

Bill of Complaint.

BILL OF COMPLAINT.

Filed August , 1919.

In Chancery of New Jersey

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Between

DAVID DOBBIN,

Complainant,

and

LENA PLAGER,

Defendant.

*On Bill for
Specific
Performance.*

Bill of Complaint.

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

The complainant, David Dobbin, of the City of Newark, County of Essex and State of New Jersey, respectfully shows that:

1. On May 29th, 1919, the defendant, Lena Plager, who is a widow, was seized in fee simple for the following described lands and premises: All that lot, tract or parcel of land in premises situate, lying and being in the City of Newark, County of Essex and State of New Jersey.

BEGINNING in the easterly line of Prince street, at a point therein distant four hundred and seventy-five (475) feet southerly from southerly line of Montgomery street; thence running easterly parallel with Montgomery street one hundred (100) feet; thence southerly twenty-five (25) feet; thence westerly one hundred (100) feet to Prince street; thence northerly along the same twenty-five (25) feet to the place of BEGINNING.

Being same premises conveyed to said Lena Plager and Meyer Plager, her husband, by Morris Horwitz and wife by deed dated July 27th, 1903, and recorded in U. 36-460, Meyer Plager having since died.

2. On May 29th, Nineteen hundred and nineteen, the said Lena Plager entered into a written agreement with the complainant, a copy of which is hereto annexed and marked Schedule A, whereby the said Lena Plager did agree to convey the

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above described premises to the said complainant by Warranty Deed, free from all encumbrances, on or before the first day of September, Nineteen hundred and nineteen, for the consideration of \$11,000 to be paid in the following manner: \$300 upon the execution of the said agreement, the receipt of which was acknowledged by the said defendant, and the balance of the purchase price in cash upon the passing of the title and delivery of the deed.

3. It was further agreed between the parties to the said agreement that taxes for 1919, water rents, house rents, insurance premiums and interest on mortgages, were to be apportioned and allowed on the day of passing title and delivery of deed, and that the said sale was to include all electric and steam heat fixtures.

4. It was further agreed between the parties to the said agreement, that the said complainant, his heirs and assignee, may enter into and upon the said lands and premises on the first day of September next ensuing the date of the said agreement, and from thence take the rents, issues and profits to him and their use.

5. It was further agreed between said defendant and complainant that the deed for the above-described premises should be delivered and received at the law offices of Lubetkin & Greenbaum, 137 Springfield avenue, Newark, N. J., between the hours of nine in the forenoon and five in the afternoon on the said first day of September next.

6. On May 29th, Nineteen hundred and nineteen, the said Lena Plager, together with the said complainant, did sign, seal and deliver said agreement in the presence of Jacob Lubetkin, and the said Lena Plager, on that same day after having the contents made known to her before the said Jacob Lubetkin, an attorney at law of New Jersey, did acknowledge that she signed, sealed and delivered the same as her voluntary act and deed, for the uses and purposes therein expressed.

7. On or about July 21st, Nineteen hundred and nineteen, and thereafter, the said defendant, personally and through her attorney did notify the complainant that she, the defendant Lena Plager, would not carry out her agreement and offered to return to the complainant the deposit of \$300 received by her under and by virtue of the terms of the said agreement.

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8. The said lands and premises are at present encumbered by a mortgage originally in the sum of \$7,200, held by the Cross-town Building & Loan Association of the City of Newark, N. J., and a second mortgage of \$800 held by one Max Farber besides taxes and water charges.

9. On May 31st, Nineteen hundred and nineteen, the agreement made between the complainant and the defendant, was recorded in the Essex County Register's Office in Book O 61 of Deeds for said County on page 423, a true copy of which agreement is hereto annexed and made part thereof.

10. Said complainant has been at all times, and is still ready, willing and able, and hereby offers to carry out the agreement with the said Lena Plager, in accordance with the terms and provisions thereof.

11. Complainant is without adequate remedy in the Courts of Law, and, therefore, prays:

1. That Lena Plager, who is the defendant in this suit, may answer this Bill without oath, and each statement therein made.

2. That the said defendant, Lena Plager, be ordered to pay out of the purchase money for the said lands and premises, all encumbrances which are or may be liens upon the said lands and premises.

3. That the defendant may be decreed to specifically perform the agreement, so as aforesaid entered into between her and the complainant, and each and every term thereof; and that she may be ordered and decreed to execute and deliver the deed of conveyance of the said lands and premises to this complainant, and in all respects to abide by, and perform the said agreement.

4. That your complainant may have such other and further relief in the premises as the nature of the case may require.

5. That a writ of subpoena be issued commanding the said defendant, Lena Plager, to answer this Bill of Complaint, and to abide by such decree as this Court may make in the premises.

LUBETKIN & GREENBAUM,
Solicitors for Complainant.

Of Counsel with Complainant.

Bill of Complaint.

THIS AGREEMENT, made the twenty-ninth day of May, in the year of our Lord One Thousand Nine Hundred and Nineteen, between LENA PLAGER, widow, of the City of Newark, County of Essex and State of New Jersey, party of the first part, and DAVID DOBBIN, of the City of Newark, County of Essex and State of New Jersey, party of the second part;

10 WITNESSETH, that the said party of the first part, for and in consideration of the sum of eleven thousand dollars (\$11,000) to be paid and satisfied as hereinafter mentioned, and also in consideration of the covenant 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 she, the said party of the first part, will well and sufficiently convey to the said party of the second part, his heirs and assigns, by Deed of Warranty free from all encumbrance including
20 unconfirmed assessments on or before the first day of September, next ensuing the date hereof, all that lot, tract, or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Newark, in the County of Essex and State of New Jersey.

Being the premises known and designated as No. 216 Prince street, in said City, and being a lot twenty-five (25) feet front and rear by one hundred (100) feet in depth and having erected thereon a two-family house and a brick garage in the rear thereof.

30 It is expressly understood and agreed by and between the parties hereto as follows:

That the title to said premises is a clear record title, and not what is commonly known as a "Martin Act" or "Tax Title," or a title derived through adverse possession.

That the buildings on said premises are within the lines as described in deed therefore, and that there are no encroachments upon said premises.

40 That the said premises are free and clear of any violations of the local ordinances or Board of Health rules or local building department rules or regulations.

That all tenants in possession are tenants from month to month only.

The risk of loss or damage by fire or otherwise to remain in the party of the first part until passing of title and delivery of deed.

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Taxes for 1919, water rents, house rents, insurance premiums and interest on mortgages to be apportioned and allowed on the day of passing title and delivery of deed.

This sale includes electric fixtures and steam heat fixtures, except gas range and gas heater.

The party of the first part will take proceedings to vacate the store now occupied by Charles Rabinowitz and agrees that said store will be vacant on passing of title. 10

AND the said DAVID DOBBIN, for himself, his heirs, executors and administrators, doth covenant, promise and agree to and with the said party of the first part, her heirs, executors, administrators and assigns, that he, 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 eleven thousand dollars (\$11,000) as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say: Three hundred dollars (\$300) upon the execution of this agreement, the receipt of which is hereby acknowledged. 20

The balance of the purchase price in cash upon the passing of title and delivery of deed.

AND IT IS FURTHER AGREED, by the parties to these presents, that the said party of the second part, his heirs and assigns, may enter into and upon the said land and premises on the first day of September next ensuing the date hereof, and from thence take the rents, issues and profits to his and their use. 30

AND IT IS FURTHER AGREED, by the parties hereto, that the said deed shall be delivered and received at the Law Offices of Lubetkin & Greenbaum, 137 Springfield avenue, Newark, N. J., between the hours of nine in the forenoon and five o'clock in the afternoon on the said first day of September, next ensuing the date hereof.

IN WITNESS WHEREOF, the said parties have hereunto interchangeably set their hands and seals the day and year first-above mentioned.

her
LENA (X) PLAGER. (L. S.) 40

mark
DAVID DOBBIN. (L. S.)

Answer.

Signed, sealed and delivered
in the presence of

JACOB LUBETKIN.

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

BE IT REMEMBERED, that on this twenty-ninth day of May, in the year of our Lord, One Thousand Nine Hundred and Nineteen, before me, the subscriber, personally appeared LENA PLAGER, widow, who I am satisfied is the grantor in the within agreement named; and I having first made known to her the contents thereof, she did acknowledge that she signed, sealed and delivered the same as her voluntary act and deed, for the uses and purposes therein expressed.

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JACOB LUBETKIN,
An Attorney at Law of New Jersey.

ANSWER.

Filed Sept. 20, 1919.

30 The answer of Lena Plager, defendant, to the bill of complaint of David Dobbin.

This defendant, answering the bill of complaint, says that:

1. Paragraph 1 is admitted.

2. Paragraph 2 is denied; this defendant denying that she voluntarily and consciously entered into a written agreement to convey the said premises to the complainant for the consideration of \$11,000.00.

40 3. Paragraph 3 is denied; this defendant denying that she voluntarily and consciously agreed to sell her property for \$11,000.00, and to apportion the taxes and water rents, house rents, insurance premiums and interest on mortgages, etc., as alleged in said Paragraph 3.

4. Paragraph 4 is denied; this defendant denying that she voluntarily and consciously agreed to sell her property for

Answer.

\$11,000.00, and to permit the complainant to take possession on September 1, 1919.

5. Paragraph 5 is denied; this defendant denying that she voluntarily and consciously agreed that a deed for her said property should be delivered at the law offices of Lubetkin and Greenbaum, Newark, N. J., as alleged in the bill of complaint.

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6. Paragraph 6 is denied; this defendant denying that she voluntarily and consciously signed, sealed and delivered an agreement in writing on that day, to sell her property for \$11,000.00 to the complainant. But this defendant believes that she did make her mark to some paper in the presence of Mr. Lubetkin, but she did not at that time understand, and it was not so stated to her that the consideration for the conveyance was to be \$11,000.00. This defendant had at the solicitation of one Max Ginsberg, agreed to sell her property to him for \$15,000 if her children would consent, and she went to the office of Mr. Lubetkin with him and signed a paper, which she understood was an agreement to sell to Ginsberg, subject to the consent of her children; and she received a check from said Ginsberg for \$300.00, made to him by the complainant, and said she would take it home, and if her children were satisfied she would carry out the sale. Her children were not satisfied, and she immediately, on the same day, May 29th, offered to return the said check, and the complainant refused to receive it, and stated that he didn't buy the property, and that the check belonged to Ginsberg.

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7. Paragraph 7 is admitted, and defendant annexes hereunto a copy of the notice sent by her attorney to the complainant, and prays that the same may be read as a part of her answer.

8. Paragraph 8 is admitted.

9. Defendant says that if the said agreement in writing has been recorded, it was put on record by the complainant, or his agents, and not by the defendant.

10. Paragraph 10 is denied, and defendant alleges that the complainant is not able financially to purchase said property, and has not at any time tendered the purchase price to the defendant, and, in fact, has repudiated the agreement, and has expressly stated that he did not buy the property from complainant, but was buying it from Ginsberg.

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FRANK E. BRADNER,
Solicitor and of Counsel with Defendant.

Answer.

“July 21, 1919.

Mr. David Dobbin,
218 Prince St., City.

Dear Sir:

10 The agreement purporting to be signed by Mrs. Lena Plager for the sale of her property, 216 Prince street, to you, and dated May 29, 1919, will not be carried out by her, because she claims that she was deceived.

Although you refused to accept the return of your check for \$300.00, and stated that you did not know anything about the matter, and had not bought the property, Mrs. Plager is ready and willing to pay to you the \$300.00 upon the execution of a release of the agreement by you. I notified your attorney, Mr. Jacob Lubetkin, on July 17th, that I was authorized to pay over
20 the \$300.00, and that the agreement would not be carried out.

Yours truly,

FRANK E. BRADNER,
Atty. of Lena Plager.”

(Copy.)

(Replication filed.)

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Jacob Lubetkin, direct.

IN CHANCERY OF NEW JERSEY.

Between

DAVID DOBBIN,

Complainant,

and

LENA PLAGER,

Defendant.

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Transcript of shorthand notes of testimony taken in the above-entitled cause before Honorable John H. Backes, Vice-Chancellor, at the Chancery Chambers, Prudential Building, Newark, N. J., on November 10, 1919, in the presence of Mr. Benjamin M. Weinberg, solicitor for complainant, and Mr. Frank E. Bradner, solicitor for defendant.

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JACOB LUBETKIN, sworn on behalf of the complainant.

Direct examination by Mr. Weinberg.

Q You are a practicing attorney at law of this State? A Yes, sir.

Q And in that capacity, as attorney, did you prepare an agreement, which I show you? A Yes, sir.

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Q In your handwriting? A Yes, sir.

Q The entire agreement? A Yes, sir.

Q And was it signed in your presence? A Yes, sir.

Q On what date was it signed? A On the day it was made—29th.

Q And who signed the agreement? A Mrs. Plager and Mr. Dobbin.

Q Give her full name? A Mrs. Lena Plager and Mr. David Dobbin.

Q Lena Plager, the defendant in this case? A Yes, sir.

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Q Did you at the same time attach your signature as subscribing witness? A Yes, sir.

Mr. Weinberg. I offer the agreement in evidence. Paper received and marked Exhibit C. 1.

Lena Plager, direct.

Cross examination by Mr. Bradner.

Q Was anyone else present at the time the paper was signed by Mrs. Plager besides you? A Yes, sir.

Q Who? A Mr. Ginsberg and Mrs. Frank, Mr. Dobbin, Mrs. Plager and my associate, Mr. Greenbaum.

10 Q Did Mr. Dobbin execute the paper immediately after Mrs. Plager? A Yes, sir.

Q And in her presence? A In her presence.

Mr. Weinberg. I offer in evidence letter dated July 21, 1919, from Frank E. Bradner, Esq., to David Dobbin. Letter received and marked Exhibit C. 2.

COMPLAINANT RESTS.

LENA PLAGER, sworn in her own behalf.

20 *Direct examination by Mr. Bradner.*

Q Where do you live? A 216 Prince street.

Q How long have you lived there? A I lived there seventeen years.

Q Is your husband living? A No.

Q When did he die? A In April will be eleven years he is dead.

Q Have you a family living with you at 216 Prince street? A Yes, sir.

30 Q Have you daughters? A Yes, sir.

Q How many? A Four.

Q Any sons? A Two.

Q Are they all there living with you? A Yes, sir; one daughter lives across the street from me.

Q Do you know Mr. Dobbin? A Yes, sir; I know him. He lives next door from me.

Q Is he here in the court room? A Yes, sir.

Q Which one is it? A Right there. (Indicating.)

40 Q Do you recall making any agreement with him to sell your property to him? A No, sir.

Q What do you mean by saying you do not recall it? A Mr. Ginsburg was the man that I was to sell the house— I don't know Mr. Dobbin—

Q Where does Mr. Dobbin live? A He lives next door from me.

Lena Plager, direct.

Q 218? A Yes, sir.

Q And what is his business there? A Butcher business.

Q Any business carried on in your property? A No.

Q No business there? A No business. I am in the express business.

Q Where do you keep your express wagons or motors? A 10
In my yard in my garage.

Q You mean to say you had no talk with with Mr. Dobbin?
A No, sir.

Q Who did you talk with about selling your property? A
Mr. Ginsburg.

Q How long have you known Mr. Ginsberg? A I know
him about twenty-nine years; pretty near thirty years.

Q When did Mr. Ginsberg first talk to you about buying
your property? A The day before.

Q Day before what? A Before I sold. 20

Q What did he say to you? A He is coming to me, he
says, "Mrs. Plager, sell the house—property—to me." Then
I answered him, "I can't sell that because I need it for my
business." He says, "What is the use of staying with the chil-
dren, because no good staying with the children. I will give you
better proposition. I will give to change another property. If
you sell I get a good price. Sell the property to me." I said,
"what do you need my property for? You got plenty of prop-
erty." He says, "I need it for a shop. I got to make a shop
there." That is what he told me. 30

Q Well, did you reach any agreement as to price? A Yes,
sir. He says—then he told me, "I will give you a good price."
Then I asked him, "How much you think is worth my property?"
He says, "How much you want?" I told him I want \$16,000.

Q What did he say to that? A Then after he again come to
me the same day, and tomorrow he come to me again. I told him,
"I can't give you cheaper; fifteen thousand," I says, "is the
cheapest price." Then he told me, "All right."

Q Now, did you go with him anywhere that day? A Yes,
sir. I told him I want to make the agreement by Mr. Levi, 40
Justice of the Peace.

Q Did you go there? A No. I went about two blocks from
my house, to Springfield avenue, then he told me, "What is the
use to go to a Justice of the peace, come on to the lawyer." I
says, "I am not dressed." I was, you know—I am in the house,

Lena Plager, direct.

you know, around, and I told him I can't go like that; he says, "It is all right." The lawyer won't do you nothing for that. It is all right." I come to the lawyer. He give me an agreement to sign and he read for me, "Lena Plager, 216 Prince street." I said, "What is the matter? Everything is ready—the agreement is ready. How did you know my name?" And the lawyer—

10 Q What do you mean by "everything was ready"? A I know he wrote for me already my name and house.

Q Already had the paper all written out? A Yes, sir.

Q What did he say then, when you said that? A Mr. Ginsberg give me the check and give me the paper to sign—I signed one paper—and I took the check and told him, "Mr. Ginsberg, I don't know what about this. I will come home and if it is not right I will give it to my children to read it. If my children tell me something is wrong, I will give you back the deposit." He told me, "All right," and he started to laugh at me. I said, "What are you laughing for? I am not crazy." He says, "Mrs. Plager, I got you to do it and I don't know—you don't know. I got you to do it and you don't know that."

Mr. Weinberg. Who said that?

Witness. Mr. Ginsberg told me that.

Q Was Mr. Dobbin there then? A No, sir.

Q Did he come in? A Later he come.

Q Did you say anything to Mr. Dobbin? A No, sir; nothing.

30 Q Did you see Mr. Dobbin sign the paper? A No.

Q Well, when you went out of there where did you go? A Right home.

Q And who was home when you got there? A My children. All my children was home.

Q Was the paper read at home? A Yes, sir.

Q Who read it? A I give it to my daughter. She is right there. (Indicating.) She was sitting with her husband. I gave it to her to read. She read me \$11,000. I started to cry, "What is the matter? He fool me altogether." The agreement was ready and everything, and the price wasn't right." My sons come; I says, "Look here." He says, "All right. Give back right away the deposit. Don't sell the house. The house is mine. You can't sell the house. What is the matter with you, are you crazy?"

Lena Plager, direct.

Q What did you do with the check? A I gave it to my tenant and sent him in with the check to Mr. Dobbin, because it was in Dobbin's name.

Q What did you know about Dobbin before your daughter read the agreement? A I don't know nothing about Mr. Dobbin.

Q When did you first know that you had agreed to sell to Mr. Dobbin? A After. 10

Q Who told you? A My daughter.

Q Do you recognize the check? Can you make that out? A I don't know. I can't.

Q You don't know? A No, sir; I don't.

Q When you made your mark on the paper could you read that paper? A No, sir.

Q Did anybody read it to you? A Nobody. He give me to sign that paper; that is all. 20

Q Who said to sign it? A Mr. Ginsberg. He was sitting so—like that (indicating)—and the paper was with him.

Q What did Mr. Lubetkin say to you? A He didn't said to me nothing, Mr. Lubetkin.

The Court. Why did you sign a paper of that kind without somebody telling you what it was?

Witness. He said it was 216 Prince street and Mr. Ginsberg give me the paper to sign.

The Court. Why did you sign a paper of this kind without knowing what it was? 30

Witness. I told him, "I don't know what is in the paper. I will give the paper to my daughter."

The Court. Why did you sign that without knowing what you were signing?

Witness. I signed it. That is all.

Q Do you understand that? If you couldn't read it yourself, and Mr. Ginsberg told you to sign it, then what did you do? What did you say? A I told him I can't sign my name—I can't sign my name because I can't write. 40

Q Why did you put your mark there? A He told me to make the mark and I make it.

The Court. Why didn't you have somebody read the paper to you?

Lena Plager, direct.

Witness. I wanted to wait for my son, he should go with me, and then he told me, in my house, "You don't need nobody; so long as you go with me you don't need nobody." I thought he is a good friend, I will go with him. I know him long already.

10 Q Why didn't you say you would take the paper home and have the children read it? Why didn't you say that? A I told him because I don't know what is in the paper to read—I am blind. I don't know what the paper read.

The Court. Didn't they tell you what it was you were signing?

Witness. The children told me.

The Court. Didn't Ginsberg or Lubetkin?

Witness. No; didn't tell me nothing.

20 *The Court.* What did you think you were signing?

Witness. He told me.

The Court. What did you think you were signing?

Witness. He told me it was an agreement.

The Court. Agreement for what?

Witness. For the property.

The Court. You understood that, did you?

Witness. Yes, sir.

The Court. For how much?

30 *Witness.* He didn't tell me the price. "Mrs. Plager, here is the paper; sign the paper." That is what he told me.

The Court. Didn't tell you the price?

Witness. No.

The Court. You knew the agreement had to have the price in, didn't you?

Witness. I was then just like crazy. I don't know what to say. He says, "Here is everything ready." He

40 give me the paper to sign.

Q What else did he say before you went out? You said a moment ago you would take it home and have the children read it? A Yes, sir; that if the agreement wouldn't be right, you know, give back the deposit.

Lena Plager, cross.

Q And was there any answer made to that by Mr. Ginsberg or Mr. Lubetkin? Did they say anything? A Nothing; I don't think.

Q I understood you to say Mr. Dobbin wasn't there then? A He was—I went by the door already when he was coming in.

Q When you were going out Mr. Dobbin was coming in? A Yes, sir. 10

Cross examination by Mr. Weinberg.

Q Did you have the agreement in your hand as you were going out? A Yes, sir; I had the agreement with the check.

Q You had the check and the agreement as you were going out? A Yes, sir.

Q And at that time Mr. Dobbin just came in? A Yes, sir; and I started to go home already as he is coming in.

Q Now do you know how Mr. Dobbin's signature got onto your paper, then? A I didn't see him sign. 20

Q You have another agreement? You have an agreement with respect to this property, haven't you? You have got an agreement of your own? A Yes, sir; sure I had the agreement.

Q May I see it to see if they are both alike?

Mr. Bradner. I think they are. (Handing paper to Mr. Weinberg.)

Q Where were you at the time you passed Mr. Dobbin as you were going out of the office? What floor were you on, to begin with? A I think it was one story—on the second floor. 30

Q Office building? A Yes, sir; I think it is the second floor.

Q Did you go down stairs or down the elevator? A No, stairs.

Q You were going down the stairs? A Yes, sir; but I was inside when Mr. Dobbin come in.

Q You were still in the office? A Yes, sir; I was by the door.

Q Ready to go out as Dobbin passed you and came in? A Yes, sir.

Q Did he say anything to you when he came in? A Nothing. 40

Q Just walked in. You didn't speak a word to him? A Yes, sir.

Q And you went right home? A Yes, sir.

Lena Plager, cross.

Q You had this paper in your hand? A Yes, sir—one paper and I had the check.

