why didn't he come there and have checks made out to their order for the money they had paid to him, and offer him a bonus besides? A. Where?

Q. At your office or at Mr. Smith's office? A. No, sir, they came into Mr. Smith's office; they never, in my presence, tendered any checks back; you tendered the money back to me; about the end of June, you said to me, "Take back the checks of $500.00 each—take back the checks—we are ready to tender to you back the checks."

Q. The checks were made out, then, were they not? A. You never showed them to me, and I said I would not take them.

Q. You went into this deal with your eyes wide open; and there was a lawsuit before you? A. I felt that contract had been properly executed, and that it was a legitimate contract from beginning to end.

Q. Do you mean to stand before this Court as a member of the Bar and say, with that information, that two of the parties who were interested in the contract denied ever approving it, that it was a binding contract upon those two parties? A. Absolutely.

Q. Remember, you are a member of the Bar.

Mr. Harding—I object to that.
The Court—Strike that out.

Q. Now, Mr. Rabinowitz, and then this bill was filed? A. Yes, sir.

Q. Now, you spoke about going up to the house and wanting to buy the six-sevenths interest of the heirs? A. That took place at Mr. Smith's office.

Q. How di dthat take place? A. Well, John

and Tom came to Mr. Smith's office after I left the card, with either Bridget or Elizabeth the day before, and John said, "Why, I made a mistake when I said to you and Laderman that Elizabeth had signed Bridget's name—the fact is, that Bridget signed Elizabeth's name; "but," he said, "all the heirs are satisfied to carry out the terms of their contract," and Tom said, "I am, too;" he said, "I am willing."

Q. Both John and Tom? A. Yes, sir.

Q. That was in Mr. Smith's office? A. Yes, sir.

Q. What did you say to that? A. I said, "Under those circumstances," I said, "Mr. Rooney, I think Mr. Laderman and I will take six-sevenths of the property and fight out the other one-seventh."

Q. In other words, you gave him to understand you fellows were willing to buy a lawsuit? A. To buy six-sevenths of that property and fight out the other one-seventh.

Q. Now, then, you realized that it would be necessary for you to file a bill? A. I never knew it was necessary to file a bill at all until my last conversation with you.

Q. Why didn't you threaten to file a bill when you came to see me? A. You had led me to believe constantly, that you were going up to the farm, and do everything in your power to see what you could do in getting that contract carried out.

Q. State to the Court a single sentence I uttered to you that indicated to you that I was going to get the contract carried out? A. I came to your office on at least four different occasions.

Q. State a single thing that I said, that warranted you in thinking that I was going to get them to do this. A. You told me you were going up to the farm, and you were going to report your clients' decision to me; I came again to your office, and you said to me at that time—I asked you again, I said, "Mr. Dunn, what have you found out? we are getting ready to carry out the terms of this contract;" and immediately you engaged in a conversation about a case of some people down in Alabama, and you would not enter into any discussion about the situation at all; I came to you again, and then you talked about some checks being returned, and I said that was not satisfactory; and then I came to you—

By the Court:

Q. What did Mr. Dunn ever say that indicated to your mind that he was going to get the contract carried out? A. On June 30, on the last Saturday in June, I came to you again, and you said you would report your clients' decision to me on Tuesday.

Q. The question is, what did Mr. Dunn say to you that indicated to your mind that he was going to induce his client to close this matter without a lawsuit? A. He said he would see what he could do; he just stopped short there.

Q. Had you asked him to get the matter closed without a lawsuit? A. Yes, sir, and he said he would do all he could.

Further Cross:

Q. That was on what date? A. Well, that was the second time.

Q. Was it before or after you had filed the bill? A. Before I filed the bill.

Q. Then afterwards did you learn that they would not change their minds before you filed the bill? A. Well, I don't seem to understand your question.

Q. Before you filed the bill did you learn that they had made up their minds not to convey the property to you? A. No, sir.

Q. So, at the time you filed the bill, you did not know whether they would convey it to you or not? A. I did not know that until the day the contract was to be consummated, on the 2nd of July, when we were able and willing to tender the money to carry out the contract.

By the Court:

Q. You had not filed the bill then? A. No, sir.

Further Cross:

Q. You left for Europe on what date? A. On the 3rd of July.

Q. Do you know when the bill was filed? A. No, sir, I don't know exactly what date.

Q. But it had been ordered filed before you left for Europe? A. Yes, sir.

Q. And Mr. Harding had been retained in the case? A. Yes, sir.

Q. Then afterwards, there were no offers of settlement after the bill was filed? A. No, sir; I never heard any more about it.

Q. So that at the time you first got knowledge of it, down to the time of filing this bill, everything indicated that there was going to be a lawsuit?

A. Not at all. On the 30th of June, you said to me, Mr. Dunn, that you were going to go up to the farm again, or you would go up to the farm and you would report your clients' decision on Tuesday; I told you that I was going to sail for Europe on Monday and that I could not wait until Tuesday; the contract was to be fulfilled on July 1st, and the first of July falling on Sunday we would be willing to go on and be ready to tender the money on the 2nd of July, and you said, "I will let you know Tuesday;" and I said, "You will have to go on and carry out the terms of the contract as provided;" and that is all I heard from you.

Q. Then you left and went to Europe? A. I left on Tuesday.

Q. Had you ever been in a real estate transaction in Paterson before? A. Yes, sir.

Q. Vacant lots like this? A. No, sir, but I have been interested in real estate.

Q. After this period or before? A. Before.

Q. What arrangement did you have with Mr. Laderman as to how the profits were to be divided in this transaction? A. Equal.

Q. You knew that Mr. Frishman would not have anything to do with it because of the trouble that was foreseen? A. Well, I heard Frishman did not want to bother.

Q. He told you that? A. Frishman told me that; that was not before the contract was transferred to me, the half interest, it was after. I met him on several occasions.

Q. That was after he had quit? A. Yes, sir.

Q. And you were willing to take the chances? A. Yes, sir.

Re-direct Examination by Mr. Harding:

Q. In the letter dated June 20th, 1923, addressed to Michael Dunn, signed by Nathan Rabinowitz and David Laderman, which has been admitted in evidence in this case, I call your attention to this language: "In order that there may be no possible question as to our attitude in the matter of the Rooney contract, this is to put in writing what Mr. Harding and myself expressed verbally to you today, that I and David Laderman shall be ready and willing and insist on the performance of the contract on Monday, July 2nd, 1923, at the office of Albin Smith, 152 Market Street, Paterson N. J., and shall be ready and willing to pay the consideration and do everything on our part to be done, according to the terms of the contract; that we will not agree to postpone its performance in any respect, or make any agreement, or do anything whatsoever by which you or your clients can consider that we are in any respect whatever to modify its performance according to its terms. The suggestion made by you, that you would report your clients' decision on Tuesday next is, of course, entirely unacceptable to us, and you are not to consider such suggestion as acceptable to us, and you are not to consider that by your said suggestion we in any respect whatsoever are to depart from our attitude of having the contract performed according to its terms, as above stated.

"We repeat, that we are putting in writing our attitude, as already clearly expressed to you verbally a short time ago to-day, in order that there may be no possible dispute or question to to our attitude in the matter." Now, this letter referring to the fact that your counsel and yourself had had

an interview with Mr. Dunn on that day, I will ask you whether or not it is a fact that you and I called on Mr. Dunn? A. Yes, sir.

Q. That is what you refer to in reference to that? A. Yes, sir.

Q. Now, you say about the end of June Mr. Dunn said to you that he tendered back the checks that had been paid by Laderman and Frishman? A. No, sir, he did not mention names, but he said, "We will give you back the checks."

Re-cross Examination by Mr. Dunn:

Q. That letter just referred to was written by you and Mr. Harding after you had been in my office and had gone out, so as to get a permanent memorandum of what you claim to be the conversation, so you wrote the letter to me; you got no answer, did you? A. I don't think so; I went over to the office and gave it to you, and you read it and said, "All right;" that was all you said. Arthur Dunn was in the office with you at the time.

FREDERIC BARNES, being duly sworn, testified as follows:

Direct Examination by Mr. Harding:

Q. You are a constable? A. Yes, sir, deputy sheriff.

Q. Do you recall serving a notice on the Rooneys yourself in this case? A. Yes, sir.

Q. And do you remember particularly the serving of a notice on Mary A. Rooney? A. On Cooke Avenue, yes, sir.

Q. And at the time you served that notice on Mary A. Rooney, who was present? A. Mr. Rabinowitz.

Q. And did you have a conversation, or did Mr. Rabinowitz have a conversation in your presence with Mary A. Rooney? A. Yes, sir, Mr. Rabinowitz did.

Q. What was the conversation? A. I was then serving a notice of the fulfillment of the contract on July 2nd, the date for their payment, and Mr. Rabinowitz called attention to the fact that the price was $20,000, and Mary A. Rooney said that that was satisfactory to her; and at the time that Mr. Rooney was to have the others sign, she went down with him on that same bus that morning. went down with Mr. Rooney; this is what Mary A. Rooney said.

Q. What was it she said? A. The morning that Mr. Rooney went to the office of Mr. Smith, she went down in the same bus with him; she said that; that was about the extent of the conversation.

Q. And was there any conversation with John about the contract that he was going to enter into in Mr. Smith's office? A. I did not hear her say that; she said she went down in the bus with John that same morning.

By Mr. Rabinowitz:

Q. Do you remember my inquiring of her what the price was that John was going to get for the property? A. $20,000.

Q. What did she reply? A. She said that was satisfactory to her.

Q. She said she was going out on the jitney

bus with John the same day that John was going to the office of Albin Smith? A. Yes, sir.

Q. And now will you tell us what took place when I accompanied you at the time the subpoena was served in the home of Mary A. Rooney; do you remember that date? A. I don't recall any conversation at that time.

Q. The summons, I mean; was there a reiteration of the conversation we had had the first time we called on her? A. There may have been; I don't recall just now.

Q. But she said she did know that when she went down on the jitney bus with John, that she knew John was going to the office of Albin Smith? A. Yes, sir.

Cross Examination by Mr. Dunn:

Q. When was that that you saw her on the bus going down? A. I did not see her on the bus.

Q. When was it she made this statement to you that she was on the bus? A. I think on the day that I served the notice of the fulfillment of the contract for July 2nd.

Q. You served a notice on her that day? A. Yes, sir.

Q. That was the last time you saw her? A. Yes, sir.

Q. You had no further conversation with her? A. No, sir.

Q. She did not say what took place in Albin Smith's office? A. No, sir.

JOSEPH ROONEY, being duly sworn, testified as follows:

Direct Examination by Mr. Harding:

Q. Where do you live? A. 73 Cook's Avenue, Paterson, N. J.

Q. Where do you work? A. I work for Morris Fleishman; I have worked for him three years last October.

Q. What is your mother's name? A. Mary A. Rooney.

Q. She is one of the defendants in this case? A. Yes, sir.

Q. I show you a paper marked "Exhibit D-5½ for identification" in this case, dated April 20, 1923? A. Yes, sir.

Q. Have you ever seen that paper before? A. Yes, sir.

Q. When? A. On April 20th I saw it, 1923.

Q. Can you tell me whose handwriting the body of that paper is in? A. It is my writing.

Q. It says "We, the undersigned heirs of James Rooney, do appoint John Rooney with power of attorney, and do invest him with full power to act in our behalf on the sale of the estate of the late James Rooney?" A. Yes, sir.

Q. All of that is in your handwriting, including the words, April 20th, 1923? A. Yes, sir.

Q. When did you do that writing? A. On that date.

Q. Where was it done? A. In the home of the Rooney family on Main Avenue, Clifton.

Q. Who was present when you wrote those words? A. There was my uncle Tom, my uncle Jack, my aunt Bridget, my aunt Annie—

Q. Did you see any of the Rooneys sign this paper? A. No, sir.

Q. Just tell the circumstances connected with it, that you know of.

Mr. Dunn—We object to that; he says he did not see any of the Rooneys sign.

Q. Tell us anything that happened in connection with the signing of that paper; did you read it to them? A. Yes, sir.

Q. What did they say about it? A. They did not say anything to me about it.

Q. State in your own language, what took place; you state the circumstances; the things that you know—just what took place about your drawing that contract— A. The first thing that was said to me about the paper was by Morris Fleishman; he said that in Smith's office he had learned whatever took place there, that there was a sort of a hitch as to Jack's authority—my uncle Jack that is—and he said they wanted that paper to be because hey were afraid things were not just right.

Q. That is what Mr. Fleishman told you? A. Yes, sir.

Q. So you went up to have the paper prepared? A. Yes, sir.

Q. And in their house, in the Rooneys' house, you wrote these words on this paper? A. Yes, sir.

Q. Did you write them at anyone else's dictation? A. I wrote them at my uncle Tom's dictation.

Q. Your uncle Tom told you what to write here? A. Yes, sir.

Q. Did you indicate to your uncle Tom what Mr. Fleishman had told you? A. I don't recall that I did.

Q. Did you tell your uncle Tom you wanted a paperwith some such thing? A. Yes, sir.

Q. So he dictated these very words to you? A. I spoke to uncle Jack; I had no conversation with anyone else in the house.

Q. Who told you to write these words on this paper? A. My uncle Tom dictated them.

Q. Your uncle To mthen dictated to you just what you have written on this paper? A. Yes, sir.

Q. Your uncle Jack was present when he did that? A. I think so.

Q. Was anyone else present? A. Uncle Tom was present and my aunt Annie and aunt Bridget.

Q. Was your aunt Bridget and your aunt Annie present when your uncle Tom dictated it to you and you wrote it out? A. They were in the room.

Q. In the same room? A. Yes, sir.

Q. Did you see each one—which one, if any, did you see sign this paper in your presence? A. When I drew that paper I saw my uncle Tom sit down, and then the paper was brought out of the room.

Q. Did you see your uncle Tom writing? A. No, sir.

Q. Did you see any of them writing? A. No, sir.

Q. When the paper was brought back to you did it have the signatures on it that it has on now? A. All except my mother's.

Q. Is that right? A. Yes, sir.

Q. That is your mother's signature? A. Yes, sir.

Q. After it was dictated and was brought back to you, then it had on all three signatures, did it? A. I took it for granted they were on there; I did not open the paper and read it again.

Q. When did Mary Rooney sign it? A. The next morning.

Q. And this name, "Mary Rooney," was signed by Mary Rooney? A. I did not see her at all; I cannot say that she signed it, because, to the best of my knowledge, she was not there.

The Court—Strike his answer out, then.

Q. What I am getting at is, that all these signatures were on this paper before your mother signed it? A. Yes, sir.

Q. Did you see your mother sign it? A. I believe that is her signature; the last signature there is my mother's.

Q. Do you know your aunt Mary's signature? A. No, sir.

Q. Do you know your aunt Bridget's signature? A. No, sir.

Q. Do you know your uncle John's signature? A. No, sir.

Q. Or your aunt Annie's signature? A. No, sir.

Q. Did you have anything to do in bringing the question of this property—the sale of this property—to Mr. Fleishman? A. To a certain extent, yes, sir.

Q. You knew the property was in the market? A. I had heard from my uncle.

Q. And you called Mr. Fleishman's attention to it? A. The first time that there was anything spoken regarding Mr. Fleishman being interested in the property was a short time after my grandmother's death.

Q. Which uncle was it that called your attention to the sale of the property? A. My uncle John.

Q. In what way? A. I cannot recall the conversation; we were out in the yard when he spoke of it; I cannot just recall what the conversation was.

Q. Did you uncle Tom—then you drew to the attention of Mr. Fleishman the fact that the property was for sale? A. He had spoken to Jim, and my brother Jim told me in the course of conversation; and then he spoke to me some time later about it, and I spoke to my uncle Jack about it—Mr. Fleishman insinuated that he was interested in buying.

No cross examination.

Mr. Harding—Some of the exhibits are marked by the stenographer as being in evidence, but he failed to state on the notes that I offered them, so, if necessary, I will correct that. I now offer in evidence "Exhibit C-5½." We have some corrections to make in the stenographer's record.

The Court—All right. You can make the corrections later, and if there is anything overlooked you may put it in later on.

Mr. Harding—We rest.

Adjourned to February 13 and 14, 1924.

("Exhibit C-5½" reads as follows:)

"April 20, 1923.

We, the undersigned, heirs of James Rooney, do appoint John Rooney with power of attorney and do invest him with full power to act in our behalf on sale of estate of the late James Rooney.

Thomas C. Rooney,
Bridget Rooney,
Elizabeth Rooney,
Annie Rooney,
Mary Rooney,
John Rooney,
Mary A. Rooney."

Continuation of the taking of testimony in the above-entitled cause, at the Chancery Chambers, Paterson, New Jersey, on the twenty-eighth day of April, nineteen hundred and twenty-four, before Hon. Vivian M. Lewis, Vice Chancellor.

Appearances: John W. Harding, Esq., for complainants; Michael Dunn, Esq., for defendants.

DEFENCE

JOHN ROONEY, sworn in behalf of the defendants, testified as follows:

Direct Examination by Mr. Dunn:

Q. You are one of the defendants in this case? A. Yes, sir.

Q. Brought by Mr. Laderman and Mr. Rabinowitz? A. Yes, sir.

Q. Now, where do you live? A. On Main Street, in the City of Clifton.

Q. You live on the property in question in this city? A. Yes, sir.

Q. How long have you lived there? A. Fifty years or more.

Q. And your father is dead? A. Yes, sir.

Q. Did he own the property before his death? A. Yes, sir.

Q. He died possessed of it? A. Yes, sir.

Q. What children survived your father and are still living? Give us the names— A. John, Thomas, Lizzie, Mary, Annie and Bridget.

Q. Did your father leave a will when he died? A. No, sir.

Mr. Harding— Iunderstand there were seven heirs; as I understand it, there were seven children, consisting of all of the defendants, exxcept Mary A., and that Mary A., is the widow of one of the other children that died, and she takes it by devise from her husband, so that all the present defendands, each of the present defendants, owns a one-seventh interest.

Mr. Dunn—That is right.

Q. Mary A. Rooney was the widow of your brother Joseph? A. Yes, sir.

Q. He died leaving a will? A. I think so, yes, sir.

Q. Now, after the deat hof your father, along in the early part of 1923, did you meet Mr. Fleishman in reference to the property and have a talk with him? A. Yes, sir.

Q. Where? A. At his place of business in Paterson.

Q. What was the conversation? A. Well, he understood the place was for sale; that is what he said; I had two nephews and they were working with him, and he understood it from them; they were my brother's children.

Q. When you went to his place of business, what conversation took place between you? A. He said he was going to get a partner with him, Mr. Laderman, and we went from Mr. Frishman's over to Mr. Laderman's.

Q. Did you meet Mr. Laderman there? A. Yes, sir.

Q. What conversation took place there? A. They asked me how much I wanted for the place, and I said about $20,000; and then they wanted an option on it, so Mr. Laderman wrote out an option and I signed it; I gave him an option for ten days on it; that was the 16th of April.

Q. That was the option that has been offered in evidence here? A. Yes, sir.

Q. Now, what next occurred after that? A. Well, the next thing that occurred; I did not see them any more after the option—they came down to Passaic where I was in the blacksmith shop getting a horse shod, and they said they wanted an agreement, a contract, or an agreement to buy the place.

Q. What did they say to you then? A. They told me they were ready to go on with the contract; that they had Mr. Smith to draw up the contract, and they wanted me to come up to sign.

Q. That is Senator Albin Smith? A. Yes, sir.

Q. What did you do after that? A. Of course, I went in there; I signed the contract there.

Q. That was the contract that was offered in evidence here on the part of the complainant? A. Yes, sir.

Q. And that was signed in Mr. Smith's office? A. Yes, sir.

Q. The same day they saw you in Passaic? A. Yes, sir.

Q. And at the time that you met there in Mr. Smith's office, just state what conversation took place as to the ownership of the property? A. Well, my brother came in before the contract came out from the private office, and Mr. Smith went to read it, and my brother Tom said, "John has no power to make a contract."

Q. Now, proceed first with the conversation that took place at that time—right on from that point; what was said after that remark? A. There was some talk then, and Mr. Smith asked me, he said, "Have you got a power of attorney;" I said, "No, I have no power from the Court," or, "I did not have any writings."

Q. What next was said? A. Well, Mr. Smith, the way he talked, he said, "You are the oldest boy;" I said, "Yes;" he said, "Well, I think you have power to sell." Mr. Smith told me—

Q. And then what was done? A. Well, I signed the contract there.

Q. Your brother Tom was present at that time? A. Yes, sir.

Q. What did he say to them before you signed any contract? A. He told them I did not have any power to make a contract; that is what Tom said.

Q. Proceed; give us the rest of the conversation before you signed—between you and Mr. Smith. A. We gave the name of the heirs; I told them how

many were interested; that there were seven altogether interested in it—

Q. The names were put afterwards in the contract? A. I don't think so. I don't think the names were in the contract—

Q. Now, up to that time had you discussed the question of selling the property with your sisters, who are interested? A. I had always done the business down there, and I never asked anyone what business I did on that place; I always took it on myself to do the business.

Q. Did you ever discuss selling the property, with your sisters, before this day? A. Well, I might have made some remarks of selling; I think I did; I might have said, "I think I will sell this place"—

Q. But before you came up to the Smith office on this day, did you have any talk with your sisters as to going to sell the property, or make a contract to sell it? A. No, sir, I did not.

Q. So they knew nothing about it then?

Mr. Harding—Objected to as leading.

Q. You did not discuss it with them at all that day?

Mr. Harding—Objected to.
The Court—Objection sustained.

A. No, sir.

Q. Did you have any conversation with them that day before you came to Smith's Office, about going up to make a contract to sell the property? A. No, sir, not that day.

Q. Did you, before that day, have any such conversation with them? A. We never had any conference about selling the property.

Q. Now, then, on that day, April 19, at Mr. Smith's office, there was a contract drawn which you signed? A. Yes, sir.

Q. Now, your brother Thomas was there at that time? A. Yes, sir.

Q. Tell what conversation took place there in the presence of the parties before you signed this contract. A. Well, I already explained what it was that Tom told me, I did not have power to make the contract, and that was about the substance of the whole thing.

Q. Now, after that, then, at that meeting, what happened after, you said—after the meeting was over you signed the paper there that day? A. I signed the contract and they gave me two checks, the contract agreed for, I believe, $20,000, and they paid me a deposit of $1,000.

Q. They gave you a check for $500.00? A. Yes, sir.

Q. What took place after that; what was the next thing in the case that occurred? A. I don't think there was anything more about it at that time.

Q. When was the next talk about it and where was it? Do you remember Frishman and Laderman coming down to your house? A. Yes, sir, they were down there.

Q. Now, then, did Joe Rooney, your nephew, come down to the house after you had signed this contract? A. Yes, sir.

Q. What occurred when he came there? A. He came down there and he said he wanted the names

of the heirs on the paper, and I think Joe wrote out the names of the heirs on a paper; that was the next day after the contract was signed.

Q. That was April 20? A. April 20, I believe.

Q. And he said he wanted to get the names of the heirs? A. That is what I understood him to say.

Q. What was done there that day? A. It was towards night.

Q. What was done? A. Him and my brother Tom—Tom dictated the paper, I understood, to him.

Q. And what was done with the paper; did you know? A. Some of the girls signed the paper, as far as I know.

Q. Why did he say he wanted the names? A. He said there was some trouble down in Smith's office—that is why he came up for the paper; he said there was some trouble in Smith's office; they claimed they could not get any money out of the bank.

Q. What did he say? A. He said he could not get any money out of the bank; that Mr. Frishman had sent him.

Q. Then, when this conversation took place about signing a paper there, about the girls, how many of the girls were present, do you know, at the conversation? A. I don't know how many were there; they were in the kitchen and I was out in the room with Tom and Joe.

Q. After Tom and Joe, your nephews, had dictated something to go down on the paper, what was done with the paper? A. One of the girls took it out in the kitchen.

Q. What instruction was given to the girl who

took it out, at the time? A. I don't know that there was any.

Q. Was there any conversation at the time? A. Not that I heard.

Q. Do you remember what was said as to why they wanted these names? A. Yes, sir, they said the bank wanted the names; some of them said the bank wanted the names.

Q. And then did you see any of the girls sign the paper? A. No, sir, I did not.

Q. So you don't know who did sign the paper? A. No, sir.

Q. You afterwards saw the paper after it was all signed? A. No, sir, I did not.

Q. What was done with it? A. Joe took the paper to Crooks Avenue, and I believe his mother signed it, and he took it down to Frishman the next morning.

Q. What was said, if anything, there that day, by any of the girls in your hearing in reference to signing their names? A. Well, I did not know whether the girls signed the paper or not.

Q. You did not see the paper after it was signed? A. No, sir.

Q. And you don't know who signed it? A. No, sir.

Q. Up to that time had you ever received the consent of any of the girls to sell the property? A. No, sir, not direct.

Q. Did you ever tell them that you were going to make a contract to sell the property, the girls, before this time? A. No, sir, I did not.

Q. Did you ever show your copy of the contract after you got it and before this paper was made? A. No, sir, it was after the paper.

Q. At the time that this paper was obtained by Joe, had you informed them that you had made a contract to sell the property; had you informed the girls before they signed this paper? A. No, sir, I did not.

Q. Nor did you show them the contract? A. Not until afterwards.

Q. You are positive of that? A. Yes, sir.

Q. Now, then, after this paper was taken by Joe, what was the next thing that occurred in the transaction; when did you next have your attention called to the transaction? A. When, after two or three days afterwards, I understood from the girls that they did not sign the paper—

Q. I mean, about Frishman and Laderman—about the sewer? A. They came down there to look at a fence that was up on the other end of the land; they were building a sewer in there—Frishman and Laderman did—

Q. What took place that day? A. They wanted to go down to the Municipal Building and see somebody down there, and I went with them, but they could not get the man they wanted to see.

Q. Did they come into the house that day? A. No, sir, I met them outside.

Q. Did you have any talk with them that day in reference to the sale of the property? A. No, sir.

Q. And then, after your conversation with them about the sewer, what did they do? A. They went down to the Municipal Building, and we did not do anything.

Q. Did you go with them? A. Yes, sir.

Q. What was the object of going there? A. I don't know, really, what they did want.

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Q. After that did you have any meeting at Mr. Frishman's place at Paterson with Joe? A. In a week or so after I made this contract, I found out the girls would not sign, and I went to Mr. Frishman's residence where he lived; he lived on Governor Street, I think. I went there and told him how the thing was, and about the girls not signing.

Q. Tell us what you said to him. A. That is all I told him; and he said, "We shall have to go down and see Mr. Laderman," and we went down to Laderman's office on Bridge Street, and we went in there, and, of course, Mr. Laderman said he had already bought and that there was no use of making any excuse at all, that he had everything just pat; he said, "I have got everything all right;" and I told Mr. Laderman how things were; I told him the girls would not sign off—I mean, they would not sign the deed; and he said, "You will have to sign the deed;" so I did not think I had power enough to sign the deed, and I told him that. That was Saturday afternoon; and in a week or so after, I made another visit to him and wanted to settle with him and give them back their deposit and whatever expenses were incurred; and Mr. Laderman did not seem to want any expenses; the way he talked he wanted quite a lot of money.

Q. How much did he ask? A. $3500.00 he asked of me.

Q. And a return of what he had given you? A. Yes, sir, his checks.

Mr. Harding—I announce to counsel I think he should not lead the witness.

Q. Now, after you had that conversation with him, he asked how much money—

Mr. Harding—I object again.

A. $3500.00

The Court—Objection sustained; it is leading.

Q. You say he asked money? A. Yes, sir.

Q. What did he say on that subject? A. He wanted $3500.00.

Q. What did you say? A. I told him I could not give it to him—that I was willing to pay all expenses that occurred and give him back his checks.

Q. What else did you tell him in reference to not having authority to sign for the girls, if anything?

Mr. Harding—Objected to as leading.
The Court—The objection is sustained.

Q. Now, then, what other conversation did you have with him? A. I have had another conversation; I went down there two or three times—

Q. What was said at that time? A. Mr. Frishman was agreeable to take his check with expenses, light expenses, and Mr. Laderman agreed finally to take $1,000; and I offered them $800.00 between the two of them, and their checks back.

Q. And to return their deposit? A. Yes, sir.

Q. What did they say to that? A. They wanted $1,000.

Q. Now, then, what occurred after that; what

was the next thing that occurred? A. I think the next thing that occurred was, that Mr. Frishman sold out his interest to a man named Rabinowitz.

Q. That is the gentleman sitting here? A. Yes, sir.

Q. What was the next thing that occurred after that? A. And Rabinowitz came down to the house.

Q. Who was with him? A. I don't know; it was getting dusk; I was at the gate, and he saw me at the gate; I was standing at the gate outside of the house; it was a roadway gate there that I used to drive into the barn.

Q. Was that the first you saw of him? A. Yes, sir.

Q. What conversation took place there between you two? A. He said he had purchased a half-interest from Frishman.

Q. In what? A. In the property.

Q. Then what? A. I did not say anything at all to him.

Q. What else did he say? A. I don't think he said anything more at that time.

Q. What did he say he had come for? A. He said he had come down to tell me he had purchased a half-interest in the property.

Q. Was there nothing else said or done? A. I don't think so that night.

Q. What reply did you make? A. I don't think I said anything to him.

Q. Do you remember who was with him? A. There was somebody in the car with him out on the road, but who it was, I don't know.

Q. After that, what next occurred in reference to any of them coming there? A. I understood he

came to the house the next day and saw two of the girls—Mr. Rabinowitz did, I was not there; and he left a card with the girls, and he wanted me down to see him at Smith's office, or his own office; I believe they are in the same building.

Q. What did you do in reference to that request? A. I went down on a Saturday morning, and I went into Mr. Smith's office.

Q. Do you remember what date that was? A. Well, it was along towards the first of June, I think, or the latter part of May.

Q. Then you went down to Smith's office the next day? A. Yes, sir.

Q. Now, whom did you see there? A. I saw Mr. Smith and Mr. Laderman, and Mr. Rabinowitz was not in the office; he was in his own office, I believe, but he came into the office.

Q. What took place there; what was said? A. He came in there and he told me that I was in pretty bad; and he said, "I have three charges against you, altogether, embezzlement, and taking money under false pretences"—

By the Court:

Q. Who said that? A. Mr. Rabinowitz.

Further Direct:

Q. Go ahead—what other charges—A. I don't recall what other charges.

Q. Give the whole conversation. A. I said, "You are a lawyer, Mr. Rabinowitz;" and he said "Yes;" and I said, "I am not going to say any more until I see counsel;" and then I left, and I have not talked to him since.

Q. Now, was there anybody with you at Senator Smith's office on that day? A. Yes, sir, my brother Tom was with me.

Q. Now, do you remember being there one day at Mr. Smith's office with Mr. Barney and Mr. Frishman? A. Yes, sir, that was before Rabinowitz was in the case; I had Mr. Barney with me when I offered him the checks, the $800.00; Mr. Frishman never came to the office; it was only Mr. Laderman was there.

Q. What was said then when you offered at Mr. Smith's office, when Mr. Barney was with you, when you offered the check? A. Well, Mr. Laderman would not accept the check; he would not accept the $500.00 that I offered him.

Q. I show you these papers and ask you if those are the checks? A. Those are the checks I offered them.

Mr. Dunn—We offer them in evidence—two checks for $500.00 each.

Q. Did you offer these checks when Mr. Barney was present? A. I offered them to Mr. Laderman and Mr. Frishman.

Q. You never offered them to Mr. Rabinowitz? A. No, sir.

Marked "D-M 1, D-M 2."

Q. Who was Mr. Barney? A. He was a neighbor of mine—

Q. And did you ask him to go down there with you and aid in getting this matter adjusted? A. Yes, sir, that is what it was.

Q. What did they say when you offered these checks? A. Mr. Laderman wanted $800.00 or $750.00, and I offered him, I think, $550.00; and Mr. Frishman $250.00.

Q. They wanted that in addition to these checks? A. Yes, sir.

Mr. Harding—Objected to as leading.

The Court—The objection will be sustained.

Q. What did they say that they wanted, if anything? A. They wanted $1000.

Q. Besides these checks? A. Yes, sir, besides those checks.

Q. Between the two of them? A. Yes, sir.

Q. And if you would give them the thousand dollars, what did they say they would do? A. That they would release me from the contract; that was the idea.

Q. What did you say to that? A. Well, when they did not settle, I could not say anything.

Q. What reply did you make? A. I told them I would not give it to them.

Q. Then what further was said? A. I don't think there was anything further said at that time.

Q. Now, what, if anything, was said at the time that you went there with Mr. Barney and met Mr. Laderman and Mr. Frishman and presented these checks; what, if anything, was said as to the girls? A. I don't think the girls were mentioned at that time.

Q. Was anything said by Mr. Barney to them as to why they should accept the checks? A. He had some talk with Mr. Laderman; I don't just recall what it was. He called him a "Sherlock," I think.

Q. Mr. Rabinowitz was not present at this time? A. No, sir.

Q. When did you have the next meeting after that? A. Well, I don't know that I had any further meetings than that.

Q. This was May 28th? A. That was the last conference I had with Mr. Laderman and Mr. Frishman, I think.

Q. After that you remember meeting Mr. Rabinowitz at your gate? A. Yes, sir.

Q. After you met him at the gate and he told you what you said, what you have testified, did you afterwards meet Mr. Rabinowitz at Smith's office? A. Yes, sir.

Q. Tell us what the conversation was there. A. I have told you that.

Q. Will you repeat it? A. He told me—he came in there and he said he had three charges against me, Mr. Rabinowitz said that; he said, "You are in pretty bad," and I think he said "for embezzlement and taking money under false pretenses," or something to that effect; then I asked him, I said, "Are you a lawyer?" and he said "Yes;" and then I said, "Then I want to go and see counsel." That was the last conversation I had with him.

Q. Now, what was said about the girls at that time in reference to the deed? A. I don't think I said anything about the girls at that time; I told Mr. Frishman and Mr. Laderman about the girls; I did not say anything to Mr. Rabinowitz about the girls I had said the girls would not sign the deed, and for that reason I wanted to be released and settle the contract.

Q. That was before Mr. Rabinowitz came in the case at all? A. Yes, sir.

Q. So he knew about that?

Mr. Harding—Objected to.

The Court—The objection will be sustained.

Q. Then did you have a talk with Mr. Rabinowitz at any time with reference to the property and the girls? A. No, sir, I did not talk to Mr. Rabinowitz on the property at all.

Q. Did you talk about the property to Mr. Rabinowitz, about the property? A. No, sir.

Q. Then, when did you first have a talk with Mr. Rabinowitz? A. The only time I talked to him was at the gate and at Smith's office.

Q. At Smith's office did you have any conversation? A. No, sir.

Q. You had a conversation there with Mr. Rabinowitz?

Mr. Harding—Objected to.

Q. I asked you when you were at Mr. Smith's office if you had a conversation with Mr. Rabinowitz; he was there, wasn't he? A. Yes, sir.

Q. Didn't you have any words with him? A. Yes, sir.

Q. Was there anything else took place at Mr. Smith's office? A. I left Mr. Smith's office.

Q. Had you had any conversation before that time with Mr. Rabinowitz as to— (Question withdrawn.) Now, when you met Mr. Laderman about the time you were trying to negotiate this settlement, did you ever say then to Mr. Laderman, "These women have no money, and I cannot go to them individually and ask for money;" and you re-

plied, "I said they were the ones" (Question withdrawn.) Do you remember having a conversation with Mr. Laderman in which you said, "These women have no money, and I cannot go to them individually and ask for money;" and Laderman said, that they were the ones that told you to make this written contract for them; and you said, "I know they did;" did you ever state that? A. No, sir, he wanted $500.00; and I said, "I could not approach these people for $500.00 apiece;" he said $500 apiece. Now, I said, "Joe's mother, I would not approach her for any money;" that was all the conversation about the women at that time that I know; that was down at Laderman's office when I was trying to settle.

Q. Did he say there that they were the ones—these girls were the ones who told you to make this written contract? A. I don't think so.

Q. Did they ever tell you to make this contract? A. No, sir.

Q. Now, the day that Laderman and Frishman were down to your place in reference to the sewer, did they go into the house that day? A. No, sir.

Q. Where did they meet you? A. Well, I was around the property somewhere; I don't recall where it was; they came up in a machine.

Q. Did they have any conversation with your sisters that day while they were there? A. No, sir.

Q. Do you remember when Mr. Rabinowitz was down there when they drove up to the place, that they drove up in a car? A. Yes, sir.

Q. And they got out at the gate? A. Only Mr. Rabinowitz got out; I did not know who was with him.

Q. And he was not in the house at all? A. No, sir.

Q. Did he have any conversation there that day with your sisters? A. I don't know.

Q. In your presence, did he? A. No, sir.

Q. And did he look around the place that day? A. It was dark—

Q. After he got out and spoke to you, where did he go? A. I don't know; he got in the car and went away; and then afterwards I saw him in Smith's office—

Q. Now, there has been something said about the girls were willing to sign; what do you say to us in reference to that; as to whether the girls were willing to sign? A. The only thing I know about that is, that they were not willing to sign for me—

Q. None of them were willing to sign? A. No, sir.

Mr. Harding—I object to this—

The Court—Strike it out.

Q. Did any of the girls ever tell you that they were willing to sign?

The Court—That also is leading, Mr. Dunn.

Q. What, if anything, did the girls say, when they heard that you were trying to make a contract to sell this property, about signing off a deed for the property? A. They said they would not sign a deed.

Q. Did you communicate that to Mr. Laderman? A. Yes, sir, and to Mr. Frishman.

Q. Do you remember also making that statement to Mr. Rabinowitz? A. Well, now, I cannot say that I did—

Q. When he was talking about threatening to hold you for some criminal acts of embezzlement or false representation, what did he say, if anything, was the ground upon which he was making that threat? A. I could not tell you.

Q. Did he state it? A. No, sir.

Cross Examination by Mr. Harding

Q. Are you the eldest member of the family? A. No, sir.

Q. Who is? A. There are two girls older than I—Lizzie and Mary.

Q. When did your father die? A. In 1900.

Q. When did you first put this property in the market for sale? A. The first man was Frishman.

Q. You never offered to sell it to anyone else? A. No, sir.

Q. Are you sure of that now? A. Yes, sir.

Q. Neither you nor your sisters ever offered to sell it to anyone else? A. Not that I know of.

Q. Do you know Mr. Bonney? A. Yes, sir.

Q. Were you in court when he was sworn? A. Yes, sir.

Q. Did you hear him swear that this property had been on the market for some time? A. No, sir, he said he could buy it; he came in the yard one day and this was after the contract was made with Mr. Frishman, and he suggested about buying the property.

