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Bill of Complaint.

(Filed January 22, 1926.)

In Chancery of New Jersey 10

Between <div style="text-align: center;"> CHARLES HOBELMAN, Complainant, and LORENZO CAVALLO and MATILDA CAVALLO, Defendants. </div>	}	On Bill, &c.
		20

To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey:

The complainant Charles Hobelman, residing in the Township of Rivervale, County of Bergen and State of New Jersey respectfully shows that:

1. On or about the twenty-fifth day of January, 1924, defendant Lorenzo Cavallo became seized in fee-simple of certain premises by virtue of deed recorded in Book 1242 of Deeds for Bergen County pages 457, etc.; which land and premises are situated in the Borough of Old Tappan, County of Bergen, State of New Jersey, bounded and described as follows: 30

“Beginning at the northwest corner of Tappan Run Brook in the middle of Public Road leading from Tappan to Westwood, thence westerly along the middle of the said 40

Bill of Complaint.

road to the northeast corner of land of Jacob Amos thence south thirty degrees east, eight chains thirty-five links to the land of Wilbur Eckerson, thence north eighty degrees east, thirteen chains ten links to a large whitewood stump at the aforesaid brook; thence along said brook upstream to the place of BEGINNING.”

10

2. On the seventeenth day of September, 1925, Lorenzo Cavallo and Matilda Cavallo entered into a certain contract in writing, a true copy of which is hereunto annexed and made a part thereto, whereby they agreed to convey to complainant for the sum of three thousand five hundred dollars (\$3,500.00) by deed, on or before October 1st, 1925, so much of the foregoing described premises as is contained and embraced within the following description.

20

“ALL the easterly situated property divided by line from a point eight feet east of chichen house on farm and running parallel to westerly line of land held now by Lorenzo Cavallo and described in deed as line running from Tappan to Westwood road south thirty degrees east eight chains and thirty-five links.”

30

Said contract, after its execution, was duly acknowledged.

3. The sum of fifty dollars (\$50.00) as part of the consideration for said lands and premises to be conveyed, was duly paid by complainant to said Lorenzo Cavallo and Matilda Cavallo, upon the execution and delivery of said contract.

40

Bill of Complaint.

4. The lands mentioned and described in the aforesaid contract of sale, consisted of a tract of land of twelve acres, more or less, fronting on Old Tappan Road, County of Bergen and State of New Jersey

5. The said Matilda Cavallo is the wife of Lorenzo Cavallo, and both are of full age.

10

6. Complainant is desirous of obtaining a conveyance of the lands and premises contracted to be conveyed to him as aforesaid.

7. The said Lorenzo Cavallo and Matilda Cavallo have refused and still refuse to convey to complainant the lands and premises contracted to be conveyed to him as aforesaid for no reason whatsoever.

20

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

a. The said Lorenzo Cavallo and Matilda Cavallo who are the defendants in this suit may answer this complaint and each statement therein made.

b. That the said Lorenzo Cavallo and Matilda Cavallo may be decreed specifically to perform the said agreement entered into by them with complainant on the 17th day of September, 1925, aforesaid, the complainant tendering himself ready and willing and hereby offering specifically to perform the said agreement on his part pursuant to the terms thereof.

30

c. That a writ of subpoena may issue commanding the said defendants to answer this complaint and to abide by the decision of this Court.

40

CHARLES STOCKDELL GRAY,
Solicitor for and of Counsel
with Complainant.

Bill of Complaint.

Old Tappan, September 17th, 1925

Received from Chas. Hobelman, \$50.00 deposit for property owned now by Lorenzo Cavallo, Old Tappan, Bergen County, N. J. and described as follows:

10

“All the easterly situated property divided by line from a point 8 ft. east of chicken house on farm and running parallel to westerly line of land held now by Lorenzo Cavallo and described in deed as line running from Tappan to Westwood Road south thirty degrees east eight chains and thirty-five links.”

20

Price of land is \$3500.00 net, payable \$50.00 on the signing of this receipt and \$50.00 on the signing of the contract on or before October 1, 1925. On passing of title, seller agrees to accept \$400.00 in cash and a 3 Year mortgage of \$3000.00 (Three Thousand Dollars) bearing 6% interest.

Signed:
LORENZO CAVALLO
MATILDA CAVALLO

30

CHAS. J. CARLSEN
H. ALLENBORN
P. S.

The seller has the use of barn until April 1st, 1926

40

Answer of Defendant Lorenzo Cavallo.

(Filed March 15, 1926.)

IN CHANCERY OF NEW JERSEY.

Between

CHARLES HOBELMAN,
Complainant,

and

LORENZO CAVALLO and MATILDA
CAVALLO,
Defendants.

On Bill, &c.

10

The answer of the defendant Lorenzo Cavallo. The defendant, Lorenzo Cavallo, answering the bill of complaint, says that: 20

1. Paragraph 1 is admitted.
2. Paragraph 5 is admitted.
3. Paragraph 2 is denied.
4. Paragraph 3 is denied.
5. Paragraph 4 is denied.
6. This defendant has no knowledge or information, sufficient to form a belief, as to the statements in Paragraph 6. 30
7. This defendant has no knowledge or information, sufficient to form a belief, as to the statements in Paragraph 7.

This defendant, by way of answer in lieu of plea, says that specific performance should not be decreed herein: 40

Answer of Defendant Lorenzo Cavallo.

1. Because said alleged contract is uncertain and incomplete and as to material incidents is left to be ascertained by subsequent negotiations.

10 2. Because the alleged contract is with reference to lands, tenements or hereditaments or some interest in or concerning them and it does not appear that the parties have concluded their alleged agreement to warrant this Court in decreeing specific performance.

By way of counterclaim against the complainant, the defendant says:—

20 1. This defendant realleges the matters hereinbefore stated to the same effect as if they were realleged.

2. That the execution of the instrument purporting to be a contract, and annexed to and made a part of complainant's complaint, was obtained from this defendant by fraud and without any consideration therefor.

This defendant therefore prays:

30 1. That the instrument dated September 17th, 1925, a copy of which is annexed to and made a part of the complainant's complaint, be adjudged to be null and void and of no effect.

2. That the said complainant may be decreed to have no estate, interest or right in or encumbrance upon the lands described in the bill of complaint or any part thereof.

FRED W. MATTOCKS,
Solicitor for Defendant,
Closter, N. J.

Answer of Defendant Matilda Cavallo.

(Filed March 15, 1926.)

IN CHANCERY OF NEW JERSEY.

Between

CHARLES HOBELMAN,
Complainant,

and

LORENZO CAVALLO and MATILDA
CAVALLO,
Defendants.

} On Bill, &c.

10

The answer of the defendant Matilda Cavallo.
The defendant, Matilda Cavallo, answering the
bill of complaint, says that: 20

- 1. Paragraph 1 is admitted.
- 2. Paragraph 5 is admitted.
- 3. Paragraph 2 is denied.
- 4. Paragraph 3 is denied.
- 5. Paragraph 4 is denied.

6. This defendant has no knowledge or information, sufficient to form a belief, as to the statements in Paragraph 6. 30

7. This defendant has no knowledge or information, sufficient to form a belief, as to the statements in Paragraph 7.

This defendant, by way of answer in lieu of plea, says that specific performance should not be decreed herein:

Answer of Defendant Matilda Cavallo.

1. Because said alleged contract is uncertain and incomplete and as to material incidents is left to be ascertained by subsequent negotiations.

10 2. Because the alleged contract is with reference to lands, tenements or hereditaments or some interest in or concerning them and it does not appear that the parties have concluded their alleged agreement to warrant this Court in decreeing specific performance.

20 3. Because the statutes require every agreement for the sale of lands, tenements or hereditaments or any interest in or concerning them to be in writing, and that no estate or interest of a *feme covert* therein shall pass by her deed or conveyance without a previous acknowledgment and a certificate thereof written on or under or annexed to said deed or conveyance and signed by the officer before whom it was made and the alleged agreement set out in the bill of complaint does not comply with the provisions of the Statutes of this State.

By way of counterclaim against the complainant, the defendant says:—

30 1. This defendant realleges the matters herein before stated to the same effect as if they were realleged.

2. That the execution of the instrument purporting to be a contract, and annexed to and made a part of complainant's complaint, was obtained from this defendant by fraud and duress and without any consideration therefor.

This defendant therefore prays:

40 1. That the instrument dated September 17th, 1925, a copy of which is annexed to and made a

Replication and Answer to Answer and Counterclaim of Lorenzo Cavallo.

part of the complainant's complaint, be adjudged to be null and void and of no effect.

2. That the said complainant may be decreed to have no estate, interest or right in or encumbrance upon the lands described in the bill of complaint or any part thereof. 10

FRED W. MATTOCKS,
Solicitor for Defendant,
Closter, N. J.

Replication and Answer to Answer and Counterclaim of Lorenzo Cavallo.

(Filed Sept. 30, 1926.)

IN CHANCERY OF NEW JERSEY. 20

Between

CHARLES HOBELMAN,
Complainant,

and

LORENZO CAVALLO and MATILDA
CAVALLO,
Defendants. 30

} On Bill, &c.

Complainant by way of replication to the answer of the defendant, Lorenzo Cavallo, says that:

1. Complainant joins issue on the answer of said defendant.

2. He denies the affirmative allegations of the answer.

3. He denies that said contract set forth in the complaint is uncertain and incomplete. 40

Replication and Answer to Answer and Counterclaim of Matilda Cavallo.

2. He denies the allegations of the counterclaim.

OBJECTIONS IN POINT OF LAW.

10 Complainant objects to the counterclaim and on the final hearing will move to strike it out on the following grounds:

1. It fails to set forth the alleged fraud or duress therein pleaded as a conclusion.

2. Said alleged counterclaim is not in fact a counterclaim and does not set forth any cause of action against the complainant.

20 3. Said counterclaim fails to ask for any relief with respect thereto and in its nature does not set forth sufficient facts for relief of any kind.

CHARLES STOCKDELL GRAY,
Solicitor for Complainant.

30

40

Testimony.

IN CHANCERY OF NEW JERSEY,

Between

CHARLES HOBELMAN,
Complainant,

and

LORENZO CAVALLO and MATILDA
CAVALLO,
Defendants.

10

Transcript of testimony taken in the above entitled cause before his Honor, Alonzo Church, Vice-Chancellor, at the Chancery Chambers, Newark, New Jersey, in the presence of Collins & Corbin (by Charles Stockdell Gray; Mr. Newton of counsel) for complainant; F. W. Mattocks for defendant.

20

Mr. Newton: I offer in evidence the contract in the suit dated September 17, 1925, to which is annexed an acknowledgment.

Mr. Mattocks: I object to that as not having been properly proven. There is no evidence before this Court and we denied the execution of the paper in our answer.

30

The Court: It has to be proved then.

Mr. Newton: Under Section 22, the act respecting conveyances, it is evidence without proof.

40

Testimony.

The Court: Has it an acknowledgment?

Mr. Newton: Yes, sir.

The Court: Oh, I didn't understand it had been acknowledged.

Mr. Newton: It does not preclude him, of course; he has the right to attack it.

10 Mr. Mattocks: Your Honor please, in the complaint there is no allegation in the complaint that a certified acknowledgment was passed to that receipt.

