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NOTICE AND GROUNDS OF APPEAL.

(Filed July 2, 1927.)

NEW JERSEY SUPREME COURT.
CAPE MAY COUNTY.

SHEPPARD W. COOMBS,
Plaintiff,
v.
SOPHIA WITTE, and in the
alternative, HELENE F.
WITTE,
Defendant.

Action at Law.
Notice and Grounds
of Appeal.

10

To the Within Named Plaintiff:

20

Notice that the defendants appeal to the New Jersey Court of Errors and Appeals from the judgment entered in this cause, upon the following grounds:

1. Because the Court improperly allowed witness Bright to answer the following question:

“Now will you tell the jury what was said there and done with relation to this title?”

30

2. Because the Court improperly allowed witness Bright to answer this question which had to do with the title:

“What did you say about it?”

3. Because the Court permitted witness Bright to answer this question: "Now what were those objections?"

The same being irrelevant and immaterial.

4. Because the Court improperly admitted in evidence Exhibit P3.

5. Because the Court improperly allowed witness Bright to answer the following question:

"Now do you remember if at that meeting there was any reference or statement made as to encumbrances."

6. Because the Court improperly allowed witness Coombs to answer the following question:

"Was anything said to you as to why they wanted to get this money to Mrs. Witte or the daughter instead of going to the father, Henry Witte?"

7. Because the Court permitted Coombs to answer the following question:

"Will you tell the Court and jury what took place at that time with relation to this title at the settlement?"

8. Because the Court allowed witness Mark R. Sooy to answer the following question:

"Now what did you do with it?"

This had reference to Exhibit P3.

9. Because the Court permitted witness Sooy to answer the following question:

"Did Mr. Bright say anything at that time with regard to the sufficiency of the title they were to convey?"

10. Because the Court permitted witness Sooy to answer the following question:

"Now, what did he say?"

11. Because the Court permitted in evidence Exhibit P4, Exhibit P5 and Exhibit P7.

12. Because the Court allowed witness Mace to answer the following question:

"And what did you do with it? What was done with that order, do you know?"

13. Because the Court improperly limited the examination of witness Funkhauser to what was said or done by Witte.

14. Because the Court overruled the following question to witness Funkhauser:

"Give us the substance."

15. Because the Court overruled the following question to witness Funkhauser:

"Now, what is his relation to the hospital, that is to say, how is he treated, what is he allowed to do and what does he do?"

16. Because the Court overruled the following question to witness Sophia Witte:

"Now had Mr. Witte sold some property he owned before he made this deed?"

17. Because the Court refused to direct a verdict for the defendant.

18. Because the Court refused to charge defendant's first request as follows:

"1. The mere fact that Henry Witte was an inmate of the State Hospital at the time he signed and acknowledged the deed to his daughter does not raise a presumption that he was mentally incapable of executing the deed."

19. Because the Court refused to charge defendant's second request as follows:

10 "2. The burden of proof to establish that Henry Witte was not mentally capable of executing the deed is upon the plaintiff and he must establish his claim of incapability by the preponderance of the evidence."

20. Because the Court refused to charge defendant's third request as follows:

20 "3. The only question the jury can consider touching the question of marketability of title is that which questions Witte's mental capacity to execute the deed."

21. Because the Court refused to charge defendant's fourth request as follows:

"4. The jury has no right to consider the claim that there are restrictive covenants against the land."

22. Because the Court refused to charge defendant's fifth request as follows:

30 "5. If at the time Witte executed the deed he had ability to understand the nature and effect of the act in which he was engaged and the business he was transacting, then he had capacity in the law to make the deed."

23. Because the Court refused to charge defendant's sixth request as follows:

"6. If the jury should find under the test stated that Witte was capable of making the deed there must be a verdict of no cause of action."

24. Because the Court refused to charge defendant's seventh request as follows:

"7. If the jury find by the test stated that Henry Witte was capable of making the deed there must be a verdict in favor of the defendant on her counter-claim for the sum of \$144,500 with interest from January 5, 1926." 10

25. Because the Court refused to charge defendant's eighth request as follows:

"8. The plaintiff cannot recover unless he establishes his claim to the satisfaction of the jury by the preponderance of the evidence." 20

26. Because the Court refused to charge defendant's ninth request as follows:

"9. If the jury believe that Coombs knew when he signed the agreement that Witte was in the State Hospital and believed that he was mentally incapable of executing the deed he cannot recover and defendant is entitled to a verdict on her counter-claim."

27. Because the Court refused to charge defendant's tenth request as follows: 30

"10. If the jury believe that at the time Coombs signed the agreement and paid the \$16,000 (which was after Witte had executed the deed) without any knowledge that Witte

was in the hospital and that he was mentally incapable of executing the deed, he cannot recover.”

28. Because the Court instructed the jury that the order and proceedings before Judge Eldridge were *prima facie* evidence of insanity.

29. Because the Court told the jury that they might take into consideration the fact that Mr. Witte was still in the hospital in determining whether he was insane at the time of the making of the deed.

30. Because the Court permitted the jury to say whether there was any binding effect upon the defendant with relation to the alleged restriction.

31. Because the Court permitted the jury to pass upon the question of Witte’s insanity when the same could not be in issue, and that the real question was whether or not he appreciated the nature and effect of his act.

32. Because the Court improperly discussed with the jury the question of the order and proceedings before Judge Eldridge.

33. Because the Court improperly discussed with the jury the question of a marketable title, which was not in issue.

34. Because the Court improperly discussed with the jury the question of whether the contract in question was between Mr. Witte and Coombs.

35. Because the Court stated to the jury that Miss Witte was acting for her father and mother.

COLE & COLE,
Attorneys of Defendants.

JUDGMENT RECORD.

COMPLAINT.

(Filed July 13, 1927.)

NEW JERSEY SUPREME COURT.

10

SHEPPARD W. COOMBS, <i>Plaintiff,</i> v. SOPHIA WITTE, and in the alternative, HELENE F. WITTE, <i>Defendant.</i>	}	Judgment Record. Action at Law. On Postea. Mark R. Sooy, Attorney.
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20

Sophia Witte, and in the alternative, Helene F. Witte, the defendant in this cause was summoned to answer unto Sheppard W. Coombs, the plaintiff therein in an action at law upon the following complaint:

(Summons issued Aug. 16, 1926.)

30

Plaintiff, Sheppard W. Coombs, residing in Wildwood, County of Cape May and State of New Jersey, says:

1. That during the latter part of August, 1925, Henry Witte and Sophia Witte, his wife, were the

owners of property, lands and premises in the City of Wildwood, County of Cape May and State of New Jersey, situate at the northeasterly corner of Atlantic and Pine Avenues, and known as Hotel Adelpia Witte, including the garage, furniture and fixtures contained in said hotel.

2. That during the latter part of said August, 1925, defendant, Sophia Witte, entered into negotiations with plaintiff for the sale to plaintiff of said lands and premises and personal property, which negotiations resulted in a verbal agreement between defendant, Sophia Witte, and plaintiff for the sale of said property to plaintiff, at the price of one hundred and sixty thousand five hundred dollars (\$160,500.00).

3. That the signature of Henry Witte was necessary to the making of a valid agreement of sale, as well as to the making of a valid conveyance of said lands and personal property.

4. That on September 5th, 1925, defendant, Sophia Witte, and Henry Witte conveyed said lands and premises to their daughter, Helene F. Witte, a single woman, for the purpose of having the said Helene F. Witte make the agreement of sale and title for said premises to plaintiff.

5. That on September 5th, 1925, defendant, Helene F. Witte, for the purpose of carrying into effect the aforesaid verbal agreement of Sophia Witte, entered into an agreement in writing for the sale of said lands, premises and personal property to plaintiff, at the price or sum of one hundred and sixty thousand five hundred dollars (\$160,500.00),

theretofore agreed upon between defendant, Sophia Witte, and plaintiff, a true copy of which written agreement is hereto annexed and made a part hereof, and marked "Exhibit A."

6. That at the time of the signing and delivery of said agreement of sale to plaintiff, plaintiff paid to the defendant, Sophia Witte, who still conducted the negotiations for said sale, the sum of sixteen thousand dollars (\$16,000.00) by check, which check was by the said defendant, Sophia Witte, deposited in her individual account and cashed.

7. That in and by the terms of said agreement, defendant agreed to convey to plaintiff on January 5th, 1926, said lands and premises, by a plain warranty deed, with a good and marketable title, free and clear of all encumbrance.

8. That said lands and premises were conveyed to the said Helene F. Witte by deed of gift from Henry Witte and Sophia Witte, his wife, bearing date the 2nd day of September, 1925, and recorded in the clerk's office of Cape May County, on the 9th day of September, 1925, in deed book 410, p. 323.

9. That at the time of the making and executing of said deed from the said Henry Witte and Sophia Witte, defendant, his wife, to the said Helene F. Witte, defendant, the said Henry Witte was of unsound mind and incapable of executing a valid legal conveyance, and was at that time confined in the New Jersey State Hospital for the insane, at Trenton, New Jersey.

10. That for the purpose of preventing plaintiff from learning that mental condition of the said

Henry Witte, the said Sophia Witte caused the title to said premises to be transferred from the said Henry Witte and Sophia Witte to Helene F. Witte, defendant, instead of transferring the same directly to this plaintiff, pursuant to the agreement between the said Sophia Witte, defendant, and plaintiff, for the purpose of imposing an imperfect title on plaintiff.

10 11. That on the day of settlement, to wit, the 5th day of January, 1926, neither the said Sophia Witte or Helene F. Witte, defendants, was able to convey to plaintiff a good and marketable title, free and clear of encumbrance, as in said contract provided, and neglected and refused so to do.

20 12. That on January 5th, 1926, plaintiff, by his attorney, attended at the time and place fixed and demanded a valid conveyance of said premises, which the defendants, or either of them, was unable to give; whereupon plaintiff refused to accept the defective title tendered, and demanded from the defendants and each of them the return of the deposit of sixteen thousand dollars (\$16,000.00).

13. That the said defendants, and each of them, refused and have ever since neglected and refused to return the said deposit to plaintiff.

30 Plaintiff demands of the defendant, Sophia Witte, or in the alternative from Helene F. Witte, the sum of sixteen thousand dollars (\$16,000.00), with interest from January 5th, 1926.

MARK R. SOOY,
Attorney of Plaintiff.

SCHEDULE A.

THIS AGREEMENT, made the fifth day of September A. D. 1925, between Helene Witte of Wildwood, New Jersey, singlewoman, of the first part, hereinafter called the "Seller" and Sheppard W. Coombs, of the same place, of the second part, hereinafter called the Buyer.

Witnesseth, That the Seller agrees to sell and convey and the buyer agrees to buy all that certain 10 lot, tract, or parcel of land and premises situate in the City of Wildwood, County of Cape May and State of New Jersey, more particularly described as follows: All that certain property known as the Adelpia-Witte situate on the Northeast corner of Atlantic and Pine Avenues including the entire plant, garages, furniture and fixtures therein contained, for the price or sum of One Hundred sixty thousand five hundred dollars, under and subject to the following terms and conditions: 20

1. A first payment of Sixteen thousand dollars, receipt of which is hereby acknowledged by the seller.

2. The balance of the purchase price shall be paid in the following manner:

Forty six thousand five hundred dollars cash at the time of settlement and a first mortgage of \$76,000.00 will be given and accepted for a period of eight years and a second mortgage of Twenty four thousand dollars payable in annual install- 30 ments of Three Thousand dollars, both mortgages to bear interest at six per centum per annum, payable semi-annually and contain tax and insurance clauses, at the time of final settlement, which shall be made at the office of John Bright, 113 E. Wildwood Ave. Wildwood, N. J. on or before January

5, 1926 or the deposit of Sixteen thousand dollars made herewith, at the option of the seller, may be applied on account of the purchase price or be forfeited as liquidated damages to the seller, and not as a penalty, provided that the necessary title searches can be obtained from any first class New Jersey title company by that date;

SCHEDULE A.

10

should there be any delay, not the fault of the buyer in the procuring of such searches, the time for the final settlement shall extend until such searches can be obtained.

3. The title to the premises shall be free and clear of all incumbrances, including municipal liens and assessments, except municipal improvements in the course of construction and not assessed, obvious easements, usual restrictions running with the land, and shall be a marketable title, and the seller, shall tender a plain warranty deed conveying such title at the time of the final settlement, or in the event that such title cannot be as above, then this deposit shall be returned to the buyer.

20

4. All adjustments shall be made as of January 5, 1926, and possession shall be given the buyer January 5, 1926.

5. The buyer shall pay for searches and all other expenses excepting the preparation of the deed and the necessary revenue stamps attached thereto, which shall be paid for by the seller.

30

6. This agreement shall extend to and be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

7. Time is the essence of this agreement.

8. This contract includes all fixtures and appur-

tenances permanently attached to the building or buildings on the land herein described and also specifically the following items:

In Witness whereof, the parties hereto have set their hands and seals the day and year first above written.

HELENE F. WITTE (SEAL)

SHEPPARD W. COOMBS (SEAL)

Signed, sealed and delivered

in the presence of

John Bright.

10

STATE OF NEW JERSEY }
CAPE MAY COUNTY } SS

BE IT REMEMBERED, That on this Fifth day of September in the year of our Lord one thousand nine hundred and Twenty five, before me, a Notary Public, in and for the State of New Jersey, personally appeared Helene Witte, who I am satisfied is the grantor mentioned in the above deed or conveyance, and I having first made known to her the contents thereof she acknowledged that she signed, sealed and delivered the same as her voluntary act and deed. All of which is hereby certified.

20

JOHN BRIGHT,

Notary Public of New Jersey.

(Filed Aug. 20, 1926.)

30

ANSWER.

(Filed Aug. 23, 1926.)

Sophia Witte and Helene F. Witte, of Wildwood New Jersey, jointly and severally answering the complaint say:

10

1. Paragraph one is admitted.
2. Paragraph two is admitted.

3. The signature of Henry Witte was not necessary to the making of a valid agreement of sale by defendant, Helene F. Witte. His signature to a deed was necessary in order to convey his title to the said Helene F. Witte or any other person.

20

4. Paragraph four is admitted.
5. Paragraph five is admitted.
6. Paragraph six is admitted.

7. Paragraph seven is admitted subject to the production of the agreement to establish its exact terms.

30

8. Paragraph eight is admitted.

9. It is admitted that on the day when Henry Witte executed the deed referred to he was an inmate of New Jersey Hospital for the Insane, at Trenton. It is denied that he was of unsound mind and incapable of executing the said deed or a valid legal conveyance of his interest in the premises.

10. Paragraph ten is denied. Before and at the time of the execution of the agreement in question, plaintiff knew that the said Henry Witte was an inmate of said hospital.

11. Paragraph eleven is denied.

12. Paragraph twelve is admitted except as denied. It is denied that defendant, Helene F. Witte, was not able to convey a marketable title to the plaintiff for the premises in question and make a valid conveyance of the same. 10

13. Paragraph thirteen is admitted.

COUNTER-CLAIM.

Defendant, Helene F. Witte, counter-claims against the plaintiff as follows: 20

1. On September 5, 1925, agreement in writing was entered into between Helene F. Witte, seller, and Sheppard W. Coombs, plaintiff, buyer, a copy of which agreement is made a part of the complaint.

2. By the terms of the agreement, the plaintiff was to pay the sum of \$160,500 for conveyance of the premises described. On January 5, 1926, defendant was ready, able and willing to convey the premises in accordance with the terms of said agreement and tendered herself so to do to the plaintiff. Without any legal justification, he refused to perform the contract on his part. 30

3. As a result of his refusal, there became due

and payable on said date the said sum less the sum of \$16,000 paid at the time of the execution and delivery of said agreement.

Judgment will be claimed for the sum of \$144,500, with interest from January 5, 1926, besides costs.

COLE & COLE,
Attorneys for Defendants.

10

ANSWER TO COUNTER-CLAIM.

(Filed Aug. 26, 1926.)

By way of answer to the counter-claim filed by the defendant in the above entitled action, plaintiff says that:

20 1. Paragraph one of said counter-claim is admitted.

2. Paragraph two of said counter-claim is denied except that plaintiff admits that the purchase price of said lands and premises was the sum of \$160,500.00.

3. Paragraph three of said counter-claim is denied.

30

MARK R. SOOY,
Attorney for Plaintiff.

JUDGMENT.

This action was tried before Judge William Frank Sooy, with a jury, at the Cape May Circuit, on April 14, 1927.

This cause having been heard and submitted to the jury, they returned a verdict as follows: We, the jurors, find the verdict in favor of the plaintiff and against the defendants, in the sum of sixteen thousand dollars (\$16,000.00) damages, with interest from January 5, 1926. 10

Whereupon it is adjudged that the plaintiff, Shepard W. Coombs, do recover of the said defendant,

Damages \$16,000.00 Sophia Witte, and in the alternative, Helene F. Witte,
Costs 72.30 the sum of sixteen thousand

\$16,072.30 dollars damages, with interest from January 5, 1926, together with his costs which have been taxed at the sum of 20

seventy-two dollars and thirty cents making in the whole the sum of sixteen thousand and seventy-two dollars and thirty cents.

Judgment entered May 9, 1927.

WM. S. GUMMERE,
C. J.

I, Edward J. Kelleher, clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the notice of appeal and also a copy of the judgment entered in the above stated cause as the same remains on file and of record in my office. 30

In testimony whereof I have set my hand and the seal of said Court at Trenton, this twelfth day of July, A. D. nineteen hundred and twenty-seven.

EDWARD J. KELLEHER,
(Seal) Clerk.

TESTIMONY.

NEW JERSEY SUPREME COURT.
CAPE MAY COUNTY.

10	SHEPPARD W. COOMBS, <i>Plaintiff,</i>	}	Testimony.
	v.		
	SOPHIA WITTE, and in the alternative, HELENE F. WITTE, <i>Defendant.</i>		

20 Cape May Court House, N. J.,
Thursday, April 14, 1927.

Before HON. WILLIAM FRANK SOOY, J., and a jury.

30 APPEARANCES:
MARK R. SOOY, Esq., By MR. BOURGEOIS, for the
plaintiff.
MESSRS. COLE & COLE, By CLARENCE COLE, Esq.,
for the defendant.

(The jury was empaneled and sworn.)

(Mr. Bourgeois opened to the jury on behalf of the plaintiff.)

(Mr. Cole opened to the jury on behalf of the defendant as follows:

Mr. Cole: May it please your Honor and gentlemen of the jury: Mr. Coombs is a man of years of business experience who has lived in Wildwood for a great many years. He knew the Witte family and at the time he accepted this written agreement from Miss Witte for the purchase of the property he knew that Mr. Witte had been in the State Asylum for years. He had all the knowledge about that that Mrs. Witte had or Miss Witte had, and with all that knowledge he signed this agreement, and he knew that in order to get a title for that property he had to have a deed made by Mr. Witte because Mr. Witte owned the property. He knew that. And so no matter whether the deed was made from Mr. Witte to him or made to the daughter for the purpose of conveying to him, we submit, made no difference. At all events, knowing that the deed had to be made by Mr. Witte and his wife either to him or to the daughter or some one, he signed this agreement, and paid the \$16,000. Now for some reason that perhaps you will never know—we don't know—later on, Mr. Coombs, as we think, for an unjustifiable reason sought to escape from this contract, and set up as a reason and the only reason at the time that the title company would not insure this title because they said Mr. Witte was in the State Asylum. He then declared that this was not, could not be a good and marketable title and therefore he is entitled to have his money back. Now our in-

sistence will be he knew all this, he accepted the agreement with full knowledge of it, that he cannot now be allowed to escape from the effect of his agreement.

- But in addition to that it will be our contention at the time Mr. Witte made this deed he was capable of knowing what he was doing. He knew he owned this property and he knew the paper was a deed for it and knew his wife and daughter had arranged to sell this property to Mr. Coombs, and with that knowledge, capable of knowing what he was doing, he signed and acknowledged the deed, which you will see. We contend it is too late for him now to say that Mr. Witte was not capable of making that deed, and it will be our insistence it is not a question whether Mr. Witte was as bright as you gentlemen of the jury or as counsel of the other side—I will make no mention of myself—if he knew what he was doing and was capable of signing that deed that is the test the law imposes and the only test. And we submit, independent of Mr. Coombs' knowledge of everything, that this deed was signed by a man capable of signing it and it is here for you to see.

In substance, that is the defense to this cause.

- Mr. Bourgeois: If your Honor please, all the first part of that opening I move to strike out, all that part before he said "In addition to that." The first part was directed to the fact that Mr. Coombs knew Witte was in the insane asylum. That does not make any difference under this agreement which provides they will make title free and clear and marketable. They have said they would convey that sort of a title, and the fact he knew does not change that title.

I move to strike all that part of the opening.

The Court: I refuse to strike it.

Mr. Bourgeois: Allow me an exception.

The Court: Yes.

SHEPPARD W. COOMBS, the plaintiff, called as a witness in his own behalf, being sworn, was examined and testified as follows:

Direct examination.

10

By Mr. Bourgeois:

Q. Mr. Coombs, you live where?

A. In Wildwood.

Q. And are you acquainted with Sophia Witte?

A. I am.

Q. Did you at one time have some negotiations with her with relation to the purchase or possible purchase of a hotel property?

20

A. I did, sir.

Q. What property?

A. Property known as the Hotel Witte, Wildwood.

Q. And when were those negotiations had?

A. In the office of the Hotel Witte.

Q. I say when?

A. Why, in '25; I don't just recall the date. If I could have the agreement I could refer to that.

30

(Paper shown witness.)

The Witness: Made the 5th day of September 1925; September 5th.

Q. When did you have the negotiations with Sophia Witte?

A. That was when —

Q. The first time?

A. The first time, oh, no, not when the agreement was made. The first time I had negotiations with her with regards to the Hotel Witte was about, oh, at least, possibly a week or ten days before.

Q. Before that time?

10 A. Before the time I signed the agreement.

Q. And what negotiations did you have with her?

A. At the time that I made those—first time I met her, that is right, I was informed by Mr. Goslin—

Q. Don't tell me that. Just tell me what your negotiations with her were.

A. My negotiations with her was to purchase her hotel.

Q. Yes.

20 A. At a price which was mentioned in my agreement.

Q. What price was mentioned?

A. I think \$165,000.

Q. Yes.

A. And certain mortgages to be taken, which I don't recollect, in the agreement there. And the time of settlement was so much cash to be paid and so much to be made —

Q. And after you came to the agreement, what was said about making the written agreement?

30 A. Mrs. Witte said she would have—before she could make an agreement with me she would have to go to Trenton to see her husband and get the agreement signed by him.

Q. And how long after that was it before you were in touch again about it?

A. Somewhere between a week or ten days she

called my attention in some way that I should come and see her now, that she wanted to see me.

Q. And did you go?

A. I did.

Q. Whom did you find there?

A. I found Mrs. Sophia Witte and her daughter.

Q. Now, what was done at this time?

A. That time Mrs. Witte said, "I have got the signatures from Mr. Witte all right now in Trenton, but you will have to make an agreement with my daughter, Miss Witte, now, as the property is in her hands." 10

Q. At that time did you know the mental condition of this man Witte?

A. Yes, I knew Mr. Witte was in the institution in Trenton.

Q. In the institution, yes, but did you know whether he was sane or insane at that time?

A. No, I didn't know that; no, sir.

Q. Did you know how long he had been there, anything about that? 20

A. Not exactly; I presume around ten or twelve or fifteen years, just roughly.

Q. As a result of your second visit, what did you do when you went to see Mrs. Witte and her daughter?

A. Well, Mrs. Witte says to me, "Now, Mr. Coombs, everything is all fixed up and we have an agreement here that is made from Helene to you."

Q. I show you what purports to be an agreement bearing date the 5th of September, 1935, and ask you whether or not that is the agreement of which you speak? (Handing paper to the witness.) 30

A. Yes, that is the agreement I am speaking of now.

Mr. Bourgeois: I will offer it in evidence; mark it Exhibit P1.

(Paper referred to marked as an exhibit for the plaintiff, P1.)

Q. Now, at the time you went there when they spoke about the agreement, did they have the agreement already prepared?

10 A. The time that we went in to the agreement, no, they didn't have it already prepared.

Q. No.

A. Mrs. Witte says to me, she says that, "Mr. Bright will take care of this for me, Mr. John Bright." She says that Helene can go down to the office and I can meet her there, I just don't recollect what hour it was that day, and then—I says to Mrs. Witte, "There seems to be some changes here about this here agreement. I was doing business with you and I understand I was to get an agreement from you." She says, "That will be all right, my husband has made it over to Helene now and that will be all right, and," she says, "there will be no question about it in no way, shape or form." I says, "Title and everything will be handled the same?" She says, "Yes. Make the agreement with Helene and there will be no question about it." I went to Mr. Bright's office and when I got there I was there five minutes and in came Miss Helene; Mr. Bright
20 seemed to have knowledge of the affair, knowing such a thing was going to be made, seemed so to me, and the agreement was there made.

Q. At that time did you give them some money?

A. I did; I gave them —

Q. I show you a check dated September 5, 1925, for the sum of \$16,000—not \$16,500 as I stated to the jury —

A. A mistake there.

Q. —made payable to Sophia Witte, and signed by Sheppard W. Coombs, and ask you if that is the check you gave at that time?

A. Yes, that is the check I made, and gave at that time.

Q. Will you tell me if that has been paid?

A. That has been paid, yes.

Q. Is it endorsed by whom?

A. Mrs. Sophia Witte, made to the order of Mrs. Sophia Witte. 10

Q. I see.

A. Whom I had arranged to do business with, Mrs. Sophia Witte.

Mr. Bourgeois: Please mark it P2.

(Check referred to marked as an exhibit for the plaintiff, P2.)

20

Q. And Helene Witte's name does not appear on that check at all, does it?

A. No, Miss Helene Witte is not there and not interested as far as our original dealings were concerned, more than Mrs. Witte transferred me, told me that the agreement would have to be made with Miss Helene now.

Q. After you got the agreement, what happened?

A. After I got the agreement, of course then, I suppose, waiting for the time of settlement. 30

Q. Yes.

A. When settlement would be made.

Q. What did you do with relation with this clause in the agreement that provides that you were to get a marketable title and a title free and clear of encumbrance?

A. I informed my attorney that I wanted to get title papers for same, I wanted to guarantee title.

Q. Yes.

A. And he I suppose— I know he did —

Q. Did you go yourself and make the application for title insurance or was that done by Mr. Sooy?

A. No; I gave that to my attorney, Mr. Sooy. He has been my attorney for years.

Q. What happened on the day of settlement; were you there then?

A. Yes, I were at the settlement.

Q. Had you met Miss Witte before that time since the signing of the agreement?

A. Between the time of agreement and the settlement day.

Q. Yes.

A. No, I haven't met Miss Witte.

Q. Where did you go at the time of the settlement?

A. We went to the Wildwood Title & Trust Company in Wildwood.

Q. And whom did you find there?

A. Mr. Crane, president of the trust company; Mr. John Bright; and my attorney and myself.

Q. Neither Mrs. Witte nor Miss Witte were there?

A. No, they weren't there. Only the four men were there.

Q. At that time did you have title insurance?

A. I had a letter from the Title —

30

Mr. Cole: I object.

Q. No; did you have title insurance? Were you there to get your title insured?

A. No, I weren't.

Mr. Cole: I object. It is utterly immaterial as far as we are concerned whether he was able to get title insurance or not.

The Court: The agreement doesn't call for title insurance.

Mr. Bourgeois: No; only for marketable title.

The Court: I sustain the objection. 10

Mr. Bourgeois: Yes.

Q. Was there any discussion there at that time about the title that they were able to give you?

Mr. Cole: I object.

Q. Whether it was to be a clear title or not a clear title? 20

Mr. Cole: object.

Mr. Bourgeois: Wait a minute. That is only preliminary.

Q. Did Mr. Bright, their attorney, take part in your discussion?

A. Yes, Mr. Bright did.

Q. Will you state what was said in the presence of Mr. Bright with regard to the title? 30

Mr. Cole: I object; what Mr. Bright said.

Mr. Bourgeois: Not only what he said, but anything said in his presence. He was there representing these people.

Mr. Cole: I object.

The Court: There is no dispute as between the parties that Mr. Bright was there?

Mr. Cole: He was only an attorney. He was not an agent to bind anybody; at least, it doesn't appear so.

10 The Court: That not being admitted—I supposed it was—that not being admitted, Mr. Bourgeois, how can I —

Mr. Bourgeois: May I withdraw this witness a moment?

The Court: Yes.

Mr. Bourgeois: Mr. Bright, will you take the
20 stand?

JOHN BRIGHT, called as a witness on behalf of the plaintiff, being sworn, was examined and testified as follows:

Direct examination.

30 By Mr. Bourgeois:

Q. Mr. Bright, I show you Exhibit P1 and ask you whether or not that agreement was drawn by you?

A. Yes, sir.

Q. At whose request?

A. At the request of Mrs. Witte.

Q. Were you present when it was delivered to Mr. Coombs?

A. I believe so.

Q. Were you present when the check for \$16,000 which is marked P2 was delivered to—oh, to you, probably or to Miss Witte, which was it?

A. I don't recall exactly. I remember these folks being in my office to sign up the agreement. I drew it and witnessed it and I assume the check was delivered, too. 10

Mr. Cole: There is no question but what Mrs. Witte got that money.

Q. I want to know whether it was delivered to you or directly.

A. I think it was handed direct to the Wittes.

Q. Were you present on the day when the settlement was supposed to have taken place? 20

A. Yes, sir.

Q. Representing whom?

A. The Wittes.

Q. Who?

A. The Wittes.

Q. Now, will you tell the jury what was said there and done with relation to this title?

Mr. Cole: I object to that, may it please your Honor. Is this an attempt to change this written agreement. 30

Mr. Bourgeois: They are acting through an agent. Suppose Mrs. or Miss Witte was on the stand; couldn't I ask them what took place?

Mr. Cole: It would depend on whether it is relevant.

The Court: What is the purpose?

Mr. Bourgeois: They didn't furnish a title free of encumbrance and a marketable title.

The Court: I will permit it.

10

Mr. Cole: I want to object to that. I don't think that question is specific enough to draw the answer counsel says he wants or expects to get. It is pretty general.

The Court: If the witness cannot answer it, he won't.

The Witness: What is the question?

20

Mr. Bourgeois: Will you read the question?

(The question was read by the stenographer, as follows: "Now will you tell the jury what was said there and done with relation to this title?")

Mr. Cole: Exception.

The Court: Yes.

30

(The question was again read by the stenographer.)

A. At the time of the settlement, Mr. Crane, who was the president of the Wildwood Title & Trust Company, and I were in the Wildwood Title & Trust Company settlement room, waiting for the buyer to

come in and make a settlement. Mr. Coombs and Mr. Sooy came in and said that they couldn't settle for the reason that their advices from the title company —

Mr. Cole: That I object to. We are not concerned with anything that the title company had to do with this case.

Mr. Bourgeois: If your Honor please, they are there making this transaction, and the whole transaction is relevant, coming from them. I am not objecting to it. It is coming from their side, not from our side. 10

The Court: I know, but you are now endeavoring to prove what happened there by statements of your witnesses. In other words, you are trying to prove there was a defective title by the statements made 20

Mr. Bourgeois: Let me change that.

Q. They said something about that title?

A. They did.

Q. What did you say about it?

Mr. Cole: I object.

Q. In answer to what they said. 30

The Court: I will permit it.

Mr. Cole: Allow me an exception.

The Court: Yes.

Mr. Cole: I don't think what he said can bind these defendants.

A. I merely said I would like them to submit their objections in writing so that I could forward it to the Wittes who were then in California.

Q. And what were those objections?

Mr. Cole: I object.

10

Q. What were the objections you were going to submit?

Mr. Cole: The Wittes weren't there.