Q. You are sure about that? A. Yes, sir.

Q. It was after the sale was made with Frishman? A. Yes, sir.

Q. Did you offer to sell it to him then? A. No, sir; him and my brother Tom came in the yard and they were talking property.

Q. Mr. Bonney says it was about a month before the sale was, about? A. I don't think so.

Q. If he said that, that is not so, is it? A. I don't know that it is, I don't recall that.

Q. Did you ask Mr. Bonney $20,000 for it? A. I don't know that I did.

Q. He says the price that was asked was $20,000; did you offer it for $20,000? A. I don't think Bonney offered $20,000 for it.

Q. Now, then, you did offer it to Mr. Bonney some time after the Frishman sale? A. I just talked about it, yes.

Q. Who were present? A. Tom—

Q. It was after this trouble? A. Yes, sir.

Q. How long afterwards? A. Probably a week or so after the contract had been made.

Q. The contract was made April 19? A. Yes, sir.

Q. And a week or two after that you had this talk with Mr. Bonney, talking about selling? A. I was not talking about selling it.

Q. What were you talking about? A. He was talking about buying property.

Q. You knew you had sold it to Mr. Laderman and Mr. Frishman? A. Yes, sir.

Q. Then why was it you wanted to sell it to Bonney? A. I did not want to sell it to Bonney; I did not make any suggestion of selling it to Bonney at all.

Q. If he said you offered to sell it to him for $20,000, he was telling what was not true; do you say that? A. I don't recall that.

Q. Why did you consider the question of Mr. Bonney buying that property two weeks after you had made this contract to Frishman and Laderman? A. I did not consider it.

Q. Why didn't you tell him it was under sale and had been— A. I told Mr. Bonney that.

Q. About two weeks after you had made the contract? A. Yes, sir, I went over and told Bonney.

Q. None of your sisters had refused to sell at that time, two weeks after the contract was made, had they? A Yes, I think they did before that.

Q. Do you say that now? A. Yes, sir.

Q. How long before? A. Well, now, I just cannot remember how long.

Q. When was it you first ever heard any objection from any one of your sisters about it? A. The eldest one never said anything about it at all; I could not get her to talk about it at all, at any time; I could never get her to talk about selling the property.

Q. After you had sold it? A. After or before, either—

Q. You said you never could get her to talk; what effort did you make to get her to talk about it? A. I wanted her to sell the property, because I thought I was getting a fair price for it.

Q. You wanted to sell it? A. Yes, sir.

Q. And you wanted her to sell it? A. Yes, sir.

Q. On the 19th you made the contract? A. Yes, sir.

Q. What was said about it then? A. There was not anything said at that time; it was a few days afterwards, two or three days afterwards; I had

the contract in my pocket; I did not show them the contract for two days.

Q. Why not? A. Well, I was away doing other things, and I forgot about it.

Q. You were living in the same house? A. Yes, sir.

Q. How many sisters lived in the house? A. Four—Annie and Bridget and Mary and Lizzie.

Q. It was all the land that you and your sisters had in the world? A. Yes, sir.

Q. Do you mean to say, that living in the house with your sisters, that you did not show this contract that you had made, which purported to sell all this property— A. I had the contract in my pocket for two or three days.

Q. Did you purposely refrain from speaking to your sisters about it? A. Yes, sir.

Q. Why? A. Well, I had a little trouble up there with the sewers and one thing and another, and with a fence.

Q. You say you intentionally had that contract in your pocket, of April 19, and did not show it to either of your sisters for a day or two after that? A. No, sir.

Q. State your reasons why. A. I have no reason to give for it.

Q. When was it—first, in connection with that—some time before—you offered to sell this property to a Mr. Packer? A. I don't think so.

By the Court:

Q. You know, don't you?

Mr. Harding—Is Mr. Packer here—will Mr. Packer stand up—do you see that gentleman standing in the rear of the court room?

The Witness—Yes, sir.

Further Cross:

Q. Didn't you offer to sell that property to him for $19,000 before this sale? A. No, sir.

Q. Did you ever offer him that property for any price? A. I don't think I did.

Q. Do you know him? A. No, sir, I don't know him.

Q. Did you ever see him before? A. I don't know that I did.

Q. And you don't know whether you ever offered that property to him for any price; you say you don't know that you did? A. The question is, I had not the power of selling the property.

Q. Is that the best answer you can make? A. Yes, sir, I could not get any definite answer on the property from anyone.

Q. Tell me whether or not you ever offered that property or had any talk with Mr. Packer about that property?

Mr. Dunn—Objected to as incompetent, irrelevant and immaterial.

The Court—Objection overruled.

Q. (Question read.) A. Well, of course, I was talking to fellows about the property; I didn't know who they were.

Q. Did you have a talk with Mr. Packer? A. I don't know him from anyone else.

Q. Did you offer to sell that property to that man for any price? A. No, sir, there was no price on the property.

Q. Is there a sign on that property "For Sale"? A. No, sir.

Q. Was there at that time? A. No, sir.

Q. There was never a sign on it "For Sale"? A. No, sir.

Q. You say the reason you would not talk to Mr. Packer was because you could not get any authority —authority from whom? A. From any of the folks.

Q. You were the only one that wanted to sell it; is that right? A. I wanted to sell it, yes.

Q. When was it that Mr. Frishman and Mr. Laderman first came to see you about this property, the sale of it? A. I went up to see Mr. Frishman; I don't think they ever came down to see me; I went down to see them.

Q. Do you recall anything about Mr. Laderman going up to see you alone, about the middle of March, and asking you about the sale of this property? A. The first time I saw Mr. Frishman was the middle of April; that is the first time I ever saw Mr. Laderman.

Q. Was anything ever said to you—did not Mr. Frishman and Mr. Laderman see you there alone about the middle of March, when they first asked you if the property was for sale? A. No, sir, they did not see me until April 15.

Q. Did they ever say anything to you about wanting a mortgage on the property? A. They talked about a mortgage, yes, sir.

Q. Before they made the contract was anything

said about a mortgage? A. I gave them an option for three days.

Q. Before that option was given? A. There was nothing about a mortgage before the option was given.

Q. How did you come to give them an option? A. Well, I went up there and gave them an option; I told them they could buy the place for $20,000; I told Mr. Frishman and Mr. Laderman it was a good price for it, I thought.

Q. How did you come to give them the option? A. They asked for an option.

Q. Do you remember of speaking, before you and your sisters, some time after the option was given, about giving an option because they wanted it to show the bank, if they wanted to get a mortgage? A. No, sir, they did not say anything about the bank, until they got the contract and they wanted a paper.

Q. Was anything said about your sisters giving you power to give the option? A. No, sir.

Q. Was anything said about that? A. No, sir.

Q. Well, you gave that option to sell the property for $20,000? A. Yes, sir.

Q. If it was to be sold for $20,000, it meant, of course, the whole property for $20,000? A. Yes, sir, it meant the whole property.

Q. I want to know from you what justification you had to give an option to sell that property for $20,000, which meant the whole property, unless your sisters had given you authority to do it? A. Well, I done business down there for years without getting authority from anybody—

Mr. Dunn—Let him finish his answer.

Mr. Harding—I have not interrupted him.

Q. Your answer was complete, wasn't it? A. As far as I know, yes, sir.

Q. But you say that you could not get any authority from your sisters to sell this property, and that is one of the reasons that you could not sell it to Mr. Packer or to Mr. Bonney, and did not want to talk to them about selling; is that so? A. I was never questioned about what I did there until this time.

Q. But you just said to me a few minutes ago, that one of the reasons you could not talk about it was because you could not get any authority, although you wanted to sell this property—from your sisters? A. I did business down there without any one questioning me at all; I bought and sold things for years there—not real estate—

Q. You said to me that you could not get any authority from any of your brothers and sisters? A. When they found out I made the contract, they jumped on me.

Q. I asked you about Mr. Packer; I asked you about offering it to him for $19,000— A. I don't think I ever offered it to anyone for $19,000.

Q. You gave as a reason that you had no power to sell it, and I wanted to know what you meant, and you said you could not get any power from them to sell it; didn't you say that? A. That is what I say now.

Q. That was on a question that was asked you with reference to why you did not sell it to Mr. Packer a month or so before you made this contract of sale, and you gave that as your reason; if that be so, why is it that you gave this option to sell

that property for $20,000, when you knew it was to be for the sale of all the property— A. I always done business down there, and I was never bothered before; this was the first time they ever opposed me.

Q. You don't mean to say that they all opposed you, that they were all dissatisfied with this contract? A. They seemed to be, yes.

Q. Was your brother Tom opposed to selling it, as well as your sisters? A. Yes, sir.

Q. Everyone opposed the signing—everyone was opposed to signing the deed? A. Yes, sir.

Q. Did you ever talk to Tom about it before you gave the option? A. I don't know that I did.

Q. You don't know that you did? A. No, sir.

Q. You never said a word to Tom about giving the option? A. No, sir.

Q. Tom did not know anything about it, then? A. No, sir.

Q. And you mean to say that you just took that option yourself and signed it, and never said a word to anyone about it? A. That is right.

Q. And then when it came around time—how long did the option go for? A. I think it was two or three days.

Q. This option says it expires April 27, 1923, and it was given April 16. Now, the day before the contract was made Mr. Frishman and Mr. Laderman found you in the horse shoeing place? A. No, sir, they did not find me at all; they found me in Passaic in a blacksmith shop, getting my horse shod.

Q. How did they happen to know you were there? A. I don't know.

Q.Did they tell you how they knew? A. No,

sir, they came down there and I was in the blacksmith shop—Laderman and Frishman.

Q. Didn't they say they had been to your sisters' house and your sisters had said;didn't they say they had spoken about it to your sisters, about where you were— A. That I don't know; they did not tell me that down there.

Q. Do you know how they kne wthat you were in the blacksmith shop? A. Joe's brother John was fixing a car, and it was him told them where I was, I understand.

Q. Why didn't you tell Tom about this option that you had given? A. I never used to tell anyone when I was doing things, until this time.

Q. Well, you made an option in which you expected these people would be bound, and you did not tell them anything about it? A. Yes, sir.

Q. You saw these two gentlemen at Passaic and they wanted to go to Mr. Smith's office? A. Yes, sir.

Q. What hour was that? A. It was about 10:30 in the morning, and they wanted to go to Mr. Smith's office that very afternoon between one and two o'clock.

Q. And you had not said anything to Tom about it? A. No, sir.

Q. Did you go to Smith's office without saying anything to him about it? A. Yes, sir.

Q. How did Tom happen to go to Smith's office if you had not said anything to him about it? A. I don't know.

Q. You had not said a word to him about it? A. No, sir, I had not.

Q. Then some of your sisters must have said something? A. Maybe they did.

Q. Which one of them said anything about it? A. I don't know which of them, I don't know.

Q. But up to this time you had not said a word about it to your sisters, about the option? A. No, sir, I had not.

Q. Who went there first to Mr. Smith's office, you or Tom? A. I was there first.

Q. And then Tom came in? A. Yes, sir, near three o'clock.

Q. Neither Tom nor a single one of your sisters knew a word about this option? A. No, sir.

Q. You had not spoken about selling the property? A. No, sir.

Q. Had you said anything about selling the property? A. Well, now, I might have said something about selling.

Q. What did you say about selling—to Laderman and Frishman? A. I thought the people would be satisfied to take a good price, for the property.

Q. You think you may have said something to your sisters about selling this property to Mr. Laderman? A. I may have said something.

Q. Did you meet Tom in the office, in Smith's office—how long had you been there before Tom came in? A. I was there probably an hour and a half before Tom came in.

Q. Had the deed been drawn? A. No, sir, there was no deed drawn, it was a contract.

Q. Had you signed it? A. I think not—before Tom came in I did not sign it; I think Tom was there when I signed it.

Q. What did you say when Tom came in? A. I did not say anything.

Q. What did Tom say? A. Nothing until Mr.

Smith was reading the contract, and then Tom objected—Tom said, "John has no power to make a contract."

Q. Have you given to me the first words that Tom said? A. Yes, sir.

Q. And the only words he said there? A. That is all I heard Tom say about it.

Q. Did Tom stay with you while the contract was signed? A, Yes sir. .

Q. You took one of the contracts? A. I had one of them.

Q. You put it in your pocket? A. Yes, sir.

Q. Did you go out after Tom? A. Yes, sir, I did.

Q. Did you have a talk with Tom? A. I did not say a word about the contract.

Q. And he did not say a word about the contract? A. No, sir, not a word, after we got out of the office.

Q. You did not ask him how he happened to come down there? A. We did not have any conversation about that.

Q. How long were you with him after you left the office? A. Probably about five or ten minutes, and then he got on a trolley car and I got on the bus.

Q. Up to this time you had never said a word to Tom about it? A. No, sir.

Q. You were providing to sell Tom's interest, were you not? A. Yes, sir.

Q. You got on the car and went away and never said a word to Tom about it? A. No, sir.

Q. You did not ask him why he came there? A. No, sir.

Q. Did it strike you at all as remarkable that he said you had no power to sign that contract; didn't that strike you as funny? A. Yes, sir.

Q. And yet you signed it? A. Yes, sir.

Q. Did Tom tell you the girls were opposed to your signing it? A. Not a word about it then.

Q. How long were you with him after you left the office of Mr. Smith? A. Probably five or six minutes; he walked up and got a trolley car on Grant Street, and I took a bus.

Q. When did you next see him? A. He took a White Line car and I took a Main Street bus.

Q. Did he tell you that he objected to it then? A. He was the first man made the objection.

Q. He was making the objection on his own account; is that right? A. I don't know whose account he made it on.

Q. Did you understand that Tom was objecting because you had no power to sign for him, or whether he was objecting because you had no power to sign for your sisters? A. He just told Mr. Smith that I did not have any power to sign the contract.

Q. But you understood that he objected to your selling his interest, as well as your sisters'? A. I suppose he did, yes, sir.

Q. And you went on after that and signed this paper? A. Yes, sir.

Q. Notwithstanding that? A. Yes, sir.

Q. Which pretended to sell the whole thing? A. Yes, sir.

Q. And never said a word to Tom about it? A. No, sir.

Q. And what time did you get home? A. About four or five o'clock.

Q. And did you see your sisters, or any of them? A. Yes, sir.

Q. What did you say? A. I did not tell them a word about it.

Q. At no time during that night? A. No, sir; I went out again after I came home.

Q. Did you intentionally keep from saying it to them, or did you forget to say it? A. I don't say it was intentional; I think I forgot about it.

Q. Tom had told you that you had no power—in Smith's office; and you went home and spent the whole evening at home; you spent some part of the evening there, saw your sisters, and you forgot to say anything about it? A. I don't know that I saw them all; I think I might have seen one or two of them.

Q. But you did not say anything about the contract? A. No, sir, not until after Joe came down with the paper.

Q. Did Tom say, when he was in that office, that he came there to look after the interests of one of his sisters? A. I don't think so.

Q. Are you positive he did not say that? A. He might have said it, but I did not hear him say so.

Q. You did not say a word about it all that evening? A. No, sir.

Q. You got up the next day; did you say anything to them then? A. The next day I got up, and I had the contract in my coat pocket upstairs hanging in the clothes closet, and two checks with it.

Q. Did you say anything about it then? A. I had the two checks for two or three days before I said anything about it; the checks and the contract were in my overcoat pocket.

Q. For two or three days before you said anything to your sisters about it? A. Yes, sir.

Q. Did you then show them the checks? A. Yes, sir.

Q. Three or four days after you made the contract? A. I showed them the contract.

Q. Why did you show it to them then? A. I think one of the girls asked about it, and I said, "It is upstairs in my pocket;" and I went up and got it and gave it to her.

Q. She heard talk about the contract having been signed? A. They all talked about the contract having been signed.

Q. Anyway, Joe said you had signed this contract, but you had not shown it to them? A. They had not seen the contract until I showed it to them; Joe said there was some hitch in Mr. Smith's office; Joe came down there with a paper; they claimed there was some hitch in the office at Smith's—

Q. What was the hitch about? A. Joe said there was a hitch.

Q. Joe said to all of you that there was some hitch about the paper that you had signed?

Mr. Dunn—I object to that.

Q. What did Joe say to them? A. I don't recall; Joe came down with the paper.

Q. Were you present? A. Yes, sir, me and Tom and Joe were there; I don't know whether the girls were there or not; we three were talking; I don't know that the girls were there at that time.

Q. What did Joe say? A. Well, Joe said very little; he came down with the paper to get it signed;

he wanted the women folks to sign as heirs, that is what he said.

Q. Who were there? A. I was there, and Tom and Joe.

Q. Where did Tom live at that time? A. He lived over on Bonney Street.

Q. He does not live at the house you live in? A. No, sir, but he comes over pretty nearly every day—Tom comes over every day.

Q. Do you recall whether or not Tom was there by arrangement with you, or did he just happen to be there? A. Tom comes to the house every day.

Q. Did you ask him to come there to meet Joe? A. No, sir.

Q. And when Joe came in he said there was a hitch in the matter of your making the contract, and he wanted you to sign a paper? A. Yes, sir.

Q. Did Tom dictate the paper? A. Yes, sir, Joe told him and Tom dictated it.

Q. You had not said a word to Tom up to that time? A. No, sir.

Q. Yet you say that Tom was opposed and said you had no authority to sign the paper? A. He said that in Smith's office.

Q. He did not want to sell the property? A. No, sir.

Q. And yet Tom dictated this paper? A. Yes, sir.

Q. "April 20, 1923. We, the undersigned, heirs of James Rooney, do appoint John Rooney with power of attorney, and do invest him with full power to act in our behalf on the sale of the estate of the heirs of James Rooney"? A. Yes, sir.

Q. Tom did not object to it then, did he, of your

having power to sell it; he did not object to it when he dictated it, did he? A. I don't know.

Q. Did Tom sign it? A. Yes, sir.

Q. You saw him sign it? A. sir, I did not see Tom sign it.

Q. You saw it dictated? A. Yes, sir, it did not take half a second to put that on there.

Q. You don't quite mean that? A. Yes, I mean the headlines there.

Q. After Tom dictated it and your nephew Joe wrote it, what was done with it? A. I believe Tom signed it; Tom says he signed the paper, but I did not see him.

Q. Did anyone else sign it? A. I signed it.

Q. When did you sign it? A. Well, I signed it before it went away.

Q. Did you sign it before Tom signed it? A. No, sir, I don't think so.

Q. Did you sign it before the other sisters signed it? A. I don't think I did.

Q. You don't think you signed it first? A. No, sir, I did not; I don't think so.

Q. You think Tom signed it before you did? A. I know he did.

Q. How do you know that? A. Well, he was the first one signed it.

Q. Did you see him sign it? A. No, sir.

Q. How do you know he signed it first? A. He said he signed the paper.

Q. When did he say he signed it? A. He always said he signed it.

Q. Did he say he signed it there? A. I could not say everything.

Q. After this paper was dictated by Tom, what

was done with it? A. One of the girls took it in the kitchen.

Q. Then one of the girls must have been there when it was signed; which one was that? A. I don't know whether it was Annie or Bridget that was in the kitchen.

Q. Which one was there when the paper was dictated by Tom? A. I dont recall.

Q. You say one of them took it out in the kitchen? A. Yes, sir.

Q. Was it there when it was signed?—Is your recollection that one of the girls took it into the kitchen? A. Yes, sir.

Q. What other girls were in the kitchen? A. That I could not tell you.

Q. You must know? A. I don't know.

Q. They were your sisters? A. Yes, sir, but they were in all parts of the house.

Q. Were all the girls there that day? A. Not all in the same room, but they were all in the house, I think, at the time when that paper was signed; I did not see them all—

Q They were in different parts of the house, though? A. Yes, sir.

Q. You think one of your sisters took it out to the kitchen after it was dictated? A. Yes, sir.

Q. And did you say the whole thing was done and signed within a half second? A. I mean the headlines were dictated very quick.

Q. I thought you said the whole thing? A. No, sir.

Q. How long did the whole thing take? A. I don't know.

Q. Give us your best recollection? A. It might have taken ten minutes.

Q. Now, did you sign it before it was taken out for your sisters to sign it? A. No, sir, I signed it afterwards.

Q. And when it came back to you it was signed by all your sisters? A. Well, their names were on there, yes, sir.

Q. All their names were on there? A. Yes, sir.

Q. Do you know your sister Bridget's handwriting? A. I don't know that I would.

Q. Do you know the handwriting of any of your sisters? A. I don't know that I would.

Q. You have seen them write? A. Yes, sir.

Q. They all went to school together? A. They did not all go to school together.

Q. Were they taught by the same teacher? A. No, sir, there is ten or twelve years' difference in their schooling.

Q. Can you tell me whether or not that is Bridget's signature on this paper, "Exhibit C-5 1-2;" doesn't that look like Bridget's handwriting? A. Yes, sir.

Q. How about Annie? A. I think that is her writing.

Q. Is that Mary Rooney's writing? A. I don't think so.

Q. That is your signature, John Rooney? A. Yes, sir.

Q. Now, in response to your counsel's question when he asked you whether or not before this contract was signed, your sisters had ever given you authority to sign it, you said, "No, not in writing"? A. Yes, sir.

Q. And not direct? A. Yes, sir.

Q. Why did you say they had never given you

any authority in writing? A. I said I did not have any authority in writing, and was not appointed by the court; that is what I said to Mr. Dunn.

Q. Why did you qualify your answer that way? A. I could not answer in any other way that I know of.

Q. When you said you had not any authority in writing, did you mean to say that is the only way you thought you could get authority to do this thing? A. That was in Mr. Smith's office that this thing occurred.

Q. When you told Mr. Dunn that you did not consider you had any authority in writing, did you mean by that, that you did not think that you could have any authority unless it were in writing? A. I suppose I could, yes.

Mr. Dunn—That is a legal question.

Q. You took this contract that you had and kept it in your pocket, and then this paper of April 20th was presented at your home and signed by different ones of your sisters; where was Joe when it went out in the kitchen to be signed by the others? A. Now, I don't know.

Q. Did he go to the kitchen? A. No, sir, I don't think so.

Q. Where did Tom go? A. I think he went home.

Q. Now, you have given the whole conversation between Joe and Tom—that when Joe told him what you say Joe told him, that there was a hitch, then Tom immediately dictated this paper? A. Yes, sir.

Q. And Joe wrote it out in his handwriting? A. Yes, sir.

Q. And then it was sent in to the sisters—did Tom stay— A. Tom went right home; Tom had a horse and wagon with him; he signed it first and he went out.

Q. If Tom's signature is on it, do you know whether or not Tom signed it and went away before it was sent in the kitchen? A. I think he did.

Q. Did Tom say a word to you about it after that? A. No, sir.

Q. Never said a word to you since about it? A. No, sir.

Q. From the time Tom left on this day of April 20th, in his wagon, have you ever talked at all to him about this paper that was signed? A. I don't say that I did; I don't recall talking anything about it with him.

Q. Did you stay in the house? A. Yes, sir.

Q. And did you see any of your sisters sign the paper? A. No, sir, I did not.

Q. When did you next see the paper after Tom went away? A. Well, Joe got the paper and brought it to his mother.

Q. You saw that paper go to the kitchen—taken by one of your sisters? A. Yes, sir.

Q. You had not signed it yet? A. No, sir.

Q. Who brought it back? A. I think one of the girls brought it back; Joe and I were in one room and the girls were all in the other room.

Q. All together? A. I think so.

Q. Which other room? A. It was in the kitchen.

Q. What makes you think the girls were there? A. I saw two of them in there.

Q. You looked through the door? A. The door was open between the kitchen and the other door.

Q. While the thing was going on you saw two of them at one time; did you see the rest of them at another time, or not? A. I could not say whether they were all there at one time or not.

Q. But they were there at some time when the thing was going on; they were all there at some time as you looked through the door? A. I could not see them all at one time from where I was.

Q. But while the thing was going on you saw them all in the kitchen at some time? A. I saw some of them there, yes.

Q. You saw some there at one time and some another time, is that right?

Mr. Dunn—He did not say that.

The Court—Don't interrupt, Mr. Dunn; the question is a perfectly proper question; if this man wants to tell us the truth, he can do so; this is a very important part of the case.

Q. Did you consider this an important transaction?

Mr. Dunn—Objected to.

Q. Was this an important transaction to you, the signing of this paper? A. I don't know that it was.

By the Court:

Q. Why wasn't it important? A. I did not know whether it was important or not.

Further Cross:

Q. After the paper came back, did you notice it had the signatures of all your sisters on it? A. Yes, sir.

Q. Did you notice that? A. Yes, sir.

Q. Was it important enough for you to notice that? A. Yes, sir, I noticed that.

Q. At that time did you think they had all signed it? A. Yes, sir.

Q. You thought each one individually had signed it? A. Yes, sir.

Q. You looked at the signatures and thought then they had signed it; how carefully did you examine the signatures? A. I did not think at all.

Q. You saw their names right in front of you on the paper before you signed it? A. It was probably near nine o'clock, and Joe was in a hurry to get home; it was getting near nine o'clock at night.

Q. Which sister brought it back? A. That I don't know.

Q. Did she say, "We have signed it"? A. They did not say.

Q. You pretend, do you, to say that that sister brought that paper back and did not say a word? A. She left it on the dining room table with Joe; I was right with Joe; I was there in the dining room with Joe all the time, and she came from the kitchen.

Q. The door was open between the kitchen and the dining room? A. Yes, sir.

Q. Did you hear them talking out there when they signed it? A. Yes, sir, but I could not hear what they said.

Q. There was no argument? A. I did not hear any argument.

Q. How far away from them were you? A. Probably twenty feet.

Q. Did not somebody come in to get some ink to sign the paper? A. I don't think so; I think there was ink in the kitchen.

Q. Was not this paper all signed by the same pen and ink? A. That I don't know.

Mr. Dunn—The witness said he was not present when it was signed.

Mr. Harding—I wish you would not interrupt.

Q. I ask you now, when you look at this paper, whether or not it was not all written with the same pen and ink, in your opinion? A. That I could not tell you.

Q. How many different pens and inks did you have in your house at that time? A. There is a dozen pens there.

Q. But you don't have ink in the kitchen? A. I don't know whether the girls have ink in the kitchen, but in the room where I was, there were four or five different pens there.

Q. After you signed this paper, what did you say to your sisters about it? A. Nothing.

Q. Do you mean to tell me you did not say a word to your sisters? A. Not a word.

Q. No one ever spoke to you about it? A. No, sir.

Q. You understood your sisters were disputing your power to sell their portion of the property, as you say when you were in Mr. Smith's office, and you went back and had not said a word to them about it, and had signed the contract; and then an-

other day this paper came, giving this power and authority; and you mean to say now, that during this second day, after Tom had gone away, you did not say a word to your sisters?

Mr. Dunn—Objected to on the ground that it is so worded that it is impossible for anyone to give an intelligent answer to it.

The Court—I think myself it is quite understandable; I will let it stand. You may answer it if you can.

Q. In view of the fact that when you were in Mr. Smith's office you say you had no power to bind your sisters; and in view of the fact that your brother Thomas, in his office, had denied your power to make the contract; and in view of the fact, as you say, that you signed this contract on the 19th of April, and that you had carried it and the checks that you had received home, in your pocket, and had not said a word to your sisters about it, why did you not speak to one or more of your sisters about the paper that they signed on the 20th of April? You understand that, don't you? A. What do you mean?

Q. I ask you why you did not say anything to your sisters about that paper that was signed on the 20th of April; when they signed it, or after they signed it on that day? A. I don't know how to answer that question.

Q. Did you ever speak to any of your sisters after you signed the paper date April 20th, about it? A. Yes, sir, I did.

Q. When did you speak to them about that paper? A. I could not just recall when it was.

Q. About how long? A. Well I said something about the paper and they told me they did not sign the paper; that is what they told me—

Q. They told you they actually did not sign it? A. Yes, sir.

Q. Did they all tell you that? A. No, sir.

Q. How many? A. Lizzie and Mary.

Q. Did Lizzie say she did not sign it? A. Yes, sir.

Q. Who did sign it for her, did she say? A. I think she said Bridget signed it.

Q. Where was Bridget when she signed it; did she say where Bridget was when she signed it? A. She was in the kitchen—Bridget signed it in the kitchen.

Q. Where did Elizabeth say she was? A. I don't know where she was—at that time.

Q. Who was the other one said she did not sign it? A. Mary.

Q. Where did she say she was? A. I think she said she was upstairs.

Q. Did she say why she would not sign it? A. No, sir.

Q. Did Elizabeth say why she would not sign it? A. Elizabeth said she never intended to sell the place.

Q. That was some time after April 20th that the two of them told you that? A. Yes, sir; they said it was their home there and they did not want to leave it.

Q. Now, did you finally show them the contract of April 19th? A. Yes, sir.

Q. When did you show them that? A. I showed it to Bridget, and she read the contract.

Q. When was that? A. A day or two after that paper was signed.

Q. How did you come to show it to Bridget? A. I had the paper in my coat pocket, and I left the paper on the mantelpiece. I left the contract on the mantelpiece. And some one said, "What is that?" and Bridget took it up and read it.

Q. She just happened to do it? A. Yes, sir.

Q. What did Annie say at the time; was it Annie told you she did not sign it? A. It was Mary said she did not sign it.

Q. Who signed it for her? A. That I don't know.

Q. At that time was Mary objecting to your selling, or did she want to sell? A. Mary did not want to sell; she did not want to leave her home, she said—

Q. She always said that to you? A. I did not ask her.

Q. Did you show them the checks that you got from Mr. Laderman? A. I don't think I did.

Q. Any one of them? A. No, sir.

Q. Why not? A. The checks were drawn out in my name, and it was of no importance for them to see them, as I thought.

Q. Not one of them? A. No, sir.

Q. Didn't you tell them you got the checks? A. No, sir.

Q. When did you tell them? A. Probably three or four days after the contract.

Q. You showed them the checks? A. No, sir, the contract showed there were checks.

Q. But they never saw the checks? A. They might have looked at them from my pocket.

Q. You ought to know. A. I had the checks in my pocket, and they were in the clothes closet and they might have seen them there.

Q. But they had nothing to do with the checks? A. No, sir.

Q. If they saw it, they saw it without your knowledge? A. Yes, sir; I don't think anyone saw the checks outside of myself.

Q. Until the time you got them cashed? A. That is right.

Q. Who got them cashed? A. I did.

Q. Where did you cash them? A. I did not cash them; I put them into the Paterson Savings Institution; I deposited them to my account—

Q. Did you have an account there at that time? A. Yes, sir.

Q. One of your own accounts? A. Yes, sir.

Q. So you took each of these two checks that were given to you on April 19th, and took them down to the bank yourself? A. Yes, sir.

Q. And deposited them there? A. Yes, sir.

Q. And so far as you can tell us, you are sure that nobody had ever seen those checks or had anything to do with them up that time? A. I don't think so.

Q. I show you check of April 19, 1923, signed, "David Laderman" which is marked "Exhibit C-2," and I ask you if that is your signature on that, "John Rooney?" A. Yes, sir.

Q. First, "John Rooney, Attorney for the Estate of James Rooney"? A. Yes, sir.

Q. And your name is signed a second time; how does that happen to be? A. I don't know how that came about.

Q. Did they ask you to do it in the bank? A. Is it on the other check like that?

Q. I ask you how you happened to sign it twice; can you tell me? A. No, sir, I don't recall that.

Q. Now, turn to the other side of the check, and I see the name of John Rooney is again signed on the opposite side of it—crossed out—whose signature is that, "John Rooney," whose signature is that I am now showing you up here at the top of the check? A. I don't know; I don't think that is my signature.

Q. You say none of your sisters had ever seen it? A. No, sir; that is not in all their writing, either; that is not my sisters' writing.

Q. Do you swear to that positively? Look at that again before you declare positively that that is not in your sisters' handwriting? A. I don't think so.

Q. Was that handwriting on that paper when you had it cashed in the bank? A. I think so.

Q. That wording "John Rooney" that is crossed off was on there when you had it cashed? A. I had it deposited.

Q. When you deposited that check, do you think the name of John Rooney was there? A. Yes, sir.

Q. Crossed out? A. I think it was there—

Q. Who wrote it there? A. I don't know.

Q. If it was in your pocket from the time you got it from Mr. Laderman until it was deposited by you in the bank, and the name of John Rooney, now erased, was crossed off at that time, who could have put it there except one of your sisters? A. I did not put it there.

Q. How do you account for it? A. I cannot account for that.

Q. I show you another check, dated April 19th, for $500.00, made by Maurice E. Frishman, "Exhibit C-3" in this case, and ask you if those two signatures of John Rooney, one about "Attorney for the Estate of James Rooney," and the other below—A. Both of those are in my handwriting.

Q. And I show you on the opposite side of this check the name of John Rooney; that is also erased; is that the same writing that is on the other one, do you think? A. Yes, sir.

Q. Do you also think that this name "John Rooney," erased on this check, was there at the time when you deposited it, the same as it was on the other? A. I suppose it was.

Q. Will you say whether or not that writing is in the name of any one of your sisters? A. I don't know that it is.

Q. Do you say it is not? A. I don't think so.

Q. Nobody else had possession of that check, as you say now, except yourself, in your pocket, in your home? A. Yes, sir.

Q. You have said that you thought that Bridget Rooney wrote the name "Elizabeth Rooney" on this paper of April 20th? A. That looks a little like Bridget's writing.

Q. You have no doubt she wrote it, have you? A. I would not be positive of that.

Q. You would not be positive? A. No, sir

Q. I want to take the two words "Rooney" on the check, and the word "Rooney," of "Elizabeth Rooney" on the agreement of April 20th, and you first look at those two words, will you, this one here on the check, and this one on the paper, and I ask you if they don't look to you as if they were written by the same person?

Mr. Dunn—Objected to.

A. I couldn't tell.

Q. How long did you hold these checks before you deposited them? A. I think it was four or five days, maybe a week.

Q. Well, they show on the back of them, under the last deposit mark of the banks, that they were deposited the first of May; is that about right?

Mr. Dunn—They don't show that.

A. I think it was before that.

Mr. Harding—The perforated mark says "Pd;" they are marked with the stamp on as April 30th.

Q. So you had them all that time, did you? A. Yes, sir.

THOMAS C. ROONEY, sworn in behalf of the defendants, testified as follows:

Direct Examination by Mr. Dunn:

Q. What relation are you to Mr. John Rooney? A. I am a little deaf.

Q. What relation are you to Mr. John Rooney? A. I am his brother.

Q. Your father's name was what? A. James Rooney.

Q. And at the time he died he was seized of this land down at Clifton, which has been described in

the bill and which has been mentioned here? A. Yes, sir.

Q. Known as the James Rooney Estate? A. Yes, sir.

Q. Now, after your father's death who continued to occupy the place down there—the homestead? A. John Rooney and the girls.

Q. Your sisters Bridget, Elizabeth, Annie and Mary? A. Yes, sir.

Q. All four girls? A. Yes, sir.

Q. Did you live there last year—in the year 1923? A. No, sir.

Q. Where did you live? A. I lived in Lakeview, near the river.

Q. You are married? A. Yes, sir.

Q. After the death of your father, was there a dwelling house on this property? A. Yes, sir, two.

Q. And they are still there? A. Yes, sir.

Q. And the family lived in one—that is, John and the girls, and what did they do with the other? A. The other one is rented.

Q. And the land is used as farm land? A. Yes, sir.

Q. Now, were you at Senator Smith's office the day this contract was signed by your brother John to sell that property? A. Yes, sir.

Q. How did you come to be there? A. John asked me to come up to Mr. Smith's office, and I went and I was a little late; it must have been about a quarter to three when I got there, and I ought to have been there at two o'clock.

Q. Now, will you tell us what transpired after you got there in reference to this contract? A. I was in Mr. Smith's private office a few minutes

when a paper came in purporting to be a contract, and Mr. Smith started to read it, and when he got done reading it, I said, "Senator, I don't think my brother has a right to sign a contract like that;" and Mr. Smith turned to John and said, "John, haven't you?" and he said, "No, nothing in writing." Senator Smith then said, "I will make you attorney in fact;" and he went on with the contract, and my brother signed it and we left the office.

Q. At that time did you make any other statement to Senator Smith? A. Yes, sir, we gave the names of the heirs; John and I gave them to Mr. Smith.

Q. How did you come to be at Senator Smith's office that day? A. John asked me to come down. At about 12:30 I met him.

Q. Where did you meet him? A. In the yard, up at the old homestead.

Q. Did he say what he wanted you there for? A. No, sir.

Q. So you went there? A. Yes, sir; he said, "I would like to have you come to Senator Smith's office at two o'clock," and I said "All right."

Q. When this paper was brought out and read over, and you made that statement to Mr. Smith, what then was done in reference to the paper? A. Mr. Smith said that he would make John attorney in fact. Of course, I did not say any more then; and John signed the contract.

Q. Was there anything said there then in reference to the girls would not be willing to sell? A. No, sir.

Q. You did not say whether you would be willing or not? A. No, sir.

Q. Then after that was signed, when was the next that you heard— A. The next day Joseph Rooney came down in the yard, about 6:30 or 7 o'clock, and he told my brother John there was something the matter up in Mr. Smith's office, and he wanted the names of the heirs, and we got a paper and went into the house; I was just going home, and I went back in the house and got a paper, and Joe wrote it, and I dictated to him what was to be put on the paper, and I signed that paper and went home.

Q. What did you understand from Joe that they wanted? A. The way I understood it—

Mr. Harding—I object to what he understood from Joe.

Q. What did Joe say? A. He said Mr. Smith wanted the names of the heirs.

Q. I show you this paper; look at it and see if you recognize that as the paper? A. Yes, sir, I dictated that writing to Joe; that is my signature.

Q. What did he say they wanted the names of the heirs for? A. He said there was something the matter with the contract.

Mr. Harding—This has been going on during this whole case; he puts leading questions, suggests it to his witness, and then he puts the general question. I call upon the counsel, as a fair practitioner, that he refrain from this sort of thing.

The Court—You object to the question. The objection is sustained .