Mr. Newton: The allegation is that the contract, after its execution, was duly acknowledged.

The Court: I will admit it.

20 Mr. Mattocks: If your Honor please, I would like to take an exception, based on a long line of decisions of this State, that the certificate must be attached to the acknowledgment, to the paper acknowledgment; not only that it is acknowledged, but the certificate must be attached. Now, there is no allegation in the bill in this case that the certificate was attached to the acknowledgment. I therefore say it is irregular to allow any proof of the certificate being attached to this acknowledgment.

The Court: "Certificate," what do you mean by that?

30 Mr. Mattocks: Certificate of acknowledgment.

The Court: Well, there is a certificate.

Mr. Mattocks: Yes; but they did not allege that in the bill. They simply say that the instrument was acknowledged. Now, there is a long line of cases in this state on that.

Mr. Newton: Duly acknowledged. Of course, the papers speak for themselves.

40 Mr. Mattocks (continuing): Which say that a certificate must be attached, the certificate of ac-

Charles Hobelman, direct.

knowledge. There is no allegation in this bill that a certificate is attached to this acknowledgment.

The Court: Well, it now appears that it is attached, doesn't it?

Mr. Mattocks: There is no allegation in the bill. 10

The Court: Well, all right. If that is necessary, we will amend the bill and have it say that.

Mr. Mattocks: I will take an exception.

The Court: You don't have to take an exception in Chancery.

(Paper marked Exhibit C-1.)

CHARLES HOBELMAN, sworn for the complainant.

Direct examination by Mr. Newton:

20

Q. Are you the complainant in this case, Mr. Hobelman? A. Yes, sir.

Q. Where do you live? A. Harrington Park.

Q. Do you recall the occasion on ~~January 25,~~ ^{September 17,} 1924⁵, when you agreed with the defendant Lorenzo Cavallo to purchase this property? A. Yes, sir.

Q. Had you known him before that time? A. No.

Q. Tell us how you came in there, into the transaction. A. Well, that morning I went over to his office and we talked about buying property and so we got in the car and went along to Tappan Avenue, and first we bought a place, a little further, and went to Tappan Road, whatever they call it, and we seen a sign "This place for sale." 30

Q. And you saw a sign "This place for sale"? A. "For Sale," yes, sir.

Q. And what did you do when you saw that sign? A. Well, Mr. Carlsen first got out the car.

Q. Who was with you at that time? A. Mr. Carlsen and Alleborn. 40

Charles Hobelman, direct.

Q. You got out of the car? A. Yes, sir.

Q. What did you do? A. The men, then, as far as I remember, was out in the yard.

10 Q. By "the man" you mean the defendant, Cavallo? A. Cavallo, yes, sir; I asked him he was Cavallo and he says, "Yes," and Mr. Carlsen asked if he want to sell and he said, "Yes," and he went around and showed us what he wanted to sell, a certain part of his land, excluding buildings.

Q. Excluding buildings, what do you mean, his house? A. He wanted to keep that, yes.

Q. All right; did you agree on that price? A. He asked the price. I guess it was thirty-six hundred, what he asked.

20 Q. You paid him what he asked? A. I think so, pretty near.

Q. Well, the price is thirty-five hundred net. A. Yes, I guess he might have asked thirty-six hundred. I can't remember exactly.

Q. Then what did you do, after you agreed on the price? A. We went—he showed us the line where he wanted to sell and there was a certain way by a chicken house and he wanted to keep that side of the chicken house and all the eastern part of that he was going to sell.

30 Q. And then, afterwards, this agreement, Exhibit C-1, was drawn? A. He went in the house afterwards.

Q. Who wrote this agreement out? A. I think, Mr. Alleborn.

Q. Look at it. A. Yes; Mr. Alleborn's writing, I know that.

40 Q. Now, I show you a check, or what purports to be a check, dated September 17, 1925, to the order of Lorenzo Cavallo for fifty dollars, and ask you if that is your signature. A. Yes, this is mine, yes; that is what I wrote out.

Charles Hobelman, direct.

Q. To whom did you give that check? A. To Mr. Cavallo and Mrs. Cavallo, both were there.

Mr. Newton: I offer the check in evidence.

Mr. Mattocks: No objection.

(Check marked Exhibit C-2.)

10

Q. I show you letter dated September 24, 1925, purporting to be written by Joseph T. Egan, an attorney, to Charles Hobelman, Esq., Harrington Park, New Jersey, together with its accompanying envelope, and ask you if you received that letter? A. Yes, sir.

Q. When did you receive it? A. When? What do you mean? I guess, the next day.

Q. You received it, shortly after this date? A. Yes.

20

Mr. Newton: I offer that in evidence.

Mr. Mattocks: I object to it. Not binding on the defendant.

The Court: I will receive it for what it is worth.

(Letter marked Exhibit C-3.)

Mr. Newton: The letter, I think, I ought to read so you can get the continuity of it.

The Court: Very well.

30

Mr. Newton: Your Honor please, it is dated September 24, 1925. "Charles Hobelman, Esq., Harrington Park, New Jersey. Dear Sir: I am enclosing herewith your check to Lorenzo Cavallo, of Old Tappan, New Jersey. He has no intention, nor has his wife, to go through with your real estate project, which he tells me he does not understand and of which you left him no written memorandum. I would suggest in

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Charles Hobelman, cross.

such case that you take along an interpreter. Very truly yours, J. T. Egan."

Q. Was this check received in that letter, Mr. Hobelman? A. Yes; that was in the letter.

10 ✓ Q. Now, then, after you got this letter, what did do? A. I went right to the office of Carlsen, Tappan, and he telephoned, I think, for Mr. ~~Newton~~^{GRAY}. I can't exactly say—and I went up to Mr. ~~Newton~~^{GRAY} and gave him that letter, because the statement in the letter made me kind of mad.

✓ Q. All right. You gave Mr. ~~Newton~~^{GRAY} the letter. Then what did you do after that? A. And told him to go ahead and stop that thing and fight for it.

Q. Did you go down and see Cavallo after that? A. No; I never was near the house.

20 Q. And has Cavallo ever tendered you any deed? A. Not at all.

Q. For the property. Have you been ready, willing and able to pay the balance due under the contract? A. At any time it was ready, yes.

Mr. Newton: Cross examine.

Cross examination by Mr. Mattocks:

30 The Court: How long after the agreement was signed was the letter sent?

Mr. Newton: Seven days after.

The Court: All right; cross examine.

Q. Who was present when that paper was signed? A. Mr. Carlsen, Mr. Alleborn and Mr. Cavallo and Mrs. Cavallo and I, of course, was there too, but I didn't bother Mr.—about writing the paper.

40 Q. What did you see done, at the time this paper was—what did you see while you were present—

Charles Hobelman, cross.

where was it, at their home? A. At their home, in the room.

Q. Will you kindly tell the Court what you actually saw, the time you were there in their home? What was done? A. Well, I don't understand. What do you mean "what was done"? 10

The Court: Well, he wants to know what he said and what they said.

Q. I want to know exactly what was done by Mrs. Cavallo and Mr. Cavallo. A. I will tell you: I didn't understand a word, and, of course, I didn't bother at all after that; the papers was made out.

Q. My question was, what was said? A. I heard, but didn't know what was said. 20

Q. Was Mrs. Cavallo there when this paper was drawn up? A. Yes, sir.

Q. Was she present at the time this paper was drawn up? A. In the room?

Q. In the room. A. I don't know—she was in the room all the time, as far as I know.

Q. Was she out in the yard? A. If she was out in the yard, I can't remember exactly, no, no.

Q. Didn't she say she didn't want to sell the property? A. She didn't say anything in English; she might have said it in Italian. 30

Q. Did she make a demonstration against signing any paper? A. No. She was asked specially if she was willing to sign and she signed and she said, "Yes".

Q. I thought you said she couldn't talk English. A. She could talk that; she said, "Yes" and she signed.

Q. Where was she when she stated she would sign the paper? A. In the room. 40

Charles Hobelman, cross.

Q. Didn't you go outside in the yard to get her to sign the paper? A. I went in the room.

Q. You didn't go out of the room? A. No. I was in the room. I didn't bother about signing—about writing the papers.

10 Q. Will you kindly tell what occurred in the room? A. What occurred? I don't get you right.

Q. Will you kindly tell the Court—

The Court: What happened?

20 Q. What was said? What happened in the room, when this paper is drawn up? Just tell us; recite to the Court what you saw done and what you heard; tell us. A. We first was outside and Mr. Cavallo showed us the line he wanted to sell and then we went in the room to make out the papers and Mr. Alleborn wrote out the paper.

Q. Eh? A. Mr. Alleborn wrote out the paper. I was sitting alongside on the back. They even brought inside some apple cider or some kind of wine and treat us.

Q. When this paper was written out; you say it was written out? A. Yes.

Q. You saw it written out? A. Yes; I was sitting right here but I didn't watch it.

30 Q. Yes, that is so. You saw somebody writing out a paper, but you don't know what was in it. A. That was this particular paper; I seen that.

Q. You saw this paper being written out? A. That same paper; yes. I can swear to that one hundred times.

Q. Mr. Alleborn wrote that out? A. Sure; right there at the table where we were sitting.

40 Q. All right; then what next occurred after he wrote this out? Tell us what occurred. A. Mr. Cavallo signed and he talked to his wife and she signed it too.

Charles Hoelman, cross.

Q. I see. Then what occurred next? A. They brought some wine, or something to drink, and we had a glass of wine. Everybody seemed to be happy.

10 Q. I want you to tell the Court everything that was said and everything that was done; I don't want you to leave out anything. We are not interested in the wine.

The Court: Well, you asked him what happened next. He said they had wine.

Mr. Mattocks: All right.

20 Q. Just tell us everything that occurred. A. I don't know anything else that occurred. They talked and talked; there was some talking and we had a friendly talk and we drank and was happy and went home afterwards.

Q. All you saw Mrs. Cavallo do was to sign this paper? A. To sign this paper; yes. As far as I know, she was very willing to sign it.

Q. And that is all you saw or heard? A. That was pretty near all I saw.

Q. And where was Mr. Carlsen at this time; was he in the room? A. He was in the room too.

30 Q. Well, was he sitting beside you? A. I don't know whether it was the same side or the other side; that I can't say no more.

40 Q. Did you hear everything that went on in the room, all the conversation? A. As far as I—I didn't pay much attention to the conversation, because I was sitting by myself smoking a cigar. They wrote out the papers right near me, and, as far as I know, Mr. and Mrs. Cavallo talked Italian amongst themselves and only a few words of English or so, so they asked us to say yes or no, or whatever there was.

Charles Hobelman, cross.

Q. So is this the only paper that you saw drawn up? A. No; they drew up two papers as far as I know.

10 Q. They wrote out two papers? A. Mr. Carlsen and Mr. Alleborn; Mr. Alleborn wrote one and Mr. Carlsen another one.

Q. Now, you say there was nothing more done than the writing out of this paper? A. Yes; there was another paper wrote out.

Q. Another paper. A. Yes.

Q. What happened to that other paper? A. Mr. Carlsen and Mr. Alleborn took care of the paper. All I wrote out was the check.

