

INDEX.

	PAGE
Bill of Complaint	1
Answer	7
Reply	12, 13
COMPLAINANT'S TESTIMONY:	
David Kotok—Direct	15
Cross	16
DEFENDANT'S TESTIMONY:	
William Hamilton—Direct	18
Cross	21
Re-direct	25
Mrs. Margaret Hamilton—Direct	27
Cross	31
Nelson Hamilton	34
Cross	36
Elmer Hamilton—Direct	37
Cross	38
COMPLAINANT'S REBUTTAL TESTIMONY:	
Mrs. Alice Blake—Direct	39
Cross	46
Re-direct	56
Recalled—Direct	68
Recalled—Cross	69

	PAGE
Harry L. Nickerson—Direct	59
Cross	61
DEFENDANT'S SUR REBUTTAL TESTIMONY:	
William Hamilton—Direct	63
Nelson Hamilton—Direct	66
Cross	67
Conclusions	70
Final Decree	71
Notice of Appeal	74
Amended Notice of Appeal	75
Petition of Appeal	76

BILL OF COMPLAINT.

(Filed Dec. 3, 1925.)

IN CHANCERY OF NEW JERSEY.

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

10

The complainant, David Kotok, of the Borough of Vineland, in the County of Cumberland and State of New Jersey, respectfully shows that:

1. On the 20th day of August, 1925, William Hamilton, of the City of Philadelphia, was seized in fee simple of all that certain lot, tract, or parcel of land and premises situate in the Borough of Wildwood Crest, in the County of Cape May and State of New Jersey, bounded and described as follows, 20
to wit:

BEGINNING at a point of intersection on the Northeasterly side of Crocus Road with the Northwesterly side of Atlantic Avenue and extending thence Northeastwardly along the Northwesterly side of said Atlantic Avenue a distance of One Hundred (100) feet to a point; and at right angles thereto between parallel lines in length or depth Northwestwardly (and binding on said Crocus Road) a distance of One Hundred (100) feet. 30

COMPRISING Lots Numbers One (1), Two (2) and Three (3) of Block Number Twenty-one (21), as shown on the Official Map, Borough of Wildwood Crest, New Jersey, duly filed.

2. On the said 20th day of August, 1925, complainant entered into a contract in writing with

the said William Hamilton, whereby said William Hamilton agreed to sell above described lands and premises to complainant for the consideration of six thousand (\$6,000.00) dollars. A copy of said contract is hereto annexed, marked "Exhibit A" and made a part of this complaint.

3. At the time of executing said contract, complainant paid to the said William Hamilton, the sum
10 of six hundred (\$600.00) dollars on account of the purchase price, leaving a balance of fifty-four hundred (\$5,400.00) dollars, which complainant was ready, able and willing to pay at the time of final settlement on November 20, 1925, upon delivery of deed.

4. The said contract marked "Exhibit A," was duly recorded in the office of the clerk of Cape May County on the 4th day of September, 1925,
20 in Book 412 or Deeds, page 55.

5. After making said contract, and prior to November 20, 1925, the date fixed for final settlement, said William Hamilton gave notice to complainant that he did not intend to carry out the said contract according to its terms and that his wife, Margaret F. Hamilton, would not join in the execution of a deed. And by deed dated November—, 1925, and duly
30 acknowledged on November 6, 1925, the said William Hamilton and Margaret F. Hamilton, his wife, conveyed the said land and premises to William Bell of Philadelphia, which deed to William Bell was recorded in the office of the clerk of Cape May County on November 10, 1925.

6. The conveyance of said land by said William Hamilton and Margaret F. Hamilton, his wife, to

William Bell, was made after the contract marked "Exhibit A" had been recorded as aforesaid, and the said William Bell took title to said land with full knowledge of the rights of complainant, pursuant to the terms of his said contract with the said to William Hamilton, and complainant avers upon information and belief, that the said conveyance to the said William Bell was made for the sole purpose of depriving this complainant of his right to receive a deed of said land and to hinder and delay complainant in his endeavors to secure a conveyance therefor. That said conveyance was fraudulent and void so far as it effects the rights of this complainant under the contract marked "Exhibit A."

10

7. Complainant has always been ready and willing to complete said contract and to accept a deed from the said William Hamilton and his wife, and pay the full balance of the purchase price, and now tenders himself ready at any time to make such settlement, but the said William Hamilton and Margaret F. Hamilton, his wife, have refused and still refuse to execute such a deed and carry out the said contract according to its terms.

20

8. The said Margaret F. Hamilton, wife of said William Hamilton, was present during the negotiations of said contract and acquiesced and encouraged the making thereof, and complainant further avers upon information and belief, said William Hamilton has fraudulently contrived with his said wife in persuading her to refuse to join in the execution of a deed to complainant, for which reason an abatement in the agreed purchase price should be made sufficient to recover the present value of

30

the inchoate right of dower of said Margaret F. Hamilton, or that a sufficient bond indemnity against her said dower right be required of the said William Hamilton if she shall refuse to join in the execution of a deed to complainant and it shall be found that she still retains a right of dower in said property.

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

1. That the said William Hamilton and Margaret F. Hamilton, his wife, and William Bell, who are the defendants in this suit, may answer this bill of complaint, and each statement therein made.

20 2. That the deed of conveyance made by William Hamilton and Margaret F. Hamilton, his wife, to William Bell, dated November , 1925, acknowledged November 6, 1925, and recorded in the office of the clerk of Cape May County November 10, 1925, be decreed fraudulent and of no effect as against the rights of complainant, and that same be decreed null and void,

30 3. That the defendant, William Hamilton, may be decreed to specifically perform the contract set forth and convey to the complainant the lands and premises therein described upon payment by complainant of the balance of the purchase price.

4. That in case said Margaret F. Hamilton refuses to join in the making of a deed and release of her inchoate right of dower, that said William Hamilton be decreed to give a suitable bond of indemnity against any claim which his said wife

may have by reason of her dower rights, or that the present value of said dower right be fixed and determined and that said William Hamilton be compelled to allow out of the balance of the purchase price, a sufficient sum in abatement to cover the value of said dower right.

5. That it be decreed that the defendant, William Bell, took and holds the legal title to said land subject to the rights of complainant under his contract with the said William Hamilton and that he be required to convey the legal title which he now holds to this complainant. 10

6. That complainant may have such other further or different relief in the premises as may be deemed just and equitable.

7. That a writ of subpoena may issue commanding the said defendants to answer this bill of complaint and to abide by such decree as this Court may make in the premises. 20

MORRIS V. McDONALD,
*Solicitor for and of Counsel
with Complainants.*

This agreement made the twentieth day of August, 1925, between William Hamilton of the City and County of Philadelphia, State of Pennsylvania, of the first part, and 30

David Kotok, of the second part, witnesseth: That the said party of the first part, for the consideration of six thousand dollars (\$6000.00) as herein mentioned, doth promise and agree to and with the said

party of the second part, that he will well and sufficiently convey to the said party of the second part, his heirs and assigns, on or before the twentieth day of November, 1925, clear of all encumbrances, except restrictions contained in the original deed, all that tract or piece of land, situate, lying and being in the Borough of Wildwood Crest, Cape May County, State of New Jersey, known as and being lots numbers 1; 2 and 3 of block 21, cor. of Crocus Road and Atlantic Avenue, Wildwood Crest, New Jersey, the total size of the three lots being 100 feet by 100 feet, also it is further agreed by the party of the first part to pay to A. Blake, Real Estate, a commission of five per cent (5%) of the sale price, the same being now due and payable and the said party of the second part, for his heirs, executors and administrators, doth covenant, promise and agree to and with the said party of the first part, that he shall and will on executing the said conveyance, pay unto the said party of the first, heirs and assigns, said sum of Six Thousand Dollars (\$6000.00) as and for the purchase money of the said tract or piece of land above mentioned, to be paid as follows: \$600.00 upon the execution of this agreement, the receipt whereof is hereby acknowledged; \$5400.00 or balance, to be paid on November 20, 1925, at the final settlement as above stated, or as soon thereafter as all papers and searches are ready for settlement, adjustment as to taxes and so on are to be made from date of possession November 20, 1925.

And for the due performance of all and singular the covenants and agreements aforesaid, the said parties to these presents, do bind themselves, their heirs, executors and administrators, each to the other, his executors, administrators and assigns, in

the sum of . . . Dollars firmly by these presents, the said sum to be considered as liquidated damages.

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

William Hamilton (SEAL)

David Kotok (SEAL)

Sealed and delivered in the presence of

A. Blake

A. Blake

10

ANSWER.

(Filed Dec. 24, 1925.)

IN CHANCERY OF NEW JERSEY.

20

Between

DAVID KOTOK,

Complainant,

and

WILLIAM HAMILTON, *et*

als.,

Defendants.

On Bill, etc.

Answer.

30

Defendant, William Hamilton, answering the complaint of the plaintiff, says:

1. He admits paragraph 1.
2. He denies paragraph 2.

3. He denies paragraph 3.

4. He has no knowledge or information as to the truth of the contents of paragraph 4 and prays proof.

5. He denies paragraph 5, but says that on the contrary, William Hamilton stated that he would sell and convey the premises to the complainant without abatement and without indemnity, but informed the complainant through his solicitor, that his wife would not join in the conveyance. The conveyance to William Bell is admitted.

6. He denies paragraph 6.

7. He denies paragraph 7.

8. He expressly denies paragraph 8.

20

FIRST DEFENSE.

1. Defendant never knew complainant and does not now know him.

2. The signature of defendant, William Hamilton, was obtained by one Blake, a real estate agent, upon the express contract and agreement that said signature would be valueless unless the agreement marked "Exhibit A" should be presented to defendant's wife, who was then in another city, and signed by her, she being cognizant of the value of the land, and defendant, William Hamilton, being ignorant thereof.

30

3. That said agreement was never presented to defendant's wife, and a copy thereof was not delivered to defendant until three or four weeks after it had been signed by defendant and then only after defendant had served notice upon Blake that he would not perform said contract.

4. At the time defendant signed said contract, the name of the complainant was not mentioned in said contract, but the name of the vendee was left blank. 10

5. Defendant never acknowledged said agreement, nor was his signature witnessed by any person except said Blake.

SECOND DEFENSE.

1. Defendant, William Hamilton, a resident of the City of Philadelphia, knew nothing of the value of the lands and premises described in agreement, marked "Exhibit A." 20

2. Defendant charges that the price described in said contract is inadequate and that advantage was taken of defendant's ignorance of the value thereof by said Blake, who the defendant charges was the agent of complainant in this transaction.

30

THIRD DEFENSE.

1. That said contract was rescinded by defendant prior to the time of the insertion of the complainant's name therein and knowledge thereof was given to Blake, agent for the complainant.

FOURTH DEFENSE.

1. That the agreement marked "Exhibit A" was not a valid contract and did not become such until it had been ratified by defendant's wife and signed by her.

Wherefore, defendant prays that the bill may be dismissed.

10

WILLIAM CHARLTON,
Solicitor for Defendant,
William Hamilton.

Defendant, Margaret Hamilton, answering the complaint of the complainant herein, says:

1. She admits paragraph 1 of the complaint.

20

2. She has no knowledge or information as to the truth of paragraph 2, except as she has been informed by her husband.

3. She has no knowledge or information as to the truth of paragraph 3, except as she has been informed by her husband.

30

4. She has no knowledge or information as to the truth of paragraph 4 and prays proof.

5. She has no knowledge or information as to the truth of paragraph 5, except that she admits that she informed her husband that she would not join in the execution of the deed to the complainant. She admits the transaction to Bell.

6. She has no knowledge or information as to the truth of paragraph 6 and prays proof.

7. She has no knowledge or information as to the truth of paragraph 7, except that she admits that she refused to execute said deed.

8. She specifically denies paragraph 8, and says that she had no knowledge whatsoever of the signing of said contract by her husband, was not present during negotiations, and if she had been, would have refused to sign said contract because of her knowledge of the fact, that the consideration was inadequate. 10

FIRST DEFENSE.

1. Defendant, Margaret F. Hamilton, objects to having her dower right fixed and determined and paid to her in money. 20

Wherefore, defendant prays that her dower rights may be protected by this Court and that she may by decree of this court, remain possessed of her dower.

WILLIAM CHARLTON,
*Solicitor of Defendant,
Margaret Hamilton.*

30

William Bell, answering the complaint of the complainant herein, says:

1. He has no knowledge or information as to the truth of any of the paragraphs of the bill of complaint, except that he admits that the premises

therein described were conveyed to him on November 6th, 1925, and that his deed is recorded in the office of the clerk of Cape May County.

2. Answering paragraph 6 of the complaint, this defendant says that at the time of the delivery of said deed, he had no knowledge of the recording of contract agreement marked "Exhibit A."

WILLIAM CHARLTON,

Solicitor of Defendant.

10

REPLY.

(Filed Jan. 7, 1926.)

IN CHANCERY OF NEW JERSEY.

20

Between

DAVID KOTOK,

Complainant,

v.