Q. Were you present when this paper was drawn? A. Yes, sir.

Q. And what was done with the paper after you saw your nephew write the heading? A. I wrote my signature and went home.

Q. Did you see any of the other parties sign? A. No, sir.

Q. What did he say he wanted those signatures for? A. He said there was something the matter in Mr. Smith's office.

The Court—Same objection—what did he say?

Q. What did he say? A. He said there was a hitch in the contract and Mr. Smith's office wanted the names of the heirs.

Q. Then after you went out you left your signature and this paper with him? A. Yes, sir.

Q. Now, at that time did you see which of the girls were in the house? A. I did not notice them.

Q. Now, after that, did you speak to the girls in reference to this contract; did you speak to the girls that day in reference to the contract that was signed? A. No, sir.

Q. You were at the office when your brother signed this contract with Frishman and Laderman? A. Yes, sir.

Q. Did you say anything to the girls at the time you were in the house? A. No, sir.

Q. That John signed such a contract? A. No, sir.

Q. Nor that John had agreed to sell the property? A. No, sir.

Q. Now, then, when next did you hear anything

about this paper that was signed by the girls after you saw it there that day? A. I guess it was about a week after.

By the Court:

Q. How soon after the signing in Smith's office did you see your sisters? A. I saw them that same evening.

Q. Why didn't you speak to them about it? A. I supposed they knew something about it; I did not know.

Q. Did your brother tell you that he had told them about it? A. No, sir.

Q. How did you think they found out about it, then? A. It was their home, and I thought if they were going to sell, I should not object; I thought they knew about it.

Further Direct:

Q. Did you talk it over with them at all? A. No, sir.

Q. Now, after that, do you remember attending and meeting Mr. Rabinowitz in Mr. Smith's office? A. Yes, sir.

Q. When was that? A. Some time in early June, I think.

Q. What took place there? A. My brother asked me to go down to Mr. Smith's office that Saturday morning, and I went with him, and when we got to the office there was Mr. Smith and Mr. Laderman, and we were there a minute or two, and then Mr. Rabinowitz came in, and Mr. Rabinowitz told my brother that he had bought Mr. Frishman's

interest in the contract and that he had some heavy charges against him if he did not go on with the contract; that he was liable for damages for embezzlement; there were three charges. My brother said, "You are a lawyer?" and Mr. Rabinowitz said, "Yes;" and my brother said, "I have nothing to say; I have to see counsel;" and we left Mr. Smith's office, my brother and I; and we went over to Mr. Dunn's office and Mr. Dunn was out of town.

Q. Did you meet Mr. Rabinowitz at the Second National Bank one Saturday morning? A. Yes, sir; I was coming up Market Street and I met Mr. Rabinowitz, and he said, "What are the folks doing down there?" and I said, "I don't know;" and he said, "Are they going to give us a fight?" and I said, "I don't know; you will have to see Mr. Dunn about that."

Q. Do you remember after you were over to the Second National Bank Building meeting Mr. Rabinowitz and having this conversation: Mr. Rabinowitz says he said to you, "Mr. Rooney, Joe told me that he had sent up to the farm to get all the heirs to sign, and that you dictated the paper to him; I remember Joe said Annie and Mary were both there at the time;" were they both there at the time? A. No, sir.

Q. Did Mr. Rabinowitz say that? A. I did not hear him say so, no, sir.

Q. Do you remember hearing Mr. Rabinowitz say this (page 102 of the testimony) "Ans. I said, 'Joe told me you dictated this paper to him up at the farm,' and Joe said that Annie and Mary were there, and that this paper was taken into a room and all the heirs had signed it, and it was taken out and given to Joe, and Joe went over to his mother,

Mary, and she signed that paper." And then he was asked the question, "Q. What did Thomas say to that?" and the answer is, "A. He refused to talk; he said 'I have nothing to say.'" Did you have such a conversation with him? A. No, sir.

Q. What did take place up there when you met him up there at the Second National Bank? A. He said, "What are the folks doing down below?" and I said, "I don't know." He said, "Are they going to give us a fight?" and I said, "You will have to see Mr. Dunn about that."

Q. And that is all you had to say? A. Yes, sir.

(Recess to 2 P. M.)

After Recess.

THOMAS C. ROONEY resumes the witness stand.

Direct Examination (Continued) by Mr. Dunn:

Q. Now, Mr. Rooney, you were present at Mr. Smith's office when this preliminary contract was signed? A. Yes, sir.

Q. And I ask you if you remember of John being asked: "Have you the authority in writing to make a contract for your sisters and brothers?" (See page 65 of the testimony.) And he said, 'I have.'" This is Mr. Smith's testimony; and Mr. Smith says he said to John, "Have you the authority in writing to make a contract for your sisters and brothers?" and he said 'I have.' I said, 'Is this contract or power of attorney on record?' He said, 'I don't know.' At

that time Mr. Thomas Rooney spoke up and verified what was said, and we proceeded to have the contract signed under those conditions; I made it 'The Estate of James Rooney,' representing everyone who was interested as an heir. The contract was signed, and the money was passed, and the gentlemen left my office." (Counsel reading from Mr. Smith's testimony at pages 64 and 65.) Now, I want to ask you whether or not you recall being present at the time this contract was signed by John, that you spoke of this morning? A. Yes, sir.

Q. I also ask you if you recall if he was asked if he had the power of attorney to act for all the heirs of the estate, and that he said he had; did John say that? A. No, sir.

Q. Now, I call your attention to this statement; this is Mr. Smith's statement (see page 65 of testimony) "I said" (that is, Mr. Smith said) "Is this contract or power of attorney on record?" and he said, "I don't know." That is you; did he ask you such a question as that? A. No, sir.

Q. Continuing with Mr. Smith; Mr. Smith says he said, "Have you the authority in writing to make a contract for your sisters and brothers?" and he (John) said, "I have." Did he ask him that question? (Meaning John). A. No, sir.

Q. At that time he says: "Then Mr. Thomas Rooney spoke up and said that his father had died and they all practically lived together, and that Mr. John Rooney always had authority to act for all the heirs." A. No, sir, there was nothing said about these matters to which you have called my attention.

Q. Do you remember him asking John, did he have the power of attorney for all the heirs of the estate, and he said he did? A. No, sir.

Q. Do you remember John saying that he did have the power? A. No, sir.

Q. He made no such statement? A. No, sir.

Q. And the next question was—Mr. Smith said he asked John, "Have you a written power of attorney to make the contract for all the heirs of this estate?" and that John said he had? A. No, sir, John did not say that.

Q. Now, I call your attention to a statement made by Mr. Smith in reference to a Mr. Bonney being present (page 70 of the testimony): Mr. Smith was asked, "Q. Were John and Thomas present when you had this conversation about all the heirs having signed the paper on April 20th? A. Yes, sir, Thomas and John were both present in my office at that time." A. With Mr. Bonney?

Q. Yes, A. No, sir.

Q. (Continuing reading, Smith's testimony, page 70): "Did Thomas Rooney say anything in response to your statement that Elizabeth, as well as all the rest, had signed this paper? A. I don't recall that he said anything with regard to that, but Thomas and John said, 'We are all willing except Elizabeth, to carry out the contract.' They both asserted up to the last, that they were willing to carry out their part of the contract, and they said that every one of the heirs were willing except Elizabeth." Did you say that? A. No, sir.

Q. Do you remember whether you were there that day or not? A. With Mr. Bonney, no, sir, I was not there when Mr. Bonney was there that day at all.

Q. Now, do you remember on another occasion being present at Mr. Smith's office and he was asked

(page 85 of testimony) "Ques. State anything that Thomas said that led you to believe that he had authority to sign he contract to sell on that day. Ans. As near as I can recall, Thomas said— I don't know whether he called me Senator, or not, but he called me something, 'Lawyer,' probably; he said, 'It is this way, the estate belongs to all the children, and we all left it to John.' I don't know whether he said to sell or handle, but I inferred that whatever John did was their wish. Ques. Might be approved? Ans. No, sir, that John had the authority to go ahead and do what he was doing." Was such a statement made by you in Mr. Smith's office in reference to that? A. No, sir.

Q. Now, I call your attention to Mr. Rabinowitz's testimony, page 98, in which he said: "It is a very strange case, Mr. Rooney, I understood that all the heirs were satisfied to go on with their contract, and he said 'All the heirs were satisfied.' Thomas interrupted and said, 'I am satisfied, too, so far as I am concerned, in having this contract carried out, but' he said, 'Elizabeth is the only one that seems to hold out, but everybody else is perfectly satisfied to go on with their contract.' I said, 'Well, if that is the situation, I will be willing to take that six-sevenths of the property and see what we can do about the other one-seventh through the court." Now, did that conversation take place? A. No, sir.

Q. Do you recall any remarks of that kind being made there, to this effect—that you said all the heirs were satisfied? A. No, sir.

Q. And then you interrupted "I am satisfied, too, so far as I am concerned, in having this contract carried out, but Elizabeth was the only one that seems to hold out, but everyone else is perfectly

satisfied to go on with their contract." Did you say that? A. No, sir, I said I would sign if all the others signed.

Q. At that time you knew that the others would not sign?

Mr. Harding—Objected to as leading; and it calls for a conclusion.

Q. What knowledge or information at that time had you as to what the other girls and yourself would do? A. I knew at that time they would not sign; that was when I met Mr. Rabinowitz in Mr. Smith's office.

Q. And you told him so? A. Yes, sir.

Q. Now, I further call your attention to a statement made by Mr. Rabinowitz—we are speaking again in reference to this paper "Exhibit C-5 1-2," being obtained from all the heirs. I call your attention to this testimony: "John and Thomas both said it was all right." A. No, sir, I never said that.

Q. Mr. Rabinowitz then says: "I said, 'There is no doubt about everbody signing that paper?" He says, "I had the paper there and I showed it to them, and they said 'That is all right; but the only one that does not want to go ahead with the contract is Elizabeth.'" Now, did you say that? (Reading from page 101 of the testimony.)

Cross Examination by Mr. Harding:

Q. You saw the contract on April 19th when it was signed? A. Yes, sir, I saw it at a distance.

Q. And when was the first you ever heard that any contract was to be signed? A. I did not know anything about it until it was brought out

in Mr. Smith's private office; I did not know there was a contract to be made.

Q. Had you ever heard that your brother thought of selling this property? A. Yes, sir.

Q. When did you hear of it? A. About a week or ten days before he made the contract.

Q. What was it you heard? A. He said he was going to sell the place.

Q. To you? A. Yes, sir.

Q. Did he tell you what he was going to sell it for? A. No, sir.

Q. Where did he tell you that? A. Down by the barn—

Q. Up on the place? A. Yes, sir.

Q. What else did he say? A. He said, "I am going to sell the place; they are putting in stores and I am going to sell it."

Q. What did you say? A. Nothing; I did not care whether it was sold or not.

Q. Did you care how much he got for it? A. No, sir.

Q. You were willing to let him sell it for what he coud get for it? A. I let him use his judgment on that.

Q. Insofar as you were concerned, you were willing that he should sell it on any terms he saw fit? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. And he understood that you thought that, too? A. Yes, sir.

Q. You wanted him to understand that he could sell it on any terms he saw fit, so far as you were concerned? A. Yes, sir.

Q. Did he tell you about what offer had been made for it? A. No, sir.

Q. Did you know of his having it in the market to sell about a month before that time, to Mr. Bonney? A. No, sir.

Q. Or to Mr. Parker? A. No, sir; Mr. Bonney and I came in the yard together, and Mr. Bonney said, "Mr. Rooney, how much will you take for the place?" addressing my brother; and he said, "Do you want to buy it?" and Mr. Bonney said, "No."

Q. Well, now, where did you live at that time? A. I lived on Barney Street, Clifton.

Q. Have you a business of your own? A. Yes, sir.

Q. What do you do? A. Carpenter.

Q. Did you work most of the time in the daytime at that time? A. Yes, sir.

Q. You were steadily employed at that time, about the time of this contract? A. Not very steadily, but I was working along daily.

Q. During the time when this contract was signed? A. Yes, sir.

Q. And then afterwards, were you working at your trade? A. Yes, sir.

Q. You have a family of your own? A. No, sir.

Q. But you live in a different place? A. Yes, sir.

Q. How far away? A. About a mile.

Q. Do you see your sisters pretty frequently? A. Yes, sir.

Q. Do you visit your sisters in the evening? A. Yes, sir.

Q. How many sisters live in the old homestead together? A. Four.

Q. Where did the other one live—four lived at home? A. Yes, sir.

Q. Which one lived away? A. Are there five?

Q. One of the sisters lived away from the old homestead? A. That is my sister-in-law.

Q. Your brother's wife lived away? A. Yes, sir, she lives on Crooks Avenue, Paterson, N. J.

Q. Do all your sisters live at home? A. Yes, sir.

Q. All live there together? A. Yes, sir.

Q. And there were four sisters that all lived at home? A. Yes, sir.

Q. You used to visit them about this time, day and night? A. No, sir, in the evening.

Q. Did you ever discuss and talk about selling the property? A. No, sir; not with me.

Q. Did you ever hear him talk about selling the property at all? A. No, sir.

Q. You never heard the sisters talk about selling the property? A. No, sir.

Q. Well, about ten days before the contract was made, you had this talk with John, and he said he was going to sell the property? A. Yes, sir.

Q. Why didn't you talk with your sisters about that after John had said that to you? A. I thought they were living there, and they should know what they were going to do.

Q. You supposed then, of course, that John talked to them about it? A. I did not live there, and it was their home, and I did not want to butt in what they were going to do with it.

Q. If you had a one-seventh interest in the property and intended to sell it, didn't you think it proper for you to speak to your sisters whether they would sell it or not, too? A. No, sir.

Q. How did you think you could sell your interest unless they sold theirs? A. They could not sell it

unless I signed it.

Q. Well, now, the day you say this contract was made, you had a talk with John about it? A. No, sir, not until after it was made.

Q. But on the day it was made, you had a talk with John? A. No, sir.

Q. Did not John see you on that day before the contract was made? A. Yes, sir.

Q. You heard him swear that he did not see you? A. No, sir.

Q. Didn't you hear anything on that day at all until you came in the office of Mr. Smith? A. I met John about 12:30 that day, and John invited me down to Mr. Smith's office, but he did not state the purpose.

Q. Did you talk to counsel about this case before you went on the witness stand? A. No, sir.

Q. Now, just what did John say to you that day? A. John asked me about 12:30 on the day of April, to meet him at Mr. Smith's office at two o'clock.

Q. Is that all he said? A. Yes, sir.

Q. Did you say anything to him? A. No, sir.

Q. He did not tell you why he wanted you to meet him there? A. No, sir.

Q. And you did not ask him why? A. No, sir.

Q. You were not interested in why? A. No, sir.

Q. You had no suspicion of what it was about? A. No, sir, not the slightest; I had to go to town anyhow.

Q. But when he told you to go to Mr. Smith's office at two o'clock you went there? A. Yes, sir.

Q. Did you meet him there? A. He was there when I came.

Q. And you had no idea what he wanted you there for? A. No, sir.

Q. It strikes me as remarkable, that a man should ask you to go with him, or meet him at a lawyer's office, and you should not ask him what he wanted you to go there for? A. Well, I did not.

Q. How did he happen to see you? A. I drove in the old homestead yard.

Q. So he did not come to see you to ask you about it? A. No, sir.

Q. And, so far as you know, if you had not happened to see him, he would have gone to Smith's office himself without asking you to go at all? A. He might have, as far as I know.

Q. Well, now, then when you got in there you said nothing, in Mr. Smith's office, when you first went there; you said nothing until you saw Mr. Smith come out with a paper to be signed; is that right? A. Well, my brother John and I gave Mr. Smith the names of the heirs, before the contract came out.

Q. I thought you said, that when you went in there the contract was brought out by Mr. Smith? A. No, sir, I did not; I said that somebody brought the contract in the room while I was in there about three or four minutes.

Q. The first thing you knew about the transaction, then, was when they brought the contract in? A. Yes, sir.

Q. That is the first notion you had of what was going on? A. Yes, sir.

Q. Then what happened when they brought the contract in? A. Senator Smith started to read

it, and he read the contract through, and I said, "I don't think my brother has the right to sign that contract."

Q. That is the first thing you said about it? A. Yes, sir.

Q. And that is the first you knew what you were there for? A. Yes, sir.

Q. Why did you say that? A. Because I did not think he had any power to sell it; in my judgment I did not think he had power to sell it.

Q. But you have just said, that you were satisfied to have him sell? A. I was.

Q. And that you presumed he had the right to sell it for his sisters? A. I said that.

Q. If that is so, why did you tell Senator Smith you did not think he had the power? A. I did not think he had. And Mr. Smith said, "I will make him attorney in fact."

Q. But you just said you thought when you talked to John about his selling it, you were willing to have him sell your interest; and I asked you how you expected he could sell your interest unless your sisters agreed; and you said you presumed he had the power from your sisters, and they had agreed to his selling it for them as well as for you; didn't you say that? A. Yes, sir.

Q. If you said that, then why is it that after that conversation you had had with your brother, when you expected he had the power to sell for the sisters, that you told Senator Smith when your brother was there, that you did not think he had the power to sell it? A. I did not say anything about knowing of the power he had from my sisters; I did not say that; I did not know anything about

it; that is why I objected to making the contract, because I did not know.

Q. But you did see him sign that paper? A. Yes, sir.

Q. You saw it pretended to be signed for the whole estate? A. Yes, sir.

Q. And that meant the whole seven heirs? A. Yes, sir.

Q. Why didn't you protest about it? A. Because Mr. Smith said, "I will make you attorney in fact;" and I thought that was some part of law that covered it.

Q. You thought then, if your sisters had not given the power to sell, that Mr. Smith could give the power? A. I thought so.

Q. You thought a lawyer could give the power, although the sisters had not given it? A. Yes, sir.

Q. Well, anyway, it was signed? A. Yes, sir.

Q. Did you say anything to your brother about it after it was signed? A. No, sir.

Q. You went your way and he went his way? A. Yes, sir.

Q. Did you say anything to your sisters about it that night? A. No, sir.

Q. Did you see them that night? A. Yes, sir.

Q. You went up to the house? A. Yes, sir.

Q. They were at home? A. That I could not say.

Q. Most of them were home? A. I could not say that either; I used to be out in the yard more than in the house.

Q. You saw some of your sisters there? A. Yes, sir.

Q. And, so far as you know, they were all home? A. I don't know.

Q. Now, Mr. Rooney, in the afternoon of April 19th, you had seen this paper signed by your brother, pretending to sign for everybody—all seven—and you went home and saw your sisters that evening; and you had expressed yourself, as you say, to Mr. Smith, to the effect that your brother had no power to sign; do you mean to tell me that you never told one of your sisters of this transaction that night? A. No, sir.

Q. And you had seen him sign a paper and go away with it, and you did not say a word about it? A. No, sir.

Q. Did you purposely refrain from saying anything? A. No, sir.

Q. And you did not forget it? A. No, sir.

Q. Well, you did not say a word about it to them? A. Not a word.

Q. And you went away that night to your own home? A. Yes, sir.

Q. And the next day was the 20th of April, and what happened then? A. I came down in the evening again, on the 20th; I was out in the yard where I usually stay—

Q. You came in on the evening of the 20th? A. Yes, sir.

Q. Were you there in the daytime on the 20th? A. No, sir.

Q. Do you remember a paper being signed on the 20th? A. Yes, sir.

Q. What time was it signed? A. 7:30 or 8 o'clock in the evening.

Q. Who brought it there? A. Joseph Rooney, my nephew.

Q. How did you happen to be there? A. I was down there in the evening.

Q. Had you been there that day before? A. No, sir.

Q. Had you seen any of your sisters that day before? A. No, sir.

Q. What happened when Joseph Rooney came? A. He came down and told my brother John there was something the matter with the contract; that there was a hitch in Mr. Smith's office, and they wanted a paper signed; I was in the yard and I went in the house.

Q. Did all three go in together? A. Yes, sir.

Q. What room did you go in? A. In the dining room, and Joe wrote the paper and I dictated it to him.

Q. And all Joe said to you was, that there was some hitch in it? A. He said that to John, my brother.

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

Q. You are sure that is all that Joe said? A. Yes, sir.

Q. And then you sat down to fix up the hitch and you dictated to him this paper of April 20th? A. Yes, sir.

Q. Then you signed it? A. Yes, sir.

Q. Where were your sisters? A. I don't know.

Q. You saw them around, didn't you? A. No, sir.

Q. You were busily engaged in dictating the paper? A. Two or three of my sisters might have come in for all I know; I signed my name on the dining room table; the pen and ink were there.

Q. What was done with it then? A. When I signed my name I went home.

Q. Well, you were willing, so far as you were

concerned, to carry out the contract in every way? A. Yes, sir.

Q. Have you ever talked at all to your sisters about the contract? A. No, sir.

Q. Since? A. No, sir.

Q. Or John? A. No, sir.

Q. Right up to this time, then, you have not said a word to them about the transaction? A. No, sir; John knew I was satisfied.

Q. You never talked to your sisters at all about it after the trouble arose? A. No, sir.

Q. You refrained from speaking to them? A. Yes, sir.

Q. You never asked them if they had given John authority? A. No, sir.

Q. You have never spoken to either of your sisters about it at any time? A. No, sir.

Q. Or anybody? A. No, sir.

Q. And so, when Mr. Dunn calls upon you now to testify, what you say to him is just what you remembered at that time? A. Yes, sir.

Q. You have never had the testimony read over to you or any of those things; you have not talked to anyone about it? A. No, sir.

Q. You mean that literally? A. Yes, sir.

Redirect Examination by Mr. Dunn:

Q. Were you present when the testimony was given? A. Yes, sir.

Q. You were interrogated in reference to this matter before you came here? A Yes, sir.

MISS MARY ROONEY, sworn in behalf of the defendants, testified as follows:

Direct Examination by Mr. Dunn:

Q. You are a sister of Mr. John Rooney? A. Yes, sir.

Q. And of Mr. Thomas Rooney, who was just on the witness stand? A Yes, sir.

Q. And also sister to the other ladies who are here with you? A. Yes, sir.

Q. And you live at the old homestead? A. Yes, sir.

Q. Your father was James Rooney? A. Yes, sir.

Q. Do you remember when there was some talk about John wanting to sell the property down there, the homestead, hearing something about that? A. No, sir, I did not hear anything about it—did not never tell me anything about it.

Q. When did you first hear that there had been a contract made to sell the property? A. When Joe came down to get the paper that time; I thought it was for the heirs; I did not know that it was to sell the property.

Q. That was the first you heard about it? A. Yes, sir.

Q. What did Joe say? A. Just the same as I just stated; he did not say anything to me. I did not know it; I did not talk to Joe at all.

Q. Did you sign the paper? A. No, sir.

Q. Did you see the paper that they wanted the girls to sign? A. No, sir, I did not see it.

Q. When Joe was there, you were not downstairs? A. No, sir.

Q. You knew nothing about the contract? A. No, sir, not a thing.

Mr. Harding—Objected to as leading.
The Court—This is very important.

Q. You did not sign any authority? A. No, sir.

Q. Did you give anybody authority to sign your name to a paper? A. Not at all.

Q. About the contract? A. No, sir.

Q. Did you ever authorize John to sell the property? A. Never.

Q. He never spoke about it to you? A. He never spoke about it to me.

Q. When did you first learn that John had sold the property; that John had given a contract; when did you first learn about that? A. Well, I cannot remember when I first heard about it.

Q. Was it after Joe had been there? A. Yes, sir, I think it was.

Q. Did you ever talk to John about selling the property? A. No, sir.

Q. I show you this exhibit; can you see to read without your glasses? A. No, sir, I cannot.

Q. Have you got your glasses? A. No, sir.

Q. See if you can see with mine; just look at those names on there; did you sign your name? A. No, sir, I did not.

Q. You see the name "Mary Rooney" there? A. Yes, sir.

Q. Did you sign it? A. No, sir, maybe Annie signed it.

Q. Have you ever signed that paper before? A. No, sir.

Q. Did you ever authorize Annie or anyone to sign it for you? A. Not at all, Mr. Dunn.

Q. Did Joe ever read that paper to you that I just showed you? A. No, sir.

Q. Were you present at any time that this paper that I have just shown you was dictated or written in the house? A. No, sir, I was not present then.

Q. And you did not know the property had been sold, did you?

Mr. Harding—Objected to.

A. No, sir, I did not know.

Cross Examination by Mr. Harding:

Q. What time in the day did Joe come there on the 20th of April? A. He came in the evening, I guess it was.

Q. What time in the evening? A. After supper, around eight o'clock, I guess.

Q. Had you had supper? A. Yes, sir.

Q. Where were you when he came? A. I was not in the house at all when Joe came in.

Q. You came there later? A. Yes, sir.

Q. When did you come in? A. I came in around nine o'clock, I guess, that same evening.

Q. About nine o'clock you came? A. Yes, sir.

Q. Was Joe there when you came? A. No, sir, he was not there when I came in.

Q. Where had you been? A. I was up to Mr. Connor's house, up here at my sister-in-law's.

Q. What day was it? A. I cannot remember.

Q. What day of the month was it? A. That I don't know.

Q. Was it in April? A. I think it was April.

Q. 1923? A. I think so.

Q. 20th of April? A. I think it was the 20th.

Q. That is last year, about a year ago? A. Yes, sir.

Q. You had been up to your sister's? A. Yes, sir.

Q. What time did you go up there? A. About five o'clock.

Q. Did you stay there for supper? A. Yes, sir.

Q. Are you sure of that? A. Yes, sir, I was there for supper.

Q. You came home when? A. Around nine o'clock.

Q. Was Joe there? A. No, sir, he was after going home.

Q. Was your brother John there? A. Yes, sir.

Q. Was your brother Thomas there? A. No, sir, Thomas was after going, too.

Q. Whom did you find at home? A. We were all home, what stays there.

Q. Was Bridget home? A. Yes, sir.

Q. Was your sister Annie home? A. Yes, sir.

Q. And John was home? A. Yes, sir.

Q. And Elizabeth was home? A. Yes, sir.

Q. And you went in there? A. Yes, sir.

Q. What was the first thing they said to you when you went in? A. They did not say much.

Q. Did they say anything? A. They did not say anything to me that evening.

Q. I understood you to say to Mr. Dunn, that the first you knew about this contract was when Joe came there? A. But Joe was after signing their names.

Q. But when you came home what was said about it by them? A. They said Joe was there.

Q. And wanted a paper signed? A. Yes, sir.

Q. What did they say it was; was this the paper that they said had been signed? A. I don't know whether that was the paper or not.

Q. Did they tell you they had signed a paper like that? A. They said they were after signing a paper for the heirs.

Q. Who told you that? A. Elizabeth.

Q. She told you that Joe had been there, and she had been signing a paper for the heirs? A. Yes, sir.

Q. And this paper says that all the heirs appoint John Rooney with power of attorney, and invest him with full powers to act in behalf of the sale of the estate of the late Thomas Rooney; did she tell you substantially that that is what had been done or not? A. No, sir, Elizabeth did not say.

Q. What did she say? A. She said they were after signing for the heirs.

Q. About selling the property?

Mr. Dunn—She did not say that.

Mr. Harding—I wish you would not interrupt.

A. No, sir, she did not say that.

Q. Was it Bridget told you this? A. No, sir, Elizabeth—Elizabeth told me they had signed the paper.

Q. She said she had signed and the heirs had signed? A. She said the heirs had signed.

Q. Did she say she had signed? A. No, sir.

Q. Who, did Bridget say, had signed—Elizabeth was the one that told you? A. Yes, sir.

Q. What did Elizabeth say she had done— A. Elizabeth said she would not sign her name to sell the property.

Q. What did you say? A. I said I would not sign my name.

Q. Then she did say it was to sell the property? A. No, sir, she said it was for the herrs.

Q. But you just now said that Elizabeth told you that she would not sign to sell the property; didn't you say she said that? A. No, sir, I did not say that.

Q. I am sure you did. A. She said she did not sign her name to sell the property.

Q. She said she did not sign her name to sell the property—her name to what—this paper? A. Yes, sir.

Q. What did she say about the paper that had been made the day before, if anything?

Mr. Dunn—Objected to.

The Court—There is no evidence from this witness to that effect.

Mr. Dunn—There is no evidence from any witness to that effect.

Q. Was anything said by Elizabeth at all as to any other paper than the paper of April 20th? A. No, sir, she never said anything about it.

Q. Well, just tell me what she said about the rest of them; did she say that John had made a contract, or anything like that, to you? A. No, sir.

Q. You did not know what she was talking about to you until she explained it to you? A. No, sir.

Q. Did you know anyone was going to come there to have this paper signed? A. No, sir.

Q. Had you heard Joe was going to go? A. No, sir, not until he came in with the paper; then after it was signed they were talking about it.

Q. Whom do you mean by "they?" A. My nephew, that is it.

Q. Did you hear him talk about it? A. No, sir, but I knew he wrote it down.

Q. Well, how do you know that? A. Elizabeth told me so.

Q. Tell me what Elizabeth said about it. A. She told me that Joseph had signed for the heirs and John.

Q. That John had signed for the heirs? A. Yes, sir.

Q. Where did she tell you they had signed for the heirs—this paper that I have just shown you? A. It must be—

Q. What paper did she tell you they had signed?

Mr. Dunn—I object to this.

Q. What paper did Elizabeth tell you that Joe had signed; what was the paper; she told you he had signed a paper; what paper? A. I did not see the paper

Q. But you say she told you that she had signed some paper; what paper did she say it was? A.

The same that John was after signing, that he signed for the heirs.

Q. What was it that he had signed—was is to sell the land? A. I don't know whether it was to sell the land or what; I could not say.

Q. Was there any other paper? A. No, sir.

Q. Was John present when Elizabeth said this to you? A. No, sir.

Q. Was Bridget present? A. There was just her.

Q. Did she say that anyone had signed it—this paper? A. No, sir.

Q. Did she say that Bridget had signed it? A. No, sir.

Q. Did she say Thomas had signed it? A. No, sir.

Q. Did she say Annie had signed it? A. No, sir.

Q. Annie was there that night, wasn't she; and Bridget was there? A. Yes, sir.

Q. And you were all there? A. Yes, sir.

Q. Did you talk with them about the paper being signed? A. No, sir.

Q. You did not say a word about it to anyone? A. No, sir.

By the Court:

Q. Have you or your sisters, to your knowledge, had any real estate transactions? A. No, sir, I never bought any.

Q. Didn't you and your sisters talk about this transaction at all? A. Only what John said; that is all I know about it.

Further Cross:

Q. Your name is what? A. Mary.

Q. You say you did not sign that name "Mary" on this paper? A. No, sir.

Q. Did you ever see this paper before? A. I could not say that I did.

Q. What is your best recollection about it; look it over and see if you ever saw it before today; just look it over carefully now. A. I don't think I did.

Q. Why do you say you don't think you did? A. I cannot recollect that I did see if before to-day.

Q. Is that the best you can say, that you don't remember seeing it? A. That is it.

Q. But you won't say positively that you have not seen it before to-day? A. No, sir.

Q. You won't say that positively? A. No, sir.

Q. Well, whose writing is "Mary Rooney" there on that paper; do you know? A. My name is Mary Rooney.

Q. But do you know whose handwriting that name Mary Rooney is in? A. I could not say, unless it was my sister Annie.

Q. Have you ever asked Annie if she ever wrote that? A. No, sir.

By the Court:

Q. Didn't you ask her about your name appearing on this important document? What do you say to that? A. That is my name there.

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

Further Cross:

Q. Whose handwriting is it? A. I guess that is Annie's.

Q. Would you mind yourself writing your name for me, Miss Rooney? Write your name for me, please: "Mary Rooney." A. (Witness writes her name on a sheet of foolscap.)

Q. Now, when you came back, tell me just again exactly what Elizabeth said to you; you say you saw Elizabeth on the 20th; tell me just what she said. A. She said that John was after selling the place, the ground.

Q. What else did she say? A. That is all she said; she did not say any more.

Q. Did she say anything about this paper of Joe's; you said she said John was after selling the place; did she say anything about Joe being there with the paper to be signed? A. No, sir, she was after telling that—the same as John told you.

Q. I want you to tell us now what Elizabeth said; you said she told you when you came back, she said that Joe had been there and told you that John was after selling the place; now, what else did she say; tell us what she said. A. She did not say any more than that.

Q. Did she say Joe had been there? A. Yes, sir, she said my nephew was there.

Q. What did she say he was there for? A. For the names.

Q. What did he want the names for—what names did she say? A. The names of the heirs, she said.

Q. Well, did she say that she refused to sign something? A. She said she would not sign her home away.

Q. She said that? A. Yes, sir.

Q. Did she say Joe wanted her to sign her home away? A. No, sir.

Q. How could she have said she was not signing her home away; what did she mean? A. She said she would never sign that paper.

Q. What paper? A. To sell her home.

Q. She said she would never sign a paper to sell her home? A. Yes, sir.

Q. She told you that when you came back that night? A. Yes, sir.

Q. Then she told you Joe had been there to get the names of the heirs? A. Yes, sir.

Q. Did she tell you Joe had had a paper that he wanted her to sign? A. Yes, sir.

Q. And she said she would not sign it? A. Yes, sir.

Q. Was that the paper that she said was to sell the home? A. Yes, sir.

Q. The paper then that she would not sign, she said was the paper to sell the home, and she would not agree to do that? A. That is it. She said she was old now.

Q. Did she tell you that as soon as you came in? A. Yes, sir.

Q. In the presence of anyone else? A. No, sir, only me and her were there.

Q. Did she find fault because the rest had signed the paper? A. She did not like it.

Q. Tom had signed it—did she tell you? A. She did not say.

Q. Did she say John had signed it? A. Yes, sir.

Q. Did she say Anna had signed it? A. I think she did.

Q. Did she say Bridget had signed it? A. Yes, sir.

Q. Did she say Bridget had signed it for her? A. No, sir.

Q. But she did tell you Bridget had signed it? A. I cannot remember now whether she did.

Q. Did she say she was present when they signed it? A. No, sir.

Q. But she said she was home that evening? A. Yes, sir.

Q. And you knew of the rest of them signing? A. Yes, sir, I think she did.

Q. Did you understand her to say that she said she had seen them sign it? A. No, sir.

Q. Did she tell you that Annie had signed it for you? A. Yes, sir.

Q. What did you say to that? A. I said I did not want my name signed on the paper.

Q. Did you say it to anyone else? A. No, sir.

Q. You never said a word to Annie about it? A. No, sir.

Q. From that time until this time? A. No, sir, never.

Q. Yet Elizabeth had told you on that night that Annie had signed your name to that paper, and you never asked Annie why she had done it? A. No, sir.

Q. Have you talked with anyone about this transaction? A. No, sir.

Q. Is this the first you have ever told anybody about that transaction? A. Yes, sir.

Q. You have never talked it over with John or Thomas? A. No, sir.

Q. You never talked it over with Bridget? A. No, sir.

Q. Nor with Annie? A. No, sir.

Q. Nor with Mary A. Rooney, your sister-in-law? A. No, sir.

Q. So when Mr. Dunn was examining you to-day you gave him your answers right off without talking with anyone about it? A. Yes, sir.

Q. You spent most of your time around home? A. No, sir, I worked.

Q. You worked around the home? A. Sometimes, when I do not have work in the factory.

Q. Did you see Mr. Parker, who was here this morning? A. No, sir, I don't know him.

Q. Do you know Mr. Bonney? A. Yes, sir, I know him.

Q. You do know Mr. Bonney? A. Yes, sir; I am not personally acquainted with him, though.

Q. When was the first time you ever saw this gentleman, Mr. Laderman? A. I don't know him; I never spoke to him.

By the Court:

Q. Did you ever see Mr. Rabinowitz? A. No, sir, I never spoke to him.

Further Cross:

Q. Did you say anything to Bridget on this night after you came home? A. No, sir.

Q. You did not say anything to Bridget? A. No, sir.

Q. When did you first ever hear—did you ever hear your brother John had made a contract; did you ever hear it—to sell the land? A. Yes, sir.

Q. When did you hear he had made the contract? A. He talked about it in the house.

Q. When did he talk about it? A. After making it he talked about it.

Q. Did you ever hear of his giving an option to sell the property? A. No, sir.

By the Court:

Q. Is your brother John friendly with you? A. Yes, sir.

Q. You have confidence in him? A. Yes, sir, he does everything—he is a good man—

Q. You like his judgment on most anything? A. Yes, sir.

Further Cross:

Q. You follow out John—what he wants done? A. Yes, sir.

Q. He told you the different things usually that took place? A. Yes, sir.

Q. You and your sisters let each other know of everything that was going on? A. Yes, sir.

Q. You had no secrets from each other? A. No, sir.

Q. You often talked about this property that was left to you by your parents, and as to what you ought to do with it? A. Yes, sir.

Q. And John talked about selling it, off and on? A. Yes, sir.

Q. And Tom wanted to sell it, and John wanted to sell it? A. Yes, sir.

Q. It had been in the market for some time for sale? A. No, sir.

Q. You know they had been talking about selling it? A. Yes, sir.

Q. They asked $20,000 for it? A. Yes, sir.

Q. You did not want to take a mortgage on it? A. No, sir.

Q. Why not? A. John did not want to take it.

Q. When did he tell you that he would not take it? A. He said it there in the house.

Q. How did he come to tell you he would not take a mortgage on it? A. He said he would not take any mortgage; he said the sum they offered him, and then they wanted a mortgage, and he would not take the mortgage.

Q. Now, the sum they offered was $20,000? A. Yes, sir.

Q. And then he wanted cash for it? A. Yes, sir.

Q. And they wanted to give $15,000 cash? A. Yes, sir, I think so.

Q. Then they wanted you to take a second mortgage of $5,000? A. Yes, sir.

Q. John told you that? A. Yes, sir.

Q. Did he tell you that they said they could not get money from the bank and they wanted to improve the property, and, therefore, they wanted you to take $15,000 cash and take a second mortgage? A. Yes, sir.

Q. Did you all agree you would not do that? A. Yes, sir.

Q. Elizabeth agreed to it and you and Annie? A. Yes, sir.

Q. And Tom? A. I don't know about Tom.

Q. All you girls said you would not take it unless you got the whole $20,000 in cash; you would not take a mortgage for $5,000, anyhow; you said they had offered $15,000 in cash, and wanted you to take

a $5,000 second mortgage? A. Yes, sir.