Mr. Bourgeois: The Wittes cannot escape liability by sending some one else in their place.

20 The Court: Certainly not, but on the other hand the real capacity of Mr. Bright there doesn't now appear. He was there for the purpose of making settlement evidently. Now then, he says that there were some verbal objections made and that in reply to that he said to them they would have to put their objections in writing so that I could forward it to the Wittes. Now then, were those objections put in writing?

Q. Were those objections put in writing?

30

A. They were.

Q. Have you them?

The Court: And were they sent to the Wittes?

The Witness: They were.

The Court: Then that is competent.

Q. Where are those objections?

A. Well, I sent them to the Wittes. I don't know where they are now.

Mr. Bourgeois: Will you produce them?

Mr. Cole: Never saw them.

Mr. Bourgeois: That doesn't make any difference. 10

Mr. Cole: I cannot produce them.

Mr. Bourgeois: Then I ask he be permitted to tell about them.

Mr. Cole: May it please your Honor —

The Court: There is no question pending yet. 20

Mr. Cole: All right.

Q. Now you say you sent them to the Wittes?

A. Yes.

Mr. Bourgeois: And they say they haven't them, upon call.

The Court: All right. 30

Q. Now, what were these objections?

Mr. Cole: Now, I object. They cannot create a defect in our title by making objections. If there was a defect in our title under the agreement they must prove it.

The Court: I will permit this question for the purpose of showing what objections were submitted to the Wittes.

Mr. Cole: Allow me an exception.

The Court: Yes.

10 A. Mark B. Sooy, Esquire, wrote me a letter embodying all the exceptions which he spoke of in his verbal conversation with me at the title company. That letter I forwarded to the Wittes. I read it, of course, before I sent it. Just what it contained I don't know.

By Mr. Cole:

Q. Now, let me see; you saw this was a letter?

A. Yes, sir.

20 Q. That Mr. Sooy sent to you?

A. Yes, sir.

Q. That came through the mail?

A. Yes, sir.

Q. That is what you call the objections?

A. Yes, sir.

Mr. Cole: Let me see if I got that letter.

Mr. Bourgeois: Now what was that question?

30 The Court: He wants to see if he has the letter now.

Mr. Bourgeois: Who?

The Court: He says there was a letter.

Mr. Cole: No, I haven't got it. I thought I might have been in error in thinking I didn't have it. I haven't.

By Mr. Bourgeois:

Q. I show you a copy of a letter under date of January 15, 1926, addressed to John Bright, Esq., Wildwood, New Jersey, and without signature, but is produced to me by Mr. Mark Sooy, and ask you if that is a copy of the letter you received from Mr. Sooy. (Paper handed to witness.) 10

A. Yes, sir; I received such a letter from Mr. Sooy.

Q. And was that accompanied by a copy of a letter I now show you from the Cape May Title Company? (Handing paper to witness.)

A. Yes, sir.

Q. Is that the letter, the one you now hold in your hand, the copy of which you sent to Mrs. Witte? 20

A. Yes, sir.

The Court: You mean that or both of them?

Q. Did you send a copy of Mr. Sooy's letter also?

A. Well, I imagine that I sent the entire correspondence on to the Wittes.

Mr. Bourgeois: All right; then I will offer them both in evidence as P3.

Mr. Cole: I object. Mr. Bright, can't you get above imagination on this? 30

The Witness: No, I don't hardly think so. I knew I sent them a letter, the correspondence in the matter, so that they would be fully advised in the premises.

Mr. Bourgeois: Suppose I withdraw from that offer the copy of Mr. Sooy's letter, because the other he knows he sent and that one he is in doubt about and I don't want to have any trouble about it. So I will confine my offer simply to the letter from the Cape May Title Company, of which he sent a copy.

Mr. Cole: I object to both. I understand he does not insist upon having the title company letter in.

10 Mr. Bourgeois: That is the one I do. I don't insist on Mr. Sooy's letter, because he doesn't recall.

Mr. Cole: I object to both. I say nothing this title company said or did can affect the question of this title's marketability. So far as Mr. Sooy's letter is concerned —

The Court: You are not asking that?

20 Mr. Cole: Then that is sufficient for the time being.

The Court: For the purpose of showing the objections to the title, not for the purpose of proving the title I will permit the letter to be received in evidence.

30 Mr. Cole: Exception on the ground it is irrelevant and immaterial.

The Court: Yes.

Mr. Cole: Cannot bind us.

(Paper referred to marked as an exhibit for the plaintiff, P3.)

Q. Did you continue to be the attorney of the Wittes.

A. No; I think after that I had nothing further to do with this transaction.

Q. It terminated there?

A. Yes.

Q. Now do you remember if at that meeting there was any reference or statement made to encumbrance?

Mr. Cole: Objected to.

10

Mr. Bourgeois: Well, if it was made, I don't care anything about by whom.

Mr. Cole: We weren't there.

Mr. Bourgeois: Weren't you?

Mr. Cole: No, I understand Mrs. and Miss Witte were in California. Which time are you talking 20 about?

Mr. Bourgeois: If your Honor please —

The Court: They were in California and sent Mr. Bright there, according to the testimony at the present time, to the settlement, and I assume that is what Mr. Bourgeois is referring to.

Mr. Cole: I object on the grounds he has no au- 30 thority to bind the Wittes in any way.

Mr. Bourgeois: I am asking if a certain thing happened.

Mr. Cole: I object. What was said there couldn't bind us. If the fact is the title is defective, that is one thing, but what somebody said about it is another.

The Court: He is asked if anything was said. I will permit the answer, yes or no.

The Witness: There was.

10 Mr. Bourgeois: You may cross-examine.

Cross-examination.

By Mr. Cole:

Q. Mr. Bright having in mind when you say Mr. Coombs and Mr. Sooy came to your office after the agreement was made, what was that date?

20 A. No, it was not at my office. It was at the office of the Wildwood Title & Trust Company.

Q. What was that date?

A. I don't recall. I imagine, however, it was the date set for the settlement in the agreement.

Q. Yes. Now did you say the Wittes were in California?

A. Yes.

Q. Do you know when they left for California?

A. Quite some time before that.

30 Q. All right. Now you drew the agreement?

A. Yes, sir.

Q. And who was present when it was drawn?

A. Well, I don't know as anyone was present when it was drawn. They came in to execute it later, as I recall.

Q. From whom did you get the information to draw the agreement?

A. Well, from the Wittes. Now, I couldn't say; I imagine Miss Helene Witte and Mrs Sophia Witte, and possibly her son William, at different times.

Q. After it was drawn Mr. Coombs called?

A. Yes.

Q. At that time he gave a check which you have just been shown? 10

A. Yes.

Q. And he signed the agreement?

A. Yes.

Q. Did he know the agreement was with Helene Witte?

A. Yes. I have no doubt the agreement was read.

Q. Did he make any objections to signing the agreement with Helene Witte?

A. Not that I recall; no, sir.

Q. Now at that time, I mean at the latter date, was 20 this deed dated the 19th of September, 1925, from Helene Witte, produced?

A. It was.

Q. You took the acknowledgment?

A. Yes, sir.

Q. Did Mr. Coombs know it was there?

A. I have no doubt he did. We said we were ready for settlement.

Mr. Cole: All right. Mark that for identifica- 30 tion.

(Paper referred to marked for the defendant, Exhibit D1 for identification.)

Q. Now, this deed conveyed the property in the agreement?

A. Yes, sir.

Q. Now, I notice that there is no grantee named in this deed. Can you recall why that omission?

A. Yes; because at the time of the drawing of the agreement, there was a strong probability that it might not be made in the name of Mr. Coombs.

Q. How did you get the information?

A. Well, as a matter of fact it was right during the real estate boom that was there, and lots of people were selling their agreement prior to the date of settlement and the papers would be drawn, the deeds would be drawn to others than named in the agreements by assignment and otherwise.

Q. Well, did you get an impression that might occur in this case; is that why you omitted it?

A. Yes, sir.

Q. Did Mr. Coombs ask to look at this deed?

A. I don't think he did; no, sir.

Q. Did he make any objections to the form of it?

A. No, I don't think he even looked at it.

Q. Do you know to whom this deed was delivered after its execution, immediately after? Was it delivered to you?

A. No, we delivered it to Heber Crane who was the president of the Wildwood Title & Trust Company, and he was to keep it in his possession until the day of settlement

Q. And he is now deceased?

A. He is now deceased.

Q. He was a witness in the former trial, was he not?

A. Yes, sir.

Mr. Cole: That is all.

Mr. Bourgeois: Just a word.

Re-direct examination.

By Mr. Bourgeois:

Q. Mr. Bright, I again show you P3 and ask you whether or not that letter was shown to you at the time of settlement and then the copy was furnished to you afterwards?

Mr. Cole: Of course, this is objected to on the grounds it is irrelevant and immaterial. 10

The Court: I will permit it.

A. It was.

Q. Yes. Now Judge Cole asked you some questions. You answered them. I think you didn't quite understand them. Have you that deed? He asked you if this deed marked D1 for identification conveyed the property in the agreement, and you answered yes. That would depend on whether or not the deed preceding this one was a good deed, wouldn't it? 20

A. I merely meant that deed contained the description of the property.

Mr. Cole: That was all I want to show.

Q. Yes. And also this deed having no grantee couldn't convey the property to anybody, could it? 30

A. No.

Q. And I suppose as a lawyer you could possibly agree that if the grantee was now to be put in there, it would be void?

Mr. Cole: I would rather have his testimony on the facts than on the law.

Mr. Bourgeois: I will withdraw that. I want the jury to understand he did not go quite so far as the Judge did with it. Now, Mr. Coombs, will you go back again?

SHEPPARD W. COOMBS, recalled, testified as follows:

10 Direct examination. (Continued.)

Mr. Bourgeois: Now I have forgotten where we were with him.

(The stenographer read the last question put to the witness, as follows:

20 "Will you state what was said in the presence of Mr. Bright with regard to the title; not only what he said, but anything said in his presence?")

Mr. Bourgeois: I don't think I will need to have that now. I think it has been covered.

Q. Now, did they deliver to you at that time a deed of conveyance conveying that property free of encumbrance and with a good, marketable title?

30 Mr. Cole: I object; that is calling for too many things—conclusions, opinions of law; have them one at a time.

The Court: I think you get more exceptions if you split that up a little.

Q. Did they deliver any deed to you that day?

A. They did not.

Q. No. Now after that time, what happened to your money, the \$16,000?

A. Well, the Wittes still retained it.

Q. Did you make a demand for it?

A. I did, through my attorney.

Q. Yes; and did you get it?

A. I did not.

Q. Where is Witte, do you know?

A. Mr. Witte.

Q. Yes.

A. Why, he is in the insane asylum at Trenton.

Q. Still there?

A. Yes.

Mr. Cole: No; he is here.

Mr. Bourgeois: Oh, he is here?

Mr. Cole: Just shows you how witnesses will go wrong about things. 20

The Witness: Well, he was there some time ago.

Mr. Cole: Well, I know he was there.

Mr. Bourgeois: You may cross-examine.

Cross-examination.

By Mr. Cole:

30 Q. Now, was it your understanding that the agreement about the purchase of the property was with Mrs. Witte?

A. Yes; my first arrangements were with Mrs. Witte; no other.

Q. How did you come to go to her?

A. I was informed that she wanted to sell her property, through Mr. Goslin.

Q. Mr. Goslin in the real estate business?

A. No; just happened to see him on the street.

Q. I say, is Mr. Goslin in the real estate business?

A. No, in the lumber business.

Q. Having been told by him Mrs. Witte wanted to sell the property, you went to see her?

10 A. I did.

Q. At that time did you know who owned the property?

A. Not positively. I presume that the Wittes—it was known as the Witte's Hotel. I have known the Wittes ever since I have been in Wildwood, or ever since I knew they were there, twenty-three years or more.

Q. How long have you lived in Wildwood?

20 A. Twenty-three years.

Q. How old are you?

A. Forty-five.

Q. What business are you in?

A. Lumber business and wholesale grocery, and do real estate.

Q. You have lived there continuously all those years?

A. Yes.

Q. At any time during that period did you ever meet Mr. Witte?

30 A. Yes, I met Mr. Witte before he went to the asylum.

Q. That was how long ago?

A. Well, I would not say; possibly ten or twelve or fifteen years.

Q. Have you ever seen him around Wildwood after he went to the asylum?

A. I did not. Never seen him since then.

Q. And Mrs. Witte told you, as I understood your testimony, that the agreement would have to be made with Miss Witte?

A. After she come back—either came back or got word from Trenton.

Q. Did she say anything to you about having got a deed from Mr. Witte?

A. No; I don't think she said she had a deed from Mr. Witte. I don't think she did. 10

Q. Did she tell you why she had to go to Trenton?

A. To get Mr. Witte's signature.

Q. To what?

A. On the agreement. That is what I thought it was to be, the agreement.

Q. You thought that she was going up merely to get an agreement signed by him for the sale of the property?

A. Between him and or—between him or her. 20

Q. You must have thought at that time, did you not, that he owned the property?

A. I would say I presumed he had some interest.

Q. Now, when she came back she told you the agreement had to be made with Miss Witte; did you ask her why?

A. She said something, I think, about transferring—he transferred it to the daughter, that he was going to transfer the property to the daughter. 30

Q. Give you any reason for that?

A. No, to the best of my knowledge.

Q. Did she say it would be better to handle it if the title was in her name rather than in Mr. Witte's?

A. I don't think so.

Q. All right. Then with that knowledge you signed the agreement with Miss Witte, didn't you?

A. After I had asked Mrs. Witte —

Q. Did you know when you signed the agreement with Miss Witte that you were making the agreement with her?

A. Did I know I was making the agreement with Miss Witte?

Q. Yes.

10 A. Yes, because I read the agreement.

Q. Then you turned a check over made to Mrs. Witte's order for \$16,000?

A. Yes.

Q. Handed it to her?

A. Handed it to Mrs. Witte?

Q. Yes.

A. No, I didn't hand it to Mrs. Witte. No, Mrs. Witte wasn't present when I handed the check over. Miss Witte was in Mr. John Bright's office.

20 Q. Why did you draw it to Mrs. Witte's order?

A. She was the only party I was really doing business with. I don't know —

Q. You regarded her as the one you were doing business with?

A. Yes; Mrs. Witte.

Q. For that reason you drew the check to her order?

A. Sure.

30 Q. Now, you said that no deed was delivered at the time you were at the title company?

A. No.

Q. Did you ask for the deed?

A. Did I ask for the deed? I told them—I don't know as I asked for the deed; I told them I was there for settlement. I seen Mr. Crane had papers.

Q. He did have papers there?

A. Yes, I don't know what they were.

Q. Did he tell you they were ready to settle?

A. He said they were ready to settle.

Q. So that he had a deed?

A. I presume he did.

Q. You didn't ask him for the deed?

A. No.

Q. You had made up your mind before that, had you not, that you were not going to settle?

A. Well, there was a question—

10 Q. Yes or no. Hadn't you made up your mind when you went in that title office on that morning you were not going to settle?

A. Only one way, and that was—

Q. Can't you answer that yes or no?

A. I don't see how I could.

Q. You can't answer yes or no?

A. Not as a way of answering it.

Mr. Cole: All right, that is all.

20

Re-direct examination.

By Mr. Bourgeois:

Q. Had you made up your mind before you went in the title company office that morning that you were not going to settle?

A. Providing I put up the money in escrow. If there was any question raised I wanted to have it in 30 escrow in the Title & Trust Company's Bank. I had the money there for that purpose. If there was any question about that title and they didn't want to turn the property over to me I wanted to secure myself by putting that money in escrow. And I was there for the purpose and had the money for that purpose.

Q. Were you asked to put up any money?

A. I weren't asked to put up no money.

Q. Now, did Mrs. Witte tell you that the title was put in the daughter's name so that the money would not have to go to Mr. Witte and avoid a guardian; is that the reason?

Mr. Cole: I object.

10 The Court: It is leading.

Mr. Cole: Leading, to begin with. I asked him what she did say and he told us.

The Court: Read the question.

(The question was read by the stenographer.)

The Court: The question is overruled.

20 Q. Was anything said to you as to why they wanted to get this money paid over to Mrs. Witte or the daughter instead of going to the father—to Henry Witte?

A. May I ask for that question again?

The Court: The stenographer will read it.

(The question is read by the stenographer.)

30 Mr. Cole: I object to it. I don't think it is proper re-direct, and I don't think it is material or relevant.

Mr. Bourgeois: If your Honor please, I think it is not re-direct, but I think it goes to clear up—well, it is re-direct, too, on what Judge Cole brought out on his cross-examination.

The Court: I will permit it.

Mr. Cole: Exception.

A. I don't recollect of anything that she said, in preference to giving it to him. I don't recollect of anything; no.

Mr. Bourgeois: All right. That is all. Mr. Sooy.

10

MARK R. SOOY, called as a witness on behalf of the plaintiff, being sworn, was examined and testified as follows:

Direct examination.

By Mr. Bourgeois:

Q. Mr. Sooy, you represented Mr. Coombs in this real estate transaction, did you? 20

A. I did.

Q. What, after the agreement was executed and delivered to him, did you do towards perfecting the title or ascertaining the title?

A. I first went to the Wildwood Title & Trust Company, to Mr. Crane, with the intention of making an application for title insurance. Mr. Crane refused to accept it.

Q. Why? 30

Mr. Cole: I object.

The Court: How are you going to bind the defendant by what Mr. Crane said?

By Mr. Bourgeois: All right.

Q. After that you did what?

A. I made an application for title insurance to the Cape May Title & Trust Company.

Q. And with what result there?

Mr. Cole: I object. It is irrelevant and immaterial, and we cannot be bound.

10 Mr. Bourgeois: No, if the Court please, I think maybe that is not just right because I think we will follow that up and show that there was a demand made upon the Wittes that if they would comply with what the title company said was necessary to perfect the title, then they would go through with the transaction.

20 Mr. Cole: We are not required to do something some title company asks us.

Mr. Bourgeois: Maybe not. But maybe the jury is going to have something to say about that.

The Court: It seems to me if you are going to prove the encumbrance you must do it by some different way than what some title company said.

Mr. Bourgeois: Then that is overruled?

30 The Court: Yes.

Q. Now, a day of settlement came; were you there?

A. I was.

Q. Will you tell the Court and jury what took

place at that time with relation to this title and the settlement?

Mr. Cole: Of course I object to that very general question. I want to reserve the right to have it stricken unless it can be made competent and relevant. The Wittes were not there.

The Court: But they were represented there.

Mr. Bourgeois: They were there. 10

The Court: I will permit it.

Mr. Cole: Exception.

The Court: Yes.

A. Mr. Coombs and I went into the private office of Mr. Crane, the president of the Wildwood Title & Trust Company, and he and John Bright were there 20 together at the time we arrived. Some one stated we were there for settlement, and I produced a letter from—which I had received from a title company.

Q. I show you Exhibit P3 and ask you if that is the letter to which you refer?

A. That is the letter.

Q. Now, what did you do with it?

Mr. Cole: I submit it is of no consequence, irrelevant and immaterial what he did with it or what 30 the letter contains; cannot possibly bind us.

The Court: I am going to permit this testimony.

Mr. Cole: Allow me an exception.

The Court: Yes. Now for the purpose of proving defects in the title, however.

Mr. Bourgeois: I am not offering it for that.

A. I presented this letter to Mr. Bright and Mr. Crane, who both read it. Mr. Bright requested that I transmit a copy of this to him with a letter in writing so that he could transmit it to the Wittes, for he stated that he did not think the Wittes would comply with the request.

Mr. Cole: I ask it be stricken.

Mr. Bourgeois: All right.

The Court: What he thought doesn't make any difference; ought to be stricken.

Q. And did you furnish the copy to him?

A. I did.

Q. Yes. Now, was a deed tendered for that property at that time?

A. There was not.

Q. Was there any statement made by Mr. Crane or by Mr. Bright that they were ready and prepared to deliver to you a deed for that property, free and clear of encumbrance, with a good, marketable title?

Mr. Cole: I object.

30

Mr. Bourgeois: I want to know whether it was said or not.

Mr. Cole: I know, but that carries with it, may it please your Honor, three or four questions. Carries with it law and conclusions.

Mr. Bourgeois: No; that is just one question.

The Court: That is one question, but doesn't prove anything, it seems to me.

Mr. Bourgeois: It shows whether they contended they had the right or not. Mr. Sooy had made objection to that title. Now, if they had a title to deliver, the natural thing would be to say, "We tender this deed" for a title corresponding with their agreement.

10

The Court: What was the question?

(The question was read by the stenographer.)

The Court: I sustain the objection.

Mr. Bourgeois: Allow me an exception.

The Court: Yes.

20

Q. Now, did Mr. Crane or Mr. Bright tender you a deed in conformity with the terms of the agreement that they had of September 5, 1925?

Mr. Cole: I object; calls for the conclusion and opinion of the witness—conclusions and opinion.

Mr. Bourgeois: All right.

Q. Did Mr. Crane or Mr. Bright tender to you a deed at the time of the settlement which they claimed covered the agreement of September 5, 1925:

30

Mr. Cole: I object. No claim they made could bind these people.

Mr. Bourgeois: That doesn't make any difference.

The Court: I sustain the objection.

Mr. Bourgeois: Allow me an exception.

The Court: Yes.

Q. Did Mr. Bright say anything at that time with
10 regard to sufficiency of the title that they were there
to convey?

Mr. Cole: That I object to on the ground the
statement cannot bind this defendant.

Mr. Bourgeois: I don't just quite see the theory of
Judge Cole's various objections. Mr. Bright was
sent there to make this settlement.

20 Mr. Cole: That is all he was sent there for.

The Court: It seems to me you are trying to prove
by indirection that which should be proved by direct
testimony, if I got that question correctly. Let me
have it again.

(The question was read by the stenographer.)

The Court: I will permit it.

30 Mr. Cole: Exception.

The Court: Yes.

A. The only thing that Mr.—

The Court: No. Did he—yes or no?

A. No.

Mr. Cole: No.

The Witness: Now, wait a minute. Don't be too
hasty, Judge.

Mr. Cole: I said I would wait, too.

The Witness: Yes, he did say something. 10

Q. Now, what did he say?

The Court: In reference to the sufficiency of the
title.

Mr. Bourgeois: In reference to the sufficiency of
the title or non-sufficiency—same thing.

Mr. Cole: Same objection; and exception allowed? 20

The Court: Yes.

A. What did he say, you asked me?

Q. Yes.

A. Well, what he said was in answer to a question
of mine, and alone will mean not a thing. He said,
"I don't think they will do it, but I will send them
a copy of this letter."

Q. A copy of the letter what?

A. P3. 30

Q. P3.

A. Letter from the title company.

Q. I see. He said they would not comply with the
terms?

Mr. Cole: No, he didn't.

A. Didn't think they would.

Q. Didn't think they would. That was all that was said?

The Court: That being the case, why shouldn't that testimony be stricken out? Your question was what did Mr. Bright say with reference to the sufficiency of the title, and the only answer was he said he didn't think they would do it. That has not anything to do with the sufficiency of the title at all, as I see it. So I will strike that answer.

Q. Did Mr. Crane say anything about the sufficiency of that title at all?

Mr. Cole: That is objected to.

20 The Court: How are you going to bind the defendants with what Mr. Crane said?

Mr. Bourgeois: I don't know. They had him there.

The Court: Who?

Mr. Cole: Who?

30 Mr. Bourgeois: Mr. Bright and somebody, I don't know who. We didn't have him there.

Mr. Cole: Before you can bind the defendants

Mr. Bourgeois: All right.

Q. Now, Mr. Sooy, after the settlement went down, did you make any effort to get the money back?

A. I did. I made a demand on Mr. Bright in writing for the return of the deposit. Subsequently, I heard from Judge Cole in answer, evidently, to that correspondence, in which he refuses to return it.

Q. On what ground did you make the demand for the return of the money?

Mr. Cole: Objected to. He can't make a case by a demand he makes for the return of the money. It was down. They were out. We admit they made the demand and admit we have not paid it.

Mr. Bourgeois: I ask for the production of the letter that he wrote to you about the demand for the money back.

Mr. Cole: Is that the letter?

20

Mr. Bourgeois: I really don't know.

Q. I show you a letter under date of April 26, 1926, and ask you if that is the letter that you wrote to Judge Cole demanding the return of the money?

A. This was a letter in answer to a letter I received from Judge Cole saying he would not pay it back—saying he had been retained by the Wittes, rather,—I beg your pardon; I am a little previous.

Q. There was one prior to that, was there? 30

A. I received a letter from Mr. Cole prior to this.

Q. Before you had made a demand for the return?

A. I didn't know Judge Cole in the matter until I got his letter, and then I got this letter.

Q. Will you let me see the letter you got from Judge Cole?

The Court: We will recess for ten minutes while you are getting that.

(Short recess.)

Q. Mr. Sooy, I show you a letter from Judge Cole, bearing date March 1st, 1926, which says that it is—well, doesn't say in these words, but means, in reply to a letter written to John Bright January 13, 10 1926— did you receive that letter?

A. Yes.

Mr. Bourgeois: Judge, I call for the letter that Mr. Bright handed to you that had been written him by Mr. Sooy, under the date of January 13, 1926.

Mr. Cole: I have a letter of January 16, 1926, but that is not to me.

20 The Court: That is what he calls for.

Mr. Bourgeois: No.

The Court: That is what you are calling for—for the letter to John Bright?

Mr. Bourgeois: Yes, but January 13th.

Mr. Cole: I have not such a letter; no, I haven't 30 such a letter.

Q. Mr. Sooy, I show you a letter of January 13, 1926, addressed to John Bright, Esq., and ask you if that is a copy of the letter that you sent to him?

A. It is.

Q. And I ask you whether or not that letter was accompanied by a copy of Exhibit P3?

A. It was.

Mr. Bourgeois: Now, I ask that the copy of letter be marked in evidence as Exhibit P4, I think it is.

Mr. Cole: Which letter are you referring to?

Mr. Bourgeois: That is the letter to Bright. That is the one we had before and Mr. Sooy said he could not remember sure. 10

Mr. Cole: I object to both letters for the reasons previously stated when offered; not relevant and not material and they cannot bind us.

The Court: I will permit them to be marked in evidence, but I do not receive them for the purpose of showing defective title.

Mr. Bourgeois: No; we are trying to show the 20 objections if your Honor please.

Mr. Cole: Allow me an exception.

The Court: Yes.

Mr. Cole: I think the fact of their objections is irrelevant; it doesn't matter whether they objected or didn't.

The Court: Of course I expect them to connect 30 that by showing if they can the defects in the title.

(Copy of letter referred to marked for the plaintiff as Exhibit P4.)

Q. Now, Mr. Sooy, the letter I handed you from Judge Cole, dated March 1, 1926, did you receive that from Judge Cole?

A. I did.

Q. Pertaining to this matter?

A. Yes.

Mr. Bourgeois: I ask that be marked Exhibit P5.

10 Mr. Cole: What is the purpose?

Mr. Bourgeois: I am just leading up to this correspondence; that is all.

Mr. Cole: I object.

Mr. Bourgeois: It is leading up to show the objections.

20 The Court: I will permit it subject to it being connected up by showing there were encumbrances.

(Letter referred to marked for the plaintiff as Exhibit P5.)

Q. Now, Mr. Sooy, I show you a letter, an original letter written by Judge Cole to you, under date of April 23—26th, 1926, and ask you whether or not you sent—you received that letter from Judge Cole?

A. I wrote this letter to Judge Cole.

30 Q. I mean you wrote it to him?

A. Yes, sir.

Mr. Cole: What are you going to do with it?

Mr. Bourgeois: Offer it in evidence.

Mr. Cole: I object. Nothing Mr. Sooy could say to me could possibly bind my client. I was only attorney.

The Court: I will permit it subject to it being connected up.

(Letter referred to marked for the plaintiff as Exhibit P6.)

Q. Now, I show you a letter dated May 3, 1926, 10 from Judge Cole to you, in answer to the last one, and ask you if you received that letter?

A. I did.

Mr. Cole: I am unable to see the relevancy or materiality of that. I object to it.

The Court: It is admitted.

Mr. Cole: Exception. 20

(Letter referred to is marked for the plaintiff as Exhibit P7.)

Q. Was there any correspondence between you after May 3, 1926, pertaining to this particular subject?

A. Yes, I wrote Judge Cole another letter telling him I would submit this matter to my client, but that I did not think he would accept it. I think that was 30 the last of it.

Mr. Cole: I object to that. It is apparently some effort at compromise, and I think it is not admissible.

Mr. Bourgeois: Well, the letters are admissible, I suppose.

Mr. Cole: I ask it be stricken.

Mr. Bourgeois: Not for the purpose of binding the parties, but to show the transactions between them and the purposes of the objections.

10 The Court: Yes, but this letter, from the answer of the witness, dealt with a proposition foreign to the matter entirely.

Mr. Bourgeois: No; I don't think so.

Mr. Cole: The plain indication from the witness' answer was there was some effort at compromise.

The Court: Yes.

20 Mr. Cole: I think that should be stricken.

Mr. Bourgeois: I am willing.

The Court: That should be stricken.

Mr. Bourgeois: Now, I want to read these letters.

30 Mr. Cole: What became of the last one; was that admitted in evidence?

The Court: No.

Mr. Bourgeois: Not the one he spoke about, no; that was not produced, even.

(Reads Exhibits P3 to the jury.)

(Reads Exhibit P4 to the jury.)

(Reads Exhibit P5 to the jury.)

(Reads first sheet of Exhibit P6 to the jury.)

Mr. Cole: I want at this time, having listened to this letter, to call the Court's attention to the fact that in this letter which is now before the jury Mr. Sooy is expressing opinions, making statements as to the position in which his client would be put if this, that or the other happens. It seems to me that is quite incompetent and I think it is injurious. It does seem to me the Court should in some way, in view of your Honor's ruling as to why you admit that letter, have the jury's attention called to it, and the effect of that letter limited.

20 Mr. Bourgeois: In view of what Judge Cole said in his letter, I would like to know how he insists on that, where he says, "I think she can convey to your client such a title as she agreed to convey and stands ready to do so."

The Court: These letters are admitted subject to your connecting up the defects in title by proof of defects in title other than by statements contained in these letters.

30 Mr. Bourgeois: Certainly.

The Court: And if you do not follow it by such proof, then these letters will be stricken and the jury will be then charged with reference thereto.

They are now only admitted for the purpose of showing the transaction between the parties up until the time the suit is brought.

Mr. Cole: He is building up a case here.

The Court: These letters are not admitted for the purpose of going to the jury on the question of building up a case at all. They are simply the correspondence that passed between the attorneys for both parties.

Mr. Bourgeois: Now this second letter, which is part of the one I have just read: (Reads second sheet of Exhibit P6.)

(Reading Exhibit P7.)

“May 3, 1926.

20 “Mark R. Sooy, Esq.,
Wildwood, N. J.

“My dear Mr. Sooy: I sent to Miss Witte yours of the 26th ult., and she and her mother called this afternoon. They deny that they were not present at the time set for settlement and claim that a duly executed and acknowledged deed had been prepared in advance and that it was ready for delivery at the time of settlement. They showed me the deed which they say was tendered. They seem to be convinced that your client has not given the real reason for refusing to accept a deed, the real reason being that he purchased for the purpose of sale and could not thereafter find a purchaser. I do not think that the refusal of the title company to insure the title necessarily makes it unmarketable. Title companies, like the rest of us frail humanity, occasionally do

30

silly and unjustifiable things. I think the real question is whether Mr. Witte was capable of appreciating the nature of his act when he executed and acknowledged the deed. I think there can be no presumption that he was not so capable. Two affidavits by the physicians in charge say that he was capable, and the officer taking the acknowledgment must have thought he was capable otherwise he would not have taken it.