Q Can you tell, by anything on this paper, if this is the one that you had in your hand when you passed Mr. Dobbin going out? Will you look at it? By any marks—whether you can read or not—if you can tell whether that paper belongs to you?
10 A I don't know. Maybe this is the paper.

Q You had a paper and you gave it to Mr. Bradner, didn't you, your attorney? A Yes, sir; I gave it to Mr. Bradner.

Q And this paper—whatever paper it was—that you gave to Mr. Bradner is the same paper you had in your hand when you passed Mr. Dobbin going out? A Yes, sir.

Q You don't know how Mr. Dobbin's signature got on this paper then, do you? A No, sir.

Q I see. How many papers did you sign the day you were in Mr. Lubetkin's office, do you know? A I know one paper
20 I signed.

Q Are you sure you didn't sign two? A One.

Q Now let's show you another paper—that is, to say, two agreements; you signed two papers that were just alike, didn't you? A No; it was shown to me—Mr. Ginsberg, he was sitting right there, he had the paper on the table and he give to me to sign, the one paper, that is all.

Q Now, didn't you sign this paper? A No; I signed only one. I signed one. I couldn't tell you which paper.

Q This is the broker's authorization. A I couldn't tell
30 you which paper.

Q You only signed one? A Yes, sir.

Q Did you, at the time you were in Mr. Lubetkin's office, talk to Mr. Ginsberg about paying him commission if he sold your house? A I don't know about anything.

Q You know Mr. Ginsburg for a great many years as a real estate broker, do you not? A I know him, sure.

Q Connected with the building loan, things of that sort? A Yes.

Q You never knew of him being in business, using a shop?
40 A He used to be a carpenter, yes.

Q Yes; long ago, as builder? A Yes, sir.

Q You have known Dobbin for a long time, haven't you? A Eight years; he has lived right near me eight years.

Q Right next door. What is his business? A Butcher.

Lena Plager, cross.

Q Has a chicken market? A Yes, sir.

Q And you have on your place what? A A garage.

Q Garage in back, and in front? A A house.

Q An old house there, isn't it? A It is near new; six and a half years since I built it.

Q Did you ever know that Dobbin wanted your property? A 10
Never; I never was speaking about selling the property.

Q Now, Mr. Ginsburg came to you and he said he wanted to buy the property? A Yes, sir.

Q And you said you wanted \$16,000? A Yes, sir.

Q Then he said that was too much? A Yes; that is what he told me.

Q And you said you would take \$15,000? A Yes; the next day he is coming again and he told me how much—told me, "Mrs. Plager, do you want \$15,000." I thought, "Well, I got nobody to ask." My oldest son wasn't at home and I didn't have 20
him to ask about that.

Q Now, how long was that before the day when you signed the paper? Was that the day before you signed the paper, or same day, or what? A The day before he was by me, and then the same day when I signed the paper he was by me, and he told me two or three times.

Q What did he want on those other occasions? A He wanted the house—he wanted to buy the house.

Q You told him you would sell it to him; what did he come again for? A I told him, "I can't sell that without my children." He says, "What have you got to do with the children? It is your property." 30

Q Did you tell him about the mortgage that was on the place? A I didn't tell him nothing, because he know himself. He didn't ask me about the mortgage.

Q How do you know he knew? A Because he was treasurer in my building loan.

Q Did you tell him how much of a deposit you wanted when you signed an agreement? A I told him in my house.

Q Just yes or no. Did you tell him? A He told me, "Mrs. Plager, I will give a deposit of a hundred dollars." I told him, 40
"No; such an amount I cannot take—a hundred dollars."

Q How much did you tell him you wanted? A I told him I wanted four or five hundred dollars, and he give me three hundred dollars.

Lena Plager, cross.

Q And did you tell him how much cash you wanted in the sale of the property—if you wanted it all over the mortgage, or whether you would take a second mortgage? A He didn't tell me nothing about that.

Q Did you tell him? A No; nothing.

10 Q You just didn't say, "I want \$15,000"? A He told me only, "Mrs. Plager, I will give you all the money." That is what he told me.

Q He offered to do that? A Yes, sir.

Q Then you wanted to go to Justice of the Peace Levi to draw the agreement? A Yes, sir.

Q And he said he would go to Mr. Lubetkin? A Didn't mention the name; he told me only to go to the lawyer.

20 Q Now, did you go with him? A I told him I am ashamed of myself to go to the lawyer like that.

Q Did he wait until you dressed up? A No; he didn't wait, because I was on the way already.

Q Did he tell you where to go? A He told me, "Mrs. Plager, I will go with you on Springfield avenue to a lawyer."

Q Did he give you the name of the lawyer? A No, sir.

Q How did you know how to get to the lawyer? A He went with me.

Q He waited until you got dressed? A He didn't wait.

30 *The Court.* She went the way she was, and they went together.

Q When you got to the office did you find Mr. Lubetkin there? A Yes, sir; I found the lawyer.

Q Was he in the office when you got there? A Yes, sir.

Q Or did he come in a little later? A No; he was in the office.

Q Did you see his associate, Mr. Greenbaum? A I don't know the name.

Q You know him? A I don't know; I see two men; I don't know whether he is a lawyer or who.

40 Q You had Mrs. Frank with you; your friend? A Mrs. Frank was with me?

Q She was there? A She was.

Q You didn't hear them telephone for Mr. Dobbin while you were there, did you? A No; I didn't hear.

Lena Plager, cross.

Q You started to say, Mrs. Plager, I think, in answer to his Honor's question, that Mr. Lubetkin read the agreement to you.

A He read it to me? He started to read, "Mrs. Plager, 216 Prince street," and I asked Mr. Ginsberg, "How did he know my name? What is the matter? Is everything ready already?" Had my name—

Q What else did he read beside your name and 216 Prince street? A I couldn't tell you; I don't know.

Q You must remember something about what was in it? A I think he told me I am agreeing to sell—I don't know what he told me.

Q Just think, please; just think a little bit. See if you don't remember what he told you was in that paper? A He was reading more things—more words, but I don't know.

Q Did he speak in English? A Yes, but I don't know because I was excited.

Q Did he speak to you in English or English and Yiddish? A English.

Q Both? A Only English.

Q He spoke some Yiddish to you? A No.

Q He speaks it, doesn't he? A No; he spoke to me in English.

Q You understood everything he said to you in English? A I know it was read—he read to me a couple of words and give me the agreement to sign. Mr. Ginsberg took the agreement and he says— (interrupted).

Q I will come to that. Whatever he did say to you you understood? You understood everything he told you? A I told him, "I don't know what you are saying; what you read to me in the agreement; I will give it to my children to read over."

Q Did he explain it in Yiddish to you? A No, sir.

Q Anything you said you didn't understand? A No.

Q Did you ask him to? A I didn't ask him.

Q You knew he was a Jewish boy? A I don't know.

Q You do know him? A I don't know his people, anyway.

Q You said you would have your children read it, and if it isn't all right you would give back the money? A Yes, sir.

Q What did you think wasn't all right? A Because everything was ready almost; that I told him myself, something is wrong; I told Mr. Ginsberg right there.

Lena Plager, cross.

Q Didn't he say anything about the price of the property?

A Not to me; didn't tell me nothing.

Q Didn't tell you who was going to buy it? A No, sir.

Q Or when you were to give the deed for it? A No, sir.

Q All you knew it was a paper with your name on it. A
10 Told me, "Next week you have to settle." I told him, "No, I
can't do that." That is Mr. Ginsberg told me—that is what he
told me, "Next week you will have to settle all the property." I
said, "No; I can't go away from the house—seventeen years
there and everybody knows my business—I can't go away so
quick. You must give me three months' time." That is what I
told him.

Q Didn't you talk about getting Charles Rabinowitz, the
tenant, out of your store before you gave the deed? Wasn't
20 that talked about? A He told me I should go with my tenant—
I should go next week with my tenant. I told him, "No; I can't
do that."

Q When? A At the same time he give me the agreement.

Q You should leave with your tenant? A Yes, sir.

Q You talked about getting the tenant out of there, didn't
you, before you signed this paper? A No, sir.

Q You did sign a paper, though; that is sure? A I signed
one paper; that is sure; yes.

Q How long has Rabinowitz been in your place? A He is
30 over six and a half years; in May he was six and a half.

Q Did he have a lease? A No.

Q You then talked about getting him out on a thirty days'
notice? A Yes; but I told him, "I can't do that to my tenant,
because he lived with me so long, and he must have his time,
because he will have to get rooms and a store."

Q Now, after this agreement was signed, didn't you immedi-
ately buy another piece of property across the street? A Across
the street; for my son-in-law. He bought that property; not me.

Q For your business; isn't it—your express business? A
40 No, sir; he built for himself; he is a builder; he built for
himself.

Q Isn't it for your express business? A No, sir.

Q Now, there is a garage going up there? A Yes, sir.

Q What is his business? A He is a builder, but he is in the
same business with me.

Lena Plager, cross.

Q He is with you in business—in the express business? A Trucking business, yes; he is now in the same business.

Q So you intended to go in the express business in the new building across the street from where you sold? A I don't know what he is going to do; that is not my business.

Q Now, when you went out with that paper you had the check with you, didn't you—you had the check for \$300? A Yes, sir. 10

Q You knew how much the check was for, didn't you? A He told me, Mr. Ginsberg, here is a check for \$300.

Q Did you see Mr. Ginsberg write out the check? A No; I didn't see nothing.

Q Didn't you see any one write out the check? A No, sir.

Q Now, what did you do with the check and paper as soon as you got home? A I come home and showed the children the check and the agreement.

Q And you said one of the sons said immediately that you must be crazy to sell it so cheap; is that right? A Yes. 20

Q He said, "You are crazy to sell so cheap"? A He says, "Mama, why did you do that; that is my property"? I said, "No, I didn't had that amount; I sold it for \$15,000."

Q You told him that? A Yes, sir. I come right away down to my tenant and told him, "Please, Mr. Rabinowitz, go in and tell him I cannot give the property for \$11,000; he make a mistake, and the children holler on me, and he don't want to stay with me, my son, on account of this; he wanted to go away from me." 30

Q You gave the son the check? A Yes, sir.

Q What is his name? A I gave it to him. About eight days, or seven—I don't know how long it was by my son.

Q Is your son's name Samuel Plager? A Yes, sir.

Q Two or three days after you got the check you gave it to your son to cash? A To deposit; I sent to Mr. Dobbin he should take the deposit.

Q When? A He is going every day until now to him.

Q When was the first time? A The same time that my tenant was there; the same day. 40

Q When was your tenant there? A My tenant was the same day and the next day again.

Q Why didn't you go? A He refused it.

Q Why didn't you go? A Because I didn't—I took it by Mr. Ginsberg; I see it is Mr. Dobbin's name.

Lena Plager, cross.

Q Let us get this straight. After you showed your son this check— A Yes, sir.

Q —you held it or he held it about four days? A Yes, sir.

Q And then he cashed it? A Because Dobbin refused to take it back. Then I told him, “Sam, I am afraid to hold the check;
10 you take the check and cash it.”

Q You never offered this to Mr. Dobbin, did you? A Not myself; no.

Q Why didn't you? A I offered it to Mr. Ginsberg.

Q Why didn't you go to Mr. Dobbin after you saw his name— or you were told his name was on the check? A Because I took it to Mr. Ginsberg and told him, “Mr. Ginsberg, that—” (interrupted).

Q The fact is you did not offer this check to Mr. Dobbin yourself? A No, sir.
20

Q And you didn't go to speak to Mr. Dobbin about it? A I have nothing to do with Mr. Dobbin because— (interrupted).

Q You didn't go there and tell Mr. Dobbin that you find he is the purchaser of this property, did you? A Yes, sir. I called Mr. Ginsberg in right away, the same day—I called him in my house.

Q What same day? A Same day I come back from the lawyer and the children tell me this is not right, the agreement and the check; then, as he had to pass near me, Mr. Ginsberg, I called him in and told him, “Mr. Ginsberg, here is the check, and I couldn't give you the property; take the deposit back.”
30 He says, “No; what do you mean, Mrs. Plager. This is business. What do you think, you are going to make a monkey out of me? That is business.”

Q What did you say to that? A I told him, “Business, never mind—not right business.” My daughter was with me.

Q Who said that, Dobbin? A Mr. Ginsberg. My daughter says, when he refused to take the check, “Oh, Mr. Ginsberg, you do not do nice to my mother. You done crooked. You done not right to my mother. You done crooked to my mother, what you done to my mother;” he says, “That is not your business,” and
40 he run away from my child.

Q What did you tell him, if anything, was crooked that he did? A My daughter?

Q You were with your daughter when your daughter said to Ginsberg, “You did something crooked?” A Yes, sir.

Lena Plager, cross.

Q Did she tell him what thing he did that was crooked? A Of course, the agreement is crooked.

Q What did she say to Mr. Ginsberg, if anything at all? A Because he refused to take the deposit back she was mad at him.

Q Because he wouldn't take his money back? A Yes, sir. 10

Q Did she say anything about what he did to charge him with being crooked? A She told him—she didn't talk so much because he run away from the child.

Q I want to know, before he ran away from the child, what you or your daughter said to Mr. Ginsberg about his being crooked. What did you say he did? A Because he make the contract for cheaper than the price was.

Q Give us the language. What did you say about it? A She didn't tell him much. She told him, "Oh, Mr. Ginsberg, you didn't do good to my mother; you done crooked." Then he started to run from the child. He took his coat like that (indicating) and ran away from the child. 20

Q You said he said something before he ran away? A No; nothing. I asked him, "Mr. Ginsberg, please take the deposit back. I do not want to sell the property. I need it for myself." He says, "No, sir, Mrs. Plager, this is business."

Q Now, you told him to give the deposit back to Mr. Dobbin? A Yes, sir; I told him, "Here is the check. Give the check back to Mr. Dobbin." 30

Q You knew he was the buyer then? A Yes. My daughter told me Mr. Dobbin was the buyer.

Q Now, you have told us all that you can remember about what you and your daughter said to Mr. Ginsberg when you asked him to take the deposit back? A Yes, sir.

Q Can't think of anything else? A Not much—didn't talk much because he started to run away.

Q Why didn't you take it in to Dobbin; he lived right next door to you? A I have nothing to do with him. I am mad with him about two years. He made a chicken market and I had him arrested; then he is mad on me, and I don't talk to him never. 40

Q Now, can you tell us when it was you had this talk with Mr. Ginsberg, when you wanted to give the check back, or the money back? When was it—what day? A It was the same day, and on the second day I told him again.

Lena Plager, cross.

Q Same day of what? A Same day when he buy the property.

Q The same day when you signed the paper? A Yes, sir.

Q Same afternoon? A Yes, sir.

10 Q You didn't see your son up to that time? A He is always with me. He don't work, because he is sickly—he is always with me in my house.

Q Where did you meet Mr. Ginsberg? A Near my house.

Q Walking along? A Yes, sir; he is going—always walking around near me; always.

Q Did you have the check in your hand? A Yes, sir.

Q Now, did they read to you that Mr. Lubetkin signed the agreement, too, as a witness? A It was Mr. Lubetkin's name in the contract; yes, sir.

20 Q You knew you had been to Lubetkin's office? A I was to Mr. Lubetkin's office.

Q Did you ever go back to him and tell him he had done crooked? A No, sir; only my son.

Q Never mind your son; I am talking about you. A I didn't talk with him.

Q You never went back? A No, sir; I didn't see him, never.

Q Never? A No, sir.

Q Why didn't you? A What have I got to do with Mr. Lubetkin?

30 Q You say Mr. Lubetkin did not read what was in the paper? A I had nothing to do with the lawyer.

Q You don't think he did anything wrong? A No; I don't think—

Q Why didn't you? A What I got? Mr. Ginsberg, he give me the paper and I got to do with Mr. Ginsberg; that is all.

Q How long did it take Mr. Lubetkin to read this paper to you? A Not long.

Q Well, what do you mean by "not long"? A I go in; he started to read; he was standing—he was reading the paper to me.

40 Q Do you know how many pages he turned over when he was reading? A I don't know. I couldn't tell you.

Q Did he read the description of the property? A He read a word there—he says "216 Prince street, Lena Plager"—I told myself how you know my name.

Lena Plager, cross.

Q That is the only thing that impressed you. You wondered how he knew your name. It didn't occur to you that Mr. Ginsberg told him your name? A I suppose that he told him before.

Q Didn't you talk about the question of damages in case either one backed out? Do you remember talking about that? 10
A He didn't tell me nothing.

Q Do you remember telling Mr. Lubetkin you wanted a clause in that agreement that if Mr. Dobbin backed out that you should have \$300 damages? A No, sir.

Q Don't you remember Lubetkin saying to you, "You have got \$300 now. If he backs out that is your money, but if you back out Mr. Dobbin wants the property, and will insist on getting it"? A I don't know if he told me that.

Q You remember something about that—something was said like that. Don't you remember that? A He told me here is 20
the check—I don't know—but Mr. Ginsberg give to me the check and he give to me the paper.

Q Please do not get me off of my question. What I want to know is if you do not remember right now that there was something said between you and Mr. Lubetkin about the amount of damages you should get if the agreement didn't go through. Don't you remember talking about that? A No.

Q Not a word about it? A No, sir.

Q Not a thing? A No, sir.

Q Did you ever tell your son to send Dobbin a check or Ginsberg a check for the \$300? A He wanted to give him the same 30
check.

Q Did you ever tell your son to send Dobbin or Ginsberg a check for \$300? A No.

Q Never told him to do that? A No, sir.

Q Did Ginsberg speak to you in English or Jewish? A He speak to me Jewish.

Q In Mr. Lubetkin's office? A Yes, sir.

Q Did you say anything to Dobbin at any time, either in that office or out of the office? A No; I didn't talk to him at all. He 40
went in and went home.

Q You did buy this property across the street—you have since taken title? A My son bought the property.

Q How long have you been in business? A I am 26 years in business.

Lena Plager, cross.

Q Your husband is dead how long? A Eleven years in April.

Q How old is your children? A My oldest son is 25 years old.

Q And the youngest one? A The youngest is 23—the baby, you mean?

10 Q The youngest one, the baby? A The baby is 11 years old—he was to be 11.

Q What did you do, if anything, in the business while your husband was living—did you do anything in the business yourself? A I had the same express business, and I had the store for myself—feed store.

Q You run the feed store yourself? A My husband used to run it with me together.

Q Who took care of the express business? A Him.

20 Q You looked after what? A I used to help in the business.

Q What did you do? A In the feed business.

Q What did you do in the feed business? A When the customers come in I sold hay and oats.

Q You knew the prices of hay and oats? A Yes, sir.

Q Knew the market price and selling price? A No market price, you know—

Q You know what it cost you? A Yes, sir.

Q How did you sell, retail or wholesale? A Retail.

Q To people who had horses? A Yes, sir.

30 Q They would come up with their wagon and take it away? A Yes, sir.

Q Did you deliver it? A My husband used to.

Q If they left an order would you write it down in a book? A I believe I got children.

Q You said to them how much? A Yes, sir.

Q Do you figure? A No.

Q Do you know how to make change? A No, sir.

Q If somebody gave you a two dollar bill— A Of course—sure, I know to make change.

40 Q Now, did you know anything about the express business? Did you know how many horses you had? A My son run the business.

Q Since your husband died, Mr. Plager, what have you had to do with the business? A Only my son runs the business.

Q Your son was only— A Fourteen years old, he was.

Lena Plager, cross.

Q Fourteen. He didn't run the business at fourteen, did he?

A Yes, sir—ten years he was running, because my husband was sick—he used to help him.

Q What did you do, if anything? A Now, I don't do nothing.

Q When did you stop doing something? A Long already, 10
because the people took the money—

Q When? A About a year after my husband's death, I think—right away, because there was no business—it was too heavy for my boy to go on with the feed business.

Q So you gave the feed business up? A Yes, sir.

Q Now, what do you do now? A He done the work—he is in the express business.

Q What do you do? A I don't do nothing. I am running the house. I take care of the three children; that is all.

Q You said you were in partnership with your son-in-law, 20
didn't you? A Of course, the son is in partner with him.

Q You said you were? A Well, I call that—everything together, you know.

Q What is the name of the business—express business? A It is Plager Brothers.

Q Do you get any of the money from the business? A Well, he give to me—I keep the house, you know; I buy everything myself and so forth.

Q You do everything—buy what for the house? A Every-
thing I need in the house for the children and myself. 30

Q Did you have anything to do with putting up that garage
across the street? A No, sir.

Q Make any contracts? A No, sir.

Q Talk about what it would cost? A No, sir.

Q Do you know how much it cost? A I don't know.

Q Do you know how much the lot cost? A It is my son-in-law's business.

Q Whether it is or not, do you know? A Of course, he told me how much it cost him.

Q Did you talk about it with him whether it was too much or
too little? A He no better as me. I don't tell him about 40
that. He is in the business. He is a builder. He knows what it is.

Q Do you know anything about the value of property on Prince street at all? A I live there.

Lena Plager, cross.

Q Do you know anything about the value of properties up there? A I don't know.

Q Don't know what your property is worth? A Of course, I know what she is worth; she is worth now about twenty to thirty thousand.

10 Q Worth now about twenty thousand? A Because I got plenty of rent for my property.

Q How much do you get? A I can have—

Q Not what you can have—what do you get? A \$150.

Q How do you figure? A \$40 for the store.

Q Who uses it? A Charles Rabinowitz.

Q When did you raise him? A I raised him long already—about four months. I raised him to \$40. He used to pay \$30. He pays me now about \$40.

20 Q That is about four months ago you raised him? A Yes, sir.

Q Who else did you have in the property? A Myself. I got a flat.

Q You live there? A Yes, sir.

Q And who else? A And then is the garage.

Q Is there only the two in the building? A Two in the building.

Q You and the storekeeper? A Yes, sir.

Q How many rooms are there in your place? A House is five rooms, all improvements.

30 Q What have you got in the way of improvements? A Steam, electric lights.

Q Frame building? A Yes, sir.

Q In back you got a garage—how big? A Fifty feet.

Q Fifty feet front? A Fifty feet long and twenty-five front.

Q How deep is the lot? A Altogether it is a hundred.

Q Twenty-five by a hundred? A Yes, sir.

Q And the garage covers the whole lot 25 by 50—50 deep and 25 wide? A Yes, sir.

Q And you rent that out? A To my son.

Q To your son? A My son pays me for that.

40 Q Does he pay you rent? A Yes, sir.

Q How much? A He paid me \$80 on the four big machines and little machine.

Q How long has he been paying you that? A He pays me always because I must cover my expenses.

Thelia Plager, direct.

Q How long has the garage been up? A Going on four years.

Q You built that? A I built that; yes, sir.

Q You paid for it? A Yes, sir.

Q And you made the contracts for it? A Sure.

By the Court.

10

Q When Mr. Ginsberg came to you about the property did you then know that he was in the real estate business? A I know him—I know him a long time.

Q You knew he was engaged in the real estate business? A Yes, sir; I know.

Q Did you know whether he was buying this property for himself or for someone else? A I asked him, "What do you need that property for? You got plenty of property." He says, "What do you care what I need." He says, "I need it for a shop."

20

Q Did you understand he was buying it for himself or someone else? A For himself. He told me, "I am buying it—I buy it for a shop."