Q. John told you that at the time? A. Yes, sir.

Q. He came to you and said, these people wanted you to take $15,000 in cash, and take a second mortgage? A. Yes, sir.

Q. Did he tell you they had said that just before he told you— A. I guess it was a week or so after.

Q. That they wanted you to take $15,000 in cash and $5,000 on mortgage? A. Yes, sir, John told us about it.

Q. Now, I understand you to say that John told you that the persons who were talking about buying the property had told you that they wanted to pay $15,000 in cash and wanted you to take a mortgage, and John told you this, as you understood it, about a week after these persons had made that proposition to John; is that right? A. Yes, sir.

Q. And did you also understand from John that before that time, they had been willing to give $20,000 in cash? A. No, sir, I did not understand that before that time.

Q. And you insisted that you should have the whole $20,000 in cash, and told John so? A. I did not tell John.

Q. Did you say, and all of you agreed, when John spoke about it— A. I did not say anything about $20,000.

Q. You say John said that these people who wanted to buy the property, wanted to give $15,000 in cash, and not $20,000? A. That is right.

Q. And that was about a week after; and you said you were not willing to take $15,000? A. Yes, sir, I was not willing.

Q. You said that to John. A. Yes, sir.

Q. Did John say that to all the rest of the sisters? A. I don't know; of course, I did not hear him tell the other sisters anything about it; he might have told them separate.

Q. Did you talk it over with Bridget as to whether she was willing to take the $15,000? A. No, sir.

Q. Did you hear her express herself on it? A. Yes, sir.

Q. You were talking things over together? A. She did not seem to talk about it.

Q. You were all together there? A. Yes, sir.

Q. Did Annie say anything as to whether she was willing to take it—the $15,000—I thought you said a little while ago—you said to me that none of them were willing to do it? A. They said they were not willing to do it; my sister said that, that they were not willing to take that $15,000.

Q. You heard them say that? A. Yes, sir.

Q. Whom did they say it to? A. Just amongst themselves.

Q. When was it you had the conversation with your sisters? A. I guess it must be over a year ago.

Q. And John said that the persons who were making that offer were the persons who were talking about buying the property? A. Yes, sir, that is what he said.

Q. Well, now, you never heard of anyone going to buy the property except Mr. Laderman? A. No, sir.

Q. That is what you overheard? A. Yes, sir.

Q. The property never was for sale before or since? A. No, sir.

Q. So there was talking about Laderman and Frishman? A. Yes, sir.

Q. He was talking about that? A. Yes, sir.

Q. When you told John that you were not willing to take $15,000 cash and a mortgage from Mr. Laderman and Mr. Frishman, what did John say— A. John said that, of course, if we would sign off—now, I don't know how this came around—oh! Elizabeth said she would never sign off, that she did not want to leave her home, that was it; she did not want to leave the old homestead.

Q. I thought you said a little while ago that you were all willing to sell for $20,000 in cash? A. No, sir, they did not talk about that; they did not say they were willing to sell for $20,000 in cash.

Q. Were you not willing to sell for $20,000 in cash? A. Yes, I guess I was—no, sir, I was not willing to sell.

Q. Well, I am talking at about the time when John said that Laderman and Frishman wanted you to take $15,000 in cash and $5,000 on a mortgage; did you then tell John you were willing to take $20,000 in cash? A. Elizabeth would not sign off.

Q. I am asking you how about yourself? A. No, sir, I did not say anything about the money—the $15,000.

Q. I understood you say you never told John you were not willing to take the $20,000; did you ever tell John you were not? A. No, sir, I did not.

Q. You never told him you were willing? A. No, sir, I did not.

Q. Well, when John told you that these persons wanted you to take $15,000 in cash instead of $20,000, and take a mortgage, had John previously told

you that they were willing to give $20,000 in cash and that they wanted to change it because they wanted to get money from the bank.

Mr. Dunn—You have been all over that before.

Q. I think you said before, that they had told you that? A. Yes, sir.

Q. How long before the conversation when John told you that they wanted to change it and could give only $15,000 on cash, was it that John had told you that they had been willing to give $20,000?

Mr. Dunn—I object to the question, because it has already been answered.

The Court—Objection overruled.

A. I guess about a week or so before that.

Q. John had told you these people were going to give $20,000 in cash? A. No, sir, he did not say that.

Q. Now, you have said, I think, two or three times, that before your brother told you that these persons only wanted to give $15,000 in cash and take a mortgage, that about a week before that time he had stated, that they were willing to have given $20,000 in cash; is that right? A. Yes, sir.

Q. That is correct? A. Yes, sir, I think it is.

Q. About a week before that? A. Yes, sir.

Q. And what had you and your sisters said to that when he told you that they were willing to give $20,000 in cash; what did you say to John? A. I did not say anything to John; I did not interfere with John at all.

Q. You had confidence in John? A. Yes, sir.

Q. And it was all right, so far as you were concerned? A. Yes, sir.

Q. If they got $20,000 in cash for the property? A. Yes, sir.

Q. Did Bridget raise any objection to it? A. No, sir.

Q. She was willing, was she? A. I don't know whether she was willing; she did not say.

Q. But she was present, was she, when John said these things to you? A. No, sir, she was not, but I guess she knew about it.

Q. You and she and all of you, talked over the whole thing? A. Yes, sir.

Q. And you think she knew about the $20,000 having been offered? A. I think that is right.

Q. And Bridget talked with you, and Elizabeth talked with you about it? A. Yes, sir.

Q. And what is the other one named? A. Annie.

Q. They all talked with you about this? A. Yes, sir.

Q. None of them objected to the price? A. No, sir.

Q. It was satisfactory to them, was it? A. I don't know; I don't think it was satisfactory.

Q. Well, after that, did you talk with Thomas about it? A. No, sir.

Q. Did you have confidence in him as well as in John? A. Yes, sir, sure.

Q. You had perfect confidence in him, too? A. Yes, sir.

Q. On the 19th of April, and from that on down to date, you have been very friendly with John, haven't you? A. Yes, sir.

Q. And Thomas? A. With both of them, yes, sir.

Q. Did you understand that the contract of April 19, 1923, was made the day before this paper on the 20th of April, when you came home; you see this paper dated April 20th, you recognize that paper? A. Yes, sir.

Q. You have seen your name signed on it? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. Now, on the day before—I show you a paper dated the 19th of April, signed by John Rooney as attorney for the estate of James Rooney—that is the day before—April 19th—is that right? A. Yes, sir.

Redirect Examination by Mr. Dunn:

Q. You never saw that paper of the 20th of April? A. No, sir.

Q. And you did not sign the paper?

Mr. Harding—Objected to—don't lead the witness.

Q. This paper has been shown to you with Mary Rooney's signature on; is that your signature? A. It is not.

Q. Did you see that paper on the night of April 20th, when it was purported to have been signed? A. No, sir.

Recross Examination by Mr. Harding:

Q. I show you a paper here, a check marked "Exhibit C-3," and I show you the name of John

Rooney written on it, erased; do you know whose handwriting that is?

Mr. Dunn—We object to that; she is not a handwriting expert.

The Court—Objection overruled.

A. Well, now, I could not say whose handwriting that is.

Q. I show you the same name erased, of another check, marked "Exhibit 2," and I ask you if you know whose that is? A. I could not swear to that.

Q. Will you say whether it is one of your sisters?

Mr. Dunn—Objected to.

A. I have seen them write, but I could not swear that that is their handwriting.

Q. You have seen each one write? A. Yes, sir.

Q. Have you seen Elizabeth write? A. Yes, sir.

Q. Have you seen Bridget write? A. Yes, sir.

Q. You know their handwriting well, do you? A. Yes, sir.

By Mr. Dunn:

Q. You have seen them make their signatures once in a while, you mean? A. That is it.

Further Re-cross:

Q. I show you "Exhibit C-5½," and show you the name "Elizabeth Rooney"; in your opinion, is that her signature?

Mr. Dunn—Objected to.

The Court—Objection overruled.

A. No, sir, I could not swear to it.

Q. Does it look like her writing? A. I could not be positive.

Q. Does it look like her writing? A. Yes, sir, it does.

Q. Does John Rooney's writing here look like Elizabeth's writing? A. I think it does.

Q. Does "John Rooney" on this check also look like it—the check I last spoke of is "Exhibit C-3". Now, you say you think that looks like her writing. Now, I show you "Exhibit C-2", and ask you the same question regarding that? A . I don't think she would write John's name.

ANNIE ROONEY, sworn in behalf of the defendants, testified as follows:

Direct Examination by Mr. Dunn:

Q. Miss Rooney, where do you live? A. I live in Clifton, Main Avenue, Clifton.

Q. Where do you live in reference to the home of John Rooney? A. On the same property, in the same house.

Q. How long have you lived there? A. As long as I remember.

Q. Is it the home of your father and mother, their residence? A. Yes, sir.

Q. Who composes that home? A. My sisters and myself and my brothers.

Q. Who else is there—how many sisters? A. Four, and the two brothers.

Q. The one that has just been on the witness stand is one of them? A. Yes, sir.

Q. And you are another? A. Yes, sir.

Q. And who else? A. Elizabeth and Bridget.

Q. Did you ever have any conversation there at the house along last spring in reference to the sale of the homestead property? A. No, sir.

Q. Do you remember the night Joe came there, were you there that night when he came up to get some paper signed by the heirs? A. Yes, sir.

Q. Were you there when he asked the heirs to sign the paper? A. Yes, sir.

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

Q. I show you the paper, and ask you if that is your name there? A. Yes, sir.

Q. Now, then, which is yours? A. Annie Rooney.

Q. Did you sign any other name on there besides your own? A. I signed my sister Mary's name.

Q. Then will you tell us whether that night there was anything said as to why they wanted to get these signatures on that paper?

Mr. Harding—Objected to as leading.

Q. What was said? A. I could not tell you, Mr. Dunn.

Q. Tell us how you came to sign that paper that night? A. Well, I signed it; I took it in the kitchen and signed it as an heir.

Q. For what purpose were you told — who asked you to sign it?

Mr. Harding—Objected to as leading.
The Court—Objection overruled.

A. My nephew Joseph asked me.

Q. Were you asked to sign it by anyone? A. No, sir.

Q. Your nephew brought it? A. Yes, sir.

Q. What is his name? A. Joseph.

Q. And who delivered it to you, who handed it to you? A. Joe.

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

Q. What did he say when he handed it to you? A. He did not say anything; I signed it as an heir.

By the Court:

Q. Somebody told you what you were signing for? A. I did not know.

Further Direct:

Q. Did you read over this writing that is at the top of it before you signed it? A. No, sir.

Q. Who else signed it at the same time that you did? A. My sister Bridget.

Q. Were you present when it was handed to Bridget? A. Yes, sir.

Q. Who handed it to Bridget? A. I did.

Q. And did you get it from Joe? A. Yes, sir.

Q. Did Joe tell you what they wanted to have the signatures for? A. I did not just know at the time, but I heard after, that it was to get money out of the bank.

Q. Who told you that? A. One of my sisters.

Q. Which one was that? A. Bridget.

Q. After you signed it, you gave it to Joe? A. Yes, sir.

Q. Was there anything said there that night at the time you signed this paper about selling your interest in the homestead? A. No, sir.

Q. About selling the home and all the land? A. No, sir.

Q. Was that discussed at all? A. No, sir.

Q. And was there anything said there that night in reference to $20,000 for the sale of the property? A. No, sir.

Q. Was there ever any conversation at which you were present where the price of the homestead was discussed by the children? A. No, sir, it was never discussed until the contract was drawn up.

Q. By that contract you mean the one that was made with Laderman and Frishman? A. I guess so, Mr. Dunn; I never saw the contract.

Q. It was the contract made by John Rooney? A. Yes, sir.

Q. That is the one you refer to? A. Yes, sir

Q. When did you first hear about it? A. Just when the contract was drawn up.

Q. What did you hear about it? A. I heard he had made a contract for $20,000.

Q. What further did you hear or say about it? A. That is about all.

Q. When did you hear that—do you know? A. Well, a day or so after the contract was drawn up.

Q. And was it before or after that meeting with Joe—when Joe was up there? A. After.

The Court—I shall have to adjourn now. I will fix May 20th tentatively for the next hearing.

Continuation of the taking of testimony in the above-entitled cause, at the Chancery Chambers, Paterson, New Jersey, on the eighteenth day of September, nineteen hundred and twenty-four, before Hon. Vivian M. Lewis, Vice Chancellor.

Same appearances as before noted.

ANNIE ROONEY resumes the witness stand.

Direct Examination (continued) by Mr. Dunn:

Q. Miss Rooney, you were upon the witness stand at the last hearing in this case? A. Yes, sir.

Q. And were being examined in reference to signing a paper dated April 20, 1923, marked "Exhibit C-5½;" now, will you look at the paper? A. Yes, sir.

Q. Now, did you sign that paper? A. Yes, sir.

Q. Now explain to the Court how you came to sign it. A. My sister Mary was not there.

Q. She never saw the paper? A. No, sir, she did not.

Mr. Harding—I object to that question as leading.

The Court—Strike it out. The objection is sustained.

Q. Do you know whether or not Mary ever saw the paper? A. No, sir.

Q. She was not there? A. She never saw the paper, to my knowledge.

Q. And explain to us what was said to you in reference to the paper before you signed your name on it. A. There was nothing said.

Q. From whom did you obtain the paper? A. From my nephew, Joseph.

Q. He is the son of your deceased brother? A. Yes, sir.

Q. What was your brother's name that died? A. Joseph.

Q. And by whom was your nephew employed at that time? A. Mr. Frishman.

Q. He is one of the parties to this transaction now? A. Yes, sir.

Q. Explain to the court how you came to sign that paper. A. I signed it as an heir.

Q. What was said to you before you signed it? A. Nothing was said.

Q. From whom did you obtain the paper? A. From my nephew.

Q. What did he say to you when he handed the paper to you? A. Nothing was said.

Q. Was anything said about wanting you to sign it, by anyone? A. No, sir.

Q. How did you come to sign it, then? A. I signed as an heir.

Q. You say Mary was not there? A. No, sir.

Q. And was Elizabeth there? A. No, sir.

Q. And was her name written on it when you signed it? A. Yes, sir.

Q. Who wrote her name? A. Bridget wrote Elizabeth's name.

Q. Was Bridget present when you signed it? A. Yes, sir.

Q. What did you understand was the purpose; you say you signed it as an heir; what was said about the heir? A. Nothing.

Q. How did you come to sign it as an heir, then? A. I just signed it as an heir.

Q. Who spoke to you about signing it as an heir? A. I don't know. Joseph did not say anything.

By the Court:

Q. How did you come to sign? A. I signed it as an heir and that is all I know.

Further Direct:

Q. Who else signed it when you signed it? A. My sister Bridget signed it before I did.

Q. Who was present? A. Bridget and I.

Q. What was the conversation between you and Bridget as to why they wanted this paper signed? A. No conversation at all.

Q. Where was it signed— A. In the kitchen.

Q. And then after you signed it, what was done with the paper? A. I don't remember; I cannot recall it.

Q. And at the time that you signed it, did you know anything about your brother John having made a contract with anyone to sell the homestead? A. Yes, sir, I heard that day.

Q. Before you signed, or afterwards? A. After I signed.

Q. And then Joe was at your house, your nephew Joe was at the house this night? A. Yes, sir.

Q. Did you understand why he came there? A. No, sir, I did not know anything about it.

Q. Was anything said that they wanted to get the names of the heirs? A. No, sir, I did not hear.

Q. Then, how did you come to sign that as an heir— A. I cannot explain it.

Q. At the time you signed it, did you know your brother John had entered into a contract with Mr. Frishman about selling the homestead property? A. I heard something about it that day.

Q. Did you ever consent to selling the homestead property? A. No, sir.

Q. Was there any talk about selling the property between you and your sisters? A. No, sir.

Q. So you signed your name, and what was done with the paper after you signed your name? A. I don't know.

Q. Did you sign anyone else's name to the paper? A. I signed my sister Mary's name.

Q. Where was she at the time you signed the paper? A. I think she was out of the house.

Q. How did you come to sign Mary's name? A. On account of her not being there, I signed her name—

Q. For what purpose did you sign Mary's name? A. Because she was not there; she knew I signed it afterwards, but she did not say anything.

Q. Did you tell her what was on the paper? A. No, sir.

Q. Did you read the writing at the top of the page, of the paper? A. Well—

By the Court:

Q. Do you say you did not know what this was for? A. I did not know much about it.

Q. You knew you were signing your name to a paper? A. Yes, sir.

Q. You knew you were signing your sister's

name to the paper without her authority? A. Yes, sir.

Further Direct:

Q. Just explain what was said to you as to why they wanted your name and the other girls' names on the paper? A. There was nothing said

Q. Was there anything said that they wanted a list of the heirs?

Mr. Harding—I object to that as leading.

The Court—It is leading and suggestive; I will sustain the objection.

Q. Now, do you notice on that paper that Elizabeth's name is written? A. Yes, sir.

Q. Did Elizabeth sign the paper, do you know? A. No, sir, she did not sign the paper.

Q. Where was Elizabeth at the time that paper was being passed around? A. I don't know; she was not in the kitchen.

Q. So that, so far as you know, did Elizabeth see that paper that night? A. No, sir, not as far as I know.

Q. And did Mary ever see that paper? A. No, sir.

Q. Now afterwards, did you have any talk with your sister Mary after you had signed the paper and wrote her name on it, did you have any talk with Mary in reference to it? A. No, sir.

Q. Did she come home that night? A. Yes, sir.

Q. And nothing was said? A. No, sir.

By the Court:

Q. Did you tell her you had signed her name to the paper? A. Yes, sir.

Q. What did you say? A. She said I had no right to sign it.

Further Direct:

Q. To whom did you give the paper after you signed it? A. I think my brother John took it after I signed it.

Q. Was he in the room when you signed it, or not? A. No, sir.

Q. Now, did you have any intimation before signing that paper, that John was making arrangements about selling the homestead property? A. No, sir.

Q. When did you first learn that John had been trying to sell the homestead property? A. The day the contract was made—

Q. What was said, then, between you and John in reference to it? A. Nothing between John and me; John did not say anything to me about it.

Q. Who else learned of it that day? A. My sisters.

Q. What did they say about it? A. They did not approve of it.

Q. And you did not approve of it? A. No, sir.

Q. Just explain to us now—

Mr. Harding—Objected to as leading.

Q. Explain to us now, if you can, just what was said to you when the paper was handed to

you about signing the name? A. There was not anything said.

Q. Who handed it to you? A. My nephew.

Q. And then what did he say? A. He did not say anything.

Q. Were there any names on it when he handed it to you? A. Yes, sir, Thomas' name was on it; that was the only name on it.

Q. Was Bridget's name on at the time that you signed; did she sign before you did? A. Yes, sir.

Q. What was said between you and Bridget at the time you signed? A. She said, "I will sign Elizabeth's name and you sign Mary's."

Q. Was anything said why you were signing it? A. No, sir, nothing at all.

Q. Did Elizabeth see the paper at all? A. No, sir.

Q. Was she in the house? A. Yes, sir, but not in the kitchen.

Q. After you signed your name, when you signed Mary's name, what did you do with the paper then? A. My brother John took it.

Q. Did you know anything about the fact that John was trying to sell the property and for how much he was trying to sell it? A. No, sir.

Q. Before this paper was brought to the house, had there been a conversation between you girls, the four of you; had there been any conversation between you four girls and John in reference to wanting to sell the property? A. No, sir.

Q. And when you signed this paper, what did you understand was the object of signing your name or wanting your name there? A. Of signing it as an heir.

Q. For what purpose? A. I don't know.

Q. And then the paper was handed to John? A. Yes, sir.

Cross Examination by Mr. Harding:

Q. Now, what time in the day was it when you first saw that paper that you now have in your hand, marked "Exhibit C-5½"? A. Around eight o'clock at night.

Q. Was it after you had had supper? A. Yes, sir.

Q. And who had supper? A. My sister Elizabeth, Bridget, I and John.

Q. Was Thomas there? A. No, sir.

Q. Well, I think you said to your counsel that the first you ever heard of the sale of the property was on the day the contract for the sale was made? A. Yes, sir.

Q. Well, that contract was made April 19th? A. Yes, sir, sometime in April.

Q. What did you hear about it on that date? A. I heard my brother made a contract; my sister told me, my sister Bridget.

Q. She told you that, on April 19th, your brother John had made a contract to sell this property? A. Yes, sir.

Q. Did she say how much it was to be sold for? A. No, sir.

Q. How did Bridget come to tell you that on the 19th of April? A. I don't just know.

Q. Where were you when she told it to you? A. In the house, in the kitchen.

Q. Did John tell you on that same occasion, on the 19th of April, that he had sold it? A. No, sir.

Q. Bridget told you that John had told her on that day that he had sold the property? A. Yes, sir.

Q. Who was present when Bridget told you this? A. My sister Elizabeth.

Q. Was Mary present also? A. No, sir.

Q. Where was she? A. She was not in the room.

Q. I suppose, on a matter as important as this, on the 19th of April when Bridget told you this in the presence of Elizabeth, that you spoke to Mary about it, too? A. No, sir, I did not say anything to Mary.

Q. Did not any of them say anything to Mary about it? A. Not that I know of.

Q. That is the first, then, that you had ever heard that John intended to sell the property? A. Yes, sir.

Q. John had always acted for you about the estate, hadn't he, as the eldest child? A. Yes, sir.

Q. You had a great deal of confidence in John, all of you? A. Yes, sir.

Q. And you were inclined to be governed about what he wanted to do about selling the property? A. Yes, sir.

Q. Well, when Bridget, on the date, the 19th of April, the day John made the contract, told you that John had made a contract to sell the property, what did she say about it? A. That is all she said; there was not much said about it.

Q. That was all that was said? A. Yes, sir.

Q. At that time didn't you express your willingness or unwillingness to sell it? A. No, sir, I did not say.

Q. Did Bridget say whether she was willing or unwilling to sell it? A. She did not say anything about it.

Q. What time in the day was it you talked about that? A. At the dinner hour.

Q. Had John just been home then to dinner? A. No, sir, John was not home yet to dinner.

Q. Did Bridget tell you that John had told her that he had made a contract to sell the property on that day? A. Yes, sir.

Q. Well, where was Thomas at that time? A. I could not say.

Q. Did you understand that Thomas was present when John had made the contract on that day? A. I could not say.

Q. Where was Mary on this occasion on the 19th of April when you had this conversation with Bridget, stating that John has said he had sold the property? A. She was not in the kitchen.

Q. How long did you discuss this property, about John having sold the property? A. We did not talk much about it at all.

Q. But you did talk about it? A. Not much.

Q. Was it a matter of importance to you, the sale of this property? A. After it was sold.

Q. Before that conversation, you had been acquainted with Mr. Bonney, the real estate man? A. Yes, sir.

Q. He lives near you, doesn't he? A. Yes, sir.

Q. He lives quite near you? A. Not so near.

Q. He buys and sells real estate? A. I am not very well acquainted with him.

Q. You heard him testify, didn't you, that your brother John had offered the property to him

about a month before this contract was made with Frishman; wou heard him testify to that? A. I don't know; I cannot recall it.

Q. What do you know about your brother having offered it to Mr. Bonney? A. I don't know anything.

Q. So this thing went on, then, and do you recall whether or not anything was said to your sister Mary about this important matter of selling the property? A. I cannot recall it.

Q. It strikes me as rather remarkable that this important thing that was discussed between you and Bridget and Elizabeth, should not have been spoken of to your sister Mary, when she was right there in the house. A. It was sold too quick.

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

Q. That you did not say anything to Mary about it? A. Yes, sir.

Q. Did you know at that time, on the 19th of April, whether Mary wanted to sell it or not? A. No, sir.

Q. You did not know anything about it? A. No, sir.

Q. Well, you signed Mary's name without any authority, so you say? A. Yes, sir.

Q. Do you know whether or not it is criminal to sign somebody else's name? A. Yes, sir, I suppose it is; I did not think there would be any such trouble over it.

By the Court:

Q. Did you know it was forgery to sign your sister's name without authority? A. I knew it was not right; it was not the right thing to do.

Further Cross:

Q. You would not have done it unless you had thought she was willing to have you do it; you would not be so bad as to do that; you would not have signed her name unless you thought she was willing to have you sign it? A. I know I ought not to have done it.

Q. But you thought at the time that she would be perfectly willing to have you do it? A. No, sir, I did not know it.

Q. You signed your sister's name to a document which was to go out to a third person, thinking at the time you signed it, that your sister did not want you to sign it for her; do you mean to say that? A. Yes, sir.

Q. Your sister was there from the dinner hour on the 19th of April, your sister Mary was there, all that night; is that right? A. Yes, sir.

Q. And all the next day? A. Yes, sir.

Q. And do you say that neither you nor your sister Elizabeth, or Bridget, or your brother John, or your brother Tom, ever told your sister Mary that John had stated to Bridget that he had made a contract of sale of that property on April 19? A. I could not say; I was not home; I was working in the factory.

Q. But you saw your sister Mary many hours during those two days? A. Not much.

Q. Is that the reason you did not tell her, or did you purposely refrain from telling her? A. I told her I signed her name, yes, sir.

Q. When did you tell her that? A. The next morning.

Q. After when? A. After I had signed the night before.

Q. But I am asking you why it was that you did not tell your sister Mary that John, on the 19th of April, had made this contract to sell the property? A. No, sir, I did not tell her.

Q. Why didn't you tell her? A. I thought John would tell her.

Q. You thought John would tell her? A. Yes, sir.

Q. So then you thought John had told your sister Mary? A. No, sir, I don't think he did; I could not say; I did not say he told her.

Q. As soon as you heard that John had sold the property, you thought he would tell your sister Mary, didn't you? A. I don't know whether he told her or not.

Q. You thought he would tell her at once? A. Yes, sir.

Q. Didn't you think he had told her when you signed the paper that you signed? A. Icould not say.

Q. But you thought so; you would not do such a thing as to sign a paper unless you thought Mary would approve of it? A. It was done so quickly; I did not realize what it was all about.

Q. Well, at any rate, Joe came on the next day, the 20th, and presented this paper to you which you now have in your hand, marked "Exhibit C-5½;" is that right? A. I did not see Joe the next day.

Q. But Joe did come on the date when this paper, marked "Exhibit C-5½" was signed, at about eight o'clock in the evening? A. Yes, sir.

Q. Now, where were you when Joe first came? A. I was not in the room when Joe came in.

Q. Where did you first see Joe? A. In the dining room.

Q. You did not see him come in? A. No, sir.

Q. But Joe was in the dining room when you saw him? A. Yes, sir.

Q. What room did you go from? A. I went from the dining room into the kitchen.

Q. Joe came in the dining room? A. Yes, sir.

Q. Where were you when Joe came in the dining room? A. I was in the kitchen.

Q. And you went from the kitchen into the dining room when you saw Joe? A. Yes, sir.

Q. Was the door open when Joe came in between the kitchen and the dining room? A. I could not say.

Q. When you first went into the dining room and saw Joe, who were present in the dining room besides Joe, if anyone? A. My brother Tom and John.

Q. When you went in there and saw them, just at that instant where was Bridget? A. She came in after.

Q. Where was Eliza? A. Some place in the house, but she was not in the dining room.

Q. What was said when you first went into the dining room? A. Nothing was said at all.

Q. Your brother Thomas testified that he dictated this paper; is that true? A. As far as I know.

Q. Were you there when he dictated it? A. No, sir.

Q. What was said to you when you went in? A. Nothing was said to me.

Q. Do you mean that literally? A. Nothing was said to me.

Q. Was anything said to you when you were

in there between Joe, your brother John or your brother Tom; did either one say anything to you? A. No, sir.

Q. Did not any of them speak to you? A. No, sir.

Q. Neither of them said a word to you that whole evening? A. No, sir.

Q. You mean that just that way? A. Yes, sir.

Q. And yet somebody gave you this paper marked "Exhibit C-5½?*" A. Yes, sir.

Q. "Exhibit C-5½?" A. Yes, sir.

Q. Who gave it to you? A. Joe, my nephew.

Q. Where was the paper when he gave it to you? A. In the dining room.

Q. You say he did not say a word to you? A. He did not.

Q. So you must have gone right over and he handed the paper to you? A. Yes, sir.

Q. And you went over and saw the paper without knowing what it was, and picked it up and took it in the kitchen? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. Then you read it? A. I did not read it, no, sir.

Q. But you signed it? A. Yes, sir.

Q. And not a word had been said to you? A. No, sir.

Q. And you signed it of your own accord? A. Yes, sir.

Q. When you signed it, who else was present? A. Bridget.

Q. Is that so? A. Yes, sir.

Q. You showed it to Bridget? A. Bridget wrote her name to it.

Q. Did Bridget read it? A. I don't know.

Q. What did you say to Bridget? A. I did not say anything.

Q. You did not ask her to sign it? A. She signed it before I did.

Q. But you did not say a single word to her? A. No, sir.

Q. You just brought that paper in and laid it down before Bridget? A. Bridget signed it before I did.

Q. And Bridget then took the paper and made some examination of it, did she? A. I could not say.

Q. You saw her take it? A. Yes, sir.

Q. And saw her sign her name, "Bridget Rooney" right after Thomas Rooney's name? A. Yes, sir.

Q. And she said she would sign for Elizabeth? A. Yes, sir.

Q. And she told you to sign for Mary? A. Yes, sir.

Q. And is that every word that was said between you and Bridget? A. Yes, sir.

Q. You are sure of that? A. Yes, sir.

Q. Nothing more was said than what you say? A. No, sir.

Q. Then you picked up the paper? A. Yes, sir.

Q. And took it back and gave it to whom? A. My brother John.

Q. Was your brother Tom then there? A. No, sir.

Q. Was Joe there? A. No, sir.

Q. You took this paper after you and Bridget had signed it and just handed it to John? A. Yes, sir.

Q. And did not say a word to John about it? A. No, sir.

Q. Not a word? A. No, sir.

Q. And John took it? A. Yes, sir.

Q. Did you see him give it to Joseph? A. No, sir.

Q. And you went right back again? A. Yes, sir.

Q. And you said you thought you were signing it as an heir? A. Yes, sir.

Q. You mean you were an heir of your father's land? A. Yes, sir.

Q. And when you signed that paper, you signed it as one of the owners of the land that you had inherited as an heir of your father?

Mr. Dunn—Objected to, because you are adding a conclusion.

Mr. Harding—This is cross examination.

A. Yes, sir, that is right.

Q. Well, now, your sister Bridget having been told, as you say, by your brother John that he had sold the property on the 19th of April, did he tell you on that day that he had sold it? A. No, sir.

Q. So that the only way you got it was from Bridget, who told you at noon time? A. Yes, sir.

Q. You are familiar with Bridget's handwriting? A. Yes, sir.

Q. You saw her write this name "Bridget Rooney?" A. Yes, sir.

Q. On the writing of April 20th, 1923, marked "Exhibit C-5½" you saw the name "Bridget Rooney" there? A. Yes, sir.

Q. You have seen her write frequently, haven't you? A. Yes, sir.

Q. Do you see the word, the name "John Rooney" written on a paper that is marked here "Exhibit C-1," which is erased? A. I cannot see without my glasses; Elizabeth has my glasses.

Q. (Glasses handed to the witness.) You can see it now with your glasses? A. Yes, sir.

Q. Do you see that name? A. Yes, sir.

Q. Whose handwriting is that do you think? A. I could not say.

Q. Is it Bridget's handwriting? A. I could not say.

Q. You have seen Bridget write? A. Yes, sir, I saw her write this name.

Q. You have seen her write frequently? A. Yes, sir.

Q. And, in your opinion, is that or not Bridget's handwriting? A. I could not say.

Q. What do you think about it? A. I could not tell you.

Q. Have you ever talked about it at all? A. No, sir.

Q. Do you know what the paper is? A. No, sir.

Q. Did you ever see the paper before? A. No, sir.

Q. Did you write it? A. No, sir.

Q. Does it look like Elizabeth's writing? A. No, sir, it is not Elizabeth's.

Q. You are sure it is not Elizabeth's? A. It is not Elizabeth's.

Q. Why are you sure of that? A. I know her writing.

Q. Cannot you tell Bridget's writing? A. Yes, sir.

Q. Is it Bridget's writing? A. I don't know whose writing it is.

Q. Why is it that you say it is not Elizabeth's and you cannot say it is not Bridget's? A. Elizabeth's writing is different from Bridget's.

Q. But you are positive it is not Elizabeth's writing? A. I would not be positive.

Q. You are not positive? A. No, sir.

Q. Do you think it is? A. I could not say.

Q. Now, in your opinion, did Elizabeth write that name, "John Rooney?" A. I cannot say whether she did or not.

Q. You don't know? A. No, sir.

Q. You don't know whether Bridget signed it or not? A. No, sir.

Q. And you have no opinion on that? A. No, sir.

Mr. Dunn—These questions have all been asked and answered repeatedly.

Q. Now, I show you "Exhibit C-2", and show you the word "John Rooney" in manuscript, written and erased, and I ask you whose signature that is, if you know? A. I don't know.

Q. Does it look like the other one that you just saw on "Exhibit C-1"? A. I could not say.

Mr. Dunn—She is not a handwriting expert. Cannot you and I determine that just as easily?

Mr. Harding—Address the Court, Mr. Dunn.

Mr. Dunn—The objection will be overruled.

Q. In your opinion, was that name "John Rooney" on this check which you are now looking at, was it written by your sister Elizabeth? A. I could not say.

Q. And you have no opinion about it? A. No, sir.

Q. Can you tell whether it was written by your sister Bridget? A. No, sir.

Q. You have no opinion about it? A. No, sir.

Q. Was it written by you? A. No, sir.

Q. Was it written by Mary? A. Not that I know of.

Q. You are interested as your father's heir, in one-seventh part of his land? A. Yes, sir, I believe so.

Q. Do you know where he bought the property from? A. No, sir.

Q. Is that the deed to your property that I now show you from John Davidson and Adelaide, his wife, to James Rooney? A. I never saw the deed.

Q. Do you know who had the title deed?

Mr. Dunn—Objected to.

Q. Do you know who kept the title deed of the property? A. I believe my sister did.

Q. Which sister? A. Elizabeth.

Q. You think she did? A. Yes, sir.

Q. Now, is it your understanding that on the day when John signed the contract he took the title deed of that property to the office of Mr. Smith? A. I don't know that.

Q. But your understanding was, that Elizabeth held the title deed? A. Yes, sir.

Q. Where did you hear that from? A. I did not hear it at all, I supposed it.

Re-direct Examination by Mr. Dunn:

Q. Do you know whether Elizabeth had the deed when this contract was made? A. No, sir.

Q. Do you know whether Elizabeth had the deed when this paper was brought up to the house? A. No, sir.

Q. When did you first hear of the contract being made? A. The day it was made.

Q. That, then, was before you signed this paper, wasn't it? A. No, sir, after I signed the paper.

Q. Then you learned there had been a contract made by John? A. Yes, sir.

Q. And how long after you had signed your name to this paper was it that you learned that? A. The next day.

Q. And at that time you did not know anything about where this was? A. No, sir.

Q. Had there been any conversation between you and your sister and John and Thomas in reference to selling the property before you signed this paper? A. No, sir.

Q. No discussion as to the price that you had on it? A. No, sir.

BRIDGET ROONEY, being duly sworn, testified as follows:

Direct Examination by Mr. Dunn:

Q. You are the sister of John Rooney and Thomas Rooney? A. Yes, sir.

Q. Where do you reside? A. 1027 Main Avenue, Clifton, New Jersey.

Q. How long have you resided there? A. All my life.

Q. Who do you live there with? A. My three sisters and my brother John.

Q. Give the names of your sisters? A. Elizabeth, Mary, Annie and myself.

Q. You have lived there together how long? A. All my life I have lived there.

Q. It was your father's property? A. Yes, sir.

Q. And did he build the house, your father, before he died? A. Yes, sir.

Q. And did your mother die first? A. No, sir, my father died first, and then I lived there with my mother, and she died, and we children then continued to live there.

Q. Your brother Thomas did not live there? A. No, sir.

Q. He had married and lived elsewhere? A. Yes, sir.

Q. Now, after the death of your mother, some time, do you remember whether or not, up until April, 1923, there had been anything said about selling the homestead property and the land, among the heirs; had there been anything said in reference to selling it? A. Yes, sir.

Q. When was the first talk— A. After the contract was signed.

Q. Was that the first time there had been anything said about it? A. Yes, sir.

Q. By John? A. Yes, sir.

Q. When did you first learn that John had made a contract? A. Two or three days after the contract was signed by John.

Q. How did you learn it? A. I picked the contract up on the mantel-piece.

Q. What did you do with it after you picked it up? A. I told John I would never sign the deed.

Q. And then what was said by John when you told him that? A. There was nothing said.

Q. Who else was present? A. No one, only me and him.

Q. What did you learn from him in reference to the arrangement he was making about selling the property then? A. It was never discussed, Mr. Dunn.

Q. When you say you learned this, that he was trying to sell it, what talk did you and he have? A. We did not talk at all.

Q. Did you learn how much he was trying to sell it for? A. The contract said $20,000.

Q. Then after you saw this contract there, you called his attention to it? A. Yes, sir.

Q. What did you say to John then? A. I told him I would not sign the deed.

Q. Did you tell him why not? A. Because I did not want to sell my home; my home was not for sale; I told him that.

Q. Were any of the other girls present when this talk took place? A. No, sir.

Q. What did John say then in reference to the matter? A. He did not say anything.

Q. Was that conversation before—

Mr. Harding—Objected to as leading; the question should be—

Q. Was the conversation before or after your nephew came down there to get the names of the heirs? A. Oh, it was after that, Mr. Dunn.

Q. I show you this paper, Bridget, and ask you —can you see it without your glasses? A. Yes, sir.

Q. Did you sign your name to that? A. Yes, sir, I signed my name and I signed Elizabeth's name.

Q. How did you come to sign that paper? A. I signed it as an heir.

Q. Who asked you to sign it? A. Annie brought it from the dining room, and I signed Elizabeth's name, and Annie signed Mary's name.

Q. What was said to you when she brought it in? A. Nothing.

By the Court:

Q. Had you ever seen the paper before? A. No, sir.

Q. Didn't you ask her what it was. A They said it was for the heirs of the property.

Further Direct:

Q. Who said that? A. It was my nephew Joseph, who brought the paper.

Q. Just tell us what you learned in reference to the paper when you first saw it; what they wanted done in reference to it. A. They wanted the name of the heirs.