WILLIAM HAMILTON, *et al,*

Defendants.

On Bill.

Reply.

30

Complainant replying to the answer of the defendant, William Hamilton, says:

1. Complainant denies paragraph 2 of the first defense.

2. Complainant denies paragraph 3 of the first defense.

3. Complainant denies paragraph 4 of the first defense.

4. Complainant denies paragraphs 1 and 2 of the second defense.

5. Complainant denies paragraph 1 of the third defense. 10

6. Complainant denies paragraph 1 of the fourth defense.

MORRIS V. McDONALD,
Solicitor of Complainant.

REPLY.

20

(Filed Jan. 7, 1926.)

IN CHANCERY OF NEW JERSEY.

Between

DAVID KOTOK,

Complainant,

v.

WILLIAM HAMILTON, *et al.*

Defendants.

On Bill,
Reply.

30

Complainant joins issues on the answers of the defendants, Margaret Hamilton and William Bell.

MORRIS V. McDONALD,
Solicitor of Complainant.

party of the first part and David Kotok, party of the second part.

(Contract admitted and marked Exhibit C1.)

I should state further, having upon it endorsed a certificate of the Cape May County clerk, showing that it was recorded in his office on the fourth day of September, 1925, in Book 412 of Deeds, page 55.

Mr. Charlton: Acknowledged only by Kotok?

10

Mr. McDonald: Acknowledged only by the party of the second part.

DAVID KOTOK, sworn.

Direct examination.

20

By Mr. McDonald:

Q. Where do you live, Mr. Kotok?

A. Vineland, New Jersey.

Q. You are the party of the second part named in this contract marked Exhibit C1?

A. Yes, sir.

Q. Did you pay deposit of six hundred dollars on that contract?

A. I did.

30

Q. To whom did you pay it?

A. To Mrs. Blake.

Q. Who was Mrs. Blake representing?

A. Mr. Hamilton.

Mr. Charlton: I object to that, if the Court please. That is a conclusion and ask that it be stricken.

The Court: Yes, it may be stricken.

Q. Were you ready, able and willing to pay the balance of fifty-four hundred dollars called for by that contract on the twentieth of November?

10 Mr. Charlton: I think that is also a conclusion.

The Court: No, I will permit that.

A. Yes, sir.

Q. Are you able and willing to pay the balance now?

A. Yes, sir.

Q. Have you been willing and able to carry out this contract at all times?

20 A. Yes, sir.

Cross-examination.

By Mr. Charlton:

Q. Did you ever see Mr. Hamilton before today?

A. I did see him in Wildwood,

Q. In Wildwood?

A. Yes.

30 Q. Ever talk to him?

A. No.

Q. When did you see him in Wildwood?

A. Why, I couldn't say exact.

Q. Before or after this agreement was signed?

A. No, after.

Q. Before that was signed you never seen him?

A. No.

Q. You never had any conversation with him in your life?

A. No.

Q. When did you sign this agreement?

A. I give her the money the nineteenth.

Q. On what day?

A. On the nineteenth, the day before that contract.

Q. Was Mr. Hamilton's name on it when you signed it?

10

A. Yes, sir.

Q. Then you didn't sign it on the nineteenth?

A. No. I give her the money on the nineteenth but she told me she have to go in Philadelphia and buy it.

Q. When did you sign it?

A. When she came back from Philadelphia on the twentieth or twenty-first, I don't remember, as soon as she came from Philadelphia she called me up.

Q. Was your name in it?

20

A. In the contract?

Q. Yes, when you signed it?

A. I don't know what she had it.

Q. You don't know whether that name was in there or not?

A. She brought me this contract, I don't know what the name was when I signed it.

Q. Have you the original of this contract?

A. Yes, sir.

Q. This is only the copy; have you the original? 30

A. I don't know what this is; I have this.

Q. This is all you have?

A. Yes.

Q. Did you have as your counsel at one time Mr. William S. Darnell? Was he your lawyer?

A. He was.

Q. Authorized to act for you?

A. Yes, sir.

Mr. McDonald: I take it from the opening of counsel, it is not necessary for us to prove further that demand for the title was made?

Mr. Charlton: Not at all.

10 Mr. McDonald: It is conceded that the defendant refused to convey?

Mr. Charlton: Yes, we concede it.

COMPLAINANT RESTS.

WILLIAM HAMILTON, SWORN.

20

Direct examination.

By Mr. Charlton:

Q. Mr. Hamilton, did you ever see Mr. Kotok or talk to him in your life before?

A. Never, no, sir; I never did.

Q. Do you remember the time you signed this paper?

30

A. I do, at my home.

Q. Where was it signed?

A. In my house.

Q. Where?

A. 2241 Woodstock Street.

Q. What city?

A. Philadelphia.

Q. At what time of the day or night was it signed?

A. She arrived there about seven o'clock. I said that I had a pinochle game on and that I hadn't much time, see, but she called me up at ten o'clock on the day before, on Wednesday, I said that I wouldn't, she offered me——

Mr. McDonald: I object.

The Court: Not responsive.

10

Q. Where was Mrs. Hamilton on this day?

A. She was at Wildwood.

Q. At Wildwood?

A. Yes, sir.

Q. Was she present in Philadelphia when you signed this paper?

A. No, sir, positively not.

Q. Who negotiated with you when you signed that paper?

20

A. Mrs. Blake.

Q. Did you know her?

A. I knew of her. I never—about four years ago I had a conversation with her.

Q. That was all you knew her?

A. Other than what—I don't believe I did.

Q. Just tell the Court what you said to her at the time you put your signature to the paper with respect to your wife's signature?

30

Mr. McDonald: I object to this, if the Court please. This is his agent, in the absence of the defendant or of the complainant.

The Court: Nothing to indicate as yet that she is his agent. Mr. Kotok swore that he had given

her money for a certain purpose and that evidently

Mr. McDonald: I would like then the privilege of cross-examining the witness on that point before he is allowed to testify.

The Court: No; I will permit the examination and cross-examination later and if I find I am
10 wrong I may strike it out.

(Question repeated.)

A. Could I name——

Q. You may say.

A. On the twentieth day of——

Q. No, what was said at the time you signed the paper with respect to Mrs. Hamilton?

A. I said that I didn't want to sell the property
20 without Mrs. Hamilton's sanction, because I knew she had a half interest in it, see, I owed her the money, and I said that, "I will sign this if you come up at seven o'clock, I will sign it, but it is not a bona fide sale without Mrs. Hamilton's sanction and signature."

Q. Did you tell her where Mrs. Hamilton was?

A. Yes, sir; I did. Yes, I did.

Q. At the time you signed it, Mr. Hamilton, did you get a check?

30 A. I got a check from her; she made out from her check book, her own money, and I asked her and she said it was her money.

Q. Her money?

A. Yes.

Q. At the time you got the check, was it certified?

A. No, sir, positively not; she made her check, pulled out her check book and I said, "Is your pen all right? If not, I will loan you mine." and she signed it from her own check book.

Q. Now, when did Mrs. Hamilton come home from Wildwood?

A. I think a day or two later.

Q. Do you know whether Mrs. Hamilton was ever asked to sign this paper or agreement?

A. No, sir; positively not.

10

Q. Have you ever had any conversation with your wife in regard to her signing this deed?

A. No; when she came home——

Q. Just answer yes or no.

A. No.

Q. Have you ever instructed your wife or directed her not to sign a deed?

A. No, sir; positively not.

Q. What did you do shortly after Mrs. Hamilton got home with respect to the check?

20

A. What was that, beg pardon?

Q. What did you do with the check shortly after Mrs. Hamilton got home?

A. It laid on the sideboard there and when Mrs. Hamilton said that she wouldn't agree, I never used it.

Q. What did you do with the check?

A. I gave it to you.

Cross-examination.

30

By Mr. McDonald:

Q. How long had you owned this property, Mr. Hamilton?

A. It will be five years, I believe, this October. It was at the sale, I am not just positive.

Q. You know Mrs. Blake was a real estate agent at Wildwood?

A. I knew that, yes, sir. That is, I never had any business dealings with her.

Q. Well, had you not talked with her about selling this property for you prior to the time she came?

A. Four years ago like any other they were trying, understand—it is like properties that I have
10 sold, one time has a valuation and another time has another, but I may be of an opinion of selling the property now, about four years ago she did tell me that she could get me a customer within a week's time for five thousand dollars, I never heard of it, I never heard from it.

Q. So you had authorized her to sell it?

A. No, sir; I did not. I said to her positively, I says, "If you do get a customer just write to me and I will consider it."

20 Q. You was willing to consider a proposition for five thousand dollars?

A. No, I said, "I will consider it," but that is four years ago, four years last October—let's see

Q. When Mrs. Blake came to you in August, she came as a real estate broker, did she not?

A. She just simply said she had a party to buy the ground.

Q. Had a customer?

30 A. Well, she didn't name it in that way.

Q. She had a party who was willing to buy your land?

A. When she called me up over the 'phone, it was a question of coming up to my house, understand, to get that agreement signed, and take a chance not to come up, because I spoke to her about my wife

and she says, "That will be all right, that will be all right."

Q. The title to this property stood in your name only, did it not?

A. Yes, sir; but she had a half interest.

Q. One minute; you have answered the question. Did you see that at the time you signed the contract the name was blank?

A. Which?

Q. The purchaser's name was blank?

10

A. No, I didn't see that. I saw that his signature was blank and my wife's name wasn't on there.

Q. So this contract, Exhibit C1, when you signed it, was in the same condition it is now with the exception of Mr. Kotik's name had not been attached?

A. Yes, sir, I did. I asked her, "Who is this purchaser?" She says, "Oh, he is a man that is going to put a ten-thousand-dollar property on it."

Q. Did she tell you that he owned the adjoining property?

20

A. No, sir. Ah, that is what I want to just say

The Court: No, there is no question now.

A. Now that is the question. What was it you asked me?

Q. I say did she tell you that Mr. Kotok owned the adjoining property?

A. No, sir; she did not. I will tell you what she did—

30

The Court: No.

Q. You received a copy of this—Mrs. Blake had your signature put to the two copies and took them away with her?

A. Three copies.

Q. And then later she returned one copy with Mr. Kotok's signature attached?

A. In about three or four weeks later; she never bothered herself about it.

Q. You have that copy now?

A. I believe my attorney has that.

Q. Did you tell your solicitor, your counsel, that at the time you signed this agreement, the name of
10 the purchaser was blank?

A. No, sir; I said my wife's signature was blank and the purchaser, her name wasn't on nor the purchaser.

Q. You say you have never—

A. That is his signature, not his name.

Q. You didn't intend to say that it was blank in the body of the agreement, you meant to say there was no signature on the bottom?

A. That is the idea, because I had asked her who
20 is the buyer of it, I says, "You will have to have his signature to that agreement and Mrs. Hamilton's to make it a bona fide sale." That is what I told her.

Q. And after that, you say you never—

A. At that time.

Q. After that you say you never had any talk with Mrs. Hamilton regarding making a deed?

A. No, sir, she plainly, when she came home that night she was wrathful.

30 Q. Then you did have a talk with her that very night?

A. Who?

Q. With Mrs. Hamilton?

A. No, we had some pretty strong language, I will tell you that, between the two of us.

Q. Later on Mrs. Hamilton joined with you in making a deed over to William Bell, did you not?

A. Yes, sir.

Q. Who is Mr. William Bell?

A. He is a friend of mine.

Q. That is, you transferred the title over to Mr. Bell to hold for you?

A. Yes, sir. To hold for me?

Q. Yes.

A. Is that right? All right; go ahead.

Q. So you still hold the property in William Bell's name, is that correct? 10

A. Yes, sir.

Re-direct examination.

By Mr. Charlton:

Q. Mr. Hamilton, I can't seem to find this check of Mrs. Blake's; how much was that check for?

A. Three hundred dollars.

Q. Did you ever get the six hundred that the agreement mentions? 20

A. No, sir.

Q. That is the only deposit was ever left with you?

A. I think I signed a little paper, though, for her commission.

By Mr. McDonald:

Q. That is, you allowed Mrs. Blake three hundred dollars commission? 30

A. Providing bona fide sale.

Q. Did you put that in writing?

A. What?

Q. The provision—I have the witness; go ahead—did you put in writing the provision that you made to Mrs. Blake?

A. No, I did not.

Q. You paid her three hundred dollars absolutely?

A. I didn't pay her absolutely. She handed me a check, was no exchange of money, whatsoever.

Q. She handed you a check for three hundred dollars and you gave her a receipt, did you not?

A. I guess that night I would have signed anything.

10 Q. Look at that paper and see if you can identify your signature?

A. It was a little bit of paper I signed.

Q. Isn't that your signature?

A. That is my signature.

Q. Read that over and see if that is the memorandum you gave her?

A. I never read it.

Q. Read it now.

A. When that was handed to me——

20 it as it is now?

A. I don't remember it, sir. I remember signing a little piece of paper without explanation, folded up, a little piece of paper.

Q. Mrs. Blake played a trick on you, is that right?

A. I don't know.

Mr. McDonald: I will offer this in evidence.