20 Q. So you don't know anything about anything else? A. I was going to buy the property together with him.

Q. I see. Did you know exactly where the lines of this property were? A. Yes. Eight feet east of the chicken barn; we was out there and he was going to have it removed and we were going to give him another eight feet of road. It was understood. It was understood that he was to use the barn until the first of April; the barn was over the line.

30 Q. And how were you going to find out exactly where the barn was—where the line was? A. Well, you can find out by surveying.

Q. Were you going to have it surveyed? A. Surveyed. I was over the next day; I went over to the surveyor's office in Westwood, Hering and Westphal, and they had the survey right there, made for the title company only a little while ago before that.

40 Q. I see. So you were going to have it—(interrupted). A. And he showed me that right in the office and we was going to send a surveyor

Hans Alleborn, direct.

over, and, in the meantime, this letter came. We were going to have it surveyed right the next week.

10 Q. You were going to have it surveyed? A. In fact, I guess you can ask Mr. Westphal that I gave him orders to go over and have it surveyed.

Q. So you were going to have the line surveyed? A. Yes, sir.

Q. So as to find out where the line was? A. Yes, sir; how it ran. I know where the line was. It was eight feet east of the chicken house exactly. That was the understanding we had with the man when we bought.

20 Q. You were going to have the line surveyed to find exactly where you were going to have it go? A. I guess if you are going to have it surveyed it is to find out exactly where the line is.

Q. So the description could be put in the contract; is that so? A. Before we took title we would have to survey, sure.

Q. Weren't you going to have a contract drawn up? A. A contract drawn up, as far as I know.

Q. Did you read this paper when you signed it? A. Yes, sir.

30 Q. You notice it says in here, "Contract to be signed on or before October 1st, 1925"? A. Yes, sir. Well, that was the regular contract.

Q. I asked you if you saw it.

The Court: What is the date of it?

Mr. Mattocks: September 17, 1925.

(Discussion.)

The Court: The paper speaks for itself.

HANS ALLEBORN, sworn for the complainant.

40 *Direct examination by Mr. Newton:*

Q. Where do you live, Mr. Alleborn? A. Harrington Park.

Hans Alleborn, direct.

Q. And you recall an occasion on September 17, 1925, when you visited the home of Mr. Cavallo?

A. Yes, sir.

Q. And who were you with at that time? A. Mr. Carlsen, Mr. Hobelman.

10 Q. Tell us how you came to go there. A. Well, Mr. Hobelman came down to the office that morning on account of the business, you know, going on, buying acreage, the acreage boom.

Q. Then you went out? A. We went out together and we —

Q. Never mind what you did before, but how did you come to go to this man? A. We passed by the store and there was a sign on the fence.

20 Q. What does it say on the fence? A. The sign said, "For Sale," but I think it said more about a seven-room house for sale when Mr. Cavallo was there, on the fence, that is, on the gate and we stopped the car and Mr. Carlsen asked Mr. Cavallo if he has had something for sale there, and he would sell some acreage. He says, "Yes" and so we went out of the car and he showed us what he has got; he didn't want to sell the whole piece; he wanted to sell a part of it.

30 Q. Were there any buildings on this plot he wanted to sell? A. There was only an old barn there on that part he wanted to sell.

Q. What did you do after that, after he pointed out the land to you? A. Then he said, after he pointed out the land, we agreed on that dividing line, it was eight feet east of the chicken house and—(interrupted).

Q. What did you do then? A. Then we went inside the house. We agreed on the price before we went in the house.

40

Hans Alleborn, direct.

Q. What price did you agree upon? A. Thirty-five hundred dollars, no commission paid.

Q. What part of the house did you go into? A. The dining room; that is a large dining room.

Q. When you got into the dining room who did you find there? A. Well, Mrs. Cavallo, I think, 10 was in the kitchen at the time we came inside.

Q. Who went in the dining room with you? A. Mr. Cavallo, Mr. Carlsen, Mr. Hobelman and myself.

Q. Then what did you do there? A. Well, we sat down and Mr. Cavallo got—said "Everything is agreeable" and he got the description on—(interrupted).

Q. What? A. He got the title policy, I think, as far as I remember. 20

Mr. Newton: I ask the other side to produce that title policy, if you have got it.

Mr. Mattocks: No; we have not.

The Court: All right; go on.

Q. You looked at this title policy? A. I looked at the title policy and I make out a description as good as I was able to, specified the dividing line.

Q. Is this the title policy? A. Yes; Rutherford Trust Company; I remember that. 30

Mr. Newton: I offer it.

Mr. Mattocks: No objection.

(Paper marked Exhibit C-3.)

Q. I show you Exhibit C-1 and ask you if that is in your handwriting, except the signatures— A. Yes, sir; that is my writing.

Q. Lorenzo Cavallo and his wife and Carlsen and wife? A. Yes, sir. 40

Hans Alleborn, direct.

Q. Are the words "P. S. Cavallo has the use of barn until April 1st, 1926" are those in your writing? A. No; Mr. Carlsen wrote that.

Q. Mr. Carlsen wrote that? A. Yes.

10 Q. Now, tell us just what you did in drawing that contract. You say you got the description from this title policy. A. Yes; so I got the location of the property, you know, I wanted to know where east and west and so on is, and got locations, or got approximating idea how many acres it was.

Q. Then you drew it up? A. I drew it up then, specified what was going to be sold, and so on, and what the price was, and I put every point in it.

20 Q. Where did you get the terms from? A. Well, we agreed on the terms before we went even into the house; everything was agreeable then.

Q. And the terms are stated in the contract? A. I think so.

Q. Well, read it. A. That is quite some time.

The Court: Yes.

The Witness: Yes.

30 Q. Now, tell us who signed the contract after you had drawn it. A. Well, after I drew it, Mr. Cavallo signed the contract.

Q. Who signed first? A. Mr. Cavallo.

Q. And who signed then? A. Mrs. Cavallo.

Q. And did they sign in your presence? A. Yes, sir; inside room.

Q. And did you sign as a witness? A. I signed as a witness and Mr. Carlsen signed as a witness.

Q. "H. Alleborn", that is your signature? A. That is right.

40 Q. And the name, "Charles J. Carlsen" was that signed in your presence? A. Yes, sir; it was all signed in the same room.

Hans Alleborn, cross.

Q. Did you see Mr. Hobelman give any check to Cavallo? A. I certainly did.

Q. What did you do, after the contract was drawn? A. Well, after the contract was drawn, just as Mr. Hobelman said, we had a little drink and then we went home, that was all. 10

Q. Did you have anything to do with the transaction after that? Did you see Cavallo again after that? A. No; I didn't see him again.

Mr. Newton: Cross examine.

Cross examination by Mr. Mattocks:

Q. You say that— Who was in the room when this paper was drawn up?

Mr. Newton: I forgot one question. Pardon me. Had you known Cavallo or his wife before that? 20

The Witness: No; I had not.

Mr. Newton: All right.

Q. Who was in the room when this paper was drawn up? A. When this paper was drawn up there was Mr. Cavallo, Mr. Carlsen, Mr. Hobelman and I, and we were sitting there drawing up the paper.

Q. Who drew up the paper? A. Mr. Carlsen and Mr. Cavallo gave me all assistance on account of the description. 30

Q. And you did not talk with Mrs. Cavallo at all? A. Well, as far as I understood she didn't understand English; I didn't talk to her, no.

Q. I asked you whether you talked to her. A. No; I did not.

Q. Did anybody talk to her? A. Mr. Cavallo was talking to her. 40

Hans Alleborn, cross.

Q. But you didn't know what he said to her?
A. No.

Q. But you saw this drawn up, and Mrs. Cavallo was in the kitchen; is that right? A. She was partly in the kitchen and then she came inside and then she went out again.

10 Q. I see. A. But, when it came to signing, we all went in the room and I read the paper over.

Q. You read the paper? A. Yes. And Mr. Cavallo pointed out, and Mrs. Cavallo too. I said, "You can read it along when I read it out loud."

Q. Who read it out loud? A. I read it out loud.

Q. And you read it out loud? A. Yes.

Q. And did anybody else read it out loud? A. I don't think so; I can't remember that; it is quite some time ago.

20 Q. You just read it out loud? A. Yes.

Q. And at that time, you say, Mrs. Cavallo was in the kitchen? A. Not when I was reading the contract.

Q. Well, where was she? A. In the room, in the dining room.

Q. When you were reading it out loud she was in the dining room? A. Yes, sir.

30 Q. Did you hear Mr. Carlsen say anything to Mrs. Cavallo? A. Well, I will tell you, I don't remember that.

Q. You didn't hear it? A. I can't say that, that I did, because I was busy drawing up the papers and I paid no attention.

Q. But you were in the room all the time? A. I was in the dining room all the time.

Q. And you were in the room all the time that Mrs. Cavallo was there? A. Yes.

40 Q. You were in the room all the time Mr. Carlsen was there? A. Yes.

Charles J. Carlsen, direct.

Q. You did not hear Mr. Carlsen say anything to Mrs. Cavallo? A. I don't remember.

Mr. Mattocks: That is all.

The Court: That is all, sir.

Mr. Newton: The next witness, Mr. Carlsen.

10

CHARLES J. CARLSEN, sworn for the complainant:

Direct examination by Mr. Newton:

Q. Where did you live, Mr. Carlsen? A. Harrington Park.

Q. And on April 17, 1925, did you visit the home of Lorenzo Cavallo? A. We got there, I should judge, in the neighborhood—(interrupted).

20

The Court: Did you or did you not?

The Witness: Yes.

Q. Did you or did you not? Yes. And how did you come to stop at the house? A. They had a sign on the fence.

Q. What did it say on the sign? A. Well, something along the lines, "This property for sale" or just say "7 Room house and property for sale," or something.

30

Q. Who were with you at the time you saw the sign? A. Mr. Alleborn and Mr. Hobelman.

Q. When you saw the sign, what did you do? A. Mr. Cavallo was standing right at the gate working, doing a little chores around the garden and we didn't get out of the car immediately. I was the spokesman. I said, "Is this property for sale?" He said, "Yes."

Q. Who did you say that to? A. To Mr. Cavallo.

40

Charles J. Carlsen, direct.

10 Q. What did he say? A. He said, "Yes," he says, "the property is for sale." Then we became interested and we got out and went inside; and he took us around and said that they did not care to give up the home. They had sort of a little roadhouse there and made their living out of the place; but the low land, it was very extremely low land. You could really tell at the price it was purchased at it was not so a valuable piece of property, but we figured this way, maybe in—(interrupted).

The Court: No.

20 Q. Now, then about that. You went around—(interrupted). A. Went around the property; he showed us the property, approximately the whole thing; he walked all over it, we walked along with him and finally the price was put on.

Q. And what was that price? A. Thirty-five hundred.

Q. Did he point out then what points you were to get the property? A. Yes; that was eight feet east—east of the chicken house.

Q. And what did he say when—or, who made the suggestion of thirty-five hundred? A. That was his price.

30 Q. That was his price; and after that was done where did you go? A. We walked to his home, inside.

Q. And who went in with you? A. Mr. Cavallo. His wife was already in the house—Mr. Cavallo, Mr. Hobelman, Mr. Alleborn and myself.

40 Q. In what room did you go? A. Into a large dining room with a long table about, I should judge, six feet long, and it was up against the wall and we just gathered on the front part at the end of that dining room table.