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Q. Did they say why they wanted the names of the heirs? A. No, sir.

Q. You say Annie brought the paper in? A. Yes, sir.

By the Court:

Q. Did you ever speak to John about it? A. No, sir.

Q. Did John speak to you in reference to it? A. No, sir.

Q. What was said to you by Joseph in reference to it? A. Nothing was said.

Further Direct:

Q. Didn't you talk it over with other sisters than Annie? A. No, sir.

Q. Now explain to us how you came to sign the paper. A. Annie brought it in the kitchen and I signed it.

Q. What did she say? A. She said Joe wanted the names of the heirs.

Q. Was Joe out in the other room at the time? A. Yes, sir.

Q. Then when she said that, what did you do? A. I wrote my name and Elizabeth's name.

Q. Was Elizabeth in the house at the time? A. No, sir.

Q. Did Elizabeth know anything about your writing? A. No, sir.

Q. Did they tell you why they wanted the list of the heirs? A. No, sir.

Q. And at the time that you signed your name there, did you know that your brother John had made a contract with Frishman or anyone else to

sell the property? A. That is the first time I knew it, when they were signing their names.

Q. What did you know about it at that time? A. I knew that he made a contract—when I signed my name.

Q. Why were you asked to sign your name? You were asked to write down the names? A. Yes, sir.

Q. Why were you asked? A. As an heir.

Q. (By the Court) Did Annie tell you she asked you to sign as an heir? A. Yes, sir.

Q. Did she tell you it was for the homestead? A. She did not say.

Further Direct:

Q. Did you own any other real estate? A. No, sir.

Q. That property consists of six or seven acres? A. Yes, sir.

Q. Two dwelling houses and barns and all that? A. Yes, sir.

Q. At the time you signed that paper, Bridget, did you know anything about the price that John was trying to sell the property for? A. After I saw the contract I knew he was selling for $20,000.

Q. When did you see the contract? A. A day or two after it was signed; after this was signed.

Q. After this paper as signed you saw the contract? A. Yes, sir.

Q. Where? A. It was on the mantelpiece, and I picked it up and read it.

By the Court:

Q. Do you know who put it on the mantelpiece? A. No, sir.

Further Direct:

Q. And were there any signatures on the contract when you saw it? A. No, sir, not that I know of.

Q. I show you this paper, and ask you whether or not you recognize this as being what you call the contract which was on the mantelpiece? A. I did not examine it much, Mr. Dunn—

Q. Do you recall whether any signatures were on it? A. I don't know.

Q. You don't know whether this is the paper or not? A. No, sir.

Q. Now, then, that was how many days after you signed your name that you saw this on the mantelpiece? A. A couple of days after.

Q. Now, then, was that the first intimation or knowledge that you had that John was trying to sell this property for $20,000? A. Yes, sir.

Q. After you learned that, what, if anything, did you do in reference to the matter? A. I did not do anything.

Q. After you learned that he had arranged to sel it for $20,000—(interrupted by the Court).

By the Court:

Q. Did you tell John not to sell it? A. Yes, sir. I did not know my home was for sale; I never knew it until after he had made the contract.

Further Direct:

Q. Had there ever been any talk between you and John in reference to selling the property and the price you would be willing to sell it for? A. No, sir.

Q. What did John say when you said you were unwilling to sell? A. He did not say anything.

Q. You had signed as an heir? A. I never signed to sell my home.

By the Court:

Q. What did you think this was all about? A. For heirs of the property—the owners of the property.

Q. What did you sign your name for; did you think that made you any more of an heir? A. No, sir.

Further Direct:

Q. Was this the first time since the death of your father and mother that you had been called upon to sign your name to any paper pertaining to the estate? A. Yes, sir.

Q. And it was the only property that you had any interest in at all? A. Yes, sir.

Q. And you never had had a real estate transaction other than this? A. No, sir.

By the Court:

Q. Have you a bank account? A. Yes, sir.

Q. You have signed checks? A. No, sir, I never did.

Q. Did you have a bank book? A. Yes, sir.

Q. Who signed the checks for you? A. It was a savings account; I did not have to sign any checks; I simply signed a receipt.

Q. That was all the business transactions that you had had? A. Yes, sir.

Further Direct:

Q. You were working? A. Yes, sir.

Q. What were you working at? A. I worked at home—sewing and helping my sisters, and some times I worked out, did sewing.

Q. Who was the housekeeper at this time? A. Elizabeth.

Q. Was she home all the time practically? A. Yes, sir.

Q. She is older than you are? A. Yes, sir.

Q. Then, after you learned that there had been a contract made by John for $20,000, what was said between you and John as to carrying out that contract? A. Nothing was said, Mr. Dunn; I said nothing to him.

Q. Later, you had some talk about it, didn't you? A. He went to the man and told him he could not fulfill the contract; John told me that.

Mr. Harding—I object to that.

Q. What else did he tell you after that?

Mr. Harding—I object to this testimony as hearsay.

Q. What man do you mean when you say you went to the man and told him he could not fulfill the contract? A. He said he could not fulfill the

contract; he told Mr. Frishman and the other man that he could not get us to sign the deed.

Q. What did you understand this paper was that you signed? A. I thought it was for the heirs of the property.

Q. For what purpose did you make your signature? A. As an heir; that is all I know, Mr. Dunn.

Q. Was it to sell the property? A. No, sir.

Q. Just to show who the heirs were? A. Yes, sir.

Mr. Harding—I object to your leading this witness in this manner.

The Court—Objection overruled.

Q. So up to the time you signed that paper, there had been no talk—

Mr. Harding—Objected to as leading.

Q. Was there any conversation between you and John as to selling this property? A. No, sir, none whatever.

Q. After that paper was signed, and when, you say, afterwards you happened to run across the contract and saw $20,000 stated in it as the consideration, what conversation then took place between you and John in reference to the estate? A. He told those men he could not get the deed; he told them he could not get the heirs to sign the deed.

Q. What else was said after that? A. Nothing.

Q. So the result was, that the heirs would not sign a deed? A. No, sir.

Q. Now, then, after that then this suit was brought? A. Yes, sir.

Q. And you were unwilling to sell the property? A. Yes, sir.

Mr. Harding—Objected to as leading.

The Court—I will strike it out, if you so desire, but she has already stated that she was unwilling to sell the property.

Q. Did you ever give John verbal orders to sell the property? A. He never asked for any authority.

Q. And never had any conversation about selling it with you? A. No, sir.

By the Court:

Q. You knew who the heirs to your property were? A. Yes, sir.

Q. They were your sisters and your brothers? A. Yes, sir.

Q. And that is all there were? A. Yes, sir.

Q. And you knew that when you signed that paper? A. That is the way I signed the paper, as an heir.

Cross Examination by Mr. Harding:

Q. I show you "Exhibit C-5½," and ask you whether or not that name, "Bridget Rooney", was signed by you? A. Yes, sir.

Q. And also "Elizabeth Rooney"? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. You signed that paper on the 20th of April, 1923? A. Yes, sir, I guess so.

Q. I show you a paper marked "Exhibit C-2,"

and show you the name of John Rooney erased. A. I never saw that—

Q. Now look at it very carefully. A. I don't know anything about it; I never saw that before.

Q. I show the paper to you; can you read the words "John Rooney" on that paper? A. Yes, sir.

Q. You did not write it then? A. No, sir.

Q. Do you know the handwriting of your sister Elizabeth? A. I could not swear to her handwriting.

Q. Did she sign it? A. I say, she did not sign it.

Q. Did you sister Annie sign it? A. No, sir.

Q. Do you know who did sign it? A. No, sir.

Q. I show you "Exhibit C-3," and show you the name "John Rooney" erased there. A. I never saw that before.

Q. You did not sign it? A. No, sir.

Q. Your sister Elizabeth did not sign it? A. No, sir.

Q. Does it look like anybody's handwriting that you know of? A. No, sir.

Q. Did you write the name "Elizabeth Rooney" on this? A. Yes, sir.

Q. Do you always write your name in about the same way? A. Yes, sir.

Q. Always make about the same capital letters? A. Yes, sir.

Q. You always make the same kind of a "B" for Bridget, and the same kind of an "R" for Rooney? A. Yes, sir.

Q. I show you the other "Rs" and I ask you now— A. I wrote both those names.

Q. Do you think those are the same kind of "Rs"? A. Yes, sir.

Q. Let me point out to you and see if we can agree or not. This "R" starts up here and runs down that way; here is an "R" that runs with a perfectly straight stroke and does not commence that way at all. A. They are both just the same.

Q. If that is so, I want to take this "R" in the name of Elizabeth Rooney—(I would like to have your Honor look at this while I am examining the witness)—do you think that that "R" in the name of Elizabeth Rooney on "Exhibit C-5½," resembles the "R" in the "Rooney" on "Exhibit C-3"?

Q. You don't think they look alike? A. I could not tell.

Q. Do you think the word "Rooney" looks anything like "Rooney"— A. I could not tell.

Q. I call your attention to your signature — which is apparently yours—"Bridget Rooney," and call your attention to that double "o", how it slants up—the size of the letters and the loop; doesn't it look exactly like yours? A. No, sir.

Mr. Dunn—I object to that. We can tell that as well as anybody else.

Q. Did you ever hear from anybody that there had ever been any checks given to John Rooney from Mr. Frishman? A. I knew he had checks, but I never saw them; the contract said that he had checks, a thousand dollars.

Q. Did it say he had checks? A. I read that portion where it said "checks."

Q. What did it say? A. A thousand dollars; John told me, he had checks, after the contract was signed; he said he had those men's checks.

Q. Now, as I understood you to say, I took your testimony down, see if I am right about it: "I knew John had made the contract when I signed my name;" that is when you signed your name to the contract of April 20, 1923; what did you mean, "I knew John made the contract when I signed my name?" A. No, sir, I did not know he made the contract when I signed my name.

Q. Do you say you did not swear to that on your direct examination? A. If I did, I made a mistake.

Q. So you did not know a single thing about John ever having made a contract, or talking about selling this property? A. No, sir.

Q. And when you signed your name to this paper of April 20, 1923, you did not have the slightest notion what it was about? A. No, sir, only as an heir.

Q. Joe said he wanted you to sign it as an heir? A. Yes, sir.

Q. And that is all you knew about it? A. Yes, sir.

Q. How much of this contract did you read over? A. I only read part of it.

Q. How much did you read of it? A. I read where it said, a thousand dollars down and $19,000 on delivery of the deed.

Q. That is, over on the latter part of it; that portion comes here (indicating)? A. Yes, sir.

Q. So you saw it was a contract to sell the property? A. Yes, sir.

Q. You never had the slightest suspicion before you saw this contract, that John had the slightest idea of selling this property? A. No, sir.

Q. Did you hear Mr. Bonney swear, in your presence, and in the presence of Bridget, that John had offered to sell the property to him for $20,000? A. I did not hear that.

Q. Do you know Mr. Rooney? A. Just a bowing acquaintance.

Q. If Mr. Bonney said that, it is not true? A. I never heard him say that.

Q. Do you say now that Mr. Bonney never talked with you or John about selling this property? A. I never had any conversation with Mr. Bonney whatever.

Q. Do you swear now that Mr. Bonney never, in your presence, had any conversation with John with reference to the selling of this property? A. I never heard of it.

Q. Well, where was this paper lying? A. On the mantelpiece.

Q. And it was two days after you had signed this other paper? A. Yes, sir.

Mr. Dunn—Meaning the paper of April 20th.

By Mr. Harding:

Q. You never signed but one paper? A. That is all.

Q. Well, you must have thought, of course, when Annie came in and told you that Joe Rooney your nephew, had been down there and wanted you to sign the paper, you must have had some notion of what it was about? A. No, sir, I did not.

Q. What did you think Joe was down there for? A. I did not know what he was there for.

Q. Why didn't you ask somebody what it meant? A. It never was explained to me.

Q. Why didn't you ask to have it explained to you? A. I signed it as an heir, that is all.

Q. Your brother John was the oldest son? A. Yes, sir.

Q. He says, and the rest of your sisters say, you had all talked with him and relied upon his judgment? A. Not about selling our home; we relied on him in other things, but not for selling our home.

Q. Had the question ever occurred to you to sell your home? A. No, sir.

Q. You never thought of such a thing? A. No, sir.

Q. And do you mean to say this brother John of yours and Tom, who were all friendly with you, never told you a word about having made the contract of April 19? A. No, sir.

Q. And they saw you right along? A. Yes, sir.

Q. You have no reason to think that they would try to do anything against your wishes? A. No, sir.

Q. As a human being with reason, what in the world did they want you to sign this paper for, April 20, 1923? A. I signed it as an heir, that is all I know.

Q. Will you read that paper, will you kindly read that for me, read it aloud? A. We never appointed John.

Q. I asked you to read that paper aloud; this paper is the paper dated April 20, 1923, "Exhibit C-5½"; just read it; what is the date of it?

A. April 20, 1923; "We, the undersigned, heirs of James Rooney, do appoint John Rooney, with power of attorney, and do invest him with full power to act in our behalf on sale of the estate of the late James Rooney."

Q. That is what it says, is it? A. Yes, sir.

Q. I see you have no difficulty about reading it now? A. No, sir.

Q. You did not, then, at the time? A. I did not read it.

Q. Why not? A. I don't know why.

Q. Somebody came and asked you to sign this paper as an heir, and you did not read it? A. No, sir.

Q. And you did not say anything to a single soul about it? A. I did not.

Q. And your sister Elizabeth was not there in the room? A. No, sir.

Q. Where was she? A. I don't know, she was in some other part of the house.

Q. Did you say anything to her about having signed it? A. I told her the next day I had signed it.

Q. Why didn't you tell her that night; it was only eight o'clock? A. She was in some other room in the house.

Q. You never had a paper like that come to you before? A. No, sir.

Q. And you had signed the name for your sister Elizabeth to something reading like that, and never told her a word about it that night? A. That is right.

Q. Did you tell her anything about it the next day? A. I told her I had signed her name.

Q. What time? A. Some time in the morning.

Q. On the morning of the 20th you told Elizabeth you had signed her name to a paper made on April 20, 1923? A. Yes, sir.

Q. What did you tell her it was? A. I told her the names of the heirs.

Q. Did you tell her you had signed her name to it? A. Yes, sir.

Q. Did you tell Mary that her name had been signed to it? A. No, sir, Annie told her.

Q. Why didn't you tell Mary right away? A. Annie told her, I guess.

Q. When? A. I don't know.

Q. Where was Mary that night? A. She was out at some place; I know she was not in at supper.

Q. Well, you told Elizabeth the next morning, and what did Elizabeth say? A. Nothing.

Q. Did she object to it? A. She did not like it when I told her.

Q. What did she say—that she did not want to sell the property? A. Yes, sir, she said that the next morning.

Q. She told you that she did not want to sell the property? A. Yes, sir.

Q. Did Mary say that, too? A. Yes, sir.

Q. Right the next morning? A. Yes, sir.

Q. Is that right? A. I did not hear what Mary said.

Q. You said you had signed Elizabeth's name as an heir to the property? A. Yes, sir.

Q. And Elizabeth then immediately said she was not going to sell, and she objected to your signing your name? A. Yes, sir.

Q. Then you must have thought at that time, and Elizabeth must have thought, that you had signed to sell the property; is not that so?

Mr. Dunn—Objected to; he has asked this witness to presume what might have passed into the mind of another person. Now, then, that is not proper.

The Court—The objection will be overruled.

Q. (Question read.) A. No, sir.

Q. Why should Elizabeth say she would not sell the property when you had told her you had signed the paper which you did not think required you to sell it?

Mr. Dunn—Objected to; she did not say that. I ask your Honor to direct counsel to come back to the table and examine the witness.

The Court—He has a perfect right to confront the witness with the papers.

Mr. Harding—I will go back to the table.

Mr. Dunn—How would she know?

The Court—She has answered that question.

Mr. Dunn—I cannot silently stand by and see questions put like that which would mislead a lady who has never been on the witness stand before in her life.

The Court—The court will pass upon her veracity afterwards; I will allow the question.

A. Elizabeth said she would never sell her home.

Q. And she said this to you immediately upon your telling her that you had signed this paper? A. Yes, sir.

Q. When you told her you had signed the paper on April 20th, you must have understood that you had sold the home? A. No, sir.

Q. Can you tell me why Elizabeth should immediately, on your telling her that, say that she would not sell the home and find fault with you? A. She did not find fault with me.

Q. You think she was dissatisfied with what you had done? A. Yes, sir.

Q. She had no reason to say she would not sell, except from the fact that you told her you had signed this paper?

Mr. Dunn—I object.

The Court—It calls for a conclusion

Q. The first time Elizabeth had ever spoken to you about selling this property under any circumstances, was on this occasion when you told her you had signed this paper of April 20th? A. Yes, sir.

Q. Then she immediately expressed her dissatisfaction and said you had no right to sign her name? A. She did not say that, but she said she would not sell the property.

Q. She said that? A. Yes, sir.

Q. Did you hear your sister Annie's testimony a few minutes ago? A. Yes, sir.

Q. Did you hear her say she understood that Elizabeth had the title deed to your property? A. I heard her say that.

Q. What was your understanding about who had the deed? A. I did not know who got the deed.

Q. I think she said that Elizabeth as the eldest sister had the deed. A. I don't know anything about that.

Redirect by Mr. Dunn:

Q. How many days was it after you signed this paper which was shown to you, that you knew that John was about selling the property; how many days after? A. Two or three days after.

Q. Then you discovered it how? A. I saw the contract.

Q. That was two or three days after? A. Yes, sir.

ELIZABETH ROONEY, being duly sworn, testified as fallows:

Direct Examination By Mr. Dunn:

Q. Miss Rooney, where do you reside? A. Clifton.

Q. And you live at the homestead of your father? A. Yes, sir.

Q. And how long have you lived there? A. As long as I can remember.

Q. About what age are you? A. I guess I am over sixty.

By the Court:

Q. Were you born there? A. No, sir.

Futher Direct:

Q. Do you remember how long you have lived there? A. As long as I can remember.

Q. Now, then, Miss Rooney, do you remember at the time that this trouble arose in reference to selling the property? A. Yes, sir.

Q. Now, then, when did you first hear that there was any talk of John selling this property? A. I never heard anything about it until after the contract was made; he never said a word to anyone in the house about it.

Q. When did you first learn that he made a contract? A. After that paper came up.

Q. Which paper? A. The exhibit for the names of the heirs.

Q. Where were you that day when that paper came? A. I was down town.

Q. And did you sign the paper? A. No, sir, I never saw the paper at all.

Q. And then how long was it after Joe had been up to the house and got the paper, before you learned about it? A. That night or the next morning.

Q. Then when did you learn that John was trying to sell the property? A. After this paper came out.

Q. What paper? A. The names of the heirs.

Q. I show you the paper which has been testified to by Bridget, and your name is on there; was written by you? A. No, sir.

Q. When did you first learn that Bridget had written your name on the paper? A. The next morning.

Q. What did she then tell you? A. She told me she had put my name down on the paper that Joe had brought last night; she said she wrote my name on a paper that Joe brought there last night.

Q. What else did she say? A. That was all.

Q. Did she say what the paper was? A. No, sir, she did not seem to know.

Q. What did you say in reference to it then? A. I did not say anything just at that time.

Q. When did you next have your attention called to the property going to be sold, or the paper; when did you next have your attention called to the paper that they claim you had signed or had been signed for you by Bridget?

The Court—Strike that out and re-frame it.

Q. When did you next have your attention called to this paper which I show you, "Exhibit C 5½;" when did you next have your attention called to this paper which has been marked "Exhibit C 5½?" A. I did not have my attention called to that paper at all; I never saw that paper.

By the Court:

Q. When did you first see it? A. In court here is the first I ever saw it.

Q. Didn't your sister show it to you? A. No, sir.

Q. Do you mean to say your sister told you she had signed your name and never showed it to you? A. She did not show it to me.

Further Direct:

Q. Did you ever agree with your brother John that you would sell your interest in the property? A. He never asked me; there was never a word said about selling the property in our house, never.

By the Court:

Q. Never a word spoken about it between you and your brothers and sisters about selling this property? A. Never at any time.

Further Direct:

Q. When did you first learn, then, that John had made a contract with Mr. Frishman and Mr. Laderman? A. After he had made the contract I heard about it.

Q. Who told you then? A. He told me himself.

Q. What did you say to him then? A. I said "You cannot sell it;" I said "It is not for sale; why didn't you say something about it before you went and did it?"

Q. And what did he reply to that? A. He said, "It is done now."

Q. What did you say in reference to that? A. I said, "You will never get a deed signed for it."

Q. What reply did he make to that? A. He went back to the men then, I suppose, and I don't know what he did with them.

Q. Did you ever consent to the sale that he had made to Laderman and Frishman for $20,000? A. No, sir, never.

Q. Now, then, did you learn that Bridget had signed your name to the paper? A. Yes, sir, she told me so.

Q. What did you say to her when she told you she had signed your name to the paper? A. I told her she had no business to do that—no right to do it.

Q. Did she say what the paper was that she had signed? A. She said she put my name down as an heir.

Q. Did she say anything else about it? A. No, sir, that is all she said.

Q. When you had learned that John was trying to sell the property to Laderman, you had this talk with him and told him you would not sell? A. Yes, sir.

Q. And have you ever since changed your mind on the topic? A. No, sir.

Q. Have you changed your mind? A. Not a bit, no, sir.

The Court—She says she does not want to sell.

Q. And did you ever authorize anyone to sign your name? A. No, sir, I never did.

Cross-Examination By Mr. Harding:

.Q You first said to Mr. Dunn, that Bridget told you either that night when she signed that paper dated April 20th, or the next morning? A. Well, yes, I think it was the next morning.

Q. Why did you first say either that night or the next morning? A. I am most sure it was the next morning.

Q. And at the time this paper was signed from Joe Rooney, where were you that night? A. I was unstairs. I was not feeling well.

Q. You were upstairs? A. Yes, sir.

Q. You were not out of the house? A. No, sir.

Q. You were not feeling well? A. No, sir.

Q. What were you doing upstairs? A. Lying down in bed.

Q. For a rest? A. Yes, sir.

Q. And when Bridget did tell you that she signed this paper, what did she say the paper was? A. She did not say what it was to me; she said she put my name on it, and that is all I know about it.

Q. Did she tell you how she came to sign it—who asked her to sign it? A. No, sir, she did not say.

Q. And you were not interested to know what kind of a paper she had signed for you? A. No, sir, I was not interested at all.

Q. She said that you told her you were not willing to sell the property? A No, sir.

Q. You told her she had no business to sign it? A. Yes, sir.

Q. Is that all you said? A. Yes, sir.

Q. You dont know for sure whether it was that night she told you this? A. I know it was the next morning.

Q. You girls all live together in that house? A. A. Yes, sir.

Q. Did you have sleeping apartments together? A. Yes, sir, Bridget and I sleep together, and Annie and Mary sleep together.

Q. Annie and Mary slept together? A. Yes, sir.

Q. You occupied the two rooms? A. Yes, sir.

Q. You are the eldest girl of the family? A. Yes, sir.

Q. Do you know Mr. Bonney? A. Yes, sir, I am acquainted with him; I never spoke much to him; he has been at the house once; that is all I know; I am not acquainted much with him; I did speak to him once.

Q. Why do you say you are not acquainted with him much; he says he knows you? A. He knows who I am; that is all.

Q. Do you know what Mr. Bonney has sworn to in this case in your behalf about the sale of the property? A. I don't know.

Q. When was the very first you heard that John had made a contract to sell the property? A. After he had brought the contract home.

Q. How did you happen to know about it? A. He put it on the mantelpiece I never loked at the contract.

Q. Who first told you the contract had been made? A. Bridget told me first about it.

Q. Did Bridget tell you checks had been given for it? A. She said there was $1,000 paid.

Q. Did she tell you checks had been given for it? A. She did not say anything about checks.

Q. I show you a paper here, which is marked "Exhibit C 2," where it has the name of John Rooney—I am showing you "Exhibit C 2," do you see the name "John Rooney" written on it, where it is erased? A. Yes, sir.

Q. You see it plainly? A. Yes, sir.

Q. You have seen all your sisters write? A. Yes, sir.

Q. And you know their handwriting? A. Yes, sir.

Q. As well as anybody? A. Yes, sir.

Q. You certainly know your own? A. Yes, sir.

Q. I ask you whether or not you wrote that name "John Rooney?" A. I did not.

Q. Knowing your sister's handwriting, did she write it? A. I don't think that is her writing.

Q. You know it is not yours? A. It is not mine.

Q. Do you think it is Annie's? A. No, sir.

Q. Do you think it is Mary's? A. No, sir, it is not.

Q. You see it on this check? A. Yes, sir.

Q. And your brother John says the check was in your house in his pocket with the contract; you heard him swear to that? A. Yes, sir.

Q. Did you hear him swear he did not know whose handwriting was on that check? A. Yes, sir.

Q. And you don't know? A. I do not.

Q. I show you another check; do you think that looks like Bridget's writing? A. No, sir.

Q. You don't think it looks like it? A. Not at all.

Q. You are sure it is not Annie's? A. It is not.

Q. And it is not Mary's? A. No, sir.

Q. I show you another check, "Exhibit C 3," with the name "John Rooney" on it, and I ask you if you wrote that where it is crossed out? A. No, sir.

Q. Are you positive or not whether that is Bridget's handwriting? A. I cannot be positive, but I am most sure it is not hers.

Q. Do you think it is Annie's? A. No, sir.

Q. Do you think it is Mary's? A. No, sir.

Q. You don't know anything about it? A. No, sir.

Q. Would you kindly write your name for us? A. Yes, sir. (Witness steps down and sits in the stenographer's chair and writes her name on a sheet of foolscap.)

MRS. MARY A. ROONEY, being duly sworn, testified as follows:

Direct Examination By Mr. Dunn:

Q. Mrs. Rooney, what relation are you to John Rooney and Thomas Rooney? A. Sister-in-law.

Q. You were the wife of Joseph Rooney? A. Yes, sir.

Q. He is dead? A. Yes, sir.

Q. Now, then, after Joseph's death and some time in the spring of 1923, do you remember being called upon to make your signature on a paper which I show you? A. Yes, sir.

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

Q. Dated April 20th, 1923? A. Yes, sir.

Q. And at the time that you signed it, were all the signatures that are there above, on it? A. Yes, sir.

Q. Where did you sign? A. In my own home.

Q. Who brought it to your home? A. My son.

Q. When did he bring it there? A. Some time in the evening of April 20th.

Q. You had visited the house where Bridget and Elizabeth and the family lived? A. Yes, sir.

Q. Now, up to that time had you ever heard any talk between the girls of wanting to sell the homestead? A. No, sir.

Q. And at this time how did you come to sign this paper when Joe brought it to you; what explanation did he make to you about it, your son Joe? A. Before he went down to the homestead, he said he was going down to uncle John's to get a paper signed by the heirs, for, as I understood, to give to the people that John was going to sell the place to .

Q. Then when he came back? A. He had this paper with him.

Q. And you signed it? A. Yes, sir.

Q. And then it was taken by Joe, and that is the last you saw of the paper? A. That is right.

By the Court:

Q. Did you read the paper over? A. Yes.

Q. You visited the girls frequently? A. Yes, sir.

Q. Up to the time that this paper was presented to be signed by you, had you ever heard them talk about selling the homestead property?

Mr. Harding—Objected to as immaterial and irrelevant.

The Court—Objection overruled.

Q. (Question read.) A. Yes, sir.

Q. Had you ever heard any price fixed upon it by them in reference to its value? A. Only what John told me.

Q. When? A. The day they signed the contract.

Q. What did he say was the price? A. $20,000.

Q. When was that? A. The day he signed the contract.

Q. Did you communicate that information to the girls up home? A. I had not seen them.

Q. Did you see them between that time and the time that you signed this paper? A. No, sir.

Q. Did you ever hear them talk of wanting to sell the homestead—the girls? A. I did not have any conversation with them at any time about it.

Q. When you heard about this paper being signed, did you have a conversation then with the girls about it? A. No, sir.

Q. So you never spoke to the girls about it? A. No, sir.

By the Court:

Q. When you signed it for your son Joe, when did you see the girls next? A. I don't think I saw them for three or four weeks after that.

Further Direct:

Q. Then did you have any talk with them in reference to selling the property? A. No, sir, they never said anything to me about it.

Q. Did they say anything? A. They spoke about signing that paper—Bridget said that she signed Elizabeth's name.

Mr. Harding—I object to this as irrelevant and immaterial—what they said amongst each other.

The Court—Objection sustained as not binding upon the parties.

No Cross Examination.

Mr. Dunn—We rest.

REBUTTAL

ALBIN SMITH, recalled in rebuttal, testified as follows:

Direct Examination by Mr. Harding:

Q. Thomas Rooney said that when he was in your office he told you that he did not think his brother had a right to sign that contract; is that so? A. That is not so; I mean, he did not say that to me.

Q. And he said that you turned to John and said, "John, haven't you?" and John said, "No, nothing in writing;" and you then said, "I will make you attorney in fact;" is that so? A. I did not use that expression; I did not say that.

Q. Did you say anything like that? A. No, sir, nothing like that.

Q. Thomas Rooney said, When Mr. Rabinowitz came into the office he said he had heavy charges against him; was any such statement made by him? A. I don't remember Mr. Rabinowitz making any such statement.

Q. Thomas Rooney said that you never asked John Rooney concerning the authority which he

had to sell the property? A. I did not ask John Rooney about his authority to sell the property.

Q. As to which you have already testified on direct examination? A. I think that I havee.

Q. Did Thomas Rooney tell you on that occasion, or any other occasion, that John Rooney had no authority to enter into a contract for the sale of this land? A. He did not.

Q. Did you hear Mr. Rabinowitz say, in the presence of Thomas Rooney and John Rooney, and David Laderman, that Mr. Laderman and Mr. Rabinowitz would be willing to take six-sevenths of the property, and determine the question as to the other one-seventh in court? A. He did say that in my office, yes, sir, in the presence of Laderman and the two Rooneys.

John Rooney says, that in answer to your question, "Have you got a power of attorney," he said, referring to John, "No, I have no power from the court, or I did not have any writings;" to which John said you replied, "You are the oldest boy;" John said, "Yes," and you said, "Well, I think you have power to sell." Did you make any such statement? A. I did not.

Q. Now, do you remember that—what is that? A. That looks like the deed of the property to James Rooney, the father of the present owners of the property.

Q. Tell us how you got that deed? A. I received that from my stenographer; I think it was left in my office with my stenographer; I don't know who left it there.

Mr. Dunn—I object to it, unless he knows positively.

A. It was left in my office, I am positive of that; it was given to my stenographer, I am positive of that, and I am positive she gave it to me, but I don't know who left it there.

Q. Did you ask John Rooney for this deed? A. I don't know how it got in my office.

Q. Did you speak to John about the deed? A. Yes, sir.

Q. What did you say to him? A. I asked him for the deed.

Q. What did he say? A. He said the only thing he had that day was a tax bill, or a tax receipt.

Q. What did you ask him about the deed? A. I told him to get the deed.

Q. What did he say to that? A. He said he would get the deed.

Q. Did he say who had the deed? A. I don't recall that he did.

Q. How soon after that conversation, or after the execution of the contract of April 19th, was the deed brought to your office? A. Two or three days after.

Mr. Harding—I offer the deed in evidence.

Marked "Exhibit X-Rab. B-1."

Cross Examination by Mr. Dunn:

Q. Now, Senator, do you remember of Mr. Thomas Rooney being there at your office with his brother John? A. Yes, sir.

Q. And do you remember whether or not you made any inquiry from John as to whether he had authority to make title, to sell this property? A. I inquired.

Q. What did he tell you his authority was? A. He told me he had a power of attorney.

Q. Did he produce it that day? A. No, sir, he did not.

Q. Was the contract drawn that day? A. Yes, sir.

Q. Well, that was April 19? A. I think so.

Q. I show you the copy. A. Yes, sir, it was

Q. And it was executed that day? A. Yes, sir.

Q. When did you learn that John had not title to this property? A. What do you mean?

Q. That he did not have titled to the property he was contracting to sell? A. John did not have the title in his name; John had the power of attorney to act for the other people.

Q. When did you first see any such power of attorney? A. I never saw it.

Q. So that, so far as you know, it was verbal? A. No, sir, it was not; John told me it was in writing.

Q. You believed it was in writing, didn't you? A. I believed John when he told me.

Q. What, if anything, then did you do or have done afterwards to get the signatures of these heirs of the property to a piece of paper? A. I did nothing.

Q. So you had nothing to do with having the hiers sign this exhibit "C-5½"? A. Absolutely nothing.

Q. You never saw it? A. Yes, sir, it was brought to my office, I think the next morning by Mr. Frishman; he is one of the original purchasers of the property.

Q. Did not young Joe Rooney work for him? A. I suppose—I don't kno wanything about that.

Q. Was that paper obtained at your suggestion? A. No, sir.

Q. That exhibit "C-5½"? A. No, sir.

Q. You regarded that the contract that you had drawn was sufficiently binding on the parties. A. When they showed me the paper, I said "That is not necessary; that is good to have;" that was all there was to it.

Q. What, if anything, did you have before that showing that John Rooney had title to this property and authority to convey the property? A. John's word and Thomas' assent.

Q. Did not Thomas say that John did not have authority to convey this property? A. No, sir, Thomas did not say that.

Q. Now, do you remember saying on cross examination in this case before—I asked you a question—didn't you say that day: "Ques. Didn't you know that day that the others would not sign? Ans. At no time did John or Thomas say anyone would not sign, except Elizabeth; to the contrary, they always reiterated that all were willing except the eldest sister." (Page 87 of testimony.) A. At each time I met John and Thomas Rooney after that contract was made, they said that all were willing to sell their interest except Elizabeth, and that Elizabeth was the only one, when they came and tried to not through with the contract.

Q. Didn't you learn that Mary had never signed the paper that was brought to you by young Rooney? A. No, sir, I don't recall; I was not interested in that paper particularly; in fact, young Rooney never brought me any paper.

Q. You felt that this paper was binding upon all the parties? A. I felt that John Rooney had made a bona fide contract to sell the property; I believed what he said, and I thought that contract was all right.

DAVID LADERMAN, recalled in rebuttal, testified as follows:

Direct Examination by Mr. Rabinowitz:

Q. Thomas Rooney said that when he was in Senator Smith's office he told Senator Smith he did not think his brother had the right to sign a contract? A. Thomas, on the contrary, corroborated John Rooney's authority and said his father had died and left no will, and he said, "By mutual consent we appointed John Rooney to take care of this matter." He said to me prior to that, when he walked in with his brother, he said that his sisters had sent Tom down there to see that everything was done properly—that everything was properly taken care of.

Q. Now, when you came into the office, do you recall the time of day it was? A. It was just about two o'clock, because we had made an appointment the day previous; we had gove up to the farm, and we had met the girls there, and we asked where John was; Elizabeth answered the

bell, and Bridget came right after, and the girls told us John had gone to Passaic to have his horse shod; and Mr. Frishman thought he knew where the place was, and so we went to Passaic to see John, and we found him and told him what we were there for, and he was surprised to see us, and he said, "How did you come down here?" and we told him that his sisters had told us that he was in Passaic, and he said "What are you after?" and we told him we wanted to draw a contract for the property that we were holding an option for; and he said, "You know I could not go today; it is about 11:30;" and he said, "If you want me to go to-morrow, it will be all right;" and I said, "Is there any lawyer you have in mind?" and he said, "No." I said, "How would Senator Smith do?" and he said, "He is a very reputable man, and we will go to him;" then the question was about the time, and we decided to meet at two o'clock, and we went there at two o'clock in the afternoon.

Q. And when you came there, where was Thomas Rooney and John Rooney? A. They were waiting downstairs, and we all went up together.

Q. Did you go into Senator Smith's private office? A. Yes, sir, and I introduced John Rooney and Thomas Rooney to Senator Smith, and Senator Smith said, "where do you people live?" and they had a discussion; and Thomas Rooney asked the Senator who his father was; and Senator Smith tried to explain who his father was; and he told him his father was a railroad man, I think; and Senator Smith told him to sit down.

Q. All this conversation took place in the presence of Thomas? A. Thomas and John.

Q. So that, when Thomas says the contract was brought in by Senator Smith's stenographer, into Senator Smith's private room, and after that was brought in Thomas came in after that—that is not so? A. Absolutely not; he helped to frame the contract and told the different names.

Q. Do you recall, Senator Smith speaking—do you recall him conversing about the deed? A. Just as we were leaving Senator Smith said, "I guess you people will want a search;" and speaking to John and Thomas he said, "If you can find the deed, bring it up, so that we can have the property searched and see what is what; and as we walked down, Thomas and John, Frishman and myself, walked over to the United Advertising Company.

Q. Did he tell you who had the deed— A. John told me that he thought that Elizabeth had the deed, and that he would go home and ask her, and if she had it, he would leave it with Senator Smith, and then I could get it.

Q. The deed of the property? A. Yes, sir.

Q. The deed to their father? A. The deed that was made out to their father.

Q. Did you ever find out if that deed was in the possession of Senator Smith? A. I went to Senator Smith and asked him if he got the deed, and he gave the deed to me.

Q. Do you know who brought the deed up there? A. I think his stenographer, Miss Chrisman, told me that John Rooney brought it up there.

Q. Is that the deed that was brought up which has been marked "Exhibit Rab. B-1"? A. That is the deed, yes, sir.

Q. Did you have occasion to be in Senator Smith's office two or three days later? A. I went up there to inquire about this property.

By Mr. Harding:

Q. On page 51 of your testimony, it says: "Ques. Now, what, if anything, did you learn, or when did you first learn that John Rooney was not able to carry out the contract and had no authority to do so? Ans. I never learned that at all, at no time, but I learned that John Rooney did not have the power to fulfill that contract;" the word "but" should be taken out; do you wish to correct that? A. I don't understand that question.

Q. On page 51 of your testimony, this question is put to you: "Ques. Now, what, if anything, did you learn, or when did you first learn, that John Rooney was not able to carry out the contract and had no authority to do so? Ans. I never learned that at all, at no time, but I learned that John Rooney did not have the power to fulfill that contract;" do you wish to correct that? A. I never said he did not have the power; he never told me that; the only thing that he did say to me was, he said, that he was having a little trouble with Elizabeth, that she had changed her views, and that she did not like the idea of moving from the place; that when she started to look around she did not like the idea.