30 (Paper admitted and marked Exhibit C2.)

A. I have been——

The Court: There is no question.

Mr. Charlton: Call the Court's attention to the fact Mrs. Blake designates herself as agent for Kotok in the agreement.

A. Could I speak?

Mr. Charlton: There is no question.

Q. What is your business, Mr. Hamilton?

A. Life insurance business, one firm for thirty-eight years.

Q. What firm?

A. Prudential.

Q. What is the nature of your employment with 10 the company?

A. Solicitor thirty-eight years.

Q. Thirty-eight years with one company?

A. Yes.

Q. That is all.

MRS. MARGARET HAMILTON, SWORN.

20

Direct examination.

By Mr. Charlton:

Q. Mrs. Hamilton, you are the wife of Mr. Hamilton who has just testified?

A. Yes, sir.

Q. Do you know Mrs. Blake?

A. Yes, I know. I met her five years ago. Her husband is a huckster and she used to go around 30 with him huckstering with the two children and they used to serve at my apartment where I was stopping.

Q. That is your only acquaintance with her?

A. Then the next year I went down to look at the apartment I had that year, I liked it so well, I

was looking around for the lady that owned it—
Then she came up on the porch and she had no
authority to rent this and she asked me such a
price——

Q. That is not necessary.

A. That is not necessary?

Q. Did you talk with Mrs. Blake in 1925, last
year?

A. No, I haven't spoken to her for four years.

10 Q. Where were you on August twentieth, 1925?

A. I was at Wildwood. I was talking to her
husband, Mr. Blake, it was on Wednesday.

Q. Where was your husband?

A. In Philadelphia.

Q. At your home in Philadelphia?

A. Yes.

Q. Did you know anything concerning the sign-
ing of an agreement for the sale of some land owned
by your husband in Wildwood Crest?

20 A. Did I know what?

Q. Did you know anything about his signing a
paper?

A. No.

Q. When did you discover that he had signed a
paper?

A. I didn't know anything about it until today, he
told me he signed a paper.

Q. When did you learn that your husband had
signed an agreement to sell land?

30 A. Oh, when I came home on Friday.

Q. On Friday?

A. Yes.

Q. Was Friday the twenty-first?

A. No, that was—let me see, Friday was—Wed-
nesday was the twentieth, Thursday was the twenty-
first, no, I came home Friday, that was the twenty-
second.

Q. Twenty-second?

A. Yes.

Q. Were you in Wildwood up until you came home on Friday?

A. Wildwood Crest.

Q. Near Mrs. Blake's office?

A. Well, I don't know how far. I was stopping over Mr. Fagan's office, I don't know how far that is, that is about six squares, I imagine.

Q. Did Mrs. Blake approach you in Wildwood or Wildwood Crest and present the agreement of sale for your signature? 10

A. No, I never seen her, never spoke to her for four years, four years ago this summer.

Q. You have not?

A. No.

Q. Has it ever been presented for your signature since that time?

A. No.

Q. If it had been, would you have signed it? 20

A. No, sir.

Q. Why not?

A. Because that piece of ground my husband was to put a summer home on it and I have got thirty years of hard savings in that piece of ground and he always promised to put a home when material got cheaper.

Q. He did?

A. Yes.

Q. Is that the reason you wouldn't have signed any agreement? 30

A. That is just the reason. That is my piece of ground much as his.

Q. Are you willing to sign a deed for that property?

A. No, sir.

Q. Has your husband said anything to you about signing a deed?

A. Not a word.

Q. You wouldn't sign of your own accord?

A. No, I wouldn't sign it because that is my piece of ground as well as his and I want it for a home.

Q. At the time you were talking to Mr. Blake on Wednesday—

A. That was the beginning, it was on Wednesday.

10 Q. Was his wife with him?

A. No.

Q. Where were you talking to him?

A. On Pacific Avenue, it is on the same plot that we have ours, only on Pacific Avenue, he was putting a sign up and I stood there a minute and I said to him, "Oh, did you sell that piece of ground?" He said, "Yes." I said, "How big is it?" He says a hundred by a hundred. I said, "How much did you get for it? How much did it bring?" He
20 said, "I can't tell you; that is between the buyer and myself." Well, I said, "Did it bring——"

Q. That is not important, Mrs. Hamilton. At that conversation, did you give Mr. Blake information that your husband owned the ground next door?

A. Oh, yes, because he told me, when I said this, "Five hundred" he said he got more——

Q. Don't go into that, please; just answer my question.

A. I did tell him, yes.

30 Q. Name and where you lived?

A. Yes, he came over and recognized me and then he knew that we had that and he said——

Q. Did he get your name and address, your husband's name and address?

A. He came over and recognized me, "Oh," he says, "I didn't recognize you. Between you and I,

I only got forty-five hundred for it.”

Q. Won't you please just answer the questions. Did he get your address from you or your husband's address?

A. No.

Q. Did you tell him where you were living in Wildwood or Wildwood Crest?

A. Yes, I told him I was up at the Crest, yes, because I didn't like my place and I asked him——

Q. Up at the Hotel Crest? 10

A. No, I was stopping up at the Crest over Mr. Fagan's office.

Q. You told Mr. Blake where you were?

A. No, I didn't tell him my address, no.

Cross-examination.

By Mr. McDonald:

Q. You told your husband you wouldn't sign a 20 deed for the property?

A. After I came home.

Q. When you came home and found out he had signed, you told him you wouldn't sign a deed?

A. I said, no, I didn't want to sell that piece of ground.

Q. You didn't sign a deed?

A. No, sir.

Q. Didn't you join with your husband in making a deed to Mr. Bell? 30

A. Yes.

Q. So you did sign a deed?

A. Yes.

Q. You no longer have any interest in the property, have you?

A. That is all right about that.

The Court: Just answer the questions.

A. Yes.

Q. Do you say that you have never had a talk with Mrs. Blake, the real estate agent, for four years?

A. Not for four years and I only asked her then the price of that apartment, that is all I ever said to the woman.

10 Q. You say you can't recollect ever talking with Mrs. Blake in 1925?

A. 1925?

Q. Didn't she come to your apartment where you were living in Wildwood Crest in 1925 and have a talk with you there?

A. Last year? Oh, no.

Q. Last summer?

A. No.

20 Q. Didn't have any talk with her last summer at all?

A. Positively no.

Q. Do you know how Mrs. Blake discovered where your husband's address was in Philadelphia?

30 A. Why, yes, I will tell you, if you will let me. It was on Wednesday that I met her husband, Mr. Blake, with this putting the sign up, you know, so he said, "You think your husband would take five thousand for that ground?" I told him, you know—I asked him that first, how much it would bring, sixty-five hundred, then he said, "Yes, oh, my, yes," he said. He says, "Do you think your husband would sell it for five thousand?" I said, "No, sir."

Q. Did he tell you he had an offer of five thousand?

A. He said, no, he said, "Do you think your hus-

band would sell that piece of ground for five thousand dollars?"

Mr. Charlton: Won't you please tell him how he knew where your husband lived?

A. No, he never asked me, just asked me if my husband would take five——

Q. Didn't ask you where he lived?

A. No.

10

Q. So you don't know how Mrs. Blake discovered your husband's address in Philadelphia?

A. No, I don't know, no.

By Mr. Charlton?

Q. Do you have a 'phone?

A. Yes, we have a 'phone.

Q. Listed in the Philadelphia telephone directory?

A. Yes.

20

Q. Mr. Blake recognized you, you say?

A. He recognized me, yes.

Q. Did he know your name?

A. I guess he did because, you know, he used to serve the apartment where I was.

Q. He used to serve you as a huckster?

A. Yes.

30

NELSON HAMILTON, SWORN.

Direct examination.

By Mr. Charlton:

Q. Mr. Hamilton, you are the son of Mr. and Mrs. Hamilton who just testified?

10 A. I am.

Q. Where do you live?

A. 2221 North Woodstock Street.

Q. Live with your parents?

A. Yes, sir.

Q. Do you remember a night last summer when Mrs. Blake called on your father?

A. I do.

Q. Were you home?

A. I was.

20 Q. Were you present while your father talked with Mrs. Blake?

A. I was standing there.

Q. Did you hear all that they said?

A. On the 'phone you mean?

Q. No, were you present when she came up to the house?

A. I was.

Q. Were you present when your father signed the agreement of sale?

30 A. I was.

Q. Did you hear all the conversation before that and after it?

A. Yes, sir.

Q. Now, tell the Court what your father said and what Mrs. Blake said at the time he signed that paper?

A. Well, Mrs. Blake came in, well, I guess, to make a long story short, he signed the agreement under one condition——

Q. Just tell the conversation.

The Court: What did he say?

Q. Tell what your father said to Mrs. Blake before he signed the paper?

A. Why, he said——

10

Q. Was your mother home?

A. No, sir; she was not.

Q. Where was she?

A. He said, "My wife is at Wildwood Crest."

Q. Your mother was at Wildwood Crest?

A. Yes, sir.

Q. Your father was there, just you and your father and your other brother?

A. He was.

Q. Tell us what your father said.

20

A. Well, he said he would sign the agreement under one condition that my mother would sign. Of course, he didn't want to do anything behind her back, and she offered to give him the——

Mr. McDonald: I move to strike out.

The Court: Yes.

Q. You heard your father say that?

30

A. I did.

Q. Did your father say anything about your mother having an interest in the property?

A. Sure.

Q. What did Mrs. Blake say when your father said that?

A. Well, she said "If you don't sign I will lose my commission."

Q. Did she say anything about seeing your mother?

A. Not a thing.

Q. Did your father say where your mother was?

A. Yes, he told her she was at Wildwood.

Q. Did he tell her where in Wildwood?

A. Wildwood Crest.

10 Q. Is that a large place or a small place?

A. Well, fairly big population.

Q. It is? Your father give her your mother's address?

A. No.

Cross-examination.

By Mr. McDonald:

20 Q. Live at home all the time?

A. Yes, sir.

Q. Did you hear any conversation between your father and your mother about this contract after your mother came back?

A. Only that she was peeved that he sold it.

Q. Did you hear any conversation between your father and mother regarding this sale?

A. No.

Q. Nothing at all?

30 A. No.

Q. Been any discussion about it since August, 1925, down to the present time?

A. Not that I heard.

Q. Haven't heard a word about it?

A. No.

Q. That is all.

ELMER HAMILTON, SWORN.

Direct examination.

By Mr. Charlton:

Q. Mr. Hamilton, you are the son of Mr. and Mrs. Hamilton just testified?

A. I am.

10

Q. Where do you live?

A. 2241 North Woodstock.

Q. Live with your parents?

A. Yes, sir.

Q. Were you home one night last summer when your father signed the agreement of sale?

A. I was. I answered the phone.

Q. Where was your mother?

A. She was at Wildwood Crest.

Q. Remember what day of the week it was?

20

A. It was on Thursday, Thursday night.

Q. On Thursday night?

A. Yes, sir, August 21st.

Q. Do you know Mrs. Blake?

A. I do not.

Q. Did you ever have conversation with her?

A. I did not.

Q. Did you have any on that night?

A. No, sir.

Q. Were you present when your father signed that paper?

30

A. I was at the head of the stairs on the second floor and heard the conversation.

Q. How was that with respect to the room where he signed it, could you hear?

A. Yes, dining room, she was in the dining room.

Q. You could hear everything that was said?

A. Yes, sir.

Q. What did your father say and what did Mrs. Blake say?

A. He said he didn't want to do anything behind my mother's back and that he would go down to Wildwood the following end of the week to have the thing cleared up.

10 Q. What did Mrs. Blake say about the necessity of signing that day?

A. She says, he says the only one condition he would sign it my mother sign.

Q. She said she would get your mother to sign?

A. No, my father said he would sign only on one condition, that she sign.

Q. You didn't see her give him the check? You couldn't see, only hear?

A. No, I didn't see that.

20 Cross-examination.

By Mr. McDonald:

Q. Have you ever heard any further conversation or did you hear any conversation between your father and mother?

A. No, only sick about it, that is all.

Q. Have you talked with your mother about selling this property?

30 A. I did not.

Q. Never have?

A. No.

Q. Have you talked with your father?

A. She said several times she didn't want it sold.

Q. Have you talked with your mother?

A. She told father didn't want it sold.

Mr. McDonald: I move to strike that out.

The Court: Yes.

Q. Have you personally had any talk with your mother regarding the sale of this property?

A. No, I haven't.

Q. Have you had any talk with your father?

A. No, I haven't.

Q. Have you heard any conversation between your father and your mother? 10

A. No, sir.

Q. All you know is that you happened to be home on one occasion and heard the talk between Mrs. Blake and your father?

A. That is right.

Q. That is all.

DEFENDANTS RESTS.

20

COMPLAINANT'S REBUTTAL.

MRS. ALICE BLAKE, SWORN.

Direct examination.