THELIA PLAGER, sworn on behalf of the defendant.

Direct examination by Mr. Bradner.

Q How old are you? A I am sixteen.

Q Are you a daughter of Mrs. Lena Plager? A Yes, sir.

Q Do you go to school? A No, sir.

30

Q Do you know Mr. Ginsberg? A Yes, sir.

Q Did you ever see him at your house? A Yes, sir.

Q When did you see him there? A Well, when he came in at our house he says to my mother he wants to buy the house and started to tell her—he says to her that she should sell—she shouldn't be in business with the children, and why don't they board and all. He says, "I want to buy your house." My mother says she's don't want to sell the house. He says, "Come on; come with me and I will sell—I want to buy the house," he says. My mother says no, she don't want to sell the house. So he come around the next day. He says, "Well, Mrs. Plager, come with me." My mother says, "Where?" He says, "Well, I want to go with you, and you go with me to sell the house." My mother says, "No; I can't go; I am not dressed." He was

40

Thelia Plager, direct.

pulling her. I says, "Now, listen, Mr. Ginsberg, my mother don't want to sell the house." He says, "Why, it is none of your business," and he took her along.

Q Well, were you there the day before when he was there?
A Yes, sir.

10 Q Well, will you tell us just what you heard them say? A Well, he says, "How much do you want for the house?" My mothers says, "\$16,000." So he says, "Well, that is too much." So he came—he was bothering her—came a few times and she says, "Well, then, I will tell you, I will make it the cheapest \$15,000." He says, "All right." And my mother asked him, "Well, you are going to buy the house?" He says, "Certainly, I am going to buy the house."

20 Q "What? A My mother asked him who is going to buy the house and he says he is going to buy the house. The next day he came and she wasn't all dressed to go out—fit to go out; he says, "You come along." I said, "Now look here, Mr. Ginsberg, my mother don't want to sell the house. Don't you force her to sell." He says, "It is none of your business. You are nothing but a kid. You mind your own business." He took her along.

Q How was she dressed, for in the house? A Just dressed in the house, doing her housework.

Q What kind of a hat did she have on? A Didn't have any hat on.

30 Q What kind of a coat? A She didn't have any coat. She just took a cape.

Q Did you see your mother when she came back? A Well, when she came back—yes, sir; my oldest sister and I was in the house.

Q What is your oldest sister's name? A Yetta Plager.

Q Is she here now? A Yes, sir.

40 Q And when your mother came in what did she say? A Why, the first thing Yetta said, "Let me see the contract"—because when she came in she was, she had a paper in her hand so (indicating), you see. My mother said, "Read it for me." She read it and saw it was only \$11,000. "Why," she says, "this is wrong. I heard you tell Mr. Ginsberg \$15,000." I was there and she was there at the time.

Q And then what was done? A Then my mother says all she will have to do is to see Mr. Ginsberg about this.

Thelia Plager, cross.

Q Do you know whether Mr. Ginsberg was around there that day again? A That day? I don't know. I think he was around at night—I think it was around at night.

Q Did you hear what was said when he was there that night? A No; I wasn't there at the time.

Q You weren't there? Then you didn't hear anything that your older sister said to him? A No, sir.

10

Cross examination by Mr. Weinberg.

Q Do you know how long your mother stayed away when she went to the office with Mr. Ginsberg to sign the paper? A Well, she stayed away quite a while.

Q How long about? A I don't know. I think it was possibly two hours or something like that.

Q Do you know where the corner of Springfield avenue and Howard is? A Yes, sir.

20

Q How long a walk is that from your house? A Well, about ten or fifteen minutes.

Q How long did you say your mother was away? A Well, she was away possibly two hours.

Q Possibly two hours? A Yes, sir.

Q Who did she go out with? A Mr. Ginsberg.

Q Anyone else? A Well, Mrs. Frank was walking home or taking the car or something, and then she walked down—I don't know where she went.

Q Did Mrs. Frank go out with your mother and Mr. Ginsberg? A Yes, sir; she went out, but I don't know where she went to.

30

Q Mrs. Frank was in your house at the time Mr. Ginsberg came? A No, sir.

Q Was your brother there? A My brother? No, sir.

Q Samuel; was he home? A No, sir; when he came home—

Q Where was he at the time? A Well, he was out with his machine.

Q With a wagon or with the automobile? A Yes, sir.

Q And did you see your mother come home? A Did I see my mother? Yes.

40

Q Was she alone? A When she came home? Yes, sir.

Q Was Mrs. Frank with her? A No, sir.

Q Where did Mrs. Frank live at that time? A Where did she live?

Thelia Plager, cross.

Q Yes. A I don't know. She moved. I don't know where she lives now—where she lived before—

Q Where she lived at that time? A I don't know.

Q Your mother and Mrs. Frank were friends? A Yes, sir.

Q Good friends? A I don't know where she lived.

10 Q Do you know how Mrs. Frank got into your home that day? Do you know if she was sent for? A No, sir.

Q You didn't hear? A No, sir.

Q No one went out for her? A She just came up to visit; that is all.

Q Now, you heard Mr. Ginsberg say to your mother, "Now, I want to buy." "Buy" or "sell"? A "I want to buy your house."

Q You started to say—I don't know whether it was a slip or not, but you said—"I want to sell your house," and then you changed it, "I want to buy." A No, sir; I said that first, "I want to buy the house."

Q What is that? A I said at first he came up first and said he wanted to buy the house.

Q Don't you remember saying here in court just a few minutes ago, when you started to tell your story, that Mr. Ginsberg said, "I want to sell," and then you changed it and said, "I want to buy the house"? A No, sir.

Q Is that what you said here? A No, sir.

Q If you said it you didn't mean to say that, "I want to buy," and mother said, "I will sell it to you for \$16,000?" A Yes, sir.

Q What did he say? A He says, "That is too much." Then mother says, "I will sell it to you for \$15,000."

Q Who was around at that time besides Ginsberg and yourself? A My oldest sister and I.

Q Four of you? And did either of you say anything about it? A We said we didn't want to sell the house to anyone because we are living there long and everybody knows us.

Q What did your mother say? A She said she didn't want to sell it at all; but she was excited—she had a little argument with my brother—so she went along.

Q She had an argument with your brother. When was that, the day before? A Yes, sir.

Q She got angry and made up her mind she was going to sell the property? A Yes, sir.

Thelia Plager, cross.

Q And then you didn't want her to sell it? A No, sir; none of us wanted her to sell.

Q She had given you all notice, in the family, the day before, after her quarrel with the boys, that she was going to sell the property and get through with this, didn't she? A No; she didn't say that the day she went, but I knew Mr. Ginsberg was coming up the day before. 10

Q I am not talking about Mr. Ginsberg. I am talking about the quarrel your mother had with your brother? A Yes, sir.

Q It was over business, wasn't it? A Yes, sir.

Q And she said, practically, "I am tired of this thing and I am going to sell the property and get out," didn't she? A She didn't exactly say she was going to sell, but she was angry. I went out. I don't know what she said after.

Q Was that the day Ginsberg came? A That was the next day. 20

Q The day before Ginsberg came? A Yes, sir.

Q (*By the Court.*) How did you know Ginsberg was coming? A I didn't know he was coming.

Q (*By the Court.*) You just said you did? A No; I saw him come up. I didn't know what purpose he came up for.

Q (*By the Court.*) Now, it was at the time your mother told Ginsberg that she would sell for \$15,000 that you said, "My mother don't want to sell?" A I said, "I don't want my mother to sell the house." 30

Q (*By the Court.*) You said that? A Yes, sir.

Q Why did you tell him your mother didn't want to sell? A My mother said she didn't want to sell for any amount because she was living there long.

Q But she did say she would sell for \$15,000? A For \$15,000, yes, sir.

Q Didn't Ginsberg say that was entirely too much and he could get probably \$11,000? A No, sir.

Q Didn't she then say, "Who do you want to sell it to?" A Yes; he says, "I am the buyer." 40

Q You are sure he said, "I am the buyer?" A Yes, sir.

Q Did he then say, "I will pay you \$15,000?" Did he then and there agree to pay \$15,000? A Yes, sir; that is why she went with him.

Q What? A That is why my mother went with him.

Samuel Plager, direct.

Q So that at the same time she agreed to sell for \$15,000 he said, "Well, come on with me to the lawyer." A Yes, sir.

Q Now, after that you don't know anything more about this transaction. You didn't see the agreement—you were not consulted afterwards? A No, sir.

10

SAMUEL PLAGER, sworn for defendant.

Direct examination by Mr. Bradner.

Q Lena Plager is your mother? A Yes, sir.

Q How old are you? A I was twenty-five in September.

Q You are running the express business? A Yes, sir.

Q Did you know anything about this sale of the property at the time? A No, sir. I didn't know my mother ever intended selling. I got my garage there. We make our living there. In fact, I make a living for my mother and all.

20

Q Did you see your mother when she came back from the office where she had signed some paper? A Well, I wasn't home then. I come back and my mother was in the house.

Q Did you see the check at that time? A No. While I was in the house I asked them to give me a cup of coffee; she give it to me and then she said, "Sam, I sold the house." I said, "How much?" She said, "\$15,000." I said, "To who?" She says, "To Dobbins"—or "to Ginsberg." "Who told you to sell it?" I said. "I am working for that house; I builded that house up; that is where I make a living; got my garage and everything there." She says, "I don't know"—she went and sold it for \$15,000. She handed me the check. I seen it was by Dobbin. I says, "Did you sell to Dobbin or Ginsberg?" She says, "To Ginsberg." So I took the check; I says, "Mama, take the check back—send it right back. I don't want to sell the house at all." So they went in with the check to Dobbin—the tenant.

30

Q Who went in? A The tenant.

Q Who is the tenant? A Rabinowitz.

Q Did you see the check in the tenant's hand? A Yes, sir.

40

Q Did you see him with the check? A After I gave it to my mother she gave it to him.

Q I notice that the check has written on the back of it, "Lena Plager, Samuel Plager." A Yes; I endorsed it.

Q You endorsed the whole thing? A Yes, sir.

Q Her name, too? A Yes, sir. My mother can't write.

Samuel Plager, cross.

Q What did you do with the money? A Why, deposited it and then gave to my mother \$300 cash back.

Q To hold? A Yes, sir; after he refused to take it. It was four or five days.

Q When did you deposit the check? A Oh, I guess four or five days after she sold it.

Q Had you had any conversation with Mr. Dobbin? A No, sir. 10

Q Or Mr. Ginsberg? A No, sir; none of them. He would never come up to my mother if I was there home.

Cross examination by Mr. Weinberg.

Q How long are you running the business? A Ever since my father has been dead.

Q How long is that? A About 12 years—11 or 12 years.

Q How did you endorse this check? I can't read it. What is the word? A I endorsed the words, "Lena Plager, Samuel Plager, special account." 20

Q Has your mother an account in the bank? A No, sir.

Q Whose special account is it, yours? A Mine. I got two accounts; one special account for checks.

Q Everything is in your handwriting—"Lena Plager"— A Yes, sir; the whole thing on that.

Q (*By the Court.*) How did you come to put it in the bank; at the request of your mother? A Yes, sir; she told me to sign underneath, because she can't sign.

Q Your mother didn't tell you to sign at that time because she couldn't write. You knew she couldn't write all the time? A Yes, sir; I always knew it. 30

Q Isn't this name "Lena Plager" written by somebody else than yourself? A No, sir; by me; I endorsed that myself.

Q Wasn't that done by your sister? A I endorsed it myself.

Q I mean that "Lena Plager." Isn't that written by your sister? A I endorsed that myself.

Q Answer the question, if "Lena Plager" here isn't by your sister; I am not talking about "Samuel." A My sister didn't write anything. 40

Q Both these Plagers in the same handwriting? A I put the whole business on.

Q You put the whole business on? A There was no name on it.

Samuel Plager, cross.

Q As I understand, you didn't take this check to Mr. Dobbin?

A No, sir.

Q Or to Mr. Ginsberg? A No, sir; not myself.

Q Or to Rabinowitz? A No, sir; my mother did.

Q You? A No.

10 Q You did nothing with it? A No, sir.

Q How long did you have the check in your possession? A My mother handed it to me and I handed it right back to her, and then she held it.

Q She held it for three or four days? A Yes, sir; because she said he wouldn't take it back.

Q Did she ask you to take it back? A Yes, sir.

Q What did you say? A I said I wouldn't go in there; I didn't have any business.

Q You did have business? A No, sir.

20 Q Didn't think you had any business when your mother had been fooled to sell the property for a different price—considerably less— A No, sir; she told me she sold the property for \$15,000. I didn't want her to sell it for no amount.

Q When did she tell you she sold it was \$15,000? A The day I come home when she was home. She told me the same day.

Q Before you read the agreement? A I didn't read the agreement myself.

Q You didn't read it at all? A No, sir; not at that time.

30 Q You didn't know, then, what was in the agreement? A No; she just told me \$15,000.

Q You didn't say, "Let me see it; I want to look it over"? A Yes, sir; I didn't go over it.

Q You didn't go over it? Didn't think it was worth while to read it? A I took her word.

Q Did she tell you to whom she sold it? A Told me to Ginsberg.

Q Now, you said, "I don't want to sell the house," did you? A Sure.

40 Q What had you to do with it? A Because I builded it all; I paid for everything in that house.

Q Out of your money? A Yes, sir; every cent. I worked for.

Q When? A All the time; right along.

Q The house wasn't being built right along? A Of course, it is on my mother's name. We have been repairing and fixing

Samuel Plager, cross.

it up right along; keeping it in good shape. My mother ain't got a cent. I paid for it. It is on her name and my father's name.

Q She gets nothing except what you choose to give her? A I dress her and everything; I give her every cent I make.

Q How long since the building was built? A The garage? 10
First we had a wooden barn, then we built brick, now—and had horses; I built the brick barn.

Q The house you live in is as old as you can remember? A It is an old house. We have been repairing it.

Q Do you know how long your mother has owned it? A How long my mother owns it? About 16 or 17 years, I think.

Q Are you associated with your mother in business at all? A Everything is on my name—the business—but I give my mother everything I make. Before I was married I gave her every cent, too; right now, too; I give her everything I make to keep everything good. I pay all the debts, when my father was sick, and all. 20

Q You give her all the profits? A Certainly; I give her everything to keep the house up.

Q You give her everything? A Yes, sir.

Q Are you married? A Yes, sir.

Q Don't you need anything to support your family? A I give my mother first; I give my wife, too. I support them all. I can't do any work myself. I got the business. 30

Q Do you give your mother a regular amount every week or whatever the profits happen to be? A I give her everything she gets in the house the same as my father.

Q Do you take a regular amount for yourself? A No, sir; I put it all in the business; in the house and all.

Q What business? A My trucking business.

Q Do you live with your mother? A Now I do; yes.

Q You had had a fuss with your mother, hadn't you, before your mother sold this property? A Never had any fuss with my mother. 40

Q Didn't you have a quarrel and your mother threatened to sell the property? A She had an argument with my younger brother. I got a younger brother who helps me along.

Q She had an argument with you boys about something and said she was tired and was going to sell the property? A No,

Samuel Plager, cross.

sir; she never mentioned nothing. She used to come and bother, and I said, "Don't bother nobody."

Q What was it that you really said when you mother told you that she had sold the property? A I told her, "How did you ever come to do a thing like that? It is worth \$20,000. Where am I going to keep the trucks; how am I going to make a living for you"? I says, "Where is your brains at that time"? I keep my trucks in there; I give her everything she needed.

Q The trouble was you didn't know where to go with your business if she sold out; that is what you got angry at? A Only—about myself I didn't care—about only my mother.

Q You didn't know how you were going to make a living? A I could make a living any place.

Q I am trying to get at your idea. A I just say I am making a living for all; I don't want to lose it.

Q It was after that you started the erection of the garage across the street? A I had nothing to do with the garage; my brother-in-law owns that garage.

Q Is there anything in the garage now? A Just building it.

Q What is going in, do you know? A Rent it out; that is what he is going to do.

Q Is your business going in there? A No, sir; I have nothing to do with the garage.

Q Can't get in there if you want to? A If I pay rent I suppose he will let me in as well as anybody else. I have a garage; I don't want it.

Q You don't know that it has been rented to anybody else? A No, it ain't been yet—just building it.

Q What is your brother-in-law's name? A Morris Tarnofsky.

Q You didn't go to see Mr. Rabinowitz at any time? A No, sir.

Q Now, you say you read this contract afterwards, didn't you? A I didn't go over it; no, sir; just looked at it; that is about all.

Q What do you mean you looked at it—read it? A I took my mother's word, and then after my sister read it and she says it is \$11,000, I says, "You have been swindled."

Q You let it go at that? A I had nothing to do with it.

Q You let it go that way—just say, "You are swindled," and that is all? A Yes, sir.

Yetta Tarnofsky, direct.

By the Court.

Q Why didn't you have anything to do with it? You seem to be running her affairs? A I don't run her affairs; I help her.

Q If you thought your mother was swindled, why didn't you think it was part of your business to see that it was corrected? 10
A I can't get in an argument with anybody; I don't feel good; I don't like to argue; I have been sick for a couple of years.

Q You couldn't bother about \$4,000? A If I argue I get sick—that is all—so I don't bother doing nothing.

Further cross.

Q Have you ever seen among your mother's papers a duplicate of a paper authorizing Mr. Ginsberg to sell 216 Prince street and agreeing to give him commissions? A No, sir; she told me he bought it. 20

Q Have you ever seen a paper such as I have in my hand? A No, sir.

Mr. Weinberg. Have you such a paper, Mr. Bradner?

Mr. Bradner. No.

Witness. I never seen any.

YETTA TARNOFSKY, sworn on the part of the defendant.

Direct examination by Mr. Bradner.

Q You are a daughter of Mr. Plager? A Yes, sir. 30

Q And you are married to Morris Tarnofsky? A Yes, sir.

Q How old are you? A I will be twenty.

Q When? A April.

Q Do you know Mr. Ginsberg? A Yes, sir.

Q Have you ever seen him at your house? A Yes, sir; when he said he wants to buy the house.

Q Where do you live? A 61 Monmouth street.

Q Where does your mother live? A 216 Prince street.

Q Have you ever seen Mr. Ginsberg at your mother's house? 40
A Yes, sir.

Q When? A When he came up to buy the house—he says he wants to buy the house.

Q Who was there then at that time? A Well, I was, and this daughter, the little one—the one that just went out, Thelia.

Yetta Tarnofsky, direct.

Q And your mother? A And my mother.

Q What did Mr. Ginsberg say? A Mr. Ginsberg says he would like to buy the house, and he would like to buy the house—asked mama, “What do you wish?” Mama says, “\$16,000.” He says, “Well, it is too much.” Mama says, well, that is the price
10 she wants for it and it is worth it. He says, “No, I won’t give you that amount.” Mama says, “Well, the cheapest amount—I will leave off a thousand.” He says, “Well, all right.”

Q Anything else said? A And he says—then the next day he come in again. That was the day they went to write the contract, was \$15,000 they agreed.

Q How did you happen to be there the next day? A Well, I come every day at my mother’s home—every day I am there if I am only well.

Q About what time in the day was it, that next day? A Well,
20 I came in the morning. When Mr. Ginsberg came it was—well, I think it was about two or three—three or four, something like that. I don’t exactly remember what time.

Q Who was there then? A I was and my sister.

Q Which sister? A The one that just left.

Q Have you an older sister? A I have an older one myself.

Q What is her name? A Bella.

Q Was she there then? A She was not there.

Q What was said at that time? A Well, before they went
30 to sign, do you mean?

Q Yes; before they went out of the house. A Well, they agreed—he agreed to pay \$15,000, and he said he is buying the house—he is the buyer; and they went out—my mother wasn’t dressed fit enough to go on the avenue, and mama says she is going to Levi.

Q Did you hear her say that? A I heard her, yes, sir.

Q Who was Levi? A Justice of the Peace, on Broome street he had his office.

Q How near to your house would that have been? A Why,
40 about three blocks—three and a half—three and a half blocks, I guess.

Q Did you know Mr. Levi? A I know Mr. Levi, yes, sir.

Q Did you hear anything said about what Mr. Ginsberg was going to do with this property? A He said he wants it for a tailor shop, and he is buying it.

Yetta Tarnofsky, cross.

Q Were you home when your mother came back that day? A Yes, sir.

Q About how long was she away? A Well, I guess about two hours, but where she went from there I don't know; maybe she came home right away.

The Court. Strike out all after "about two hours."

10

Q Did you stay in the house all the time she was away? A I was in the house all the time she was away.

Q And when she came in who was in the house then? A Who was in the house? I was and the other sister.

Q And Thelia? A Yes, sir; and the other little one, eleven years—she came from school.

Q What happened then? A I says, "Mama, let me read the contract." She says, she will give it to me to read it over. I read it over. It says, "\$11,000." I says, "Mama, you agreed for \$15,000." She says, "Well, certainly I did."

20

Q Well, what then? A What then? Then she went down to the tenant and gave him the check.

Q Did you see her go down? A Yes, sir.

Q Do you know what she said to the tenant? A She come back—when she come up she told me; I wasn't present.

Q Never mind what she told you. You were not present? A No.

Q Did you ever see Ginsberg there at the house after that? A After that? No.

30

Cross examination by Mr. Weinberg.

Q After you read the agreement, you called your mother's attention to the fact that it was \$11,000? A Yes, sir.

Q Instead of \$15,000? A Yes, sir.

Q What did she say to that? A She says, "Well, I told him \$15,000."

Q What did you say? A What did I say? I told her—I read \$11,000, and mama told him \$15,000.

40

Q What else did you say? A I said, "Well, mama, what do you mean by this, you told him \$15,000 and the contract is \$11,000." She went downstairs to the tenant and she gave him the check.

Yetta Tarnofsky, cross.

Q Before she went down to the tenant, what did she say? A She says, "Well, he swindled me. I told him \$15,000 and the contract stated \$11,000."

Q Just took it easy like that and says, "He swindled me." Is that the way she said it? A She got excited.

10 Q Didn't she get excited and started to cry and carried on terribly? A She got excited; yes, sir.

Q She didn't cry, though? I only said that. Did she cry? A Her eyes were with tears; of course, she felt like crying; she kept it back.

Q What time of day was this? A What time she came back? About six, something like that; I guess about six o'clock.

Q It was daylight? A I don't know—summer—it was daylight, certainly.

20 Q Did you know the name, "Lubetkin," you saw on the agreement? A I saw the Lubetkin name. Looked it over.

Q Did you know who Lubetkin was? A No, sir.

Q Never heard of him? A Well, not exactly heard of him—I never seen him, either.

Q Did you know where Ginsberg lived? A Yes, sir.

Q Did you make any efforts to reach Ginsberg? A No, sir.

Q Go out and see him? A No, sir.

Q Try to call up Lubetkin? A No, sir.

Q Did you ask her where Lubetkin's office was? A I think it says in there.

30 Q It was in the agreement? A Mama told me Springfield avenue.

Q Did you try to call him up? A No, sir.

Q Why not? Didn't you get excited over this? A I got excited, but what help—(interrupted).

Q You couldn't do anything? A Couldn't do anything if she sold to him.