Q. On the top of page 52 of your testimony, it reads as follows: "Ques. You learned after-

wards that he did not have authority, didn't you?" and there is no answer on the notes to that question; the stenographer has an answer that should be another question, an obvious mistake; I want to correct it, that is all. The question was put to you: "Ques. You learned afterwards that he did not have authority, didn't you?" What do you wish your answer to that question to be? A. I did not.

Mr. Harding—Mr. Dunn suggests that the stenographer should insert "Q." for question, instead of "A" for answer, on the fourth line of page 52 of the testimony.

(Corrections were made by the stenographer of the Court's copy, and each counsel corrected his own copy.)

Mr. Harding—In looking over this record, also, the "Exhibit C-5½" is marked for identification, that is the paper of April 20th, 1923; that was admitted in evidence, but it only appears as marked for identification. I now offer it in evidence, and I want it marked as in evidence. It was offered and admitted.

Marked "Exhibit C-5½".

Mr. Harding—Then on page 32 of the testimony, "Exhibit C-7 and C-8," were offered and admitted. I offer them again.

And the testimony does not show that "Exhibit C-8½" was offered and admitted in evidence, although they were offered and admitted in evidence, and they are so marked. I offer them again; it is the letter of June 30, 1923.

Marked "Exhibits C-7, C-8 and C-8½."

Mr. Harding—On page 9 of the testimony, Mr. Laderman is asked if he saw John Rooney sign an option, and there is no answer to that question; on the next page, however, he says that he saw John sign it.

The Court—That covers it.

Mr. Harding—The option is admitted in evidence on the record, but the option mark itself does not show what it is; it should be "Exhibit C-1,"—the first thing that was offered.

Marked "Exhibit C-1."

Mr. Harding—And on Mr. Laderman's direct examination, referring to his meeting John at the blacksmith shop, the question was asked at that time: "Ques. Did he say anything?" and the answer, as the stenographer has it, is, "He said 'how did you know that I was down there?'" It should be, "Down here." That is on the first part of page 12; that is obvious; I think that is all.

SUR-REBUTTAL

THOMAS C. ROONEY, recalled in sur-rebuttal, testified as follows:

Direct Examination by Mr. Dunn:

Q. You were sworn in this case before? A. Yes, sir.

Q. You heard Mr. Laderman on the witness stand a moment ago? A. Yes, sir.

Q. And in speaking of the contract with him, he said that you told him your sisters had sent you down to see that everything was properly cared for? A. I don't understand that.

Q. (Question read.) A. No, sir, I never said that.

Q. They never gave you any directions in reference to doing that? A. No, sir, I was invited down by John.

(Both sides rest.)

The Court—I will fix a day for argument when the stenographer gets the testimony out.

EXHIBITS

EXHIBIT C-1

April 16th, 1923
Paterson, N. J.

This is to certify that I John Rooney of the City of Clifton hereby agrees to give an option to Maurice E. Frishman and David Laderman of the city of Paterson on my property consisting of six acres of land and two houses running from Main Ave. to Day St. for the sum of Twenty thousand dollars ($20,000). This option expires April 27th, 1923.

John Rooney.

EXHIBIT C-2

David Laderman
Cleaner and Dyer
26 Bridge Street

Number 1463
Paterson, N. J., April 19th, 1923

Pay to the order of John Rooney Atty for Est. James Rooney $500.00 Five hundred Dollars.

David Laderman

To United States Trust Company
of Paterson, N. J.
55-65

of Paterson, N. J.
John Rooney
Atty. for Est. James Rooney
John Rooney.

Pay First National Bank, Paterson, N. J. or order.

The Paterson Savings Institution. A. L. Banister, Treas.

Received payment through the Exchange, Apr. 30, 1923. First National Bank, Paterson, N. J.

EXHIBIT C-3

No. 3753

National Drug Co.
M. E. Frishman
Drugs & Stationery

Paterson, N. J., Apl. 19, 1923

Pay to the order of John Rooney, Atty. for Est. of Jas. Rooney $500.00 Five Hundred Dollars.
To United States Trust Company
55-65 of Paterson, N. J.

Maurice E. Frishman.
John Rooney
Atty. for Est. James Rooney
John Rooney

Pay First National Bank, Paterson, N. J., or order.

The Paterson Savings Institution. A. L. Banister, Treas.

Received payment through the Exchange, Apr. 30, 1923. First National Bank, Paterson, N. J.

EXHIBIT C-4

Deeds

9.30 A.M.

Contract
For the Sale of Property
Estate of James Rooney, by John Rooney, Attorney in Fact.
To
David Laderman and Maurice E. Frishman
Dated April 19th, 1923

B.

Received for record in the Register's office of the County of Passaic on the 1st day of June A.D. 1923 at 9.30 A. M. and recorded in the Book N-30 of deeds on page 256 &c.

John R. Morris,
Register

Articles of Agreement, made the nineteenth day of April, in the year of Our Lord One Thousand Nine Hundred and Twenty-three,

Between Estate of James Rooney, by John Rooney, Attorney in Fact, of the City of Clifton, in the County of Passaic and State of New Jersey, party of the first part;

And David Laderman and Maurice E. Frishman, of the City of Paterson, in the County of Passaic and State of New Jersey, party of the second part;

Witnesseth, That the said party of the first part, for and in consideration of the sum of Twenty Thousand Dollars, to be paid and satisfied as hereinafter mentioned, and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, doth agree to and with the said party of the second part, that he, the said party of the first part, will well and sufficiently convey to the said party of the second part, their heirs and assigns, by Deed of Warranty, free from all encumbrance on or before the first day of July next ensuing the date hereof, all that certain lot, tract, or parcel of land and premises, hereinafter particularly described situate, lying and being in the City of Clifton, in the County of Passaic and State of New Jersey:

Being known as Block 164 K, plot lot 240, Main Avenue, Clifton, New Jersey, and being six and one-quarter acres, buildings 2 H.B., as described and set forth on City of Clifton Tax Certificate, 1922, No. 3356, Estate of James Rooney.

And the said David Laderman and Maurice E. Frishman(for themselves, their heirs, executors and administrators, doth covenant, promise and

agree to and with the said party of the first part, his heirs, executors, administrators and assigns, that they, the said party of the second part, will pay and satisfy, or cause to be paid and satisfied, unto the said party of the first part, the said sum of Twenty Thousand Dollars, as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say:

On Execution of this agreement for which this is also a receipt $1,000.00. On delivery of deed, cash $19,000.00. Total $20,000.00.

And the said party of the first part hereby agrees to pay to a commission of % on the purchase price aforesaid, said commission to be paid in consideration of services rendered in consummating this sale; said commission to be paid upon delivery of deed.

And it is further Agreed, by the parties to these presents, that the said party of the second part, their heirs and assigns, may enter into and upon the said land and premises on the 1st day of July next ensuing the date hereof, and from thence take the rents, issues and profits to them and their use.

And it is further Agreed, by the parties hereto, that the said Deed of Warranty shall be delivered and received at the office of Albin Smith, Room 504, 152 Market Street, Paterson, New Jersey, between the hours of in the noon and o'clock in the noon on the said first day of July next ensuing the date hereof.

The rents of said premises, insurance premiums, water rents, taxes, and interest on Mortgage, if any, shall be adjusted, apportioned and allowed as of the day of delivery of said deed.

Gas and electric fixtures, gas stoves, hot water heaters and chandeliers, carpets, linoleum, mats and matting in halls, screens, shades, awnings, ash cans, heating apparatus, if any, and all other personal property appurtenant to or used in the operation of said premises is represented to be owned by seller and is included in this sale.

The risk of loss or damage to said premises by fire or otherwise until the delivery of said deed is assumed by the party of the first part.

In case the premises shall suffer injury beyond the ordinary wear and tear, the party of the first part shall repair the damages before the date set for delivery of said deed or make an appropriate deduction from the purchase price herein stated.

It is understood and agreed that the buildings upon said premises are all within the boundary lines of the property as described in the deed therefor, and that there are no encroachments thereon and that the buildings comply with municipal ordinances and regulations and the provisions of the New Jersey State Tenement House Act as enforced by the State Board of Tenement House Supervision, to be shown by the report of the department or board enforcing the same where such ordinances, regulations and said act apply.

It is expressly understood and agreed that the title to the land and premises hereby agreed to be conveyed is not derived from any Martin Act proceedings or any Act for the Sale of Land for non-payment of the municipal taxes or assessments.

If at the time for the delivery of the deeds, the premises or any part thereof shall be or shall have been affected by an assessment or assessments

which are or may become payable in annual installments of which the first installment is then due or has been paid, then for the purposes of this contract all the unpaid installments of any such assessment, including those which are to become due and payable after the delivery of the deed, shall be deemed to be due and payable and to be liens upon the premises affected thereby and shall be paid and discharged by the seller thereof, upon the delivery of the deed.

And for the performance of all and singular the covenants and agreements aforesaid, the said parties do bind themselves and their respective heirs, executors and administrators; and they hereby agree to pay, upon failure to perform the same, the sum of
which they hereby fix and settle as liquidated damages therefor.

In Witness Whereof, the said parties have hereunto interchangeably set their hands and seals the day and year first above mentioned.

Estate of James Rooney by
John Rooney Atty (LS)
David Laderman (LS)
Maurice E. Frishman (LS)

Signed, Sealed and Delivered
in the presence of
Albin Smith.

In consideration of ($) dollars
to in hand paid
hereby assign to this contract and all rights thereunder.
Witness hand and seal this
day of A.D. 19

State of New Jersey,
County of Passaic. } ss:

Be it Remembered, That on this nineteenth day of April, in the year of our Lord One Thousand Nine Hundred and Twenty-three, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared John Rooney, attorney in fact, of the Estate of James Rooney, who, I am satisfied, is the grantor mentioned in the within Instrument, to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

Albin Smith,
A Master in Chancery of New Jersey

being by me privately examined, separate and apart from said husband, further acknowledged that signed, sealed and delivered the same as voluntary act and deed, Freely, without any fear, threats or compulsion of said husband.

EXHIBIT C-5½

April 20, 1923

We the undersigned heirs of James Rooney do appoint John Rooney with power of attorney, and do invest him with full power to act in our behalf on sale of estate of the late James Rooney.

Thomas C. Rooney
Bridget Rooney
Elizabeth Rooney
Annie Rooney
Mary Rooney
John Rooney
Mary A. Rooney

EXHIBIT C-7

In consideration of the sum of Seven Hundred and Fifty ($750) Dollars to me in hand paid, the receipt whereof is hereby acknowledged, I hereby assign, transfer and set over until David Laderman all my right, title and interest in and to a certain contract dated April 19, 1923, made between the Estate of James Rooney by James Rooney, attorney-in-fact and David Laderman and Maurice E. Frishman, for the sale of premises known as Block 164 K plot, lot 240, Main Avenue, Clifton, New Jersey, and being 6¼ acres, buildings 2 H. B. as described and set forth on City of Clifton Tax Certificate, 1922, No. 3355, Estate of James Rooney which contract provided that the deed for said property should be conveyed on or before July 1, 1923.

Maurice E. Frishman.

EXHIBIT C-8

Witness

Dated: June 1, 1923.

In consideration of the sum of Seven hundred and fifty Dollars ($750.00) to me in hand paid, the receipt whereof is hereby acknowledged, I hereby assign, transfer and set over unto Nathan Rabinowitz all my undivided one half interest in and to a certain contract dated April 19th, 1923, made between the estate of James Rooney by James Rooney Attorney in fact and David Laderman and Maurice E. Frishman; the said Maurice E. Frishman having this day sold me his undivided one half interest in said contract as provided aforementioned; for the sale of premises known as

Block 164 K plot, lot 240, Main Avenue, Clifton, New Jersey and being six and one quarter acres, building 2 H. B. as described and set forth on City of Clifton Tax Certificate 1922. No. 3356 Estate of James Rooney.

David Laderman.

EXHIBIT RAB. B-1

Received Passaic Co. Clerk's Office, Mar. 20, 1873.

Deed
John Davidson
and
Adelia S. his wife
to
James Rooney
Dated, March 20th, 1873
J. & R. Davidson,
Counsellors at Law
290 Broadway, New York

Received in the Clerk's Office of the County of Passaic on the 20th day of March 1873 and recorded in Book 54 of Deeds on page 598 &c.

J. H. Blauvelt, Clerk

This Indenture, made the Twentieth day of March, in the year one thousand eight hundred and seventy three, Between John Davidson of Elizabeth, Union County, New Jersey, and Adelia S. his wife, parties of the first part and James Rooney of Passaic County and State of New Jersey, party of the second part, Witnesseth, That the said parties of the first part, for and in consideration of the sum of Four thousand Dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these

presents, the receipt whereof is hereby acknowledged, and the said party of the second part, his heirs, executors and administrators, forever released and discharged from the same by these presents, have granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents, Do grant, bargain, sell, alien, remise, release, convey and confirm, unto the said party of the second part, and to his heirs and assigns forever, All those two tracts, pieces or parcels of land, situate lying and being in the Township of Acquackanonk, Passaic County and State of New Jersey: Beginning on the west side of the Paterson and New York Plank road, at the Southeastern corner of a lot of land formerly belonging to Jacob E. Vreeland dec'd., now belonging to the Messrs. Bannigan. Thence (1) running along the line of said Bannigan's North Eighty one degrees West Ten chains and Sixty-five links to a corner thence (2) South thirteen degrees East four chains and thirty eight links to the line of land formerly belonging to John Van Riper now belonging to Cornelius D. Vreeland, (3) along the line of said Cornelius D. Vreeland, North Eighty one degrees East Twelve chains and forty links to the Paterson and New York Plank Road Thence (4) along said Road North thirty five degrees West four chains and Seventy one links to the place of Beginning. Containing five Acres be the same more or less—Bounded Easterly by the Paterson and New York Plank Road Northerly by land of Bannigan Westerly by land of Thomas Gould and Southerly on lands of Cornelius D. Vreeland.

Also one other lot of land and premises Beginning on the North West corner of the above described lot of land. Thence (1) running South Eleven degrees East four chains and thirty four links (2) South Eighty two degrees West two chains and thirty one links (3) North eleven degrees West four chains and thirty four links, thence (4) North Eighty two degrees East two chains and thirty one links to the place of Beginning, Containing one Acre be the same more or less. Bounded Easterly by the first described lot of Land, South by Lands of Cornelius D. Vreeland North and West by land of Bannigan's.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also, all the estate, right, title, interest, dower and right of dower, property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in and to the same, and every part and parcel thereof, with the appurtenances.

To have and to hold the above granted, bargained and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns to his and their own proper use, benefit and behoof forever.

Subject however to a certain Mortgage on said premises amounting to the sum of Twelve hundred and eighty Dollars, which said Mortgage with the interest now due and to grow due thereon the party of the second part hereby assumes and agrees to pay.

And the said John Davidson for himself, his heirs, executors and administrators, doth hereby

covenant, grant and agree to and with the said party of the second part, his heirs and assigns, that the said John Davidson at the time of the sealing and delivery of these presents is lawfully seized in his own right of a good, absolute and indefeasible estate of inheritance, in fee simple, of and in all and singular the above granted, bargained and described premises, with the appurtenances, subject as aforesaid, and has good right, full power and lawful authority to grant, bargain, sell and convey the same, in manner and form aforesaid. And that the said party of the second part, his heirs and assigns, shall and may at all times hereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the above granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the said parties of the first part, their heirs or assigns, or of any other person or persons lawfully claiming, or to claim the same. And that the same now are free, clear, discharged and unencumbered, of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and encumbrances of what nature and kind soever except as aforesaid.

And also that the said parties of the first part, and their heirs, and all and every other person or persons whatsoever, lawfully or equitably deriving any estate, right, title or interest, of, in, or to the hereinbefore granted premises, by, from, under, or in trust for them or either of them, shall and will at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said party of the second

part, his heirs and assigns, make, do and execute, or cause or procure to be made, done and executed, all and every such further and other lawful and reasonable acts, conveyances and assurances in the law, for the better and more effectually vesting and confirming the premises hereby intended to be granted in and to the said party of the second part, his heirs and assigns forever, as by the said party of the second part, his heirs or assigns, or his or their counsel learned in the law, shall be reasonably devised, advised or required.

And the said John Davidson and his heirs, the above described and hereby granted and released premises and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said parties of the first part, and their heirs, and against all and every person or persons whomsoever, lawfully claiming or to claim the same, shall and will Warrant and by these presents forever Defend.

In Witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

John Davidson (Seal)
Adelia T. Davidson (Seal)

Sealed and Delivered in the Presnce of
Edward S. Atwater.

State of New Jersey
Union County } ss.

Be it remembered that on this nineteenth day of February in the year of our Lord one thousand eight hundred and seventy three before me a master in chancery of said State personally appeared

Exhibit Rab. B-1

John Davidson and Adelia S. his wife, who I am satisfied are the grantors in the within Deed of conveyance named and I having first made known to them the contents thereof they did severally acknowledge that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

And the said Adelia S, wife of the said John Davidson being by me privately examined separate and apart from her husband did further acknowledge that she signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear, threats or compulsion of her said husband.

Edward S. Atwater,
M. C. C.

18 MAY.T.1927

New Jersey Court of Errors and Appeals

Between David Laderman and Nathan Rabinowitz, Complainants-Appellants, and John Rooney, Thomas C. Rooney, Bridget Rooney, Elizabeth Rooney, Annie Rooney, Mary Rooney and Mary A. Rooney, Defendants-Respondents.	On Bill, &c. On Appeal from Final Decree of Court of Chancery.

Brief of Complainants-Appellants

Complainants' Bill (Case, pages I-XXI) was filed to compel specific performance of a contract of sale of 6¼ acres of land situate within the bounds of the City of Clifton, in the County of Passaic.

The land was purchased by James Rooney in 1873 (Case, pages 297-302, Ex. Rab. B-1). He died in 1900, intestate, leaving his wife (who died before the contract in suit was made), and his sons, John and Thomas C., and his daughters, Elizabeth, Annie, Bridget and Mary, and a third son also, Joseph. Joseph married, and died testate; and although leaving a son, Joseph by name, devised his interest in the land in question to his widow, Mary A. Rooney (who is a defendant with the daughters and two surviving sons of James as codefendants). Thomas C. also married, but his four sisters and his brother John are all single.

Laderman and Rabinowitz filed the bill; and the defense was that John Rooney was not only wholly unauthorized by his sisters and brother to make the contract, but that his sisters knew nothing and learned nothing about the making of it or about even the intention to make it until two or three days afterwards (notwithstanding two of these sisters plainly and positively contradict the claim that John kept the family in ignorance of the intention).

On April 20th, the day following the making of the contract, Thomas dictated a writing (Case, page 295, Ex. C-5 ½) ratifying the contract made by John, which was signed by him, by Mary A. Rooney and by two of the sisters who signed not only for themselves but for their other two sisters; and the defense is made by these other two that the sisters who signed were unauthorized to sign for them.

~~The final decree (Case, pages XXXIV-XXXVI) calls for specific performance of John and Thomas, but only upon complainants' paying the full purchase price.~~

The final decree recites that it would have gone against John and Thomas for specific performance if complainants had elected to have it so and had agreed to pay the full purchase price for their two sevenths interest in the land; and they elected not to accept such decree. It dismisses the bill, reserving the right of appeal to this court.

GROUNDS OF APPEAL

The petition of appeal (Case, pages XXXIX-XLI) claims the right to have specific performance against all the defendants and, if not that, against such defendants as are liable for specific performance with damages from them if they should be found to have acted for the others without authority.

The decree is erroneous because it dismisses the bill instead of decreeing specific performance against each and all the defendants. If complainants are not entitled to have such a conveyance as John contracted to give on behalf of all the heirs, there is error at least in not decreeing a conveyance ***without*** covenants, against all. It is faulty also in not decreeing damages against John and Thomas and Annie and Bridget, if it should be found that Annie and Bridget were not authorized to bind the other sisters by the writing of April 20th, and John and Thomas had no power to act for these sisters, or to assure Laderman and Frishman that they had the right to act for them.

Authority to sign an agreement for the sale of land may be inferred from facts and circumstances in the absence of any direct evidence whatever. Where such inference is made from such facts and circumstances, it is classified as a contract ***implied in fact,*** as distinguished from a contract ***implied in law.*** The difference between the two is well stated in ***Underhill v. Rutland R. Co.*** (Vt.) ***98 Atl. 1017,*** by Munson, C. J., at page 1021 of his opinion as follows:

> "There is a plain distinction between contracts implied in fact and contracts implied in law, both of which are spoken of in general terms as implied contracts. The distinction would be better preserved by designating implied contracts of the latter class as quasi contracts. They are sometimes spoken of as fictitious contracts. Wald's Pollock on Con. 10. They are in truth only fictions invented for the purpose of enforcing legal duties where no actual contract exists, either express or implied. 15 Ency. Law, 1078 (2nd Ed.). Contracts implied in fact are based upon an actual agreement of the parties, deduced ***by the trier from the conduct of the parties and the circumstances of the case.***"

Again in ***Reitmyer v. Coxe Bros. & Co., Inc.,*** (Pa.) ***107 Atl., 739,*** Stewart, J. at page 740 of his opinion defines a contract implied in fact as distinguished between one implied in law as follows:

> "Where circumstances are shown, which according to the ordinary course of business dealings and the ordinary understanding of men show a mutual intention to contract, the ***law*** will not simply imply a contract, but it will ***derive the terms*** of a contract so far as practicable from the conditions shown."

The Judge thereupon quotes from ***Herzog v. Herzog, 29 Pa. 465,*** the following language expressing a contract implied in fact:

> "Every induction, inference, implication or presumption in reasoning of any kind, is a logical conclusion derived from, and demanded by, certain data or ascertained circumstances. If such ***circumstances*** demand the ***conclusion of a contract*** to account for them, ***a contract is proved.***"

Again in ***Sceva v. True, 53 N. H. 627,*** Ladd, J., referring to a contract implied in fact from mere circumstances as distinguished from a contract implied in law says:

> "The evidence of an actual contract is generally to be found ***either*** in some writing made by the parties, or in verbal communications which passed between them, ***or in their acts or conduct*** considered in the light of the circumstances in each particular case. A contract implied by law, on the contrary, rests upon no evidence." 7 Am. & Eng. Enc. L., p. 92 (2nd Ed).

In ***Keim v. Lindley, 30 Atl. Rep. 1063*** (N. J.) V. C. Pitney, at page 1064, states that the authority of an agent to sell land may be by parol and such agency may be proved by circumstances, as follows:

> "It is well settled that ***parol*** authority to an agent is sufficient to satisfy the requirements of the Statute of Frauds, and that ***such authority may be inferred and deduced from circumstances,*** and a course of dealing."

Although this case was reversed for reasons hereinafter adverted to, the settled principle of law above stated was expressly approved. Justice Magie, speaking for this court said:

> "The learned Vice Chancellor laid down three propositions which he applied in the trial of this cause, the correctness of which has not been, and, I think, could not be, successfuly contested. * * * The second proposition was that such authority to sign an agreement for the sale of land could be established either by proof that it had been expressly conferred, or ***by proof of circumstances from which its grant may be reasonably inferred.***" *54 N. J. Eq. 418, 423.*

We contend that the Vice-Chancellor, in accordance with the principle expressed in the above cases, should have inferred from many established facts and circumstances that the Rooney heirs had conferred power upon John Rooney to make the contract of April 19, 1923 (Case, Pages 291-294, Exhibit C-4); and that no other inference is congruous with the proofs.

Direct evidence, it is true, is lacking; but it is the peculiar function of a court of equity to penetrate through elaborated falsehood to the heart of truth, and to infer contracts and relationships from facts and circumstances.

It is conceded that John Rooney was trusted by the other heirs in affairs of business; that he and his four sisters (all unmarried) dwelt together upon their patrimonial homestead; that all

the heirs conferred about their common business generally; and in these circumstances it is almost incrediable that John Rooney would have made such a contract as the one in question—a contract of sale of ***the principal part of their possession;*** the only real property which they possessed; the tract of land on which five of them were living—without the authority and knowledge of them all.

The improbability of his having done so appears greater from the conceded fact that the negotiations leading up to the contract of April 19th covered a comparatively long period of time. It is not the case of John Rooney's executing the contract as a single transaction, hastily, headlong and without preliminaries; but the negotiations began in the middle of March, and there were six different conferences and conversations concerning the contract, between the Rooneys and the prospective buyers (Laderman and Frishman) before the contract in question was signed, during which time the option of April 16th was made (Exhibit C-1, Case, Page 289).

When the nature of these interviews and conversations are considered, the height of improbability appears that the contract was made without the knowledge and authority of all the heirs.

Joseph Rooney, a nephew of the defendants, was employed by Laderman, and told Laderman that the property was for sale (Case, page 2, last question and answer); and it accordingly appears that the Rooneys had the property on the market, and that the whole negotiations of sale

were started by the Rooneys. Two days later Laderman and Frishman visited the Rooneys at their home; John Rooney admitted them, and introduced them to his sisters, Elizabeth and Bridget, who sat in the room and ***not only heard the conversation*** but ***participated*** in it. John Rooney said in reference to the property, "We want to sell it." Frishman, in the presence of the women, asked the price of it, and John answered that $20,000 was the lowest price they would consider. Laderman testifies: "I think one of the women then said, if they had wanted to sell the property while their mother was living, they could have gotten considerably more, but at ***that*** time they did not want to sell the property." Laderman and Frishman then left saying they would think it over and let them know (Case, page 3 and 4). And that the first interview with the Rooneys.

A few days later Laderman and Frishman again saw John Rooney in front of the house, "and John Rooney said that he had spoken it over with the heirs and that they were willing to sell the property for $20,000; that if we did not want to pay that much they would not consider selling it for less. He told me there were seven heirs interested, and that he had spoken it over with ***all*** of them" (Case, page 5). When asked how he wanted the money, John Rooney replied "he wanted $10,000 in cash and $10,000 on first mortgage (Case, page 5, lines 18-20). Laderman asked him if he would take $15,000 in cash and $5,000 on second mortgage; and to that John Rooney said, "In order for me to do that, I have to talk it over with the

heirs and let you know how they stand on a second mortgage", and added that "he would let them know about it in a few days" (Case, page 6).

In the third conversation a few days later, John Rooney said "he had had a meeting of the heirs over at his house, and that they had decided that it did not pay them for to take a $5,000 mortgage, or any mortgage". (Case, page 6.)

The fourth conversation occurred at the Rooney home three days later, and John, Elizabeth and Bridget Rooney then talked with Laderman and Frishman. The intending buyers asked for an option that they might use it with their bank, and Elizabeth and Bridget said:

> "Why, sure there is no harm in that. * * * There is no harm in that; we will send ***John*** down, and ***he*** can give you a written option;" and this they said after John Rooney, answering Laderman and Frishman's inquiry about giving them an option, had said 'I guess so'." (Case, page 6, last 6 lines and page 7.)

Two days afterwards, John Rooney came down to Laderman's place of business and said, "You know I have come to give you that option you spoke about," whereupon Frishman drew the option and John Rooney signed it (Case, page 7, and see also Exhibit C-1, page 289). The instrument was made and dated April 16th; and although signed by John Rooney, it was made for the price of $20,000 and, as John himself admits (Case, page 154), was for the whole interests in the property.

"Q. Was anything said between you and him as to whether or not he had seen the heirs about it? A. He told me they had sent him down there to give us the written option that we spoke about, so that we could take it to our bank." (Case, page 8, lines 28-32.)

The sixth conversation took place of April 18 (the day before the contract in question was made). Laderman rang the Rooney door-bell; Elizabeth Rooney opened the door; and Laderman told her: "We have come to exercise the option that we are holding on this property". Bridget then came to the door and said that John was gone to Passaic to have his horse shod, and asked if there was anything important, and Laderman answered, "We wanted to close this deal," and she said, "Then I will send John down" (Case, page 9, last ten lines, and page 10). Thereupon Laderman and Frishman looked for and found John at the horseshoer's, and John inquired of them how they came to learn he was there (Case, page 10).

Now John admits that Laderman and Frishman did go to the blacksmith and found him there (Case, page 131, lines 20-27), and told him they wanted a contract to buy the Rooney place.

These six conversations are not ***specifically*** denied. Some of the defendants deny ***generally*** that they had authorized John to make the contract; but a ***specific*** denial of these successive conversations and interviews is not to be found in the whole range of the record.

If Laderman's testimony respecting these six conversations is true, the inference must be that the contract was made with the authority and knowledge of the defendants. If Laderman's testimony is true, John Rooney told him that all the heirs had met in the Rooney home, and had fixed the price ($20,000) at which all were willing to sell, and had empowered him to give the option of April 16th. Such would be the inference if there were no other facts and circumstances than those comprised in the six conversations which occurred before the contract of April 19th was made.

But the case for complainants does not rest here. The facts relating to the execution of the contract of April 19th and the subsequent conversations between Laderman and Rabinowitz and Senator Smith and the ratifying agreement of April 20th (Case, page 295, Exhibit C-5 ½) and the circumstances surrounding the signing of that agreement clearly show the power of John Rooney to make the contract for all the heirs and the reaffirmation of it by them all.

The contract of April 19th was made in the office of Senator Smith; and we call attention to some of the prominent facts and circumstances in the evidence from which the inference is imperative that ***the heirs*** other than John Rooney ***knew in advance of the appointed meeting in that office,*** notwithstanding their denial on the trial of the case.

John Rooney ("a good man," according to his sister, Mary: Case, page 213, line 10) swore positively that when he went to Senator's Smith office, he had not told his brother, Thomas, anything about it.

> "Q. And you had not said anything to Tom about it? A. No, sir. Q. Did you go to Smith's office without saying anything to him about it? A. Yes, sir. Q. How did Tom happen to go to Smith's office if you had not said anything to him about it? A. I don't know. Q. You had not said a word to him about it? A. No, sir, I had not. Q. Then some of your sisters must have said something? A. Maybe they did. Q. Which one of them said anything about it? A. I don't know which of them, I don't know." (Case, page 157.)

Thomas Rooney was admittedly at that office, and saw the contract made. John Rooney says so (Case, pages 132 and 134); Thomas himself says so (Case, page 179); Senator Smith says so (Case, page 54).

It is apparent that if John, as he positively states, did not tell Thomas about his proposed meeting at Senator's Smith's office to make the contract, some of his sisters must have told Thomas; and that if they informed Thomas, they understood that the contract was to be signed when it was signed, notwithstanding their denial.

John was asked and he answered as follows:

> "Q. Why didn't you tell Tom about this option that you had given? A. I never used to tell anyone when I was doing things, until

> this time. Q. Well, you made an option in which you expected these people would be bound, and you did not tell them anything about it? A. Yes, sir." (Case, page 157, lines 12-17.)

And again, when pressed:

> "Q. Neither Tom nor a single one of your sisters knew a word about this option? A. No, sir. Q. You had not spoken about selling the property? A. No, sir. Q. Had you said anything about selling the property? A. Well, now, I might have said something about selling. Q. ***You think you may have said something to your sisters about selling the property?*** A. ***I may have said something.***" (Case, page 158.)

Laderman testified that John Rooney introduced him to Thomas in Senator Smith's office, and Thomas said, "My ***sister*** sent me down here to see that everything was properly taken care of." (Case, page 12.)

Again it appears that at the time of making the contract, Senator Smith asked for the title deed of the property, and John Rooney said that the only thing he had that day was a tax receipt or bill, and Senator Smith told him to get the deed and he said he would (Case, page 279). Annie Rooney testified that her sister, Elizabeth, had possession of this deed (Case, page 245, lines 28-30). The deed (Case, pages 297-302, Exhibit Rab. B-1, put in evidence on page 279) came to Senator's Smith office "two or three days" after

April 19th and was left with his stenographer (Case, page 279). How did this deed get into the possession of Senator Smith (who produced it on the trial), from Elizabeth who had it in her possession ***unless she was told that Senator Smith wanted it for the purpose of carrying out the contract of sale?***

The facts to which Senator Smith testifies are inconsistent with the pretense that John Rooney did not have authority to make the contract. Senator Smith swears: "I asked him particularly if he had a written authority to make a contract in writing, and he said he did" (Case, page 55). * * * Then Mr. Thomas Rooney spoke up and said that his father had died and they all practically lived together and that Mr. John Rooney always had authority to act for all the heirs" (Case, page 56). On cross-examination, Senator Smith said:

> "Q. Now, did you hear Thomas say that John had no authority to sell the property? A. Thomas never said that; to the contrary, he led everybody to believe John did have the authority. * * * he said the estate belongs to all the children, and we all left it to John." (Case, pages 69-70.)

The pretense of Thomas (Case, page 180) that he told Senator Smith that John did not have authority not only contradicts the testimony of Senator Smith—a disinterested witness—but is in itself improbable. It is difficult to suppose that if Thomas had said, as he claims to have said, "Senator, I don't think my brother has a right to sign a contract like that," Senator Smith or even

Laderman or Frishman would have caused the contract to be executed by John. If John's authority had been challenged by his brother, where is the practitioner who would not have paused at that point and made, if not searching at least some ***casual,*** inquiry respecting the willingness of the heirs to sell the property? But neither John nor Thomas nor any one else asserts that Senator Smith raised any question about the attitude of the other parties in interest, although John says: "We gave the names of the heirs; I told them how many were interested; that there were seven altogether interested in it" (Case, page 132, last line, and page 133, lines 1-2).

Bearing in mind John Rooney's testimony that he had told Thomas nothing about the option and nothing about the prearranged meeting in Senator's Smith's office—testimony not doubtful or wavering but positive and strong—, John's story of what occurred immediately after he and his brother had left the office surpasses belief. He testifies that neither of them said a word about the contract, although he was providing to sell Thomas' interest. They were together for five or six minutes on the street; and he did not ask his brother how or why he happened to come down there (Case, page 159-160). Not a word of comment by one or the other.

In view of John's testimony that he understood that his brother had objected to his selling the interests of the family, it is all but incredible that he should have gone on with the project. He testified:

> "Q. But you understood that he objected to your selling his interest as well as your

sisters'? A. I suppose he did, yes, sir. Q. And you went on after that and signed this paper? A. Yes, sir. Q. Notwithstanding that? A. Yes, sir. Q. Which pretended to sell the whole thing? A. Yes, sir. Q. And never said a word to Tom about it? A. No, sir." (Case, page 160.)

Both John and Thomas admit that on the very afternoon and evening of the execution of the contract of April 19th, both saw their sisters at their home. It is impossible to believe that John and Thomas refrained from speaking to them on that night or the following day of the important fact that John had signed this important contract for them. And yet this is their testimony.

John Rooney said he reached home that day about four or five o'clock and saw his sisters. (Case, page 160.)

"Q. What did you say? A. I did not tell them a word about it. Q. At no time during that night? A. No, sir; I went out again after I came home. Q. Did you intentionally keep from saying it to them, or did you forget to say it? A. I don't say it was intentional; I think I forgot about it." (Case, page 161.)

Thomas Rooney when questioned about the evening of April 19th testified:

"Q. Did you say anything to your sisters about it that night? A. No, sir. Q. Did you see them that night? A. Yes, sir." (Case, page 196.)

The contract of April 19th, was signed in the early afternoon, and Joseph Rooney came for the ratifying agreement of April 20th about eight o'clock in the evening of the latter day (Case, page 202); nearly a day and a half intervened between the signing of the two papers. The evidence of all the heirs is that when Thomas dictated this paper of April 20th ***without a word of explanation as to its purpose,*** all the heirs signed it for themselves except Elizabeth and Mary, Bridget signing for Elizabeth and Annie signing for Mary.

The body of this paper (case, page 295, Exhibit C-5½) is in the handwriting of Joseph, the nephew of the Rooneys, (Case, page 124), and was dictated in the Rooney home by Thomas, (Case, page 125, last eight lines). All the sisters were in the house at the time (Case, page 165).

John Rooney testified of this incident:

"Q. After you signed this paper what did you say to your sisters about it? A. Nothing. Q. Do you mean to tell me you did not say a word to your sisters? A. Not a word." (Case, page 171.)

Thomas Rooney swears that he was equally taciturn (Case, page 198).

Annie Rooney testified that Joseph, her nephew, handed her this paper without saying a word; and the court asked ***"Somebody*** told you what you were signing for? A. I did not know." (Case, page 224.) On cross examination, she says that she signed this paper without reading it and without

having been told what it was and yet signed it of her own accord (Case, page 240).

Can it be seriously questioned that this paper would have been signed in the circumstances testified to by the heirs unless they had previously given authority to John to make the contract in question?

From the facts above stated alone, the inference is strong that John was authorized to make the contract, according to the principle of the cases before quoted, defining a contract implied in fact.

II

EVEN IF ALL THE DEFENDANTS HAD NOT AUTHORIZED THE MAKING OF THE CONTRACT OF APRIL 19th, NEVERTHELESS ALL THE DEFENDANTS MADE THE AGREEMENT OF APRIL 20th EITHER BY SIGNING IT THEMSELVES OR BY AUTHORIZING OTHERS TO SIGN IT FOR THEM, AND THUS ADOPTED AND RATIFIED THE CONTRACT OF APRIL 19th, WITH ALL ITS TERMS.

The law upon this question is well settled, and is to the effect that when a person without authority makes a contract for another as principal, and when such principal learns that such unauthorized person has made the contract and approves or ratifies it, ***without learning the terms of the contract which he approves,*** he is bound by the contract with such terms as were made. This rule is in perfect harmony with the rule in the law of agency sometimes expressed that the principal is bound by ratification of the acts of the agent known to him, because when the principal becomes aware

that a person without authority has made a contract for him, and the principal adopts it, the principal is chargeable with knowledge of the terms, which he is bound to know by inquiry, so that when he approves a contract without learning the terms by inquiry, he ratifies it in whole as it was made.

This rule which is obviously based upon common sense and justice is frequently expressed by the courts. We cite two instances wherein the rule is well and succinctly stated. In Meehan vs. Forrester, 52 N. Y. 277, a lawyer Pinkney, acting for his client the defendant, Bertrine, without authority, made an agreement with the plaintiff whereby Pinkney, instead of collecting a debt which he was authorized to do, received a deed for Bertrine and delivered it to Bertrine. Rappalle, J. at pages 279 and 280 states a rule as follows:

> "The agency of Pinkney was to collect the debt, not to purchase land. When under these circumstances Pinkney delivered to Bertrine the Deed obtained from the plaintiff, ***it was the duty of Bertrine to inquire*** and Pinkney to communicate under what arrangement the deed had been obtained. In the absence of any evidence to the contrary, the presumption is that these duties were performed. (2 Hill, 464.) ***If not,*** and Bertrine received the Deed blindly ***without receiving or making any inquiry,*** he must be deemed to have ***confided in the whole matter*** to his attorney ***and adopted whatever arrangement*** the latter may have made to obtain the deed."