“My client is unwilling to return the deposit 10 money.”

Now, I think the rest of that is readable, but—

The Court: Does Mr. Cole object?

Mr. Cole: I object to it blindly.

The Court: I won't admit it unless Judge Cole wants it in.

Mr. Cole: What is it? Let's see it. 20

Mr. Bourgeois: I don't think the judge wants it in. (Paper handed to Mr. Cole.) Just the last paragraph after the part I read. That is Exhibit 7.

Mr. Cole: I don't see how you can excise it.

Mr. Bourgeois: Then I will read it.

Mr. Cole: I object to it, to the whole letter. 30

The Court: That is the letter we were having discussion about after Mr. Sooy had said—testified as to something in that letter with reference to a compromise. And I said I thought that letter was not in evidence.

Mr. Bourgeois: This is not the one. This is Judge Cole's proposition to him, and his was the reply he made to Judge Cole about this phase of it.

The Court: If the reply doesn't go in, the letter should not go in.

Mr. Bourgeois: The reply can go in so far as we are concerned.

10 The Court: Judge Cole objected to it and I overruled it.

Mr. Bourgeois: He has not objected.

The Court: Oh, yes, he did object to it and asked the answer of Mr. Sooy be stricken.

20 Mr. Bourgeois: I consented the answer be stricken because it was not the letter; it was the verbal statement. The letter was not offered.

The Court: I thought the letter was offered.

Mr. Bourgeois: No.

The Court: This letter would not have been admitted had I known the bottom part was in there.

30 Mr. Bourgeois: That won't exclude the top part; that is relevant.

The Court: No, but the bottom part.

Mr. Bourgeois: If the Judge doesn't want the bottom part in, let him say so and I won't read it.

The Court: I think it ought not to be read.

Mr. Cole: The point I make is I don't see how you can excise a part of it. The jury may be told they should not consider the latter part of the letter.

The Court: If that is your attitude, then I will permit the entire letter to be read, with the instructions to the jury the latter part should be not considered by them at all. 10

Mr. Bourgeois: "My client is unwilling to return the deposit money. She is willing, without prejudice, to listen to a compromise. If your client is willing to accept \$3,000 I think I can prevail upon my client to pay this sum, otherwise, I think you may as well institute your suit.

"Very truly yours, C. L. Cole."

The Court: Now, then, gentlemen of the jury, any reference in that letter to a compromise or an offer of compromise is not to be considered by you in this case at all. In other words, you are to erase that from your minds just as though there had never been anything said about it, if you can. 20

Mr. Bourgeois: You may cross-examine.

Mr. Cole: No question. 30

MARGARET MACE, called as a witness on behalf of the plaintiff, being sworn, was examined and testified as follows:

Direct examination.

By Mr. Bourgeois:

10 Q. Doctor, you are a practicing physician in Cape May County?

A. Yes, sir.

Q. And have been for how many years?

A. Since 1905.

Q. Were you called upon at—I think about 1915 to pass upon the sanity or insanity of Henry Witte?

A. I was.

20 Q. I show you the original papers pertaining to that examination and ask you if you made an affidavit and signed an order.

Mr. Cole: That is objected to fundamentally on the ground that the witness is here to tell her story and subject to cross-examination. That paper in no event can be evidential.

The Court: How can it be?

30 Mr. Bourgeois: In the first place it is evidential because it is a record. It is a record of the institution. If that is not evidential, then they have no more right to keep that man there than to put him there.

The Court: The purpose of this examination is to show in 1915 Mr. Witte either was or was not sane.

Mr. Bourgeois: That is right.

The Court: And to show it as a result of examination by this witness.

Mr. Bourgeois: Yes, sir.

The Court: It seems to me she would have a perfect right to look at this paper for the purpose of refreshing her recollection, but it doesn't seem to me that is the best evidence of the result of the examination at that time. It seems to me she can testify as to the examination she made, what she discovered. 10

Mr. Bourgeois: Well, if your Honor please, twelve years is a pretty long time to expect somebody to remember just what was done without refreshing the memory.

The Court: I think she can refresh her memory. 20

Mr. Bourgeois: I am going to offer this in evidence after a while.

Q. Have you examined it?

A. Yes.

Q. Did you prepare and make an affidavit in that case?

A. I did.

Q. And did you sign one of the orders of commitment? 30

A. I did.

Q. Will you tell the jury the condition in which you found Henry Witte at that time, his mental condition?

A. He was nervous; he walked up and down; he

refused to eat; he said he came in to Wildwood to clean up Wildwood. And he locked his—well, I didn't see that. That is what he said to me.

Q. What did he say to you?

A. He came in to Wildwood to clean up Wildwood. He walked up and down, and he was restless, and he said he would not eat, he didn't want to eat, and he was afraid to eat.

Q. Yes; did he say why he was afraid to eat?

10 A. Well, I don't remember that. It is there.

Q. Well, you find out if you want to refresh your memory about it. (Hands paper to witness.)

Mr. Cole: This is—Dr. Mace, did you make any record of your examination of Mr. Witte?

The Witness: Well, yes, I made a record, just a card record.

20 Mr. Cole: Where is it?

The Witness: That is 1915.

Mr. Cole: I didn't ask you about the year. Where is the record?

The Witness: That is home somewhere, in the 1915 book or 1915 box.

30 Mr. Cole: Why didn't you bring that with you?

Mr. Bourgeois: That is objected to. If he wants to object to this witness' testimony, I haven't any objection to that.

The Court: He has a right to ask her why she did not bring it with her.

Mr. Bourgeois: Why has he? That is not cross-examination. He is not going to her capacity—

Mr. Cole: She is looking at an affidavit for the purpose of refreshing her recollection. I was wondering why she didn't bring her record.

Mr. Bourgeois: That is a matter of cross-examination. 10

The Court: I presume that is true.

The Witness: You won't let me tell what he said?

By Mr. Bourgeois:

Q. Certainly, you can tell what he said. You can tell anything you found there that convinced you he was not sane or that he was sane, for that matter. 20

Mr. Cole: She has not said that.

Mr. Bourgeois: No; she has not come to that yet.

Mr. Cole: Do you think she is going to come to that after a while?

Mr. Bourgeois: I think she will; in view of the fact that the state has got him up there on her statement I think she will come to it. 30

The Court: She may testify as to what he said and what he did.

The Witness: Well, he said he was afraid to eat. He would be—he would die if he ate. I said,

“Why?” He said, “It is—something is in it.” And all kinds of wild talk like that. Then he walked up and down the room, and he said he locked the door. I knew he locked the door. And I said, “Did you lock the door?” He said, “Yes.” I said, “Why did you lock the door?” He said, “I did not want anybody to come in.” And I said, “Why didn’t you want anybody to come in?” He said, “Because I come here to clean up Wildwood.”

10

Q. And did you examine him physically; I mean his eyes or anything of that sort, to see what his expression was?

A. Yes; I didn’t examine his eyes with a chart. I looked at his eyes. He had a wild expression.

Q. Did anybody make this examination with you?

A. Yes, Dr. Cohen.

Q. And where is Dr. Cohen?

A. He is dead.

20 Q. As a result of your examination what conclusion did you reach with relation to his sanity or insanity?

A. Well, inasmuch as he had already been in Kirkbride’s—

Mr. Cole: I object to that.

Q. Well, that came from the history of it, is that the idea? Did you get a history of his previous life

30 when you made the examination?

A. Yes.

Q. Oh, I see. Well, now, leave out the history and tell me what conclusion you reached.

A. That he was not sound in his mind.

Q. And he was a subject for committing to the hospital?

A. Yes, sir.

Q. Now, you made such an order? You signed such an order?

A. I did.

Q. Did anyone sign it with you?

A. Dr. Cohen.

Q. And what did you do with it? What was done with that order, do you know?

Mr. Cole: That is all objected to as being irrelevant and immaterial. 10

The Court: If she knows, I will permit it. She may testify if she knows.

A. Was sent to the—

Mr. Cole: Allow me an exception.

The Witness: I gave this to Dr. Cohen. I know I did. He was the first doctor. He was the physician in charge. I was the second signer on the papers. It requires two doctors. It was Dr. Cohen’s patient, and he asked me to come and sign the other half of the papers. 20

Q. Mrs. Mace, I ask you if this “Margaret Mace, M. D.” on page 14 is your signature?

A. Yes.

Mr. Cole: I object to all this and ask an exception, in reference to those papers. 30

The Court: I will permit her to testify that is her signature.

somebody told you. You had never examined him before, had you? I think you said that.

A. Well, you don't always have to be physical unable—you can be mentally unable from things that are not physical. He had mental depression from mental reasons.

Q. But yet you have said to us he was telling you where he had been, and was able to walk around, knew where he was, and in all those he was correct?

10 His mind was all right in that regard, wasn't it?

A. Yes.

Q. Did you ask him whether he owned the Hotel Witte?

A. No. I didn't ask that.

Q. Did he say anything about that hotel?

A. No, not to me.

Q. At that time do you think he knew he owned it, if he did own it? Would he have been capable of knowing that?

20 A. Well, he knew where he lived.

Q. How do you know?

A. Because I asked him where he lived.

Q. All right; then did you ask him that. What did he tell you?

A. Wildwood, Hotel Witte.

Q. You asked him—

A. Where he came from. That is the same thing.

Q. You asked him where he came from and he told you the Hotel Witte in Wildwood. That is true, wasn't it?

30 A. Yes.

Q. Have you any doubt if in fact at that time he owned that hotel, that he knew it? Did he have mind enough to know that?

A. I don't know that.

Q. Well, I know, but you have some opinion. You

told Mr. Bourgeois—you said he was not of sound mind. Now, I am asking your opinion as to whether or not on that occasion he knew he owned the Hotel Witte, if in fact he did own it. Did he have mind enough to know that?

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

Mr. Bourgeois: I object.

The Witness: I don't know that.

10

Q. You don't know. Well, now, he told you he had come down there to clean up Wildwood. Did he mean he came to your office to clean up Wildwood?

A. I don't know.

Q. Just how did he put it?

A. That is exactly what he said.

Q. Did he tell you why he wanted to clean up Wildwood?

A. No.

20

Q. Did you ask him?

A. No.

Q. Did you think Wildwood needed cleaning up?

A. No.

Q. Well, thinking that Wildwood did not need cleaning up and he having told you that he was going to clean it up, didn't you think it was wise to ask him why he wanted to clean up Wildwood?

A. Well, I did not go into such detail.

Q. You did not ask him, did you?

30

A. No.

Mr. Cole: All right. That was in 1915. I think that is all, Doctor.

DR. JOHN A. HOLLAND, called as a witness on behalf of the plaintiff, being sworn, was examined and testified as follows:

Direct examination.

By Mr. Bourgeois:

10 Q. Doctor, you are a physician?

A. Yes, sir.

Q. Connected with what institution?

A. New Jersey State Hospital at Trenton.

Q. You were subpoenaed, or Dr. Cotton, the head of the institution, was subpoenaed to produce the original papers of commitment and other papers previous to it of Henry Witte?

A. I don't know anything about subpoena. Dr. Cotton told me to bring the papers down to court.

20 Q. All right. I show you what purports to be an examination of Henry Witte under—and the number is 15099 on the outside.

A. Yes.

Q. Will you tell me from where that document came?

A. Came from the files of the New Jersey State Hospital.

Q. And what is it?

A. It is an original commitment paper.

30 Mr. Bourgeois: I want to offer that in evidence.

Mr. Cole: I object. It is not relevant or material. It is not evidential in this case.

Mr. Bourgeois: Well, now, if your Honor please, the case of Kern vs. Kern seems to hold differently.

The Court: What is that case?

Mr. Bourgeois: That is the case of Kern over in Atlantic City that was tried and that holds these papers are evidential of the things recited in them. They certainly are prima facie evidence—all the cases hold they are prima facie evidence. 10

The Court: Is Kern v. Kern cited?

Mr. Bourgeois: Oh, yes; 51 Equity. All the cases show the commitment is prima facie evidence of insanity.

The Court: At the time of the commitment.

Mr. Bourgeois: Certainly. Now, then, there is another case in our state that holds that where a certain status is shown to exist at a certain time, that is presumed to continue until a different status is shown to exist. So that I offer this in evidence. 20

The Court: And for the purpose of proving what?

Mr. Bourgeois: For the purpose of proving that he is in the insane asylum, that he is there by a commitment, they have authority to keep him there. 30 Otherwise they would not have any authority to keep him there. It is an original commitment.

The Court: And your objection—want to amplify that at all?

Mr. Cole: I haven't any objection. In fact, I will admit he was committed to the hospital and he is still there. But I object to the facts and that sort of thing stated in that as being evidential so far as the question of his sanity—or, putting it differently, so far as the question of his ability to make this deed is concerned, which I submit it quite a different question. A man may be insane and yet he may be capable of making a deed.

10

The Court: Yes, that is true. Under the offer as made I will admit the record and allow you an exception.

Mr. Bourgeois: Now, this is an original record. Shall I have that marked?

The Court: I presume Judge Cole will have no objection to having a copy of it marked, providing
20 you have a copy.

Mr. Bourgeois: We have the copies here from the county. Let them be substituted.

The Court: Yes.

(Copy of paper referred to considered as an exhibit for the plaintiff, P8.)

30 Q. I also show you an order of commitment in this same matter and ask you from where you got that.

A. From the files of the State Hospital.

Q. And what is it?

A. It is the final order of commitment signed by the judge, giving us the authority to keep the man there.

(Final order of commitment considered as an exhibit for the plaintiff, P9.)

Q. Do you know if Mr. Witte is still an inmate under this?

The Court: That is admitted.

Mr. Bourgeois: That he is still there.

10

Mr. Cole: You mean physically present there now?

Mr. Bourgeois: No, I mean—I think you have got him here today.

The Court: Judge Cole just admitted he was an inmate.

Mr. Cole: That is a fact, isn't it, Doctor?

20

The Witness: Yes.

Mr. Cole: Yes.

Mr. Bourgeois: Has not been discharged?

The Witness: Not yet.

Mr. Bourgeois: That is all, Doctor, unless Judge
Cole wants to question you.

30

Mr. Cole: No, I have no questions.

(Recess until 1.15 P. M.)

AFTER RECESS.

1.15 P. M.

Mr. Bourgeois: If your Honor please, I want to read in evidence the order of commitment. It reads as follows.

Mr. Cole: This is of course objected to.

10 The Court: Yes. You want the stenographer to take this as you read it?

Mr. Bourgeois: Ought to be.

"State of New Jersey, County of Cape May. Before Henry H. Eldridge, Judge of the Court of Common Pleas.

20 "In the Matter of the inquiry into the sanity commitment and confinement in the New Jersey State Hospital at Trenton of Henry Witte, an insane patient.

"Final order of commitment. Patient chargeable to the County in which he resides and is found.

30 "Certified copies of application, with physicians' certificates attached thereto, alleging the insanity of Henry Witte, of the County of Cape May and State of New Jersey, as provided by law and in accordance with the statute, having been presented to me by Sophia Witte together with an order or certified copy thereof as provided by statute directing the institution of inquiry as to the sanity of said Henry Witte, alleged to be insane, and committing the said alleged insane person to the New Jersey State Hospital, which application with certificates attached thereto as aforesaid, is dated the 10th day of May,

1915, wherein appears that the said Henry Witte was temporarily committed to said Hospital on the 14th day of May, 1915, within six days after the date of said application for admission and commitment, and as it appears from said application and certificates, six days from the date of the personal examination by the physicians signing said certificates prior to the admission and commitment of such person, the subject of this inquiry, and this inquiry having been brought on as provided by law, upon at least two 10 days' notice, as appears by the proofs of service of such notices produced before me, namely, upon Henry Witte, Jr., Sophia Witte, the next of kin of said person alleged to be insane, and having pursuant to the statute instituted such inquiry and taken proofs as to the sanity or insanity of said Henry Witte, and not having deemed it necessary to call a jury, did call before me and examine upon their oaths the following named persons: Henry Witte, Jr., Sophia Witte and Dr. Nathan A. Cohen, who 20 are credible witnesses, and having examined the certificates under the oaths of said physicians, who made the medical examinations aforesaid, who diagnosed the nature of the malady with which said alleged insane person is found to be afflicted in their opinion to be insanity, and it appearing to me from the certificates aforesaid and from the testimony of the witnesses aforesaid, that the said Henry Witte is insane, and having examined the said witnesses touching the legal settlement of the said person, and 30 having found that such person has a legal settlement in the County of Cape May, in which he resides and that he is indigent, I hereby adjudge and decree that the said Henry Witte is insane and that he be committed and confined in the New Jersey State Hospital at Trenton permanently or until restored to his right

mind or until further order of a court of competent jurisdiction.

“I further certify that I have been unable, from the proofs before me, to find that the husband, wife or any relative chargeable with the support of said insane person is found able to maintain the said Henry Witte, at the institute aforesaid, and I hereby direct that the said insane person be supported and maintained therein at the expense of the County of
10 Cape May. Henry H. Eldridge, Judge.”
It is filed June 2, 1915.

DR. RALPH R. CHARLESWORTH, called as a witness on behalf of the plaintiff, being sworn, was examined and testified as follows:

Direct examination.

20 By Mr. Bourgeois:

Q. Doctor, you are a practicing physician?

A. I am.

Q. And where do you practice?

A. Wildwood.

Q. And how long have you practiced in all?

A. Twenty-two years.

30 Q. Twenty-two. Have you ever been called on to pass upon the sanity or insanity of different people?

A. Many times.

Q. And have you passed on it? You have been called on to, I understand; now have you passed on them?

A. I have.

Q. Do you know Henry Witte?

A. I do.

Q. When did you last see him?

A. Two weeks from today past.

Q. And what was the object of your—where did you see him?

A. Trenton, in the State Hospital for the Insane.

Q. And what was your object?

A. To determine his mental condition.

Q. And did you make such an examination as would enable you to determine it? 10

A. I did.

Q. What did you find his condition to be?

A. The man is insane.

Q. Insane. What was it that led you to the conclusion that he was insane?

A. By my examination and referring to the history.

Q. Yes. What did you find from your examination?

A. The man is insane. 20

Mr. Bourgeois: You may cross-examine.

Cross-examination.

By Mr. Cole:

Q. And what do you mean when you say that he is insane?

A. Within the meaning of what the term “in- 30
sanity” might mean from a medical standpoint.

Q. What is the meaning of “insanity” from a technical standpoint?

A. I don’t know; perhaps the jury knows as much about that as I do.

Q. Well, they may know more; I don’t know, but

A. I hope they do.

Q. —the jury are entitled to know how much you know about it. When is a man insane?

A. A man is insane when scientifically, through examination of medical authorities by their examination and by their education of things, declare that he is insane.

Q. Now, is that the best you can do?

A. That is the best I can do.

10 Q. Well, now, if on the 2nd day of September, 1925, Henry Witte signed that deed which I show you and acknowledged it as it appears that he did, and he knew on that day that he owned the property as described in it, and knew that he wanted to convey it to his daughter, and, knowing that he wanted to do that, did it, would you still say he was insane?

A. He was insane.

Q. Yes; notwithstanding that?

A. Notwithstanding that.

20 Q. If in point of fact on the 2nd day of September, 1925, when Mr. Witte—by the way, I will have this deed marked for identification.

Mr. Bourgeois: It was marked.

Mr. Cole: Not this one. This is the one from the father to the daughter.

(Paper referred to marked for the defendant as
30 Exhibit D2 for identification.)

Q. If on the 2nd day of September, 1925, when Mr. Witte signed this deed, he had the ability to understand the nature of this paper, that is, he knew it was a deed and knew the effect of it, that is to say that he was conveying this land that he owned to his

daughter and knew the nature of a business transaction, would you still say he was insane?

A. Still insane.

Mr. Cole: That is all.

Mr. Bourgeois: Now, let me have the deed a minute. Now, just wait a minute, Doctor.

Re-direct examination. 10

By Mr. Bourgeois:

Q. Did he say anything about the signing of this deed that influenced your mind as to whether or not he was sane—whether he understood what he was doing at the time he signed it?

A. Yes, I asked him—

Mr. Cole: Answer that yes or no, Doctor, please. 20
Read the question to him.

The Witness: Yes.

Q. Yes. Now, what did he say that influenced your mind concerning his sanity concerning the signing of this deed?

The Court: Which deed?

Mr. Bourgeois: Deed from Henry Witte to Helene
Witte, dated September 2, 1925. 30

Q. What did he say with regard to the signing of that deed?

A. That was in part of my examination.

Q. Yes.

A. I asked him why he would sign that deed to his daughter and exclude the other children. I had as a point to determine the man's sanity. I said, "Did you know what you was doing?" He says, "Yes, I always know what I am doing." I says, "You realize then that you are excluding your children?" He said, "I always know what I am doing." That was an important thing to me in the examination.

10 The man didn't know what he was doing.

Q. Now, what else did he say about that?

A. He said, "If I signed this deed," he said, "they told me I would get my freedom and a hundred dollars."

Q. And what with the hundred dollars?

A. And he says, "Then I am going to the Pocono Mountains." I says, "Mr. Witte, why not come down to Wildwood, because there is a nice climate and that is where your people are." He says, "Well, I don't 20 like Wildwood; the people don't like me. They say I am crazy. They persecute me. They annoy me. And I want to go to the Pocono Mountains for a hundred dollars."

Q. And did he say that if he signed—that he believed and understood if he signed that deed he would be free?

A. Said he would get his freedom and a hundred dollars and go to the Pocono Mountains.

Q. If he signed the deed?

30 A. If he signed the deed.

Q. What else did he say at that time? What did he say to Dr. Cotton about that freedom?

A. I said, "Mr. Witte, do you like it here, this institution?" He says, "Yes." I said, "Treat you well?" He said, "Yes. Perfectly satisfied." I said, "Would you stay here? Would you want to stay

here?" He says, "Yes, provided I could pay my own board." I said, "Then you would want to stay here the rest of the days of your life provided you could pay your own board?" "Yes," he said, "I don't want to stay here and not pay my way, but I would stay here if I could pay my own board."

Q. Did he apparently realize that when he signed the deed he transferred everything he had from himself?

10

Mr. Cole: I object. That is a conclusion.

Mr. Bourgeois: That will give a conclusion, I suppose, but—

Q. Did he say anything that indicated that?

A. Just ask me that again.

(The question was read by the stenographer as follows: "Did he apparently realize that when he signed the deed he transferred everything he had from himself? Did he say anything that indicated that?") 20

Q. If so, what did he say? I don't know whether he did or not. You can tell me.

A. He said the reason he signed the deed was because he would get a hundred dollars and his freedom.

Mr. Bourgeois: Yes. Do you want further cross-examination? 30

Re-cross examination.

By Mr. Cole:

Q. Who sent you to Trenton?

A. At the request of Mr. Sooy.

Q. The attorney for Mr. Coombs?

A. Yes.

Q. And did he tell you to suggest to Mr. Witte that he was cutting out his other children?

A. No, that was my own thought.

Q. That was your own thought?

A. That was my own thought.

Q. How did you come to think of that?

10 A. Because in my own mind I thought it very unusual that a man would want to cut out his other children.

Q. Who told you he was cutting out his other children?

A. Who told me?

Q. Yes.

A. That I just got by general talk about the town.

Q. General talk with whom?

A. Around the town, about the community.

20 Q. Who? Who?

A. Many, many people.

Q. Now, don't you know that he is not cutting out his other children by this agreement?

A. I did not know; I don't know now.

Q. Don't you know that he simply made this deed to the daughter in order that she and the mother might complete this transaction and then divide this money up?

A. I only asked him the question because I thought that he had cut them out.

30 Q. Now, do you know as a fact that the only other children, to wit, the son who is here in court as well as the daughter in California, have all agreed to this transaction?

A. I didn't know that.

Q. Now, somebody suggested that to you, didn't they, Doctor?

A. No one suggested that; it was part of my examination, because I used that—

Q. Weren't you anxious to impress him with the idea that he was by this deed to Helene, the daughter, cutting his other children out?

A. I only used that as a matter to determine whether I thought the man was sane or insane.

Q. The answer he gave to you was he knew what he was doing?

A. He said he always knew what he was doing. 10

Q. He told you he knew he had signed this deed, didn't he?

A. No.

Q. Didn't he tell you that?

A. He said, "I always know what I am doing."

Mr. Cole: Will you go back and read the question where Mr. Bourgeois asked him whether he knew he was signing the deed? 20

(A part of the re-direct examination was read by the stenographer.)

Mr. Cole: Do you stand by that record or do you want to correct it?

Mr. Bourgeois: What is the question? Will you read the question?

(The testimony was read by the stenographer as follows: 30

"Q. The answer he gave to you was he knew what he was doing? A. He said he always knew what he

was doing. Q. He told you he knew he had signed this deed, didn't he? A. No. Didn't he tell you that?

A. He said, 'I always know what I am doing.'")

Q. That is correct, Doctor?

A. His answer was, "I always know what I am doing."

Q. Is that correct, what you said?

(The above testimony was again read by the stenographer.)

A. That is correct.

10 Q. Now, where do you draw the line between a man's capacity or ability to understand the nature and the effect of the act in which he is engaged and the business he is transacting, and insanity?

A. There is not any line to draw.

Q. What?

A. There is not any line to be drawn.

20 Q. Well, may a man be capable of knowing of the transaction in which he is engaged and the effect of the transaction upon him and still be insane, in your opinion?

A. No.

Q. Well, then, if Mr. Witte did on the second day of September, 1925, know that he was signing a deed to his daughter for property that he owned, and knew that he was conveying that to his daughter, would you say that on that day in that transaction he was insane?

A. He was insane.

Q. Notwithstanding that?

30 A. Notwithstanding that.

Mr. Cole: Well, that is all.

Mr. Sooy: I want to ask you a question.

MARK R. SOOY, recalled.

Direct examination (Continued.)

By Mr. Bourgeois:

Q. Mr. Sooy, were you present at the Insane Asylum in Trenton on the day that Dr. Charlesworth was there and Mr. Witte was there? 10

A. I was.

Q. What did he say, Mr. Witte say about the signing of this deed—of this deed marked D2 for identification?

A. Mr. Witte said that he was told that if he would sign that deed he would be a free man and he could do as he pleased, and Dr. Cotton was in the room with us, and he turned to Dr. Cotton and he says, "You won't let me out of the gates."

Q. Now, what did he say about the consideration 20 money?

A. He said that he had received one dollar and that he had been told he would get another hundred dollars, with which he can go to the Pocono Mountains. He said, "If I get that hundred dollars I can go to the Pocono Mountains and live high." One of the doctors asked him how he expected to get board. "Oh," he said, "I can get good board for six dollars a week."

Q. And his notion was then, his— 30

Mr. Cole: I object.

Q. No—what he said was that if he would sign that deed he would be a free man?

A. That was his distinct understanding.

Q. Yes.

A. He said that is the reason he signed it. He was told he would be a free man.

Q. Now, did you find out who this deed was executed before, this notary public?

A. I understand he is a clerk in the institution, Mr. Connolly.

Q. What part of the institution?

A. I think in the storehouse, in the storeroom I think.

Q. In the storeroom?

A. I think so. Supply room.

Q. I beg pardon?

A. Either in the storeroom or the supply room.

Q. They go fully equipped. When did he say he got the dollar?

A. I didn't ask him as to that. I understood—well, he was asked considering the time of the signing of the deed, and he said he got a dollar and I supposed he got it the day he signed the deed.

Mr. Bourgeois: Cross-examine.

Cross-examination.

By Mr. Cole:

Q. He knew he got the dollar?

A. Yes, he knew he got the dollar.

Q. He knew he signed the deed?

A. And he knew he signed the deed.

Q. He knew he signed the deed for the Wildwood property in question here?

A. Yes, that was mentioned.

Q. All right. And he knew he signed it to the daughter?

A. Yes.

Q. All that he knew?

A. Yes.

Q. You found it out from him?

A. That is exactly what he told me, Judge.

Q. You went up there to try and get evidence to show that he didn't know whether he was afoot or on horseback, didn't you?

A. I did not.

Q. What was the object of your going?

A. To find out his exact mental capacity.

Q. Then you did go to—

A. To find out his exact mental capacity.

Q. And as a result of your investigation, you found out he knew he had signed the deed, that he knew he had signed it to the daughter, that he knew he had conveyed his property away and that he knew he got the dollar named in the deed; all that you learned?

A. Yes.

Mr. Cole: That is all.

Re-direct examination.

By Mr. Bourgeois:

Q. Well, you learned more than that didn't you, from him?

A. Oh, yes.

Q. You learned in addition to that that if he signed the deed he thought he was going to get his freedom?

A. That was his whole cry.

Q. And if he got the hundred dollars he was going to live forever—didn't he say that? Going to live until he died on the hundred dollars?

Mr. Cole: No.

A. He would go to the Pocono Mountains and live well.

Q. Was anything said about him going back to Wildwood?

A. He said he didn't want to go back to Wildwood. He said, "The people down there think I am crazy;" wouldn't go to Wildwood.

10

Mr. Bourgeois: That is all.

Re-cross examination.

By Mr. Cole:

Q. He said he could get board at the Pocono Mountains for six dollars a week?

A. Get board for six dollars a week.

20

Q. You know that is not true?

A. I never stopped in the Pocono Mountains, but I don't believe it.

Q. You know that is not true?

A. I don't know.

Q. Then that is the answer?

A. Certainly.

Mr. Cole: You are not unlike other witnesses, apparently. That is all.

30 Mr. Bourgeois: Judge, I would like to call you and ask you if you could get board.

Mr. Cole: Off the record, I think you can. Not first-class, maybe.

Mr. Bourgeois: I don't know where you could get it. Some insane asylum, maybe.

DR. S. DIXON MAYHEW, called as a witness on behalf of the plaintiff, being first sworn, was examined and testified as follows:

Direct examination.

By Mr. Bourgeois:

Q. Doctor, you are a practicing physician? 10

A. Yes, sir.

Q. Practicing where?

A. Wildwood, New Jersey.

Q. And how long have you been practicing in Wildwood, New Jersey?

A. Nineteen years.

Q. Have you made some study of insanity?

A. Yes, sir.

Q. Have you been called on to sign papers committing people who were insane? 20

A. Very often.

Q. Are you acquainted with Henry Witte?

A. Yes, sir.

Q. Were you acquainted with him before he was sent to the insane asylum?

A. Yes, sir.

Q. Do you know about the time when he lost his mind?

A. About twelve years ago, I think something like that.

Q. Will you repeat to the jury what you know of his conduct just prior to the time he was adjudged insane? 30

A. Well, he had confined himself in his room; and roved the streets.

Q. Just a moment. You are going to testify now

to your personal knowledge or what somebody told you?

A. My personal knowledge.

Q. All right.

A. Finally Chief of Police Smith and I captured him out on the meadows back of Wildwood and delivered him back to his home.

Q. What was he doing?

A. Roving out on the meadows, hollering and waving his arms and so on.

Q. Perfectly sane?

A. I don't think so.

Q. And what was done with him?

A. He was finally committed to the state institution at Trenton.

Q. That was how many years ago?

A. I should imagine twelve.

Q. Now since that time have you seen him?

A. Yes, sir, twice I think.

20 Q. Twice. Did you see him a few days ago or maybe a week or so ago?

A. About two weeks ago I saw him.

Q. In company with whom?

A. Dr. Charlesworth, Mr. Sooy, Mr. Sheppard—and Mr. Coombs.

Q. What did you observe about him on that occasion? You went there for the purpose of examining him, I presume?

A. Yes.

30 Q. And did you examine him?

A. Yes, sir.

Q. Tell the jury what you observed about him?

A. He had a worried look.

Q. What?

A. Worried look.

Q. Yes.

A. Quite much of an excitable condition, and the more we talked to him the more excitable he would become. And he would answer our different questions right along.