By Mr. McDonald:

Q. What is your business, Mr. Blake? 30

A. Real estate.

Q. Whereabouts are you located?

A. 5600 Pacific Avenue.

Q. In what place?

A. Wildwood Crest.

Q. Were you in that business during the summer 1925?

A. Yes.

Q. How long prior to that had you been in the real estate business?

A. Since 1924.

Q. Beginning of 1924, that is two years you have been in business now?

A. That is right.

10 Q. Were you in business four years ago?

A. No, I was not.

Q. Know Mr. Hamilton four years ago?

A. No, first time met Mr. Hamilton was just about this time two years ago, 1924.

Q. When you first went in business?

A. Yes, sir.

Q. At that time did he list with you for sale the lots which are described in the complaint?

20 A. Yes, sir, he and Mrs. Hamilton came over to my office and they took me over and showed me the lots and asked me if I couldn't sell them. He said he would like to get thirty-five hundred dollars for them, that he had bought them at the auction and his wife didn't like them, because it was too noisy near the pier and she said "Yes, I never could stand this noise, I thought I would have a quiet place, but since they have built this pier here this a nuisance," so I said, "I will try because people are not buying lots so much now." I was only new in the business any-

30 way.

Q. That was two years ago now?

A. Yes.

Q. You listed them at that time at thirty-five hundred dollars?

A. \$3500.

Q. When was the—and Mrs. Hamilton was present with her husband at that time?

A. Yes, Mr. and Mrs. Hamilton, and they had a little dog with them at the same time.

Q. All right; when was the next time you saw Mrs. Hamilton?

A. So I had had different offers at different times and Mr. Hamilton said he would give them terms, he had terms on them there when he bought them the way he spoke, so I had tried different times to sell it and I never could get anybody come near that offer, nobody would pay that amount, so I saw Mr. and Mrs. Hamilton again last year when they came down and he said "My goodness," he said "you are a slow poke. You haven't sold my lots yet." She said, "No, I don't believe you can sell them," so, you know, they were joking with me and I said, "Well, maybe I can't, but I will try," and later on I got an offer and I wrote to Mr. Hamilton and asked him that this man wanted to buy them cash if he would give them to him cheaper, he said, "Well, ask him how much he will pay me for them."

Q. Was that Mr. Kotok?

A. No, that wasn't Mr. Kotok.

Q. Let's come on down to the Kotok proposition. When did you first speak with Mr. Kotok about selling these lots?

A. Why it was in August that I spoke to Mr. Kotok about them after I had seen Mrs. Hamilton over to the pier and Mr. Hamilton one evening and she told me "Why don't you see my lots?" She stopped me and she says "I see you re selling everybody else's property but mine," so I said, "Well, just wait, have patience," so then when Mr. Kotok, before Mr. Kotok made the offer for the lots why I met Mrs. Hamilton, when Mr. Blake was putting a sign on a lot that he had sold on the next corner, in the same block, but the other corner, and while he was putting

a sale sign on I went into the apartment I have charge of renting, there was something wrong with the water, so I said, "I will run in and see what is wrong, see if they need a plumber," and she was talking to Mr. Blake and she told him to sell the lots for her—

Q. Pardon me, did you hear it?

A. Came out at the tail end of the conversation, and then she says, "I was just telling your husband about my lots, here is another lot sold, mine is still for sale, why don't you get busy and try to sell them?" I said, "I have a man I think will buy them now, but" I says, "What is the least you will take for them?" She says, "We should get more money now." She said, "We don't want any more thirty-five hundred dollars for them, if you can get five thousand dollars will be satisfied to sell them." I said, "All right, I will see if my man will pay that much and I will come over to where you are living over Mr. Fagan's office." She said, "No, Mr. Hamilton takes care of all the business; you go up and you can catch him in after six o'clock at 222—same address that she had given me before, Woodstock Street. She said, "You go on up to him and bring him the money," she says, "be sure do that." So I said, "All right." Well, anyway, I caught Mr. Kotok. He didn't want to pay that much. Anyway, he was negotiating for this apartment right adjoining it on the same street.

Q. Did he purchase the apartment adjoining these lots?

A. Yes. So I told him, I said, "They won't sell them at the old price. They want five thousand dollars for them." He said "That is an awful lot of money to pay." Well, then, naturally, I was trying to sell the lots. I said to him, "Well, after

you buy this apartment they are worth that extra money, to you, so then, anyway, he gave me a check and I went to Philadelphia to bind it—no, that same day, that was on the nineteenth, before I went to Philadelphia I called Mr. Hamilton in the evening, like she told me, after six o'clock I could catch him in, and he says, "No, I won't take five thousand dollars. My wife is crazy." He said, "I want fifty-five hundred," so I said, "Well, the man has gave me a check for five thousand dollars but," I said, "if you want fifty-five hundred I don't believe you will ever get it from him. I have a hard job to get this." He says, "You try to make it, the more you get for it the more commission I am going to pay you." I didn't see Mr. Kotok. I 'phoned him. He said, "I believe you are doing some dirty work to come from five thousand to fifty-five hundred," so I went up to Philadelphia—in the meantime I had the contract made up and I got caught in a rain storm going to Philadelphia, an open touring car and I got sopping wet and the contract got wet and when I got to the Benjamin Franklin I got the public stenographer to write me out a contract and I called Mr. Hamilton, "Six thousand dollars or nothing," he said. "I just had an offer—"

10

20

Q. You telephoned Mr. Hamilton from Philadelphia?

A. Yes, I telephoned him as soon as I had gotten in Philadelphia, I had to go make another new, the other one was all wet, don't you see, and he said, "I just had an offer from another agent fifty-eight hundred, only way you can have it is six thousand dollars," so I took a chance and sold it for six thousand dollars.

30

Q. You went to his house?

A. Yes, when I went to Mr. Hamilton's house, the young boy, I didn't see him, he was up here, he was playing the piano in the parlor, I guess it is the parlor, and he opened the door and left me in, and then Mr. Hamilton took me in the dining room, you see, anyhow, because the boy was trying out some new rolls and he said,, "You don't mind being closed up in this room with me, do you?" he says, "I want to drown the sound of that music,"
10 so he shut the door. Of course, I wasn't afraid of him.

Q. Was the boy present during the conversation between you and Mr. Hamilton?

A. Nobody was there but Mr. Hamilton and I, but the boy was in the parlor playing the piano, player rather.

Q. Did Mr. Hamilton say to you, at that time, that he would sign the contract but it wouldn't become effective unless you secured Mrs. Hamilton's signature?
20

A. No, Mr. Hamilton didn't say that.

Q. Was anything said about securing Mrs. Hamilton's signature?

A. Nothing at all, only thing he said, "Mrs. Hamilton and I are both glad this sale is made, a good profit, I congratulate you, you are a good saleswoman. I would rather have seen you sell it than any other agent down there," so then he signed, and said, he said to me, "You take out your three
30 hundred dollars commission and give me three hundred dollars." I said, "Will my check do all right?" He said, "Sure, I am not afraid of your check," so I wrote out a receipt and he put at the bottom of the receipt "by check" and he said, "You are giving me check so I am going to put that on here," and he added "by check" on there.

Q. Is this the memorandum of receipt which he wrote out?

A. That is right. I wrote this part and Mr. Hamilton wrote "paid by check" and he wrote "signed, William Hamilton."

Q. You wrote the body of the receipt?

A. Yes, I wrote that.

Q. And he put on "paid by check" and signed his name?

A. That is right, three hundred dollars commission he paid me, three hundred dollar check, made six hundred dollars he received on agreement.

Q. Which he acknowledged receipt in the contract?

A. Yes.

Q. This contract marked Exhibit C1, was it in that same condition at the time?

A. Yes; I have the original contract. There was three copies made.

Q. And you brought this back and secured Mr. Kotok's signature on all three? 20

A. Yes, Mr. Hamilton was to come in Saturday and bring me the deeds and papers for to give to Mr. Seller for the searches. Well, Mr. Hamilton never did come in and the next thing I knew, I got a letter sending back the check and saying he wasn't going to make no sale, so I had the check certified and I was just going to send it back to him, I thought probably he was afraid of the check, and didn't want to cash it, but Mr. Kotok came in the office and I said yes and I explained it to him so he says, "Well, send the check right back to him," he says, "You needn't be afraid, you got the money." I said, "Sure, I have," so anyway, then instead of me sending that check, sent a check to his lawyer 30

and his lawyer sent it back to Mr. Hamilton. I never heard nothing more about it.

Q. So they still retain your certified check for the three hundred dollars?

A. Yes.

Q. After securing Mr. Kotok's signature to the contracts, did you return the original one to Mr. Hamilton?

10 A. Returned that copy, one copy I sent to Mr. Hamilton after I waited and waited for him to come in, and he didn't come in like he promised or bring me the papers, then when I got that letter from him I sent it back.

Cross-examination.

By Mr. Charlton:

20 Q. Have you the original letter you got from Mr. Hamilton returning the check?

A. No, I haven't.

Q. You say it was within a day or two after the contract was signed?

A. No, I don't think—I didn't say a day or two.

Q. How long was it after the contract had been signed?

A. That I can't remember, but it was a few days afterwards, the exact date I don't remember.

30 Q. If I show you a copy of it will that help your memory?

A. Yes, I think so. This looks like the letter.

Q. What date does that bear?

A. It was September third, 1925.

Q. No reason to doubt that is the true date it was mailed, is it?

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

Q. That is two weeks after August twentieth, isn't it?

A. Yes.

Q. Within that time you hadn't returned the contracts to Mr. Hamilton, had you?

A. Mr. Hamilton was to go—I said, "I will mail you this as soon as Mr. Kotok signs it." He said, "Don't mail it. It may get lost in the mail. You keep it and I will come down for it and bring you the deeds and rest of the tax papers for the search- 10
ers."

Q. How long have been in the real estate business?

A. Since 1924.

Q. Sell and buy property for people.

A. I never buy property. I sell property for people.

Q. Had lots of agreements signed by men who were married?

A. Yes.

Q. Do you know it is a fundamental of the law 20
that a married woman must sign a deed to pass a good title?

A. I don't know anything about law.

Q. Don't you know that you always get the signature of the wife where you have a husband sign an agreement for the sale of land?

A. I know it now?

Q. Didn't you know it then?

A. No, I didn't.

Q. And you had been in business more than a 30
year?

A. Yes.

Q. You didn't know it?

A. I didn't sell very much before then. This was the most selling I ever done.

Q. In all the transactions you had prior to that

time, you never thought it necessary to get the wife's signature where a husband sold the property?

A. I never knew it was necessary on an agreement. I always thought it had to be done on a deed.

Q. Did you have any talk with Mr. Hamilton at all about his wife or her signature?

A. No.

Q. Never mentioned her name?

10 A. Never talked about signatures. Mr. Hamilton and Mrs. Hamilton were always very anxious for me to sell the lot and I liked to be next to it.

Q. Don't you remember at Mr. Hamilton's house that you had to get his wife's signature?

A. No.

Q. He never mentioned to you that you would have to have her signature?

A. No.

20 Q. Never mentioned her name?

A. No.

Q. Never mentioned whether she was satisfied or not?

A. Oh, yes, he said, "My wife and I are both glad to sell it; we made a nice profit and we are glad to get rid of it."

Q. That was the only way he mentioned her name?

A. Yes.

30 Q. When you went to Philadelphia, your authority was to make the agreement for fifty-five hundred dollars?

A. Yes.

Q. And that was the form of agreement you had with you?

A. Yes.

Q. Did you talk with Mr. Hamilton on the telephone, yourself?

A. Yes.

Q. On the night you executed the agreement?

A. Yes, I did.

Q. Did you in fact, talk with his son?

A. No, I talked to Mr. Hamilton.

Q. Then you had the negotiation raising the price to six thousand?

A. Yes, he said, "Hurry up out here; I have a pinochle game." I said, "I have to stop and have the agreement made over." 10

Q. What time was this when you talked with him on the 'phone?

A. It was about ten minutes after six.

Q. You had to have the agreement drawn?

A. Yes, I was in the Benjamin Franklin Hotel, in the lobby.

Q. What time did you get out to his house?

A. That I can't exactly tell you, as soon as the young lady there made the agreement out for me I drove right out to Woodstock Street. 20

Q. How much check did you have from Mr. Kotok?

A. Mr. Kotok's check?

Q. Yes, how much was his check?

A. I had a five hundred dollar check and fifty dollars in cash of Mr. Kotok's, at that time.

Q. You didn't know whether Kotok would go to six thousand or not, did you?

A. No, I did not, but I felt that he would be satisfied with the extra five hundred, because it was adjoining his property. 30

Q. You had gotten him up—he thought five thousand was high, didn't he?

A. Yes, he did.

Q. And he complained very bitterly when the price was raised to fifty-five hundred?

A. Yes.

Q. Yet you took it on yourself to advance the price another five hundred?

A. Yes, sure; Mr. Hamilton knew that.

Q. If Mr. Kotok had not signed the agreement, what would have happened to your check?

A. Mr. Hamilton knew that.

Q. Knew what?

A. Knew that Mr. Kotok's highest price was only
10 fifty-five hundred dollars and that I was brought up to six thousand dollars on my own shoulders.