In that case the arrangement adopted was that the deed should be held as security for the debt.

Likewise in the present case there is no evidence that John Rooney or anyone else told the other makers of the writing of April 20th, that John had not given the particular deed with covenants that he gave, so that it is ***presumed,*** as in the case last cited, either that they were told the kind of contract that John had made, or if they were not told, they must be deemed to have confided the whole matter to John and adopted the very contract which he made with all its terms.

In Bush v. Wilcox, 82 Mich. 336, 47 N. W. Rep. 328, 21 Am. S. R. 563, at page 565, the rule is expressed as follows:

> "It is the duty of the principal or the person who becomes so by adopting the contract made in his name for him, to make all needed inquiry and investigation into the facts, acts and representations of the person whom without authority, has assumed, to act for him before he adopts the contract as his own. For in adopting the contract he not only adopts it as written, but he thereby adopts as his acts all the instrumentalities of the self constituted agent in obtaining the consent of the opposite party to enter into the contract. By adopting the acts of the self constituted agent, he seeks to appropriate to himself all the benefits to be derived from it as fully as if he had himself induced in the first instance, and with this he must assume all the liability which attach to it."

The proposition expressed in these two cases is supported by many cases therein cited.

If the makers of the writing of April 20th then knew that the contract of April 19th had already been made, and if the writing of April 20th was to put in writing and ratify the authority which had previously been given to John Rooney, they became bound by such ratification to all the terms of the contract of April 19th, whether they knew them or not. And this is so because they were charged with knowledge which they should have acquired by inquiry from John as to the terms of that contract; and in the absence of evidence it is to be presumed either that John communicated the terms to them or that they confided in him and adopted them.

Under the evidence, it is hardly possible to suppose that the writing of April 20th was not signed for the purpose of putting in writing and ratifying the contract of April 19th.

According to the testimony of Thomas, John and Joseph Rooney, (Case, pages 198, 163 and 126) after Joseph said there were some "hitch" in the office of Senator Smith about the contract, Thomas Rooney, without any instruction whatever from Joseph, dictated to Joseph the contents of the writing of April 20th. Thomas, therefore, clearly knew the purpose and effect of the paper which he himself dictated without any instructions. But the sisters Bridget and Annie testify that not a word was said to them as to what the paper meant (Case, pages 228, 229, 249). They said they thought they

were signing it as heirs (Case, pages 228, 229, 249 and 250), and that by signing as heirs they were signing as heirs of the land in question which descended to them.

On the argument before the Vice Chancellor, counsel for defendant suggested that the signing of the writing of April 20th by the heirs was without any purpose beyond obtaining a list of their names. The argument is unreasonable. What possible object could the complainants have in securing the list of names of the heirs when the list (Case, pages 132 and 194) had already been given by John and Thomas Rooney (and this is so from the testimony of John and Thomas themselves) to Senator Smith in his office and had been written down by him. And is it not absurd to suppose that if only a list of names had been required, the writing would have been passed around to be signed by each individual heir instead of their names being written out by any one member of the family, and that Thomas would have expressed by his dictation a clear authority to John to sell the property? The instrument which he dictated shows on its face that it was to be subscribed by the heirs. It runs, "We the ***undersigned*** heirs of James Rooney, appoint John Rooney with power of attorney and ***invest*** John Rooney with full power to act in our behalf on sale of estate of late James Rooney."

If there were otherwise a question that the paper of April 20th was made without their knowledge of the fact that the contract of April 19th had been made, the testimony of Annie and Mary Rooney sets the matter at rest. Although

the defendants had evidently rehearsed their story to the effect that they thought they were signing the paper of April 20th "as heirs" (but without denying that they signed it as heirs in order to ratify John's authority), and although they testified at times that they did not know that the contract of April 19th had been made until two or three days afterwards (Case, page 225 and 200 and 201) they make two illuminating slips of memory, one by Annie, the other by Mary. Annie testifies in a most positive manner that she was aware of the contract of April 19th ***on the day it was made*** (Case, page 225, lines 18-19 and pages 231 and 234) and Mary testifies that she and the other heirs were aware of the negotiations of Laderman to buy the property and give mortgages ***as far back as the middle of March.*** (Case, pages 214 and 215.)

These lapses of Annie and Mary were in direct conflict with other parts of their testimony.

Her counsel first questions Annie in regard to the writing of April 20th and immediately afterwards she testifies about the paper of April 20th her attention is called to the contract of April 19th; there can be no question, therefore, but that she understood the difference between the two papers and could not have confused them. She was then examined as to the time when she learned that the contract of April 19th was made.

> "Q. When did you first learn that John had been trying to sell the homestead property? A. The day the contract was made. Q. What was said then between you and John

with reference to it? A. Nothing between John and me; John did not say anything to me about it. Q. Who else learned of it that day? A. My sisters." (Case, page 231.)

Here is clear, positive and substantive evidence from one of the defendants on her direct examination that she and her sisters knew of this contract of April 19th, on the very day it was made.

Under the rule of law expressed in such cases as Meehan vs. Forrester, supra, and Rush vs. Wilcox, supra, can there be any question from this testimony alone that whatever heirs signed the writing of April 20th, with knowledge that the contract of April 19th had been made, adopted and ratified the contract of April 19th with all its terms?

On cross-examination Annie positively commits herself to her direct testimony that she and her sisters knew of the contract of April 19th on the day when it was made.

"Q. Well, I think you said to your counsel that the first you ever heard of the sale of the property was on the day the contract for the sale was made? A. Yes, sir. Q. Well, that contract was made on April 19th? A. Yes, sir, sometime in April. Q. What did you hear about it on that date? A. I heard my brother made a contract; my sister told me, my sister Bridget. Q. She told you that, on April 19th, your brother John had made a contract to sell this property? A. Yes, sir.

Q. How did Bridget come to tell you that on the 19th of April? A. I don't know. Q. Where were you when she told it to you? A. In the house, in the kitchen. * * * Q. Bridget told you that John had told her on that day that he had sold the property? A. Yes, sir. Q. Who was present when Bridget told you this? A. ***My sister, Elizabeth."*** (Case, pages 233-234).

She further says that neither she nor Bridget, when they learned on April 19th that the contract had been made on that date, expressed any dissatisfaction or unwillingness about it (Case, pages 234-235). The reasonable inference from this is, first, that all the heirs had previously authorized John to make the contract and, secondly, that when Bridget signed the ratifying writing of April 20th for Elizabeth and Annie for Mary, ***neither Bridget nor Annie would have so signed unless Elizabeth and Mary had understood that the contract of April 19th had been made and had expressed their assent to it.***

As is shown by the stamp on the two checks for $500 each which were given on April 19th to "John Rooney, Attorney for estate of James Rooney" (Case, page 289, Exhibit C-2, and page 290, Exhibit C-3), they were kept for 11 days before they were deposited in the bank for collection on April 30th. Each of these two checks bears the signature "John Rooney" on the back. John admits that this signature was on each check when it was deposited in the bank and that it is not in his writing (Case, p. 176). Each sister positively denies that she signed that

name and each positively refused to admit that it was signed by either sister, although each knew the others' handwriting.

It is apparent from a mere comparison of the handwriting on these two checks of the name "John Rooney" with the names "Bridget Rooney" and "Elizabeth Rooney" on the writing of April 20th (Ex. C-5 ½), that the same hand wrote them all.

How did the sister who wrote "John Rooney" on the checks happen to do so? The reasonable explanation is that the sister who wrote "John Rooney" on the checks took them to the bank for collection, probably for John's convenience; and that it was supposed by him and by that sister that she could sign his name for the purpose; and that she first wrote John's name on the checks and presented them at the bank, but inasmuch as the payee named on their face was "John Rooney, Atty. for Est. James Rooney", and Senator Smith had written the words "Atty. for Est. James Rooney" on the back (Case, page 3, 62 and 63) the bank required that John Rooney should sign his name over the words written by Senator Smith in order to make the proper endorsement. Each check, it will be observed, bears the name of "John Rooney" twice on its back, once before the words endorsed by Senator Smith and once afterwards.

The significance and importance of this is that one of these sisters signed "John Rooney" on these checks as late as April 30 when they were deposited. If this is so, what becomes of their carefully fabri-

cated story that none of these sisters knew John had made the contract of sale until two or three days afterwards, and that they then all repudiated it?

Ratification lies in the fact that these checks were held from April 19th to April 30 and were then deposited with the endorsement of one of the sisters. ***This was a family who had no secrets from each other; John's custom was to tell the different things that took place; and each member let the others know*** (Case, page 213). Considering the close relationship of these sisters and brothers with each other, it is evident that the existence and nature of these checks were known not only by the sister who endorsed them but by all the others also. The checks were payable to John Rooney as attorney for the estate of James Rooney. This means that the checks were given and deposited for the benefit of each of the defendants. Presumably with this knowledge, none of them ever repudiated, by notice to the complainants or otherwise, the act of John Rooney in depositing these checks for collection ***for their common benefit*** eleven days after the contract was made, although all admit in their testimony that they knew two or three days after April 19th that John had made it (Case, page 162, lines 10-12) and had the checks (Case, page 258).

Moreover John retained the proceeds in his possession, and never offered it until May 31 (Case, page 93, Testimony of Bonney, a disinterested witness and neighbor of the defendants).

Such conduct and acquiescence creates a ratification. In Keim vs. Lindly, 30 Atl. Rep., 1064, Pitney, V. C., says:

> "A contract made by an agent without authority may be ratified and adopted by subsequent conduct and even by mere silence." Fry, Spec. Perf. (3rd American Ed), pp. 509; Pom. Cont. pps. 77, 78: Wat. Spec. Perf., pp. 243; Whart. Ag. pp. 85-89.

Again the Vice Chancellor (at page 1065) quotes Sir John Stuart with reference to a party's ratification by silence:

> "Every additional day and hour of silence after he became privy to the contract operated as tacit acquiescence, and raised the presumption of assent."

III

IF JOHN ROONEY WAS NOT AUTHORIZED TO MAKE THE CONTRACT WITH THE COVENANTS THEREIN, AND IF THE DEFENDANTS DID NOT RATIFY IT, WITH THE COVENANTS, AND IF JOHN ROONEY WAS ONLY AUTHORIZED TO MAKE A DEED WITHOUT COVENANTS, NEVERTHELESS COMPLAINANTS HAVE A RIGHT TO ACCEPT SUCH A DEED WITHOUT COVENANTS.

Such a deed they have asked for, and now ask for, if it should be held that John's authority was limited.

The general principle, that where the agent makes a contract wherein he contracts for more than he was authorized to do, nevertheless the party contracted with may claim the specific performance of which the agent was authorized to contract, is expressed in ***Keim v. Lindly, 30 Atl. 1081, 1082,*** where the agent had contracted to give a larger tract of land than he was authorized to do, as follows:

> "Now if the complainant were here asking the enforcement of the contract as it actually reads, for the price therein named, the defendants' contention would be unanswerable, for it is admitted that such was not the intention of the parties. But the complainant is not asking such relief, and asks only just what defendants must, pro hac vice, admit to be the true contract, viz. to convey lots nos. 5, 6, 7 and 31 for $10,000. Hence it is difficult to see how the defendants are injured by the mere insertion of a description of lot No. 4 in the second contract."

The Vice Chancellor then in his opinion at page 1081, cites many cases wherein the general rule in equity is established in many different instances where the complainant if he chooses is entitled to a decree for the performance of a contract made by an agent limited to the thing he was authorized to contract for even if he has made a contract beyond his authority. In the cases cited, the effect of parole variations by an agent from the written contract upon complainant's right to specific performance was involved, and in all the cases cited, it was held that notwithstanding the agent had exceeded his authority in making such parole agreement, never-

theless, the complainant was entitled to have specific performance of such contract as was within his authority if the complainant chose to have it.

Evidently the rule that the complainant has the right to have the contract performed, limited to the authority actually given although the agent exceeded it, in the cases quoted, where the excess authority consisted in making parol variations to the written contract, would for like reason apply to our case where the excess authority, if there were such excess, consisted in Rooney's contracting to give a deed with covenants.

No reason appears why there should be any distinction in principle between the complainants' right in those cases and in our case.

It will be observed that while the decision of the Vice Chancellor was reversed in Keim v. Lindly because the Vice Chancellor held that the agent, who was a ***professional broker*** in that case, had authority other than the usual authority of a real estate broker, while the Vice Chancellor was reversed as to his conclusions of facts in that respect, nevertheless, the rule of equity that we have referred to and cited in the cases respecting complainant's right to have the specific performance of a contract limited to the authority actually upon the agent, is in no respect denied by the Court of Errors and Appeals.

In Howe v. Harrington, 18 N. J. Eq. 495, it was held that the effect of a deed with covenants of warranty executed by an attorney, whose power

only authorized him to sell and convey and contained no authority to covenant, must be ***considered*** as a deed of bargain and sale without covenants.

It was also held that while such deed would by estoppel convey after acquired property, nevertheless, it conveyed whatever equitable title the grantor had.

If such effect is given to a ***deed*** executed by an agent, beyond his authority, certainly such effect should be given to a ***contract*** to make such a deed given beyond his authority. In each case, it is entirely equitable and just to hold that that person with whom the contract or deed is made takes by such deed or contract whatever the agent actually had authority to contract for, although he contracted for more than he was given power to do.

As against John Rooney, who signed the contract, complainants are entitled to have specific performance according to its terms.

Thomas Rooney is likewise liable to have it specifically performed. The unbiased testimony of Senator Smith shows that Thomas stated, in the presence of Laderman and Frishman, that John had the authority to make the contract (Case, page 56); and this was in itself an authority then given by Thomas to John, as far as the rights of Thomas are concerned, even if it had not been previously given; and if it was not an authority, it would be at least as estoppel against Thomas, which would not permit him to deny the authority which he then said

John had. Senator Smith read to Thomas all the particulars of the contract (Case, page 75), and Thomas is bound by it with all its terms.

It is difficult to find a reason for the refusal of Vice Chancellor to decree specific performance against Mary A. Rooney, widow of Joseph, a brother of the defendants. In her testimony she makes no claim that she did not understand that the property was to be sold and offers in her evidence no defense to the prayer for specific performance against her. She understood that in signing the writing of April 20, she was confirming John's sale of the property. She testified:

> "Before he (her son, Joseph) went down to the Homestead, he said he was going down to Uncle John's to get a paper signed by the heirs, for, as I understood, to give the people that John was going to sell the place to. Q. Then when he came back? A. He had this paper with him. Q. And you signed it. A. A. Yes, sir." (Case, page 275.)

From this it is clear that she had authorized and was satisfied with the sale. She also says that on the day the contract of April 19 was signed, John told her the price was to be $20,000.00 (Case, page 276).

She does not testify that she was unwilling to carry out the contract (Case, page 274 and 276).

Frederick Barnes, the deputy sheriff (Case, page 121) says that Mary A. Rooney told him that John was going to get $20,000.00 for the place and that ***it was satisfactory to her*** (Case, page 122).

Mr. Rabinowitz says that on June 25th, 1923, he went to the home of Mrs. Mary A. Rooney with Mr. Barnes; told her that he had bought a half interest in the contract; and asked her, ***"Was it perfectly all right that John had authority to enter into that contract",*** and she said ***"It was perfectly all right as far as I was concerned".***

Counsel for the defendants then suggested to him that Mrs. Rooney was a widow, and he answered that that was so, but he asked her what John had told her he was going to sell the property for, and she answered $20,000, and he then inquired whether that was all right as far as she was concerned, and she replied "Yes". He continues that Joe "was sent up by Mr. Frishman to get all the heirs to sign a paper in which they were satisfied with that sale that John had made; and she said that paper had been obtained and Joe brought it back to Mr. Frishman; that is the paper right here—C 5½ for identification". (Case, page 82.)

This testimony of Barnes and Rabinowitz is not denied by Mary A. Rooney, and it is apparent from her own testimony (Case, page 274-276) that she authorized and ratified the contract made by John and was, when testifying, willing that it should be carried out; and she nowheres suggests that a decree of specific performance should not be made against her.

It is admitted that not only Mary A. Rooney and John and Thomas signed the writing of April 20th, but Bridget and Annie also. Bridget and Annie, by signing this paper, clearly ratified and approved

the contract even if they had not previously given John authority to make it.

The writing of April 20th runs as follows:

> "We the undersigned heirs of James Rooney do appoint John Rooney with power of attorney, and do ***invest*** him with ***full power*** to act in our behalf ***on sale*** of estate of the late James Rooney."

This phrase, ***"on sale*** of estate of late John Rooney" naturally refers to the sale ***already made,*** and that is the only reasonable construction of the expression under the conceded facts. This language was dictated by ***Thomas Rooney*** himself after he and John had heard all the terms of the contract read on the preceding day (Case, page 75), and was evidently language used and designed by Thomas to give the same ***full*** power to John to act on the sale as both he and John had assured Senator Smith that John had, before the contract was made.

It is, of course, not necessary that the ratification of a previous contract should be clothed in any particular form of words; the intent is to be collected from the words used in connection with the subject matter. With the background which the evidence discloses, it is hardly possible to believe that the language of this writing dictated by Thomas and signed by the other heirs, who must have had knowledge of the previous contract of April 19th, meant anything other than a ratification of the contract that John had already made.

In respect to the liability of Elizabeth and Mary Rooney, we call attention to some special facts and circumstances which completely explode the whole carefully composed story of the defense. The story apparently elaborately prepared was that none of the sisters had ever known that John was intending to sell the property or that they had never talked over any such project together, and that they knew nothing of the contract of sale until two or three days after it had been made.

In the face of that story, Mary Rooney in an astonishing slip actually testifies that John and ***all the sisters*** talked over the proposition made by Laderman to give them mortgages on the sale of the property ***while the negotiations were going on,*** and that ***all of the sisters objected to the taking of mortgages*** and wanted the $20,000 in cash (Case, pages 213-219).

Now the great point to this testimony is that Laderman proposed such mortgages on his second visit to them, which was ***a few days after the middle of March*** (Case, page 2 last paragraph, page 3 first two lines), which fixes time of his first visit; (page 4, last two lines, and page 6).

In the conviction that this slip on the part of Mary Rooney completely and in itself demolishes the whole structure of the defense, we set it down here at some length.

> "Q. You follow out John—what he wants done? A. Yes, sir. Q. He told you the different things usually that took place? A. Yes, sir. Q. You and your sisters let each

other know of everything that was going on? A. Yes, sir. Q. You had no secrets from each other? A. No, sir. Q. You often talked about this property that was left to you by your parents, and as to what you ought to do with it? A. Yes, sir. Q. And John talked about selling it off and on? A. Yes, sir. Q. And Tom wanted to sell it, and John wanted to sell it? A. Yes, sir. Q. It had been in the market for some time, for sale? A. No, sir. Q. You know they had been talking about selling it? A. Yes, sir. Q. They asked $20,000 for it? A. Yes, sir. Q. You did not want to take a mortgage on it? A. No, sir. Q. Why not? A. John did not want to take it. Q. When did he tell you that he would not take it? A. He said it there in the house. Q. How did he come to tell you he would not take a mortgage on it? A. He said he would not take any mortgage; he said the sum they offered him, and then they wanted a mortgage, and he would not take the mortgage. Q. Now the sum they offered was $20,000? A. Yes, sir. Q. And then he wanted cash for it? A. Yes, sir. Q. And they wanted to give $15,000 cash? A. Yes, sir, I think so. Q. Then they wanted you to take a second mortgage of $5,000? A. Yes, sir. Q. John told you that? A. Yes, sir. Q. Did he tell you that they said they could not get money from the bank and they wanted to improve the property, and therefore they wanted you to take $15,000 cash and take a second

mortgage? A. Yes, sir. Q. Did you all agree you would not do that? A. Yes, sir. Q. Elizabeth agreed to it, and you and Annie? A. Yes, sir. Q. And Tom? A. I don't know about Tom. Q. All you girls said you would not take it unless you got the whole $20,000 in cash; you would not take a mortgage for $5,000 anyhow; you said they had offered $15,000 in cash, and wanted you to take a $5,000 second mortgage? A. Yes, sir. Q. John told you that at the time? A. Yes, sir. Q. He came to you and said these people wanted you to take $15,000 in cash and take a second mortgage? A. Yes, sir. Q. Did he tell you they had said that just before he told you— A. I guess it was a week or so after. Q. That they wanted you to take $15,000 in cash and $5,000 on mortgage? A. Yes, sir, John told us about it. Q. Now, I understand you to say that John told you that the persons who were talking about buying the property had told you that they wanted to pay $15,000 in cash and wanted you to take a mortgage, and John told you this, as you understood it about a week after these persons had made that proposition to John; is that right? A. Yes, sir. Q. And did you also understand from John that before that time, they had been willing to give $20,000 in cash? A. No, sir, I did not understand that before that time. Q. And you insisted that you should have the whole $20,000 in cash and told John so? A. I did not tell John. Q. Did you say, and all of you

agreed, when John spoke about it— A. I did not say anything about $20,000. Q. You say John said that these people who wanted to buy the property wanted to give $15,000 in cash and not $20,000. A. That is right. Q. And that was about a week after; and you said you were not willing to take $15,000? A. Yes, sir, I was not willing. Q. You said that to John? A. Yes, sir." (Case pages 213—215.)

A little later she testified that no other person than Laderman and Frishman had talked about buying the property, and that this talk of the sale and mortgages related to the sale to them (Case, pages 216, last six lines, and page 217, lines 1 to 4).

Again, in speaking of her sister Bridget, Mary Rooney said:

"Q. You and she and all of you talked over the whole thing? A. Yes, sir. Q. And you think she knew about the $20,000 having been offered? A. I think that is right. Q. And Bridget talked with you and Elizabeth talked with you about it? A. Yes, sir. Q. And what is the other one named? A. Annie. Q. They all talked with you about this? A. Yes, sir. Q. None of them objected to the price? A. No, sir." (Case, page 219.)

But there are many other facts in the evidence showing the knowledge of the sale by Mary and Elizabeth and their authorization and subsequent confirmation of it.

Elizabeth was present at the first meeting in the middle of March between Laderman and Frishman and John, who introduced them to Elizabeth and Bridget, both of whom were present and interested in the sale (Case, page 3).

After the proposal to give the mortgage had been made, John said, as we have already shown, that there had been a meeting of all the heirs about the cash price and mortgages. Then on the fourth conversation Elizabeth said that John would give the option and she would send him down for the purpose. (Case, page 7.) Pursuant to her promise, John actually went to Frishman and the option was given on April 16th, John stating that the heirs had sent him down to give it. On April 18 Laderman met Elizabeth at the door and told her he had come to exercise the option and close the deal and she sent him to the blacksmith to see John.

After the making of the contract of April 19th, Laderman went to the Rooney home to see John about the sale of some lots in the City of Clifton; and while John was changing his clothes, Laderman asked Elizabeth and Bridget whether they had found a place to move to, and they answered that they had found one or two places but they were high and they had not yet made preparations, and they said the reason why they had not gas, water or electricity in the house was that they were old fashioned, and that is the reason "we want to sell this place, because it is getting too city for us" (Case, page 20-21).

The fact is undisputed that at the interview with John at the horse shoer's, he said that the buyers could not have the property as early as June 1st., but that the heirs had decided "they must have until July 1st because it will take them a little time to find a piece of property suitable for them to get into" (Case, page 11). This very fact clearly indicates that they all must have discussed and considered this before the contract was made.

The fact is that John Rooney repented of his bargain. According to the concurring testimony of all the heirs, he was the leader among them. It was ***he*** who disuaded Elizabeth after the contract of April 19th was made; and this is evident from the fact that after John had announced that there was some difficulty about getting Elizabeth to sign the deed, Laderman went to the house to endeavor to have her carry out her contract; and when he charged her there with having made the contract, instead of saying she had not authorized it, she said that the law would not compel her to sell the property; and when Laderman told her that he would sell her back the house to live in with as much ground as she wanted, and proposed that she choose any two or three real estate men and let them settle the fair value of the property, and he would sell back to her on that basis, she said, "that sounds pretty reasonable"; and then she suddenly went to John Rooney and came back with a changed mind. (Case, page 23.)

And John Rooney changed ***his*** mind a few days after he made the contract, because he learned

that the City of Clifton was offering $400. a piece for the lots, and realized that he had sold the property too cheap, and falsely pretended that he was willing to sell but that Elizabeth stood in the way (Case, page 22 and also page 24).

That this is so appears from the testimony of Senator Smith, Laderman and Rabinowitz, that when Rabinowitz stated to John that he would be willing to take a deed from all the heirs except Elizabeth and leave Elizabeth's interest to be settled by legal proceedings, John Rooney at once refused and said he would seek counsel. (Case, page 61, lines 25 to bottom.)

Elizabeth Rooney's testimony, when read in connection with that of the others, indicates her knowledge and approval of the contract of sale, and the writing of April 20.

It is highly improbable that Bridget would have written her name for her on the writing of April 20th, without her authority. If Bridget wrote her name, it was probably done because Bridget was a better writer or because Elizabeth at the moment was engaged in some household task, the paper being signed just after their evening meal, and so Annie probably did the same thing for Mary for a like reason.

On direct examination, Elizabeth testified that she was "down town" when the writing of April 20th was signed (Case, page 267). When pressed on cross-examination, she directly contradicts her testimony in regard to her whereabouts.

"Q. And at the time this paper was signed from Joe Rooney, where were you that night? A. I was up stairs; I was not feeling well. Q. You were up stairs? A. Yes, sir. Q. You were not out of the house? A. No, sir. Q. You were not feling well? A. No, sir. Q. What were you doing up stairs? A. Lying down in bed. Q. For a rest? A. Yes, sir." (Case, page 271.)

"Q. And when Bridget did tell you that she signed this paper, what did she say the paper was? A. She did not say what it was to me; she said she put my name on it, and that is all I know about it. Q. Did she tell you how she came to sign it—who asked her to sign it? A. No, sir, she did not say. Q. And you were not interested to know what kind of a paper she had signed for you? A. No, sir, I was not interested at all." (Case, page 271.)

When Elizabeth thus testifies that Bridget told her either that night or the next morning that Bridget had signed a writing ***for her,*** without explaining what it was, and that she, Elizabeth, was not interested in knowing what it was, the only reasonable inferences are either that Bridget did explain what it was or that Elizabeth knew and understood what the paper was from the previous agreement and understanding between them.

On direct examination, Bridget said that when she wrote her own and Elizabeth's name on the paper of April 20th, Elizabeth was not in the house; and on her cross examination, she declares that Elizabeth at the time was in some other part of the house (Case, pages 250 and 262).

John Rooney, when asked by his counsel how many of his sisters were present when the writing of April 20th was signed, said that he did not know, they were in the kitchen (Case, page 135). On cross examination he said not all the girls were in the same room, but all were in the house when the paper was signed (Case, page 165). Later he said that Joe and he were in one room and the girls were all in the other room and all there together, and that he supposed they had all signed it.

Recollecting John's story that he made the contract of April 19th without the knowledge of his sisters, observe this testimony of his.

> "Q. Had you said anything about selling the property? A. Well, now, I might have said something about selling. Q. What did you say about selling to Laderman and Frishman? A. I thought the people would be satisfied to take a good price for the property. Q. You think you may have said something to your sisters about selling this property to Mr. Laderman? A. I may have said something." (Case, page 158.)

In this connection notice also that John Rooney on his direct examination is asked whether "up to the time you made the contract to sell he had ever received the consent of the girls to sell the property" and he answers "No, sir, not ***direct.***" (Case, page 136.) This clearly implies that he had their consent though it was not direct probably meaning that it was not directly or formally given in writing.

Again he testifies that he had discussed selling the property with his sisters before the contract was made. (Case, page 158, lines 20-23.)

Cornelius S. Bonney was a friend and neighbor of the defendants and was produced by them as a witness. He testifies on direct examination that he attempted to persuade the sisters to sign the deed and carry out the contract (Case, page 93). Why should their friend and neighbor, who was a real estate dealer and presumably a man of good business judgment, have advised them to carry out the agreement unless, upon hearing the facts as stated to him by these defendants favorably to themselves, their story satisfied him that they were bound to give the deed? It was John Rooney who called him in (Case, page 99).

It is clear from his testimony that all the heirs, save Elizabeth and Mary at the utmost, did not when he conferred with them, make any pretense to him that any heirs other than Elizabeth and Mary were unwilling to execute the deed. (Case, page 100.)

Although in the part of his testimony already referred to, he speaks of ***two*** sisters as unwilling to sign the deed, he testifies that John had told him that ***one*** of the two of them had refused absolutely to sell the place. (Case, page 93.)

In his cross-examination, it plainly appears that only one sister in fact was unwilling to carry out the contract. (Case, pages 101, 102.) This sister, whether Elizabeth or Bridget, did not specifically claim to him that she had not authorized the

sister who signed for her; he probably thought from her language that she thought she might evade the contract merely because her signature was not in her hand; and hence his conduct in urging her to carry out the contract is explained. That such was his understanding appears from his following testimony.

> "Q. When you used the words; one of the sisters said that another sister had signed for her, what did you understand to be meant?
>
> Mr. Harding—I object.
>
> The Court—Objection sustained.
>
> Q. Had signed what for her? Did she say? A. Had signed the Power of Attorney. Q. Had signed ***without her knowledge?*** A. ***I don't think there was anything said about that.*** (Case, page 103.)

Bonney says that John Rooney, before the contract of April 19th, offered him this property for $20,000, and that Thomas was present at the time. (Case, page 97.)

The significance of this testimony is that it is hardly conceivable that the definite and positive offer to sell for $20,000 would have been made to Bonney by John in the presence of Thomas, unless it had been authorized by the other heirs.

On November 8th, 1923, Bonney gave the testimony respecting the offer of the property to him for $20,000. On April 28th, 1924, John Rooney directly contradicted this testimony of Bonney, who was his own witness, neighbor and friend. (Case, page 149.) Then Bonney's testimony given

six months before was called to his attention; and although he had just sworn that he was sure that he had never offered the property to anyone but Frishman, he admitted that Bonney had spoken to him about buying the property, but said he had done so subsequently to the contract with Laderman and Frishman. (Case, page 149.)

Here is the characteristic case where a dishonest witness, when cornered, tries to escape by admitting such part as he thinks he is compelled to admit and maintains his falsehood in the rest.

This testimony of Bonney that a short time before the making of the contract of April 19th, John in the presence of Thomas had offered the same property at the same price to Bonney is extremely important as showing that the property was on the market at the same price before the sale by John Rooney, and that it is hardly conceivable that it should have been put upon the market without the approval of all the heirs.

IV.

THE DECISION IN LINDLY VS. KEIM, 54 N. J. Eq., 418-422, IS INAPPLICABLE TO THE FACTS OF THIS PRESENT CASE, AND DOES NOT DENY THE RIGHT OF THESE COMPLAINANTS TO SPECIFIC PERFORMANCE.

The rule in that case is that where a principal makes a parole contract with his ***broker*** for the sale of land, ***and nothing more is said,*** the broker's authority, ***from the custom between professional***

brokers who sell on commission and their principals is limited to bringing the parties together and does not extend to making the contract of sale.

The Vice-Chancellor, speaking of the agent in question in that case, said: Mr. Gardner was for many years a real estate agent doing business in Atlantic City. ***30 Atl. Rep. 1065.***

In the same case in this Court (54 N. J. Eq., at page 423), this Court approves the language of the court below, and says:

> "The learned Vice Chancellor in his opinion has reviewed at considerable length all the cases in our courts touching the power acquired by ***an ordinary real estate*** agent or broker ***by his employment as such,*** and has summed up the results in these words: 'The mere employment of an ordinary real estate broker to effect the sale of a parcel of land, even though the price and terms be prescribed, does not amount to giving present authority to such broker to conclude a binding contract for the same. Moreover, such authority is not usually to be inferred from the use by the principal and broker in that connection of the terms 'for sale' or 'to sell' and the like. These words in that connection usually mean no more than to negotiate a sale by finding a purchaser upon satisfactory terms.' I am willing to adopt this language as expressing the established law of this State ***respecting the relation between a real estate owner and the ordinary real estate agent or broker*** and the author-

ity acquired by the latter over his principal's lands by virtue of ***his*** employment."

In the present case, John Rooney was not a professional broker selling on commission. He was a tenant in common and the trusted brother of the other defendants, as they all admit; and if ***any*** authority was given to him by the other heirs, certainly it was not merely to bring them and the purchaser together. But the evidence of Mary Rooney and Laderman and others, already quoted at length, shows that the other heirs were present when the negotiations were going on and took part in them, so that it is unreasonable to suppose that the authority given to John was confined to bringing the parties together.

The contract that John actually made was in writing, and was ratified by the writing of April 20th, and it is of no consequence whether or no the original authority conferred upon John was limited to bringing the parties together.

Of course, as was said in Lindly vs. Keim, supra, the proofs should be clear, where a contract to sell is in parole. But the proofs here are clear, and the obviously untruthful denial of John's authority does not obscure them.

If the mere denial of the authority by defendants whose stories are inconsistent in themselves and contradictory with each other can overcome the clear inference from the established facts and circumstances of the case, then apparent falsehood would prevail over apparent truth.

V.

THE CONTENTION OF DEFENDANTS THAT THE COMPLAINANT, RABINOWITZ, IS NOT ENTITLED TO SPECIFIC PERFORMANCE BECAUSE HE HAD KNOWLEDGE THAT SOME OF THE DEFENDANTS REFUSED TO PERFORM THE CONTRACT, WHEN HE TOOK FRISHMAN'S INTEREST BY ASSIGNMENT, IS ENTIRELY UNTENABLE.

The rule in ***Peeler v. Levy, 26 N. J. Eq. 330,*** relied upon by the defendants has no application to a complainant who stands in the attitude of Rabinowitz as disclosed by the evidence. In Peeler v. Levy, the defendant made a contract with the complainant to exchange lands in which defendant's wife had an interest. The opinion shows that the wife did not sign the contract and knew nothing about it, and the complainant had notice and knowledge that defendant's wife had not authorized the defendant to make the contract affecting her interest. It was simply a case where a defendant pretended to contract to convey his wife's interest when the complainant ***had notice and knew*** that the defendant had no right to make such contract as to the wife's interest. In such case the Court simply held that where a complainant ***had notice and knew*** that the defendant was contracting to convey an interest of which the complainant had notice and knowledge that the defendant had no power to make, the Court would not decree specific performance, but would leave complainant to his action at law. The opinion of the Court clearly shows the limit of the rule as follows:

"The important question presented by this branch of the case is, shall the husband be decreed to make compensation for the lands of his wife which he cannot convey? The Court has power to give compensation, but, like the general power of decreeing or refusing specific compensation, it is discretionary. Gariss v. Gariss, 1 C. E. Green, 79; Willard v. Taylor, 8 Wall. 567. Compensation is to be awarded, when it appears from a view of all the circumstances of the particular case, it will subserve the ends of justice; and it will be denied, when, upon a like view, it appears it will produce hardship or injustice to either of the parties. No inflexible rule can be adopted applicable to all cases, but each case must be decided on its own special facts. Generally, it will be denied where the party asking it ***had notice at the time the contract was made,*** that the vendor ***was areeing for more than he could give or convey,*** and it appears the vendee has not, in consequence of the contract placed himself in a situation from which he cannot extricate himself without loss. 2 Chitty's Con. (11 Am. Ed.) 1490; Fry on Spec. Perf., PP. 795, note 2; Nelthorpe v. Holgate, 1 Coll. 223; Harnett v. Yeilding, 2 Sch. & Lef. 559; Wiswall v. McGovan, 1 Hoff. Ch. 131; Thomas v. Dering, 1 Keen, 747. This rule has the support of the clearest dictates of justice. It is unconscionable for one man to take the ***promise of another to do a particular thing*** which the promissee ***knows,*** at the time the promise was made, ***the promisor cannot perform except by the consent or concurrence of a third person,*** and then, when consent or concurrence is refused by the third person in good faith, to demand a strict and literal fulfillment of the promise. He contracts with full notice of the uncertainty or hazard attending the promisor's ability to perform, and has no right, therefore, to ask the extraordinary aid of a court of conscience in repairing the loss he has sustained by the non-fulfillment of the contract. He must be content with his ordinary legal remedy." (26 N. J. Eq. 332, 333.)

The undisputed evidence is that Rabinowitz did not know that the other heirs had not authorized, or claimed not to have authorized, the contract in question, when he took the assignment. On the contrary he had good reason to believe, when he saw and conversed with the sisters that they were merely trying to evade it.

The rule in ***Peeler vs. Levy, 26 N. J. Eq., 330*** was applied to a complainant who ***knew,*** when contracting with the defendant with whom he was negotiating, that that defendant had no power to contract for his wife.

But that rule was denied and overruled by this Court in White vs. Weaver, 68 N. J. Eq., 644, by affirming the decision of Vice Chancellor Reed ***for the reasons stated in his opinion.*** That Vice-Chancellor emphatically repudiated the rule in

Peeler vs. Levy, not inferentially but expressly and positively. He said:

> "It is next objected that complainant, at the time the contract was made, knew that the defendant could not make a good title, and upon that ground a court of equity will not decree specific performance. Peeler vs. Levy. * * * * It is of course true that Mr. White had notice of the defect in Mrs. Weaver's title when he brought this suit, and I am aware there is a line of cases holding that the court will not award compensation for a defective title if the complainant knew of the defect in the title when the suit for specific performance was begun. ***I do not see any equity in the rule."***

The later case of ***Hall vs. Ely, 91 N. J. Eq., 92, 94,*** in this court does not unsettle ***White vs. Weaver.*** Mr. Justice Parker says in the later case:

> "Beyond noting the latter case of White vs. Weaver, 68 N. J. Eq., 644-646, where Vice Chancellor Reed refused to follow the rule just quoted from Peeler vs. Levy, ***and his opinion was adopted by this court,*** we express here no opinion of the rule quoted from Peeler vs. Levy."

But Rabinowitz is not a single ***original*** vendee with knowledge that the vendor could not give what he contracted to give, but is the assignee of the one half interest which Frishman originally held.