Q. What about his talking when he got starting talking?

A. Couldn't hardly stop him.

Q. Couldn't stop him. Now, at that time what did you conclude his then condition was, mental condition, as compared with when he went up there twelve years ago?

A. The same.

Q. Just the same.

A. With the exception, not so much excitement.

Q. Yes. Now, Doctor, did he speak about this deed transaction while you were there?

A. Yes, sir.

Q. What did he say about it?

A. He said if he would sign the deed he would gain his freedom.

Q. Was anything said about some money?

A. For one dollar. He was to get one dollar and sign the deed and regain his freedom.

Q. What did he say about the hundred dollars?

A. If he would get a hundred dollars he would go in the Pocono Mountains and live for six dollars a week.

Q. Now, Doctor, in your opinion is a man who thinks he would get his freedom by signing a deed of sufficient capacity to understand the nature of that deed?

A. No, sir.

Q. Might a man know he was signing a deed and also know his daughter and know his wife and yet not know the purport of that deed?

A. Yes, sir.

Q. Might he know his family and know he was signing the deed and yet not know the nature of the deed?

A. That could be possible, yes, sir.

Q. Were you present when he turned to Dr. Cotton and told him what they had told him about the deed?

A. Yes, sir.

Q. What was it he said?

A. Turned around to him and said, "You, Dr. Cotton, will not allow me out of the gates."

10 Q. I see. When was that? When did that take place?

A. In the afternoon while we were examining him.

Mr. Bourgeois: Yes. Cross-examine.

Cross-examination.

By Mr. Cole:

20

Q. Mr. Bourgeois in asking you a question used the words "perfectly sane." I ask you whether there is any difference between being sane and perfectly sane?

A. Probably used the word "perfectly——"

Q. Pardon me?

Mr. Cole: Read the question to the doctor.

30 (The question was read by the stenographer.)

A. They are both the same.

Q. Now, where is the line if there is any, between sanity and insanity?

A. That is a question that is much disputed. Usually after twelve months it is considered chronic insanity.

Q. Now, if in point of fact on the 2nd of September, 1925, when Mr. Witte signed this deed, he knew the nature of that transaction and knew its effect upon him, that is, that he was transferring from himself to his daughter this hotel property in Wildwood that he owned, would you say that he was insane?

A. Yes, sir.

Q. Then could he have appreciated the nature of that act and the nature of it upon himself and still 10 be insane?

A. Repeat the question, please.

(The question was read by the stenographer.)

A. No, sir, he didn't appreciate it.

Q. I didn't ask you that, sir. Read the question to him.

(The question was again read by the stenogra- 20 pher.)

The Witness: No, sir.

Q. Then I repeat the question: If in point of fact at the time he signed that deed he had the ability to understand the nature and effect of that act and the business he was then transacting, was he on the date—September 2nd, 1925, an insane man?

A. Yes, sir.

Q. Yes. Well, do you use "insanity" in the technical medical sense? 30

A. Yes, sir.

Q. Yes. Is there anybody in your opinion who is perfectly sane, or sane?

A. Supposed to be.

Mr. Cole: Repeat the question to him.

(The question was read by the stenographer.)

A. Yes, sir.

Q. Well, now, what is the standard that you erect, or what are the facts that you have to have to determine that a person is either sane or insane?

A. General symptoms we observe, and different tests.

10 Q. And you in your technical sense declare a man insane although he might be able to transact the ordinary business affairs of life, don't you?

A. No, sir.

Q. What?

A. No, sir.

Q. Well, then, what is it about this transaction, if this man knew just as well as I would know, as you would know that transaction in which he was engaged, why do you say with respect to that he was

20

insane?
A. He wasn't capable of realizing the enormity

Q. I didn't ask you that. I am assuming he was capable of doing it. My question assumes he was capable as you are or as I am to appreciate the nature of the act and the effect upon him. Now, with that situation, do you still say he was insane?

A. Yes, sir.

30 Q. All right. Now, among other things you said that you could not stop him from talking. Is that evidence of insanity?

A. Yes, sir, in this case.

Q. I didn't ask you about this case. Is it an evidence of insanity generally?

A. Yes, sir.

Q. So that every time a woman starts to talking and you cannot stop her she is insane, is she?

A. Absolutely.

Mr. Cole: Have you got the record there, Miss Stenographer? He said, "Absolutely."

Mr. Bourgeois: Why do you leave lawyers out?

Mr. Cole: I will come to that in a moment.

10

Q. Have you had some personal experience in trying to have a woman stop talking and from which you deduced that she was insane?

A. Yes, sir.

Q. State the case.

A. I cannot recall any particular case.

Q. When was it?

A. During my general practice.

Q. Is there in the fact that this man had a worried look of itself evidence of insanity?

20

A. No, sir.

Q. Plenty of people carry a worried look?

A. Yes.

Q. In fact, it is a natural thing for a man who has something to worry about, to worry about it, isn't it?

A. Yes.

Q. And to carry that look on his face?

A. Yes, sir.

30

Mr. Cole: Nothing abnormal about that.

Re-direct examination.

By Mr. Bourgeois:

Q. Going back to the question about capacity: In your judgment from what you observed of him at that time when you examined him last, and what he said to you, are you of the opinion that he did have capacity to know what he was doing when he signed
10 that deed?

A. He did not.

Q. Did not. Did he comprehend what he was doing?

A. He may.

Q. Would he comprehend the effect of what he was doing?

A. No, sir.

Q. Would he comprehend the importance, the enormity of it?

20 A. No, sir.

Mr. Bourgeois: That is all.

Re-cross examination.

By Mr. Cole:

Q. Well, if he was able to comprehend what he was doing, why wouldn't he comprehend its effect?
30 I don't understand that. What is the difference? How could a man, Doctor, comprehend the thing he was doing without comprehending its effect?

A. Very easily done.

Q. How? Tell the jury.

A. A man through his family influences signing a deed all right, but he does not realize the enormity, or so on, of that.

Q. In that case he doesn't understand the act?

A. He understands what he did; doesn't understand the act completely.

Q. Did he have any memory?

A. Yes, he can remember.

Q. He remembered he signed the deed?

A. Yes.

Q. Remembered he got the dollar?

A. Yes.

Q. Remembered he had some children? 10

A. Yes.

Q. Remembered he was in Trenton?

A. Yes, sir.

Mr. Cole: That is all.

Mr. Bourgeois: That is all.

20

JOHN SAYRE, called as a witness on behalf of the plaintiff, being sworn, was examined and testified as follows:

Direct examination.

By Mr. Bourgeois:

Q. Mr. Sayre, did you examine the title to a piece of property that prior to the second of September, 30 I think it was, stood in the name of Henry Witte, known as the Adelpia Witte Hotel?

A. Yes.

Q. Will you tell the jury what you found the record of that title to be? I want to know whether it is free of encumbrance or if there was encumbrance on the property—I don't mean that.

Mr. Cole: Before he testifies —

Mr. Bourgeois: Let me withdraw that question.

Mr. Cole: All right.

Q. I want to know whether it was free of restrictions or whether there was a restriction on that property?

10

Mr. Cole: Before he answers that. Did you make the investigation of the record yourself or are you testifying from records made by somebody else?

The Witness: Well, our report is based on the searches made by our searchers.

Mr. Cole: Then you are reading from a record made by somebody else, aren't you?

20

The Witness: I personally examined those records myself yesterday, Judge.

Mr. Cole: All right.

Q. Now, then, will you answer that question, please?

A. There are restrictions imposed upon the land.

Q. There are?

A. Yes.

30

Q. And what are those restrictions?

A. There are two sets of restrictions imposed on that land, or, rather, three. The title was conveyed by the Wildwood Beach Improvement Company by two deeds originally. The first deed recorded in Deed Book 148, page 526, of the records of this

county, and the other in 193, page 367, of the records of this county. Those restrictions are both the same.

Q. Now, will you read those restrictions, please?

A. Under and subject to the covenants that no building of any description shall at any time be located within ten feet of the line of any street or avenue. And also under and subject to the covenants and conditions that no cess-pool shall be dug in the earth upon said lot or any part thereof, but suitable tight boxes shall be provided for such purposes, and shall be kept clean and odorless; and that no nuisance, such as slaughter-houses or bone-boiling establishments, or any other nuisance shall ever be erected or kept on said premises, and that no drainage of any kind of filth into the soil in any way whatever shall ever be permitted; and also and subject to the covenants that all dwelling houses, hotels, and boarding houses, stores and buildings for business purposes shall be set and erected at least three feet higher than the grade of the street or avenue as now established; and that all new buildings shall be painted not less than two coats and the front of said lot between the building and the street or avenue shall be kept clean and free from all nuisances; and that all privies be built in the rear of said lot and not within five feet of the line of any adjoining property. The object of these covenants being to secure uniformity of improvements and the health, beauty and value of the place.

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And it is expressly stipulated and reserved by the grantor, its successors and assigns, that in the event of any violation of or failure to comply with the said conditions, covenants and reservations, by the party of the second part, their heirs and assigns,

that then the said party of the first part, its successors or assigns, shall have the right to enter without previous notice, upon said premises and use whatever force may be necessary to abate such violation, or to enforce said covenants, or any of them, at the cost of the party of the second part, their heirs or assigns, and this without any liability for damage or to any action at law, in equity or otherwise for such abatement or enforcement. And the

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said party of the second part, their heirs, executors, administrators and assigns, by the acceptance of these indentures, approve, ratify and agree to the said conditions, covenants and reservations and assent to the enforcement of the same as aforesaid.

Q. You say two of those sets are exactly the same?

A. They are.

Q. What is the third restriction?

A. The first was a deed for the corner lot. Lot No. 1. The deed is recorded in Deed Book 207, page

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366:
Under and subject to the covenants and conditions that all buildings shall be artistic in design and attractive in finish, and no smithy, factory, livery stable, public garage, slaughter-house or fish market shall ever be erected or conducted on the premises conveyed by this deed; that the right of the grantors herein to fill the lots and streets as near to the boardwalk as shall appear discreet to them, to gravel the avenues and lay the pavements, curbs and sewers; to remove the old boardwalk and buildings; to the reservations that there shall be no building or buildings erected on the ocean side of the boardwalk, except ocean piers, and no ocean piers shall be built before August 22, 1919, on the ocean-front of any land sold December 5, 1911, by the grantors herein, nor shall free bathing ever be pre-

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vented on the beach or in the surf in front of the said land, and the right of way for the construction of the boardwalk now building and to complete, maintain and operate the same and the right of way for any future boardwalk to maintain and operate the same on the ocean side of the boardwalk now building, upon the surrender and vacation to the adjoining owners of the present right of way and the right to take sand from the ocean side of the boardwalk now building to complete the fill now being made to grade between Atlantic Avenue and the new boardwalk.

10

Q. Now, that restriction was on which lot?

A. That was on the corner lot. Lot Number 1, I think.

Q. Now, Mr. Sayre, can you tell me if there had been any other conveyances by the Wildwood Beach Improvement Company prior to the time when the lots that you have spoken of went back into their ownership and they imposed this third restriction on it?

20

A. No. These four conveyances that I have mentioned are the only ones we have been able to find of record.

Q. Find what?

A. Find of record. We have not found any others of record.

Q. You don't know whether there was any other conveyances at all or not?

A. No, only what is shown by the record.

30

Q. I understand. I meant by the record. Now the land that you have—that was in the Witte—what was the description of that? Where did it go? What I want to know is did it include a riparian grant or not?

A. No.

- Q. Just went to the high-water mark?
 A. No, didn't go to the high-water mark.
 Q. Didn't go to the high-water mark?
 A. No.
 Q. Now, I want to show you —

Mr. Bourgeois: Judge, here is a map that was made—have you any objection to using that?

10 Mr. Cole: What is the purpose? I don't know.

Mr. Bourgeois: Only for the purpose of showing where this property is. There is Pine Avenue and there is Atlantic Avenue and here is the property. Just for the purpose of showing the lots.

Mr. Cole: Just for illustration?

Mr. Bourgeois: That is all.

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Mr. Cole: What is the significance of it?

Mr. Bourgeois: Not a thing except to show the jury where the lots are and where the restrictions are.

Mr. Cole: I haven't any objection.

Q. I show you a map and ask you if that shows those two lots?

30 A. I cannot just see from this map how much frontage there is there.

Q. Well, never mind.

A. There is a hundred feet frontage on Atlantic Avenue; 92.17 on Pine Avenue.

Q. Never mind. I will withdraw that.

A. I don't think that map shows the frontage on Atlantic Avenue there.

Q. I beg pardon?

A. It is the same property.

Q. It is the same property?

A. Oh, yes, it is the corner of Atlantic and Pine.

Q. And how many feet front do you say it is?

A. The deeds call for 100 feet on Atlantic by 92.17 on Pine.

Q. 92?

10

A. 92.17 feet on Pine.

Mr. Bourgeois: Cross-examine.

Cross-examination.

By Mr. Cole:

Q. Is it true that the restrictive covenants which you have read are contained in the deed from the owner of the large tract of land as laid out by that owner? 20

A. Yes.

Q. In the first deed out of that company?

A. Yes.

Q. They imposed restrictive covenants upon a large tract of land they owned in Wildwood; is that right?

A. So far as we have been able to see they are covenants in their deeds for these lots. 30

Q. I say, covenants in the deed from whom?

A. Wildwood Beach Improvement Company.

Q. And that company owned a large area of land in Wildwood?

A. Yes.

Q. Now, was there any map filed by the company?

A. Yes.

Q. Have you the map here?

A. I have not; no.

Q. But the map showed a large tract of land? About how much area?

A. Well, I couldn't tell you, Judge.

Q. Oh, roughly.

A. How much area there is there? It showed this particular block.

10 Q. And in all the deeds that that company made, so far as you have investigated, it imposes these covenants you have read?

A. Yes.

Q. As a sort of general scheme of that company?

A. Yes.

Q. And then you say that title went back into what company?

A. Wildwood Beach Improvement Company.

Q. The same company?

20 A. Yes.

Q. Well, to whom did it convey; that is, I mean the first time the conveyance was made to whom was the conveyance made?

A. The first deed was made to Joseph A. Woodruff, Samuel A. Lannon and C. Howard Lannon. They conveyed to one Joseph B. Vanderslice, this particular lot, the corner lot.

Q. Now it finally goes back into the same company?

30 A. Yes.

Q. And in the deed back to the same company are these restrictive covenants again imposed?

A. They are not.

Q. When did they cease to be imposed?

Mr. Bourgeois: I object; that is a question of law.

Q. As a fact, when did they drop out?

Mr. Bourgeois: As a fact—those restrictions, after once imposed, stayed there.

The Court: I suppose he means when did they stop being referred to in the deed.

Mr. Cole: Exactly. I agree with you, when once imposed, they are there. 10

The Witness: The first deed out of the company was by the original map of the company, in which the lots were laid out differently. The lots in that original map faced on Pine Avenue. This corner lot had a frontage of fifty feet on Pine and a hundred on Atlantic. That was the lot that was conveyed, and the other adjoining lot was conveyed by the company in this original deed to Woodruff and Lannon, 90 feet on Pine and 100 feet on Atlantic. Woodruff and Lannon conveyed to Vanderslice; Vanderslice to one McClellan. 20

Q. Are the restrictive covenants referred to?

A. In these deeds, yes.

Q. All right.

A. They don't recite them in full.

Q. Were they referred to?

A. Yes.

Q. When did they cease to be referred to in the deeds? 30

A. Vanderslice conveyed to McClellan in 1902 under and subject to certain building restrictions and sanitary measures. McClellan conveyed that to the Wildwood Beach Improvement Company in 1911.

Q. Does he refer to them?

A. Now —

Q. In the deed; does the deed refer to these covenants?

A. I think the deed would better be produced.

Q. Don't you know?

A. Yes, I know what is in the deed.

Q. You have not got the record here?

A. No, I haven't the record here.

10 Q. I thought you said you searched this morning?

A. No, I said I examined the records yesterday.

Q. Did you examine to see whether the restrictive covenants were again referred to in the deed of this man to the company?

A. In a vague way.

Q. Does it at all?

A. Yes.

Q. We have got the title back in the same company?

20 A. Yes.

Q. Did it make some conveyance after that?

A. Yes.

Q. Did it again impose restrictive covenants?

A. Yes.

Q. One of those you just read?

A. That is not the original set, however.

Q. Well, how much of the area that this company owned at the beginning was conveyed back to it by this deed from—what was the name?

30 A. McClellan. McClellan conveyed back just the same that he had, 90 by 100 feet.

Q. Well, now, when the company, again having title to all the land as I understand it once owned, began to reimpose the covenants which you read, how much land did it own then?

A. I couldn't tell you that.

Q. Have you any idea at all?

A. No, I have not.

Q. Was there any map filed under the new restrictive covenants?

A. Yes.

Q. And did it in the deeds it thereafter made, so far as you have examined, impose these covenants?

A. Yes.

Q. So that they were restrictions running with the land out of the company? 10

A. Yes; we so regard it.

Mr. Cole: That is all.

Re-direct examination.

By Mr. Bourgeois:

Q. How much do you say they conveyed back to the Wildwood Beach Improvement Company? 20

A. McClellan conveyed the same piece he owned, 90 by 100.

Q. 90 by 100?

A. Yes, at the corner.

Q. Then when the Wildwood Beach Company conveyed it again, they put in this third restriction, is that the idea?

A. Yes.

Q. I see. Now, were there other conveyances by the Wildwood Beach Improvement Company after the conveyance to Woodruff and prior to the conveyance back to them in 1911? 30

A. I don't think so.

Mr. Bourgeois: That is all.

The Court: What is the claim of plaintiff with reference to these restrictions?

Mr. Cole: There is no claim made in this complaint.

The Court: That these were unusual restrictions, instead of usual.

Mr. Bourgeois: They were to be unrestricted; and they are restricted.

10 The Court: I see. "Shall be free of all encumbrances"— (Reads complaint.)

Mr. Bourgeois: Yes, these restrictions running with the land. These restrictions running with the land do not include these restrictions in the third instance which are just on this particular one lot.

By Mr. Bourgeois:

20 Q. Is that right? Did they put those restrictions in any other deeds?

A. I think so.

Q. All of them or some of them?

A. I could not testify as to all of them.

The Court: I do not understand those restrictions as read in number three, in so far as they apply to the beach front, have anything to do with this.

30 Mr. Bourgeois: No.

The Court: So that the only restrictions that apply to this lot are that there should be no factory, garage or fish house, or something of the kind, located on this particular lot; is that all?

The Witness: Well, just as I read there.

The Court: Well, I mean the restrictions with reference to the ocean front had nothing to do with this lot?

The Witness: No.

The Court: All right.

Q. Mr. Sayre, about this usual restriction phase: Are these restrictions all the same? 10

Mr. Cole: I object:

Mr. Bourgeois: Well, now, I don't mean the restrictions here, but the restrictions on this land.

Mr. Cole: They speak for themselves. He has read them. 20

Mr. Bourgeois: He has been testifying about the restrictions to Judge Cole. I don't see why we should now have to go back and examine those deeds.

The Court: I don't quite get the question.

(The question was read by the stenographer.)

The Court: What restrictions? 30

Mr. Bourgeois: Imposed upon this land by the Wildwood Beach Improvement Company.

Mr. Cole: I object to any conclusion or opinion of this witness.

Mr. Bourgeois: Then we will have to get the records; because Judge Cole asked him about this thing himself.

Mr. Cole: I cross-examined the witness.

Mr. Bourgeois: I know. Now, then, I have a right to re-examine him on that same subject he cross-examined.

10 The Court: As I understand, he cross-examined him on the question, not whether or not all these restrictions were the same, did he?

Mr. Bourgeois: No, but I examined him with relation to certain specific restrictions. Now he goes beyond that and says these are the same restrictions on that land, ad the witness says yes. I want to re-examine him and show there is a difference in those restrictions.

20 The Court: Yes, but you are calling for an interpretation of those restrictions from this witness.

Mr. Bourgeois: Assume that is true; after the Judge brought out his question without having the record before him, why may I not cross-examine him?

Mr. Cole: Not your witness.

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Mr. Bourgeois: I mean re-examine him.

Mr. Cole: I think this is not in the case. Assuming it is in the case, by the pleadings we have the agreement which your Honor must interpret. Now

all this witness ought to be allowed to testify is that he finds records of certain restrictive covenants on that land. I assume he testified from a personal examination; that is what he said—two or three days ago.

Now, if he is going to tell us about these covenants and restrictions he should tell us about all of them. And then your Honor will interpret that language. The record will show the facts.

10

The Court: As it stands now, as far as the Court is concerned, and also the jury, all the testimony shows is there are three sets of restrictions, two originally created and finally a third set of restrictions. As far as the testimony is concerned now, I assume—I don't know—that all these restrictions apply to all the land which was originally conveyed by the original deed.

Mr. Bourgeois: Certainly. Now, then, he has brought that out. And he objects to my re-examining the witness for the purpose of clearing up what he has brought out that I think is not accurate.

20

The Court: No, but you have asked the witness whether or not these all apply to this whole tract.

Mr. Bourgeois: No, no.

Mr. Cole: He is asking whether they are the same restrictions. I don't know what the witness may answer. The witness may conclude to give some opinion about that, or state some conclusion.

30

The Court: The witness has not the right to state a conclusion.

Mr. Bourgeois: I am not asking for that. What was the question I asked him?

(The question was repeated by the stenographer as follows: "Mr. Sayre, about this usual restriction phase: Are these restrictions all the same?")

Mr. Bourgeois: Are the restrictions on this property all the same?

10

The Court: I will permit it.

Mr. Cole: I object to it.

The Court: I will permit it.

The Witness: Do you mean that the first set of restrictions are the same as the second set of restrictions?

20

Q. Yes, are they the same?

A. No, they are not the same.

Q. And there are two sets of restrictions on the same property, different, on our property?

A. Yes.

Mr. Cole: Objected to.

The Court: I haven't had time to rule on it yet.

30

Mr. Cole: I didn't have a chance to object. There was a big hurry there, both the lawyer and the witness.

Mr. Bourgeois: It was admitted, was it?

The Court: We are waiting.

Q. Now, Mr. Sayre, do the same restrictions apply to all the three lots that are included within the description of the agreement?

Mr. Cole: That I object to. I think we are entitled to have the facts about that and not this witness' statement.

Mr. Bourgeois: Well, maybe he can tell us.

10

The Court: I think we are entitled to have the facts.

Q. What restrictions apply to the corner lot? You don't have to read them over again if you have already read them once.

A. I read—the first set that I read applies to the corner lot and to the 90 by 100 feet as originally conveyed.

Q. Yes.

20

A. The second set applies to the corner lot as it is now laid out and imposed by the second deed out of the Wildwood Beach Improvement Company.

Q. And what is the size of that lot as it is now laid out?

A. That lot is 40 feet front by 92.17 feet deep.

Q. Yes.

The Court: What was the other lot, 90 by what, the first?

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The Witness: The first layout, Judge, was right crosswise from what the present layout is.

The Court: And that made it 90 by what?

The Witness: 90 by 100 when first conveyed.

Mr. Bourgeois: That is all.

Re-cross examination.

By Mr. Cole:

Q. Now, Mr. Sayre, Wildwood—what is the name of the company?

A. Wildwood Beach Improvement Company.

10 Q. Wildwood Beach Improvement Company owned a large tract of land in Wildwood; is that correct?

A. Yes.

Q. It filed a map plotting that land, didn't it?

A. Yes.

Q. And then it made a deed in which it set forth a number of restrictive covenants; is that right?

A. Yes.

20 Q. And in so far as your investigation went, whatever conveyances were made by that company had those covenants in the deed, didn't they?

A. So far as I know.

Q. Now, there came a time when some of the land it had conveyed came back to it; is that right?

A. Yes.

The Court: Some or all?

Q. Was it some or all?

30 A. It was the original corner, 90 by 100 came back to it, yes.

Q. We are not talking about any original corner. We are talking about the tract. If you just forget this Witte proposition a minute, maybe we will get along faster. We are talking about the tract of land the Wildwood Beach Improvement Company owned on the corner of that.

A. Yes.

Q. And they imposed restrictions on the land they sold, didn't they, out of the first deed, the map being filed, showing the whole tract of land; is that correct?

A. Well, I cannot testify to that. All I know about here is this particular corner. I cannot testify as to the first deed the Wildwood Beach Improvement Company made.

Q. You mean now after all this investigation you 10 have made, all you have done is to search against the corner lot?

A. We have made numerous searches on other parts of the tract.

Q. Did you find these covenants there?

A. Generally they are in the deed, yes.

Q. And when this title of this large tract of land came back into this Wildwood Beach Improvement Company, it began to make other deeds, didn't it, of 20 that tract?

A. It reconveyed this land.

Q. And it imposed covenants restrictive in those deeds, didn't it?

A. Yes.

Q. Which you say were somewhat different from those they imposed in the first instance?

A. Yes.

Q. And that those covenants restrictive were imposed also on land involved in this suit?

A. Yes. 30

Mr. Cole: That is all.

Re-direct examination.

By Mr. Bourgeois:

Q. Weren't imposed on all the land in suit, were they? Only imposed on the 40 feet?

A. Yes, they were imposed on all the land.

10 Q. Which ones were imposed on all the land?

A. The second set.

Mr. Bourgeois: All right.

Mr. Cole: That is all.

Mr. Bourgeois: We rest.

Mr. Cole: I offer in evidence deed of September 2, 1925, from Henry Witte and wife to Helene
20 F. Witte.

The Court: No objections, I assume?

Mr. Bourgeois: What is that? Which one?

Mr. Cole: From Witte and his wife to Helene Witte.

(Paper referred to previously marked for the defendant, Exhibit D2 for identification, now received
30 in evidence as D2.)

Mr. Cole: I offer in evidence deed of September 19, 1925, Helene F. Witte, single woman, which has been marked D1 for identification.

(Same received in evidence and marked for the defendant, D1.)

EDGAR B. FUNKHOUSER, called as a witness on behalf of the defendant, being sworn, was examined and testified as follows:

Direct examination.

By Mr. Cole:

Q. Are you connected with the State Asylum at 10 Trenton?

A. I am.

Q. And for how long have you been connected with it?

A. Twenty years.

Q. What is your position?

A. First assistant physician.

Q. Are you a doctor?

A. Yes, sir.

Q. How long have you been a doctor? 20

A. Since 1900.

Q. Have you specialized?

A. I have.

Q. In what?

A. Nervous and mental diseases.

Q. You know Mr. Witte?

A. I do.

Q. And about when did you first see him?

A. When he came to the hospital.

Q. And has he been under your observation more 30 or less ever since?

A. He has.

Q. How frequently did you see him during the period?

A. Most every day except during the war period.

Q. Were you at the hospital on the 2nd day of

September, 1925, when he executed this deed which has been offered in evidence?

A. I was.

Q. Were you present at the time he signed it?

A. I was.

Q. Did you see him sign it?

A. I did.

Q. Who is Mr. John H. Connolly who took this acknowledgment?

10 A. He is the chief clerk in the business department.

Q. How long had he been there?

A. Longer than I. Probably thirty years or more.

Q. Did you have any talk with Mr. Witte or he with you or was there any conversation in your presence concerning the execution of this deed?

A. There was.

Q. State to the jury and the Court —

20 Mr. Bourgeois: I object.

Q. —as nearly as you can recall.

Mr. Bourgeois: That is irrelevant and immaterial. We were not present at that time. How is it binding on us?

The Court: I assume the purpose is to show whether or not at the time of signing that deed Mr. 30 Witte was sane or insane.

Mr. Cole: Certainly, to show what happened.

Mr. Bourgeois: I object because we were not there. It cannot be binding on us. It is hearsay as to us, whether using it for one purpose or another.

The Court: I think the jury have the right to pass on the question of insanity. It seems to me what he did and what he said at that time for that purpose would be material.

Mr. Bourgeois: I think if they are going to examine this man as an expert, they have got to put a hypothetical question to him, and if he is not an expert he cannot give his opinion and we cannot be bound by hearsay testimony.

10

Mr. Cole: I have not asked him for an opinion. I have asked him for what happened—facts.

Mr. Bourgeois: I am objecting to their stating what happened in our absence, when there was nobody there representing the plaintiff in this suit.

Mr. Cole: There wasn't anybody representing the defendant.

20

Mr. Bourgeois: If they wanted to make this thing secure against us—the title was coming to us, they had our \$16,000. Now, if they wanted to make it binding on us, why didn't they tell us, "We are going to send the deed up there and you can see what takes place?" They cannot get a deed in our absence and then say, "You must take it."

The Court: The issue here is, was or was not Mr. Witte sane at that time.

30

Mr. Bourgeois: That is the issue. If he wants to state what was done, not what was said, I don't object to that, possibly. But we are not bound by hearsay testimony as to the making of that deed.

The Court: Not as to the making of the deed, but as to the mental capacity of the man who made it at the time it was made, it seems to me they would have the right to say what was said and done.

Mr. Bourgeois: That would be if he is an expert, then it must be hypothetical. We have the right to know the basis on which he is going to give his opinion.

10

The Court: He is not asking for opinion.

Mr. Bourgeois: He is asking for facts. He must produce the testimony of the facts and from these facts, either produced beforehand, or else supply it afterwards, he must formulate his question. Judge Cole and I went through this whole thing in the case of Shoemaker against Elmer, and the Court there said—Judge Cole had a notion that a man could give his opinion, and qualify it as he went along.

20

The Court: He is not asking for any opinion. He is not asking whether he was sane or insane. He is asking what was done at the time this deed was acknowledged.

Mr. Bourgeois: No; he is asking what was said.

The Court: Yes.

30

Mr. Bourgeois: That he cannot do.

The Court: What was said and done.

Mr. Bourgeois: I am not objecting to what was done, but he cannot ask him what was said because that is hearsay testimony as to us.

The Court: I will permit it.

Mr. Bourgeois: Allow me an exception.

The Court: Yes.

Q. Now, Doctor, tell the jury what took place.

A. I don't recall the exact wording of the question.

Mr. Cole: Repeat the question to the doctor.

10

(The question was repeated by the stenographer as follows: "Did you have any talk with Mr. Witte or he with you or was there any conversation in your presence concerning the execution of this deed? A. There was. Q. State to the jury and the Court as nearly as your can recall.")

Q. Now, speak loud enough so all the jurors can hear you.

20

A. As I recall, the question came up between Mr. Witte and myself and some members of the family with reference to some property which he had which he wished to transfer to his daughter. At first I didn't take it seriously, but later it came up again. By and by the members of the family came to the hospital and talked it over.

Mr. Bourgeois: I object to that. Are we bound by that, too?

30

Q. No, I don't want the conversation that you had with the members of the family unless, of course, he was present. Any talk that was had concerning the making of this deed when he was present.

The Court: I think what he said and what he did is competent. Now, then, I do not think it is competent to say what the other people said or what the other people did. It doesn't seem to me that tends to prove either insanity or sanity on the part of Mr. Witte.

Mr. Cole: It seems to me we are entitled to have the transaction. The jury can see whether he ap-
10) preciated the talk that was being made by them.

The Court: The question of what he said or did, it seems to me.

Mr. Cole: I ask an exception to the restriction.

The Court: Yes.

Q. Now, Doctor, having in mind the Court's ruling that you cannot state anything that was said by the other members of the family nor what you said to them, can you tell the jury what Mr. Witte said, even though it may have to be disjointed, about this transaction?
20)

A. Well, to make it clear to the jury, Mr. Witte wanted to transfer this property.

The Court: Now that —

Q. Tell it in substance as you recall.
30)

Mr. Bourgeois: I ask that be stricken out, because that is a conclusion of the doctor's.

The Court: Yes, that is a conclusion of the doctor's, no question about it.

Mr. Bourgeois: I surmise he had all the brains the two of them had.

The Court: It is stricken.