Charles J. Carlsen, direct.

Q. Tell us just what happened while you were there. A. Yes. Well, of course, naturally we had to get something to get a description of the property and Mr. Alleborn, he began to draw the contract—or whatever you may call it, and I asked the gentleman if he had a deed. 10

Q. What gentleman? A. Mr. Cavallo.

Q. Mr. Cavallo. A. If he had a deed or something along that line, and he brought down his title policy.

Q. Is this the document he brought down? I show you Exhibit C-3. A. That is the policy brought to us that day.

Q. All right; then what happened? A. From that instrument Mr. Alleborn gathered—which we figured was sufficient—information in order to draw that contract, taking into consideration, of course, the chicken house on that little road. After the paper was drawn—(interrupted). 20

Q. Who drew it up? A. Mr. Alleborn drew up the paper.

Q. And who was there, when he drew it up? A. When he drew it up Mr. Cavallo was there to assist us and Mr. Alleborn, Hobelman himself, and Mrs. Cavallo was in the kitchen at that time. When the paper was drawn, ready to be signed I, myself, asked Mr. Cavallo to have his wife come in. They both signed that paper freely. 30

Q. Well, did they sign it in your presence? A. In my presence, because I was taking the acknowledgment as a notary.

Q. Now, I show you the document, Exhibit C-1, and call your attention to the name "Charles J. Carlsen." A. That is my signature.

Q. Is that your signature? A. Yes, sir.

Q. And was that document signed by Lorenzo 40

Charles J. Carlsen, cross.

Cavallo and Matilda Cavallo in your presence? A. Truthfully.

The Court: You took their acknowledgment?

10 The Witness: I took their acknowledgment.

The Court: And that is the acknowledgment?

The Witness: That is the acknowledgment. I made that in my own handwriting and annexed it to this ~~survey~~ ^{contract} and I—

The Court: All right. Now, that is enough.

Mr. Newton: Cross examine.

Cross examination by Mr. Mattocks:

20 Q. Now, you testified to everything that occurred, did you? A. I think so.

Q. Did you ask Mrs. Cavallo to come into the kitchen—into the dining room from the kitchen? A. I think Mr. Cavallo asked his wife to come into the dining room from the kitchen.

30 Q. And when she came in from the kitchen, what did you say to her? A. I showed her where to sign, after her husband had signed; then I prepared to take the acknowledgment. I read the paper to her, also the acknowledgment. I asked her did she swear that she knew everything that was in that paper and that she knew what she was doing—practically along the lines that every notary public would do and should do.

The Court: What did she say?

The Witness: She said she did. I made it plain.

40 Q. You say you made it plain? A. At least I think I did.

Charles J. Carlsen, cross.

Q. Did she talk to you? A. I guess there was quite a lot of talking went on at that time.

Q. I am asking you a question, whether she talked to you or not. A. I presume she did. I don't know whether—

Q. You don't know whether she did or not? You have the privilege of saying whatever you like. Did she or did not? A. I couldn't recall just what she said. 10

Q. I am asking you whether she said anything. A. I couldn't say yes or no, now. It is a long time.

Q. Then your testimony is that you can't say whether she said anything to you or not. A. She said she did understand what I said to her.

Q. Well, then, now you say— A. Yes, well— 20

Q. —she did say something. A. Yes; certainly.

Q. That is what we would like to know, what she said to you. A. All right.

Q. During that time what did she say? A. She did.

Q. The words that she used were "She did"? A. I couldn't just say—this is more than a year—just what the words was. The same as if I took your acknowledgment something along that line; that was satisfactory in order for me to take the acknowledgment. 30

Q. You are here for the purpose of telling the Court what you heard her say, and I am asking you again, did you hear her say anything, and, what, if anything she said. A. She said she did understand what I read to her.

Q. She said she did understand what you read to her? A. She was perfectly—(interrupted).

Q. Is that all she said? A. I couldn't recall any more. 40

Charles J. Carlsen, cross.

Q. Isn't it a fact, Mr. Carlsen, that you did not acknowledge this instrument at all on that day?

A. Take the acknowledgment—I took the acknowledgment.

10 Q. Will you swear, before this Court that you took the acknowledgment on that day? A. I took the acknowledgment on that day and annexed it to that paper.

Q. And what did you do with the acknowledgment, the certificate after you took it? A. I annexed it with a clip to that piece of paper.

Q. And who did you deliver it to? A. To Mr. Hobelman.

20 Q. When you first went to this property didn't you state to Mr. Cavallo that you desired to buy one-half of the land between the brook and his west line? A. I don't recall it.

Q. You don't recall it? A. I was not buying the property.

Q. You were the broker, were you not? A. Yes, sir.

Q. Who did the talking to Mr. Cavallo with reference to the purchase of this land? A. Well, I guess I done—I done some of it.

Q. You did some of it? A. Yes, sir.

30 Q. Well, will you kindly tell us whether the part that you did referred to the division between the brook and the west line of the farm, whether the line was not to go through the center, divide equally? A. To the best of my knowledge in this transaction it was going beyond the brook, in order to take in the right land.

40 Q. I am not asking you that. I am asking you about the line between the brook which is all you claim in this proceeding, about the west line? A. Well, the line, taking the line down from the imaginary lane, which was there from wagons going

Charles J. Carlsen, cross.

over it a good many years, there was eight feet to be given by both sides in the transaction, eight feet—the chicken house, as I understand it was to be the monument, eight feet from that chicken house and it would give them the sixteen foot road to the best of my knowledge.

10 Q. So now you say there was nothing said by Mr. Cavallo or you with reference to the division line between the parcel that you were buying or representing the purchaser in, and the parcel that he was to retain, that it was to be eight feet from the chicken house? A. Well, in fact, we all spoke on that; everybody was interested there at that time. I was not the only spokesman.

20 Q. How much land is there between this point that you designate and the brook? A. I couldn't say right to the accurate survey.

Q. You don't know whether it is five acres or fifteen acres? A. Well, I couldn't just say, but I know that the engineer has a record of that and he was the original engineer on that piece of property before.

Q. I show you a diagram and ask you if this is a fair representation.

The Court: This man is not an engineer or a surveyor either. 30

Mr. Mattocks: I am asking him whether it is a fair representation.

The Court: Well, I don't suppose that amounts to—is that cross examination?

Mr. Mattocks: He referred to a line. I wanted him to explain the testimony. However, if you object—I will withdraw it.

40 Q. This price of thirty-five hundred dollars was a very low price, wasn't it? 40

Charles J. Carlsen, cross.

Mr. Newton: Objected to as incompetent, irrelevant and immaterial.

The Court: I will allow it, because on his direct examination he said he thought it was a good price.

10 Q. Was this a very low price for the land that you were contracting to buy?

Mr. Newton: He was not contracting to buy it.

Q. Well, you are in the real estate business, aren't you? A. I am.

Q. Are you familiar with the values in that section? A. I am.

20 The Court: Well, now, you were asked if you do not think that was a very low price. Do you or don't you?

The Witness: That was a very good price for that property in the immediate vicinity and on that line the property was all wet; it is all low ground and runs to a mill in the rear.

30 Q. Don't you know there was about ten acres of land within these lines that you were buying? A. There were about ten acres?

Q. Yes. A. I wasn't buying anything.

Q. Well, the gentleman you represented. You were the broker. A. There was about ten acres he was purchasing. Ten acres.

Q. Yes; ten acres. A. I couldn't say exactly just what he was purchasing.

40 Q. You don't know whether it was ten acres or fifteen? A. I understood it was something in the neighborhood; it might probably average between ten and twelve.

Charles J. Carlsen, cross.

Q. Then it was between ten and twelve acres? A. Now, I think the gentleman owns an eighteen acre farm, Mr. Cavallo.

Q. You now testify it was between ten and twelve acres? A. I should judge, something in that neighborhood.

Q. And you were paying thirty-five hundred dollars for that? A. Mr. Hobelman was paying thirty-five hundred dollars for it.

Q. Mr. Hobelman was paying thirty-five hundred dollars for it? A. Yes, sir.

Q. You are a real estate broker? A. Yes, sir.

Q. And you were getting no commission? A. Yes, sir.

Q. And you were not interested in this transaction whatsoever were you? A. No, sir.

Q. Not getting any money out of it at all? A. Now, wait a minute; I just want to say something.

Q. Just answer questions. A. Mr. Hobelman wanted to buy this property. Mr. Hobelman is a friend and neighbor and I didn't want to interfere with this transaction because of a commission.

Q. And you were not getting a part of the profit out of this purchase? A. No profit.

Q. You were just doing this purely, simply for a neighbor? A. Yes, sir.

The Court: That doesn't make any difference really, what he did it for?

Mr. Mattocks: The whole scheme was to detract from the value of the land.

Mr. Newton: I object to the word "scheme".

The Court: No. Strike it out.

Mr. Mattocks: I think all these facts—

Charles J. Carlsen, cross.

The Court: Have you any further questions?

Q. Didn't you go out on this tract of land and the time that you wanted to have this paper signed to get Mrs. Cavallo— A. No.

10 Q. Wasn't she out on the farm? A. She was in the kitchen.

Q. You didn't go out to her and say, "Now, Mrs. Cavallo, will you please come in and sign this paper?" A. I don't think she would and I couldn't hold that conversation with the lady because I don't think she is versed pretty well in the English language; I couldn't talk like that.

20 Q. So she couldn't understand the English language. A. I couldn't—she could understand the English language, but I couldn't hold a conversation like that—impossible.

Q. You say she did understand the English language? A. But this lady as far as—(interrupted).

Q. Just answer the question. A. Yes—well, I wouldn't—she was in the kitchen.

30 Q. And you think that she did not understand the English language, is that it? A. Well, I don't think—she is not an expert on it; she understood—Listen! I didn't ask her; her husband brought her inside to sign that paper. You can't make me say things that isn't true, you know.

Q. So that, when you read this paper to her, would you say that she understood what you read? A. I read that paper very loud right in her room and explained every word to her and she—I took the acknowledgment and she admitted she understood what she was signing.

40 Q. And yet you are willing to testify that she

Charles J. Carlsen, redirect.

did not understand everything that was said. A. Well, not the conversation you were just putting to me then.

Q. But she did understand the contents of that instrument. A. Yes; she said she did.

Mr. Mattocks: That is all.

10

The Court: That is all.

Redirect examination by Mr. Newton:

Mr. Newton: Now, I think I rest. I have one other witness, Mr. Gray, but I think I will reserve him for rebuttal. His testimony will go to show that he made three calls—

Mr. Mattocks: I object, your Honor please.

The Court: If you want to rest, all right. I don't see how there can be any rebuttal, because now the counterclaim has been stricken out it is only a question of law.

20

Mr. Newton: My only point is Mr. Gray will prove an absolute refusal on the part of these defendants to perform, but, it seems to me, this letter proves that.

The Court: Yes.

Mr. Mattocks: Now—

The Court: Now, there is nothing for me to do except to decide on a question of law, as I see it.

30

Mr. Mattocks: I have, if your Honor desires to decide it on a question of law, I have witnesses here to show she never acknowledged anything at all.

The Court: Is that in your answer?

Mr. Mattocks: I deny making the execution of the paper, Paragraph 2.