Q Did you have some interest in your mother's affairs? A Yes, sir; of course, I did.

40 Q The fact is you didn't try to see either Dobbin, Ginsberg or Lubetkin or anybody else? A No, sir.

Q You didn't think of going out to the lawyer then? A No.

Q Were you there at the time of the first agreement—were you there at the time of the first conversation between Ginsberg and your mother? A Yes, sir.

Charles Rabinowitz, direct.

Q Isn't this the fact, that Ginsberg said that he thought he could sell this house for your mother, and wanted to know how much she wanted, and your mother said she would take \$13,000?

A No, sir.

Q Listen to the question and do not interrupt me. And didn't he say, "That is entirely too much; I can never sell it for that much money"? A No, sir; she didn't say that.

10

Q "But I think I can get \$11,000"? A No, sir; he didn't say that.

Q Didn't say that at all? A No, sir.

Q The only figures you heard were 16 and 15? A Yes, sir.

Q And when you read this agreement, was your brother around? A No, sir. Later he came before I read it—I read it before and then he came after I got through reading.

Q You are quite sure you were there then? A Yes, sir.

20

Q Did you tell him about it? A He read it—he looked at it—he looked it over—he didn't read it out loud to my mother, because I read it.

Q Did you tell him what was in it? A No, sir; I did not.

Q After you read it, you gave it to him and said, "Read the agreement." A I gave it to mama. Mama gave it to him to read it over.

Q Didn't you tell your brother your mother had been cheated out of \$4,000? A I didn't want to tell him.

Q Answer me. A No, sir; I didn't tell him that.

30

Q Why. A He looked at it as soon as he came in. Mama gave it to him and showed it to him.

Q When he looked it over, didn't you say, "Mother has been cheated out of \$4,000"? A I didn't tell him that; no, sir.

Q What was said about being cheated out of \$4,000? A Of course, he got excited also and then mama went down to the tenant and she give him the check.

CHARLES RABINOWITZ, sworn on the part of the defendant.

Direct examination by Mr. Bradner.

40

Q Where do you live? A 216 Prince street.

Q You have a store there? A Yes, sir.

Q What is your business? A Barber business.

Q Do you know Mr. Dobbin? A Oh, sure.

Charles Rabinowitz, cross.

Q I show you this check that has been used. Did you ever see it before? A Yes, sir; I handled it.

Q Where did you see it? A In my house.

Q And did you take it to Mr. Dobbin? A Yes, sir.

Q What did you say to him? A I said that "Mrs. Plager wanted—she was with me downstairs and she beg that you take
10 back this check. Of course, she has—she told me that it is wrong, the agreement."

Q What did Mr. Dobbin say? A Mr. Dobbin refused to take the check.

Q Can't you tell me what he said? Not say he refused—what did he say? A He says he has got the contract and got nothing to do; that is all. The property is sold.

Q What did you do with the check then? A I handed it to Mrs. Plager.

20 *Cross examination by Mr. Weinberg.*

Q How long have you been in there—in those premises? A Since this house is built—she built it over—there was alteration. I don't remember—I think I moved in in May.

Q How long ago? A About six and a half or seven years. I don't know exactly the date when I moved there.

Q You have an established business there? A Yes, sir.

Q And you don't want to get out of the place? A Certainly not.

Q When Mrs. Plager came down to you, did she have an
30 agreement with her? A With me?

Q Did she have an agreement in her hand—a paper? A No, sir.

Q Just came down with the check? A Just came down with the check and told me—she was crying—she came down—she fly in in my house.

Q Flew in? A Yes, sir.

Q And she had this check in her hand? A Yes, sir.

Q And what did she say? A She says, "Something wrong
40 in the agreement and she wanted I should go to Mr. Dobbin and I should beg him"—and I appealed to Mr. Dobbin and he refused.

Q Is that her language, "You should beg him to take the money back"? A Yes, sir—no, I begged him myself.

Q Did she tell you—I mean in her language? A In her language she says I should go to Mr. Dobbin and should give him

Charles Rabinowitz, cross.

the check, that she can't sell this house under those conditions what she found out in the agreement.

Q And you went to him and said that "I beg you to take the check back and give up the agreement"; is that right? A I beg pardon? When I give him the check he says he won't take the check back because he bought the house and then I appealed to him. 10

Q What do you mean by "appealed"? What did you say? A I begged him—(interrupted).

Q What did you say? A I say to him, "Mr. Dobbin, you know it very well how them boys need the house and them boys they built up; we know them boys very well, that they was small children and they built up and it isn't right to take away the piece of bread off them two children."

Q That is what you told him? A That is what I told him. I told him, "Where is our feelings, yasha—" that is Hebrew. 20

Q That means, "Have a feeling"—"Have a heart"? A Have a heart.

Q As we say in English, "Have a heart"? A Yes, sir.

Q But he said he had no heart and wouldn't take the check? A What he said this is not a place to answer and I won't say.

Q This is no place to say what he said—too holy or profane, which? A What is that?

Q Well, you didn't tell him he was a swindler, and all that stuff? A I had no right to say that.

Mr. Bradner. Did you see Mr. Ginsberg about it? 30

Witness. I saw in the morning Mr. Ginsberg and asked him if he bought this house and he says, "No, I didn't bought this house, Mr. Dobbin bought the house."

Q When was that? A That was in the same morning.

Q Same morning of what? A Of the other. I don't know when the agreement was finished. I wasn't in the house because I always keep in my business and I don't know; and the other day I heard the house was sold and they handed me this check.

Q Did you see Mr. Ginsberg before or after you had seen Mr. Dobbin? A Mr. Ginsberg I saw before. 40

Q Before? A Yes, sir.

Q Why did you go to see Mr. Ginsberg? A Mr. Ginsberg passed our house. He has got 208 and 206—he has got a brick house there. He is always coming every morning there.

Morris Tarnofsky, direct.

Mr. Bradner. And you told him about it?

Witness. Yes, sir.

Q When did you get the check? Do you remember the date?

A I don't remember the date.

10 Q What time of day was it, morning, noon or night? A It was in the morning.

Q And you saw Ginsberg the same time you got the check?

A Yes, sir.

Q And had a talk with him? A Yes, sir.

Q When did you speak to Dobbin, the same day? A The same morning, yes, sir.

Q How long after? A Well, maybe fifteen or twenty minutes after.

Q He was right in the same block? A Yes, sir.

20 Q You didn't have to go anywhere—you just met him right there? A No, pretty near at my door.

Q None of the Plagers were around when you had the talk with Dobbin? A No, the Plagers weren't around.

Q All by yourself? A All by myself.

Q You are sure it was the next day, now? A Yes, sir; it was on the next day.

Deed offered in evidence and marked Exhibit D. 1.

MORRIS TARNOFSKY, sworn for the defendant.

30 *Direct examination by Mr. Bradner.*

Q You are Mrs. Plager's son-in-law? A Yes, sir.

Q Where do you live? A 61 Monmouth street.

Q Were you present on any of these occasions when Mr. Ginsberg was at the house, 216 Prince street? A No, sir. I wasn't present when Mr. Ginsberg was—no, I was not.

40 Q Were you there Mrs. Plager came back with the agreement in her hand? A I was not there exactly when she came back. I came later, about fifteen minutes or half an hour—same day—I was there the same evening.

Q What is your business? A I am a builder.

Q Have you dealt any in real estate in that neighborhood, in Prince street? A I haven't dealt exactly in Prince street. I dealt in Monmouth street and all around that section.

Q Do you know what this property is worth?

Morris Tarnofsky, direct.

Mr. Weinberg. I object. I would like to ask a few questions as to qualifications.

The Court. Objection overruled.

Q On what do you base your knowledge of value?

The Court. You did not get an answer to that question. I overruled the objection. 10

Q Do you know what the property is worth? I do not ask you how much. Do you know? A I know how much it is worth.

Q How do you know how much it is worth? A I am a builder and I could judge how much the property is worth.

Q You may judge the building, but how could you judge the land? A Well, I could judge the land from building around on Prince street—that section. 20

Q How? A I know the property.

Q From what do you know? A You know from experience and business of the street, the business of that neighborhood. It is of more value than the different streets. From the business section you get the value.

Q Then you do know from your experience the ground value on Prince street? A Yes, sir.

Q What is the ground value?

Mr. Weinberg. I want to be protected. I do not want him to base it on the amount of business done there. 30

By Mr. Weinberg.

Q Did you ever buy or sell any land on Prince street in this block? A Well, I bought land, but I haven't sold any land.

Q Bought it in this block? A Yes, sir.

Q Where? A Across the street—two houses.

Q When was that, this year? A Yes, sir.

Q How long ago? A About four months.

Q Don't you know the exact date you bought that property? 40
A I couldn't remember the exact date.

Q That is the only experience you have with the values of Prince street? A Well, I have experience on a lot of properties all along.

Morris Tarnofsky, cross.

Q Is that the only experience you have with the land values on Prince street, the fact that you bought one across the street?

A Well, I know the experience from the value of property.

Q Do you know what other people paid for theirs, is that what you mean? A That is what I mean.

10 *Further direct.*

Q Basing your opinion upon what you know about the conditions, what is this property worth, in your opinion? A This property, in my opinion—two-family house, all improvements, steam heat and electric, everything—it is worth today \$18,000. You can't build it now for \$20,000.

Cross examination by Mr. Weinberg.

20 Q What is the lot worth? A Well, the lot value is between \$250 and \$300.

Q What is the land value? A Well, the land value on this block is between \$250 and \$300 a foot.

Q How many feet are there in this lot? A There is 25x100 feet.

Q How many feet is the lot you bought across the street? A Well, the whole lot is 50x100.

Q And what did you pay for that? A Well, I paid close to \$12,000—\$11,600.

30 Q What was on it? A Nothing—just shacks. Took them off, no improvements. Nothing, just the lot.

Q How much? A \$11,600.

Q For fifty feet? A Yes, sir.

Q That is the price of the lot? A What were the shacks? A The shacks were nothing.

Q What were these things you call "shacks"? A They ain't worth anything.

Q Were they houses? A No; just shacks—nothing.

Q Was it a pig pen or what? A Little shacks; that it is worth while to tear down.

40 Q Any people ever live in these shacks? A Well, colored people lived there mostly.

Q They lived there up to the time you tore them down, didn't they? A Yes, sir.

Q They were paying rent? A Yes; they were paying a very small rent.

Morris Tarnofsky, cross.

Q Now, did you build this garage? A I am building it now.

Q I mean the one on your mother-in-law's lot? A I built a room there—brick room there last year or—yes, last year.

Q What kind of a house is this? Will you describe it? A My mother-in-law's house?

Q Yes. A It is a two-family house.

Q What do you mean, "two-family house"? A That means two stories high; downstairs, store and three rooms, and upstairs is a flat, five room, all improvements, steam, electric, hot water and everything. In the rear, there is a garage there, 25x50, water and steam and electric—brick building.

Q Is there any cellar under the house? A Yes, sir.

Q How much of a cellar? A Well the cellar is— (Interrupted.)

Q Just big enough for the heater, isn't it? A No; it is a cellar just under the house. The cellar is just as big as the house.

Q There is a driveway next to this house, isn't there? A Yes, sir.

Q How wide is the driveway? A I haven't measured, but approximately it is between eight and nine feet.

Q And the whole lot is 25 feet? A Yes, sir.

Q How wide is the building? A You take off from 25 8 feet, leaves 17 feet.

Q Very narrow, isn't it? A Well, it has nine rooms.

Q I am talking about the building. That is narrower than the ordinary building, isn't it, 17 feet? A Well, it is a little ordinary, but not very much.

Q Is it very old? A I don't know exactly how old it is, but it is good remodeled.

Q The outside isn't remodeled? A It is stucco outside.

Q You stuccoed it? A Yes, sir.

Q When? A When it was remodeled.

Q When was that? A Few years ago; I don't remember.

Q How many? A I judge about five years—six years.

Q You didn't see the building remodeled? A I haven't took notice of it, no.

Q You don't know whether the stucco is put on wire lath or slapped right on the wood? A No, sir; lath and wire.

Q Did you see it? A Certainly.

Q When? A When I see it?

Morris Tarnofsky, cross.

Q Yes. A I am going around the house there about a year and a half or two years.

Q You didn't see under the stucco, though, as to whether there was any wire under the stucco? A There is wire there—it is with wire—it can't be without wire.

10 Q That is the reason you say it? A No; there is wire there.

Q How deep is that house? A Well, it is approximately close to 50 feet—45 or 50.

Q How much space is there between the back of the house and the garage? A Well, space, say, about six feet—five or six feet. There is a porch there.

Q Is that all there is between the garage and the house, just six feet? A That is all. Six feet.

20 Q Not enough room to drive a big truck in there? A They go straight in the door, see? When you drive the truck in you back right into the door of the garage. You don't turn anywhere there—it just goes right into the garage.

Q Do you know of any other property that has been sold in that block or any property that is for sale in that block? A I don't know of any property sold, but I know the value of the people asking.

Q The values are jumping every day there, aren't they? A Not there. There is always a big price on that block.

30 Q But it has gone up considerably since spring, hasn't it? A Well, it doesn't go up very much.

Q Doesn't it go up there the same as it does all over? A Well, they are mostly high priced all the time because it is a business section—always the price high.

Q You want more than you paid for yours, don't you? A Well, if I put money in, repair it, I have to get more.

Q But you want more than it cost you after you repair it? A Certainly.

40 Q Have you got title to the property, the one you are talking about across the street? A Yes, sir, my deed is on record.

Q Has your mother-in-law got any interest in it? A No, sir; my own name I got the property.

Q Have you rented that garage to anyone? A No, sir; I am just building it.

Q Well, when will it be done? A Depends upon the weather.

Bella Hecht, direct.

Q The way it is now, beautiful like this? A With weather like this, I will have it done by December—first of January.

Q You don't know anything about this trouble with the agreement? A I know a little about it. When I came— (Interrupted.)

Q I am just asking, not what it is, whether you know anything about it, yes or no? A Yes, sir; I know. 10

Re-direct examination.

Q I would like to ask as to the value of the house by itself. What is that worth? A The house without the lot?

Q Yes. A Well, it is worth about \$9,000 or \$10,000.

Q Do you include the garage with that? A Yes, sir.

Q The whole thing, all the buildings, \$9,000 or \$10,000? A Yes, sir; nine or ten thousand, about, more or less. It could be \$500 more or less. 20

Re-cross examination.

Q You say the value of the lot is how much, the land itself? A \$250 to \$300.

BELLA HECHT, sworn on the part of the defendant.

Direct examination by Mr. Bradner.

Q Do you live at 216 Prince street? A Yes, sir.

Q Were you living there the latter part of May, this year? (No answer.) 30

Q Are you a daughter of Mrs. Plager? A Yes, sir.

Q I didn't hear your answer, whether you were living there in May? A I was separate, but most of the time I am at my mother's, see. I stay there all day.

Q Were you there one day when Mr. Ginsberg was there? A Yes, sir.

Q Talking to your mother? A Yes, sir.

Q About the property; and what did you hear? A I heard him say he had a customer to sell the house, so I say, "I don't want my mother to sell the house, because we make a living here and we want to stay here"; so Mr. Ginsberg says, "Why, your mother don't have to ask you; she can do as she pleases." "Well," I says, "well, then leave her do as she pleases." Then he come around and see we were not upstairs, and he come up. 40

Bella Hecht, cross.

10 He says he has got a buyer, or he would be willing to buy. My mother says—he says he has got a buyer for \$16,000—for \$15,000—so my mother says she would want \$16,000. “Well,” he says, “you will never get that. Now is a good chance,” he says; “you can get a good price for it.” Then he come around the next day and he says, “Do you want it at that price”? “Why,” she says, “Well, I will see about it.” Then we were all downstairs, and I see Mr. Ginsberg come up into the hall and my mother walked away with him. I was downstairs with the baby. Then they came back—my mother had the paper, and she sold for \$15,000, she was telling us, and the agreement read for \$15,000—or for \$11,000, and then the next day Mr. Ginsberg passed by. We called him in the house; we says, “Mr. Ginsberg, give Mr. Dobbin back the check.” He says, “Once it is sold, it is sold.” He will not take it back.

20 Q Did you say anything to him? A I says, “Well, then, you done crooked business to my mother.”

Cross examination by Mr. Weinberg.

Q What crooked business did you tell him he done? A Why, because he went and he fooled the house out of us in the first place.

Q You didn’t get my question. You told him that he did something crooked. Did you tell him what thing he did? A I told him about the house.

30 Q Just tell us what the conversation was when you met him, as near as you remember it. A Why, because he bought the house of my mother.

Q Won’t you tell the Court and us just what you said to him and what he said to you? A He says they wouldn’t take the check back; that is all he said.

Q What was the start of it? Who asked him to take the check back? A My mother called him in—I was in the house—she says, “Mr. Ginsberg, here is the check; give it back to Mr. Dobbin.” He says, “Well, Mr. Dobbin won’t take it back for no money. Once it is sold, it is sold,” he says.

40 Q Is that all that you said? A That is all.

Q And then you interjected and said, “Well, then, you did something crooked”? A Why, certainly.

Q Didn’t tell him what it was? A Well, it was about the house.

Max Ginsberg, direct.

Q But you didn't tell him what it was that he did that was crooked? A No; it was just about the house.

Mr. Bradner. I will ask Mr. Weinberg if he will admit that there is now, and was at the time when the agreement was made, a building and loan mortgage of \$7,200 and a second mortgage of \$600, making \$7,800 altogether. The mortgage may have been reduced a little. 10

Mr. Weinberg. If Mr. Bradner tells me it is so, I will admit it.

The Court. You will admit it, subject to correction.

Mr. Weinberg. If I find it is wrong; yes, sir.

Mr. Bradner. The building and loan mortgage is 1916 and the second mortgage is 1917.

DEFENDANT RESTS.

20

MAX GINSBERG, sworn on the part of the complainant.

Direct examination by Mr. Weinberg.

Q Mr. Ginsberg, you have been living in Newark for a great many years? A A Thirty-two years.

Q What is your business—your active business? A Real estate.

Q Are you connected with different building and loans? A Yes, sir.

Q And one particularly, the Crosstown Building & Loan? A The Crosstown Building & Loan Association. 30

Q Buy and sell real estate in Newark? A Yes, sir.

Q In the hill section, as it is known? Do you know anything about Prince street and Broome street values? A Yes, sir.

Q Have you ever bought and sold property up there? A Yes, sir.

Q Do you know about Prince street in particular, in the neighborhood of where Mrs. Plager's property is? A Yes, sir; I got property there for twenty-eight years.

Q In that neighborhood? A Same block. 40

Q How near to it? A Mine is 206 and 208; this is 216; so I live about three houses.

Q Have you sold any property for anybody on Prince street in that neighborhood? A Yes, sir; I sold this summer a couple of parcels in the block.

Max Ginsberg, direct.

Q How long ago did you sell property in that block? A In July, 188 Prince street.

Q July of this year? A 1919.

Q Any other numbers you can give us? A I sold a piece of property between Waverly avenue and Spruce.

10 Q On Prince? A Prince; Mr. Cooperman I sold to; 244; I sold, too, at Stratford place, only one block from Prince street.

Q Have you appraised property for any of the building and loans you are connected with? A Yes, sir.

Q What building and loans are you connected with? A With the Crosstown.

Mr. Bradner. I will admit the witness' qualifications.

20 Q What, in your opinion, is the land value of 216 Prince street? A In my opinion the land is worth \$4,000.

Q For how many feet? A 25x100.

Q Did you value that property at the time the building and loan mortgage for \$7,200 was granted by the Crosstown Building & Loan? A I granted a loan, 1916; I valued at that time—I was interested—at the time she built the garage—of course, at that time about \$2,200, and we granted \$2,200 additional loan. The mortgage was \$5,000 before 1916, so we went to work and made the mortgage \$7,200.

30 Q The question is whether you assisted in the valuation? A Yes, sir; \$4,000 for the ground.

Q Do you know of an application made for a loan by Mr. Dobbin this year to the Crosstown Building and Loan? A Yes, sir.

Q Did you assist in valuing the property at that time for the loan? A No, sir; I did not.

Q Do you know whether or not it was appraised by anyone from your society? A Yes, sir.

Q Did you ever see the application by Mr. Dobbin in the Crosstown? A I didn't see that, no.

40 Q What office do you hold in the Crosstown? A Treasurer.

Q Do you recognize this as being one of your blanks? I show you a paper marked "Crosstown Building and Loan Association"? A Yes, sir; this is the Crosstown Building and Loan Association.

Max Ginsberg, direct.

Q Did you ever see that paper before? A Yes, sir; I see it before.

Q Where did you see it? A By the meeting.

Q What meeting? A By the Board of Directors.

Q Were you present at the time that that was passed on, that application? A Yes, sir; \$7,200. 10

Q Do you know the signatures of the appraisers on that property? A Yes, sir.

Q They have been appraisers how long? A For the last eight years.

Q Mr. Ginsburg, do you know what the value of the buildings on Mrs. Plager's lot is? A Yes, sir; it is an old building. I take the value about \$6,000.

Q What kind of a building is it? A It is a two-story building, an old store—an old building; maybe the building is old, maybe twenty-five years, and they was all the time remodeling. I admit it myself that the building was remodelled—stuccoed. Then they tore down the stable and built a garage—brick—the garage is 50 by 25 feet. Between the buildings I suppose is nine feet. This building is very short, about 40 feet—42 feet in length, about 16 feet wide. 20

Q The garage or the house? A The house. In the front part of the kitchen is no cellar.

Q You have been all through the house? A Sure. I went all through the house. One part is cellar, the back part where the two rooms is, there is no cellar, just plain on the floor. 30

Q What kind of a bathroom have they got? A They got a bath, common bath.

Q Has that been put in recently? A 1916.

Q When you made the valuation of \$6,000, was that for both buildings? A Both buildings.