Q. How did he know that?

A. Because I told him.

Q. You had more conversation then?

A. Yes.

Q. Where did this take place?

A. With Mr. Hamilton over the telephone.

Q. And Mr. Hamilton was perfectly willing with that arrangement?

A. Of course; he signed the contract.
20

Q. What was to happen in the event Mr. Kotok would not approve it for six thousand?

A. I guess I would have been the loser.

Q. You were to lose what?

A. I would have lost the money.

Q. What money?

A. The money that I gave him if Mr. Kotok didn't want to pay that six thousand dollars, I would have had to lose my money, wouldn't I? I would have
30 given him back the money.

Q. You would have lost three hundred dollars?

A. I guess I would.

Q. Check you gave to Mr. Hamilton?

A. Yes.

Q. That was understood between you and Mr. Hamilton?

A. That was my own words.

Q. Do you mean to say, you and Mr. Hamilton had a talk in which you told him you were not authorized to sell for six thousand dollars, adding that on your own hook, and you never discussed what would happen to your own check if Mr. Kotok didn't sign?

A. No.

Q. And you thought you would have lost the money?

A. If he hadn't have taken it, but I felt if the man went up that far, owning the adjoining property which he was purchasing, it was worth, to make the sale, the lot itself at that time, was worth six thousand dollars, it was worth it to Mr. Kotok, attractive apartment house that he bought, he bought a pretty big apartment house adjoining it. 10

Q. And with that knowledge that Mr. Kotok had not ratified the sale, you drew the memorandum of agreement, did you, had his check, were depositing three hundred dollars more on this property? 20

A. I had Mr. Hamilton's check, not Mr. Kotok's check.

Q. How does this receipt——

A. It says, "Received of David Kotok per A. Blake, agent." I meant real estate agent.

Q. You were handling Kotok's money?

A. Naturally, I would have to sell Mr. Hamilton's property, I would have to handle the money.

Q. Although you knew that Kotok had not ratified this, although he had complained about paying five thousand, although he had grumbled about paying fifty-five hundred—— 30

A. He is perfectly satisfied to pay that money.

Q. You gave a check of your own of his money and took that receipt for six thousand dollars?

A. It wasn't my money; it was Mr. Kotok's

money, because Mr. Kotok had given me five hundred and fifty.

Q. Then Mr. Kotok would have lost the money if he had not gone to six thousand?

A. No, I would have returned him that money. It wouldn't have been right to keep the money.

Q. For it was a conditional agreement?

A. No.

10 Q. Depending upon Kotok's acceptance?

A. No, it wasn't a conditional agreement at all.

Q. What was it?

A. Just as the agreement called for, everything supposed as it is on that agreement.

Q. If Kotok did not ratify it there was no agreement at all, was there?

A. Certainly.

Q. Mr. Hamilton's name is in the Philadelphia 'phone book, isn't it?

20 A. I suppose it is. I don't know.

Q. Didn't you look in the book when you got there?

A. No.

Q. How did you get his number?

A. Mrs. Hamilton gave me his number.

Q. She gave you not only the address but the number?

A. Telephone number.

Q. She wrote that down for you?

30 A. Yes.

Q. She wrote it down?

A. Mrs. Hamilton, yes.

Q. On the street?

A. Yes.

Q. What did she write it on?

A. On a piece of paper.

Q. Where did she get the paper?

A. From me.

Q. Where did you get it from?

A. Well, I will tell you, I always have paper in my pocket book and she had a lead pencil and she said, "If I had a piece of paper I would write it down for you." I said, "I think I can remember." She said, "Maybe you can't," and I took the paper out of my pocket book.

Q. Your husband present at the time?

A. Yes.

10

Q. Is he here today?

A. No; he is sick.

Q. He is sick?

A. Yes.

Q. That is the only reason he isn't here?

A. That is the only reason. He isn't expected to live.

Q. Mrs. Hamilton in her handwriting, wrote her address and telephone number?

A. Yes.

20

Q. You knew Mrs. Hamilton?

A. Yes.

Q. Your husband used to be a huckster?

A. Yes, my husband and I both were hucksters.

Q. Used to serve Mrs. Hamilton?

A. No, never; never met her until her and her husband came in the office and asked us to sell the lots.

Q. Used to serve them when you were in the other business?

30

A. No, sir.

Q. First time you knew Hamilton was after coming in your office when you were real estate brokers?

A. Yes, sir.

Q. Then you knew the names?

A. Yes.

Q. Knew Mr. Hamilton's name?

A. He introduced himself and gave me his card.

Q. Did the card have his address on it?

A. Yes.

Q. In Philadelphia?

A. Yes.

Q. You say you never looked in the Philadelphia 'phone book to find his 'phone number?

A. No, I had no cause to.

10 Q. These two young men took the witness stand; did you see them at the house?

A. No, I only saw the young boy.

Q. Which one?

A. The one said here he opened the door.

Q. Which one of those two young men?

A. That youngest one, that first one.

Q. Nelson?

A. I don't know his name.

20 Q. He was present, wasn't he?

A. Yes.

Q. And you want us to believe——

A. He opened the door for me and let me in and he went right back in the parlor and played the pianola.

Q. Played the pianola whole time you and Mr. Hamilton——

30 A. He was there in his shirt sleeves; he say, "You know how, the boy has got new rolls and it is all he thinks about." He took me in the dining room he said, "You are not afraid of being in here alone with me?"

Q. This piano play music rolls, it is a player piano?

A. Yes.

Q. That is in the next room to the dining room, isn't it, is that the parlor?

A. Wait, I will see if I can remember that room is right there, what I would call the parlor, living room, dining room, has doors in the back of that.

Q. Next room, isn't it?

A. I suppose it would be the next room.

Q. Do they join by a door?

A. I didn't see any door, no.

Q. Mr. Hamilton had you in the dining room with the door shut?

10

A. Yes.

Q. Had they just finished dinner?

A. No.

Q. Didn't see any signs of it?

A. If they had, I don't know; they might have, but the table was cleared, had things cleared, cloth on it.

Q. Did he shut the door so nothing could be heard except through the door?

A. Yes.

Q. You and he were there alone transacting this business?

20

A. Yes.

Q. Mr. Hamilton tell you he had ever sold any other property?

A. That he had sold other property?

Q. Yes.

A. No.

Q. He never said that?

A. No.

Q. Mr. Kotok did sign for six thousand dollars?

30

A. Yes.

Q. Why didn't you return the agreement to Mr. Hamilton?

A. I did send him the agreements afterwards.

Q. When?

A. After I had got that letter as Mr. Hamilton said unless Mr. Kotok signs these I will resell them.

Q. When did Mr. Kotok sign them?

A. Next day.

Q. Why didn't you send them to Hamilton?

A. I just tried to explain, please, Mr. Hamilton said don't send them, they will be lost in the mail, I will be down Saturday and bring them tax papers and then I can have the agreements and I said all right. If I shouldn't come Saturday, well, I am down every week-end, my wife and I have so many places to go I will come late, say ten o'clock.

Q. Mr. Kotok complain to you Mrs. Hamilton's signature wasn't on the agreement?

A. No.

Q. He said nothing about it?

A. No.

Q. Did you take them in the title company?

A. That agreement was made out in Mr. Hamilton's name.

Q. Did you tell Mr. Hamilton that Mr. Kotok had bought the lots next door or could buy them if he didn't sign this paper?

A. No.

Q. Never discussed that?

A. No.

Re-direct examination.

By Mr. McDonald:

Q. I understood you to say in your cross-examination that at the time Mr. Kotok offered you \$5500 that you considered more than the fair market value?

A. Yes.

Q. And that the only reason they were worth more

to him was because he owned the adjoining property?

A. Yes.

Q. And you figured from your talk with him that he would go as high as \$6000, if compelled to?

A. That is right.

Q. Was \$6000 a fair market price for those lots?

Mr. Charlton: I object unless she is qualified.

10

The Court: No proof she is qualified yet.

By Mr. Charlton:

Q. Mrs. Blake, what makes you think because Mr. Kotok owned the property next door this property was worth more than the market value to him?

A. Because he didn't have very much ground where his apartments were and it was the ocean view that those apartments had that rented them and if somebody else had that lot and built up and blinded him it would kill the apartment. 20

Q. You thought he ought to pay that much for land—

A. Renting value.

Q. —more than that for the mere open land, open space, you thought he ought to pay more than the market price for mere open land and open space for his apartments?

A. Don't you think it would be worth that to the apartment? 30

Q. Is that your opinion?

Mr. McDonald: Did you answer the question?

A. I said if he had the apartment it would be worth it.

By Mr. McDonald:

Q. I want you to give us an idea of how the property does lay, as to location. It is Atlantic Avenue, is it?

A. Yes.

Q. Corner Atlantic Avenue?

A. Yes.

Q. Which way does Atlantic Avenue run there?

10 A. Why Atlantic Avenue runs north and south.

Q. Along the ocean front?

A. Yes.

Q. And the other street is Crocus Road?

A. Yes, Crocus Road.

Q. And the property is on the corner of Atlantic and Crocus Road?

A. That is right.

Q. Directly across Atlantic Avenue is the ocean?

A. Yes.

20 Q. Where is the apartment which you say Mr. Kotok purchased adjoining this property?

A. It is right, the lots was right on, this is Atlantic Avenue, this is Crocus—

Q. Which direction from the lots, east or west?

A. I suppose you would call it westerly direction, at the back of the lots. The apartment is at the back of the lots, Mr. Hamilton's lots.

30 Q. What you want to tell us a great big apartment was built on the corner, on these lots, between the ocean and Mr. Kotok's apartment house, it would conceal the view?

A. Yes, and then his apartment house would be looking at back yards instead of you know a nice beach.

Q. Instead of facing Atlantic Avenue his apartment would be in the back yard of the other house?

A. Yes.

By Mr. Charlton:

Q. Front of his apartment house would be looking in the back yards?

A. No, all the living rooms and bedrooms.

Q. Back of his apartment?

A. Side.

Q. Side?

A. That is where all the rooms look out towards the ocean.

10

HARRY L. NICKERSON, SWORN.

Direct examination.

By Mr. McDonald:

Q. What is your business, Mr. Nickerson?

20

A. Real estate salesman.

Q. With what firm are you connected?

A. Beecher-Kay Realty Company.

Q. Is that a large concern in Wildwood?

A. Quite a large concern, yes, sir.

Q. How long have you been in the real estate business in Wildwood?

A. Twenty-one years.

Q. During that time buying and selling real estate?

A. Acting as agent and broker.

30

Q. As broker and as agent?

A. Yes.

Q. Were you familiar—do you know the property at the corner of Crocus Avenue and Atlantic Avenue which was owned by Mr. Hamilton in 1925?

A. I do.

Q. Do you know Mr. Hamilton?

A. Yes.

Q. Did you have this property listed for sale in your office?

A. I did.

Q. What do you say was the fair market value of that property on the 20th of August, 1925?

Mr. Charlton: I don't think that is material.

10

The Court: I will permit it. It may not be material.

A. Fair market value I should say was \$6000.

Q. You think that was the fair market value?

A. Yes.

Q. Did you have any communication from Mr. Hamilton after August 20th, 1925?

A. I did.

20

Q. Regarding this property?

A. Yes.

Q. Was it in the form of a letter?

A. Yes.

Q. Do you have—have you the letter?

A. I have not.

Q. What became of it?

A. I couldn't say. I submitted an offer to Mr. Hamilton.

30

Mr. Charlton: No.

The Court: That is not responsive.

Q. Have you made a search through your files in your office for the letter?

A. A very careful search.

Q. You cannot discover it?

A. Cannot find it.

Q. Can you tell us what the contents of that letter was?

Mr. Charlton: I object. I can't see what possible materiality it has.

The Court: How is that admissible, Mr. McDonald?

10

Mr. McDonald: All right.

Cross-examination.

By Mr. Charlton:

Q. Mr. Nickerson, what did similar property in the same neighborhood bring in August, 1925, at a sale?

A. The corner of Atlantic Avenue or Pacific Avenue and Crocus Road sold for \$5000. 20

Q. Any lots right nearby on Atlantic Avenue sold at that time or a little later?

A. Yes.

Q. How much did they sell for?

A. They were various prices.

Q. High as ten or eleven thousand dollars?

A. That wasn't until the very latter part of August or the first of September when they reached those prices. 30

Q. This was the 20th of August?

A. Yes, sir.

Q. Did the value increase that much within a few days?

A. It certainly did.

Q. But you still think on August 20th \$6000 was fair?

A. I do.

Q. Even though it might have been on August 23rd or 24th between ten or eleven thousand?

A. They hadn't gone that price on August 23rd or 24th.

Q. What day in August had they gone that high?

A. They began to climb around the very latter part of the month when the prices went to the highest.

10 Q. For what reason?

A. Apparently a boom.

Q. Boom?

A. Boom prices.

Q. Well known that the boom was coming, wasn't it, by the people in the neighborhood who lived there, who were familiar with it?