Mr. Newton: Paragraph 2 is admitted

40

Matilda Cavallo, direct.

and Paragraph 2 in the bill says, "The said contract after the execution was duly acknowledged."

The Court: Well, I don't—yes, so it does.

10

Mr. Mattocks: No; not by the wife. It is denied.

The Court: Now, the answer of defendant Matilda Cavallo—which is the paragraph which says it was duly acknowledged?

Mr. Newton: I beg your Honor's pardon. I think I read it wrong. Paragraph 1 is admitted; 2—Paragraph 5 is admitted. I find there is a denial of the execution.

20

The Court: I think as long as he has denied the execution, we better have the testimony as to whether it was executed.

Is she going to deny her own signature?

Mr. Mattocks: I beg your pardon?

The Court: Go ahead. Put her on, if you want to.

Mr. Mattocks: Mrs. Cavallo.

MATILDA CAVALLO, sworn for defendant.

30

Direct examination by Mr. Mattocks:

Mr. Mattocks: I don't know whether she understands—

The Court: Have you got the bill there?

Mr. Mattocks: Maybe we will have to have an interpreter.

The Court: Go on.

Mr. Mattocks: I am afraid we will have to have an interpreter.

40

The Court: Well, try it without one. What is your name?

Matilda Cavallo, direct.

Q. Your name is what? A. Matilda.

Q. Matilda? A. Yes.

Q. Matilda what? A. Cavallo.

Q. Cavallo. Can you tell this Court whether you saw Mr. Carlsen come to your house? A. Yes.

10

Mr. Newton: Objected to as leading.

The Court: Never mind. We are trying to see if we can get along without an interpreter. She doesn't understand very well.

(To witness): Did Mr. Carlsen come to your house?

The Witness: I don't know. That man (indicating).

Mr. Newton: Stand up, Mr. Carlsen.

The Witness: This one and that.

20

The Court: He came to your house, did he? Did he come to your place?

The Witness: Yes, sir.

Q. Who else came with him? A. I no understand.

Q. Did you see these gentlemen before these other two gentlemen? A. No.

Mr. Mattocks: I don't know how to ask her an acknowledgment. She probably wouldn't understand what I am asking about.

30

The Court: She probably would not understand. Now, if you want an interpreter, go and get one.

Mr. Mattocks: I haven't any interpreter. Here is her husband.

The Court: Oh, no.

Mr. Mattocks: We are not prepared with an interpreter.

40

Matilda Cavallo, direct.

The Court: I am sorry. Are there any Italian lawyers around here?

Mr. Mattocks: I supposed an interpreter was provided by the Court.

10 The Court: I am sorry, we have no interpreters.

Mr. Mattocks: It is unfortunate, not having an interpreter present and I didn't know that was required.

The Court: Go and ask the sergeant-at-arms in his room if he knows where you can get someone. There may be some lawyer around here.

20 (From this point the examination was conducted through Thomas Difede, sworn as interpreter.)

The Court: This gentleman will ask you the questions and you translate them to the witness and then just repeat, in the first person just what she says. He will ask you in the first person, "Did you do so and so."

Q. What is your name? A. Matilda Cavallo.

Q. Where do you reside? A. Old Tappan.

30 Q. Do you know these three gentlemen? A. Yes.

Mr. Newton: Pointing to Mr. Carlsen—stand up—and Mr. Alleborn and Mr. Hobelman.

The Witness: Yes.

Q. Did you see these three gentlemen before?
A. Yes.

Q. When? A. In September.

Q. Did they come to your place? A. They went with her.

40

Matilda Cavallo, direct.

Q. Which one spoke to you? A. None of them.

Q. Didn't talk to anyone of them?

The Interpreter: No; she didn't talk to any one of them, she said.

Mr. Mattocks: Ask her if she signed that. Did you sign Exhibit C-1, showing her the paper. 10

The Witness: Yes. She signed this name.

Q. What was said to you when you signed the paper? A. She didn't want to sign it, but she claimed she was forced to sign.

The Court: Well, that has nothing to do with the case, because the counterclaim of fraud has been stricken out.

Mr. Mattocks: Well, of course, the question whether she acknowledged, I suppose, is a question of fact. 20

The Court: Oh, yes, whether she acknowledged it is all right.

Q. Did Mr. Carlsen speak to her? A. She said when this man approached her that she run out of the house and he went after her and told her—she said she was crying—asked her not to cry, all she had to do, just to sign the name to the paper. 30

Q. That is what he said to her? A. Yes; to sign the paper.

Q. Whereabouts did he say this? A. Outside of the house, in the back of the house.

Q. What did she do, then? A. She told him that she didn't care about selling the property and he just forced her to sign the papers.

Q. Well, just let her state what he said and what she said. 40

Matilda Cavallo, direct.

The Interpreter: That is all, that he just told her that it would be all right for her to sign the name to the paper and that she didn't care about doing so, that he told her to do it.

10 Q. Did he ask her to swear to it, after she signed it? A. Just signed her name, that is all.

Q. Just signed her name? A. Yes.

Q. Just signed her name. Was the paper read to her before she signed it? A. No.

The Court: Let it appear on the record: Mr. Interpreter, she said that she told this man she didn't care to sell her property, is that right?

20 The Interpreter: Yes, sir.

The Court: Let that appear. She said, "I don't care to sell my property."

Q. How did you come to sign this paper?

The Interpreter: She claims the first gentleman there asked for a fountain pen and the gentleman in the middle there handed it to her and she signed her name.

30 Q. Did your husband ask you to sign this paper?

The Interpreter: The husband was not there at the time.

Q. Wasn't your husband present when the paper was signed? A. No; he was not around and he went downstairs.

Q. Well, where was the paper signed? A. In the house.

Q. Whereabouts in the house? A. In the dining room.

40

Matilda Cavallo, cross.

Q. In the dining room. Wasn't your husband present when you signed the paper? A. No.

Q. Who was present, when you signed it? A. This one, two, three.

Q. Three men? A. Yes.

Q. And didn't your husband come out and tell you to sign the paper? 10

The Interpreter: She claimed that her husband asked her to sign the papers, but she didn't want to; that was the time she run out of the house and then two gentlemen there ran out and asked her to sign.

Q. Your husband wanted you to sign the papers?

The Interpreter: Yes, sir; but she didn't want to, because she claimed she didn't want to sell the property. 20

Mr. Mattocks: I just want to bring that out.

Q. Your husband wanted her to sign the papers, didn't he?

The Interpreter: Yes, sir; her husband wanted her to sign the papers, but she ran outside, because she didn't care about selling the property. 30

The Court: Ask her; say this, "Why didn't you want to sign the papers?"

The Interpreter: Because she didn't want to sell the property. She wanted him to let her keep the property.

Cross examination by Mr. Newton:

Q. Did you have a sign on the house or fence, "For Sale," the property? A. No; never had a sign. The only sign we had was "Eggs for Sale." 40

Matilda Cavallo, cross.

Q. Only "Eggs for Sale." Now, what did you do, after the contract was signed, when those three men were there?

10 The Interpreter: She claims she just went outside because she didn't want to sell the property.

Q. Well, did you bring on any cider or any wine?

The Interpreter: She didn't see it.

Q. She didn't see it. And there was no sign up on the house or anywhere? A. For the eggs, that is all.

Q. What is that? A. "Eggs for Sale."

20 Q. "Eggs for Sale." And you say your husband asked you to sign the paper? A. Yes.

Q. And how many times did your husband ask you to sign the paper?

The Interpreter: She was asking him what he wants her to sign the paper; she never wanted to.

Q. Where were you in the house, when your husband asked you to sign? A. In the kitchen.

30 The Interpreter: She was washing clothes.

Q. Did you leave the kitchen and come into the dining room?

The Interpreter: No. She went away and she went outside; she run out of the house.

40 Q. Weren't you in the dining room at all, when these men were there? A. Never in there when the man was in the dining room.

Matilda Cavallo, cross.

Q. Did you see your husband get a check?

Mr. Newton: Ask her.

Q. Do you know what a check is?

The Interpreter: No; she don't see it, she claims. 10

Q. You didn't see your husband get a check? A. No.

Q. (Continuing.) That day. Now, do you remember a man, a lawyer coming around to your husband after that day? A. Yes, the lawyer was there after the papers were signed; after that date a lawyer say to her.

Q. A lawyer say to you?

The Interpreter: She explained that to me already. She had the little girl to talk to the lawyer and the little girl told the lawyer not to come around any more because she didn't care to sell the property. 20

Q. Now, why did you sign the paper, if you did not care to sell the property?

The Interpreter: She was so excited, she claimed that she didn't know what she was doing. She just signed her name, but she didn't know what she was doing. 30

The Court: Don't go into that, because that is not in the case any more.

Mr. Newton: That is all.

The Court: That is all.

The Interpreter: All right, your Honor?

The Court: Yes; that is all. 40

Adele Thomass, direct.

ADELE THOMASS, sworn for the defendant.

Direct examination by Mr. Mattocks:

Q. Where do you reside? A. In Closter, New Jersey.

10 Q. What is your occupation? A. I am a stenographer and law clerk in your office.

Q. And you are attending the New Jersey Law School? A. I am.

Q. And going there for how long? A. This is the end of my second year.

Q. I will show you Exhibit C-1; did you ever see that first sheet before? A. I did.

20 Q. Where and when? A. It was the end of February, 1926, in the office of Mr. Charles F. Gray.

Q. Is he the attorney of record in this case? A. He was at the time, yes.

Q. And was that after the complaint, bill of complaint had been filed in this case? A. Yes, it was.

Q. Was that certificate that you see attached there, attached to the receipt? A. No; it was not.

Q. Did you ask for the paper in the office of Mr. Charles S. Gray? A. Yes, I did.

30 Q. What did you say? A. I asked the young lady in—I believe it was Mr. Gray's secretary—if I could see the copy of the contract or the receipt in the Herman Cavallo case, so she got out the folder and she showed me this and I asked her if there was any other papers or any acknowledgment attached to it, and we looked through the folder and there was not any folder. This was the only paper.

Mr. Mattocks: That is all.

40 The Court: Wait a minute. How are you

Adele Thomass, direct.

going to connect this up? There is not any agency between Mr. Gray and this complainant, is there? I don't know of any, and even so you have only got the statement of the secretary of the man, who is not proved to be the agent of the complainant. It seems to me that is a little vague. Do you want to cross examine? 10

Mr. Newton: No; I do not.

The Court: That is all, madam.

Mr. Mattocks: That is the case.

The Court: Let me see that paper, will you, please?

Mr. Newton: The contract and receipt?

The Court: The whole thing, whatever it is. This is a paper, dated September 17, 1925. It provides, among other things, that fifty dollars,—the purchase price shall be thirty-five hundred dollars, fifty dollars on the signing of this receipt and fifty dollars on the signing of the contract on or before October 1st, 1925. 20

The only question is whether or not this paper was actually signed by the wife of the defendant. The defendant does not deny that he signed it and that he knows the contents of it and signed it willingly. 30

She says that she signed it; she says that she was so excited that she did not know what to do and was forced to sign it.

That has no place in this case because the counterclaim was stricken out.

She knew that it was a paper relating to the sale of this land, when she signed it, because she repeatedly said on the witness stand that she did not sign it because she 40

Adele Thomass, direct.

did not want to sell her land, so she must have known that this was a document which would result in the sale of her land.