Q Now, tell us what did you have to do with this transaction. A Well, it was the middle of May I passed through the street. I always pass three or four times a day; I got property at 206 and 208; I always go around there all the time; she was standing; she told me, "Mr. Ginsberg, if you can get a buyer?" I said, "Yes, I can get a buyer." I asked her how much she wants; she says to me she wants \$13,000. I said, "All right, I can get you a buyer," and I left her. \$13,000 was what she asked. I left her. I will get buyer. About a week later, I think 40

Max Ginsberg, direct.

it was—I think on the 24th or 25th—I can't remember exactly—
of May I told her I got a buyer for \$11,000, if you can see a
square deal and let me know a few days later, then I can bring
you up a check for the deposit. She says, "All right." On the
29th of May, in the morning—it was ten o'clock—I generally
10 I asked her, "Mrs. Plager, we are ready to close the deal; what
time have you got time?" She said, "In the afternoon." "When
shall I come?" "Between one and two." I come around about
two. I says, "I got a check." I went to my buyer—my buyer
gave me a blank check, not knowing the amount of the deposit—
"you shall fill it in," so I took the blank check and went up to
Mrs. Plager and there was a woman by the name of Mrs. Frank
that was her advisor, Mrs. Frank. She went up, she dressed
herself—I was waiting in the place up to two o'clock, one hour,
20 from one o'clock to two o'clock, I was waiting up there, she was
dressing herself—went down—she asked me, "Where shall I
go make an agreement?" I told her best thing in Springfield
avenue, a lawyer, Mr. Lubetkin, maybe we will catch him, bet-
ter than to go to a Justice of the Peace—he knows better to
make a contract than a Justice of the Peace. So we did went up
there. Mrs. Plager and Mrs. Frank and I went up there—was
sitting in—Mr. Lubetkin didn't was in the office, only Mr. Green-
baum was in the office, one of his partners. Mr. Greenbaum
asked me what do we want, if we want to make bill of sale for
selling property. Well, we want better—Mr. Lubetkin—Mr. Lu-
30 betkin is busy in court and an hour later if we can wait he will
come up; he knows better how to make it out and he will be
all right. So we were sitting together from two o'clock up until
half-past three—sitting together before Mr. Lubetkin reached his
office and we were talking the matter of insurance and taxes, pro-
portion; she says, "Who shall pay the taxes?" I said, "Mrs.
Plager a portion of the taxes is now just due; May 29th will be
the last day to pay the taxes." Mr. Lubetkin come up and we
told him what is the conversation, the price for the property. I
told Mr. Lubetkin, "You know the price of the property is
40 \$11,000"; I said, "mortgage \$7,200, building and loan; we got
to pay all cash subject to the mortgage of the building and loan,
\$7,200. All right." So Mr. Lubetkin told me "I can't write the
agreement. You must call up your client." I called up Mr.
Dobbin and Dobbin come up, and we are sitting about three

Max Ginsberg, direct.

hours, the different talking, until we come to the conclusion altogether. Mr. Lubetkin drew up the agreement—Mr. Dobbin was present and he signed me the check. She wants \$500; I said, “No, \$300.” She got \$300, and she went away. When I went away I didn’t see her from that time up until a couple of weeks later.

Q When did you give her the check? A On the same day when the agreement was signed she got the check for \$300. 10

Q Now, when Dobbin came in, after you telephoned for him, was there any conversation between you and Dobbin and Mrs. Plager? A No conversation at all—conversation of price and fixing the taxes—arguing about the taxes—she wouldn’t stand the taxes and then I said the taxes should be proportioned. That is all.

Q Was anything said about damages? A Yes, sir; she spoke about damages, when anybody back out they shall pay \$500 damages. I said, “You have got \$300, what kind of damages do you want.” 20

Q Was anything said about when the property should be sold, do you remember—when title should pass rather? A In three months.

Q Spoke about that? A Yes, sir; three months’ time.

Q Was anything said about a certain tenant in there? A Yes, sir. When the thing was settled she wants to draw up the 30 days’ notice to move and Mr. Lubetkin draw up 30 days’ notice and handed it to her. 30

Q He did what? A Gave her a 30 days’ notice.

Q Drew up a 30 days’ notice to give Rabinowitz? What did she say about it before she drew the agreement? A Said she was satisfied.

Q Said she would give the notice? A Yes, sir.

Q Did you talk about whether or not Rabinowitz had a lease of the place? A No.

Q Did she say there was no lease? A No; no lease at all.

Q You spoke about that? A Yes, sir; she told me he had no lease. 40

Q Anything else spoken about? A No, sir.

Q Now think. Talk about commissions? A Yes, sir; argument—she wouldn’t pay me 2½ per cent commission. I said, “I worked hard enough for the job, I think. The commission today is 3½ under the new law, so I am very lenient with you.

Max Ginsberg, direct.

I will take 2½," and she says, "All right; Mr. Lubetkin, draw up the agreement"; I said, "I want an agreement in black and white for my commission."

Q Was it drawn up? A Yes, sir.

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

10 Q Was it given to you? A She handled it to me.

Q Is this the paper? A Yes, sir.

Q Look at it before you say yes? A Yes, sir; that is what she signed; that is her mark.

Q Is that the paper? A That is the paper.

Paper offered in evidence and marked Exhibit C. 3.

Q Do you know if there was more than one paper for the commission? A Yes, sir.

Q How many? A Two; one for her and one for me.

20 Q Did she get one? A Yes, sir.

Q And take it away? A Take it away.

Q Was this written before or after the other agreement was signed? A Before.

Q Which was first? A This was first.

Q I show you this check. Is this the check you were referring to? Look at it. A Yes, sir; that is the check, \$300.

Q And was the name, "David Dobbin" and figures "\$300" there? A Yes, sir.

Q And the date "5/29"? A Yes, sir.

30 Q Was that lead pencil mark on there when you got it? A Yes, sir.

Q The name "Lena Plager" and "\$300" was written in by whom? Who wrote that in "Lena Plager, \$300"? A Mr. Lubetkin.

Q That was done in the office? A In the office.

Q While Mrs. Plager was there? A While she was there.

Check offered in evidence and marked Exhibit C. 4.

Q Did you see Mrs. Plager leave the office? A Yes, sir.

40 Q Who went with her? A Mrs. Frank.

Q Who stayed back then? Who was there, you, Dobbin— A I went with Dobbin home.

Q You went after they left? A Yes; they left.

Q I understand you to say that Dobbin was there about a half hour with her? A No; not downstairs.

Max Ginsberg, direct.

Q No, I didn't say downstairs. A Pardon me!

Q Did you say that Dobbin was in Lubetkin's office for about half an hour when Mrs. Plager was there? A No; we was two hours there with Mr. Dobbin.

Q You were there a long time? A Long time.

Q How late was it when you left? A Six o'clock. 10

Q Mr. Lubetkin's office was closing, wasn't it? A No, sir.

Q Was the stenographer still there? A Yes, sir; the stenographer and he was and his partner.

Q His partner, Mr. Greenbaum, stayed until Mrs. Plager left? A Yes, sir; there was more people.

Q Did Mrs. Plager or her daughter speak to you the day after? A No, sir.

Q And ask you to take this check back? A No, sir.

Q And tell you of anything that was crooked? A No, sir. 20

Q And did she say you made a crooked agreement? A No, sir.

Q When was the first you heard about this? A A month later.

Q Who did you hear it through? A Through Mr. Dobbin.

Q Did you hear it direct from any of the Plagers? A No, sir.

Q Any of them ever come to see you or you go to see them? A No, sir. 30

Q Do you know the young lady who was on the stand here, Mrs. Hecht, the woman who was on the witness stand, last? A No.

Q Bella Hecht? A No, sir.

Q Did you have any talk with her at all? A No, sir.

Q Did you ever tell Mrs. Plager that you were buying this house for yourself? A No, sir.

Q That you were going to open a shop? A No, sir.

Q A tailor shop? A I am not a tailor.

Q The lot next door was used for a fish market or chicken market? A Chicken market. 40

Q You have known Dobbin how long? A Ten years.

Q You knew Dobbin wanted the next door, didn't you? A Yes, sir.

Max Ginsberg, cross.

Cross examination by Mr. Bradner.

Q How long had you known that Dobbin wanted next door? How long had you known that, that he wanted to buy 216? A Well, about a couple of days before.

Q Only that long? A Well, I'll tell you—

10 Q Answer my question. A Yes, sir; a couple of days.

Q Only a couple of days that you knew that Mr. Dobbin wanted to buy that property. Did Mr. Dobbin ask you to buy it for him? A Yes, sir.

Q Did he tell you how much he was willing to pay? A Yes, sir.

Q How much? A \$10,000.

Q Did he agree to give you a commission? A No, sir.

Q You don't say you were going to buy it for him without any commission? A No, sir.

20 Q Did you expect to be paid by Mr. Dobbin? A No, sir; Mrs. Plager.

Q You were acting for Mr. Dobbin to buy it for him. How could you expect to be paid by Mrs. Plager? A I didn't act for Mr. Dobbin. I acted for Mrs. Plager.

Q Dobbin wanted you to buy the property? A I went myself to him and asked him if he wanted to buy this piece of property.

Q You said a moment ago you knew he wanted it? A He wanted to buy next door, 222. So I told him he could get it for 30 \$9,000, and he said he didn't care for that.

Q How did you know he wanted to buy this property next door to him? A I told him this property is for sale next door. That is what he didn't know; I told him.

Q What did he want this property for? A His business.

Q What kind of business? A Chicken.

Q Market there? A Market there.

Q He wanted more property for the market? A Didn't tell me; none of my business.

Q Did he tell you he wanted it for a market? A No, sir; 40 didn't tell me.

Q He told you he was willing to pay \$10,000 for it? A Yes, sir.

Q Now, when was it that you saw Mr. Dobbin; how many days before you spoke to Mrs. Plager? A I saw Mrs. Plager two weeks before, and I stopped in—I couldn't get any buyer.

Max Ginsberg, cross.

Q Who did you see first about this property—Dobbin or Plager? A Mrs. Plager.

Q And Mrs. Plager told you she wanted to sell it? A Yes, sir.

Q And then you went to Mr. Dobbin? A No; I didn't right away go to Mr. Dobbin. 10

Q Who did you go to? A To somebody else.

Q Who? A I can mention the name.

Q Who? A A fellow by the name of Mr. Deutsch.

Q What is his business? A He has got a shoe store.

Q In that same street? A Mercer street.

Q Did you offer the property to him? A Yes, sir; he wouldn't buy it.

Q Did you go to anybody else? A No.

Q And then you went to Mr. Dobbin? A Then I went back. I said to Mrs. Plager, "I can't get any buyer right away. If I get you a buyer, maybe I will do business with you." She says, "Go ahead. Get the buyer," and I picked up Mr. Dobbin. 20

Q What gave you the idea of going to speak to Mr. Dobbin about it? A My business is to go to Mr. Dobbin to ask if he wants to buy this property.

Q He told you right away he wanted to buy it? A No; didn't tell me right away. He said he would let me know in a few days.

Q How many days did he wait? A Five days.

Q Then he said he would buy it? A Yes, sir; then he told me the price. 30

Q He told you \$10,000? A He told me \$10,000.

Q Then you went to Mrs. Plager? A I told her and she wouldn't sell it.

Q I thought you told her \$13,000? A No; she told me; I didn't tell her anything.

Q She wanted \$13,000? A Yes.

Q You offered her \$11,000? A I didn't offer her \$11,000 right away—I didn't offer her \$11,000—I offered her \$10,000 and I told her in case I might—I would try to get more money. She says, "Go ahead and try," and I went on with my trying and we come to the conclusion, you know, to buy it for \$11,000. 40

Q And you went back to Mr. Dobbin? A I went from Mr. Dobbin to Mrs. Plager.

Max Ginsberg, cross.

Q After you had talked with her, did you go back to Mr. Dobbin? A Not right away.

Q Did you ever go back to Mr. Dobbin and say if he would pay \$11,000—(interrupted). A Not right away. Couple of days later—two days later, I asked him is he willing to pay more
10 money. He says, "Well, it don't is worth it." "Well," he says, "I will take a chance and pay \$11,000."

Q Now, did he then, when he said he would pay \$11,000, did he sign the blank check? A Yes, sir.

Q And gave it to you? A Gave it to me.

Q To fill up any amount you please? A Not what I please, for \$300. I didn't fill it out. He filled it out.

Q He wrote the \$300 in in figures? A In figures, yes, sir—generally, as a rule—

20 Q When did you agree with him that he was to pay \$300? A On the 29th.

Q Do you know why he didn't write Mrs. Plager's name in the check? A Who?

Q Mr. Dobbin? A He told me he can't tell exactly, maybe she wants \$500 deposit, maybe \$300.

Q When he was writing in the figures, why didn't he write her name in just as well? A He couldn't write her name out.

Q He couldn't? A No.

Q He could write his own name? A Write his own name.

30 Q Why didn't you write it in? A I wouldn't write somebody else's—I wouldn't do that—wouldn't write somebody else's checks.

Q Did Mr. Dobbin make out this check at his own place of business? A No, sir; I think he got the bookkeeper to make it out.

Q Got the bookkeeper to make it out? A No; this he made himself.

Q Made it out himself? A Yes.

Q At his own store? A At his own store.

40 Q And that same day you went to Mr. Lubetkin's office? A Yes, sir.

Q And he knew then that Mrs. Plager was to get the check, didn't he? A Who.

Q Dobbin knew it? A Mrs. Plager was going to get that check?

Max Ginsberg, cross.

Q Yes. A We are ready to close the contract and to make the agreement, you have to give a deposit, isn't it?

Q Yes. A Mr. Dobbin gave me the check.

Q So that if you didn't close the contract— A We did close it.

Q If you hadn't closed it you were to give him back the check? 10

A Mr. Dobbin was so busy he couldn't go.

The Court. Strike out the answer.

Q Were you to give him back the check if you did not close the contract? A If I did not close the contract I would give him back the check.

Q He knew that the check was to be given to Mrs. Plager, didn't he, if you did close the contract? A He know that the check would go to Mrs. Plager.

Q Now, I ask you again why her name was not written in then? A Well, he give me blank check, that is all; he give me only the figures. 20

Q He trusted you with the blank check? A He trust me.

Q How long have you known Mr. Dobbin? A Ten years.

Q And you are very friendly? A Not friendly; we know each the other.

Q Does he belong to this building and loan association? A No, sir.

RECESS. 30

Q Did I understand you correctly to say in your direct examination that the property was bought subject to mortgages and that the agreement was that the difference between the mortgages and the \$11,000 was to be paid in cash? A Yes, sir.

Q That is the mortgages were to be left standing on the property? A Yes, sir.

Q That would have made about how much cash to be paid to Mrs. Plager? A Well, I will tell you; she got some back shares from the building and loan—I don't know how much—\$1,400 she got back shares, and \$5,000 she had to get out— 40

Q Was it to be paid to her in cash? A In cash.

Q When was that agreement made? A Didn't make agreement—on the same time by the lawyer.

Max Ginsberg, cross.

Q When did you make that agreement with her, in her house?

A No, by the lawyer.

Q At the lawyer's office; had you made any agreement at her house before you went to the lawyer? A No.

Q Then, when you went to the lawyer's office, you didn't
10 know how much you would have to pay her? A No; I did not until we got by the lawyer.

Q And you didn't know before you went to the lawyer's office whether Mr. Dobbin would be willing to pay \$11,000? A Yes; he said he is willing to pay to her for it \$11,000.

Q When did you make that up with him? A Between one and two on the same day when I went with her.

Q At his store? A In his store.

Q Was that the time you got the check for \$300? A Yes, sir.

Q Then, when Mr. Lubetkin came in, after you had waited for
20 him a long time, he told you to call up your client, didn't he?
A Yes, sir.

Q Did he mean Mr. Dobbin? A He mean Mr. Dobbin.

Q Did you call up Mr. Dobbin? A Mr. Lubetkin called him
up.

Q Did you hear what Mr. Lubetkin said to him? A Yes, sir.

Q What did he say? A He shall come down and make an agreement.

Q To make an agreement? A Yes, sir; with Mrs. Plager.

Q And were you there when Mr. Dobbin came in? A I was
30 there.

Q What did Mr. Lubetkin say to him when he came in? A Well, what is the condition—how you make it out. Mr. Lubetkin didn't know anything about it; Mrs. Plager told him all about it.

Q What did Mr. Dobbin say? A All right.

Q And Mrs. Plager told Mr. Lubetkin in your presence just what the agreement was? A Yes, sir.

Q And among the other things she said, "You are to take the property subject to the mortgages and pay me the difference in cash"? A Yes, sir.

Q Did she have any conversation with Dobbin? A No, sir.
40

Q Didn't talk to him at all? A No.

Q How long was he there? A About two hours.

Q Dobbin was there two hours? A With her together before he make the agreement to sign.

Jacob Lubetkin, direct.

Q And did Mr. Lubetkin write out this agreement while they were both there? A Yes, sir.

Q Had you ever seen Mr. Lubetkin before about this agreement? A No, sir.

Q When did he write out the commission agreement? A The commission, after, when the agreement was signed.

10

Q After the other agreement had been signed, then this was written out. I notice this is on the typewriter and the other agreements are in his handwriting. A Because the girl was so busy—the office girl was so busy—another transaction; after she was through—they all were so busy up there—went to work and dictated to the girl about the commission.

Q Then, after Mrs. Plager had signed the other agreements, then the typewriting agreement was made out and she signed that? A Yes, sir.

Q Has this property been sold by Mr. Dobbin since? A No. 20

Q Have you tried to sell it? A No, sir.

Q Have you told anybody it has been sold? A No.

JACOB LUBETKIN, recalled on behalf of the complainant.

Direct examination by Mr. Weinberg.

Q Now, Mr. Lubetkin, will you tell us what occurred from the time the first person connected with this transaction came to your office on the 29th? A On May 29th I came to my office between 3:30 and 4 P. M. I found at my office Mrs. Plager, Mr. Ginsberg and Mrs. Frank. I asked what their business was. Mr. Ginsberg told me that Mr. Dobbin was purchasing Mrs. Plager's property. I asked where Mr. Dobbin was. Mr. Ginsberg told me he was too busy and wanted to know if we couldn't get along without him. He gave me a check, signed by Mr. Dobbin. I told him that I thought Mr. Dobbin would be necessary and I would not proceed to draw any agreement until Mr. Dobbin came. I called up Mr. Dobbin on the 'phone and he came up about fifteen minutes after that. I then proceeded to write the agreement out in longhand.

30

Q Why did you do that? A Mr. Greenbaum, my associate, had already dictated an agreement for the sale of property which the girl was working upon and had in the typewriter.

40

Q That is a different agreement? A That was a different agreement. I started to write out the agreement in longhand—

Jacob Lubetkin, direct.

took all the facts down—obtained all the necessary information, after Mr. Dobbin had arrived. I drew up the agreements; read them to each of the parties, and Mrs. Plager signed her name—or made a mark—in my presence; Mr. Dobbin signed. I filled in the check and gave it to Mrs. Plager. Almost simultaneously with that—practically a few seconds afterwards—I dictated the
 10 commission papers—the commission paper was drawn up. I read it to Mrs. Plager. She signed it. There was a little dispute about the commission there, and they finally settled upon two and a half per cent. I gave the commission paper to Mr. Ginsberg. I gave a copy of the commission paper to Mrs. Plager. I believe that I also drew up another notice to the tenant requesting him to vacate the premises on the 1st of September, which I gave to Mrs. Plager. The parties were in my office about an hour. Various disputes arose—little questions—as Mrs.
 20 Plager insisted that I fix liquidated damages \$300. I told her that Mr. Dobbin would not do that—I didn't think he would consent to that, because Mr. Dobbin was buying the property; that he wanted the property and didn't want damages. I told her if Mr. Dobbin refused to carry out the agreement she would probably have the right to retain the \$300 or to sue him for damages, and she finally agreed to do it in that way.

Q Was there anything about this agreement which you recall particularly, aside from what you have mentioned—you have spoken about the dispute on the commissions and question of
 30 damages—was the tenancy spoken of? A Yes, sir; the tenancy; of course, I stuck the usual provision in there on the representation that the tenancy was from month to month.

Q Who told you it was a monthly tenant? A Why, I asked Mr. Dobbin—I asked that of Mrs. Plager.

Q Did you know who the tenant was until Mrs. Plager told you? A No; I didn't know the name of the tenant. It was mentioned, but I can't recollect it.

Q Do you know who mentioned the name of the tenant? A The name of the tenant, I believe, was mentioned by Mrs. Plager.
 40

Q And where did you get the price from—\$11,000? A The price was told to me by the parties. I asked Mrs. Plager if she agreed to sell this property for \$11,000, and she said she did.

Q Was any other figure than that mentioned during the time you were in the office? A Absolutely none, whatsoever.

Jacob Lubetkin, direct.

Q Was anything said about the apportioning of taxes and interest? A I believe that she did refuse to an apportionment of the taxes, though finally she changed her mind afterwards and agreed upon the usual apportionment, as of the day of passing title.

Q Was anything put in this agreement by you that you were not told to put in? A Absolutely nothing at all. 10

Q What language did you converse in? A I spoke to her in Yiddish.

Q You speak it? A Yes, sir.

Q And she does? A Yes, sir.

Q How much of the agreement did you read to her? A I read the entire agreement substantially.

Q Were there any parts of this agreement that she said she did not understand? A There was no part whatsoever. She shook her head and nodded in the affirmative in assent as I read the agreement to her, and I explained the details, as I generally do in those cases. 20

Q How long was Dobbin in the office? A About an hour; Dobbin was in the office an hour—approximately an hour.

Q Of course, you don't know how long the other parties were there when you got there? A No, sir.

Q You were out. When you got there you found them there? A Yes, sir; I found them there.

Q Who gave you the name of Dobbin to call up? A Mr. Ginsberg. 30

By the Court.

Q You have testified that you signed in her presence. Did you know these people? A I knew Mrs. Plager and I knew Mr. Dobbin—knew Mr. Ginsberg; knew them all. I believe they all knew me.

Q And the information you got from the parties in your office at the time you drew this agreement, in preparation of the agreement— A Exactly. 40

Q Was any such amount as \$15,000 spoken of? A No, sir.

Q Any amount other than \$11,000? A No other amount at all; absolutely no amount was mentioned at all.

Jacob Lubetkin, cross.

Further direct.

Q You filled in the name, "Lena Plager" and the words "\$300" on this check? A Filled that in when I gave her the check, and when they executed the agreement I gave her that check.

10 Q When did you first hear, after the agreement, that there was any trouble about it? A Mr. Bradner called me up about the 17th or 18th of July and told me that Mrs. Plager claimed she was deceived, or something. I do not exactly recollect what he told me, but the effect or substance of what he said was that she wouldn't carry out her agreement.

Q Did he charge any specific fraud? A Nothing specific at that time; no.

20 Q Did you hear subsequently of any specific fraud? A I heard subsequently of no specific fraud at all until the answer was filed. That is the first information I obtained as to what the claim was.

Q Did any of the parties or anybody representing the parties—that is, the defendant in this case—call to see you in regard to this agreement? A No, sir.

Cross examination by Mr. Bradner.

30 Q When you heard from me, Mr. Lubetkin, that the agreement was not be carried out and that Mrs. Plager claimed she had been deceived, did you notify Mr. Ginsberg? A No, sir; I didn't have anything to do with Ginsberg.

Q Did you notify Mr. Dobbin? A Yes, sir; I called him up a few days later—few days after that.

Q How long after? A Well, I think it was about four or five days after that.

Q And did Mr. Dobbin bring to you the letter, Exhibit C. 2? A Yes, sir.

The Court. What date?

Mr. Weinberg. July 21st.

40 A (Continuing.) I called him up and he told me he received a letter the same day I called him. I told him to bring the letter to my office.

Q Did he give you any instructions at that time as to what to do? A I asked him what he proposed to do about it, whether

Samuel Schechner, direct.

he was going to take the deposit back or insist upon having the property. He told me that he wanted the property. I advised him to file a bill.

Q Why did you wait until the latter part of August—August 23rd—before filing the bill? A Well, I wanted to search the record down a little to find out whether—I didn't want to make a complete search—I wanted to see how the title was, whether the title stood in her name, and happened to be a little busy with other matters at the time, number of large real estate transactions.

10

Q Did you put the agreement on record? A Yes, sir.

Q On May 31st? A I believe I did.