Mr. Cole: Allow me an exception.

The Court: Yes.

The Witness: I wanted to make it clear to the jury that I had first to gain the facts before I could give an opinion. 10

Mr. Bourgeois: I object to that.

The Court: Yes.

Q. Now, Doctor, did you talk with Mr. Witte concerning the property that he had owned at Wildwood?
20

A. I did.

Q. And about when was that?

A. Not long before the transaction occurred.

Q. Tell the jury the conversation between you and Mr. Witte about this property.

Mr. Bourgeois: I object.

The Court: What the doctor said—not what the doctor said; what Mr. Witte said to him and what he did. 30

A. I asked Mr. Witte to give me some details concerning the property.

Mr. Bourgeois: Now, if the Court please, I object.

The Court: I am going to permit what Mr. Witte said.

Mr. Bourgeois: I know; he is not telling anything about Witte.

The Court: He asked him a question concerning the property which is preliminary, and I will allow that to stand.

10 Mr. Bourgeois: Allow me an exception.

The Court: Yes.

The Witness: I asked Mr. Witte if he realized the nature of this transaction, transferring it to his daughter. He seemed to be quite clear.

The Court: No, not what he seemed to be.

20 Q. What did he say, Doctor? If you can recall, the language he used.

A. As well as I can recall, it was—he said he wanted to make that transfer.

Q. Now how long was that before he actually signed the deed?

A. I don't remember the exact number of days, but it was on two occasions—first talked it over and then on the day that we went to Mr. Connolly for the final affidavit.

30 Q. Yes. Now who went to Mr. Connolly?

A. Mr. Witte and myself were there.

Q. Was Mrs. Witte there at that time, do you recall?

A. I think Mrs. Witte was there.

Q. Now did you all three go to Mr. Connolly?

A. I think we did.

Q. Now what happened when you got to Mr. Connolly?

A. Mr. Connolly reviewed it very carefully. I might say Mr. Connolly was a very conscientious man.

The Court: No, that may be stricken out.

The Witness: And he reviewed the ———

Q. What happened so far as Mr. Witte was concerned, and the deed? 10

A. Well, he signed the deed in the presence of the notary.

Q. You saw him sign it?

A. I did.

Q. Was he asked by anybody if he knew what he was doing?

A. He was.

Q. Who asked him? 20

A. Mr. Connolly.

Q. The notary public?

A. Yes.

Q. And what did Mr. Witte say?

A. He knew what he was doing.

Mr. Bourgeois: He what?

The Witness: He knew what he was doing.

Mr. Bourgeois: That was not the question, was it? 30

The Court: What did Mr. Witte say, and he said he knew what he was doing. I presume that is what he said.

Mr. Bourgeois: You mean Witte said he knew what he was doing?

The Witness: I don't recall Witte's exact words.

Mr. Bourgeois: You mean you said he knew what he was doing?

The Witness: I inferred from his words.

10 Mr. Bourgeois: That he knew what he was doing. I ask that it be stricken out.

The Court: Stricken out.

Mr. Cole: Exception.

(Short recess.)

20 Q. Now, Doctor, how did it come about—don't give us the details, but just the substance—how it came about that you talked with Mr. Witte about his property in Wildwood? How was it first introduced to you and how did you introduce it to him?

A. He mentioned the subject to me that he had property in Wildwood he wanted to transfer to his daughter.

Q. What more did he say to you about it up to the time when he signed this deed, if you can recall?

30 A. I don't recall definite conversation, except that there was some correspondence also.

Mr. Bourgeois: I object if he does not recall the conversation.

The Court: Yes.

Q. I am not speaking now of correspondence. I am talking about your face-to-face talk with Mr. Witte about this property. What can you recall was said between you?

A. That he had property in Wildwood—hotel.

Mr. Bourgeois: I object, if your Honor please. If he is going to state what he said, I think he ought to state it, not state his conclusion of it.

10

The Court: Yes; state what he said.

The Witness: I don't remember, word for word

The Court: No.

The Witness: —very much that he said.

Q. Well, Doctor, you don't have to remember the words. You are entitled, subject to the Court's ruling, to state the substance of the talk between you and Mr. Witte concerning this real estate and concerning the deed that he made. I am asking you now to state as nearly as you can recall presently the substance of the talk that took place between you and Mr. Witte concerning this property, now, from the time you first talked to him or he with you until the deed was finally signed.

20

30

Mr. Bourgeois: I object to that.

The Court: I will permit it.

Mr. Bourgeois: That is not competent evidence, and he has no right to state what he said about it.

The Court: I want the conversation that Mr. Witte had with him, the substance of the conversation, of Mr. Witte's conversation with reference to the property.

Mr. Bourgeois: But the question is more than that—the substance of Mr. Witte's conversation and his conversation.

10 The Court: It may be that what he said in reply to Mr. Witte would be competent under certain circumstances. I cannot tell.

Mr. Bourgeois: Well, allow me an exception.

The Court: Yes, I will allow an exception.

Q. Now, then, Doctor, do you understand that?

A. I do.

20 Q. Tell the jury your best present recollection?

A. That Mr. Witte had a hotel property in Wildwood, that it consisted of I don't know how many rooms—it was some size; that he had had this property for quite a while; that he would like to transfer it to his daughter—mentioned the name, Helene. And the reasons for his transfer he talked about. I talked to the family and they —

30 The Court: I don't care what you talked about to the family.

The Witness: I was convinced —

Mr. Bourgeois: I object.

The Court: No.

Q. The talk, Doctor.

A. Just the talk?

Q. Between you and him. Counsel object to anything more and they have a right to, so you will have to try to keep your mind on that.

A. Then following this conversation there was—I will say it is very difficult to make it clear to the jury.

Mr. Bourgeois: Maybe to state what he said 10 won't be so clear to them anyhow.

The Witness: That it was a family union or affair that they wanted to make this transfer. Knowing that, Mr. Witte—and clear in his mind —

Mr. Bourgeois: No.

Q. Doctor, don't give us your opinion.

A. There is not much more to say. I will stop.

Q. Is that all you can recall of the conversation? 20

A. That is all.

Q. Now, coming down to the day when this deed was signed, you said you were present?

A. I was present.

Q. Now, then, state your best recollection at this time of what took place in connection with the signing of that deed.

Mr. Bourgeois: That was all gone over once. 30

The Court: What he did I will permit, but—I presume it has been gone over, but I will permit it.

A. I took Mr. Witte into Mr. Connolly's office. Mr. Connolly looked over the papers and asked Mr. Witte some questions and signed his name.

Q. Won't you tell us what Mr. Connolly asked Mr. Witte, if you can remember it?

Mr. Bourgeois: I object.

A. I don't remember his exact words, but he covered —

Mr. Bourgeois: I object to that certainly as
10 hearsay.

The Court: Yes. He says he doesn't remember his exact words, but he covered — That would certainly be a conclusion.

Q. Do you remember the substance of what Mr. Connolly said to him?

Mr. Bourgeois: Answer yes or no.
20

A. Yes.

Q. Give us the substance.

Mr. Bourgeois: I object. I have thought that his testimony, what took place in our absence, was hearsay. Now he is going to go on and state what some third party said to Mr. Witte in our absence, and I say that is hearsay.

30 The Court: I will overrule that.

Mr. Cole: Allow me an exception.

The Court: And allow an exception.

Mr. Cole: That is, your Honor overrules our offer to show what took place in the presence of the

witness and Mr. Connolly and Mr. Witte at or about the time of the execution of this paper?

The Court: What Mr. Connolly said.

Mr. Cole: What he said to Mr. Witte.

The Court: I will permit what Mr. Witte said to him.
10

Mr. Cole: Allow me an exception.

The Court: Yes.

Q. Well, now, what followed, if anything, after there was something said by Mr. Connolly?

A. Signing of his name.

Q. Who? Who signed?

A. Mr. Witte signed and Mr. Connolly signed.
20

Q. Now, do you know whether or not this deed was read, the contents of the deed was read to Mr. Witte or whether Mr. Witte read the deed?

A. I am sure he read the deed.

Q. When did you first see the deed? In whose hands was it?

A. I don't know.

Q. How did you come to go with Mr. Witte into Mr. Connolly's office?

A. I am not sure whether I turned the deed over first to Mr. Connolly or whether I took the deed
30 when I took Mr. Witte to the office.

Q. Well, did you have the deed in your hands?

A. I did.

Q. Do you recall from whom you received it?

A. No.

Q. Had it been in Mr. Witte's hands, do you know, before he signed it?

A. Yes.

Q. You know that?

A. I know that.

Q. And you say that Mr. Connolly read that deed to him?

A. Yes.

Q. What, if anything, did Mr. Witte say in response to anything that Mr. Connolly said or did?

10 A. I don't recall his exact words.

Mr. Bourgeois: What was the answer to that?

The Court: "Don't recall his exact words."

Q. Do you know what became of that deed after that?

A. No, I don't.

Q. All right. Does Mr. Witte read?

20 A. He does.

Q. Able to read?

A. Yes.

Q. And does he read?

A. Yes; not so much probably now, perhaps due to defective glasses.

Q. And what does he read when he reads?

A. Newspapers and magazines.

Q. Now, what is his relation to that hospital, that is to say, how is he treated, what is he allowed to do and what does he do?

30 Mr. Bourgeois: I object as irrelevant and immaterial.

Mr. Cole: These are—this, of course—we intend to elicit what this man's actions are.

Mr. Bourgeois: You have got three questions there and part of them certainly are not relevant.

The Court: Repeat the question.

(The question was read by the stenographer as follows: "Now, what is his relation to that hospital, that is to say, how is he treated, what is he allowed to do and what does he do?")

10

Mr. Bourgeois: Now, that is all irrelevant except the last question. There are four questions there. It may be relevant to say what he does do, but not what he is allowed to do or his relationship.

The Court: What he does is competent.

Mr. Bourgeois: That is the only part that is competent of those four questions.

20

The Court: Of course, any answer may bring out some of the other parts. But I will overrule this question at the present time.

Mr. Cole: Allow me an exception.

The Court: Yes.

Q. What does Mr. Witte do about that hospital?

A. He has paroled the grounds and he does much 30)

Mr. Bourgeois: What is that answer?

The Witness: He has paroled—he goes in and out as he likes, and he does much of the work that is done by an attendant.

Q. By whom?
A. By a regular hospital attendant.

Mr. Bourgeois: I object to the conclusion.

The Court: Yes.

Mr. Bourgeois: I ask it be stricken out.

10 Q. Won't you please tell us what he does? Not he does something somebody else does. What does the man do about the hospital?

A. He cleans sick rooms, he cleans the wards, cleans the chapel, he arranges the seats, he dusts the furniture, and takes other patients here and there by request of doctors.

Q. Where does he take them?

A. May take them to chapel; may take them to the movies; may take them to the X-ray room; may take
20 them to the dental rooms; may take a specimen to the laboratory.

Q. Where is the movie?

A. In the building.

Q. And in doing those things that you just enumerated, does he do them right or wrong?

A. Does them well.

Q. Does he have the right to leave the hospital and the grounds?

A. He has the privilege.

30 Q. And where may he go?

A. To Wildwood, I suppose, if he wished to.

Q. And what about the city of Trenton?

A. Goes in the city.

Q. And does he exercise that right?

A. Sometimes.

Q. And does he come back all right?

A. He does.

Q. Do you talk with him from time to time?

A. Quite frequently.

Q. What do you talk about?

Mr. Bourgeois: I object to that, if your Honor please.

The Court: I will permit it.

Mr. Bourgeois: Exception. 10

The Court: Yes.

Mr. Bourgeois: Being hearsay.

A. Maybe the weather; maybe current events; maybe some duty to perform.

Q. Now, assuming himself to be sane, what have you to say as to the intelligence of his conversation?

A. I think it is quite intelligent. 20

Q. Does he understand you when you talk to him?

A. I think so.

Q. Do you understand him when he talks to you?

A. I do.

Q. Were you present on the occasion that the two doctors testified to being up there to examine him?

A. No, sir; I was not there.

Q. You spoke a moment ago about his coming to Wildwood. Has he come unattended or attended?

A. Attended the only times he has been down, 30 with some member of his family.

Q. What is your opinion as to whether on the 2nd of September, 1925, he knew he was signing a deed for the property?

A. I feel confident that he knew.

Q. What is your opinion as to whether on the 2nd

day of September, 1925, when he signed the deed which has been offered in evidence, he had the ability to understand the nature and effect of that act in which he was engaged, and the business that he was transacting?

A. I think he knew it perfectly well.

Q. Did you want to be assured on that day that he did know that?

10 A. I did. I would not have permitted him to sign it if I had any doubt at the time.

Mr. Bourgeois: I ask that may be stricken out.

The Court: Yes.

Mr. Cole: Exception.

The Court: That is, "I would not have permitted him to sign it."

20 Q. Now, is he a pay patient there?
A. He is.

Q. How long has he been a pay patient?

A. I don't know.

Q. Well, I can prove that—but he is a pay patient?

A. Pay patient.

Mr. Cole: Cross-examine.

30 Cross-examination.

By Mr. Bourgeois:

Q. When he first came there did he come there as a pay patient?

A. I don't think he did.

Q. No. He came as a charge on Cape May County?

A. I understand the records indicate it.

Mr. Cole: May I ask him a question right here?

By Mr. Cole:

Q. It has been testified here that Mr. Witte is insane. I ask you whether in your opinion he is insane? 10

A. I don't think he is.

Mr. Cole: That is all.

By Mr. Bourgeois:

Q. Well, if you don't think he is insane, what status do you give him—mental status?

A. I give him the status of being a patient at the hospital. 20

Q. That is not mentality, is it?

A. No.

Q. I asked you, what mental status do you give him? If not insane, do you consider him to be sane?

A. I consider him to be sane.

Q. Now, he came there fifteen years ago; were you there then?

A. I was.

Q. Was he sane then or insane? 30

A. He was considered nervous; never pronounced insane.

Q. I didn't ask you that. I asked you for your opinion at that time?

A. Not insane.

Q. Not insane then?

A. Not insane then.

Q. And today he is in the same condition he was then, is that the idea?

A. He is less nervous now.

Q. But other than being less nervous now, he is of the same mentality now as he was then; is that right?

A. Intellectually, yes.

10 Q. That is your judgment of it?

A. Yes.

Q. What is your position in the hospital?

A. First assistant physician.

Q. First physician. You come just next after Dr. Cotton?

A. There is a clinical director now.

Q. You are?

A. No, between my position and the medical director.

20 Q. And in your opinion Mr. Witte has been sane all the time he has been in that hospital?

A. Yes.

Q. And have you ever taken any steps to secure his liberation, his freedom for him?

A. Yes.

Q. What?

A. Talked it over with the medical director; talked it over with the other physicians; talked it over with the members of the family.

30 Q. Why was he not liberated?

A. Several reasons.

Q. Wouldn't they go along with you?

Mr. Cole: Wait a moment now; give the reasons, please.

Mr. Bourgeois: I haven't asked him for the reasons. I asked him why; he said, "Several reasons."

Q. I say, didn't they go along with you; didn't they agree with you?

A. It was never brought up for a definite issue, definite decision.

Q. Doctor, do I understand you to say that you, an officer in that institution, would permit a man, a sane man, to be incarcerated for fifteen years in a mad-house and never assert yourself to get his freedom for him? 10

A. We have quite a number of them.

Q. I didn't ask you that. Answer the question I asked you.

A. Yes.

Q. Yes, you would?

A. Yes.

Q. And then you think you are competent to tell the jury whether a man is sane or insane? 20

A. I may be; I don't know.

Q. Well, do you think you are?

A. I think I am.

Q. You think then you are sane and yet you would stay there and permit a man to remain, a sane man to remain in that institution for fifteen years, and you never assert yourself to get his freedom for him?

A. We have many there not insane.

Q. I didn't ask you that. Just the question I 30 asked you?

A. I would.

Q. Then he has been sane, you say, all the time since he came there in May of 1915?

A. Yes.

Q. He was capable of executing a deed any time during all that while?

A. I think so.

Q. You think that all the time from the time that man came there in May of 1915, until the present time and until September 2, 1925, he had the capacity to make an agreement or conveyance, do you?

A. I do.

Q. And that he had the ability to understand the nature and effect of that act?

A. I do.

10 Q. All that time?

A. All the time.

The Court: What is your citation?

Mr. Cole: Eaton v. Eaton, in 37 Law, beginning at page 108.

Q. When did you first see the deed that was signed on September 2nd?

20 A. I don't recall the exact date.

Mr. Cole: Signed on the second? It was signed on the fourth. Dated the 2nd.

Q. When you went over this deed with Mr. Witte, did he tell you that if he signed that deed he was going to have his freedom?

A. No.

30 Q. Did he tell you that if he signed that deed he was going to get a hundred dollars and go to the Poconos and live?

A. No.

Q. Did you know that the signing of this deed was in furtherance of a conveyance of this property?

A. Yes.

Q. Did you think it was important or advisable to have the people who were going to take the title of

the property present so that they might find out whether he was sane or not?

A. No.

Mr. Cole: I object to that.

Mr. Cole: It is not cross-examination and cannot bind this defendant.

Mr. Bourgeois: Yes, if your Honor please, I think it is cross-examination. They have gone all through and shown nobody was there but him.

The Court: No; this is a question as to what he thought with relation to the relationship between the possible vendor and vendee; has nothing to do with whether the man was sane or insane.

Mr. Bourgeois: It may have something to do with whether he thought he was sane or insane. He says he is sane now. If he then thought he was sane, the chances are he would have had them up there so that they could see he was sane. I am going to argue to the jury —

The Court: That is all right; you can argue to the jury. He said "No," anyhow, so I don't suppose it makes any difference.

Mr. Cole: My objection is there, but the answer is too rapidly given.

Q. You say he can come to Wildwood. How long ago since he was in Wildwood?

A. I can give you the exact date. January 3, 1923.

Q. And who came down with him?

- A. Some member of his family.
- Q. Who first came and asked you with relation to this transaction in 1925?
- A. I don't remember.
- Q. Did Mrs. Witte come?
- A. I talked with her.
- Q. You talked with her, where?
- A. At the hospital.
- Q. And when was that?
- 10 A. I don't recall the date.
- Q. Was any other person with her?
- A. I think her son was with her.
- Q. Did they see Mr. Witte alone?
- A. I think so.
- Q. Yes. When did you next see her?
- A. I don't remember.
- Q. Did she tell you what was going on?
- A. Yes.
- Q. Told you she wanted to get a deed signed?
- 20 A. Yes.
- Q. And then when the deed was prepared she sent it to you, didn't she?
- A. No.
- Q. Whom did she send it to?
- A. The medical director.
- Q. Who is your medical director?
- A. That is Dr. Cotton.
- Q. Didn't she send it to you?
- A. I am not positive about that.
- 30 Q. Well, Doctor, didn't you testify before when you were on the stand that she sent it to you? You received it?
- A. It is possible, but I am not positive about that, only I know it came to my hands.
- Q. After it came to your hands how long did you keep it before it was signed?

- A. I don't remember.
- Q. What did you do with it?
- A. Read it; talked it over with Mr. Witte.
- Q. You what?
- A. Read it; talked it over with Mr. Witte.
- Q. Why did you talk it over with Mr. Witte?
- A. Mr. Connolly.
- Q. Why did you talk it over with Mr. Connolly?
- A. They were interested.
- Q. They were? 10
- A. They were.
- Q. What interest did Mr. Connolly have in it?
- A. He was a notary.
- Q. What interest did you have in it?
- A. I was his physician.
- Q. Mr. Witte's physician?
- A. I was Mr. Witte's physician.
- Q. Well, what did he want a physician for if he was sane?
- A. Every one in the hospital comes officially under 20 some physician, sane or insane.
- Q. I know, but if he was—do you have other sane people up there besides Mr. Witte?
- A. Oh, yes.
- Q. Who are they, the officers?
- A. May not be, but they are there.
- Q. What is the treatment—what is the object of the treatment of a person who comes in there sane and is kept there for fifteen years? Is he treated for sanity or insanity? 30
- A. He is treated for the trouble we take is wrong, or the trouble he has.
- Q. I know, but do you treat anything else? You don't treat typhoid fever?
- A. May be treated for his nervousness; may be treated for brain tumor.

Q. Then he was committed for insanity; that is right? Wasn't it?

A. Yes.

Q. And you treated him for which tumor?

A. We treated him for nervous condition.

Q. For nervousness; not for brain tumor?

A. No.

Q. Not anything else?

A. No.

10 Q. Why does a nervous man need to be confined in an insane asylum?

A. It is for nerves and mental diseases. That is what the hospital is for.

Q. Isn't it likely to make him insane if he was sane?

A. I don't think so.

Q. You think you can put a sane man who is nervous in an insane institution and keep him there fifteen years and he would not be insane?

20 A. I think so.

Q. Do you think he would get well?

A. Yes.

Q. Do you think he would recover his nervousness?

A. Yes.

Q. Do they usually send nervous people to the insane asylum?

A. We have a voluntary commitment, that they may come in before they are insane.

30 Q. When there is nothing the matter with their mentality; just nervousness?

A. May be just nervousness.

Q. In other words, if a man should be injured in some accident and become nervous, you would send him to the insane asylum?

A. He may come on his own accord. A number of them do.

Q. Are they permitted to come of their own accord?

A. Yes.

Q. To go out of their own accord?

A. Yes.

Q. Is Witte permitted to go out on his own accord?

A. Any day he wishes to go.

Q. The testimony seems to be that he was not permitted to go out. At any rate, he was sane, and 10 you have kept him there?

A. We have not exactly kept him there. That leaves a false impression.

Q. Doctor, we tried this case before in September, 1926; that is seven months ago. At that time you testified he was sane. You remember that, don't you?

A. Yes.

Q. And you have kept him there still? 20

A. Yes.

Q. And he is still there?

A. Not kept him there. He has been there since.

Q. Why has he been there? Have you discharged him?

A. Largely because he prefers to be there.

Q. Have you discharged him? Has there been any discharge?

A. He has a permit —

Q. You can answer that. Has there been any discharge issued him? 30

A. Well, I don't know what you mean by a discharge—whether it is my discharge or the assistant physician's discharge?

Q. I mean the discharge that the institution gives that permits a man to open the gate and walk out.

A. He has that permit.

Q. I didn't ask about a permit. I ask you if he has a discharge.

A. I think he has.

A. Well, do you know?

A. In black and white, I am not sure.

Q. You have the records there; look and see. You have the records there, the history of it. Find out if he has the discharge.

10 A. I don't think the records contain all the information on that point. Quite a number of our people stay in the hospital.

Q. I don't care about the number of people. It is only this one I am interested in.

A. The record does not show.

Q. The record does not show any discharge?

A. Any official discharge.

Q. No. Now, Doctor, do you think if a man had been discharged he would stay there if he were sane?

20 Mr. Cole: I object.

Mr. Bourgeois: Withdraw that.

Q. In your opinion would a sane man remain in an insane institution if he had leave to go out?

Mr. Cole: I object. That cannot call for an expert opinion, as to what somebody would do under some circumstances. The question here is not
30 whether this man was sane or insane. Whether he could appreciate the nature of his acts. That is the law, as I understand it.

The Court: I will overrule the question.

Q. Now you say he cleans rooms and takes patients from one place to another. Is it in your judg-

ment an evidence of sanity that a man can take another person from one place to another?

A. That is one evidence.

Q. That is one evidence?

A. Yes.

Q. Well, Doctor, you can teach a bird dog to lead a child from one place to another. Do you think the bird dog is sane?

A. I think so. Unless you have reasons to believe he is insane. 10

Q. You think he is sane all right. Then you think Mr. Witte, at least has the mentality of a bird dog?

A. I don't know as it is necessary to make the comparison.

Q. And you say he cleans rooms? Does that require sanity to learn to clean a room? Isn't that purely mechanical?

A. Not exactly; it requires some mind.

Q. You think it requires some mind? 20

A. Yes.

Q. Yes. Well, now, an ant will do that, won't it? An ant will clean its own room, will it not?

A. I presume so, in its way.

Q. And then that has mentality?

A. Probably so.

Q. Now, if Mr. Witte at that time knew all about what was going on, why did you take him in to Mr. Connolly's room? If he were able to lead the other patients around, why did you need to lead him around? Why didn't you let him go alone? 30

A. That was customary for the physician.

Q. That is because you are dealing with insane people, isn't it?

A. Yes. I may take a visitor.

Q. That is because they are strangers that don't know.

A. He could have gone alone just as well.

Q. Well, why did you go along, then?

A. I don't know it was necessary, but I did.

Q. Did Mr. Witte ask you to go along while it was being signed?

A. I don't think so.

Q. Do you think Mr. Witte wasn't able to go alone?

A. No.

Q. That he could go alone, but you went for com-
10 pany?

A. I don't recall the exact reason, but I did.

Q. Did you know he was getting a dollar for this land, this property?

A. I did not.

Q. Did you know they had paid him a dollar?

A. No.

Q. Did you know the value of the land?

A. No.

Q. Would it have made any difference to your ac-
20 tion; if you had known they were deeding \$165,000 worth of property away from this man to his daughter, would you have gone on the same?

A. I might have been a little more careful in my investigation.

Q. Why?

A. More involved.

Q. And the more fear of imposing on him; that is right?

A. May have been so.

Q. You had no interest in it?
30

A. None whatever.

Q. Except seeing he was not imposed on?

A. That is it.

Q. And they came with a deed for a dollar and you put it through for them, and that was the end of it?

A. Not, after investigation, until I was satisfied and Mr. Connolly was satisfied he knew the nature of the act.

Q. And you investigated by investigating there at that time?

A. Different times.

Mr. Bourgeois: I think that is all.

Re-direct examination.

10

By Mr. Cole:

Q. Did you know that the grantee named in that deed was Mr. Witte's daughter?

A. I did.

Q. Has Mr. Witte been under any restraint from the hospital during the last ten years, in the sense that he is not allowed to leave if he wants to?

A. No.

20

Q. May he quit tomorrow if he wants to?

A. Yes.

Q. You feel it is perfectly safe for him to leave that hospital, do you?

A. I do.

Q. Has he ever asked to leave and you refused to let him go?

A. I don't recall—not recently, anyway.

Q. Now, something was said about whether people come there voluntarily who are not insane. I suppose the hospital doesn't go out and bring people in, do they?
30

A. No.

Q. They either have to come by virtue of some form of commitment or act voluntarily?

A. Yes.

Q. They don't seek them out?

A. No.

Q. Do you refuse anyone who comes because they are insane?

A. Not as a rule. Recently some counties have objected to our taking in alcoholics, and we have turned down a few.

10 Mr. Cole: I think that is all, Doctor.

JOHN A. HOLLAND, recalled as a witness on behalf of the defendant, having previously been sworn, was examined and testified as follows:

Direct examination.

By Mr. Cole:

20

Q. You have been sworn?

A. Yes.

Q. And how long have you been connected with the institution?

A. Four years.

Q. And are you a doctor?

A. Yes, sir.

Q. How long have you been practicing?

A. Eight years.

30 Q. Have you in any way specialized?

A. Specialized in mental and nervous diseases, from the State Hospital work.

Q. Do you know Mr. Witte?

A. I do.

Q. And how long ago did you come in contact with him?

A. I first knew him four years ago, when I became employed there.

Q. And how frequently have you seen him since?

A. Practically daily, in making my rounds.

Q. Talked with him?

A. Yes.

Q. He talked with you?

A. Yes.

Q. Do you understand what he says?

A. I do.

Q. Does he seem to understand what you say?

A. Oh, yes.

Q. Can you recall what you talk about?

A. Nothing in particular. I just simply examined him as we do every patient up there to see whether they are getting along well, whether they are satisfied with the food, whether —

Q. Now, what does he do about that hospital?

A. Does some very useful work.

Q. What is it? What is the work he does? What 20 does he do, Doctor? Tell us quickly.

A. As Dr. Funkhauser has already stated, he cleans up different rooms, cleans the dance hall, and arranges chairs, and does work which, if I may say it, is the work of a paid helper.

Q. Does he do it properly?

A. Oh, yes.

Q. Does he have a right to leave the hospital grounds if he wants to?

A. He has.

Q. And does he leave?

A. He does.

Q. And does he return?

A. He does.

Q. Are his hours of returning proper or improper hours?

10

30

A. Proper.

Q. Have you had any trouble with him at all up there?

A. No trouble.

Q. Has he ever asked leave to leave the hospital and been refused so far as you know?

A. Not at all.

Q. Has he leave to go where he pleases?

A. He has.

10 Q. I ask you whether in your opinion, on the 4th day on September, 1925, when he executed this deed, he had the ability to understand the nature and the effect of that act in which he was engaged and the business that he was transacting?

Mr. Bourgeois: I object. It has not been shown he knows anything about his condition on that day.

The Court: Well, he has testified he has seen him
20 every day for four years?

Mr. Cole: Four years.

The Court: I will permit it.

Mr. Bourgeois: Allow me an exception.

A. He was just as capable as now, and he is quite
capable now.

30 Mr. Cole: Cross-examine.

Cross-examination.

By Mr. Bourgeois:

Q. Has there been any change in him since you have been there?

A. Not at all. Just as well when I first saw him as I see him now.

Q. Just as well four years ago as now?

A. Absolutely.

Q. Well, do you think he is sane? 10

A. I do.

Q. Then why is he kept there?

A. I don't know. He was asked to go and he doesn't want to go.

Q. When was he asked to go?

A. You asked me why. Shall I answer?

Q. When was he asked to go?

A. I asked him repeatedly.

Q. When?

A. Well, the last time—or, rather, one time par- 20
ticularly I recall was about in February.

Q. Of this year?

A. Yes.

Q. Did you give him any discharge; has he received a discharge from that institution?

A. Formally he has been discharged from the hospital.

Q. What does that mean?

A. Getting the permission of the medical director
to have the patient discharged, and Dr. Cotton has 30
given me that permission.

Q. Has he ever been discharged from the institution?

A. Formally he has.

Q. By what?

A. Dr. Cotton giving his permission to have the patient go.

Q. That is only a permit. I mean —

A. That is a formal order of discharge. There is nothing more formal than that.

Q. That means if he goes, they can come back and pick him up again?

A. Not at all.

Q. Why?

10 A. Because in the final Judge's order he states the patient should be kept there permanently, until restored to his reason or until removed by a court of competent jurisdiction; and we felt he had been restored to whatever reason he may have had before. I don't know that he was without reason.

Q. Well, if you don't give him a formal order of discharge, and he goes out and you change your mind about it, all you do is go down there with the same commitment and pick him up?

20 A. No. I gave him an order on a piece of paper saying he had been discharged from the hospital, which he sent to his family in February.

Q. I suppose that was for this case?

A. No, sir. I knew nothing about this case, until I came down here today.

Q. Look in your minutes and tell me whether there is any record?

A. I made no record there. That is made by somebody else.

30 Q. Is there any record there of any formal discharge of this man?

A. Not in there, no.

Q. That is the place it would be, isn't it?

A. Not necessarily.

Q. You have other records?

A. The history is not complete. I don't believe it is all there.

Q. Is that kept by one of the inmates?

A. No.

Q. Why is it not all there?

A. I don't know. It has been in the possession of a number of lawyers. I don't know whether it is all there now or not.

Q. So far as you are concerned, it is not there. You know that?

A. I know there is no record there.

Q. There is no record there for years, is there? 10
When he first came in they made a record of his condition and then they went on for years with no record at all?

A. Records are made from time to time, as I see them. I did not make any.

Q. Look and see how long a time elapsed between the record just prior to this deed, September, 1926, and the last next preceding record.