A. No.

Q. Totally unexpected?

A. Absolutely.

20 Q. That is all.

By Mr. McDonald:

Q. There was quite a boom came in Wildwood beginning the latter part of August and continuing during the rest of the season?

A. Yes, sir.

Q. What is the condition down there now? Does that boom still continue?

30 A. Oh, no.

Q. Is any selling going on at all to amount to anything?

A. Nothing compared to what there was last August or September.

COMPLAINANT RESTS.

WILLIAM HAMILTON, recalled.

Direct examination.

By Mr. Charlton:

Q. Mr. Hamilton, did you have any discussion on the telephone or elsewhere with Mrs. Blake concerning increasing the price of your property? 10

A. Positively no.

Q. When she brought you this agreement was that the only agreement you ever saw?

A. That is the only one.

Q. Had you any talk with her?

A. Not for four years.

Q. Had you ever seen her in 1924, two years ago?

A. Not to my knowledge. I think there was a time when my wife wanted to rent an apartment there or something. 20

Q. That is years ago?

A. I never had a business talk with that woman since four years back.

Q. Were you ever in her office as a real estate broker?

A. Not to my knowledge, no, sir.

Q. You would know it if you had been?

A. It is on the corner, my wife says "There is where"—she always calls her "Blake," "That is where Blake lives." 30

Q. Were you ever in that office?

A. No, sir; not to my knowledge.

Q. Have you a player piano in your house?

A. No, sir.

Q. Did you ever have one?

A. No, sir.

Q. Were you in the dining room with her with the door shut?

A. No, sir, I have no door. The door, it goes in, I took down the two doors and have it open, see?

Q. It is now open, is it?

A. It is now, been open for years.

Q. No doors at all?

A. No, sir, positively.

10 Q. Where does that dining room connect, does it connect with the parlor?

A. Yes, that is right.

Q. Connects with the parlor?

A. Yes, sir.

Q. Is that opening between the dining room?

A. A great big door there into the entry.

Q. Is the piano in the parlor?

A. Yes, sir.

Q. Is there any door between the parlor and dining room?

20 A. No, sir; I have no doors on there.

Q. That is where the opening is?

A. Both of them, both into the entry from the parlor and I took down those doors years ago and I also made this opening into the, from the entry into the dining room, and she sat right here at the end and where the oldest boy saw her and heard me talking it is all an open space, anybody could hear or understand.

Q. Where was Nelson while you were talking?

30 A. He was there all the time that she was there.

Q. Where was he?

A. In the dining room.

Q. Right in the room with you?

A. Yes, sir; right at the table.

Q. Was he playing the piano?

A. No, sir; positively not.

By Mr. McDonald:

Q. Does the boy Nelson play the piano?

A. Yes, all my children can play once in a while.

Q. Nelson can play the piano?

A. Yes, sir, just casually.

Q. And you have a piano in the parlor?

A. I have a piano, yes, sir, but not a player.

Q. You say that it was four years before 1925 that you talked with Mrs. Blake? 10

A. I judge it was the following year after I bought it. I think it was around Easter. Now you know I can't just recall.

Q. Let me ask you this——

A. Oh, it has been years since I ever had any business talk. She wanted me to sign a card for a sale price. I wouldn't. I says "No, I won't do anything." That is four years ago.

Q. At the time you talked with her she was in the real estate business? 20

A. I should judge she was. She must have been.

Q. Because you talked with her?

A. That is four years ago.

Q. Because you talked with her about selling the property?

A. No, she came up to me.

Q. She came to you and wanted you to sign?

A. She says "Can I get you apartments or anything?" "Why no," I says, "I bought them at the sale, Ackley's sale, a year ago." 30

Q. Do you know when she first started in the real estate business?

A. I understood four years ago she was in the real estate business.

Q. Do you know when——

A. She told me at that time she was.

Q. You will say positively it was four years ago that she was?

A. I don't say, as far as dates is concerned, it is running around four years, that is so I should judge; I am not positive about exact dates not at that time.

By Mr. Charlton:

10 Q. Mr. Hamilton, was there any conversation between you and Mrs. Blake at the time you signed this paper as to whether or not Mr. Kotok would pay \$6000?

A. No, sir. I asked her who the buyer was and she just said he was a white man.

Q. You never had any conversation about whether he would or would not pay \$6000?

A. No, sir, I didn't.

20

NELSON HAMILTON, recalled.

Direct examination,

By Mr. Charlton:

Q. Nelson, is there a piano in your house?

A. There is.

30 Q. Is it a player piano?

A. No, regular hand played piano.

Q. Is there a door between the dining room and parlor?

A. No.

Q. Is there an opening there?

A. All open space.

Q. What kind of an opening is it? Have any doors on it?

A. No, been taken off.

Q. How long since the doors have been up there?

A. About, I should judge, around 8 or 9 years.

Q. Was there any door on there when Mrs. Blake was there?

A. No, sir.

Q. Is there any door into the hall?

A. No, sir.

Q. Were you present during the whole conversation your father had with her?

A. I was.

Q. Were you playing the piano any part of it?

A. No.

Q. Were you playing the piano when she arrived?

A. No.

Q. You let her in, didn't you?

A. I just can't recollect that.

Q. Did you hear any conversation between her and your father about whether or not Mr. Kotok would give \$6000?

A. No,

Cross-examination.

By Mr. McDonald:

Q. You like to play the piano?

A. Do I like to?

Q. Yes.

A. Whenever I have a little spare time occasionally.

Q. Pretty good player, are you?

A. Wouldn't say I was an expert at it. Get away with it.

- Q. Do you play considerably?
A. Once in a while.
Q. Do you recall now whether or not you was playing the piano when Mrs. Blake called?
A. I don't believe I was. I can't recollect that.
Q. You don't know for sure, you might have been playing the piano?
A. I wasn't playing while she was there.
10 Q. You are quite positive you didn't play at all while she was there?
A. Yes.
Q. But you might have been playing when she called?
A. I may have been playing when she called.
Q. That is all.
-

MRS. ALICE BLAKE, recalled.

- 20 Direct examination.
By Mr. McDonald:
Q. When you first became a real estate broker, did you take out a license?
A. Yes.
Q. Have you the license with you, first license which you ever received?
A. This is my first.
30 Q. By referring to that can you tell when you first engaged in the real estate business?
A. November 15th.
Q. What year?
A. 1923.
Q. Prior to that did you ever do any real estate business?
A. That was good until 1924.
Q. Until July 1st, 1924?

A. Yes.

Q. That is the first license you ever held?

A. Yes, that is the first license.

Q. Did you do any business in real estate prior to that?

A. Never before. I had never had any dealing of real estate.

Q. Was it after that that Mr. Hamilton listed this property with you first?

A. Yes, Mr. Hamilton came in the spring, 1924. 10

Q. Spring following when you first took out your license?

A. After I first took out the license.

Cross-examination.

By Mr. Charlton:

Q. That is when the law went into effect, wasn't it, when you got the card? 20

A. What law? I don't know what you mean.

Q. This card.

A. What law? I don't know what you mean.

Q. Weren't you a broker in 1922 doing business in Wildwood?

A. No, I wasn't.

Q. Did you talk with Mr. Hamilton about an apartment?

A. No, I didn't; never tried to rent from him.

Q. Understand when I say real estate broker or not, you had an office, weren't you an itinerant real estate broker? 30

A. No, I never was engaged in real estate business until I got that card. The reason——

Q. No question.

TESTIMONY CLOSED.

CONCLUSIONS.

(Filed July 8, 1926.)

IN CHANCERY OF NEW JERSEY.

10

Between

DAVID KOTOK,

Complainant,

and

WILLIAM HAMILTON, *et**als.,**Defendants.)*On Bill for Specific
Performance.On Final Hearing.
Conclusions.

20

These conclusions are not to be published in the
official or unofficial reports.

MR. MORRIS V. McDONALD, for the complainant.

MR. WILLIAM CHARLTON, for the defendants.

30

INGERSOLL, V. C.

A decree in favor of complainant, as against de-
fendants, William Hamilton and William Bell, will
be advised.

There can be no abatement, as the wife has dis-
posed of her interest to the defendant, Bell.

Determined: June 30th, 1926.

FINAL DECREE.

(Filed July 28, 1926.)

IN CHANCERY OF NEW JERSEY.

	10
Between	
DAVID KOTOK,	
<i>Complainant,</i>	
and	
WILLIAM HAMILTON, and	On Bill, etc.
MARGARET F. HAMIL-	Final Decree.
TON, his wife, and WIL-	
LIAM BELL,	
<i>Defendants.</i>	
—————	20

This cause coming on to be heard in the presence of Morris V. McDonald, solicitor of the complainant, and William Charlton, solicitor of the defendants, and the Court having examined the pleadings and having taken proofs orally and in open Court, and heard and considered the arguments of counsel thereon:

It is, thereupon, on this 28 day of July, 1926, 30 ordered, adjudged and decreed, that the agreement made by and between the complainant, David Kotok, and the defendant, William Hamilton, dated August 20th, 1925, be specifically performed by the defendants, and that the defendant, William Bell, do make, execute and acknowledge in due form of law, and deliver to the complainant, David Kotok,

on the 10th day of August, 1926, between the hours of 10:00 o'clock in the forenoon and 12:00 o'clock noon, at the office of Morris V. McDonald, Counsellor-at-law, 511 Landis Avenue, Vineland, New Jersey, a good and sufficient deed of conveyance for all that certain lot, tract or parcel of land and premises situate in the Borough of Wildwood Crest, in the County of Cape May and the State of New Jersey, bounded and described as follows:

10 BEGINNING at a point of the intersection on the northeasterly side of Crocus Road with the northwesterly side of Atlantic Avenue and extending thence: Northeastwardly along the northwesterly side of said Atlantic Avenue a distance of one hundred (100) feet to a point; and at right angles thereto between parallel lines in length or depth northwestwardly (and binding on said Crocus Road) a distance of one hundred (100) feet.

20 COMPRISING lots numbers one, two and three (1, 2 & 3) in Block number twenty-one (21), as shown on the official Map, Borough of Wildwood Crest, New Jersey, duly filed. And deliver at the same time to the said David Kotok possession of said lands and premises.

30 And the Court being satisfied that the defendant, William Hamilton, is entitled to collect and receive from the complainant, the balance of the purchase price amounting to \$5(400.00, plus or minus all adjustments of sewerage, taxes, interest, etc., as of November 20th, 1925, and in addition to said sum so due, thereafter, with interest thereon, at the rate of six per centum per annum (6%) from November 20, 1925, to August 10, 1926.

And it is further ordered that said complainant pay to said defendant, William Hamilton, or to the defendant, William Bell, as agent and trustee for said William Hamilton, the balance due under said

contract as it may be found under this decree, at the time of the delivery of said deed to him.

It is further ordered that the said defendants, William Hamilton and William Bell, pay to the complainant, the costs of this suit to be taxed, including a counsel fee of two hundred and fifty (\$250.00) dollars, which is hereby allowed to said complainant.

It is further ordered that true, but uncertified, copies of this decree and the taxed bill of costs be served upon the solicitor of the said defendants, within five days after the date of this decree.

E. R. WALKER,
C.

Respectfully advised:

R. H. INGERSOLL,
V. C.

20

30

AMENDED NOTICE OF APPEAL.

(Filed Aug. 14, 1926.)

IN CHANCERY OF NEW JERSEY.

Between

DAVID KOTOK,

Complainant,

and

WILLIAM HAMILTON,

Defendant.

On Bill, etc.
Amended Notice of
Appeal.

10

To the within named Complainant:

Take notice that the defendant appeals to the Court of Errors and Appeals of the State of New Jersey, from the whole and every part of the decree made in this cause by the Chancellor and advised by the Vice-Chancellor, Robert H. Ingersoll, entered in the Court of Chancery on the 28th day of July, A. D. nineteen hundred and twenty-six.

20

Dated August 11th, 1926.

WILLIAM CHARLTON,

Solicitor of Defendant.

[ENDORSED]

30

Due and legal service of a copy of the within hereby acknowledged this 12 day of Aug., 1926.

Morris V. McDonald,

Solicitor for Complainant.

PETITION OF APPEAL.

(Filed Aug. 10, 1926.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10

Between

DAVID KOTOK,
Complainant-Respondent,

and

WILLIAM HAMILTON,
*Defendant-Appellant.*On Appeal from
Chancery.
Petition of Appeal.

20

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

30

The petition of William Hamilton, the appellant in the above entitled cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 28th day of July, A. D. nineteen hundred and twenty-six, wherein the said petitioner was defendant, and David Kotok was complainant, and from the whole and every part thereof, to wit: That said decree obliges the appellant to specifically perform the contract referred to in the bill when the bill of complaint should have been dismissed. And your petitioner humbly

appeals from every part of said decree of the said Chancellor upon the ground that the same is erroneous.

Your petitioner therefore prays that the said decree of the said Chancellor may be, in the particulars aforesaid, 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.

WILLIAM CHARLTON, 10
*Solicitor and Counsel with
Appellant.*

[ENDORSED]

Due and legal service of a copy of the
within petition hereby acknowledged 20
this 7 day of Aug. 1926.