Q Then you knew, of course, that this property was affected by that agreement on record? A Surely.

Q Then why did you delay for a whole month before filing the bill? A I had other matters that were pending that had to be disposed of before this one.

20

Q Were you paid for your services in preparing these papers? A Yes, sir.

Q Who paid you? A Mr. Dobbin paid a portion and Mrs. Plager paid a portion—paid me \$3 apiece for drawing the agreement.

Q Did she pay you herself? A She paid me herself.

SAMUEL SCHECHNER, sworn on the part of the complainant.

Direct examination by Mr. Weinberg.

30

Q Mr. Schechner, did you examine 216 Prince street? A Yes, sir, I did.

Q When? A This morning about 10:30.

Mr. Weinberg. Do you admit the witness' qualifications as a real estate man?

Mr. Bradner. I am satisfied that he can testify as to the property on Prince street.

The Court. You mean eminently qualified to testify?

40

Q What did you find the property to consist of? A The property consisted of a lot 25x100 and the front building is stucco, two-story building; store and three rooms in the rear, and bath and five rooms on the second floor, and in the rear a one-story garage, 25x50, brick.

Samuel Schechner, direct.

Q What is the interior of the brick walls, is it plastered or plain brick? A What do you mean?

Q Garage. A Plain brick calcomined.

Q Were you in the house? A Yes, sir.

10 Q Examined the make-up of the house? A Examined the building.

Q What kind of a building is it outside of its general description? A The building is very old. Is covered by stucco in order to keep it together. Inside they keep it in pretty fair condition.

Q Did you ever see this building before this morning? A Passed by it enough, but never paid any attention.

Q Not the interior, but the location, you know thoroughly? A The location? Oh, yes.

20 Q What have you to say as to the value of that lot? What in your opinion is the value of that lot based on your knowledge and experience of land values there—the value of this lot? A That lot is worth about \$150 a foot, \$3,750. It is the most it was ever worth.

Q What is your opinion as to the value of the buildings? A I figured the buildings were worth about \$7,000.

Q Is that a fair estimate? A That is a very fair estimate.

Q Do you know anything about what the assessed value of this property is? A Yes, sir.

30 Q What is it? A The land is assessed for \$2,000 and the building for \$3,700.

Q What year's assessment is that? A This year, 1919.

By the Court.

Q Are you giving war prices? A I am giving prices—not war prices—fair prices which the property—

Q When you speak of "fair price" as of what period? A I figure a period of two years ago.

40 Q How about now? A Excuse me, I meant the present value on that property—that property isn't worth any more than what I say.

Q Then you are figuring war prices? A I do not consider the war at all. I figure the price which that locality would bring today. It would bring no more than \$10,000 or \$11,000.

Q Property there has gone up in value? A No. Property in different locations—residential locations—is up in price, but

Samuel Schechner, cross.

not there. There is an element which has reached its height—doesn't go any further.

Q All Jews? A There is Jews and colored people and Polacks.

Cross examination by Mr. Bradner.

Q Did you look inside of the garage? A Yes, sir. 10

Q How large is that garage? A Well, I judge about 25x50, maybe a couple of feet more.

Q What would you consider a fair rent for that garage? A Well, for this locality garages are not as valuable as in different localities. I figure the rent this way, \$40 for the store, which I take for granted—I asked the people in the house and couldn't get any definite information—and I figure the flat where they live worth about \$30 to \$35, and figured the garage worth about \$40.

Q And how much the store? A The store \$40. 20

Q You didn't know anything about the actual rent? A No; but I think \$40 is a very good price for that.

Q What kind of a store is it? A I think it is a barber shop.

Q Did you know that there were living apartments? A Three rooms in the rear, yes, sir.

Q Did you go in the apartment upstairs? A Yes, sir; went through the apartment.

Q Went through it? A Yes, sir; spoke to the daughter.

Q It has all modern improvements? A All modern improvements. 30

Q So has the store and other apartments? A The store is three rooms and bath.

Q What do you mean by modern improvements? A Bath and heat.

Q Would it make any difference in your estimate of the value of that garage as to the use it was put, whether for mere storage or a going business? A No; on account of having machines and running a business; storage would be different.

Q What kind of a business is going on there? A I understand a few machines there, no cars. 40

David Dobbin, direct.

DAVID DOBBIN, sworn in his own behalf.

Direct examination by Mr. Weinberg.

Q Mr. Dobbin, you are the complainant in this case, the man who brings the suit? A Yes, sir.

10 Q And you live what number Prince street? A 218.

Q What business do you carry on there? A Wholesale butcher business and poultry market.

Q How long have been there? A For the last eight years.

Q What have you got on your place? What is your lot? What is on your lot? A Rear building, poultry market and little front building, two stories, where the wholesale butcher business is, and I live upstairs.

Q What is this poultry market? What kind of a building is that? A Two-story building.

20 Q Made of what? A Made of brick.

Q How long has it been there? A About eight years.

Q You keep your live stock in there, your poultry—chickens? A Yes, sir.

Q Do you kill up there? A Yes, sir.

Q Do you kill kosher? A Yes, sir.

Q Is that the market section up there in Prince street about where you are? A Yes, sir.

Q You signed an agreement to buy Mrs. Plager's property, did you? A Yes, sir.

30 Q Now tell us how you came to buy the property, and stick to just the story. Don't go off. A I see Mr. Ginsberg coming into my place. I was all the time in the store. He comes in and says, "Dobbin, I have for you a proposition to buy next door." I says, "What kind of a proposition have you got?" Mr. Ginsberg, he says, "I have for you a proposition to buy next door. You have to tell me if you are ready to buy." I said, "I will tell you, Mr. Ginsberg, I always—you know me for a couple of years—if you tell me that the proposition will be reasonable and I will be able to buy it, then I will buy it. You tell me where it is." He says, "Well, I have that property, 40 220 Prince street." I says, "Mr. Ginsberg, find out the price." He says—he come in and says the price is \$9,000, six-family house. I says, "\$9,000. I ain't able to tear it down because for \$9,000 there would be an empty lot entirely if I tear it down. If I have property in Prince street, the only thing I need for a

David Dobbin, direct.

piece of property in Prince street is that I should be able to build it up to make larger my business." He says, "Well, then, you can't buy it?" I said, "No, sir." I believe three or four weeks later he comes in and says, "Mr. Dobbin, I have another proposition next door." That is the way he spoke. "I have for you another proposition next door," and I said, "Well, you had for me that proposition." He says, "No; I got another one." I said, "I would like to find it out where it is." I thought maybe he means in the rear of that property and I answered him, "I can't use nothing in the rear." I said, "Well, the proposition." He says, "216 Prince street." I said, "What do they want for the property?" He says, "They want \$13,000." I said, "Mr. Ginsberg, you didn't have to bother with it; I ain't going to buy that property for \$13,000." "It don't pay me."

10

Q Did you see him again? A Then I seen him in a couple of days later and he says, "What is your offer on that property?" I says, "The highest offer is \$10,000." He says, "Well, you can't touch it for that money. The lady won't sell it." I said, "Then I can't help it, the deal is off." Then he comes around a couple of days later and he says, "Well, I will tell you, I maybe could get down that property for you to \$11,000." I says, "Well, I will have to talk it over with my wife, and if my wife will say yes, I might buy it." He comes around and says, "What do you say?" I says, "We need a bigger place. I am doing a commission business for a Baltimore house—I just do it for the last six months—and I want a place. Before I can go away from my property I might as well pay a little more and get it next door. Do you think you can buy it for me for that amount? If not, don't come any more, because I won't pay any more. Don't bother me any more." He says, "I will be here by you tomorrow." The next day he comes in and he says, "I did get it down for you for \$11,000," and said, "Will you go down with me to the lawyer?" I say, "What time?" He says, "Twelve o'clock." I says, "I have no time; all day I am working in the store; I have to go on with my business until three or four o'clock." I says, "Sometimes you go in the lawyer's office you have to wait a couple of hours. You might as well go down there yourself and if the lawyer is ready, call me up and I will be up there to the lawyer's in fifteen minutes." That is the way I talked to him. He says, "What did you want me to look around for," just like that. I says, "If you are afraid,

20

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40

David Dobbin, direct.

you think I am going to fool you, I will give you a check as deposit." He says, "How much are you going to give as a deposit?" I says, "\$300." He says, "Can't you give a little more than \$300?" I says, "No; I ain't got the money at present, now," that is all I could spare, \$300. I opened up the check book and made out a check for \$300 and signed my name. I only put the amount, the figures, because I never fill out a check because I don't know how to fill out in English.

Q Then what happened after you gave him the check? A After I gave him the check he went away from me and about an hour and a half later called me up, Mr. Lubetkin. He says, "There is here a party you want to buy the house from, why don't you come over here and make the deal?" I say, "Mr. Lubetkin, can't you do it yourself without me; you got the check. I will be there for the agreement," because I was busy. He says, "Can't do nothing of the kind. We want you here present."

Q What did you do then? A I took the carriage and went there. When I went there I seen Mrs. Plager and Mrs. Frank, Mr. Ginsberg—Mr. Lubetkin isn't there—sitting in the office waiting just for me to come up. I even go over and say "How do you do" to Mrs. Plager, because I always talked to the woman in the store. I knew she wanted to sell the property because I heard her a couple of times.

Q Keep on. What was said after you got into the office? A Come in to the office and I say, "How do you do, Mrs. Plager?" and I sat down and they start to write the agreement and fill out the agreement.

Q Did you talk about anything before they filled out the agreement? A I was talking to her when they wrote the agreement. She was mentioning about the taxes I should pay her—I should pay the taxes—and I bought a couple of properties before and I said that always the party where they own it he pays for the time he keeps the property—pays the taxes.

Q What else did you talk about? A Nothing.

Q Was the amount spoken about? A The amount of the property, yes, sir; \$11,000.

Q Was that spoken of? A Yes, sir.

Q How was it spoken about? Tell us all about what was said there, everything. A When I come to this office Mr. Lubetkin

David Dobbin, direct.

asked me, "For how much you buy the property?" and I said for \$11,000, and he wrote \$11,000. I didn't say anything else.

Q Anything said about the tenant—getting the tenant out of there? A This was when the agreement was written out. I said to Mrs. Plager—to Mr. Lubetkin—I said, "Mr. Lubetkin, I want you to write in that agreement that I want the house entirely empty." Then Mrs. Plager said, "Well, I can't make the house empty, the way you want it, in one month or two months." I said, "Well, give her more time; the house should be empty." I said, "I don't want to have anything to do with the tenant downstairs. You should make him move on your own responsibility." And she told Mr. Lubetkin he should make out a notice for Rabinowitz.

10

Q Then after the agreement was written out, what happened? Did you sign it? A After the agreement was written out he read it for me and give me to understand in Jewish—there was a couple of high words I couldn't understand it and he give me to understand in Jewish.

20

Q So he told you some things in Jewish? A Yes, sir.

Q Now, did you see who signed the paper?

The Court. What was explained in Jewish?

Witness. I do not remember.

Q What was too high in English that you did not understand, do you remember? A Something about fixing up the property in good condition to get the mortgage—something like that.

30

Q Now, you were up to the point where I wanted to get from you who signed the paper that you saw? A I signed the paper and Mrs. Plager signed the paper.

Q Anybody else? A Mr. Lubetkin signed the paper.

Q And after the papers were signed, what did you do with them? A He read the papers and asked me again if I understand all right all the agreement and give to me one paper and give to Mrs. Plager one paper.

Q Then what happened? A Then when we had the paper she had the dispute with Mr. Ginsberg about commission. She thought two and a half per cent. was too much commission, but I didn't interfere anything in that. It was none of my business.

40

Q Who left the office first? A Well, Mrs. Plager left the office first.

David Dobbin, direct.

Q Then you stayed back? A No; I didn't stay back. Maybe took me two minutes and I left after with Mr. Ginsberg because it was late and Mr. Lubetkin was busy.

Q What time did you leave the office, do you know? A Well, it might be about five o'clock. I think it was late.

10 Q Did you see the commission agreement written out? A Yes, sir.

Q Did you see that signed? A Yes, sir.

Q That was all done before you left? A Yes, sir.

Q Now, what is the next thing that happened after that, after you took your agreement away with you—what is the next thing you knew about this matter? A In the office?

Q After you left the office? A After I left the office and went home, I didn't hear nothing that day.

20 Q When did you hear something? A In a couple of days later, Mr. Rabinowitz comes in to me and he says, "Maybe I could make a shole between you and Mrs. Plager." I say, "What is the matter? What do you know between me and Mrs. Plager?" I thought he comes in to me to fight why he get that notice. I said, "Mr. Rabinowitz, I have nothing to do with you. I can't make no shole with you." He says, "Not with me, between you and Mrs. Plager." I says, "Mrs. Plager sold the house to me. She knows it." "No, but the children aren't going to allow her to sell the house because they find out you bought the house, and this is the reason they don't allow her."

30 I says, "They haven't anything to do about it. They know it themselves I am buying the house and I didn't tell her to sell me the house. If she wouldn't want to sell the house I wouldn't bought it, but so long as she sold it to me I want to have it." That is the way I answered it.

Q What do you intend to do with the property?

Mr. Bradner. I object.

The Court. Objection overruled.

40 A I want to tear down the front building—old building—and want to tear down my house and build one building out of it.

Q Have you had any property besides the house you live in? A Yes, sir.

Q What property? A I had property on Barclay street, near Spruce street, on the corner of Barclay and Spruce.

David Dobbin, cross.

Q Did you ever have any other property on Spruce street in this block? A No, sir.

Q You have had this piece how long? A Eight years.

Cross examination by Mr. Bradner.

Q How long have you known Mrs. Plager? A I have known Mrs. Plager for the last fourteen or fifteen years.

10

Q And you have lived next door to her for eight years? A Yes, sir.

Q Did you ever tell her that you would like to buy her property? A Never.

Q Did you ever try to buy it? A No.

Q And Mr. Ginsberg was the first person who told you that she was willing to sell it, is that right? A Yes, sir.

Q Did you tell him to try to buy it for you? A No, sir.

Q Then you didn't want to buy it, did you? A What?

20

Q You didn't want to buy it? A I didn't want to—I never had my opinion to buy that property.

Q You were not trying to buy it? A No.

Q It was only when he came and said he had a chance to sell it to you that you thought you would take it? A Yes, sir.

Q Why didn't you go in and see Mrs. Plager when you heard she was willing to sell it? A It is a custom up with us not—in our line of business in a thing like that, when we buy anything—we don't go right to the party that sells it.

Q What was to prevent you from going in to see her? A I didn't go.

30

Q You didn't go? A No.

Q How long had you known Mr. Ginsberg? A For the last ten or twelve years.

Q Had he sold any property for you? A Yes, sir.

Q And you paid him commission? A Never.

Q Never paid him. Had he bought any for you? A Yes, sir.

Q And you paid him commission for that? A No.

Q You never paid commission? A No.

Q When you made out the check for \$300, what did you say to Mr. Ginsberg as to what he was to do with it? A When I made out the check for \$300?

40

Q Yes. A I told him he could go to the lawyer's office and when the lawyer was ready he should call me to buy that property.

David Dobbin, cross.

Q Then why give him the check, if you were going to the lawyer's office yourself? A Because Mr. Ginsberg, when he was in my place, that is what he answered me. I say, "You go to the lawyer, and when the lawyer will be ready I will come." He says, "Now, look here, Dobbin, I was fooled many times, I ain't going to fool myself now. I want to know sure you are
10 a buyer for the property. I want to have a check you are the buyer. I think I am good for \$300." I said, "Yes, Mr. Ginsberg, I think you are good for more." I give him a check for the sum.

Q Why didn't you make it out for Mrs. Plager? A I can't spell nothing else in English only my name.

Q Who makes out the checks in your place? A I got a bookkeeper.

Q Couldn't he make this out? A He wasn't in. He only
20 comes in the evening to do my business.

Q Mr. Ginsberg can write, can't he? A Yes, sir; but he didn't write.

Q Why didn't you ask him to write Mrs. Plager's name in it? A Well, I trust him; I have confidence in him; I know him too long; I didn't think anything like that.

Q You didn't tell him what to do with the check? A Give to the lawyer.

Q To hand it to the lawyer? A Yes, sir.

Q And that is all you told him, to give it to the lawyer? A
30 Yes, sir.

Q Have you sold this property since? A No, sir.

Q Have you tried to sell it? A No, sir.

Q Have you tried to rent it? A No, sir.

Q When you were talking to Ginsberg about buying it, did you figure out how much rent you could get out of it? A
No, sir.

Q Didn't figure that up at all? A No, sir.

Q You didn't know how much you could get out of it? A
No, sir.

Q Did you know how much the store was rented for? A
40 No, sir.

Q Nor the garage? A No, sir.

Q Well, how did you determine the price of \$11,000? A Well, it was worth it for me without looking for that, for my own use.

William L. Greenbaum, direct.

Q You were going to live in it yourself? A Yes, sir.

Q And use it yourself? A Yes, sir.

Re-direct examination.

Q Did you make an application for a loan to the Crosstown?
Is this your application (showing witness paper)? A Yes, sir.

10

Q Signed by you? Yes, sir.

Q In which you asked for \$7,200? A Yes, sir.

Q Were you ever informed whether that loan was granted?
A Yes, sir; the lawyer told me.

WILLIAM L. GREENBAUM, sworn on the part of the complainant.

Direct examination by Mr. Weinberg.

Q Mr. Greenbaum, you are a lawyer? A Yes, sir.

20

Q Practicing how long? A Five years.

Q How long have you known Mr. Lubetkin? A Oh, about five years.

Q You have an office with him? A Yes, sir.

Q At the present time? A Yes, sir.

Q Are you in partners? A Yes, sir.

Q Partnership, I should say. Where is your office? A At the time this agreement was made it was on Springfield avenue.

Q Now, you have moved downtown? A Yes, sir.

Q What did your office consist of? A Consisted of three rooms. One was a large room, where Mr. Lubetkin and I used a desk in common—that is, we used the same desk. The reason for that was that the stenographer was in one room and the other room was too dark to be used for an office, so we both used that one large room. I had just returned from the service and we hadn't made any arrangements to have separate rooms.

30

Q Now, do you remember the day when Mrs. Plager was in your office? A I do.

Q Where was Mr. Lubetkin at the time? A Mr. Lubetkin was out when they came.

Q Who was making use of the stenographer's services? A I was at that time.

40

Q When these people came in? A I was. There was nobody in the office. They came in and asked for Mr. Lubetkin. I told them he wasn't in. I asked them what they wanted and

William L. Greenbaum, direct.

they said they wanted to make an agreement for the sale of some property.

Q Who was that, do you know? A Mr. Ginsberg, Mrs. Plager, and some other woman I don't know—

The Court. Where is Mrs. Frank?

10 *Mr. Weinberg.* I don't know. It is her friend.

Mr. Bradner. The first time I heard of her was today.

Witness. I know Mrs. Frank. I done some work for her once before. I think I mentioned Mr. Ginsberg's name.

Q How long were they there before Mr. Lubetkin came in?
A They were there about half an hour.

Q Then he came in? A Yes, sir. In the meantime, some other people came in and I started to draw an agreement for
20 them and I was using the stenographer at that time.

Q Do you know whether or not Mr. Lubetkin had drawn this agreement spoken of before these people came in? A No, sir; he did not.

Q You know that as a fact? A I know that because I saw him writing, and the reason he wrote it was because the stenographer was busy at the time, because I was using her.

Q Did you pay any attention to the conversation between them? A After I had gotten through with my agreement I sat down at my place next to Mr. Lubetkin. Of course, there
30 was so much going on there—

Q It was a double-sided desk? A No; table about three-quarters of the size of the one you are sitting at, and I was sitting at about the same position you are with Mr. Lubetkin now. He read the agreement—substantially the whole agreement to the parties. Mr. Dobbin wasn't there when the parties came, but Mr. Lubetkin called up Mr. Dobbin.

Q Do you recall that? A Yes, sir.

Q Then how long was he there? A Oh, I should judge about an hour.

40 Q And was he there at the time Mr. Lubetkin read the agreement? A Yes, sir.

Q Did you see them sign? A Yes, sir.

Q Did you take any acknowledgment? A Sir?

Q Was there any acknowledgment taken to this agreement?
A Mr. Lubetkin took the acknowledgment.

William L. Greenbaum, direct.

Q He did? A Yes, sir.

Q Do you recall anything that was read from that agreement or not? A Well, I recall the fact that there was an argument between Mrs. Plager and Mr. Ginsberg with reference to the commission, and I know that the consideration was \$11,000 because they were figuring about how much it was going to be. Mrs. Plager claimed it was too much money, and she only wanted to give one per cent., I believe, first, but finally I believe she agreed to give two and a half per cent. 10

By the Court.

Q How did that question come up? How did that come about? A Why, when the agreement was, I think—was at that time—was already signed, then Mr. Ginsberg asked for a writing to secure his commission, and he said he wanted two and a half per cent. She said, no, she didn't expect to give that much—it was too much money—she says, "How much would it be?" They started figuring. 20

Q Figuring on what basis? A On the basis of \$11,000.

Q Did you hear them say that? A Sir?

Q Did you hear them say it was figured on the basis of \$11,000? A Yes, sir.

Q And then? A Well, there was some argument pro and con and finally she agreed to give two and a half per cent.

Further direct examination.

Q Did you see any papers signed, did I ask you? A Yes, sir. 30

Q And who left the office first? A I couldn't recall that. I imagine they all went out together. I don't know just who did leave first.

Q Do you know what time it was? A It was around five o'clock in the evening.

Q Can you then say about how long it was from the time the first person got there until they all finally left? A Well, between an hour and a half and two hours. Approximately that. 40

Q When had you come back from the service—how long before? A Just about three weeks.

Q That was a temporary office? A Yes, sir.

Q Where are you located now? A Lawyers' Building, 164 Market street.

William L. Greenbaum, cross.

Cross examination by Mr. Bradner.

Q Did you hear the total amount of the commission spoken of? A Total amount of the commission?

Q Yes. A I believe I did, but I don't remember just what it would amount to.

10 Q Didn't hear any definite figures stated as \$250 or \$200? A Yes; they figured it out—there was a definite figure stated, but I don't know what it was now.

Q Don't recall that? A No, sir.

Q And was that figure stated before she signed the commission paper? A Well, that figure was stated, but it wasn't put in the commission paper.

Q I didn't ask you whether it was put in the commission paper. The commission paper was dictated to the stenographer, was it? A Yes, sir.

20 Q Who dictated it? A Mr. Lubetkin.

Q And that was dictated after the agreement of sale had been executed? A Yes, sir.

Q And then you heard some gross amounts made named for the commission? A Yes, sir.

Q You don't know whether that was stated in the paper or not, do you? A The gross amount?

Q Yes. A I don't think it was. They only did that for ascertaining—Mrs. Plager wanted to know how much it would amount to, at two and a half per cent.; that is why they figured it that way.

30 Q Do you know why this paper was written in this form after the agreement had been executed and the sale completed: "I hereby authorize and empower Max Ginsberg to sell my property at 216 Prince street." Do you know why that was put in that form? A To secure the payment of the commissions, I suppose.