A. The last note was made September 20, 1926. I 20
see nothing since then.

Q. I don't mean afterwards; before that?

A. August 28, 1926.

Q. Now, before that?

A. June 2, 1924.

Q. 1924. Two years and more?

A. That is not unusual.

Q. No? Isn't it?

A. Not at all.

Q. Have them there all the time and don't make a record of his condition for two years at a time? 30

A. That is not unusual at all. I can show you hundreds of records just like that.

Q. In the insane asylum?

A. Absolutely.

Mr. Bourgeois: That is all.

Re-direct examination.

By Mr. Cole:

Q. Doctor, do you have people in the asylum who are not insane?

A. We do.

Q. In your opinion is this man insane?

A. He is not insane.

10 Q. Has he ever been insane since you saw him?

A. I don't know—he has never been insane since I saw him.

Q. What people do you have in there that are not insane?

A. People who wish to stay there, may have been there for a number of years. It became more like a home to them. They don't want to go out of the hospital.

Q. Do you think these people are sane?

20 A. Absolutely.

Q. Do they get pay like doctors?

A. Some people who have been patients.

Q. I mean the people do not get paid. Do any of them stay there?

A. They get their room and board. This man said he wanted to stay because he got cheap board, eight dollars a week, cheaper than he could get outside. He will tell you. Put him on the stand.

Q. Because he gets cheap board, and he wants to stay there?

30 A. He is not the only case. It has been part of my duty of the last year or so to search out these cases and have them sent out of the hospital. You made inference of the fact I knew something about this case. I know nothing until I come today. I do recall sending a letter to the patient—to the family

to take the patient out of the hospital, having obtained the medical director's permission.

Q. You are an officer in that state institution. Do you mean to tell us that the administration there boards people that have not any right to be there on State money at eight dollars a week?

A. Not willingly.

Q. Can't you get clear of them?

A. We are getting clear of them.

Q. Why don't you get clear of Witte if he is sane? 10

A. We shall.

Q. When you first came there four years ago, why didn't you get clear of him?

A. That was not my duty.

Q. Whose duty was it?

A. I don't know.

Q. You mean the State of New Jersey has been keeping that man for eight dollars a week?

A. That is not the only one they keep.

Q. That makes it all the worse for you and your 20 institution.

A. I am sorry to say it does.

Mr. Bourgeois: That is all.

Mr. Cole: That is all.

Mr. Bourgeois: Now we have got a line on the patient and the institution, too. 30

Mr. Cole: Mr. Witte, will you come up here, please?

HENRY WITTE, called as a witness on behalf of the defense, being sworn, was examined and testified as follows:

Direct examination.

By Mr. Cole:

- 10 Q. What is your name?
A. Henry Witte.
Q. And where are you stopping? Where are you staying these days?
A. Well, I am here now, but generally up to the hospital.
Q. In Trenton?
A. Yes, sir.
Q. And are you the Henry Witte that signed this deed to your daughter? Is that your signature?
20 A. That is mine.
Q. Where were you when you signed this?
A. In the notary public's office.
Q. In the hospital?
A. Yes, sir.
Q. Who was the notary public?
A. Connolly.
Q. John H. Connolly?
A. Yes, sir.
Q. You know Dr. Funkhauser?
30 A. Yes, sir.
Q. Was he there the day that you signed this paper, this deed?
A. He was there, yes, sir.
Q. Did you know what this was?
A. Sure.
Q. What is it?

A. Deed transferring my property over to my daughter?

Q. Your daughter here?

A. Yes, sir.

Q. What property?

A. My property on the corner of Atlantic Avenue and Pine Avenue, Wildwood, New Jersey.

Q. Did you intend to do that, convey it to her?

A. Sure.

Q. How long had you owned that property, 10 about?

A. Well, as near as I can get it, just before Wilson took his seat on the chair in Washington, March 4, whatever year that was.

Q. Your wife and daughter come to see you at Trenton?

A. Sure.

Q. What do you do around the hospital?

A. Well, I have charge of the church.

20

Mr. Bourgeois: Charge of what?

Mr. Cole: Charge of the church.

The Witness: And I have charge of the dance hall, moving picture show place, and charge of the library.

Q. What do you do, clean it up, keep them cleaned up?

A. Clean it up and fix it up and open the church for services on Sunday mornings and Sunday after-
noons.

30

Q. Do you leave the hospital grounds sometimes?

A. Yes, sir.

Q. Where do you go?

A. Where I get permission to go. I have to ask permission first. And if they let me go, I go. I

have been taking a cripple man out for seven years, take him to Princeton, take him all over. The cripple man has to get permission first.

Q. How do you take him?

A. How do I take him?

Q. Yes.

A. In the car.

Q. You mean in the train?

A. Trolley car. Don't go in no train.

10 Q. Now why was it that you made the deed of the property to the daughter?

A. Well, now, I want to tell you something. When a man is hitched up in a hospital and a fortune hunter goes around, he might get married to my wife and and probably get all the money and my children wouldn't get any. This way the papers are fixed, not this one but another one, it is fixed so each child gets the same amount.

Q. Yes. That is your understanding, isn't it?

20 A. That is why I done it.

Q. And that is why you made it to Helene?

A. Yes.

Q. So she could take care of the other children?

A. Yes.

Q. You have an understanding with her?

A. Yes.

Q. Had you signed a deed for another piece of property in Wildwood before you signed this one?

A. Sure.

30 Mr. Bourgeois: I object as irrelevant and immaterial.

Mr. Cole: I think it is quite competent.

Q. When was that, how long before this transaction, just about?

A. Oh, well, I couldn't tell you.

Q. All right.

A. Why I signed that was—the lot next to me, the Douglas house was on that side, my house here, and big lot here; was going to build a church and I thought probably they were buying the property for a priest's house or minister's house for the church, and I let it go away cheap. And whether it was going to be transferred over that way I don't know.

Q. Now, Mr. Witte, why do you stay up to the 10 hospital?

A. Why do I stay there?

Q. Yes. Don't you feel well enough to come out?

A. I think if you were up there you would stay, too.

Q. Do you like it up there?

A. Now, wait, let me tell you something, if you let me. The State never puts out any bad doctors—the best doctors that the State can get in those institutions. And if you are sick you have got your 20 doctor. And the eating isn't so awful bad. And there is plenty of nice girls, just as many as you want, but you can't get near them. But you can get near the office girls and they are all nice and they are all good up there.

Q. Treat you kindly, do they?

A. Yes, sure.

Q. Have you ever told them you want to get out and they would not let you go?

A. Well, I asked Dr. Cotton years ago whether 30 he agreed to let me go and he said I was too good a man, I better stay.

Q. Do you remember these doctors coming up there the other day and talking to you?

A. Talking to me?

Q. Yes; Dr. Charlesworth and Dr. Mayhew?

A. Yes.

Q. Do you remember their being there?

A. Sure.

Q. Did you know them?

A. I didn't know them at that time, coming right in the room. But I knew Mayhew. He was sitting in the chair something like this (illustrating) and of course I couldn't see who he was.

Q. Did he appear to be trying to hide himself?

10 A. No. He just—what I think, he didn't think I was coming right in. I was out at the gate, staying there while the trolleys go by and different things.

Q. Dr. Mayhew says that you turned around and said to Dr. Cotton, "You are keeping me here; you won't let me go." Did you tell Dr. Cotton that?

A. Never, never.

Q. Didn't say that?

A. You ask Dr. Cotton if I said that.

20 Q. And they say you said you were going to get for signing this deed a hundred dollars, and you were going to Mount Pocono and live in comfort the rest of your days.

A. I got the hundred dollars before I signed that—no, a hundred dollars I got afterwards. If you want to see the hundred I will show it to you.

Q. All right; let's look at it?

A. (Hands an article to counsel.)

Q. What are you showing me?

A. Check book.

30 Q. Is the hundred dollars in this check book?

A. I don't know. It is marked a hundred. I guess it is there. Do you think it is good? I do.

Q. The check? I hope so.

A. But will you let me tell you —

Q. Wait a minute. One thing at a time. Now, Mr. Witte, what we want to be sure about is this:

when you signed this deed on the 4th of September, 1925, are you sure that you knew that you were transferring to your daughter Helene the property you owned in Wildwood? Did you know that?

A. Well, will you let me tell you how sure I was?

Q. Yes.

A. When I went in with Dr. Funkhouser to the notary public's office, he got me in there and he read it, Dr. Funkhouser was called out on a case, and he read this paper, the whole deed from the first 10 word to the last. Then he says, "You read it, Mr. Witte." I says, "I ain't got my glasses with me." He says, "See if you can see with mine." And I read it. He says, "Read it out loud," and he says, "That is all right," just the same as he read it, and I couldn't do no better than that.

Q. And do you read?

A. Sure.

Q. What do you read?

A. Will I tell you the truth? 20

Q. Sure.

A. I read mostly jokes.

Q. You can't read without glasses?

A. What?

Q. Have to have glasses?

A. Oh, I have to have glasses.

Q. Do you want your daughter still to have this property?

A. Sure.

Q. And hold it for your other children? 30

A. Sure.

Q. No doubt about that, is there, in your mind?

A. No.

Mr. Cole: Cross-examine.

(Whereupon an adjournment was taken to Monday, April 18, 1927.)

Cape May Court House, N. J., April 18, 1927.

Trial of the cause resumed pursuant to adjournment.

10 HELENE F. WITTE, SWORN.

Direct examination.

By Mr. Cole:

Q. You are the defendant in this case, are you?

A. I am.

Q. Do you own in your own right a part of the land described in the agreement that you made with
20 Mr. Coombs?

A. I did.

Q. In the deed of September nineteenth, 1925, which you executed and acknowledged, did you include in that both the land described in your previous deed to you as well as the land you owned independently?

A. I did.

The Court: You said the deed of September nine-
30 tenth, didn't you, Judge?

Mr. Cole: September nineteenth, yes.

Q. When did you first learn that Mr. Coombs did not intend to perform his agreement and take over this property?

A. By a telegram from Mr. Crane on the fifth of January.

Q. That was while you were where?

A. In California.

Q. Now there was something said about there being no pay made to the state for your father's maintenance. Was there a time when that was so?

A. There was.

Q. When did you or your mother begin to make payments? 10

A. I can't recall the exact date; it was about two or three years afterwards.

Q. And why weren't payments made in the first instance?

A. Because we were financially not able to.

Q. Who has been managing, running the hotel while your father has been up to the hospital?

A. My mother.

Q. Have you assisted? 20

A. Yes.

Q. Did your brothers assist?

A. Yes, brothers and sisters, sister rather.

Q. By the way, you have two brothers?

A. Two brothers and one sister.

Q. Are the brothers here in court?

A. Yes.

Q. Have you been in touch with your father from time to time since he has been at the hospital?

A. Yes, sir.

Q. About how often would you say that you see
him? 30

A. About three times in the fall, during the winter and in the spring, never in the summer because we were not able to go up there.

Q. When you saw him did you talk with him?

A. Always.

Q. Now do you remember the circumstances about the making of this deed?

A. We have always spoke of selling —

Mr. Bourgeois: I object.

The Court: Yes.

10 Q. Do you remember the circumstances about the making of the particular deed from your father and mother to you?

A. Yes.

Q. Now tell the jury whether in your opinion at the time that your father made this deed he was capable of appreciating what he was doing and the nature of the transaction?

20 Mr. Bourgeois: I object, if your Honor please. She is not competent to express an opinion, I suppose, of a person's sanity or insanity. I have no objection to her stating what he did or what she knew him to do.

The Court: What is the answer to that?

Mr. Cole: The answer is that upon that subject anybody can speak that has any relation to the party at all.

30 The Court: Can in a criminal case that is sure. I will permit it.

(Exception noted for the plaintiff.)

(Question repeated.)

A. He was capable of making the deed because he always spoke to us —

Mr. Bourgeois: I object.

The Court: Yes.

Q. Don't give the reason.

Mr. Bourgeois: I ask that be stricken out. 10

The Court: Yes.

Q. Please answer yes on no.

A. I would say yes.

Q. Now when you would visit your father did you talk with him?

A. Yes.

Q. Would he talk with you?

A. Yes. 20

Q. Did you understand him?

A. Yes.

Q. Did he understand you?

A. Yes.

Q. Was his talk intelligible?

A. Always.

Mr. Bourgeois: If the Court please, these are all leading and I would think that if they are going to say that he talked intelligibly the witness would have 30 to repeat it so we could determine that.

The Court: I think so too, but that question is answered. There is nothing pending.

Cross-examination.

By Mr. Bourgeois:

Q. Miss Witte, you know that your father was taken to the insane asylum?

A. Yes.

Q. And he has been there ever since?

A. He has except for times when he has visited
10 at home.

Q. That was on two or three different occasions, wasn't it?

A. Yes.

Q. And somebody came with him or unless you brought him?

A. No, he has come alone. He has gone back alone.

Q. All the way down alone?

A. Not every time.

20 Q. Did he ever come down alone and go back alone?

A. Yes.

Q. Both ways?

A. Yes, except one time we took him as far as Camden and he went back alone from there.

Q. There never was a time when he came from Trenton to Wildwood alone and went back alone, was there?

A. Not the whole way back alone.

30 Q. No? Now you say that the first three years you were not able to pay expenses in the insane asylum. Did he still own that property then?

A. He did.

Q. Well, wasn't the property worth the money to pay his expenses?

A. The property had to be financed.

Q. I didn't ask you that. I asked you whether or not he couldn't have sold the property to get the money to pay his expenses?

A. That I don't know. I don't know what his wishes were at that time, Mr. Bourgeois.

Q. In other words he had the property but you didn't have the ready cash to pay the State so you didn't pay?

A. Correct.

Q. Now, if as you say, he is competent to make a deed, is he in your judgment competent to do other things as well? 10

A. He is.

Q. Everything?

A. Yes.

Q. Then why is he kept in the insane asylum?

A. He has been up there because he wanted to stay up there.

Q. And you permitted him to stay there because he wants to stay? 20

A. Wherever he likes to stay, yes.

Q. I see, even in an insane asylum?

A. Yes, because he isn't up there for insanity.

Q. I suppose if he wanted to go to the penitentiary and stay there you would be willing to keep him there?

Mr. Cole: I object.

The Court: I will overrule that question. 30

Q. You don't think that he has need to be in the insane asylum?

A. No.

Q. How long in your judgment has he been there when he need not have stayed, when he had no need to have been there?

A. That I can't just answer the exact time.

Q. Well, do you —

A. Practically all the time.

Q. What?

A. Practically all the time.

Q. Do you think he ever needed to go there?

A. Well, he was sent there for nervousness.

Q. The papers say he was sent there for insanity, the records show he was sent there for insanity.

10 Mr. Cole: I object, please your Honor. The records speak for themselves. She can't correct that.

Mr. Bourgeois: I was trying to contradict her because she says he was sent there for nervousness, to find out what she means by it.

The Court: There is no question pending at all.

Q. You say he was sent there for nervousness; by
20 whom?

A. Well, he went up on the doctors'—Dr. Mace and the other doctor I don't know.

Q. Dr. Cohen?

A. I don't know who signed it, Mr. Bourgeois.

Q. Now did you ever read the affidavit that your mother made or the application that she made, the petition?

Mr. Cole: I object.

30 The Court: I will permit the answer, yes or no.

(Exception noted for defendant.)

A. No.

Q. Do you know what it contained? Did you ever speak to her about it?

A. No.

Q. Do you know whether or not she contended that he was insane?

Mr. Cole: I object.

A. No.

Q. Do you know whether or not she reported to the State that he should be restrained and confined, that he was unable to care for himself? 10

Mr. Cole: Objected to, not cross-examination and incompetent.

A. I don't know.

The Court: She says she don't know, so can't make much difference.

20

HENRY S. WITTE, SWORN.

Direct examination.

By Mr. Cole:

Q. Where do you live, Mr. Witte?

A. Wildwood.

Q. Are you a son of Henry Witte? 30

A. Yes, I am.

Q. Did you know that he and your mother had made a deed to your sister Helene for the Hotel Witte property?

A. I do.

Q. Was the making of that deed satisfactory to you?

Mr. Bourgeois: I object. Irrelevant and immaterial.

The Court: What difference can it make?

Mr. Cole: Well, I am not going to press it. I will ask an exception, except that argument was made before in this case that this was an effort —

10 Mr. Bourgeois: If your Honor please we are not going to retry the other case.

Mr. Cole: Not going to retry it, but I don't want counsel to argue about it next time.

(Exception noted for defendant.)

20 Mr. Cole: I make the same proffer with respect to the other son, that the making of this deed is satisfactory. Your Honor overrules it? Allow an exception.

The Court: Yes.

(Exception noted for defendant.)

30 Mr. Cole: I want to make now a formal tender in open court to Mr. Coombs of the deed of September nineteenth, 1925, from Helene F. Witte, conveying the land described in the agreement of September fifth, 1925.

Mr. Bourgeois: If the Court please, I don't know just what that is for, but that is a procedure with which I am not familiar in court. I don't understand any practice of law that permits the tender of

a deed during a trial and I think that is just a little jury play.

The Court: There is nothing for the Court to rule on.

MRS. SOPHIA WITTE, SWORN.

10

Direct examination.

By Mr. Cole:

Q. You are the the wife of Henry Witte?

A. Yes.

Q. Who first approached you, talked with you about selling this property?

A. Well, there were different ones, but Mr. Coombs came to me first and wanted an option on 20 the place.

Q. About when was it that Mr. Coombs came and wanted an option?

A. About three weeks before we agreed to sell it to him.

Q. Had you before that time gone and asked him to buy or told him you wanted to sell?

A. I never asked Mr. Coombs to buy, never went to him.

Q. Now what happened on that occasion? 30

A. Well, we absolutely refused to give him an option on it.

Q. Did you give any reason for it?

A. Yes.

Q. Why?

A. That we didn't have to sell.

Q. Well, did he come again?

A. He came again and he wanted—let me think—he came again and said he had a buyer, then he came again and said he wanted to buy it for himself, and then we agreed to sell it to him after a lot of talk.

Q. Well, had you changed your mind about selling it?

A. No.

10 Q. Well, the first time you said you didn't have to sell?

A. Well, we didn't want to give an option on it.

Q. Now how did it come about that your daughter Helene signed the agreement? Tell the jury how that came about.

Mr. Bourgeois: I object. Irrelevant and immaterial.

20 The Court: The pleadings say, as I understand, the purpose of doing that was to deceive and it seems to me under the phase of the situation that this testimony would be relevant and competent. I will admit it.

(Exception noted for plaintiff.)

Q. You tell the jury how it came about that Helene signed the agreement?

30 A. Well, she signed the agreement because it was in her name. Mr. Witte and I put the property in her name.

Q. Now did Mr. Coombs know that you were going to do that?

A. Yes, I had told him.

Q. What did you tell him about that? What did you tell Mr. Coombs?

A. That I can't recall just exactly.

Q. But tell the jury as best you can recollect how it came about?

A. Well, I asked Mr. Coombs to wait until the papers came back from Mr. Witte from Trenton and he says, "Oh, that is all right; that is all right." Then I says "Mr. Coombs, you haven't looked at the hotel." He says "I know what I am buying."

Q. All right, then what did you do?

A. Then I thought he really meant to buy, I really 10 thought it was a sale, so we agreed to sell it to him.

Q. Now did you do anything toward having a deed sent up to Mr. Witte?

A. Yes—well, we had the deed made out and had sent up to Mr. Witte, the doctor up there said it wasn't necessary for me to come up.

Q. No. Won't let you tell that. Do you know how the deed got up there?

A. We mailed it to him, mailed it to the doctor.

Q. Had you talked with Mr. Witte about selling 20 this property before that deed was made?

A. Oh, yes, many times.

Q. Did he consent to sell it?

A. Yes.

Q. Now when you talked to him about selling the property did he know what you were talking about?

A. Yes.

Q. Your daughter owned a piece of the property within the limits of this hotel, didn't she?

A. Yes. 30

Q. That stood in her name?

A. Yes, sir.

Q. Now had Mr. Witte sold some property he owned before he made this deed?

Mr. Bourgeois: Objected to as irrelevant and immaterial.

The Court: I will sustain the objection.

(Exception noted for defendant.)

Mr. Cole: The proof will show that prior to the making of this deed he had deeded other property about which there has been no dispute.

Mr. Bourgeois: What difference does that make?

10

Mr. Cole: I only want to show the offer is all, so the record will be straight.

Cross-examination.

By Mr. Bourgeois:

Q. You say that he understood at the time he said he would convey this property?

20 A. Yes, sir.

Q. What is your opinion, that he then was sane?

A. Yes, I think he always was sane on business.

Q. Always was sane?

A. Yes, on business.

Q. Now you were the person who signed the petition, weren't you?

A. I think I did. I don't remember that.

Q. This isn't your signature but this is a copy of it and it may refresh your memory, maybe; that is the petition and that is the signature there.

30

A. Yes, but I don't recall. That is my name at the top.

Q. Now, Mrs. Witte, I suppose whatever you signed at that time you knew about, of course?

A. Yes, I think I knew.

Q. And the thing that you subscribed to was true?

A. Yes.

Q. Now let me read this to you, a part of it—let me ask you first now, is he any different today than he was then?

A. Oh, yes.

Q. "The undersigned"—that is you "of Wildwood in the county of Cape May and State of New Jersey hereby makes application for admission to the New Jersey State Hospital at Trenton for commitment and confinement therein of Henry Witte, Sr. of the county of Cape May and State of New Jersey"—now if he was sane why did you want him confined to the insane asylum?

10

A. Well, he was very nervous and we were afraid he would commit suicide.

Q. Were you going to send him to an insane hospital for his nerves?

A. Yes.

Q. That is what you were going to send him for?

A. He needed treatment.

20

Q. You were going to send him to an insane asylum?

A. They treat the nerves up there.

Q. What sort of nerves do they treat up there?

A. I don't know but he was very nervous and very unhappy.

Q. You thought the place to send him was an insane asylum rather than some sanitarium?

A. He needed the doctor's treatment.

Q. Why didn't you send him to some hospital, Jefferson, Pennsylvania Hospital or some hospital?

30

A. They wouldn't take a case like that.

Q. Why not?

A. A nervous case.

Q. Wouldn't they take anything except—wouldn't they take any nervous case except mentally nervous?

A. I don't know.

Q. Then you went on: "That the said Henry Witte is insane and the applicant is interested in making this application because the said Henry Witte is related to the applicant in the following degree, her husband."

Q. Now if he was simply nervous why did you tell them he was insane? Why did you sign he was insane?

10 A. I didn't read that paper particularly but he was very nervous.

Q. You knew what you were doing? You knew that you had two doctors, too?

A. Yes.

Q. And you knew that you had their certificate for the purpose of putting him in an insane asylum, didn't you?

A. I thought it would help him there, doctors helped him.

20 Q. But you knew he was going to the insane asylum, that is what you had the two doctors for?

A. Yes.

Q. That is what this application was for, isn't it?

A. Yes.

30 Q. Then goes on: "And because the insanity of the said Henry Witte is of such a nature that he should be under restraint and confinement, is unable to care for himself and is sufficiently dangerous to make it necessary for his welfare and that of others that he should be so confined and restrained. The insane person is fifty-five years old, was born in Philadelphia county, state of Pennsylvania"—now you thought he was insane at that time, didn't you?

A. Well, no, not exactly. I never called him insane.

Q. You never called him insane?

A. No.

Q. Save when you signed this petition?

A. I thought he was nervous and very unhappy. He was melancholy.

Q. Then why did you sign, if he was just nervous and unhappy, why would you sign a petition and get two doctors to give a certificate to confine him in the insane asylum?

A. Well, I guess I signed it.

Q. I know, but why would you do it if you thought he wasn't insane? 10

A. I don't recall that.

Q. Would you give out to the public that your husband was insane if you didn't think he was insane?

A. Well, you can call it by different names, can't you?

Q. I don't know whether you can or not, but you didn't here. If he were nervous and you thought it was nervousness why didn't you put in nervousness? Why did you put insanity? 20

A. I didn't read the paper.

Q. Mrs. Witte, he was your husband?

A. Yes.

Q. Now do you think you would have signed an application stating he was insane if he had not been certainly insane? You wouldn't want to put that on your husband, would you, if he were not insane?

A. Well, they called it insane but I never did, that is all. 30

Q. Do you mean to say that you were willing that the public should understand that you considered your husband insane and that you had signed an application to put him in the insane asylum when he was only nervous, is that so?

A. I don't know; I had to do something for him.

Q. Now let me ask you, haven't you changed your mind about his condition at the time you signed this application, this petition, didn't you then think he was insane and haven't you changed your mind since?

A. Yes, I have changed my mind.

Q. Since?

A. Yes.

10 Q. At that time you thought he was insane, didn't you?

A. I don't know what I thought. I was under too much trouble at that time.

20 Q. Then goes on: "The present residence of said insane person is Atlantic above Pine street, in Wildwood in the county of Cape May and State of New Jersey and the name of the said person with whom he resides is.....said insane person has resided in said county.....years and before said time for.....years in the county of.....and state of.....that his occupation or kind of employment is confectioner. The next of kin of said person intended to be committed or person with whom said insane person resides and any other who should be served with notice of inquiry as to said person's insanity are as follows: Henry Witte, Jr., 312 East Juniper Avenue, Wildwood, New Jersey, Sophia Witte, Atlantic above Pine street, Wildwood, New Jersey, Helene T. Witte, Atlantic above Pine Street, Wildwood, New Jersey."

30 Now you have mentioned there one son and one daughter. Mrs. Witte, you wouldn't have put on the record there, if you had not believed it to be true, that the father of those two children was insane? If you had not believed he was insane at that time you would not have signed a petition and told the public generally and everybody that the

father of those two children was an insane person, would you?

A. I didn't know what I did at that time.

Q. Then it goes on: "The insane person is known to the applicant to be insane because of his irrational conduct personally observed by me and because of the report that he is insane by two physicians who, after personal examination of the insane person made on the day of the date hereof by Dr. Nathan A. Cohen and by Dr. Margaret Mace are attached hereto. I will give two days' notice of the time and place of inquiry to be held as per form attached" and after you signed that you did give notice, didn't you, and came before Judge Eldredge and there there was testimony taken to show that he was insane, wasn't there?

A. I think I was before Judge Eldredge.

Q. Now you say that you think he was only nervous?

A. Well, I think he was very nervous, yes, and very unhappy.

Q. You don't think he was insane, or do you?

A. Well, you can call it so.

Q. What do you think it was? Was it insanity, this irrational conduct, was it insanity, do you think now, or do you think it was nervousness?

A. Perhaps he was insane, but he isn't now.

Q. He isn't now?

A. No.

By Mr. Cole:

Q. Mrs. Witte, did you draw that affidavit?

A. No.

Q. Do you know who did draw it?

A. No, I don't

Q. Do you know whether or not that affidavit was drawn by one or the other of the doctors?

A. I couldn't say.

Q. You were asked to sign it?

A. I think it was sent to me to sign.

By Mr. Bourgeois:

10 Q. Who was it that engaged these two doctors to make an examination of him, you?

A. I think it was.

Q. You got the doctors to make an examination and then there was a petition presented to you?

A. No, I don't think Dr. Mayhew really made an examination.

Q. Not Dr. Mayhew, Dr. Cohen and Mrs. Mace.

A. Dr. Mace and Dr. Cohen was his physician.

Q. They are the ones that you had examine him?

20 A. No, I didn't have them. Mr. Witte went to them himself.

Q. But you arranged with them to make an examination of him?

A. I didn't arrange with Dr. Cohen.

Q. Now, afterwards there was a petition presented to you and you signed that petition?

A. Yes.

Q. Didn't make any difference who wrote it, did it?

A. I don't suppose so.

30 Q. You knew what you were signing at the time you signed it, you read it through, did you not?

A. No.

Q. Didn't read it through?

A. No.

Q. Did you know what you were signing?

A. I may have known something about it.

HENRY WITTE, SR., recalled.

Cross-examination.

By Mr. Bourgeois:

Q. Mr. Witte, before you went to Wildwood to live where did you live? 10

A. Before I went to Wildwood to live?

Q. Yes.

A. Holly Beach.

Q. Where did you live before you went to Holly Beach?

A. 1507 South Fourth Street, Philadelphia.

Q. What was your business?

A. Confectionery and candy maker.

Q. Did you have a confectionery business in Holly Beach? 20

A. No.

Q. Have a confectionery business in Wildwood?

A. No, ice cream business.

Q. Didn't have any confectionery business at all?

A. No.

Q. What did you sell, just ice cream?

A. Just ice cream.

Q. Are you quite sure about that?

A. What?

Q. Are you quite sure that you didn't have any confectionery business? 30

A. Sure I am. I was on Cedar Avenue about two doors below the Edgeton Inn, 221-223 East Cedar Avenue, just served people with ice cream during the summer time and had the store there, after I built the store they said I was building away ahead of the times.

Q. Are you a confectioner?

A. What?

Q. Are you a confectioner?

A. I am supposed to be. I worked for Pine Brothers on Eighth Street above Walnut in Philadelphia and then I was working in the Phillip Norris candy factory for about a year there.

Q. Now, what sort of a business, this ice cream business, did you have in Wildwood?

10 A. What kind?

Q. Yes; was it a prosperous business?

A. I made a living.

Q. How much did the living consist of?

A. How much?

Q. Yes, how much would you consider a living, how much would you make a year?

A. Well, then and now?

Q. No, then.

20 A. Well, I don't know; I cleaned up enough money to put me through the winter time.

Q. Can you tell me approximately how much that was?

A. No, sure not.

Q. Can you tell me whether it was a thousand dollars or a hundred dollars?

A. No.

Q. Don't you remember?

A. No. The money we made why we put in the bank and my wife she is the boss, you know.

30 Q. She was boss?

A. Always, always, keep from having trouble in the family.

Q. Whatever she wanted to do you did, is that the idea?

A. Whatever she spent why she knows. I never bothered around with it. I never cared much for

money, if I had enough for a plug of tobacco, I was satisfied.

Q. But you made the money on the confectionery business, ice cream business and put in the bank, you don't know whether a hundred dollars, thousand dollars or two thousand dollars?

A. How much put in the bank?

Q. And don't know how much you put in the bank?

A. I tell you what was done on me one time, and I don't want anybody else to do it. I went in the Marine bank one time on a Monday after I had collected from the different summer people for the week, you know; we got paid on Monday; I left three hundred dollars in the bank with McKnight, and I went into the bank and I said, "McKnight," and I had the slip three hundred dollars marked on I wanted deposited. He says, "You left this book here for me to get fixed up." I left it there and I had had three hundred dollars, when I went and got my book and I went over to Eldredge, and that was when McKnight got away with that money at the bank, I went to Eldredge and I said, "Eldredge, I got three hundred dollars in that bank and it got away from me." So he said, "About what time?" and I told him—I don't know exactly, you know—and I told him and we went over all these books in the back office and we couldn't find it and then I guess they thought I was crazy.

Q. He thought you was crazy?

A. No, I guess anyone.

Q. Anyone?

A. Because I was hunting for my own money, and then the lawyer done me out of two thousand dollars. I guess I will get that back because he is worrying himself to death over it.

Q. I don't understand that about the two thousand dollars; what is that?

A. In a transaction.

Q. What was that?

A. Selling the Cedar Avenue property.

Q. Did you out of two thousand dollars?

A. Yes.

Q. Who did that?

A. Never mind who did it.

10 Q. But they did you out of two thousand dollars?

A. Yes. They all thought that I was out of my mind and they don't understand the legal chancery

Q. Go on, explain it to us.

Mr. Cole: I object. There is no question pending.

The Court: No question.

20

Mr. Bourgeois: He is going on and telling.

Mr. Cole: I object. It isn't responsive. I think I have a right; he is under cross-examination.

A. I know I am telling the truth.

The Court: But there is no question pending at all.

30

Mr. Bourgeois: He was answering a question, if your Honor please, and I asked him to continue it and Judge Cole interrupted. I certainly have the right to have the question finished.