10 On the other hand, you have the testimony of the disinterested notary public, who swears that he read over the paper to both of the defendants, that they signed freely and stated to him that they understood what they were doing and that they signed.

I have no reason to believe that he would falsify his testimony, because he has no interest in the matter whatever. He says that he did not even get a commission; it was merely a friendly act on his part, he happening to be in the automobile when they were passing the property.

20

I shall therefore find that this is a proper agreement for the sale of land.

Now, the only other question is whether it was modified by the clause, fifty dollars on the signing of the contract on or before October 1st, 1925. Within seven days after the signing of this paper, a letter was sent by direction of these defendants, refusing to go further in the matter, and I don't think that they can be allowed to break this contract by refusing to carry out its terms. The terms, according to the testimony seem to be perfectly clear. The property is described by metes and bounds and they agreed that the chicken house should be a monument and that there should be eight feet added to what this man retained, making, as I gathered a driveway and entrance of about sixteen feet.

30

40

Exhibits.

I don't see any reason why I should not advise a decree directing specific performance, and I will so advise.

Exhibit C-1.

Old Tappan, Sept 17th, 1925 10

Received from Chas. Hobelman, \$50.00 deposit for property owned now by Lorenzo Cavallo, Old Tappan, Bergen Cty, N. J. and described as follows:

"All the easterly situated property divided by line from a point 8 ft. east of chicken house on farm and running parallel to westerly line of land held now by Lorenzo Cavallo and described in deed as line running from Tappan to Westwood Road south thirty degrees east eight chains and thirty-five links." 20

Price of land is \$3500.00 net, payable \$50.00 on the signing of this receipt and \$50.00 on the signing of the contract on or before Oct. 1st, 1925. On passing of title, seller agrees to accept \$400.00 in cash and a 3 Year mortgage of \$3000.00 (Three Thousand Dollars) bearing 6% interest. 30

Signed:
LORENZO CAVALLO
MATILDA CAVALLO

CHAS. J. CARLSEN
H. ALLEBORN
P. S.

The seller has the use of barn until April 1st, 1926 40

Exhibits.

State of New Jersey }
County of Bergen } ss.:

10 BE IT REMEMBERED, That on this 17th day of Sept. in the year of our Lord One Thousand Nine Hundred and twenty-five, before me, the subscriber, LORENZO CAVALLO and MATILDA CAVALLO, personally appeared, who, I am satisfied, are the persons mentioned in the within Instrument, to whom I first made known the contents thereof, and thereupon they acknowledged that, they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

CHAS. J. CARLSEN
Notary Public of N. J.

20

Exhibit C-2.

No. 620

Westwood, N. J. September 17, 1925.

THE FIRST NATIONAL BANK

Pay to the order of LORENZO CAVALLO \$50.00
FIFTY 00/100 Dollars.

C. HOBELMAN.

30

40

Exhibits.

Exhibit C-3.

(envelope)

Joseph P. Egan
Lawyer
Hackensack, N. J.

(U. S. Stamp.) 10
(Hackensack, N. J.)
(Sep. 24)
(5—P. M.)
(1925)

A. Hobelmann, Esq.,
Harrington Park,
N. J.

Real Estate.

(letter) 20

JOSEPH P. EGAN
Lawyer

Riverdale, N. J.
Westwood P. O.
Tel. Westwood 533

Sept. 24, 1925.

A. Hobelmann, Esq.,
Harrington Park, N. J.

30

Dear Sir:

I am enclosing herewith your check to Lorenzo Cavallo, of Old Tappan, N. J. He has no intention, nor has his wife, to go through with your real estate project, which he tells me he does not understand, and of which you left him no written memo. I would suggest, in such cases, that you take along an interpreter.

Very truly yours,

J. P. EGAN.

40

Final Decree.

complainant is entitled to the specific performance of the aforesaid agreement as prayed for by him in his bill of complaint filed herein:

10 It is on this 11th day of May, A. D. 1927, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED and DECREED, and the said Chancellor does, by virtue of the power and authority of this court, hereby
 20 ORDER, ADJUDGE and DECREE that the said agreement be in all things specifically performed by the said defendants on the 25th day of May, 1927, at the hour of ten o'clock in the forenoon (Daylight Saving Time) at the office of Collins & Corbin, Room 418, #1 Exchange Place, Jersey City, Hudson County, New Jersey, and that said defendants
 20 Lorenzo Cavallo and Matilda Cavallo do make, execute and acknowledge in due form of law and deliver to the said complainant Charles Hobelman, a good and sufficient deed, conveying to the said complainant the said lands and premises in fee simple and deliver at the same time to the said complainant possession of the said lands and premises.

30 And it is FURTHER ORDERED that at the time of the delivery of said deed to him, the said complainant do pay to the said defendants the sum of \$500 in accordance with the terms of said agreement and do make and execute in due form of law and deliver to the said defendant Lorenzo Cavallo his bond in the penal sum of \$6,000 for the payment of \$3,000 in three years from the date thereof with interest at the rate of six percentum per annum, and at the same time, make, execute and acknowledge in due form of law and
 40 deliver to the said defendant a purchase money mortgage on said lands and premises in the sum

Final Decree.

of \$3,000 payable in three years from the date thereof with interest at the rate of six percentum per annum.

And the court being of opinion that the counterclaims filed by each of the defendants do not comply with the rules of this court, it is FURTHER
 10 ORDERED that said counterclaims be and they are hereby dismissed.

And it is FURTHER ORDERED that the said defendants pay to the said complainant the costs of this suit be taxed, including a counsel fee of \$100 which is hereby allowed to Collins & Corbin, solicitors for and of counsel with complainant.

And it is FURTHER ORDERED that copies of this decree (which may be certified by the solicitors of complainant) be served on the solicitor of said defendants within five days from the date hereof.
 20

Respectfully advised,

E. R. WALKER,
 C.

ALONZO CHURCH,
 V. C.

30

40

Petition of Appeal.

10 defendant, Lorenzo Cavallo, divided by line from a point eight (8) feet east of chicken house on farm and running parallel to westerly line of said land held now by said defendant, Lorenzo Cavallo, and described in the deed to said Lorenzo Cavallo as line running from Tappan to Westwood Road south thirty (30) degrees east, eight (8) chains and thirty-five (35) links; being part of the premises conveyed to said Lorenzo Cavallo by deed made by John Maurer, Jr. and Louisa Maurer, dated January 25, 1924, and recorded January 26, 1924, in the office of the Clerk of the County of Bergen in book 1242 of deeds, page 457 etc.

20 alleged to have been entered into on September 17, 1925, between the said defendants, as sellers, and the said complainant, as purchaser, be specifically performed by the said defendants, and that the said defendants execute and acknowledge, in due form of law, and deliver to the said complainant a good and sufficient deed conveying to the said complainant the said lands and premises, in fee simple, and deliver, at the same time, to the said complainant possession of said lands and premises, and that the said defendants pay to the said complainant his costs of said suit to be taxed, including a counsel fee of \$100.

30

2. The petitioners appeal from the decree of the Chancellor, which decrees as aforesaid, on the ground that the same is erroneous, in that

a. the said contract of September 17, 1925, decreed to be specifically performed, was not acknowledged by the defendant Matilda Cavallo,

40

Answer to Petition of Appeal.

who is a married woman, as required by statute, and that the same, as to her, is void;

b. the said contract is uncertain and incomplete, and as to material incidents is left to subsequent negotiations, and is therefore not enforceable in equity;

10

c. it should have adjudged that complainant's bill be dismissed with costs.

3. Petitioners therefore pray, that the said decree of the said Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioners may have such other relief in the premises as to this Court shall seem proper.

FREDERICK W. MATTOCKS,
Solicitor for and of Counsel with Appellants.

20

Answer to Petition of Appeal.

(Filed June 13, 1927.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

CHARLES HOBELMAN,
Complainant-Respondent,

and

LORENZO CAVALLO and MATILDA
CAVALLO,
Defendants-Appellants.

On Appeal from
the Court of
Chancery.

30

The answer of the above named respondent to the petition of appeal of the above named appellants.

40

44 OCT. 7. 1927

Answer to Petition of Appeal.

10 This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto nevertheless says and admits that a decree was on the 11th day of May last past made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced and this respondent is advised and believes that the said decree is agreeable to equity and he prays that the same may be affirmed with costs to be adjudged to this respondent.

20 COLLINS & CORBIN,
Solicitors for and of Counsel
with Complainant-Respondent.

30

40

New Jersey Court of Errors and Appeals

CHARLES HOBELMAN, Complainant-Appellee, <i>v.</i> LORENZO CAVALLO and MATILDA CAVALLO, Defendants-Appellants.	}	On Appeal from Final Decree of Court of Chancery.
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APPELLANTS' BRIEF.

Abstract of Case.

This is an appeal from a final decree of the Court of Chancery (State of Case, p. 54), directing the specific performance by the defendants, as sellers, of the following paper writing, claimed by the complainant, as purchaser, to be a contract for the sale of lands:

Old Tappan, Sept. 17th, 1925.

Received from Chas. Hobelman, \$50.00 deposit for property owned now by Lorenzo Cavallo, Old Tappan, Bergen Cyt., N. J. and described as follows:

"ALL the easterly situated property divided by line from a point 8ft. east of chicken house on farm and running parallel to westerly line of land held now by Lorenzo Cavallo and described in deed as line running from Tappan to Westwood Road south thirty degrees east, eight chains and thirty-five links."

Price of land is \$3500.00 net, payable \$50.00 on the signing of this receipt and \$50.00 on the

signing of the contract on or before Oct. 1st, 1925. On passing of title, seller agrees to accept \$400.00 in cash and a 3 year mortgage of \$3000.00 (Three Thousand Dollars) bearing 6% interest.

Signed:
LORENZO CAVALLO
MATILDA CAVALLO

CHAS. J. CARLSEN
H. ALLEBORN

P. S. The seller has the use of barn until April 1st, 1926.

State of New Jersey }
County of Bergen } ss.:

BE IT REMEMBERED, That on this 17th day of Sept. in the year of our Lord One Thousand Nine Hundred and twenty-five, before me, the subscriber, LORENZO CAVALLO and MATILDA CAVALLO, personally appeared, who, I am satisfied, are the persons mentioned in the within Instrument, to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

CHAS. J. CARLSEN
Notary Public of N. J.

The following two questions are involved, raised by the defendants' answers in lieu of plea (State of Case, pp. 5 and 7) and by the testimony:

1. Is the paper sued upon such a final and complete agreement of the parties as may be enforced in equity as a contract for the sale and purchase of lands?
2. Has the requirement of the statute that every deed or conveyance of an estate or interest in lands of a married woman must be acknowledged, and a

certificate thereof written on or under, or annexed to the instrument, been complied with as to the defendant, Matilda Cavallo, who is a married woman?

Specification of Errors in Decree.

The decree is erroneous in that it decrees that the defendants Lorenzo Cavallo and Matilda Cavallo, his wife, entered into an agreement in writing with the complainant, Charles Hobelman, whereby the said defendants agreed to convey the lands, in said decree described, to the said complainant, which agreement was duly acknowledged by the said defendants.

The decree is erroneous in that it decrees that the complainant is entitled to specific performance of the aforesaid agreement and that the said agreement be in all things specifically performed by the said defendants.