Q The property had already been sold. What I am attracting your attention to is that peculiar phraseology there giving the authority after the work had been done. Was that discussed?

40 A I don't understand that question.

Q You do not understand that? A No, sir.

Q Don't you perceive that this paper gives the authority to the agent after the work had been done? Was that subject discussed in your presence? A The fact that the agreement had already been signed?

Exhibit C. 3.

Q Yes. A No, sir; that was not discussed. That is only a matter of form that all lawyers use.

COMPLAINANT RESTS.

Exhibit C. 3.

10

I hereby authorize and empower Max Ginsberg to sell my property No. 216 Prince street, Newark, New Jersey, and I hereby agree to pay him as and for his services 2½% of any sum taken by me for the sale of said property. I hereby acknowledge that it has been through his efforts that I have sold the property to David Dobbin, and I agree to pay him said commission on the day fixed for settlement by an agreement bearing even date herewith.

20

her
LENA (X) PLAGER.
mark

May 29, 1919.

Attest;

JACOB LUBETKIN.

30

40

*Exhibit D. 1.***Exhibit D. 1.**

MORRIS HORWITZ & UX.
TO
MEYER PLAGER & UX.

THIS INDENTURE, Made the
Twenty seventh day of
July, in the year of our
Lord One Thousand Nine

10 Hunderd and three Between Morris Horwitz and Esther Hor-
witz his wife, of the City of Newark, in the County of Essex
and State of New Jeresey of the First Part, And Meyer Plager
and Lena Plager his wife, of the City of Newark, in the County
of Essex and State of New Jersey of the Second Part; Wit-
nesseth, That the said party of the first part, for and in con-
sideration of the sum of Three Thousand dollars lawful money
of the United States of America, to them in hand well and truly
paid by the said party of the second part, at or before the sealing
and delivery of these present the receipt whereof is hereby
20 acknowledged, and the said party of the first part therewith fully
satisfied, contended and paid, have given, granted, bargained,
sold, aliened, released, enfeoffed, conveyed and confirmed, and
by these presents do give, grant, bargain, sell, alien, release,
enfeoff, convey and confirm to the said party of the second part,
and to their heirs and assigns forever. All that tract or parcel
of land and premises, hereinafter, particularly described situate,
lying and being in the City of Newark, in the county of Essex
and State of New Jersey.

30 BEGINNING in the Easterly line of Prince Street at a point
therein distant four hundred and seventy five feet southerly
from the Southerly line of Montgomery Street; thence running
Easterly parallel with Montgomery street one hundred feet;
thence southerly twenty five feet; thence westerly one hundred
feet to Prince street; thence northerly along the same twenty
five feet to the place of Beginning. Being the same premises
conveyed to the said Morris Horwitz and Esther his wife by
deed recorded in Book Z. 27 page 558 and also by deed from
Moses Straus, Receiver dated Sept. 2, 1893 and to be recorded
herewith. This conveyance is made subject to a mortgage of
40 Two thousand dollars made by said Morris Horwitz and Esther
his wife to The West End Building and Loan Association of
Newark, N. J., and to a proportionate share of the taxes for
the year 1903.

Exhibit D. 1.

TOGETHER with all and singular the houses, buildings, trees, ways, waters, profits, privileges, and advantages, with the appurtenances to the same belonging or in anywise appertaining, Also, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in, and to the same, and of, in and to every part and parcel thereof, TO HAVE AND TO HOLD, all and singular the above described land and premises, with the appurtenances, unto the said party of the second part, their heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, their heirs and assigns forever; and the said parties of the first part do for themselves, their heirs, executors and administrators covenant and grant to and with the said party of the second part, their heirs and assigns, that they the said parties of the first part are now the true, lawful and right owners of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging; and that the said land and premises or any part thereof at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment, or limitation or by any encumbrance whatsoever, by which the title of the said party of the second part hereby made or intended to be made for the above described land and premises can or may be changed, charged, altered or defeated in any way whatsoever, except as aforesaid. And Also, that the said party of the first part now have good right, full power and lawful authority to grant bargain, sell and convey the said land and premises in maner aforesaid, and Also, that they the said parties of the first part will warrant, secure and forever defend the said land and premises, unto the said parties of the second part, their heirs and assigns forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrances whatsoever.

IN WITNESS WHEREOF, the said party of the first part have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered
in the presence of
Timothy E. Scales.

MORITZ HOWITZ L. S.
her
ESTHER X HORWITZ L. S.
mark

Exhibit D. 1.

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

BE IT REMEMBERED, That
 on this Twenty-seventh

day of July, in the year of our Lord One Thousand Nine Hundred and three before me, a Master in Chancery of New Jersey personally appeared Morris Horwitz and Esther his wife, who, I am satisfied are the grantor mentioned in the within Indenture, and to whom I first made known the contents thereof and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed; And the said Esther being by me privately examined, separate and apart from her husband, acknowledged 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.

Timothy E. Scales, M. C. C. of N. J.

Received in the office July 27, A. D. 1903, at 3:15 P. M.

ESSEX COUNTY REGISTER'S OFFICE.

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

I, WALTER A. EVANS, Register of the County of Essex, do hereby certify that the foregoing is a true and correct copy of the record of a certain Deed made by MORRIS HORWITZ & UX. to MEYER PLAGER & UX. and also of the certificate of acknowledgment thereto annexed, as the same may be found recorded in my office in book U. 36 of Deeds for said County on pages 460-461.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 24th day of February A. D. 1919.

WALTER A. EVANS,
 Register.

[SEAL]

Decree.

DECREE.

Filed January 6, 1920.

This cause coming on to be heard upon bill, answer, replication and proofs in the presence of Benjamin M. Weinberg, Esq., of counsel with the complainant and in the presence of Frank E. Bradner, Esq., of counsel with the defendant, and the pleadings and proofs having been read, and the arguments of counsel heard and considered, and the Chancellor being of the opinion that the complainant is entitled to the relief prayed for, in the bill of complaint herein; and it satisfactorily appearing to the court, that by virtue of an agreement in writing, duly made and executed between David Dobbin, the complainant, and Lena Plager, the defendant, bearing date the 29th day of May, 1919, the said Lena Plager agreed to convey to the said David Dobbin, certain premises situate, lying and being in the City of Newark, County of Essex and State of New Jersey, and more particularly described as follows:

BEGINNING in the Easterly line of Prince Street, at a point therein distant four hundred and seventy-five (475) feet Southerly from Southerly line of Montgomery Street; thence running Easterly parallel with Montgomery Street one hundred (100) feet; thence Southerly twenty-five (25) feet; thence Westerly one hundred (100) feet to Prince Street; thence Northerly along the same twenty-five (25) feet to the place of BEGINNING.

Being same premises conveyed to said Lena Prager and Meyer Plager, her husband, by Morris Horwitz and wife by deed dated July 27th, 1903, and recorded in U 36-460, Meyer Plager having since died—free and clear of any and all encumbrances and violations of the local ordinances or Board of Health rules or local building department rules, or regulations, and that the said premises were to be conveyed to the said David Dobbin, by good and sufficient warranty deed, in fee simple, on the first day of September, 1919; taxes for 1919, water rents, house rents, insurance premiums and interest on mortgages to be apportioned and allowed on the day of passing title and delivery of deed as aforesaid;

And it further appearing that the complainant herein has always been and still is ready and willing in all things, to comply with the terms of said agreement and has prayed the order or decree of this court, directing the defendant to comply with

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30

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Decree.

and fulfill the same and all things on her part, and this court being of the opinion that the complainant is entitled to the specific performance of said articles of agreement on the part of the defendant, Lena Plager, as in the said bill, the said complainant has prayed.

10 It is on this 6th day of January, 1920, ORDERED, AD-
JUDGED AND DECREED, that the said articles of agreement
be in all things specifically performed by the said defendant,
and that the said defendant does, within 20 days from date of
this decree, make, execute and acknowledge in due form of law,
and deliver at the office of Benjamin M. Weinberg, solicitor
for the complainant, No. 738 Broad Street, Newark, N. J., a
good and sufficient warranty deed, for the said premises, by
her agreed to be conveyed, free and clear of all liens and en-
20 cumbrances, except taxes, for the year 1919, which are to be
apportioned between the parties as of September 1st, 1919, and
that the defendant account to the complainant herein for the
rents, issues and profits of said premises, since the first day of
September, 1919, allowing and apportioning between the parties
all matters in said agreement mentioned, and that, after such
apportionment and accounting, the complainant pay to the de-
fendant such sum or sums of money as shall be found to be due
to the defendant, including interest, on account of the purchase
of said mentioned premises, sold to the said complainant for the
sum of \$11,000 as in said agreement is provided, and that the
30 defendant be decreed in all respects to specifically perform each
and every covenant and agreement by him agreed to be per-
formed, pursuant to the terms of said agreement of May 29th,
1919, aforementioned.

It is further ordered that the costs of the complainant, in-
cluding a counsel fee of \$200, be taxed, and deducted from such
sum or sums of money as may be found due to the defendant
from the complainant, after the making of the allowances and
apportionments herein above referred to and provided for.

E. R. WALKER.

C.

40

Respectfully advised.

JOHN H. BACKES, V. C.

*Notice of Appeal.***NOTICE OF APPEAL.**

Filed January 16, 1920.

The defendant hereby appeals from the whole and every part of the final decree made in this Court in the above-stated cause, bearing date January 6, 1920, to the Court of Errors and Appeals in the last resort in all causes. 10

FRANK E. BRADNER,
Solicitor of Defendant.

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

FRANK E. BRADNER,
Of Counsel with Defendant. 20

Service of a certified copy of the foregoing notice filed January 16, 1920, is hereby acknowledged this 27th day of January, 1920.

BENJAMIN M. WEINBERG,
Of Counsel and Solicitor of Complainant.

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Petition of Appeal.

PETITION OF APPEAL.

Filed February 5, 1920.

New Jersey Court of Errors and Appeals

Between.

DAVID DOBBIN,

Complainant-Respondent,

and

LENA PLAGER,

Defendant-Appellant.

*On Appeal from
Court of
Chancery.*

*Petition of
Appeal.*

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

The petition of Lena Plager, the defendant, in the above-stated cause, respectfully shows:

That your petitioner finds herself aggrieved by a final decree made in the said cause by his Honor Edwin Robert Walker, Chancellor of New Jersey, bearing date January 6, 1920; in and by which said decree it is adjudged and decreed that certain articles of agreement bearing date May 29, 1919, and purporting to have been executed by the said complainant and the said defendant for the purchase and sale of certain land in the City of Newark, shall be in all things specifically performed by the defendant.

Your petitioner humbly appeals from the said final decree, and alleges that the said decree is erroneous for the following reasons:

1. Because the defense made by the appellant in her answer to the bill of complaint, that she did not voluntarily and consciously sign, seal and deliver the said agreement in writing to sell her property for \$11,000, and that the sale which she had agreed to make, was subject to the consent of her children, and that her children were not satisfied and would not carry out the sale, was sustained by the evidence in the case; and the bill of complaint should have been dismissed.

Petition of Appeal.

2. Because the evidence showed that the alleged written agreement is unfair, and that the property was worth considerably more than \$11,000, and that the appellant was taken advantage of by the complainant and by Ginsberg, the agent.

3. Because the complainant has an adequate and complete remedy at law, and is not entitled to any relief in equity. 10

4. Because the said decree in other respects is erroneous and should be reversed.

Your petitioner therefore, prays, that the said final decree may be reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this honorable Court shall seem meet.

FRANK E. BRADNER,
Solicitor for and of Counsel with Appellant. 20

Service of a certified copy of foregoing Petition of Appeal is hereby acknowledged this February 10th, 1920.

LUBETKIN & GREENBAUM,
Solicitors of Respondent.

30

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Answer to Petition of Appeal.

ANSWER TO PETITION OF APPEAL.

Filed March 3, 1920.

Answer to the above-named respondent to the petition of appeal of the above-named appellant.

10 This respondent, not acknowledging all or any of the matters which in said petition of appeal are contained, to be true, for answer thereto, nevertheless, says and admits that a decree was, on January 6th, 1920, made and entered in the Court of Chancery, on or about January 9th, 1920, in the cause for that purpose mentioned in said petition, as therein stated; but as to substance and form thereof, this respondent prays to refer thereto, when the same shall be produced. And this respondent is advised and believes that the said decree is agreeable to equity, and he prays that the same may be in all things affirmed, with
20 costs to be adjudged to this respondent.

BENJAMIN M. WEINBERG,
Solicitor for and of Counsel with Respondent.

Consent is hereby given to the filing of the within answer to petition of appeal this March 3, 1920.

FRANK E. BRADNER,
Solicitor of Appellant.

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EXHIBITS.

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C. 1—Agreement of Sale (printed in full in Bill on pages 4 to 6).....	9	4
C. 2—Letter, Frank E. Bradner to David Dobbin (printed as part of Answer on page 8).....	10	8
C. 3—Commission Agreement	58	83
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New Jersey Court of Errors and Appeals

Between

DAVID DOBBIN,

Complainant-Respondent,

and

LENA PLAGER,

Defendant-Appellant.

OPINION OF VICE-CHANCELLOR.

Opinion of Vice-Chancellor.

OPINION OF VICE-CHANCELLOR.

Filed June 18, 1920.

Argued and Decided December 22, 1919.

Between

DAVID DOBBIN,

Complainant,

and

LENA PLAGER,

Defendant.

Conclusions.

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For complainant, Mr. Benjamin M. Weinberg.

For defendant, Mr. Frank E. Bradner.

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BACKES, Vice-Chancellor.

This suit is to compel the defendant to convey to the complainant her property, 216 Prince street, Newark, for \$11,000 cash, in accordance with her agreement in writing to that effect.

The answer is a categorical denial of the allegations of the bill, with the qualification that the defendant denies "that she voluntarily and consciously agreed to sell the property for \$11,000."

The meaning of this ambiguous phraseology was brought out at the trial, where it was set up that the purchase price agreed upon was \$15,000, and that when Mrs. Plager signed the contract it was with the understanding that that, and not \$11,000, was stipulated. Counsel introduced considerable testimony in support, but did not press this defense on the argument, feeling, I assume that he had failed in his proofs. That he had failed was obvious, as I shall proceed to point out:

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Max Ginsberg, a real estate agent, negotiated the sale. Dobbin was not his first prospect. Between the price demanded by Mrs. Plager of \$13,000 or more (Mrs. Plager says \$16,000) and the offer by Dobbin of \$10,000, he effected a compromise at \$11,000. Ginsberg, Mrs. Plager and a Mrs. Frank, a friend of Mrs. Plager, went to the law office of Lubetkin & Greenbaum to have the contract drawn. They waited for some time in the

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office before Mr. Lubetkin came in. He says that after the object of their visit was explained to him he told them Mr. Dobbin had to be present, and he was telephoned for and came. Then ensued considerable haggling over the date of possession, the removal of a tenant, the division of the taxes, the commission of the agent the amount of the deposit and the like, but there was no question as to the price being \$11,000. He says he got his instructions from all there—Mrs. Plager, Ginsberg and Dobbin—that he correctly incorporated them in the contract, read it to them, explained it in Yiddish—their mother tongue—and, assuming that they understood, had them sign in duplicate. He also drew a contract for the agent's commissions (2½ per cent.) and a notice to the tenant to quit, which Mrs. Plager took away, together with a duplicate of the contract of sale and Dobbin's check for \$300, the deposit. Before going she paid Lubetkin three dollars, her share of his charges. Greenbaum, his partner, and Dobbin and Ginsberg corroborate him.

The composite story of Mrs. Plager and her children runs about this way, although it clashes severely in spots: Ginsberg represented that he was the buyer, that he wanted the place for a shop and was willing to pay \$15,000; that the contract was already prepared when she got to Lubetkin's office; that she signed it believing it to be with Ginsberg, not with Dobbin, and that the consideration stated was \$15,000; that Dobbin was not known to her in the matter, was not present during the negotiations nor at the signing of the contract; that she did not see him sign; that he came into Lubetkin's office as she passed out, and that she did not know that the \$300 check was drawn by him. When she got home one of her daughters read the contract, and then she realized she had been swindled. The next day her tenant took the check to Dobbin with a request from her that he take it back and surrender the contract. He refused and after a few days Mrs. Plager cashed the check. She first consulted counsel two months later.

Much, if not all, of this story is pure fancy, and its inspiration and development are not obscure. Mrs. Plager's children were opposed to her selling the home, and upon her return with the contract, and being told what had been done, they raised a rumpus—some because the price was not to their liking and others because she sold at all—and to placate them and restore harmony she sought to have Dobbin release her. There was no

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thought at that time of having been swindled out of \$4,000 by a false contract, for had there been, I feel quite sure Mrs. Plager's course would have been swift and drastic, far from the mild appeal to Dobbin's generosity. She made no complaint to either Lubetkin or Dobbin that they had cheated her—a most natural thing to do if she had been. She and some of the children say they charged Ginsberg with crookedness in the sale, which he denied, but even at that, they do not claim to have alluded to deception by falsification of the contract.

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If the scenes of hysteria and wailing, so dramatically described by the family as having followed Mrs. Plager's return with the contract, actually took place, of which I have grave doubts, they were due principally to the shock the children experienced when they learned that their mother had executed the threat she had made to sell out, and the thing they accommodately characterize as swindling was the price over which they affected astonishment and disappointment. They agitated themselves into a feeling that their mother had been outdone in the bargain, a feeling which the mother readily assimilated, or rather simulated, and which she did not hesitate to reinforce at the trial with statements of facts which she must have felt were unfounded. Her claim that the contract was prepared before she arrived at Lubetkin's office, her denial of the happenings in his office, as related by the four men present, and her repeated assertion that Dobbin did not participate in the negotiations, was not to her knowledge the purchaser and did not sign the contract in her presence, were all consciously made, knowing that they were untrue. The untruth of her statement, that she passed Dobbin at the door coming in as she was going out of Lubetkin's office was self-evident, for she carried with her the contract Dobbin had just signed, which she afterwards gave to her counsel, who produced it at the trial on call.

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Mrs. Frank, who was taken along by Mrs. Plager as a companion and witness, and who undoubtedly knew what happened when the contract was made, was not summoned to the trial. It was said she was sick, and I adjourned the hearing so that her testimony could be taken. She was not produced, although available, and the inference is that her testimony would have been unfavorable to the defendant's claim that she had been deceived into selling for \$11,000.

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The deposit of the check after the unsuccessful appeal to Dobbin is significant of Mrs. Plager's belief in the binding force of the agreement at that time.

10 Whether the price of \$11,000 had been agreed upon previous to or upon the arrival of Mrs. Plager, Ginsberg and Mrs. Frank at Mr. Lubetkin's office is not clear, but I have no doubt that that sum was the consideration upon which the minds of the contracting parties ultimately met, and that the writing expresses the things Mrs. Plager and Dobbin agreed upon. Nor have I the least misgivings of Mrs. Plager's ability to take care of herself in her dealings with the men, or that advantage was taken of her. She is illiterate, it is true, but she thinks and talks in money keenly, as is traditional of her race, and she is experienced in the ways of business. The sum which she agreed to take was a fair price for her property, as the testimony shows.

20 On the argument, counsel for defendant, advanced three points not raised by the answer nor intimated during the course of the trial: (1) That the minds of the parties did not meet, (2) that there was overreaching in procuring the contract (3) and his chief point, that there is an adequate remedy at law, and jurisdiction, therefore, should not be exercised.

1. First, that the minds of the parties did not meet, notwithstanding the formal contract in writing, is based upon a bit of testimony culled from Mrs. Plager's jargon, as follows: "Mr. Ginsberg, give me the check and give me the paper to sign—
30 I sign one paper—and I took the check and told him, 'Mr. Ginsberg, I don't know what about this. I will come home and if it is not right I will give it to my children to read it. If my children tell me something is wrong I will give you back the deposit.' He told me 'All right,' and he started to laugh at me."

His claim is that as this was not specifically denied it must be accepted as true and conclusive that the agreement was not to be binding upon his client until approved by her children. The recital by the other witnesses, present at the execution of the contract, of what there occurred—and I must assume that they
40 told all—is a positive and complete refutation. In the quest for the truth courts are not bound to accept as verity statements of incidents not directly denied, if the body of the testimony refutes them.

Mrs. Plager's testimony just quoted was not adverted to by her counsel during the course of the trial as of the significance

Opinion of Vice-Chancellor.

he attributed to it on the argument. The impression made upon me when given, and the interpretation I then placed upon it was, that as Mrs. Plager could not read, and having signed the contract upon representation of what it contained, if the contract was not written as read and explained to her, and as to this she was to be informed by her children, then the check was to be returned and the contract at an end. It was in that sense of "wrong" that I understood her testimony, and I am quite confident that that was also the understanding of counsel.

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2. There was no overreaching. It seems that Mrs. Plager shortly before, or about the time of the sale, had difficulties with some of her children, who were living with her, and had threatened to sell out so as to get rid of them. There is no evidence whatever that either Ginsberg or Dobbin knew of this, nor does it appear that Mrs. Plager acted impulsively, or that her motive was other than the good price she was to receive. I do not mean to imply that any of these things would be ground to relieve her of her bargain or to refuse its enforcement.

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3. The jurisdiction of equity to specifically enforce contracts for the sale of land is so firmly established in this State, and so universally acknowledged by Bench and Bar, that sporadic attacks of the undaunted upon its exercise, because there is an adequate remedy at law in damages, may be at this late date viewed with perfect complacency.

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New Jersey Court of Errors and Appeals

Between

DAVID DOBBIN,

*Complainant-Respondent,**and*

LENA PLAGER,

*Defendant-Appellant.**On Appeal from
Court of
Chancery.***BRIEF OF BENJAMIN M. WEINBERG, ON BEHALF OF
COMPLAINANT-RESPONDENT.****Statement of the Case.**

On May 29th, 1919, the defendant, by an instrument in writing, agreed to sell to the complainant, who agreed to purchase, certain premises on Prince street, in the City of Newark, N. J. The agreement was drawn and witnessed by Jacob Lubetkin, a solicitor of this Court, who took defendant's acknowledgement at the time of its execution. Title was to pass on September 1st, 1919.

On July 21st, 1919, Frank E. Bradner, as attorney for the said Lena Plager, notified the complainant that the agreement in question would not be carried out by her "because she claims that she was deceived" (p. 8). The following month a bill to compel specific performance was filed by complainant and on November 10th, 1919, the case came on for final hearing, before the Hon. John H. Backes, who on January 6th, 1920, to which day the hearing was adjourned for the purpose of taking the testimony of one Mrs. Frank, a friend of the defendant (see his conclusions filed in the cause) advised a decree in favor of the complainant (p. 87). The defendant thereupon gave notice of appeal, and brings the cause before this court for review.

Discussion of the Evidence.

After making formal proof of the execution of the agreement, the complainant rested his case.