The Court: Your question was finished and you were asking with reference to two thousand dollars

and he explained that and then he said they didn't understand a certain other element.

Q. What other element didn't you understand?

A. Well, there is other people gets skinned in selling houses and buying, don't they?

Q. Is that what you don't understand?

A. Is that what?

Q. What you don't understand?

A. Sure, I understood it, but I didn't understand 10 it until later on.

Q. When did you understand it?

A. Now look here, I want to tell you something, I want to start right —

Mr. Cole: I object, may it please your Honor, he is under cross-examination and I have a right to object to something that is not cross-examination.

A. Yes, and I have the right to tell the truth in 20 the court.

Mr. Cole: We don't want to take all the time.

A. I am going to give then if that is satisfactory to you. When I first came to Holly Beach, Supreme Judge Garrison built by me down in Holly Beach, my spare time, I had plenty, I thought I had enough money to live off of, but I didn't, as I found out after awhile, because getting harder to live, so I 30 used to go around to Supreme Judge Garrison and I learned an awful pile off of him, and my spare time —

Q. What did you learn off of him?

A. That is nobody's business. So then my spare time, when I moved up in Cedar Avenue, I was out

of the ice cream business, I was working around whatever, wherever I could get a job, so I spent my time with the Honorable J. Thompson Baker, and through the two I learned an awful pile about law and there isn't anything in the law books if a man buys a property that he don't have to take it.

Q. Now does that mean that you have learned a lot about the law and you understand the law?

A. Well, I understand that much of it. When I was a boy I worked with a little business, too.

10 Q. Then you understand the legal effects of it, do you?

A. Not me. I know some of it.

Q. How much of it do you know?

A. What?

Q. How much of it do you know?

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

20 The Court: Permitted.

(Exception noted for defendant.)

A. How much I know of it? I don't know, but some of these lease tips between each other I find out which lawyer knows the most, so put someone up against me.

Q. Against you?

30 A. Yes, but not in here. I am sworn in to tell the truth, and not only that, Thompson Baker asked me whether I wouldn't go on a campaign, speech making for Wilson. I said "No." He says, "What is the difference?" Well, I said, "It is this," I says, "if a man in his speech says, 'Don't vote for me without you vote for the men on the ticket,' I said, "I

don't want to stick to such a dumb man." He said, "Where is the trouble?" I says, "Ain't no men on the ticket, only names." So I says to him, "If he changes it to 'don't vote for me without you vote for the men with the names on the ticket' why I will go along with you."

Q. Do I understand you to say that Thompson Baker wanted you to go on a speaking campaign with President Wilson?

A. Yes. 10

Q. I see? Where were you going to go, in New York?

A. Anywhere. I would have went through the State of New Jersey, but that ain't all I want to get at, I want to get at this, I want to tell you something, I want to get at the hospital, when they examine the lunatic patient before they die, they stick you here—I guess you can see all the marks yet—and they stick you here, they draw from your brain, and they stick you down here and they take tubes 20 and strength out of you, and put me in bed for a month up there doing this, I got that weak, and then they take and stick you all over and draw blood out of you and that is all taken to the laboratory and examined.

Q. Now, how do you know about that?

A. How do I know about that?

Q. Yes.

A. Why, because I carry the different stuff from the office over to them. 30

Q. You are assistant to the laboratory department, are you?

A. No, they use us people to run errands for them.

Q. Well, did they stick you and then send that blood over by you to the laboratory?

A. No. I couldn't. I was in bed. I tell you it put me in bed for a month.

Q. Where did you say they stick you, back of the head and in the neck?

A. Yes, and they stick you back of the ear, and they draw from your brains and then that is analyzed, you see, that report back there says I wasn't crazy when I was in there and I ain't crazy yet.

Q. What do they stick you —

A. Wait. I ain't through yet.

Q. All right.

10 A. I don't care, I am down here and I am going to get my words out. I am going to be like a woman.

Q. You shall say all you want to.

A. I can say all I want to?

Q. Yes, you may.

A. I will keep you here for a month. Why we will —

Mr. Cole: That is why I object. I think this is going too far afield.

20 A. That is all right. You says outside you didn't want me to speak. I am going to speak and have my own way.

Mr. Cole: No, I didn't say that.

A. Not my own way, the judge's way.

Mr. Cole: What I am objecting to there is no question pending.

30 A. Now Dr. Mayhew says, you know, that when a man speaks too much he is crazy, and they asked how about the women, well, he said, "A woman, if a woman speaks, they are all crazy, if they speak too much." Well, they are sometimes.

Q. Are they?

A. Now, that ain't what I want to get at. It is this. I don't know Dr. Mayhew only as much know him as to nod to him on the street because I always stick with my family and I never went anywheres else only to the postmaster down in Holly Beach, Fred Myers and up to Beck's store on Seventeenth Street, because they were pretty jolly and I like that kind of folk. Now I never knew Mayhew, never knew Dr. Mayhew, and I never knew Dr. Mace, and 10 I never was examined by him, and I was drawn up by a whole pile of hoodlums, you might as well say, they used to try to put a house off the corner with his automobile, mind, I had to preach in church up there, you bet your life.

Q. Before you went up to Trenton?

A. No, when I went up.

Q. I beg pardon?

A. When I went up there.

Q. Did you preach down in Wildwood before you 20 went up?

A. No.

Q. Just preached after you went up?

A. Up there. You know I had plenty of time up there to study, too. We wasn't locked up. Understand. Understand, the lunatic asylum, the main lunatic asylum is in Morris Plains. This is a general hospital. The most of the people up there is people that gets sick and paralyzed that they don't want them home, consumptives and all like that. 30

Q. That wasn't so in your case?

A. Then you see some with big balls growing on the face that they can't stand any more looking at, especially when a woman is going with a child should look at that might deform the child. Now, these doctors, I have never been examined by them. One

time I took a walk, I used to like to see the boats up to Anglesea and I went up there and my boy came up and says "Come on in Dr. Mace's." He thought I was sick and I went in Dr. Mace's.

Q. How did that come about now?

A. My boy and I, we went up, I was up there and my boy came up, I guess he had nothing to do, and we walked around there looking at the mending nets and boats, you know, to get them ready for the, I suppose, summer business, fishing business, so I stopped at Mace's and went into see Dr. Mace.

Q. How did you come to go in?

A. I just thought I would like to go in to see her.

Q. I thought your son asked you, suggested you go in?

A. He did in a way and I did too. He didn't push me to go in. So I went in.

Q. He suggested you go in and you went along?

A. I went in and I saw Dr. Mace. I didn't get examined in there, either.

Q. What did you go in there for?

A. What did I go in there for?

Q. Yes.

A. I went in a great many places.

Q. I know but what did you go in Dr. Mace's for

A. Except beer saloons.

Q. What did you go in Dr. Mace's for on that occasion?

30 A. I didn't feel good and I felt weak in the legs and I went in there and when I went in there it was so confused and the heat in that basement, I said to the boy "Come on out; I can't breathe in here," and I got out. That is the only examination I ever got in lunatic from Dr. Mace and Dr. Mayhew.

Q. Dr. Mayhew didn't make any examination of you, did he?

A. Well, no, but he can't send me up there, mind, I have been deprived of my family for twelve years, locked up in the bug house. Of course, I had the privilege to go out but you see I had to stay.

Q. Well, these doctors say that you could come out if you want to.

A. The doctor says I could come out if I want to? 10

Q. Yes.

A. Well, I will knock the doctors, too. I asked Dr. Cotton, the main doctor there, and I want to tell you first how good these doctors are from Princeton College, the students come there, and they lecture to them, from Columbia College they come there and they lecture to them.

Q. Lecture to whom?

A. These college people.

Q. Who lectures to them? 20

A. Dr. Cotton and these doctors what was here.

Q. Yes, all right; now go on.

A. I don't know about Dr. Funkhouse but Dr. Hallan does —

Q. Now —

A. They lecture to all them, they take a patient up there with the disease that they have them lecture on, so the college boys gets more knowledge, you know, in the doctor book.

Q. Now do they lecture about you? 30

A. No, never pulled me up. They said I wasn't crazy.

Q. Never pulled you up? Now, you said a little while ago that people were sent up there because their families wanted to get clear of them?

A. Yes, sure, they are.

Q. Was that the reason you were sent up?

A. No, I tell you what I think I was sent up for.

Q. What do you think?

A. This don't go, men, either; I want to tell the truth. Now this is only thinking, when I built that hotel, I think—I don't think, I am just saying it—that they wanted to get that place away from me.

Q. Who wanted to get it away from you?

A. That I don't know. Now wait. I want to tell
10 you something.

Q. All right.

A. While I was in that hospital I could have worked, I was working up to the hospital all the time, I could have worked, there my wife and children had to go to work and ask the grocerymen and butchers to keep them for two years over there.

Q. How was that? I didn't catch that? Then your wife and children had to do what?

A. I will tell you over again.

20 Q. Your wife and children had to do something?

A. My wife and children, they didn't make enough money first winter I built that place that they didn't make enough money to pay the expenses and pay and carry it there, you know what I mean, to live over the winter. Coles, the butcher, held them in meats and vegetables for the winter and I guess somebody else held them in something else, and after the two years the hotel began prosperous and they made piles of money.

30 Q. They did what?

A. Made piles of money.

Q. Made piles of money?

A. Yes.

Q. Then what?

A. I guess the books shows it. And then these people come along and buy the property and I said

to my wife, to avoid trouble, "Give them the money back." She says, "I ain't got it." I says, "What did you do with it?" Why she said, "I built sixteen—seventeen more rooms and bath to the hotel and after these people buy it that makes the property so much more valuable, because it won't be assessed so much higher."

Q. I see, then she doesn't have the money to pay back?

A. What is that? 10

Q. She says she hasn't got the money to pay back now, she can't give it back?

A. No, she has been told —

Q. In the hotel?

A. Building extra rooms in the hotel, taking the dining room from upstairs and putting it in the bottom. Now I says to my wife, before I went away, "Don't add to this building, all the money put away," and she didn't do it, she went to work and kept on adding, she said, "Look at the money them
20 thirteen rooms bring in, and it is the best paying hotel on the island," and I don't see what they want to sell it for.

Q. Mr. Witte, a little while ago you started to tell me why you stayed up in the hospital?

A. Why I stayed up there in the hospital?

Q. Yes, why don't you come home?

A. How could I come home?

Q. I don't know. You were going to tell me, and you switched off about the Princeton students. Tell
30 me why you don't come home?

A. When I asked Dr. Cotton whether he wouldn't please let me go home he said, "Mr. Witte, you are too good of a man. You better stay."

Q. Now, then you said that you were taken away from your family?

A. Yes, sure was.

Q. Now, since you were taken away from your family why don't you go back to them if you can?

A. Ain't I back to them?

Q. You are just at the present time but why didn't you come back to them a long time ago?

A. How could I? I want to tell you something.

Q. Wouldn't they let you out?

A. I want to tell you something: When you are
10 in one of those places, just long as my wife and children don't see it, I taken a walk on Pacific Avenue in Wildwood with them, when you have poor little kids, if they find you are in a lunatic asylum they won't stay on the same side, they walk on the other side of the street, and I always claim and told them when anyone gets out of that lunatic asylum don't go to the town where they are in because the children is afraid of them.

Q. Is that the reason why you wanted to go up to
20 Pocono on that hundred dollars?

A. I thought just go up there and get a day's good rest.

Q. Get a rest?

A. Yes, my wife used to go up to the Asylum Inn, and don't charge so much up there, only a little place holds about fourteen boarders, and I thought I would like to go up there and work a little on the farm.

Q. How long were you going to stay up to the
30 Pocono?

A. Long as my money lasted.

Q. The hundred dollars, you only were going to have a hundred dollars, going to stay long as your money last?

A. Yes, sure.

Q. Then where were you going?

A. Where was I going? My money might have lasted a good while, if I go to work up there for my board.

Q. How long do you think it would have lasted you?

A. What do I know how long money will last? I am in a bug house up there and how do I know how much it costs to live outside now?

Q. Were you going to live up there until after you couldn't live up there any longer, was that the idea,
10 going to live up in the Poconos long as you could?

A. Look here, if I couldn't work and I had a hundred dollars to pay board and I didn't pay my board afterwards I would have to go, wouldn't I, and that is how long I would stay.

Q. Where would you go then?

A. What do I know?

Q. Would you go back to the hospital?

A. What?

Q. Would you go down home or would you go
20 back to the hospital?

A. I guess I am always welcome at the hospital when Dr. Cotton says I am such a good man I better stay.

Q. I don't mean that. I mean where would you go? Would you go back home to Wildwood or would you go back to the hospital?

A. Tell me something what I am going to do after going to Wildwood? Look here, if I don't get some satisfaction out of this why I might go out of my
30 mind. I want something for being locked up in that hospital for twelve years for not being a crazy man, which the reports of Dr. Cotton, the main medical director up there put down. Don't you think I ought to have something?

Q. Well, it may be but who are you going to get it from?

A. I am going to incorporate and have all negroes together and I am going to sell my place to a negro company and have nothing but negroes in it and knock Wildwood higher than a kite. I am going to have satisfaction somehow or another.

Q. Against Wildwood?

A. Well, now look here. There is good people in Wildwood. There is where the trouble is. If they would only get out. When I built that hotel I was
10 cleaned out of money.

Q. Cleaned out of money?

A. And my property I had to sell, I owned three in Philadelphia and when my father died, he left me Philadelphia to walk on, a half of a property and the Jews got so thick I thought I would get away—not the Jews, Israelites, Jewish, where that religion—and come over in Jersey and I never had the time, so I built on the corner of Bennett and Pacific Avenue, one square from the life saving station, so she
20 would get plenty of air, and then we got down there, I thought I could live, but I didn't have enough money, so I wouldn't do to build a store down there, so I got rid of that property here on Cedar Avenue, then I got it in my head I would like to be tony too, so I just built on this side of Thompson Baker's, and then we were dumb.

Q. I don't quite understand who you were to get even with by selling the property to colored people, who you are going to get even with?

30 A. Haven't we?

Q. You say you are going to sell your property, incorporate and sell to colored people.

A. I got to have some satisfaction for being locked up.

Q. That is right.

A. Of course there are other ways, but with them,

wouldn't have any trouble by treating Dr. Mace or Mayhew.

Q. Who are you going to get satisfaction out of?

A. I am only saying that. I don't say I am going to do it.

Q. Who do you have in mind?

A. Perhaps be the whole city. You see there is no restrictions on that property. They can't because I come out, I didn't come out with that property, if you will look at it I built twenty feet two
10 inches back, two inches further back than what the deed called for, and there is plenty enclosed porches all around the place.

Q. Mr. Witte, yes, I know that.

A. All they got to do is just to take them frames out and move them back, there is the porch open.

Q. Mr. Witte, why or who is there down there in Wildwood you want to get satisfaction for that?

A. I don't know I got any enemies.

Q. I am wondering who you want to get satisfaction from? What is your idea, incorporating and
20 selling that property to colored people?

A. Don't you know?

Q. No, I don't know.

A. Don't you think it would ruin the whole city?

Q. Oh, then, your thought is that you will ruin the city because —

A. I want some satisfaction and I am going to do it. I am not going to be deprived of my family for twelve years for people putting me in the lunatic
30 asylum that never examined me. Now if a person is a lunatic, as Dr. Mayhew says, he is a lunatic if he talks too much, but then all lawyers must be lunatics. If they knew it means examination of lunacy and others if I am here, I think. They wouldn't even have Dr. Mayhew, I don't think, up

there for a patient, as the doctor says, we wouldn't want you to be in the hospital.

Q. I suppose he is glad of that.

A. It is knocking and don't you forget it. There isn't a man on earth can rattle me.

Q. I don't want to rattle you.

A. I speak sassy sometimes but I am not mad at anybody.

Q. I don't think I could rattle you. I don't
10 want to rattle you.

A. Here is one on you, I don't see why they have to go to another county to get a lawyer at both sides of the case. Are you as important as all that?

Q. Can't you find that out?

A. I don't see where you have done anything grand in here.

Q. Why don't you find that of your lawyer, Judge Cole?

20 A. In Philadelphia we always dealt with the stores nearby so we could all make a living.

Q. Now let me ask you, Mr. Witte, how you are going to get revenge on Wildwood?

A. I never meant, I am going to drop that. You can ask me all you want and I won't say a word. Is that contempt of court?

The Court: No, that is not contempt.

30 A. I ain't going to say a word. You can question me all you want to.

Q. I want to know why you feel sore at Wildwood about that property?

A. I ain't —

Q. Wait, you said you weren't going to say a word—when it was your wife who filed the petition to have you put in the insane asylum?

A. She did?

Q. Certainly she did. Didn't you know that?

A. No, I didn't know it. I didn't know anything until I got in the court here the other day. If I had known it would have been all that pile of trouble.

Q. What trouble would there have been?

A. What do I know?

Q. I don't know, you know it all.

A. You wait until the case come up and then you
would have found out. 10

Q. Didn't you know that your wife had filed a petition —

A. No, I didn't.

Q. —and said that you were insane and wanted you put in the insane asylum?

A. How could she put me in the insane asylum? She ain't no doctor.

Q. No, but didn't you know she signed a petition to have two doctors examine you? Didn't you know
that? 20

A. No. When was the examination? I wasn't examined by no doctors. I was just dragged in there. I was working for Harry Hood, the borough clerk at the time.

Q. Weren't you examined by Dr. Cohen?

A. No.

Q. Do you know Dr. Cohen?

A. Yes, Dr. Cohen asked me whether I wouldn't
leave my family, if I wouldn't go with him, he had
a place for me to go. He didn't tell me that I was
going to be put away. I didn't know anything about
it. 30

Q. Did you go with him?

A. No, I didn't want to go to no asylum, I didn't like them.

Q. When he asked you if you wouldn't go with him —

A. Now look here, I was born somewhere around Second and Race, Philadelphia, wasn't no Jews around there much at that time, we moved Fourth, built a store there and you couldn't do no business afterwards, although I made barrels of money in there, taken in high as twenty-five dollars a day on candies and ice cream, but not very much money, we had bad days too.

10 Q. I suppose didn't take you long to have a barrel of money at that rate after you paid the rent?

A. I didn't have no rent; I owned it.

Q. After you paid your expenses you ought to get a barrel pretty quick twenty-five dollars a day?

A. I worked for every cent I got and I ain't going to leave no one take it away from me and I want back what they taken from me down on the island and I am going to get it, if I put them all in prison.

20 Q. What property do you have at the present time?

A. None.

Q. None?

A. Only this here that I showed you.

Q. Let me see that, will you, please?

A. Didn't you never see a check book with a hundred dollars in? I know it is good. You needn't say it ain't.

Q. Now where is the bank book? Do you have a bank book or this all you have?

30 A. No. Now you want to know how the banks do business? I will tell you. I don't believe you know. I don't believe you could tell me.

Mr. Bourgeois: I will ask this be marked for identification.

(Check book marked D1 for identification.)

Q. Tell me how the banks do business.

A. They do business —

Q. Let me have it and I will see it is returned to you.

A. I want that check book. Can I have it?

The Court: He wants to see it.

Mr. Bourgeois: I want to let the jury see it.

A. I ain't going to let that slip away from me too. It is like a little story of two men having a case in court. The Judge asked them "Where is your lawyers?" They said, "We ain't got none. We came to tell the truth," and if that ain't knocking the lawyers, I don't know.

Q. I don't quite understand.

A. The only thing I am miffed at, why my wife 20 couldn't take a lawyer out of this county instead of going all the way over to Atlantic City. I guess they didn't read the news in the paper of Atlantic City. Now I want to tell you, read the papers and then you can find out what they think of Atlantic City.

Q. If you don't like Wildwood why do you care anything about what they do with Atlantic City?

A. Yes, but I always say to keep your business to your home town.

Q. Then why are you going to sell your property 30 to colored people?

A. That ain't my property.

Q. Whose property is it now?

A. It is hers.

Q. Hers?

Mr. Cole: Referring to the daughter.

Q. Absolutely hers?

A. Sure it is.

Q. Just hers individually?

A. Nobody else's, but it is going to be divided up between all the children.

Q. All the children?

A. And the wife, too.

10 Q. Now, you didn't say anything about the wife yesterday; you said going to be divided up between the children?

Mr. Cole: Yes, he did.

A. Of course the wife is boss of it, she is the boss of it yet.

Q. She is the boss of it, yet, is she?

A. Yes, and the only sucker family on the face of the earth.

20 Q. Then you transferred it to the daughter?

A. You know I feel awfully good, I have been perjured like anything and I feel awfully good, because I am in the protection of God, and no one can touch me. Now I want to tell you another thing what lunatics will do. Most of them that is out of their mind a little bit they walk up and down talking.

Q. Talking?

30 A. Talking. A man came up to me, Kelly, I didn't know anything about him, positively I didn't, I was out by the gate looking at the people getting on the car and automobiles going by, and fellows building a cave—we have a woman attendant. Now if we were crazy the doctors wouldn't put no woman over us to attend to men, would they? She has got twenty beds and I help her to make the beds too be-

sides my regular work in the church and moving picture place and laboratory, and well liked up there.

Q. Who?

A. Me.

Q. By whom?

A. By the head ones up there and by some of the patients.

Q. Do they have any insane people up there?

A. They are down below. We are way up. We 10 are on the third floor.

Q. Then they do have some people who are insane?

A. I guess some of them is insane. That I don't know.

Q. What?

A. That I don't know.

Q. You don't come in contact with any of them?

A. No. Wait, I want to tell you something.

Q. All right.

20

A. I went down to the gate, this woman came down and told me I had to come up to the office. I said, "Good gracious, do I have to go under another examination?" You know I have been examined pretty near every once in a while, but they have women up there examines your brains with geography, you know, to see if you know anything, Michigan woman she is, I guess, and attendants up there is mostly all southern people. See, it is pretty hard, I guess, down south working in the mills where 30 all that lint dust gets in the throats and they says they can't stand it and I suppose one of them got a job up there and they got other fellows and girls up there and some of them is pretty nice chaps, you can fool with them and if you don't fool you will go bughouse. That is the only thing kept me from

going bughouse and if I had thought of my family—I had that strong brains I could throw them off, just as if I didn't have no family, and I just enjoyed myself the best I could, but first when I went in there I thought every day the next day, next day, because there is no tomorrow —

Q. What did you think?

A. Because tomorrow isn't on the calendar, I can get out of that.

10 Q. What did you think the next day and next day?

A. That my wife and children or some one was going to get me out. So I wrote a letter to a well-educated man and asked him how I could get out of an insane asylum, that I was put in an insane asylum, and he said just do as the doctors tell you to do and gradually they will leave you go, and that is what I done.

Q. And you are still there?

20 A. I ain't. I am here. I don't have to go back.

Q. You don't? Are you going back?

A. That is my business.

Q. Don't you want to tell us whether you are going back or not?

30 A. I might go back for a visit and stay there like other people do. Now look here, I will tell you something, I used to take pity on these poor people there. You know there are some women in there got three real children home and the husband, put them in there, and they can't even see the children, they don't even bring them down to see them and they don't get a cent or nothing, so there is an orchard up above there, I asked the man if I could go in there and get them apples under the trees and he says, "Yes, but don't touch the trees," so I go in there and get the apples and I would bring them

in there and when they had these calisthenics, public school exercises, I used to go to the head one and I says, "Can I give these apples to these women?" She says, "Yes, but not, after they done exercises," I says, "All right." So when the time came they done exercises, I took them and put them up on the back, I says, "Have to take them to them. I don't want to have nothing to do with women because you don't know, one might get a big apple and the other one a small one and be a kick. I don't want to get anyone down on me." 10

Q. What did the school children have to do with it?

A. Wasn't no school children. I didn't say anything about school children.

Q. I thought you said about exercising?

A. The patients.

Q. I thought you said exercising with school children?

A. I says public school exercises. 20

Q. Was that it?

A. This here stuff going up, you know, and like that.

Q. Now what property did you have, Mr. Witte?

A. What property did I have?

Q. Yes.

A. All my property?

Q. Yes. I don't mean all your property. I mean that property that you had recently.

A. Recently? 30

Q. Yes.

A. What did I have?

Q. Yes, did you have any property left after you —

A. Why don't you ask me what I had on the island?

Q. I want to know whether you had any property left after you conveyed this hotel property to your daughter? Was there any other property? Did you have any other property?

A. Nothing at all. I tell you I only had this all together.

Q. Then you conveyed all your property to your daughter?

A. Yes.

10 Q. Did you know how much that property was worth?

A. Did I know how much it was worth?

Q. Had you any information about it?

A. I don't know because I just knew what it was assessed for, I don't know. I knew it was paying about twenty-nine hundred dollars taxes on it and I ought to know.

Q. How much was it assessed for, do you know?

20 A. I couldn't exactly tell you. I think the lot is assessed for about thirty-five thousand dollars and I don't know what the property is assessed for.

Q. Now —

A. And I never wanted to know either because I didn't want to go out of my mind. I didn't want to worry.

Q. Now, Mr. Witte, when you gave all of the property to your daughter for your children and your wife, how did you expect to live?

A. How did I expect to live?

30 Q. Yes.

A. I got a fortune. They keep me. They give me a hundred dollars. Now what is the matter with you?

Q. How long have you had that hundred dollars?

A. I don't know. I think I will have it forever when I go up to the bug house.

Q. How long have you had it?

A. How long have I had this hundred dollars?

Q. Yes, how long have you had that check book with the hundred marked in it?

A. I guess it ain't got no date in it, is it? I couldn't exactly tell you that, but I will tell you about when it was, it wasn't many days before this man came up to the hospital —

Q. Which man, Dr. Mayhew?

A. Yes, I didn't know who they was, I tell you, 10 that is where I stopped off before. The woman came up and said wanted to see me at the office. When I got in the office there wasn't—I didn't go to the office; they took me over—well, I know the whole building on the main floor where the office is because I had to do different things in there for them—until I walked in and they says, "Don't you know me?" Me not seeing them for twelve years and, as I told you, the last time I was speaking here that Dr. Mayhew was down this way, and he looked up like that, 20 something of that way, "Oh," I says, "You are a doctor and your name is May"—but I couldn't get "hew" out and I didn't know and then they would start to tell me.

Q. Now that was about —

A. Wait, let me tell you.

Q. All right?

A. Then these little pimps of doctors got out Cotton —

Q. Dr. Cotton? 30

A. —mean the State don't pick no mean doctors, I don't believe, I have seen the best doctors on this state on this United States, now here it is a pretty good thing up there, you pay eight dollars—well, it is \$108 every three months—you get medical attention, you get pretty fair eating and you get one

of the cleanest beds ever you slept in, and there is piles of people up there doing the same thing. We got a school principal up there, he was a school principal up Jersey, and he has a room there and he has a typewriter too and book cases in there and he pays his eight dollars a week board, about, I asked him why he done that, why he says, "I can live cheaper up there than I can outside," and had a sale of pillows and he bought the pillows himself at the sale and he goes out horse riding because he had nerve case too, but we could never go out night except summer time, we have to be in at every meal time.

10 Q. Why can't you be out at night?

A. You might get run over or something, we wasn't allowed to go out.

Q. Why not?

A. Because I tell you we have moving pictures, we have church on Sunday, first Sunday in the month we have Catholic mass, this last Saturday they had an Episcopal service with communion and confession. This, lets see, Easter Sunday, yesterday afternoon they had Catholic service, and we have Episcopal, Catholic, Lutheran, Presbyterian, Baptist, and Methodist services up there at different Sunday afternoons, and I was told that the minister that came up there got five dollars for preaching and I guess now, while everything went up, they went up too, I guess they get more. But can I tell you a little accident that happened up there?

30 Q. Sure.

A. Well, I only want to tell you how dumb some people are. I have charge of the church but I only have the —

Q. Which one?

A. For all the denominations, yes, it is the same

church, one of the best chapels you ever saw; it wouldn't hurt anybody to go up and visit the place and get taken around for there is nothing up there that would scare you and if the place ain't fixed up just as good as any homes, I don't know. They have carpet on the floor. Well, at that time when they bought it, cost two dollars and a quarter a yard, about. Beautiful and the beds as white as snow, all new mattresses, hair mattresses and hair pillows except our ward —

10 Q. Except what?

A. Except our ward.

Q. What do you have?

A. Well, before they tore it out, you know, it is all water colored, before they tore it out this woman gathered up all the hair pillows and tied them in a bundle and asked down stairs whether they could keep them and we sleep on feather pillows. Every bed has two pillows.

Q. Now you started to tell me about the chapel. 20

A. I can tell you that too.

Q. Now you are telling me about the pillows.

A. I want to tell you how dumb some people are, they sure are bad, so you know you are not really on this earth, you are sort of sitting. You sort of live afterwards and don't you forget it. The table was this way and priest—it was given out, you know I told you every first Sunday in the month they have Catholic mass, understand?

Q. I heard what you say. All right; go on. 30

A. And in March came a priest from Princeton, came, because they generally come from Trenton were busy and they must have phoned over and got a priest from there. He comes up into the church and I was in the music hall and he came in and I says, "What are you going to do?" He says, "I

am going to read mass." I said, "Ain't to be no mass today?" "Oh," he says, "yes," he says, "I was called on to read mass here." "Well," I says, "All right." I went in and I wanted to help him, get another man to help me to pull the altar out, we took the Presbyterian altar back and took out the Episcopalian-Catholic altar, pretty little altar too, and then it wasn't fixed, and the woman that has charge of the Catholic service, she went down to
 10 Trenton to church, and there he was. Well, I says, "Look here," I says, "fix up anyhow," so he said, "You go get me some water in the what-you-call-them," so I got the water and when I came in he had the altar pretty near dressed, then I ran down stairs and told them that there was a priest upstairs wanted to do mass, I told Mr. Burk, I says, "Telephone around to the attendants to bring the patients up," and then I went to the supervisor woman, and I says, "There is a priest upstairs, he wants to do
 20 mass, he wants you to get some patients up for him," and I says, "I want to get out of this." I says, "You go up and see him" and when she was walking up the steps he was walking down.

Q. Why did you want to get out of it?

A. Gee, don't I have enough little jobs up there?

Q. Now just what jobs do you have? Tell me, won't you?

A. I told you I have charge of the church, cleaning it out.

30 Q. What do you do in the church?

A. What do I do in the church?

Q. Yes.

A. I generally clean up around the altar and things up there, where the choir sings, where the organ is.

Q. You just sweep it and dust it?

A. Sweep it and dust it and mop it.

Q. Now what else do you have to do there?

A. In the church?

Q. Yes.

A. That is all.

Q. Now what do you do elsewhere, other than the church?

A. Then I go into the moving picture place.

Q. What do you do there?

A. Well, every day except Saturday and Sunday 10 that is the exercises, I have to cart the benches out of the way, so they can do the exercises and then on Tuesday I take everything out of the library, we had a place to put the tables in there and then we put the benches back in the library, while they can dance on the floor.

Q. While they dance on the floor?

A. Yes, dancing, Tuesday night dancing.

Q. Who does the dancing?

A. What? 20

Q. Who dances?

A. The patients.

Q. Men and women together or just men?

A. Sure. And then you want to say they are crazy, going up to the hospital can't read and write hardly.

Q. How is that?

A. Most all of them in the hospital can't read and write but they are some pretty bad ones up there, I guess; I don't know for I am not down there. 30

Q. Now what else do you do?

A. Then when Friday comes I fix up the—there is four rows of benches for the moving picture show and then I have to and I generally leave them mostly there because they can go up the aisles and through into the church on both sides, women on one side

and men on one; there is never a man and woman together.

Q. Not when they dance?

A. And if I went with a woman would take my parole away. Now look here —

Q. When they dance do the men and women dance together?

A. Yes, men and women dance together but they got to sit on each side of the, women on one side and
10 men on the other, and the attendants is watching them. Each ward brings so many up, the best ones.