The decree is erroneous in that it should have decreed, but did not decree, that the said contract is uncertain and incomplete, and as to material incidents is left to subsequent negotiations, and is therefore not enforceable in equity.

The decree is erroneous in that it should have decreed, but did not decree, that the said writing was not acknowledged by the defendant Matilda Cavallo, who is a married woman, as required by statute, and that the same as to her is not enforceable as an agreement to release her interest in said lands.

The decree is erroneous in that it should have decreed, but did not decree, that the complainant's bill be dismissed with costs.

ARGUMENT.

POINT I.

The paper writing, decreed to be performed, is uncertain and incomplete, and as to material incidents is left to subsequent negotiations.

The paper, specific performance of which is sought in this suit (State of Case, pp. 51 and 52, Exhibit C-1), does not contain all the particulars of the transaction contemplated by the parties, in that:

(a) it does not fix a date for passing title;

(b) it does not state the character of the deed to be given;

(c) it does not state how the interest on the purchase money mortgage to be given is to be paid, whether periodically, and if so, at what times, or at maturity, and whether the said mortgage shall contain the default clauses in case of non-payment of interest, taxes, assessments, etc., common in such cases.

The above matters were left open, and subject to subsequent negotiations; this is evidenced by the fact that the paper provides for a formal contract, to be signed at a later date, viz: on or before October 1, 1925, all the terms of which are not disclosed.

In addition, the testimony shows that the dividing line between the land to be conveyed to the complainant and the land to be retained by the defendants was to be definitely ascertained by a survey (State of Case, Hobelman, cross, p. 22, line 29, to p. 23, line 25); furthermore, it was agreed that each party should contribute from their respective lands eight feet for a sixteen-foot lane to

run on both sides of said dividing line (State of Case, Hobelman, cross, p. 22, line 22, etc., and Carlsen, cross, p. 34, line 37, to p. 35, line 10). The paper is silent on both these points.

The paper, therefore, is preliminary and not a complete, final agreement, and the features omitted therefrom cannot be supplied by intendment.

The case at bar is parallel with two cases recently decided in this Court:

Tansey v. Suckoneck, 98 Eq., p. 669;

Venino v. Naegele, 99 Eq., p. 183; aff. October 27, 1926, IV N. J. Adv. Repts., p. 1830.

In both these cases the Court held that writings—similar in form and tenor with the one now under consideration—relied upon as contracts for the sale of lands, from which there had been omitted certain features, similar with those omitted from the paper which is the subject of this suit and which, as in the present case, made a provision for the future execution of a formal contract, cannot be specifically enforced. The Court said:

“The paper is, on its face, preliminary and not final, and by its very language indicates that other features left unsettled are to be settled by further negotiations, and this requires the application of the well settled and fundamental rule that, to support a decree for specific performance for the sale and purchase of real estate, the bargain must have been completely determined between the parties and its terms definitely ascertained.”

The rule so laid down was followed in *Sukman v. Ihle* (V N. J. Adv. Repts., 441).

POINT II.

The writing decreed to be performed was not acknowledged by the defendant, Matilda Cavallo, a married woman, and as to her, cannot be enforced as a contract for the sale of lands.

Chapter 37 of the Laws of 1918, amending the act respecting conveyances of 1898, as then amended (P. L. 1918, p. 119) provides as follows:

39. No estate or interest of a feme covert in any lands, tenements or hereditaments, lying and being in this State, shall hereafter pass by her deed or conveyance, without a previous acknowledgment made by her before one of the officers mentioned in the twenty-second, twenty-third and twenty-fourth sections of this act, as the case may be, that she signed, sealed and delivered the same as her voluntary act and deed, such officer being satisfied she is the person named in such deed or conveyance and having first made known to her the contents thereof, and a certificate thereof written on, or under, or annexed to the said deed or conveyance, and signed by the officer before whom it was made.

While the paper, relied on by complainant as a contract for the sale of land, has a certificate of acknowledgment of both defendants, in proper form, attached thereto, the defendant, Matilda Cavallo, in her answer (State of Case, p. 7), denies that she acknowledged said paper, and the testimony, by clear and convincing preponderance, shows that the contents of said paper had not been made known to her by the notary certifying the acknowledgment, in the manner required by statute, and that she did not state to the notary that she had signed the paper willingly.

In *Schwabinger v. Saxon, et al.* (92 Eq. 461, aff'd. 113 Atl. 926), the duties of an officer taking the acknowledgment of a married woman are defined as follows:

"It makes it the duty of the officer taking the acknowledgment to explain to her the contents of the completed instrument, and then to ascertain from her whether she has willingly affixed her signature thereto."

It follows that, while no specific manner in which the notary shall make known to the married woman the contents of the instrument is prescribed, it is his duty to employ such means of communication as will fully accomplish that purpose; the method must necessarily vary according to the intelligence, education and knowledge of language of the person to be informed; it may require in some instances more elaboration than in others and it may even require the employment of an interpreter.

The words "contents of an instrument," in the common acceptance of the term, and as judicially defined, do not mean merely the general purport of the instrument, but all its substantial parts (*Cappell v. Fagan*, 30 Mont. 507).

The facts pertinent to this question, as shown by the testimony, may be summarized as follows:

It is admitted by the complainant in his bill that the defendant, Matilda Cavallo, is a married woman, the wife of the defendant Lorenzo Cavallo (State of Case, p. 3, line 10).

The complainant, together with Hans Alleborn and Charles J. Carlsen, two of the witnesses in this case, on September 17, 1925, while cruising around the countryside in search of property that might be purchased, chanced upon the farm of the defendant, Lorenzo Cavallo, having a sign on the

fence along the road which lead them to believe that it was for sale. They stopped at the farm and found Mr. Cavallo in the grounds; their call was not prearranged, they were not acquainted with the defendants, neither of the defendants had any knowledge of their coming, nor—until explained—of the object of their call (State of Case, Testimony: p. 15, lines 27 to 36; p. 24, lines 19 to 28; p. 27, lines 20 to 24; p. 29, lines 30 to 40).

The negotiations for the purchase of the property were between the said complainant and his companions, on the one side, and Mr. Cavallo, on the other side; they were conducted outside the house. Mrs. Cavallo was not present and did not participate in any of the discussion (State of Case, Testimony: p. 16, lines 7 to 32; p. 20, lines 18 to 21; p. 24, lines 27 to 39; p. 26, lines 19 to 22; p. 30, lines 16 to 35).

After the price had been agreed upon, the four men adjourned to the house where the paper, which is now sought to be specifically enforced, was prepared by the said Carlsen and Alleborn. While there is some contradiction in the testimony, the evidence preponderates that Mrs. Cavallo was not present at any time during the preparation of said paper; she was either in another part of the house or outdoors (State of Case, Testimony: p. 25, lines 6 to 19; p. 27, lines 25 to 29; p. 28, lines 3 to 10; p. 31, lines 26 to 32; p. 32, lines 25 to 26; p. 46, lines 28 to 40).

Upon completion of the paper, Mrs. Cavallo was called into the room for the purpose of having the paper signed. Being informed by her husband of a proposed sale of a part of the property, she protested, became excited, and ran crying out of the room; her husband and Mr. Carlsen went after her and brought her back; she continued her protests, but finally was overborne, or to use her own lan-

guage, was "forced" to sign the paper; "she was so excited that she did not know what she was doing" (State of Case, Testimony: p. 27, lines 38 and 39; p. 43, lines 13 to 15, also lines 25 to 36; p. 44, lines 1 to 5, also lines 24 to 40; p. 45, lines 1 to 35; p. 47, lines 27 to 31).

The complainant's witnesses testify that the paper was then read, there is some conflict as to whether it was read by Mr. Alleborn or by Mr. Carlsen, and that she, Mrs. Cavallo, was asked whether she would swear that she knew everything that was in the paper and that she knew what she was doing, and that she answered in the affirmative. This is emphatically denied by Mrs. Cavallo, who states that no paper of any kind was read to her or in her presence; that no one spoke to her except to tell her to sign and that she was not asked to swear to it or acknowledge it (State of Case, Testimony: p. 28, line 11, to p. 29, line 2; p. 32, lines 20 to 40; p. 33, lines 1 to 40; p. 43, lines 1 to 4; p. 44, lines 10 to 14, also lines 20 to 29).

Mrs. Cavallo's entire testimony shows that she is an ignorant, uneducated woman, with no knowledge of the English language. An attempt was made at the hearing to examine her in English, but her inability to understand questions, couched even in the simplest words, make it necessary to employ an interpreter; her lack of knowledge of the English language was known to the complainant and to the notary who officiated at the execution of the paper (State of Case, Testimony: p. 27, lines 33 to 40; p. 38, lines 13 to 18, also lines 27 to 33; p. 40, lines 30 to 40; p. 41, lines 1 to 25; p. 42, lines 17 to 20).

The mere reading of a legal document to a woman of Mrs. Cavallo's low mentality who had not participated in the negotiations, who was in the excited state of mind in which Mrs. Cavallo

has been shown to have been at the time, and whose utter lack of knowledge of the English language was known to the notary, or even a perfunctory explanation, such as might suffice in the case of a more intelligent and better educated person, having a fair command of English, was not sufficient in Mrs. Cavallo's case to "make known to her the contents" within the meaning of the statute; nor were Mrs. Cavallo's alleged statements to the notary—even though, over her emphatic denial, they were believed to have been actually made,—admissions that she had willingly signed the paper, sufficient to justify his making the certificate of acknowledgment.

Respectfully submitted,

Fred W. Mattocks
FRED W. MATTOCKS,

Solicitor for, and of counsel
with Appellants.

New Jersey Court of Errors and Appeals

CHARLES HOBELMAN,
Complainant-Respondent,

and

LORENZO CAVALLO and MATILDA
CAVALLO,
Defendants-Appellants.

*On Appeal
from
Chancery.*

BRIEF FOR COMPLAINANT-RESPONDENT.

Statement of the Case.

This is an appeal from a final decree in chancery directing specific performance of a contract for the sale of lands made by the defendants (the vendors) with the complainant (the vendee).

The contract, which is in the form of a receipt, is printed with its acknowledgment at pages 51 and 52 of the case.

The decree is challenged on two grounds: (1) That the contract is uncertain and incomplete; and (2) that it was not acknowledged by the defendant Matilda Cavallo, who was a married woman, as required by the statute.

Summary of the Evidence.

Charles Hobelman, the complainant, testified that on January 25, 1924, he was driving along the Tappan Road in Bergen County in company with Hans Alleborn and Charles Carlsen, when they saw a "for sale" sign on a building. They got out of the car and found the defendant Lorenzo Cavallo in the yard, and after discussion agreed on a price of \$3,500 net without commis-

sion for a part of Cavallo's land. They then went into the house and drew up the agreement (Exhibit C. 1, p. 16). The agreement was drawn up by Alleborn and Hobelman gave to the defendant his check for the deposit (Exhibit C. 2, p. 52), whereupon both defendants signed the agreement or receipt. On September 24, 1925, or seven days after the agreement was signed, Hobelman received a letter from Joseph T. Egan, an attorney, returning the check. The letter is Exhibit C. 2 (p. 17), and in it Egan states that Cavallo and his wife have no intention to go through with the contract.