M. V. McDonald,
Solicitor for Complainant.

[Faint paragraph of text]

10 [Faint section header]

[Faint paragraph of text]

NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between
DAVID KOTOK,
Plaintiff-Appellee,
and
WILLIAM HAMILTON,
Defendant-Appellant.

ON APPEAL.

ON BILL, ETC.

BRIEF OF DEFENDANT-APPELLANT.

STATEMENT OF FACTS.

Bill for specific performance of contract for sale of real property in Wildwood, New Jersey.

The contract was signed only by William Hamilton, the husband, and was procured by one Blake, agent for Kotok. Hamilton's testimony is complete and is corroborated by his two sons, Nelson and

Elmer, that the contract was not to be valid until it had been approved and signed by Mrs. Hamilton, who was at Wildwood, New Jersey.

The contract was signed by William Hamilton in Philadelphia, Pennsylvania. The agent, Blake, who was interested in obtaining a commission from the sale, testified that this was not true. It appearing in the case that the defendant, William Hamilton, had returned the deposit check to Blake a few days after he had signed the paper, informing her that his wife had returned and would not sign the contract.

Throughout the case there is positive testimony that Mrs. Hamilton, of her own free will, refused to sign the contract and that her refusal to sign it or to execute a deed under it, was not by any coercion or fraud of her husband.

After Mr. Hamilton had returned the check left with him by Blake, he and his wife conveyed the property in question by deed to one William Bell as trustee for them without consideration. All of which appears by the testimony.

LAW.

It is argued by the defendant-appellant that there was no contract upon which the Court could base a decree for specific performance. If there was any contract, it should have been enforced only against William Hamilton and without any abatement or bond of indemnity.

A careful reading of the testimony will show that the defendant, William Hamilton, and his two sons all testified positively that there was to be no contract unless Mrs. Hamilton approved it and signed it. Against this there is only the testimony of the

complainant's agent, Blake, whose interest is obvious. She testifies in part that she had already received her commission and in another place that she would have had to refund the money to Mr. Kotok if the deal had fallen through. A fair reading of the entire transcript is convincing that the defendant and his witnesses were truthful and honest people, and under the well-established rule that specific performance will only be allowed where the testimony is clear and convincing, it is argued that the Court should not have found that there was a valid, full and complete contract in existence.

The cases are uniform and are so elementary as not to require citation that where a married woman is not a party to the contract for the sale of lands and where the complainant does not prove that there was fraud or coercion on the part of the husband in having her refuse to sign the deed, there cannot be either abatement of the purchase price or a bond of indemnity required. These were obviously the facts in this case.

The learned Vice-Chancellor evidently based his conclusions and decree upon the theory of the law under the statute concerning dower; that when Mrs. Hamilton joined with her husband in a deed of conveyance with their trustee, Bell, she released her dower so that it could not be restored. The leading cases on this subject, *Boorman v. Tucker*, 51 Eq. 135; *Den v. Johnson*, 18 Law page 87; do not deal directly with this subject.

The question of the release of dower in them is only collateral to their main issue. It is settled law that a married woman has dower in any estate of inheritance of her husband or any estate in any other to his use and consequently that her dower remains in any estate held by a trustee.

Mershon v. Duer, 40 N. J. Eq. 333;
Yeo v. Mercereau, 18 N. J. Eq. 387;
Radley v. Radley, 70 Eq. 248;
Cushing v. Blake, 30 Eq. 689;
Brown v. Brown, 82 Eq. 40.

The question therefore is, it being admitted that Mrs. Hamilton had her dower in the lands when held by Bell and had a right to enforce that dower by appropriate action: *Radley v. Radley*, 70 Eq. 248, was it extinguished to the benefit of the complainant Kotok, or was it always present?

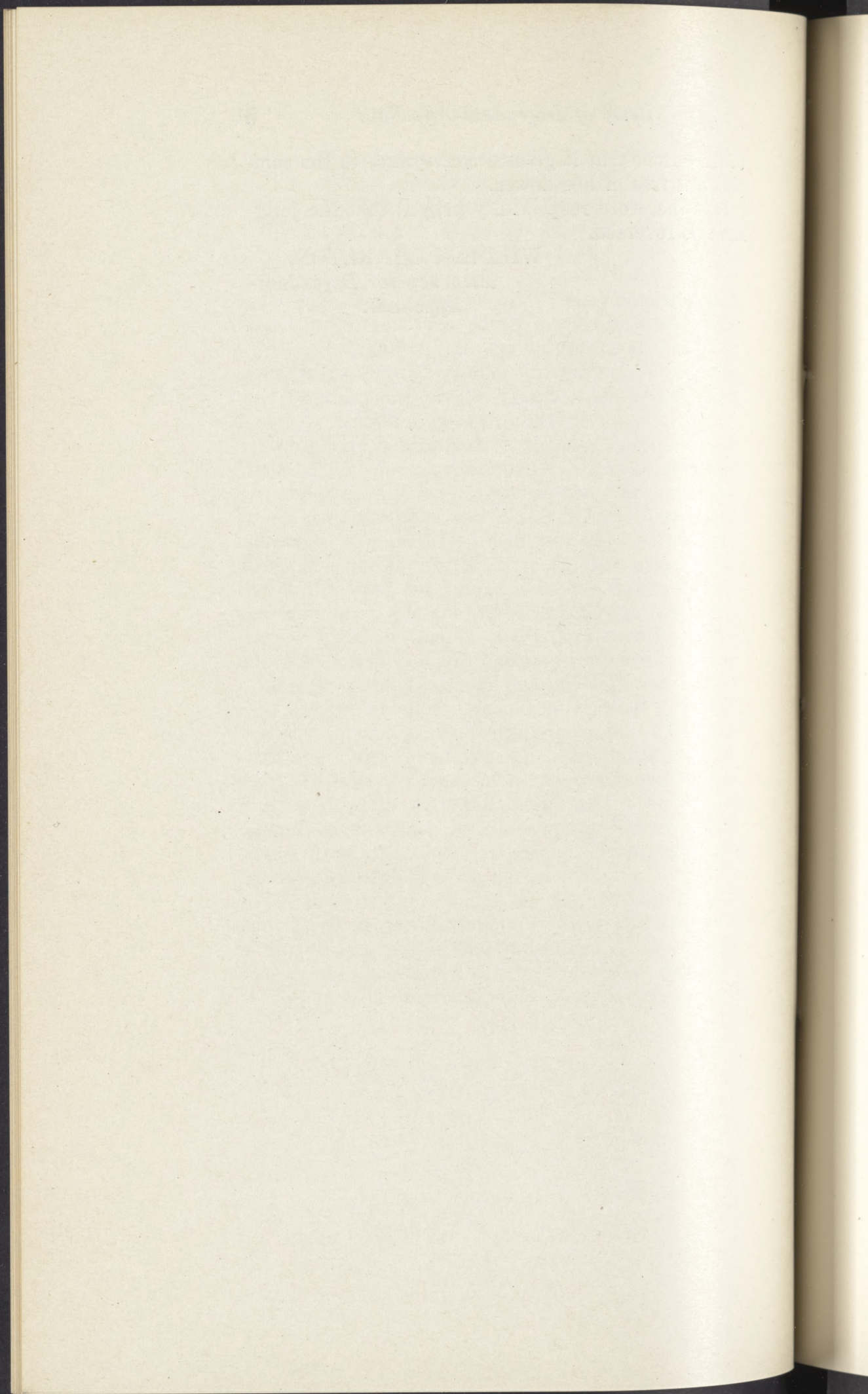
Kotok was a stranger to the deed made by her husband and her to the trustee. It is argued that he cannot acquire any rights in the transaction between the Hamiltons and Bell, for certainly no consideration was paid for them, nor did he suffer any detriment thereby. And it is further argued that the statute was not intended to bar dower in such circumstances, the intent being only to provide a way in which a woman could permanently release and bar her dower, so that some method would be provided whereby persons dealing with her directly as a contractual party, would be secured in accepting her solemn agreement under seal. The cases cited above and relied upon has established the principal that she is barred of her dower, none of them dealing directly with this point and were decided upon facts in which to allow her dower to remain would practically have imposed a fraud upon the persons who relied upon her act.

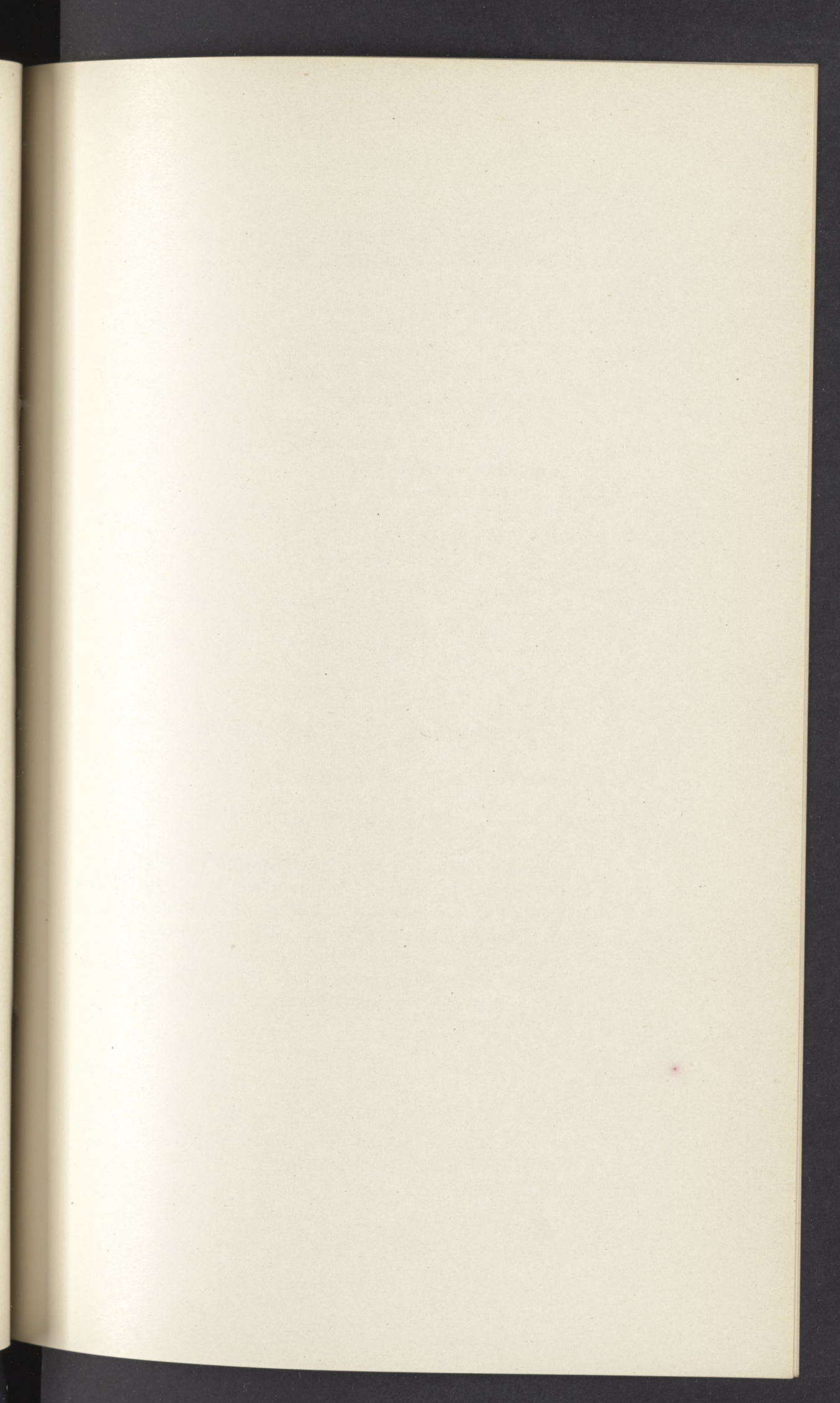
The policy of the Courts has always been to safeguard and protect a woman's dower and to extend it as far as possible and it is argued that in this case Mrs. Hamilton's dower should be conserved to her and the decree should be reversed at least