The defendant then went upon the stand and told a most weird story by way of defense, to wit: that she agreed to sell

the premises in question, to one Max Ginsberg, a real estate broker for \$15,000 (p. 11); that he thereupon took her to the office of Jacob Lubetkin, a lawyer, where she found the agreement all prepared; that she then put her mark to the paper, received a check for \$300 as a deposit (p. 12), and as she passed out of the office, met the complainant at the door coming in; but said nothing to him at all (p. 15); that she went home, showed the agreement to her daughter who read the consideration price of \$11,000 to her, whereat she started to cry; that her sons came in at that time, and one of them said to her, "Give back right away the deposit. Don't sell the house. *The house is mine.* You can't sell the house. What is the matter with you, are you crazy?" (p. 12); that she then gave the check to her tenant, and sent him to the complainant with it (p. 13). Right here, the learned Court undertook to cross examine the witness, as to her story, and exposed the absurdity of it (pp. 13-14).

Defendant admitted discussing in the lawyer's office, the subject of giving one of her tenants—Rabinowitz—time to get out of the building (p. 20). (See agreement which provides for proceedings to be taken by her to have this same tenant dispossessed, p. 5, par. 3).

On page 21, she relates how, after she was informed that the contract price was \$11,000 instead of \$15,000, she went to her tenant and said to him, "Please, Mr. Rabinowitz, go in and tell him (complainant) I cannot give the property for \$11,000; he (complainant) make a mistake, and the children holler on me, and he don't want to stay with me, my son, on account of this; he wanted to go away from me" (p. 21, l. 26). Later her daughter met Ginsberg, and told him, "You done crooked; you done not nice to my mother" (p. 22). She, however, did not charge him with anything wrong, other than to say to him, "Business—never mind—not right business" (p. 22, l. 34). She never went to Lubetkin to tell him that something "crooked" had been done (p. 24, l. 22).

Thelia Plager, a daughter of the defendant (16 years old) testified that defendant was away from the house for two hours, on the day she went out with Ginsberg to have the agreement executed (p. 31, l. 15), although the house was only 10 or 15 minutes walk from the lawyer's office (p. 31, l. 18); that she went out with a Mrs. Frank (p. 31, l. 31). Defendant, herself, admitted that she had her friend, Mrs. Frank, with her at the lawyer's office, at the time the agreement was signed (p. 18, l. 40).

This witness was not produced, which called forth the Court's adverse criticism, contained in his conclusions.

Witness said that her mother had a quarrel with the family, and made up her mind to sell the property, but that "none of us wanted her to sell" (bot. p. 32, top 33). This evidence, undoubtedly furnishes the real reason for the defendant's refusal to transfer the property to the complainant. A son, Samuel Plager, testified that after he learned of the agreement to sell, he told his mother to send the deposit "right back" (p. 34, l. 35), but that he did nothing about the matter further than to say to his mother, "You are swindled" (p. 38, bot.). This was too much for the Court, who took the witness in hand, as follows:

"Q If you thought your mother was swindled, why didn't you think it was part of your business to see that it was corrected? A I can't get in an argument with any body; I don't feel good; I don't like to argue; I have been sick for a couple of years.

Q You couldn't bother about \$4,000? A If I argue I get sick; that is all, so I don't bother doing nothing." (P. 39, top.)

Regarding the question as to whether Ginsberg represented himself as the buyer, or merely the agent in the matter, Bella Hecht, another daughter, flatly contradicted her mother, and said that she was at her house when Ginsberg called, and that she heard him say that "*He had a customer to sell the house*" (p. 51, bottom). The above is about all of the pertinent parts of defendant's defense, except that a son-in-law, one Morris Tarnofsky, an expressman, gave it as his opinion that the property in question was worth \$18,000 (p. 48, l. 15).

For the complainant on rebuttal, Ginsberg, an active real estate owner and operator, tells the story of the transaction in detail; of how he saw the defendant regarding her property; got her price of \$13,000; found the complainant as a buyer at \$11,000; went to Lubetkin's office with defendant; discussed all details in the presence and hearing of all the parties including complainant; had agreement for the sale, and his commission drawn, and executed, etc., (bot. p. 55, to 58). He fixed the actual value of the land at \$4,000 (p. 54, l. 20) and the buildings at \$6,000 (p. 55, l. 18).

Jacob Lubetkin testified that when he got to his office between 3:30 and 4 P. M. he found defendant, her friend, Mrs. Frank, and Ginsberg there; that in answer to questions, Ginsberg said that Mr. Dobbin (complainant) was purchasing Mrs. Plager's prop-

erty; that he then called Dobbin on the phone, and that he arrived in 15 minutes; that he then proceeded to draw up the agreement in longhand, because his partner, Mr. Greenbaum, had given the typist some work, which she was then working upon, on the typewriter (p. 65). He then details all the facts concerning the various terms, conditions, etc., agreed upon by the parties, which Mrs. Plager was aware of; that Mrs. Plager mentioned the price \$11,000; the name of the tenant; discussed the question of taxes, etc., (pp. 66 and 67) *and that he read the entire agreement* to her, which she understood, as they both conversed in "Yiddish" (p. 67, ll. 15, etc.).

David Dobbin, the complainant, tells the same story, with substantially the same details, adding thereto the manner in which he came to purchase the property (pp. 72 to 75).

A few days after the agreement was executed, he says Rabinowitz came to him from Mrs. Dobbin, and wanted to make "Sholem" (Hebrew for "peace") with him (p. 76, l. 22). (The book contains this statement: "Maybe I could make a 'shole' between you and Mrs. Plager.")

This same Rabinowitz testified that after Mrs. Plager gave him the check for the deposit, to be returned to Dobbin, he went to him with it, and said to him, "Mrs. Plager wanted—she was with me downstairs, *and she beg that you take back this check*. Of course, she has—she told me that it is wrong—the agreement" (p. 44, l. 8) and again he said Mrs. Plager asked him to take the check back to Dobbin and "I should beg him," and I appealed to Mr. Dobbin, and he refused" (p. 44, l. 40, etc.).

William L. Greenbaum, law partner of Lubetkin, swore that he was in the same office with him when Mrs. Plager, Mrs. Frank and Ginsberg called; that Dobbin came in later; that he knows the consideration, \$11,000 was mentioned, because they were figuring out how much the commission would be (pp. 80-81).

Samuel Schechner, a qualified real estate broker, testified that the lot in question was worth \$2,750 and the buildings about \$7,000; that in the year 1919, the city assessed the land at \$2,000 and the buildings at \$3,700 (p. 70, l. 29, etc.).

The above, with the additional testimony given by Dobbin, that he wanted the property to build up and enlarge his business (he being the owner of the adjoining premises) (bot. p. 72, top 73) by tearing down the front building, and making one building out of both (p. 76, l. 40, etc.) comprises the salient parts of complainant's case.

Instead of giving my own impression of the evidence, and the right of the complainant to a decree, I deem it more satisfactory to refer to the comprehensive, incisive and clean-cut opinion of the learned Vice-Chancellor, on all the points raised by the defendant. I merely want to answer the one legal point raised by counsel for the defendant, in his brief, to wit: that the property was bought by complainant for profit only, and that therefore, the Court should not exercise its discretion and decree specific performance. Counsel has failed to note the evidence of the complainant above referred to, which shows that he had a particular reason for buying this property. Gain was not considered. His business had increased, and he needed added facilities. This, it seems to me, answers defendant's counsel's contention in his brief, when he says, quoting from *Brown v. Brown*, 33 N. J. E. 650 (655) "A Court of Equity decrees performance of a contract for land, not because of the real nature of the land, but because damages at law, which must be calculated on the general money value of the land, may not be a complete remedy to the purchaser to whom the land may have a peculiar and special value."

It is, therefore, respectfully submitted that from the evidence it is clear that the agreement was fairly entered into; that there was no over-reaching of the defendant; that a fair price for the property was fixed by her; that complainant requires the same for a particular purpose; that defendant's case is a fabrication from start to finish—palpably so—and that the decree of the Court of Chancery should be affirmed with costs.

Respectfully submitted by

BENJAMIN M. WEINBERG,
Of Counsel with Complainant-Respondent.

New Jersey Court of Errors and Appeals

Between

DAVID DOBBIN,

*Complainant-Respondent,**and*

LENA PLAGER,

*Defendant-Appellant.**On Appeal from
Court of
Chancery.***BRIEF FOR APPELLANT.****Abstract of the Case.**

The appellant is the owner of a house and lot known as No. 216 Prince street, Newark, New Jersey, which was conveyed to her and her husband by deed of conveyance dated July 27, 1903 (Ex. D. 1, p. 84). Mr. and Mrs. Plager had established their home there and had raised some of their children in that home, and since Mr. Plager's death, in 1909, the two sons have been carrying on the express business, which had been established by their father. They erected a garage on the rear part of the lot, where they kept their motor trucks.

In May, 1919, the appellant was importuned by a man named Ginsberg, a real estate dealer, to sell the property, and Mrs. Plager said to him: "I cannot sell that without my children"; and he said: "What have you got to do with the children; it is your property" (p. 17, l. 30).

There were some negotiations between Mrs. Plager and Ginsberg, and Ginsberg and Dobbin, the complainant, which will be more fully referred to hereafter; and which resulted in Mrs. Plager going on May 29th to the office of Mr. Jacob Lubetkin, a member of the Bar, who drew up in long hand the contract (annexed to the bill of complaint) and to which Mrs. Plager affixed her mark, she being unable either to write or to read.

The suit is founded upon that contract, and complainant prays (p. 3) that the agreement evidenced by the writing may be specifically performed. The defendant expressly denies in her answer (p. 6) that she voluntarily and consciously entered into a written agreement to sell her land for \$11,000, and denies the other terms of the alleged agreement in writing. In paragraph

6 of her answer on page 7, she makes the denial that she voluntarily and consciously signed, sealed and delivered an agreement in writing to sell her property for \$11,000 to the complainant. She qualifies that denial by this statement: "But this defendant believes that she did make her mark to some paper in the presence of Mr. Lubetkin, but that she did not at that time understand, and it was not so stated to her that the consideration for the conveyance was to be \$11,000.

This defendant had at the solicitation of one Max Ginsberg agreed to sell her property to him for \$15,000, if her children would consent, and she went to the office of Mr. Lubetkin with him and signed a paper, which she understood was an agreement to sell to Ginsberg subject to the consent of her children; and she received a check from said Ginsberg for \$300, made to him by the complainant, and said she would take it home, and if her children were satisfied, she would carry out the sale. Her children were not satisfied, and she immediately on the same day, May 29th, offered to return the said check, and the complainant refused to receive it, and stated that he didn't buy the property and that the check belonged to Ginsburg."

It will be observed, therefore, that Mrs. Plager *signed the contract subject to the approval of her children, and that is the defense that she made.*

The Vice-Chancellor got the idea that Mrs. Plager merely reserved carrying out the contract until she could show it to her children and have them read it and ascertain whether anything had been inserted in the document to which she had not agreed; in other words, whether she had been deceived.

While the testimony was being taken, nothing was said about the statement made by Mrs. Plager, that she would take the contract home and show it to her children, and I certainly did not deem it to be my duty either to the Court, or to my opponents, to comment upon the evidence that had been given or omitted while testimony was being taken; as it seemed to me that the answer very clearly and expressly set up the defense that would be made.

The testimony was taken on November 10, 1919, and some days after that the counsel appeared before the Vice-Chancellor to make an oral argument, and when I stated what my points would be, the Vice-Chancellor said that he did not recall any testimony by Mrs. Plager that she would take the contract home and show it to her children for their approval, and declined to hear any

further argument until the testimony had been written out. The testimony was written out, and the case was argued on December 22, 1919, and the Vice-Chancellor decided it at once, but did not write any opinion, stating that if an appeal were taken, he would write an opinion. After the appeal had been taken, the opinion was written and was received by counsel on June 18, 1920. A decree was advised in favor of the complainant, and from that decree this appeal is taken.

Specification of Grounds of Appeal.

1. The defense that the appellant did not voluntarily execute the agreement in writing to sell her property for \$11,000, and that she did sign the agreement subject to the consent of her children, and that her children were not satisfied, and she would not carry out the sale, was sustained by the evidence in the case, and the bill of complaint should have been dismissed.

2. The evidence showed that the alleged written agreement is unfair, and that the property was worth considerably more than \$11,000, and the appellant was taken advantage of by complainant, and by Ginsberg, the agent.

3. The complainant has an adequate and complete remedy at law, and is not entitled to any relief in equity.

BRIEF OF ARGUMENT.

POINT I.

As to the execution of the agreement subject to the children's approval.

Mrs. Plager testified (p. 12, l. 13): "Mr. Ginsberg give me the check and give me the paper to sign—I signed one paper—and I took the check and told him—'Mr. Ginsberg, I don't know what about this. I will come home, and if it is not right, I will give it to my children to read it. *If my children tell me something is wrong, I will give you back the deposit.*' He told me all right, and he started to laugh at me. I said, 'What are you laughing for, I am not crazy.' He says, 'Mrs. Plager, I got you to do it, and I don't know, you don't know. I got you to do it and you don't know that.' " On p. 14, l. 41, she is asked the question: "What else did he say before you went out, you said a moment ago you would take it home and have the children read it? A Yes, sir, that if the agreement wouldn't be right, you know, give back the deposit. Q And was there any answer

made to that by Mr. Ginsberg or Mr. Lubetkin, didn't they say anything? A Nothing, I don't think." On cross examination (p. 17, l. 30) she testified that *she told Ginsberg that she couldn't sell without her children*. On p. 19, on cross examination, she testified (l. 34): "I told him I don't know what you are saying; what you read to me in the agreement, I will give it to my children to read over." At l. 41, she testified: "Q You said you would have your children read it, and if it is not all right, you would give back the money? A Yes, sir. Q *What did you think wasn't all right?* A *Because everything was ready almost; that I told him myself something is wrong, I told Mr. Ginsberg right there.*" When she reached home with the paper and showed it to her children, they discovered that the price mentioned was \$11,000 and not \$15,000, and when the son, Samuel, came home, he refused to consent to the sale (p. 34) and told her to send the check back. The evidence was, that she gave the check to the tenant to take back, and he testified that he didn't take it until the next day, he then took it first to Ginsberg, who refused it, and then to Dobbin, who refused it.

The testimony of the witnesses for the defendant, which need only be referred to generally, is that the price fixed by Mrs. Plager for her property was \$15,000, *and that is the price she had in mind*. But it may clear up the situation to call attention to the testimony of Ginsberg as to what price had been agreed upon before the parties met in Mr. Lubetkin's office. On p. 55, l. 40, he testified that Mrs. Plager called to him and suggested that he could get a buyer, and he asked her how much she wanted, and she said \$13,000. This was about the middle of May. About a week later he said: "*I think on the 24th or 25th of May, I told her I got a buyer for \$11,000, if you can see a square deal and let me know in a few days, let me know when I can bring you up a check for the deposit, and she said all right.*" On May 29th, about 10 o'clock in the morning, he said to her: "Mrs. Plager, we are ready to close the deal, what time have you got time?" and she said: "In the afternoon between 1 and 2 o'clock." Ginsberg further testified (p. 56, l. 13) "I come around about 1, and I says I got a check, and I was wating in her place up to 2 o'clock, one hour, from 1 o'clock to 2 o'clock, I was waiting up there, while she was dressing herself."

At p. 61, l. 40, he testified that he didn't offer her \$11,000 right away, that he offered her \$10,000, and told her he would try to get more money, and she said "Go ahead and try." At

the top of p. 62, he testified that he didn't go back to Mr. Dobbin right away, he went a couple of days later and asked him if he was willing to pay more money, and Dobbin said: "*Well, I will take a chance and pay \$11,000.*" "Q *Now, did he then, when he said he would pay \$11,000, did he sign the blank check?* A *Yes, sir.*"

At the foot of p. 63, he explains what the bargain was, that is, that the mortgages were to be left standing on the property, and that the difference between the amount of the mortgages and the \$11,000, was to be paid to Mrs. Plager in cash, and he is asked; "Q When was that agreement made? A Didn't make agreement—on the same time by the lawyer. Q When did you make that agreement with her; in her house? A No, by the lawyer. Q At the lawyer's office; *had you made any agreement at her house before you went to the lawyer?* A No. Q *Then when you went to the lawyer's office, you didn't know how much you would have to pay her.* A *No, I didn't until we got by the lawyer.* Q And you didn't know before you went to the lawyer's office whether Mr. Dobbin would be willing to pay \$11,000? A Yes, he said he is willing to pay to her for it \$11,000. Q *When did you make that up with him?* A *Between 1 and 2 on the same day when I went with her.*"

At the foot of p. 64, he testified that Mrs. Plager did not have any conversation with Dobbin, and that Dobbin was at Lubetkin's office for about two hours with her. It thus appears, notwithstanding the discrepancies in his testimony, that *the minds of these parties had not met as to the price of \$11,000 before they went to Mr. Lubetkin's office, and at Lubetkin's office, Mr. Dobbin and Mrs. Plager did not talk to each other.*

Dobbin testified, at the bottom of p. 74, that when he came to the office, Mr. Lubetkin asked him: "For how much you buy the property, and I said for \$11,000," and he wrote \$11,000. "*He didn't say anything else.*"

Mr. Lubetkin testified (p. 67, l. 20) that there were not any parts of the agreement that Mrs. Plager said she didn't understand; she shook her head and nodded in the affirmative in assent as he read the agreement to her, and explained the details. At l. 10, he is asked: "Q Was anything put in this agreement by you that you were not told to put in. A Absolutely nothing at all." He is also asked: "Q How much of the agreement did you read to her? A I read the entire agreement *substantially.*"

Now, it is not at all surprising that if Mrs. Plager had \$15,000 in her mind and there was talk about \$11,000, and the agreement was read to her *only substantially*, and she had her suspicions aroused, that she should say: "I will take the agreement home and show it to my children, and if it isn't all right, I will give back the check." *The agreement was not all right, because she had not agreed to sell the property for \$11,000, and the children were unwilling to sell for that amount.* It is not necessary to show any actual fraudulent misstatements or concealment on the part of the complainant or the attorneys at the time of the execution of the agreement. If the defendant *misunderstood what she was signing, the agreement ought not to be enforced in equity.*

There is no contradiction of Mrs. Plager's testimony, and as I said before, I did not deem it to be my duty to cross examine the complainant's witnesses on the subject, and no doubt assumed at the trial that what defendant had said could not be denied.

POINT II.

The agreement is unfair.

The evidence shows that the defendant is a widow and occupies the premises which were originally purchased by her husband, and some of the children live with her, and her son carries on business there. It is the family home in which the children are naturally deeply interested. It probably is the fact, that the defendant had some dispute with her son; and Ginsberg, the agent, was aware of this family misunderstanding and took advantage of it to importune the defendant to sell the property. There is a suspicion also of sharp practice by Ginsberg, who pretends to be acting for the defendant, and really is acting for the complainant; who is on such intimate relations with the complainant that he was entrusted with a check, not filled out, and signed by the complainant. He also made this significant statement in his testimony: "Mr. Lubetkin said to me: 'Call up your client.' " At that time Mrs. Plager was at Lubetkin's office, and he evidently did not refer to her. From whom did Mr. Lubetkin get the idea that Dobbin was a client of Ginsberg?

While the sons have not any legal right to carry on the business on this land, it certainly will be treating them very harshly to turn them out, and especially so when the price which the

mother will receive for the property is very much less than what it is really worth.

The testimony of Samuel Schecner (p. 69) a real estate agent, as to the rental value of the property, at p. 71, shows that the rent as he estimates it, would be \$110 to \$115 a month, making an annual rental of \$1,320 to \$1,380.

On that basis the property ought to be fairly worth between \$13,000 and \$14,000, and in these times, should be worth more. Enforcement of this agreement would deprive these children of a considerable portion of the estate which they had a right to expect from their father and mother, and would put the sons out of business, and be of no benefit to the complainant, except that he could sell the property at an advance and make some money. He declined to buy the property on the other side of him for \$9,000, which was offered to him by Ginsberg (p. 60), and at bottom of p. 72, because, as he testified, he wouldn't be able to tear it down, and for \$9,000 there would be an empty lot; *that he wanted a property in Prince street which he could tear down*. He said that he would take a chance on this property, but it is manifest that he didn't intend to tear it down, because he applied for and has been granted a building and loan mortgage on it. Top of p. 79.

Dobbin and Ginsberg have played together to get this property cheap, and succeeded in rushing the ignorant woman to a lawyer's office, and kept up a rapid fire of conversation, and induced her to sign an agreement which she did not fully understand and which in view of the evidence in the case, is plainly unfair and will operate harshly and oppressively if it is carried into effect. Some cases on the subject are as follows:

Brown v. Brown, 33 Eq. 650, at p. 655;

Crane v. DeCamp, 21 Eq. 414, at p. 418;

Webster v. Cecil, 30 Beav. 62;

Webster v. Lindabury, 89 Eq. 8, 6 Pom. Eq. Jur. 1316.

POINT III.

Complainant has an adequate remedy at law.

There can be no doubt as to the jurisdiction of equity to specifically enforce contracts for the sale of land, and counsel for the appellant is probably unfortunate in not presenting this point to the Vice-Chancellor in such a way as to make it clear that no attack is made upon the jurisdiction of the court, *but only upon the exercise of that jurisdiction in this particular case.*

It would answer no useful purpose to reiterate what has already been said in regard to the transaction and it is also quite unnecessary to cite any authorities as to the jurisdiction of the Court. It is settled beyond question that in these cases the Court exercises a sound discretion, and that specific performance is not a matter of absolute right, and that the Court will look not only at the strictly legal contract, but at the relations of the parties and all the surrounding circumstances.

The argument that I presented to the Vice-Chancellor was this: "The complainant does not desire this property for any particular reason, except to make a profit out of it. *There is no special equity in his favor.* His choice of this property was not determined by any consideration of health or convenience or neighborhood, and even if he did consider making a profit out of it, that would be no reason why equity should give relief.

In *Brown v. Brown, supra*, Justice Knapp says:

"A court of equity decrees performance of a contract for land, not because of the real nature of the land, but because damages at law which must be calculated on the general money value of the land, may not be a complete remedy to the purchaser to whom the land may have a peculiar and special value."

At the time of the decision in *Brown v. Brown*, and other cases in this State following that case, the rule for damages for breach of contract to convey land limited the recovery to either nominal damages, or to the purchase money that had been paid with interest.

Two rules are now established by the decisions as follows: When the vendor is unable to give any title, or a good title, the vendee can only recover nominal damages, or the purchase money that he has paid, with interest.

Gerbert v. Trustees, 59 Law 160.

When the vendor is able to give a title and arbitrarily refuses to convey, the vendee may recover the value of his bargain.

Brown v. Honniss, 70 Law 260.

It may be conceded that before the decision in *Brown v. Honniss*, the remedy at law would not have been adequate, but since that decision the remedy is fully adequate *in the absence of any special equity*, as for instance, where the purchaser wants a particular house for a dwelling house for his convenience, or to be in a certain neighborhood, or because it will be beneficial to his health, or the property has a sentimental value or fancy value. When it appears, as it does in this case, that the only object to be gained by the purchaser *is a profit on the transaction*, and that the profit can be fixed with certainty, there does not seem to be any reason for holding that he cannot be adequately compensated. Moreover, this is a case which should be tried before a jury. If the complainant is relegated to his remedy at law, the appellant will have the benefit of a jury trial.

It is respectfully submitted that the decree should be reversed and the bill dismissed.

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