On cross examination Hobelman testified that Mrs. Cavallo was present when the paper was drawn up and made no demonstration against signing the paper. He says that Cavallo signed and he talked to his wife and she then signed it. He says that Carlsen and Alleborn wrote out two papers that were drawn up, and he wrote out the check (pp. 21 and 22). The line was fixed at eight feet east of the chicken house.

Alleborn (p. 24) testified that they got out of the car after seeing the sign and saw Cavallo, and he said that he had some acreage for sale and that Cavallo pointed out the land and the dividing line was agreed upon as eight feet east of the chicken house. The price agreed upon was \$3,500 with no commission (p. 25). They then went into the dining room and Cavallo got his title policy and from it Alleborn got the description. Alleborn testified that Exhibit C. 1 was in his handwriting except the signatures and except the postscript at the bottom. Mr. Cavallo signed first and then Mrs. Cavallo and then Alleborn signed as a witness, and after him Carlsen as a witness, and then Hobelman gave the check to Cavallo (pp. 26 and 27).

Carlsen testified that Cavallo showed them around the property and pointed out the land for sale (p. 30), and after the price of \$3,500 was agreed on they went into the dining room of the house. Mr. Alleborn then drew up the receipt and took the acknowledgments of Cavallo and his wife, and after filling in the acknowledgment annexed it to the contract. He said (p. 32, l. 27): "I showed her where to sign after her husband would sign; then I prepared to take the acknowledgment. I read the paper to her, also the acknowledgment. I asked her did she swear that she knew everything that was in that paper and that she knew what she was doing—practically along the lines that every notary public would do and should do * * * she said she did."

Mrs. Cavallo testified that Mr. Carlsen spoke to her and she ran out of the house, and he went after her and told her not to cry, that all she had to do was to sign her name to the paper (p. 43). She says that she just signed her name and the paper was not read to her and she told Mr. Carlsen that she did not care to sell the property. She admits that the paper was signed in the dining room, but that her husband was not present when she signed. She admits that her husband wanted her to sign the paper (p. 45), but says that she did not want to sell the property. She says there was no "for sale" sign on the property but only a sign "eggs for sale" (p. 46).

Adele Thomass, a stenographer and law clerk in the employ of counsel for the defendants, testified that she examined a copy of the contract or receipt in the office of Mr. Gray and that it lacked an acknowledgment (p. 48). As the learned Vice-Chancellor said at page 49, "There was nothing to connect this testimony with the complainant."

The defendant Lorenzo Cavallo, although in court, did not testify.

I.

The Contract is Certain and Complete.

Appellants' counsel argues that the agreement is incomplete because it does not fix the date for passing title. In *Lean v. Leeds*, 114 Atl. 402, this Court held that where the contract omits to state a time for delivery of a deed, a reasonable time will be implied.

The receipt is next challenged because it does not state the character of the deed to be given. In *Lounsbery v. Locander*, 25 N. J. Eq. 554, it was held that a deed of bargain and sale will be implied.

Counsel for appellants argues at page 4 of his brief that the contract is incomplete because the dividing line between the land to be conveyed and the land to be retained was to be definitely ascertained by a survey. But the line itself was definitely fixed in the receipt by a monument. In the receipt it is stated to be "by line from a point 8 feet east of the chicken house on farm and running parallel to westerly line of land held by Lorenzo Cavallo and described in deed." The services of the surveyor were only needed to locate that line on the ground, not to make the contract complete.

Nor does the receipt contemplate any further agreement with respect to a road. It is apparent from the testimony of Carlsen (p. 35, ll. 1-10) that the object in fixing the line at eight feet from the chicken house was to give the Cavallos a sixteen-foot road. This is also apparent from Hobbelman's testimony (p. 22, l. 22), where he says

that the line was fixed eight feet east of the chicken house in order to give Cavallo another eight feet of road.

The receipt is next challenged, because it does not state how the interest on the mortgage is to be paid; that is, whether periodically or at maturity, or whether the mortgage shall contain default clauses.

The receipt fixes the amount of the mortgage, namely, \$3,000, its term, namely, three years, and the rate of interest, namely, 6%. Those are all the terms necessary for a mortgage and nothing needs to be supplied by intent. While it is true that mortgages usually contain default clauses, these clauses are not a necessary part of any mortgage.

Appellants rely on *Tansey v. Suckoneck*, 98 N. J. Eq. 669; *Venino v. Naegele*, 99 N. J. Eq. 183, affirmed on opinion below, 134 Atl. 920, and *Zukman v. Ihle*, 99 N. J. Eq. 702, affirmed on opinion below, 133 Atl. 779.

Tansey v. Suckoneck, 98 N. J. Eq. 669, is clearly distinguishable from the case at bar. The receipt then before the Court provided that a formal agreement was to be executed and an additional amount of cash paid on a certain date. The price was to be \$10,000, \$5,000 of which was to remain on mortgage. The contract was clearly incomplete in not stating the additional amount of cash to be paid and in not stating the term or rate of interest on the mortgage.

In *Venino v. Naegele*, the receipt provided for the sale of a plot of land with a building thereon for \$19,250, and the sellers agreed to leave a \$9,000 first mortgage on the house 147 Hudson avenue for five years at 6%, interest payable

January 1st and July 1st of each year, also a \$1,000 mortgage on the vacant plot for one year with privilege to pay off at any time. Here the contract was incomplete in that it did not specify the rate of interest on the \$1,000 mortgage and the words "vacant plot" were also indefinite.

Zukman v. Ihle, 99 N. J. Eq. 702, is not helpful because it involved a lease and it appeared that each of the parties had submitted to the other formal leases containing many covenants. The matter was still clearly in treaty although receipt had been signed.

In the case at bar, however, the receipt contains all the essentials of a contract. The only terms lacking are the character of deed to be given and the date of passing title, and they may be supplied by intendment under the case *supra*.

The leading case in New Jersey which has been followed for years and which does not appear to have been called to the attention of Vice-Chancellor Bentley in *Venino v. Naegele*, *supra*, is *Green v. Richards*, 23 N. J. Eq. 32, affirmed *Idem* 536. There the agreement was a memorandum endorsed on a receipt. The price was "the sum of \$2,500, and that when there is \$500 paid on the back rent, I will give her a deed and take a mortgage for \$2,000." The Court of Chancery held that "in such cases, the mortgage should be made payable on demand, and it is the duty of a court of equity, in order to prevent a fair and just agreement from being defeated by a mere technical objection, to presume that such was the intention of the parties; and to give the agreement that construction. This makes the written agreement certain in all its parts."

The Court of Errors and Appeals in affirming, said at page 540:

"With respect to the objection that the agreement is imperfect, inasmuch as it does not appear when the mortgage still to be given for the balance of the consideration money is to be payable, I concur with the opinion expressed in the Court of Chancery. Where nothing is said about credit to be given and there are no circumstances from which an inference can be made that it was the intention of the parties at the time that payment should be postponed, the money is payable immediately."

Green v. Richards was followed in *Luczak v. Mariove*, 92 N. J. Eq. 377, affirmed on the opinion below, 93 N. J. Eq. 501. The agreement provided for a price of \$20,000. There was a deposit of \$500. \$2,000 was to be paid in cash. There was to be a second mortgage (subject to a first mortgage) of \$12,000. It was contended that the contract was indefinite because the term of the mortgage was not stated. Vice-Chancellor Foster said:

"Where necessary, in the absence of definite terms in the contract, the court will presume it to have been the intention of the parties that a mortgage to be made shall be made payable on demand and also that the interest rate shall be a legal rate; and that the omission of a due date from a mortgage and the rate of interest thereon, will not defeat specific performance."

See also *Clapham v. Barber*, 65 N. J. Eq. 550, where *Green v. Richards* was also followed.

In the present case, however, the rate of interest on the mortgage and its term are stated.

There is a binding contract if all the terms are agreed upon and the parties so intend, although they may intend to afterwards reduce their

agreement to a formal writing as evidence thereof.

In *Wharton v. Stoutenburgh*, 35 N. J. Eq. 266, the following language of Lord Westbury in *Chinnock v. Marchioness of Ely*, 4 DeG. J. & S. 645, is quoted with approval:

"I entirely accept the doctrine that if there had been a final agreement, and the terms of it are evidenced in a manner to satisfy the statute of frauds, the agreement shall be binding, although the parties may have declared that the writing is to serve only as instructions for a formal agreement * * * But, if to a proposal or offer an assent be given, subject to a provision as to a contract, then the stipulation as to the contract is a term of the assent, and there is no agreement independent of that stipulation."

In the old English case of *Gibbons v. North Eastern, etc. District*, 11 Beav. 1, 50 English Reprint 716, A's agent wrote to B, "I am directed to offer you for the premises referred to £3,000." B replied, "We accept your offer. If you approve of the enclosed, sign the same and we will, on receipt of the deposit, sign you a copy." The enclosure was a contract which seller did not sign. B filed a bill for specific performance. It was held that the two letters constituted a valid contract intended to be carried into effect by the contract enclosed with the letter of A's agent and that although it did not appear that the contract had been approved of, this did not affect the prior valid contract.

In the English case of *Bonnewell v. Jenkins*, 8 Ch. D. 70, there was an absolute acceptance followed by the statement that a solicitor had been asked to prepare a contract and the vendee refused to sign the contract and specific performance was decreed on the original offer and acceptance.

In *Sanders v. Pottlitzer Bros. Co.*, 144 N. Y. 209, 29 L. R. A. 431, the contract was evidenced by letters and telegrams. The defendant's final telegraph message accepted plaintiff's offer and concluded "sign contract as stated in your message." A contract was prepared but was returned to the plaintiff with certain modifications which had not been referred to in the earlier correspondence. The Court held that the writings and telegrams that had passed between the parties contained all the elements of a complete contract and that the subsequent failure to reduce the contract to the precise form intended did not affect the obligations of either party.

Cases to the same effect are collated in 29 L. R. A. 431, *et seq.*

II.

The contract was acknowledged by the defendant Matilda Cavallo and is enforceable against her.

The notary, Carlsen, testified (p. 32, l. 28): "I read the paper to her, also the acknowledgment. I asked her did she swear that she knew everything that was in that paper and that she knew what she was doing—practically along the lines that every notary public would do and should do," and Mrs. Cavallo said she did. Her husband was present and before she signed, spoke to her. Carlsen also said (p. 38, l. 35), "I read that paper very loud right in her room and explained every word to her, and she—I took the acknowledgment and she admitted she understood what she was signing," and told Carlsen that she understood the contents of the instrument (p. 39).

The fact that her husband did not testify demonstrates that Carlsen was telling the truth.

But even if there were no acknowledgment, that would not be a bar to specific performance.

In *Stein v. Francis*, 91 N. J. Eq. 205, V.-C. Leaming held, quoting the heatnote:

“Where the wife was present at the time the contract was signed and acquiesced therein, and gave encouragement to the transaction, and where irreparable injury will result to the vendee if the contract for sale is not specifically performed, this general rule does not apply and a decree for specific performance will be made with order for a bond of indemnity.”

The decree below should be affirmed with costs.

COLLINS & CORBIN,
Solicitors of Respondent.

DAVID A. NEWTON,
EDWARD A. MARKLEY,
Of Counsel.