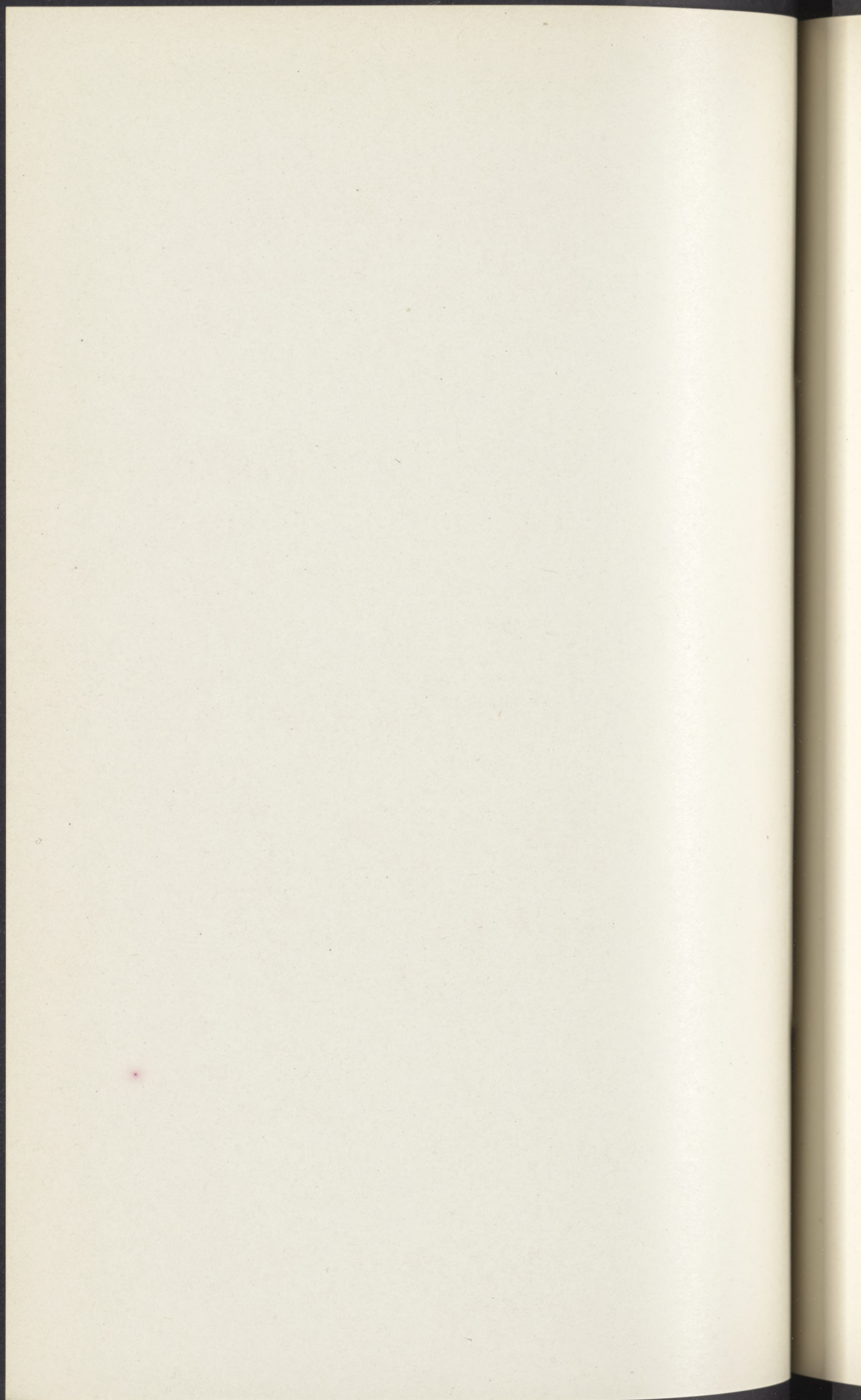
to the extent that it gives a conveyance to the complainant free of her dower.

It is therefore respectfully prayed that the judgment be reversed.

WILLIAM CHARLTON,
*Attorney for Defendant-
Appellant.*







NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between
DAVID KOTOK,
Complainant-Respondent,
v.
WILLIAM HAMILTON, *et al.,*
Defendant-Appellants.

ON APPEAL.

ON BILL, ETC.

BRIEF OF COMPLAINANT-RESPONDENT.

STATEMENT OF FACTS.

This is an appeal from a decree of specific performance of a contract for the sale of lands.

The material facts, not in dispute, are as follows:

On August 20, 1925, the defendant, William Hamilton, being the owner of the lands, signed and, through his broker and agent, delivered a written contract to sell to complainant at \$6000.00. (See

Bill, paragraphs 1 and 2, Case, pages 1 and 2 and contract attached, Case, page 5 and admission in defendant, William Hamilton's answer, Case, page 7, paragraphs 1 and 2.)

Defendant, Margaret F. Hamilton, was the wife of William Hamilton. She was not a party to the agreement and did not join in its execution. The contract was recorded in Cape May County clerk's office, being the county where the lands were located, on September 4, 1925. (See pleadings and Case, page 15.) Six hundred dollars (\$600.00) was paid by complainant and the balance was to be paid on November 20, 1925, upon delivery of title. Before settlement, William Hamilton executed a deed in which his wife, Margaret F. Hamilton, joined, conveying legal title to the defendant, William Bell, and gave notice that he would not carry out the contract with complainant. This deed was recorded on November 10, 1925. (See paragraph 5 of Bill and admissions paragraph 5 of Answer, Case, pages 2 and 8, also admission of counsel, Case, page 18 and testimony of defendant, William Hamilton, Case, pages 24 and 25.) Concededly, Hamilton, who was the owner of the land at the time he contracted to sell, transferred the legal title to his friend, William Bell, to hold for him and Mrs. Hamilton joined with him in making this conveyance, thereby releasing her inchoate right of dower and placing the absolute legal title in the defendant, William Bell.

Complainant was ready, able and willing to carry out the agreement (Case, page 16) at all times and after title was refused filed his bill in equity to compel specific performance which has been accordingly decreed, and from which decree the appeal is taken. The decree directs the defendant, William Bell, to execute and deliver a deed of conveyance to com-

plainant upon receipt of payment of the balance of the purchase price to be paid to him as agent and trustee for Hamilton or to Hamilton direct (Case, pages 71 and 72).

The contract was prepared by a Mrs. Blake, who acted as broker in the sale. It was first executed by Hamilton in duplicate at his home in Philadelphia and entrusted to Mrs. Blake. She had taken a binding deposit from the complainant and she gave Hamilton her check for \$300.00 and a receipt for \$300.00 brokerage at the time of signing and took the contracts back to Wildwood where they were executed by complainant and later one copy was sent by her to Hamilton (Case, pages 45 and 46).

Mrs. Blake testified that Hamilton promised to come to her office with his deeds, etc., but instead he tried to return the deposit and cancel the contract. Kotok would not consent to cancellation so she had her check certified and delivered it to Hamilton's lawyer, who still held the certified check at the time of final hearing.

Concededly, Kotok had paid the \$600.00 and the contract had been duly executed by Hamilton and delivered to him. Concededly Mrs. Blake was Hamilton's agent and broker in the transaction. He had authorized her to sell his property first at \$3500.00, which price was suddenly advanced to \$5000.00, thence to \$5500.00 and then to \$6000.00 at which price the sale was made. All these facts and circumstances were admitted by Hamilton but he testified that after executing the agreement, he had instructed his agent, Mrs. Blake, to secure his wife's "sanction and signature" before delivery, all of which was denied by Mrs. Blake who testified that nothing was said about securing Mrs. Hamilton's signature or consent (Case, pages 48 and 49).

A reading of all the testimony will show that this contention on the part of Hamilton was mere subterfuge. After offering to sell at \$3500.00 and finally selling at \$6000.00 on a rising market, he concluded that he had sold too soon and by hook or by crook sought to avoid carrying out the contract, even to the extent of making a fraudulent deed after failing to secure a cancellation.

The most that could be said in favor of appellants on this feature of the case is that the evidence before Vice-Chancellor Ingersoll was conflicting and he rejected appellants' contention.

No doubt Hamilton and his wife tried to defeat the legal effect of his contract but the Vice-Chancellor has found against them on the disputed question of fact and it is elementary that under such circumstances the decree will not be disturbed by this court.

POINT 1.

THE DEFENDANT, MARGARET F. HAMILTON, HAVING JOINED IN A FRAUDULENT CONVEYANCE TO THE DEFENDANT BELL, THEREBY RELEASED HER IN CHOATE RIGHT OF DOWER AND IS BARRED FROM ALL FURTHER CLAIMS AGAINST THE PROPERTY.

Boorum v. Tucker, 51 N. J. Eq. 135;

Campbell v. Weber, 79 N. J. Eq. 518, affirmed by this Court on opinion below at 80 Eq. 553;

Goodheart v. Goodheart, 63 N. J. Eq. at 752;

Saldutti v. Flynn, 72 N. J. Eq. 157;

Dey v. Allen, 77 N. J. Eq. 522 at 525.

The facts in the case of *Saldutti v. Flynn*, above cited, are practically the same as in the case at bar. At page 161, discussing this point, the following language is employed:

“The deed to the Napuranos, being executed and acknowledged by both husband and wife, also passed to them the lands free of Mrs. Flynn’s inchoate right of dower, and if they now convey the lands to complainant the complainant will receive from them a title free from the inchoate dower. Complainant could not have compelled Mrs. Flynn to convey her interest, as the agreement, although signed, was not acknowledged under the statute. And Mrs. Flynn, not being bound in any way by the agreement, was entitled to bargain for the sale of her inchoate right of dower as her own property. By the conveyance to the Napuranos this estate is in fact released and discharged altogether, and their conveyance to complainant would convey the property free from this encumbrance; which they have discharged by a purchase and conveyance from the wife.”

Since Mrs. Hamilton did not join her husband in making the contract she could not have been compelled to convey, but having joined her husband in the conveyance to the defendant, Bell, she has released her inchoate right of dower and is barred from all further claims.

The leading case of *Den v. Johnson*, 18 N. J. Law 87, deals with the point directly and the language employed in that decision is quoted with approval in *Boorum v. Tucker*, 51 N. J. Eq. at page 148. It seems the wife had joined her husband in making a conveyance of land in fraud of creditors. In an

action in ejectment against the fraudulent grantee the wife was called as a witness. Quotations from the opinion appear at page 148 (*Boorum v. Tucker*) are squarely in point:

“Justice Dayton (at page 90) uses this language:

“ ‘It was said on the argument that she was swearing in behalf of her own dower. But how? The verdict could not affect that question directly or indirectly. The object of her evidence was to show that the deed to Johnson was without consideration and therefore void as against creditors—not as against the grantors; as to them it was perfectly valid in any event, and her dower was unquestionably gone,’ citing authorities.

“And Chief Justice Hornblower (at page 97) says:

“ ‘If she proved the deed fraudulent as to creditors, she did not thereby restore her husband’s title to the land nor her own right of dower. As against her husband and herself, the deed would remain, both at law and in equity, a perpetual bar.’ ”

Goodheart v. Goodheart, supra, is squarely in point, at page 752 the Court says:

“In all cases where husband makes conveyance to a trustee, to sell and wife joins in deed, so as to bar her dower * * * a conveyance by the trustee * * * consequently must extinguish the dower.”

POINT 2.

THE DECREE IS SUSTAINED BY THE EVIDENCE AND SHOULD BE AFFIRMED.

Suits of this nature are so common in the Court of Chancery that it seems unnecessary to discuss the elementary rules covering such litigation.

Concededly, the contract sued upon was duly executed and delivered. The argument of the defendants that the contract was not to be valid until it had been approved and signed by Mrs. Hamilton is not tenable under the evidence. Defendant, William Hamilton, who owned the property admits that he signed the contract at the request of Mrs. Blake who acted as agent. She gave her check for \$300.00 and a receipt for \$300.00, brokerage which was allowed to her by Hamilton, thus making up the initial deposit of \$600.00 acknowledged by the contract. All of the evidence indicates that Mrs. Blake was acting as broker for Hamilton, otherwise, why did he pay her a commission? It is conceded that the contracts were entrusted to Mrs. Blake who delivered the same to complainant. If she was defendant's agent, her actions bound him and the delivery of the contract by Mrs. Blake was in law the same as if it had been delivered by Hamilton in person. On the other hand, if it can be construed, as argued by defendants, that Mrs. Blake was complainant's agent, then the delivery of the contract by Hamilton to Mrs. Blake as complainant's agent was in law the same as though he had delivered it to complainant.

Defendants' contention that the contract was not to be valid unless approved and signed by Mrs. Hamilton as a pure question of fact asserted by Mr. Hamilton and denied absolutely by Mrs. Blake.

At page 44 of the case, Mrs. Blake testifies:

“Q. Did Mr. Hamilton say to you, at that time, that he would sign the contract but it wouldn't become effective unless you secured Mrs. Hamilton's signature?

A. No, Mr. Hamilton didn't say that.

Q. Was anything said about securing Mrs. Hamilton's signature?

A. Nothing at all,” etc.

Mrs. Blake was cross-examined on the point and reiterated her direct testimony that nothing was said about securing Mrs. Hamilton's signature (Case, page 48).

Vice-Chancellor Ingersoll heard the witnesses testify and had an opportunity of observing their manner and judging which was most worthy of belief. The fact that Mrs. Hamilton was not named as a party to the contract indicates that there was no thought of making her a party or securing her consent and the further fact that she later on released her inchoate right of dower at her husband's request indicates that she was perfectly satisfied to permit him to deal with the property as he saw fit.

It is respectfully submitted that the decree is amply sustained by the evidence and all the surrounding circumstances and it should be affirmed with costs.

MORRIS V. McDONALD,

*Solicitor and of Counsel with
Complainant-Respondent.*