If Frishman and Laderman were bona fide purchasers, without actual notice of any want of

authority in John Rooney, Rabinowitz has succeeded to Frishman's rights.

In ***Roll vs. Rae, 50 N. J. L., 264,*** it is said that a bona fide purchaser may convey ***to one having notice*** as good a title as he himself holds.

It was held in ***Holmes vs. Stout, 10 N. J. Eq. 419,*** that the ***grantee*** of a bona fide purchaser without notice is not to be charged with an encumbrance or fraud, ***although directly known to him before he acquired his title.***

The text writer in ***23 Am. & Eng. Enc. L., p. 477,*** says: A bona fide purchaser of title affected by equities may give a clear and perfect title ***to a purchaser with notice.***

In ***McAvoy vs. Bauman, 117 Atl. Rep., p. 717,*** affirmed at p. 725, it was held that an assignee of a vendee of a contract for the sale of land may, upon performance of the terms required by the contract to be performed, have specific performance against the vendee, notwithstanding that the vendor could not bring suit against the assignee.

Rabinowitz therefore has the same rights as Frishman had to specific performance.

VI.

IF IT SHOULD BE HELD THAT ANY DEFENDANT OR DEFENDANTS SHOULD NOT BE DECREED TO PERFORM THE CONTRACT, THEN THE COMPLAINANTS ARE ENTITLED TO HAVE A DECREE AGAINST THOSE WHO ARE LIABLE, WITH THE FOLLOWING PROVISIONS:

(1) The amount to be paid by complainants shall abate so that complainants shall pay one seventh part of the whole price to each defendant decreed to perform.

> "Where a tenant in common executes a contract for the sale of the property in her own name and also, but without authority, in the name of her cotenant and the cotenant repudiates the act, performance by the signing tenant might be specifically enforced as to her interest on payment of her share of the price." ***Keator vs. Brown, et al., 42 Atl. Rep., p. 278.***

(2) If all the defendants should not be decreed to perform, compensation in damages should also be decreed such defendants as are decreed to perform.

John and Thomas Rooney were present, and affirmed John's authority to make the contract and caused it to be made; and both are liable for such damages as complainants may have sustained by reason of any lack of authority in John which they asserted he had. This is so upon the principle that a person who acts as agent of another without authority is personally liable for the damages sustained by the person who contracted with him.

Annie and Bridget, if they had no authority to sign the writing of April 20th for Elizabeth and Mary are likewise liable for like damages. They say that they signed for Elizabeth and Mary without authority; and the writing they so signed was to approve and confirm the contract of April 19th.

Compensation in damages in addition to the other remedies to which complainants are entitled should be decreed on the ground that the contract is one entire contract and that the whole rights of complainants must be settled in one action either in a court of law or equity, and since complainants are entitled to specific performance in part, they are entitled in this suit to compensation also. Lyle vs. Addicks, 49 Atl. Rep., 1121.

For all these reasons the decree should be reversed.

Respectfully submitted,
ROSENKRANS & ROSENKRANS,
Solicitors for Complainants-
Appellants.

ADDISON P. ROSENKRANS,
Of Counsel.

18 MAY.T.1927

New Jersey Court of Errors and Appeals

Between David Laderman and Nathan Rabinowitz, Complainants-Appellants, and John Rooney, Thomas C. Rooney, Bridget Rooney, Elizabeth Rooney, Annie Rooney, Mary Rooney and Mary A. Rooney, Defendants-Respondents.	On Bill, etc. On Appeal from Final Decree of Court of Chancery.

BRIEF OF DEFENDANTS--RESPONDENTS

STATEMENT OF FACTS

This is an appeal from the final decree of the Court of Chancery, dismissing the bill filed by the complainants for the specific performance of the contract for the sale of real estate situate in the City of Clifton, County of Passaic and State of New Jersey.

The land was owned by James Rooney, having been purchased by him in 1873, who died leaving him surviving his wife, and seven children, seized of the property in question, one of whom, Joseph, subsequently died testate, devising his share of the property to his widow, Mary A. Rooney. Subsequently, the widow of James Rooney died so that at the time the alleged contract was executed, title to the property was vested in the defendants as tenants in common, each being entitled to an equal undivided one-seventh interest.

John Rooney, and his sisters, Bridget Rooney, Elizabeth Rooney, Annie Rooney and Mary Rooney have always resided on the premises in question, which was the family homestead, p. 222, line 25. Thomas C. Rooney resided in Lakeview and Mary A. Rooney lived in Paterson, with her son, Joseph, p. 124.

It is undisputed that the defendant, John Rooney, executed the option, Exhibit C-1, p. 289, dated April 16, 1923, and that he received the checks, Exhibits C-2 and C-3, and further that he signed a contract for the sale of the property, Exhibit C-4, dated April 19th, 1923, page 290. Further, the complainants do not contend, and it is undisputed, that John Rooney had no written authority from the other defendants to act for them in these matters. The other defendants further say that John Rooney in executing these instruments did so without any authority from them, with the exception of Thomas Rooney, who admitted that he signed the agreement, Exhibit C-4.

The other defendants claim that they never authorized or ratified the contract of April 19th, 1923, in writing or otherwise. The instrument, Exhibit C-5½, bears the names of all the defendants. It is undisputed that Elizabeth Rooney and Mary Rooney, p. 201, line 30, never signed the same, but that their names were written by some one without their knowledge or consent. The other defendants, with the exception of John and Thomas Rooney, state that they signed this instrument to merely give a list of the heirs and not

with the idea of ratifying any contract that had been executed prior to that time, and further, they had no knowledge of any such contract having been executed at the time they signed the instrument, Exhibit C-5½, page 259, lines 10 to 20.

The Chancellor found the testimony to be "very insufficient and doubtful" with relation to the authorization alleged to have been given by the defendants, with the exception of John Rooney and Thomas Rooney, who admitted they had signed the contract, and that the case of the complainants was based upon inference, possibilities and circumstantial deductions to fasten the contract upon the other heirs, which could not prevail in the face of the positive denial of the defendants.

The Chancellor further found as to the defendants, with the exception of John Rooney and Thomas Rooney, that the writing of April 20th, 1923, Exhibit C-5½, did not constitute a ratification due to the fact that at the time of its execution the precedent acts of John Rooney were not brought to the attention of those parties who signed the same and that it was not binding upon those who did not sign, and further, that the instrument by its terms did not purport to be a ratification.

The final decree provided that the complainants were entitled to specific performance as against John and Thomas Rooney for their interest in the land, but upon payment of the full purchase price, and that if they did not see fit to take such a de-

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cree that then they might elect to have the Bill dismissed, and that specific performance as to the other defendants was denied. The complainants elected not to take a decree against these two defendants, and accordingly their Bill was dismissed.

WE CONTEND THAT THE FINAL DECREE OF THE COURT OF CHANCERY SHOULD BE AFFIRMED.

I.

THE FINAL DECREE OF THE COURT OF CHANCERY SHOULD BE AFFIRMED.

The prayer of the Bill filed in this cause is for the specific performance of a contract for the sale of real estate, which under the decisions of our State is addressed to the sound discretion of the Court, and under the decisions of our Courts, the burden of proof is upon the complainants, to establish their case by clear and decisive evidence. If the proof is substantial or evenly balanced, or the Court left in doubt because of lack of clearness of it, it denies specific performance and leaves the parties to their remedy at law. These rules are supported by the following authorities:

Crane vs. Vecamp, 21 N. J. E., p. 414, states that:

> "Application for specific performance is addressed to the sound discretion of the Court. There is no rule of Equity more clearly established than that upon an application for the specific performance of a contract, the Court must be satisfied that the claim is fair, reasonable and just, and the contract equal in all its parts. If these points are not established by the complainant, he will be left to his own remedy at law."

In the case of St. John the Baptist Greek Catholice Church vs. Baron, 73 Atl., 423, the late Vice Chancellor Howell stated:

> "There is no proceeding, no jurisdiction, no form of remedy that is administered by a Court of Equity that is quite so much within the purely sound equitable discretion of the Court, as is the action of specific performance of contracts. I do not mean to say that it rests in the capricious discretion of the Court, but in the sound judicial discretion of the Court whether in any case the decree of specific performance will be awarded or not. It is a purely equitable jurisdiction. It will not be used for the purpose of inflicting hardship upon anybody, upon either party to the suit; or if there is any equitable circumstance which would militate against the decree, the Court would consider that equitable circumstance and give judgment accordingly and it may grant the relief upon such terms and conditions as it may deem to be equitable and just."

In Kelliher v. Bragg, 124 Atl. 530 at 531, the Court held:

"Specific performance is a remedy within the sound discretion of the Court, and should not be granted unless the right thereto is clear and conclusively established. The complainant has the burden of proof in establishing her right to specific performance."

In Friedman v. Slaff, 123 Atl. 719, the Court held:

"In the suit for specific performance under a contract to convey an interest in real estate and for the establishment of resulting trust therein, if the Court is not convinced of the facts wherein a decree for complainant must be based relief will be denied."

In Farrier v. Shaw, 118 Atl. 339, the Court held:

"It thus appears that the testimony of the agent and Mrs. Shaw are substantial in balance which should lead to a dismissal of the bill."

The Court in the present case found as follows: See Rabinowitz v. Rooney, 128 Atl. 882.

"The testimony seems to be sufficient for the Court to decree specific performance against John Rooney and Thomas Rooney, but is very insufficient and doubtful with relation to the other heirs. They deny having authorized the contract or that they ratified it. The complainants have tried to make a case based upon inference and pos-

sibilities and circumstantial deductions to fasten the contract upon the other heirs, but in the face of their positive denials it is difficult to see how this testimony is to prevail against them. The relief of specific performance is discretionary and when the testimony is substantially in balance, or weighs about evenly, or leaves the Court in doubt, the undoubted rule is that specific performance will be denied and the parties will be left to their remedy at law.".

This determination is consistent with the rules of our Courts as above set forth, and under our decisions is entitled to great weight in the Court of Errors and Appeals, due to the fact that the Vice Chancellor who rendered the decision had an opportunity to see the witnesses and hear them testify, and therefore was in a better position to judge their credibility than the reviewing Court. Such is the rule laid down in Riddle v. Clabby, 59 N. J. Eq. 573; Carton v. Phelps, 91 N. J. Eq. 312; and Cavana v. Brooks, 127 Atl. 247. Especially is this rule applied where the granting of the remedy prayed for is discretionary with the lower Court as in the present case. It is to be borne in mind that it is undisputed that there was no antecedent written authority and that the circumsances from which complainants attempt to imply parol authority are not only disputed, but denied by the defendants. Furthermore, insofar as a ratification of the contract is concerned the complainants do not show that the defendants, with the exception of John Rooney and Thomas Rooney, had any knowledge of the contract and its

terms at the time that the alleged ratification of the agreement was executed, and further, it is to be borne in mind that the lower Court found that this paper of April 20, 1923, did not purport to be a ratification of anything. It is rather an authorization at that point to John Rooney to act in behalf of the purported signers, which power of attorney could be revoked at any time.

Under the foregoing rules laid down by our Courts, we contend that the decree of the Court of Chancery should be affirmed.

II.

THE DEFENDANTS, WITH THE EXCEPTION OF THOMAS ROONEY, DID NOT GIVE ANTECEDENT AUTHORITY TO JOHN ROONEY TO EXECUTE THE CONTRACT, Exhibit C-4.

The complainants do not contend and it is admitted that John Rooney had no written authority to execute this contract, Exhibit C-4, and consequently if he had any antecedent authority it must have been by parol. Our Courts have very clearly enunciated the rules to be followed in ascertaining the authority of an agent to execute a contract for the sale of real estate purported to have been given to him by parol.

In Lindley v. Keim, 54 N. J. E. 418 at 422, the Court of Errors and Appeals held:

> "That authority to sign a memorandum of agreement for the sale of lands which is

> required to be in writing need not be conferred by writing but may be conferred by parol. **But obviously, the court should require proofs of authority conferred by parol in such cases to be clear and decisive for the wholesome provisions of the Statute of Frauds may be thus evaded.**"

At page 423:

> "Moreover such authority is not usually to be inferred from the use by the principal and broker in that connection of the terms 'for sale' or 'to sell' and the like. These words in that connection usually mean no more than to negotiate a sale by finding a purchaser upon satisfactory terms. It follows that he who seeks to establish the authority of an agent to bind his principal to the sale and conveyance of lands by proof of circumstances from which it may be inferred that such authority was granted will not be successful if circumstances proved merely justify the inference that the principal had placed his lands in the hands of the agent as an ordinary real estate broker. To establish the grant of the greater authority the circumstances must show more than the grant of the restricted authority."

In Milne vs. Kleb, 44 Eq. 382:

> "Authority to make or sign a written contract is not conferred where the thing to be sold **is land** by giving an agent power by parol to sell."

Chancellor Zabriskie in Morris vs. Ruddy, 5 C. E. Green, 236 at 238 said following the rule adopted by the Courts of New York that:

> "Giving authority to sell does not by force of the terms or by their acceptation, give authority to sign the vendor's name to a contract and in the case of lands it is not wise to extend their meaning by construction."

Mr. Justice Brown had previously, in Shepard ads. Heddon, 5 Dutcher, 334 at 345 said substantially the same thing. Both of these cases are cited with the apparent approval of Justice McGee in pronouncing the opinion of the Court of Errors and Appeals in Young vs. Hughes, 5 Stew. Eq. 372 at 383. In view of these judicial utterances I think this Court is bound to regard the rule above stated as established.

In Campbell v. Hough, 73 N. J. E. at 606:

> "It is settled law in this State that the Statute of Frauds is satisfied with the signature of an agent to an agreement to convey lands provided the agent has express authority to bind the principal by writing and this authority may be by parol. **The authority however, must be such as to permit the making of the identical contract sued on and not a contract different from the one actually authorized.**"

In the case of Lindley vs. Keim, the Court of Errors and Appeals said that court should require the proof of authority in an agent to sign a memorandum in writing for the sale of lands by parol to be clear and decisive. This, of course, means not only that proof of the authority generally must be clearly and decisively shown, **but also that the agent had authority to make all of the terms for his principal which he incorporates into the agreement.**

These cases were cited with approval in Farrier vs. Shaw, 118 Atl. 339.

In Howe vs. Harrington, 3 C. E. Green, 495, it was held:

> "That a power of attorney authorizing an agent to sell and convey only empowers him to convey by deed of bargain and sale and he cannot bind his principal by covenants of warranty."

Campbell v. Hough, supra, at 607:

> "If the contract made by an agent varies from his instructions the principals will not be bound by it,"

citing Morris vs. Ruddy to the same effect, and Vice Chancellor Griffin in Farrier vs. Shaw, supra, states:

> "In view of this conclusion I have not deemed it necessary to pass upon whether the bill might also be dismissed because of the incorporation in the contract of conditions such as the giving of a warranty deed which clearly on the statement of the agent were not discussed over the telephone."

These cases show very cearly the zealousness of our Courts in upholding the principle of the Statute of Frauds and in preventing attempted evasions thereof. The cases cited by the appellant in regard to the implied authority of an agent are decisions of courts of foreign States, in which real estate was not the subject matter of litigation and therefore those cases are not applicable to the case at bar. They admit in their brief that they had no direct evidence of the authority which they seek to prove. Consequently their entire argument is based upon inference and circumstances as described by the Vice Chancellor in his opinion. See Appellant's brief, p. 4.

Under the foregoing decisions the appellants had to establish by the preponderance of the evidence which must be clear and decisive, that John Rooney was authorized by the other defendants to make the identical contract sued on, including all its terms.

It is undisputed that John Rooney executed the option, Exhibit C-1, dated April 16th, 1923. An inspection of this option will show that it was executed by John Rooney in the first person and that he did not purport to act as agent for anyone in executing it. The testimony of all of the defendants shows that they knew nothing of the execution of the option by John Rooney, pp. 200, l. 20; 228, l. 20; 246, l. 20; 267, l. 10, 248, l. 12. The only testimony which conflicts with this was that of Laderman, who testifies, at page 7, that he met Elizabeth and Bridget at their home with Morris Frishman and

that in their presence they talked about the execution of this option with John and that the girls stated that there was no harm in giving the option. At this point it is well for the court to bear in mind the fact that Mr. Laderman's testimony conflicts with that of the defendants in many points as to conversations at which Mr. Frishman, his partner, was present and took part. Mr. Frishman was in court during the entire trial but was not called upon by the complainants to corroborate these various statements made by Mr. Laderman which were contradicted by the defendants.

The testimony of John Rooney, page 131, line 10, which is corroborated by Laderman, page 7, line 15, is that this option was drawn in Mr. Laderman's shop by Mr. Frishman, this being the first occasion upon which John Rooney had ever met Mr. Laderman, and that he was introduced to him by Mr. Frishman who was interested in buying the property. In view of the informal way in which the option was drawn, the story of John Rooney seems the more plausible, it being kept in mind that the option is executed by him in the first person and not as representative of the Estate of James Rooney. Here again, if the contention of the complainants were correct, why didn't they produce Mr. Frishman who could have thrown great light upon the matter, and why did they wait two or three days to obtain this informal option if John and the two sisters were willing to give it as testified by Laderman? p. 7.

Mary A. Rooney, stated (p. 276) that John told her the price of the place was $20,000.00.

Thomas Rooney was present in Senator Smith's office when the contract was signed and heard it read. John and Thomas both testify pp. 196 and 197, p. 151, line 15, that neither of them mentioned the negotiation for sale or the execution of the contract to the girls, namely, Bridget, Elizabeth, Mary and Annie.

Another example of the over zealousness of Mr. Laderman, who is one of the complainants and interested in the outcome of this litigation, is his portrayal of the circumstances at Senator Smith's office immediately preceding the execution of the contract, Exhibit C-4. At first, on direct examination, p. 11, line 30, he testified that he arrived first at Senator Smith's office and after waiting there ten or fifteen minutes, John and Thomas entered. Later when called on re-direct examination, page 282, line 25, he testified that Thomas and John were waiting down stairs when he arrived and they all went up together, and then attempted to bolster his case by saying that John told him at that time while walking up-stairs that his sisters had sent Tom down there to see that everything was done properly and that everything was properly taken care of. Thomas and John testify that when they arrived at Senator Smith's office Laderman was already there. Thomas testifies that John and the others were in the office when he came, page 194, line 2.

From the testimony adduced at the trial there can be no doubt that John was only not given any express authority to enter into the contract

by any of the girls in compliance with the rules above set forth, but that the matter was not even discussed by them.

Mary A. Rooney admitted that she understood that John was going to sell the place for $20,000 (p. 276) but from that mere fact there is nothing to justify the court in finding that she authorized him to enter into a contract, give a warranty deed and to bind her by the numerous covenants contained in the contract which was executed by John.

The Court msst bear in mind that the authority which complainant must show must be to enable the agent to execute the identical contract sued upon, including all of its terms and conditions. Lindley v. Keim (supra).

The testimony of the sisters showed that they had confidence in John and that he attended to matters about the farm generally, **but that they had never talked to him about selling the farm, nor had they ever considered disposing of their home and John states that he never discussed the matter of sale with them,** pp. 269, l. 1; 261, line 8; 225, l. 10-30; 134, l. 1.

In ascertaining the parol authority of an agent under our decisions the declarations of an alleged agent, though accompanying his acts are not competent to establish either the fact or the extent of his agency, see Ryle vs. Manchester Building & Loan Association, 74 N. J. L., 840. Consequent-

ly the acts and statements of John Rooney are not binding upon the other defendants as evidence of the grant of parol authority to him to execute such a contract. And further, a purchaser buying of an agent must at his peril, ascertain the extent of the agent's authority. See Milne vs. Kleb, 44 N. J. E., 378. Although charged with the duty of ascertaining the extent of the agent's authority and with full knowledge of the fact that there were seven people interested in the title of the property which complainants sought to purchase, (p. 5, l. 10), they did not see fit to ascertain the extent of the authority of John Rooney but acted upon his mere say so and disregarded the duty which was cast upon them by our decisions.

In view of the above cited decisions it is clear that the complainants have failed to establish that John Rooney was authorized by the other defendants, by parol, to execute the contract, Exhibit C-4; it being admitted that there is no direct evidence on this point and the acts of the alleged agent from which inferences are sought to be drawn, not being admissible under the rules of evidence as set forth in the above cited cases. The earnestness with which our Courts strive to enforce the spirit of the Statute of Frauds in cases of this kind is further emphasized by the following cases:

In Morris vs. Ruddy, 20 N. J. Equity, 236, the direction was to sell for $3000. net, the contract was for $3000. and commissions although the complainant offered to pay the commissions to obtain

specific performance. The Court refused to grant it on the ground that the written contract varied from the parol authorization.

In Campbell v. Hough, 73 N. J. Equity, 606, the defendant authorized the agent to sell for $600 and the contract was silent as to commissions but the defendants who employed the agent were left to pay the commissions. This was held to be a departure from the authorization and the Court refused specific performance.

Campbell v. Hough, The acknowledgement to the contract is invalid in that the agent who signed the instrument acknowledged it as his voluntary act and deed instead of doing so in the name of his principals.

In view of the clear and decisive rules laid down by our Courts in cases of this kind, and in view of the fragmentary evidence adduced by complainants much of which is not binding on the defendants with the exception of John Rooney, and in the face of the positive evidence adduced in behalf of the defendants it is clear that John Rooney had no antecedent authority from the other defendants at the time the contract, Exhibit C-4 was executed.

II.

THE CONTRACT, EXHIBIT C-4, WAS NEVER RATIFIED BY THE DEFENDANTS, WITH THE EXCEPTION OF JOHN ROONEY AND THOMAS ROONEY.

The Vice Chancellor in the opinion rendered in the Court of Chancery, very properly states the law as follows:

> "In order that there may be a ratification of a preceding act or document all the details of the act and all the terms of the document must be brought home to the attention of the party whose ratification is sought. He only ratifies those things which are brought home to him as having already been done. That principle is well established."

The last paper executed was Exhibit C-5½, the exact language of which is:

> "April 20, 1923
>
> We the undersigned heirs of James Rooney do appoint John Rooney with power of attorney, and do invest him with full power to act in our behalf on sale of estate of the late James Rooney.
>
> Thomas C. Rooney
> Bridget Rooney
> Elizabeth Rooney
> Annie Rooney
> Mary Rooney
> John Rooney
> Mary A. Rooney."

The testimony clearly shows that only a part of the owners actually signed it and some of those

signed for the remaining owners upon the statement that was made by the purchasers that they simply wanted to secure a list of the names of the heirs.

Further in his opinion, the Vice Chancellor commenting upon this document says:

> "There is nothing in the testimony to show that the preceding acts of John Rooney and the agreement of April 19th, 1923, Exhibit C-4 with all its terms were brought to the attention of those parties whose ratification was sought, nor does this paper of April 20, 1923, in terms, purport to be a ratification of anything. It is rather an authorization at that point to John Rooney to act on behalf of the purported signers on the sale of the estate of the late James Rooney, and further, that no action was taken by John Rooney subsequent to its execution to effectuate a conveyance of the property in question pursuant to his authority."

The ruling of the Vice Chancellor is supported by numerous decisions of our Court, to wit, Gulick v. Grover, 33 N. J. L., 463; Duggan v. Lyman, 23 Atl., 657; Lindley v. Keim, 54 N. J. E., 418 at 424, all of which hold that in order that there may be a ratification a full knowledge of all the facts and circumstances connected with the transaction is essential.

The testimony of the four sisters is that they did not know anything about the contract, Exhibit C-4, until two or three days after the 20th day of April, when Exhibit C-5½ was executed.

Thomas testified that he did not say anything to them, p. 182, l. 20-30; p. 183, l. 15.

John testified that he did not mention the fact to them, p. 137, l. 1, and Mary A. Rooney testified, p. 276, l. 12, that she did not discuss the matter with them during that time.

Joseph Rooney (page 126, l. 5) testifies that he spoke to his Uncle Jack (meaning the defendant John Rooney) and his uncle Tom and that he had no conversation with anyone else in the house. This testimony is not contradicted.

Joseph testified, p. 125, l. 15, on the evening of the 20th of April at Mr. Frishman's request that because he was afraid that things were not just right and that there was a hitch to Jack's authority (meaning John Rooney) he went to the Rooney home to have a paper signed and that he spoke to Thomas Rooney and John Rooney, and Thomas Rooney dictated the paper to him, Exhibit C-5½) which he wrote down.

Thomas Rooney testifies, page 181, l. 5, that Joseph Rooney came down and met John and Thomas in the yard about 6:30 or 7:00 o'clock on the night of April 20, 1923, and told John that there was something the matter up in Mr. Smith's office and he wanted the names of the heirs. "I went back in the house and got a paper and Joe wrote it and I dictated to him what was to be put on the paper and I signed the paper and went home", (p. 182, l. 20), and that he did not say anything to the girls at the time he was in the house.

John testifies (p. 137, l. 1) that he did not say anything to the girls at this time concerning the paper, and Joseph testified that he saw Bridget and Annie in the room where the paper was drawn, but Annie testifies that she signed it as an heir but that she did not read it before she signed it (p. 224, l. 20) and that she also signed her sister Mary's name and that she did not learn of the contract until two or three days after Joseph had been there. (P. 229, l. 12, p. 228, l. 20.)

Bridget testifies that she did not learn about the contract until two or three days after Joe had been there; (p. 248, l. 10), and that she was in the kitchen and the paper was brought in to her and she signed without reading it as an heir (249, l. 10), and that she also signed the names of Elizabeter to the paper, (250, l. 20); that Elizabeth was not there and that Elizabeth had not discussed the matter with her and that she did not tell Elizabeth about signing until the next morning. (P. 263, l. 3.)

Elizabeth testified that she was not feeling well and was lying down in bed upstairs at the time Joseph was there and that she did not know anything about the signing of the paper until the next morning (267, l. 35).

Mary testifies that she was having supper with her sister-in-law and was not home the night Joseph was there until about 9 o'clock, and that she did not learn about the signing of the paper until the next morning (202, l. 25). This testimony is uncontradicted. She never saw the paper and never authorized her name to be signed.

In view of these facts, which must be taken to be true, there is no evidence that at the time Exhibit C-5½ was signed that any of the sisters knew that John had signed the contract; and the evidence shows that those of them who signed the paper did not intend to ratify anything when they signed the same. This contention is borne out by the fact that two of them signed the names of other sisters to the paper without their consent and without discussing the matter with them at all. This is indicative of how unimportant they regarded the paper which was handed to them for their signatures and explains why they did not even take the trouble to read the same before signing it. It is unbelievable that they would sign the names of their sisters to a document which would authorize the sale of their home, when they did not want to sell.

As far as Mary A. Rooney is concerned, she testified that she had heard from John that he was going to sell the place for $20,000. There is no testimony to show that she knew whom he was going to sell it to or that a contract had been signed prior to the execution of the instrument of April 20th. She stated that, page 275, line 10, her son Joseph was going down to Uncle John's to get a paper signed to give to the people that John was going to sell the place to. There is no indication whatsoever that she know that a contract had been executed or that she was conversant with any of the terms thereof.

We, therefore, contend that the execution of the paper (C-5½) was not a ratification of the contract (C-4) on the part of the sisters, or Mary A. Rooney. Furthermore, the exhibit (C-5½) must be construed prospectively as there is nothing in its provisions to show that it was intended to have a retroactive construction, and although two of the sisters, Annie and Bridget, did sign this instrument it could not be construed as a ratification of the contract on their part.

As to Mary and Elizabeth, who did not sign the paper and who did not authorize any one to sign the same for them, it cannot be binding upon them.

The rules regarding antecedent authority set forth above must be applied in seeking to construe ratification of a prior act, and under these rules the complainants have not shown a ratification by clear and decisive proof nor have they shown that the defendants ratified the identical contract including all its terms that was executed by John Rooney, therefore, insofar as Mary Rooney, Elizabeth Rooney, Bridget Rooney, Annie Rooney and Mary A. Rooney are concerned the complainants have failed to show a ratification of the contract (C-4) upon which they base their cause of action, and therefore the final decree should be affirmed.

III, IV, V AND VI.
SPECIFIC PERFORMANCE OF PART WITH COMPENSATION SHOULD NOT BE GRANTED.

In Peeler v. Levy, 26 N. J. E., page 330 at 332, a case in which the husband contracted to sell

lands in which contract his wife did not join, the Court laid down the rule to be followed in cases similar to the present:

> "The court has power to give compensation, but like the general power of decreeing or refusing specific compensation, it is discretionary. Compensation is to be awarded when it appears from a view of all the circumstances of the particular case it will subserve the ends of justice and it will be denied when upon a like view it appears it will produce hardship or injustice to either of the parties."

No inflexible rule can be adopted applicable to all cases but each must be decided on its own special facts. **Generally it will be denied when the party asking it had notice at the time the contract was made that the vendor was agreeing for more than he could give or convey, and it appears the vendee has not in consequence of the contract placed himself in a situation from which he cannot extricate himself without loss. This rule has the support of the clearest dictates of justice. It is unconscionable for one man to take the promise of another to do a particular thing which the promissee knows at the time the promise was made, the promissor cannot perform except by the consent or concurrence of a third person and then when consent or concurrence is refused by the third person in good faith, to demand a strict and literal fulfillment of the promise He ~~He~~ contracts with full notice of the uncertainty or hazard attending the promissor's ability to perform and**

has no right therefore to ask the extraordinary aid of a court of conscience in repairing the loss he has sustained by the non-fulfillment of the contract. He must be content with his ordinary legal remedy.

The court properly refused to decree specific performance for part with damages under the decisions in Hall vs. Eley, 108 Atl., 370, and Church of the Holy Communion vs. Paterson Extension Railroad Company, 46 N. J. E., 372.

The Court of Equity will not take jurisdiction of a naked claim for damages even when it is made under the guise of a suit for specific performance.

The case of Lyle vs. Addicks, cited by appellants, is not a case dealing with real estate. That case contains a provision that "the situation would be different if the only part of the contract to be performed was that relating to the delivery of the notes **and it was known to complainant before the bringing of suit that the defendant could not perform this contract.**" This is the situation in the case at hand, and therefore this case is not applicable.

Tremblay vs. Dessault, 23 Manitoba, L. R. 128, is a case where the plaintiff, the vendee, entered into a contract with one or two co-tenants to sell the entire premises, knowing that the property was owned by other co-tenants. **He sought specific performance with compensation which was denied him on the principle laid down in Peeler v. Levy.**

Milne vs. Kleb, 44 Eq., 378, "a purchaser buying real estate of an agent must at his peril ascertain the extent of the agent's power."

The testimony as to what took place at Senator Smith's office at the time this contract was entered into is a little confused. It is undisputed that the names of the seven people who had an interest in the property were made known to the purchasers (p. 55, l. 10). Senator Smith states that he asked John whether he had authority to act and that upon John's say-so and the assent of Thomas he proceeded to draw the contract. At this point it is well to remember that the declaration of an alleged agent, though accompanying his act, is not competent to establish either the fact or the extent of his agency. Thomas stated that he did not think John had authority (180, l. 5) and that Senator Smith informed him that he would have him execute the contract as attorney in fact and that Thomas thought that it was some point of law that would cure the defect and therefore said nothing more about it. (P. 180, l. 25.)

John Rooney also testified that at that time Thomas raised some question about his authority (p. 132, l. 15).

Laderman, at page 12, l. 30, says that Senator Smith asked John whether or not he had the power in writing and he said I don't know about that, and Thomas Rooney then said that their father had died and left no will and by mutual consent they had always exercised that judgment in John Rooney, that he always took charge, that

they wanted him to do the same thing right now. This statement is denied.

From these facts it was the duty of the vendees to ascertain the authority of John Rooney before acting. They knew that several people had an interest in this property, and that in order for John to carry out the terms of the contract it was necessary for him to have their consent and concurrence. **If the purchasers failed in their duty they should not be permitted to come to court and ask it to exercise its extraordinary remedy of granting specific performance with compensation, but they should be left to their remedy at law, and they fall within the case of Peeler vs. Levy above set forth. This is even more strikingly true in the case of Mr. Rabinowitz. He knew the law and the facts.**

He testified, page 76, that Laderman mentioned the matter to him at his shop and showed him Exhibit C-4 and C-5½. This was after Laderman testified to the fact that he was having trouble with John and after Mr. Rooney had tried to settle the matter at Senator Smith's office, and after Laderman had been offered $800 by John Rooney as a compromise. Mr. Rabinowitz testified at page 76, l. 25, that John Rooney came forward and said to David Laderman, "take $800". "Mr. Laderman then introduced me to John and said Mr. Rabinowitz is going to purchase a one-half interest. At that time I said I was going to purchase a one-half interest in the contract and that this conversation was before he made the purchase." That he had paid no money when he had this conver-

sation with John Rooney and that at that time he told Mr. Rooney, page 75, l. 10, that he understood that one of the girls was unwilling to carry out the terms of the contract, but that he was going to insist on the contract being carried out, and that immediaely after that conversation and before he had any further conversation with any of the defendants, he says he paid Laderman $750 for a one-half interest in this contract. As far as Mr. Rabinowitz is concerned under the case of Peeler vs. Levy he certainly cannot stand before a court of equity and ask it to exercise its extraordinary remedies to extricate him from a predicament in which he has knowingly and wilfully placed himself. He contracted with full notice of the uncertainty or hazard attending the promissor's ability to perform and has no right therefore to ask the extraordinary aid of the court of conscience in repairing the loss he has sustained by the nonfulfillment of the contract. These are words from Peeler vs. Levy which aptly describe the conduct of Mr. Rabinowitz in this case. Certainly he cannot obtain any relief in equity and must be content with his ordinary legal remedy.

We therefore contend under the cases above cited and under the facts that have been adduced that neither of the complainants is in a position to ask this court to exercise the unusual remedy of specific performance with compensation requested by them and therefore pray that the court affirm the final decree of the Court of Chancery.

The complainants contend that White vs. Weaver, 68 N. J. E., 644, overrules the case of Peeler vs. Levy, 26 N. J. E., 330, in regard to the principle for which that case was heretofore cited, to wit, that specific performance with compensation will be denied when the party asking it has notice at the time the contract was made that the vendor was agreeing for more than he could give or convey and it appears that the vendee has not in consequence of the contract placed himself in a situation from which he cannot extricate himself without loss.

An analysis of the decision in White vs. Weaver discloses the fact that the principle for which Peeler vs. Levy is cited by the defendants, was not only not overruled in that opinion by Vice Chancellor Reed, but was recognized and attempted to be applied by him to that case but he found that the facts of the case did not justify the application of that principle.

In order to enable the Court to ascertain the correct determination of the question in dispute there is cited at length from the opinion of White vs. Weaver, so much thereof as has a bearing upon the question.

"It is next objected that the complainant, at the time the contract was made, knew that defendant could not make a good title, and upon this ground a court of equity will not decree specific performance. Peeler vs. Levy, 26 N. J. Eq. (11 C. E. Gr.) 330, 331.

"I think before specific performance is defeated upon the ground it should be clearly proved that **the person,** with whom the contract was made to convey the title, **had notice that the one who agreed to make the conveyance had not the ability to give a complete title.** In my judgment, it does not so clearly appear in this case as to defeat the right of Mr. White to have what he bargained for.

"It is, of course, true that **Mr. White had notice of the defect** in Mrs. Weavers's title **when he brought this suit,** and I am aware that **there is a line of cases holding that the court will not award compensation** for a defective title **if the complainant knew of the defect in the title when the suit** for specific performance **was begun. I do not see any equity in this rule,** and it was properly discredited in Ludlum v. Buckingham, 35 N. J. Eq. (8 Stew.) 71, 83."

The decision clearly shows that the court drew a **distinction between** a **vendee** seeking specific performance **who had notice at the time the contract was made** that the one who agreed to make a conveyance had not the ability to give a complete title **and a vendee who had no such notice at the time of making the contract, but who subsequent to the making of the contract and prior to the institution of suit became aware of that fact.**

The cases following, Ludlum vs. Buckingham which holds that specific performance with compensation will be denied to the latter class of vendees is overruled by White vs. Weaver. It will be noted that in dealing with the first class of vendees the court stated that it did not appear that Mr. White had notice of the inability of Mrs. Weaver to carry out the contract at the time he entered it; but in dealing with the second class of vendees the court expressly stated that Mr. White had notice of the defect in Mrs. Weaver's title when he brought this suit. Consequently, the court must come to the conclusion that the decision of White vs. Weaver sustains the principle enunciated in Peeler vs. Levy and overrules that set forth in Ludlum v. Buckingham, and that the contention of the plaintiffs is not supported by the autnorities.

The principle of Peeler vs. Levy has not only received the sanction of the courts of our state but has the approval of courts of other states and also the approbation of recognized text writers as is shown by the following citations:

The Church of the Holy Communion vs. Paterson R. R. Company, 46 N. J. Eq., 372 at 377, cites Peeler vs. Levy as an authority for the proposition in discussion.

Borden vs. Curtis, 48 N. J. Eq., 128 at 133, quotes the principle enunciated in Peeler vs. Levy and approves of the same.

Planer vs. Equitable Life Insurance Company, 37 Atl., 668 at 671, Vice Chancellar Pitney makes the following statement:

> "The Court is loath to decree partial performance with compensation to be allowed to a vendee who knew when he made the contract that his vendor was unable to perform in full, while the vendor himself innocently supposed that he was able to perform. Pom. Spec. Perf. Cont. sec. 442; Peeler v. Levy, 26 N. J. Eq., 330, and cases cited on page 332."

The authorities above cited clearly show that the principle for which Peeler v. Levy is cited by the defendants is well recognized and that the contention of the complainants that the same was overruled by White vs. Weaver is erroneous.

CONCLUSION

We contend that the decree of the Court of Chancery should be affirmed for the reasons stated in the opinion rendered by the Vice Chancellor in that case.

The prayer of the bill is for the specific performance of a contract which remedy rests in the sound discretion of the Court of Chancery, and in the exercise of which the Court denied the prayer. There was abundance of evidence to support the finding of the Vice Chancellor on the question of authority and ratification of the alleged contract, and therefore the decree should not be disturbed.

As to the denial of the request for specific performance for part with compensation for the balance, this is an extraordinary remedy which is vested in the discretion of the Court of Chancery and which was exercised by it and its exercise of that power in this case was supported by plenary evidence.

We therefore respectfully urge the Court to affirm the opinion of the Court of Chancery.

Respectfully submitted,
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