Q. Why do the attendants watch them?

A. Just going to watch them.

Q. Why should they watch them?

A. What if a fight started?

Q. How is that?

A. What if a fight started?

Q. Why would they fight?

A. Why would they fight?

20 Q. Yes, what would they fight about?

A. Oh, I don't know.

Q. What makes you think they would fight?

A. Why do I?

Q. Yes, why do you think they would fight?

A. I don't know, there might be some disturbance, you know, men and women some time, there might be disturbance among the women, might be disturbance among the men, they got to have somebody there to mind them. You couldn't leave them go
30 through the whole building, the patients, and go up by themselves.

Q. Why not?

A. They couldn't leave the patients all go up by themselves.

Q. I say why not?

A. Why the doors were locked between each. The doors were locked between each ward.

Q. I know, but if they are all right why should the doors be locked?

A. What?

Q. If the patients are not insane, if they are all right, why should the doors be locked?

A. Why there is a pile of very old men up there and there is a pile of very old women and they get childish and they don't know much, now you can't leave them wander around by themselves.

Q. Do the men and women who are childish, do
10 they go down and dance too?

A. They take them up to see it. There is an awful pile just goes up to hear the music.

Q. Now do you take charge of any of them?

A. No, not on your life.

Q. Do you do anything else?

A. Then I help with the beds on the ward.

Q. Help with the beds on the ward?

A. Yes.

Q. You do a lot of manual work, don't you? 20

A. Yes, and pay board besides.

Q. Get paid for it?

A. I pay board besides, and I think I am entitled for my board back, money back for the last twelve years I have been in the hospital.

Q. Mr. Witte, I was thinking, I was wondering why —

A. I am going to get it when the, when these doctors say up there, as I say, I got in that room and said in that room, I says, "Dr. Cotton, I am going
30 to sue you."

Q. You said something else too, didn't you? You said to them that if you signed that deed you would be a free man?

A. No, I did no such thing; that is what they say.

Q. And you signed the deed and then you turned

to Dr. Cotton and you said, "You won't let me outside of this gate?" Did you say that to him?

A. Not on your life I didn't. Would take my parole away if I said that to him, but I says any business, I says, going to sue him and he can't touch me for saying that, but I can't say nothing about the doctors because they are all good up there; they are all good to me anyhow.

Q. Then you didn't want to get out, did you?

10 A. I didn't want to get out of where?

Q. Out of the asylum?

A. Didn't I say to you before that I asked Dr. Cotton to let me go and he said, "You are too good of a man; you better stay," and they don't want anybody out of there than can work, I guess.

Q. Is that the only time you ever spoke to him about it?

A. Yes.

20 Q. Now, Mr. Witte, this is the part I don't understand —

A. There is something funny about this, Dr. Hallan came to me and says, "Witte, you got to get out of this hospital." "I guess not; there is others in this hospital paying board."

Q. When did he say that to you?

A. What?

Q. When did he say that to you?

30 A. I don't know. I was walking around with a pal I saw a man outside and he says to me, called me over, and I didn't go, and he came across the road and he says to me, "Mr. Witte, you have got to get out" —

Q. How long ago was it?

A. Oh, it ain't been over a couple of months. I think they wanted to save themselves, that is all.

Q. I see, they wanted to get you out, did they?

A. They wanted me to get out.

Q. That was the first time they ever told you you had to get out, wasn't it?

A. Yes.

Q. They let you stay there twelve years all but about three months and then they told you you had to get out?

A. I want to tell you something where I was stopped, this last time, about this deed, that is about signing it over, I said—well, I will go over the whole thing—I was brought up in the office. Then the notary public, Fred Conger, with Dr. Funkhouse, notary public read this deed to me and he said, "Do you understand it?" I said, "Yes." Well, he says, "You read it." Oh, I says, "I have got my glasses on the ward." Well, he says, "Look through mine, see if you can see." I says, "Yes," and I read the deed just the same as he did. He said, "That is all right."

Q. Did you understand it?

20

A. Sure I did.

Q. All of it?

A. Sure. Now look here, I owned 1506 South Fourth Street, 1507 South Fourth Street, half of 1509 South Fourth Street left to me by my father, half of the house, the others I worked for. Then I built at Holly Beach, corner Bennett and Pacific Avenue, then I built 221-223 Cedar Avenue, just a few doors below the Edgeton Inn, next to the Normandie, and then next Mrs. Cole's house, private house, and then came our hotel.

30

Q. Now, Mr. Witte —

A. Wait. Now —

Q. You don't mean that you actually understood what all of that deed meant, do you?

A. Well, nobody does.

Q. Well, you said that you understood it and I wanted to find out.

A. I understand enough what I wanted to know. I knew I was transferring my property away to my daughter and I know my daughter, there will be a paper out, if not out now, that each one gets the same share.

Q. Have you ever seen that paper?

A. No, but I am going to write it out.

10 Q. You are going to write it?

A. Have not written it yet?

Q. Yes.

A. I started on it the other night and, of course, the automobile show was there. That is how much I think of this case.

Q. At the present time your daughter has that property absolutely herself, doesn't she?

A. Yes, and she can do with it as she pleases.

20 Q. Just as she pleases? She can keep all the money for herself?

A. She is a little crippled and I thought she was the best one and I got a family I can understand pretty good.

Q. What are the names of your children and how many of them have you?

A. How many have I?

Q. Yes.

30 A. Well, I got Henry S. Witte. I got Edwin—let's see, William Edwin Witte, and I got Helene Frances Witte—no, Helene—yes, Helene Frances Witte, and I got Pauline Mable Witte.

Q. They all the children you have?

A. That is all I got.

Q. Are they all that you have ever had?

A. No, I have got one dead and I believe —

Q. Now to whom, when you draw this paper, to whom are you going to say this property goes?

A. When I draw it up?

Q. Yes.

A. The property is not mine.

Q. What?

A. The property is not mine. I got no property.

Q. But what are you going to draw the paper up for?

A. Well, I am going to see if she won't fix it so every child gets some.

Q. Now suppose she concludes she won't? 10

A. Then it is gone; she has got it herself, but she won't do that, I don't think.

Q. But you are penniless?

A. No; I got a hundred dollars.

Q. In other words you conveyed the property that was agreed to be sold for \$160,500 to your daughter and you got one dollar when you signed the agreement and a check book with a hundred marked in it a couple of months ago; that is all you ever got for all the property you had, isn't it? 20

A. Well, why shouldn't they have it? Look here, I was in that hospital, they had to rake and scrape and pay my board up there and the book shows what you see that I wasn't insane any time I was in that hospital, now if they raked and scraped, paid all that money for twelve years, while it used to be seven dollars a week before, then got to eight, and then a little higher, they paid my board up there, they had to work like the mischief and they ought to have something for it. 30

Q. Now, Mr. Witte, if you had sold the property yourself, you had the money, you could have paid them and then you would have had probably \$140,000 for yourself.

A. I know that.

Q. Do you?

A. I told you that I didn't care for no money.

Q. What is that?

A. I didn't care for no money.

Q. You don't want any money?

A. I never did. I used to dress my wife up and I used to go out in, I don't know, rags, and she said, "Why don't you dress up yourself?" I says, "Takes all the money to dress you up." I always liked my children to be good and go to church and dress nice.

10 Q. And she had the bank account?

A. What?

Q. And she had the bank account?

A. Who?

Q. Your wife?

A. She has the bank account of her own money.

Q. I say she did have one when you were home earning money?

A. Sure.

20 Q. The money was in her name?

A. Yes. Now look here, she says, "I tell you what I will do, I will buy a little lot in the country and I will build you a little house on it and you can live there by yourself or with the children or I, whichever way you want to." Now what more can a wife do?

Q. In other words it is nice for her to give you a little house long as she has the money, but she hasn't the money now.

30 A. No, she hasn't. She would have to do it. She wouldn't take it off of her. Now she hadn't much money and she says, "I can spare you a hundred dollars." I says, "You better keep it." She says, "You better take it," so she told me to take it, and I felt pretty good with it until somebody gets it out but they won't get it, I don't think they will.

Q. You say you are not penniless now?

A. No.

Q. Although you don't have your \$160,000 property?

A. No.

Q. Now suppose—did you know when your wife came up there and talked to you about this property that she had agreed to sell it or didn't you know that?

A. Now, wait a minute. It didn't come up that way. It came up in a letter, in an envelope.

Q. Did you know that she had agreed to sell that property?

A. She had agreed?

Q. Did you know that she had?

A. Did I know?

Q. Yes.

A. Only what she told me about.

Q. Well, did she tell you that she had agreed to sell it to Mr. Coombs? 20

A. She said I think, in this way—these words all of them may not be true—she said that she had a buyer for the property, would I sell it? You know she owned the property, she done the same as I did, her own is gone just as well as mine, that property belongs to my daughter.

Q. Now, if you knew that the property was to be sold why didn't you make the deed directly to the purchaser so you would get the money, the money would then come to you? Why didn't you do that, 30 do you know?

A. I tell you I was linked with a lunatic asylum and you have got no authority, I don't think, when you are in a lunatic asylum.

Q. Now, they brought the deed in the lunatic asylum from you to the daughter?

A. Yes.

Q. Now, why didn't they make the deed from you to Mr. Coombs instead so that you would get the money instead of your daughter getting the money? Why didn't you make the deed directly to Mr. Coombs so you would get the money for it?

A. I guess the lawyer done that. I don't know. I told you I came in here dumb, I don't know anything about this case.

10 Q. But you don't know why the deed was not made directly to Mr. Coombs so you would get the money yourself? You don't know that?

A. Well, now, here is one, these people that bought this property, why didn't they buy it themselves? What did they get Mr. Coombs to buy it for?

Q. I don't care anything about that. What I am trying to find out from you, Mr. Witte, is this, why

20 A. They ain't going to start none of that skinning business, not on my life, if I have to bring the best lawyers down from Trenton, I got a hundred dollars to bind the bargain, if I don't go up above Stroudsburg.

Q. You wouldn't offer a lawyer all that, would you?

A. Now, look here. I asked for a license for that place and I got the whole town, as I suppose—

30 Mr. Cole: It seems to me that my friend is just trying to use up time. I don't know.

Mr. Bourgeois: No, I am trying to give this jury a comprehensive view of this man's understanding.

Mr. Cole: I think you have had plenty of time.

A. Look here, you get paid for this and I don't even know how much you are charging and I didn't even ask because I am only here as a witness; the property isn't mine, and what is the difference if you sit here and listen and learn something; because lawyers don't know everything. I worked in a lawyer's office where they made mistakes, too.

Mr. Cole: I have made lots of them.

10 A. I am a knocker. I can knock like the mischief if I want to. All the doctors know it too up there. They have hired the best men on earth.

Q. Mr. Witte, the question I asked you was why didn't you make that deed directly from yourself to Mr. Coombs so you would have gotten the \$160,000 then you wouldn't have been penniless, you would have had \$160,000—\$140,000 at any rate, after you had paid back to your wife and children for support, instead of only having a hundred dollars; why didn't 20 you do that?

A. I don't know why I didn't do it. I was so glad to get it because you know it is a good bit of work in the hotel and you draw a good bit of sass from people too and I wanted my wife and children to get out of that, get regular hotel keepers that knew something about the hotel business, but I guess my wife and children is just smart enough, if they can run it for five years they can keep running, if them fellows don't take it. But the case is wrong. My 30 wife and children should sue them and not them sue my wife and children.

Q. Now—

A. Now, this here man, that man, that lawyer was on this place, he was up there, that is what we call the lunatic, he was walking up and down the place

questioning. I says, "What have you got to do with me?" They asked me if I wanted to go down to Wildwood and I didn't know that they was the ones put me in the hospital.

Q. What did you say when they asked you if you wanted to go down to Wildwood?

A. I said, "Go down whenever I wanted to. I had a hundred dollar check from the doctors, I could go wherever I dashed pleased.

10 Q. Did you tell him who you were going to Wildwood to make it hot for the people of Wildwood?

A. No, I didn't say anything.

Q. Did you tell him who you were going to Wildwood—

A. I am only sorry I had to speak to that kind of people. If Honorable J. Thompson Baker had been alive and here, ex Supreme Judge Garrison, that is dead too, both dead, I guess, saw that here while I was up in the hospital, they would make them look like a little old three-cent piece.

20 Q. Now, Mr. Witte—

A. When a man buys a property and he pays his money down on it, if you go in the place and buy anything else, yes, sir, own it, own it yourself; so you buy a basket of groceries you pay for them and take them home, it is yours, then why in this hotel, this place, that bought it, because I don't think there is anything in the law book if a man buys a property that it isn't theirs?

30 Q. Then why didn't you sell it to them direct? Why didn't you make the deed direct to them?

A. I couldn't.

Q. Couldn't?

A. I didn't know that they was going to sell the property to them.

Q. You didn't know they were going to sell the property at all to them, did you?

A. Yes, by the letter I tell you.

Q. When did that letter come?

A. I don't know; just before it was sold.

Q. Before your wife had been up to see you?

A. My wife had been up there so often.

Q. Did it come up before or after the time your wife was up there next before the signing of the deed or don't you understand that? 10

A. What?

Q. Did the letter come to you before or after—

A. Before.

Q. —your wife came up there, last time she came before the deed was signed?

A. That I couldn't tell you.

Q. You don't know?

A. No, I would have to do some tall thinking to get that. I am not going to think about it. 20

Q. Not going to think about it?

A. No.

Q. Why not?

A. I might go to the bug house. Not on your life. Not for any lawyers in this case, no.

Q. Is it your opinion that if you think about something you will go in the bug house?

A. The doctor asked me what I read in papers and books and I said I only read jokes and keep jolly, and don't you forget it. I don't read no heavy reading if I get a newspaper—I used to carry newspapers up to the attendants, I used to make five and ten cents, and go over to the laundry and get the wash for them in the ward, I used to make money, I always made enough money to keep me in tobacco, and a little over. 30

Q. The part I can't understand, Mr. Witte, I expect you can explain it to me, is this—

A. You want to learn something?

Q. Yes. If you had sold the property direct to Mr. Coombs you would have gotten \$160,500 for it, then you would have had plenty of money to repay your indebtedness to everybody, you wouldn't have to carry newspapers at ten cents and you wouldn't have to work in this insane asylum for nothing. Now I ask why was it that you didn't sell direct to them?

Mr. Cole: Your Honor, I object. He has been asked that question at least four times, he has answered it each time the same way.

The Court: Yes, I think he has.

A. It is pretty good. I will understand it after a while. I will tell you, everybody makes a mistake, don't they? That is why, I guess, but the only feature exceeds me why they couldn't get the lawyers for this particular case out of this county instead of going into Atlantic County.

Q. Now, Mr. Witte, is there anything the matter with you at all?

A. What?

Q. Is there anything the matter with you at all at the present time, mentally or physically?

A. You showed the book that there was nothing the matter with me from Dr. Cotton, the main medical director of the State hospital in Trenton.

Q. No, I didn't show anything to the book.

A. You did so.

Q. No, we didn't.

A. There isn't anything agin me but I says this, Dr. Cotton—

Q. I don't care whether there is anything against you in that book; I want to know from you whether or not you are all right both physically and mentally?

A. Why no, I am weak in the legs.

Q. Weak in the legs. With the exception of being weak in the legs you are all right, is that the idea?

A. Sure; if I wasn't I couldn't speak.

Q. Your legs are strong enough so you can take care of the chapel?

A. Yes. But when it comes to any heavy lifting, I can't do it.

Q. In other words, you can work enough to make your own living?

A. Sure I can.

Q. Then why do you stay in the hospital and get nothing but your board and work for that and pay your board—

Mr. Cole: He has answered that three or four times too.

Q. —instead of going out?

A. Judge, leave him go along.

Q. Why do you stay there?

A. Why do I stay there?

Q. Yes.

A. I said if you went up there or you was a patient up there I don't think you would come out; you would stay there.

Q. Now, why?

A. Well, you have a great big lawn. The ground is about four squares, you know what I mean—I don't know whether you call them blocks; we call them squares in Philadelphia—wide from Sullivan's way to—it is an odd name of a street back there—I just can't think of it—and it runs back about six squares.

Q. In other words you would rather have that big lawn of four or six squares than you would to have your freedom outside entirely, go all over the city?

A. No, I couldn't get my freedom. I had the freedom of a patient that could take lame people out whenever they get permission from the doctors to take them. I could go down to the theater with them. I took them to different places. I took them to—

10

(Recess taken to 1.30 P. M.)

AFTERNOON SESSION.

(Trial of the cause resumed at 1.30 P. M.)

20 HENRY WITTE, SR., resumed.

Cross-examination, resumed.

By Mr. Bourgeois:

Q. Mr. Witte, before you went to the state hospital in Trenton you were for a time in Kirkbride's, weren't you?

A. Yes.

Q. How long were you there?

30 A. Three weeks.

Q. Two weeks?

A. Three weeks.

Q. That was a pay institution, wasn't it?

A. Yes.

Q. Then they took you out of there and brought you down and put you up in Trenton where you didn't pay?

Mr. Cole: Objected to as irrelevant and immaterial and not cross-examination.

Mr. Bourgeois: All right; I won't press it. I guess that is all.

Mr. Cole: That is all.

The Witness: Can I ask you a few questions? I have a paper to sign; can we sign it? 10

The Court: We will do that afterwards.

The Witness: I want the seal of the State of New Jersey on it. Can you do that? You have the power to do that?

The Court: I haven't that power but the clerk will do that for you.

The Witness: Haven't you the power that a notary public has? 20

The Court: Yes.

The Witness: That is all right then.

DEFENDANT RESTS.

30

PLAINTIFF'S REBUTTAL.

DR. SAMUEL MAYHEW, recalled.

Mr. Bourgeois: If your Honor please, I want to ask him a question or two I overlooked in the direct examination and then I want to take him on rebuttal.

10 Mr. Cole: May it please your Honor, I must object now, so there won't be any question of a waiver, to any testimony in this case that is not legally permissible touching the question of Mr. Witte's sanity upon the ground that they took the burden of that and we answered and our doctors are not here and I had no intimation of any attempt to do more than what they have done in their opening and I am in no position to meet what may be said by my doctors who I had here for that purpose and I
20 can see now, through the examination of Mr. Witte, also by the suggestion of counsel, that their purpose now is to re-open this case on that subject.

Mr. Bourgeois: Oh, no.

Mr. Cole: All right. I only want to anticipate that is the offer and I want to object on the ground we are not prepared because of the absence of our doctors who were dismissed upon the theory plaintiff
30 had rested his case upon that phase of the case.

Mr. Bourgeois: I don't want to ask him a question about that. I want to ask him a question in rebuttal, but the question I had in mind did not pertain to that at all, anything he said.

The Court: I will permit you.

Direct examination.

By Mr. Bourgeois:

Q. Doctor, you testified that you and the chief of police and I think one other person went out to look for Mr. Witte and found him on the meadow?

A. Yes, sir. 10

Q. And you testified that he was throwing his arms around and I think you said screeching?

A. Yes, sir.

Q. Now, what else was there that happened at that time when you attempted to go to him?

Mr. Cole: Of course that is objected to on the ground that is re-opening their side of the case unnecessarily. 20

The Court: I will permit it. I think he has a right to amplify that which the witness testified to.

A. He was antagonistic, fighting quite considerably when we tried to get him in the car.

Q. Did what?

A. Fighting, very antagonistic.

Q. Did he say anything then?

A. Yes, but I don't recall.

Q. I don't mean whether he made any noise? 30

A. Oh, yes, howling.

Q. Now, Doctor—that is one question I want to ask him—you have heard Mr. Witte on the stand today and on Friday. Did you have a better opportunity of observing him since—while he was here in court than you did when you were in Trenton?

Mr. Cole: That is objected to on the ground that is not rebuttal.

The Court: Is it offered as rebuttal?

Mr. Bourgeois: Yes. If your Honor please, I have this notion about this testimony, when they produced this man on the stand for the purpose of showing that he understood that opened up the whole
10 question of sanity. Now I am going to ask this man afterwards whether he has—after observing what he has said, what Mr. Witte has talked about and so on, whether he has any reason to change the opinion that he formed and testified to here on Friday.

The Court: Don't seem to me that is rebuttal; seems to me that amplifies that which he has already testified to.

20 Mr. Bourgeois: I suppose it does, I have a right, after that witness comes on the stand, to give his explanation of it. It is another examination and I want to find out further from that examination—

The Court: I am going to permit that but I do not consider it rebuttal.

Mr. Cole: I object to it on the ground this now is an effort to re-open this case on the question of the sanity or insanity of Mr. Witte when it was a part
30 of their case to establish it. They had the burden of proof and they accepted that burden and I am in no position, by reason of the absence of my doctors—they were dismissed upon the theory that that subject was closed and this is a surprise to me now to attempt to build up another case because, your Honor

please, they had an opportunity of putting this man under examination in a legal way by taking his testimony.

The Court: They did make an examination beforehand and they testified as to the result of that examination. Now they say that the doctor having sat here in the court room during the entire trial is able to testify or amplify their other testimony on direct and ask permission to open. I am going to grant that permission because I think they are entitled to do it and the fact that you haven't got your doctors here, it seems to me, is a matter not with the court and under the circumstances they are entitled to proceed. 10

(Exception noted for defendant.)

(Question repeated.)

A. I did. 20

Q. From your examination of him in the court and the answers he made to the questions propounded to him, what is your judgment as to his sanity?

A. Insane.

Q. Insane?

A. Yes, sir.

Q. What are some of the things on which you conclude he is insane?

A. General expression. His general expression; his actions; his talk; that is sufficient, I guess. 30

Q. From the examination, questions he answered, what is your opinion of his ability to understand the consequence and the importance of the deed he signed?

A. I don't think he is competent.

Cross-examination.

By Mr. Cole:

Q. He knew he had a wife?

A. Yes, sir.

Q. He knew he had children?

A. Yes, sir.

Q. He knew he loved them?

10 A. Yes, sir.

Q. And he stated that the reason he wanted to deed this property to the daughter was because, first, she was crippled, and, secondly, he was satisfied that she would carry out his wish and see that he was properly taken care of during his lifetime and after his death would equally distribute the property among all his children. Is that in your mind an indication of insanity?

20 Mr. Bourgeois: He didn't say that, if your Honor please. He didn't mention anything about death at all.

The Court: No, I don't remember anything about death.

Mr. Cole: That was the plain import that he was to be taken care of.

30 The Court: But he didn't say that. Your question is framed on the theory that he did say that as I recollect it, but maybe we better have the question again. Now my recollection is that he didn't state that.

Mr. Cole: Your Honor overrule the question?

The Court: No. If your recollection differs from mine, we will have the testimony read in order to ascertain.

Mr. Cole: That is my impression of the plain import of his statement. I am not using the exact words.

The Court: I am dealing with the question as a statement of fact, that he did say that. My recollection is that he did not. If your recollection differs from mine, we will go back to the testimony. If it does not and you are just simply referring to what you consider the import then I will overrule the question. 10

(Question repeated as follows: "And he stated that the reason he wanted to deed this property to the daughter was because, first, she was crippled, and, secondly, he was satisfied that she would carry out his wish and see that he was properly taken care of during his lifetime and would equally distribute the property among all his children. Is that in your mind an indication of insanity?") 20

A. Not necessarily so.

Q. Not of itself?

A. No.

Q. Now he also said, while he was under cross-examination by counsel: "This suit is all wrong. Instead of it being brought against my daughter to recover the money, it ought to be brought by her to make Mr. Coombs take this title." Is that in your mind, an indication of insanity? Yes, or no; is that an indication of insanity? 30

A. No.

Q. He has memory, hasn't he?

A. Yes, sir.

Q. Is that an indication of insanity?

A. No, sir.

Q. He can read, can't he?

A. Yes, sir.

Q. Is that an indication of insanity?

A. No, sir.

Q. He can write, can't he?

10 A. I don't know.

Q. Didn't you find out?

A. No, sir.

Q. You went all the way to Trenton to try to find out about this case, didn't you?

A. Yes, sir.

Q. You didn't see whether he could write or not?

A. No, sir.

Q. Well, if he can write, in point of fact, is that an indication of insanity?

20 A. No, sir.

Q. He still knows that he owned the Witte Hotel and he knows what is the fact that he has conveyed it to his daughter and he stated that he wanted his daughter to have it. Those things indication of insanity?

A. No, sir.

Q. That is all, Doctor.

By Mr. Bourgeois:

30 Q. Doctor, is the fact that a man can read an indication of sanity?

A. Of sanity or insanity?

Q. Of sanity; are there any insane people who can read?

A. Yes, sir.

Q. Then the fact that a man can read is not an indication of sanity of itself, at all?

A. Not necessarily so.

Q. Nor is writing, is it?

A. No, sir.

Q. About this man's memory; did he have memory? Did you hear him answer any one question that was asked this morning and give a complete answer? 10

Mr. Cole: That I object to. We are entitled to have the record on that if it is a conclusion he is going to give us now.

The Court: Yes.

Q. What is your opinion about his memory?

A. Not very good.

Q. Is it coherent?

A. No, sir, incoherent. 20

Q. Did he, in your opinion, comprehend the nature of that deed that he says he signed and wanted his daughter to have?

A. I shouldn't think so.

Q. Did he comprehend in your judgment, what would have been the result or effect if the deed had been made directly to him so he would have gotten the money?

A. I don't think he did. 30

By Mr. Cole:

Q. Would you regard it as an insane act for a father to deed his property to his daughter?

A. No, sir.

Q. That would rather be a sane act?

A. Yes, sir.

Q. It shows that the father still has memory enough to recognize that he has a child and that he has affection for it, doesn't it?

A. To a certain extent.

Q. Now, how many insane patients have you had in your practice?

A. I don't know.

Q. Have you any idea?

10 A. Four or five hundred.

Q. Four or five hundred?

A. Yes.

Q. In Wildwood?

A. Wildwood and Bridgeton combined.

Q. I want to ask you again, and I asked you the other day ask you now, will you please define insanity?

20 A. It is an intense mental alienation characterized by more or less loss of speech in some cases, weakness, hallucinations, illusions and delusions.

Q. Have you looked up the definition since you were here?

A. No, sir.

Q. Did you know it the other day?

A. Yes, sir.

Q. Didn't I ask you for it?

A. I don't recall.

By Mr. Bourgeois:

30 Q. Judge asked you whether or not the making of that deed to the daughter was an indication of insanity. What about the making of an agreement conveying all his property to one child to the exclusion of all the other children and his wife, is that an indication of—

Mr. Cole: I object to that upon the ground this man explained to this jury.

Mr. Bourgeois: If your Honor please, he says that there was an agreement he never signed an agreement, he says he gave it to his daughter; if she doesn't want to give it up, that is all of it; it is hers.

The Court: He says that. That is true. I will overrule this question. 10

(Exception noted for plaintiff.)

Mr. Bourgeois: I think, if your Honor please, under the cases in our state that is one of the evidences of insanity, that is one of the things the court looks at.

The Court: That may be, but this witness has been examined and cross-examined. Now, you are starting in to examine him again and there has got to be some limit to that, else we won't get this case finished. 20

Mr. Bourgeois: I was simply trying to clean up what Judge Cole asked is all.

DR. RALPH R. CHARLESWORTH, recalled.

Direct examination. 30

By Mr. Bourgeois:

Q. Doctor, were you in court during the examination and cross-examination of Mr. Witte?

A. This morning.

Q. Did you listen to his answers to questions?

A. I did.

Q. From the answers that he gave what have you to say about his memory? Is it defective?

Mr. Cole: I want to object to this upon the same ground I objected to the other testimony, this is not rebuttal and we are not prepared to meet it. It is an opening of the case of the plaintiff.

10 The Court: The Court's ruling will be the same as before.

(Exception noted for defendant.)

Q. What have you to say about his memory?

A. It confirms my diagnosis, he is insane.

Q. What is your judgment of his memory Is it a good or defective memory?

A. The fact of memory has nothing to with with
20 the point of insanity.

Q. Now what about his judgment, I mean what you observed?

A. That only confirmed my diagnosis of the previous testimony, the man is insane.

Q. That the man—

Mr. Cole: Just a moment; it remains. You needn't tell him what it was. I object.

30 Mr. Bourgeois: What did you object to?

Mr. Cole: I object to your telling the witness what his diagnosis was.

Mr. Bourgeois: I haven't told him anything.

Mr. Cole: You were going to.

Mr. Bourgeois: He objected to my thinking. I won't press it, Judge. You may cross-examine.

Cross-examination.

By Mr. Cole:

10

Q. Doctor, what is your definition of insanity?

A. The definition was on the stand today. A man in normal mental condition would not answer questions—

Q. Pardon me; I asked for a definition of insanity.

Mr. Bourgeois: He is giving it to him.

The Court: Didn't sound to me as though it was.

20

Mr. Bourgeois: If your Honor please, there are lots of answers that are put in the negative.

A. I have none myself.

Q. You have no definition of insanity?

A. No.

Q. That is all.

DR. NATHANIEL S. YAWGER, SWORN.

30

Direct examination.

By Mr. Bourgeois:

Q. Doctor, you are a practicing physician?

A. I am.

Q. Where?

A. My professional residence is 1524 Chestnut Street, Philadelphia.

Q. What is your line of profession?

A. I specialize in nervous and mental diseases.

Q. What experience have you had in mental diseases?

A. I was once an assistant physician in the Philadelphia Hospital for mental diseases. I was examining physician—

10 Q. How long?

A. I was there six months. I was examining physician to the Pennsylvania Epileptic Hospital and Colony Farm for a period of about six years. I had charge of the Bnai Brith mental hospital, that is, was superintendent of it for a period of about eight years. I was consulting neurologist to the Norristown State Hospital for five years.

Q. Is that an insane institution?

20 A. It is an insane institution similar to the one in Trenton.

Mr. Cole: Institution for the insane you mean?

A. Yes. Alienist, Eastern Penitentiary. Then I have taught in nervous and mental diseases Pennsylvania University and at the present time Jefferson Medical Schools. I am one of the State examiners at the Philadelphia Hospital of almost all the State insane cases. For instance I have seen 30 insane service last year to the extent of about fourteen hundred.

Q. Now, Doctor, how many, if you can say, how many patients have you treated during your professional career for mental trouble or mental disturbance?

A. As treating physician I don't suppose I have treated more than—

Q. I don't mean that; I mean examined?

A. Perhaps about eight thousand?

Q. Were you in court today while Mr. Witte was being examined?

A. I was.

Q. Did you hear his answers?

A. I did.

Q. Did you read the transcript or his testimony taken at the previous trial?

A. That is direct examination, was it not? Yes. 10

Q. Now, Doctor, I am going to read a question that was put to him and ask you whether or not it shows, the answer shows, mental appreciation of the act that he was doing: "Now, why was it that you made the deed—"

Mr. Cole: I am objecting to this testimony on the ground it is not rebuttal. It is a reopening of the plaintiff's case upon an affirmative issue, which they accepted and had to and that I am not in any position to meet this because my doctors have been dismissed; they are in Trenton and this is a complete surprise to me and I ask an exception. 20

The Court: I grant an exception. I can see no reason why, after the defendant has put the alleged lunatic on the stand, he has testified in court, that the plaintiff should not be permitted, on request, to open his case for the purpose of examining as to things that happened while that witness was on the stand. I will, therefore, grant the exception. 30

(Exception noted for defendant.)

Q. "Why was it that you made the deed of the property to your daughter? A. Well, now I want to

tell you something. When a man is hedged up in a hospital and a fortune hunter goes around he might get married to my wife and probably get all the money and my children wouldn't get any. That is the way the papers are fixed, not one but one another. It is so fixed that each child gets the same amount." Considering the fact that the title is in himself, tell me whether or not that answer conveys to your mind the opinion that he comprehends the

10 meaning of it?

A. Sounds like a foolish answer.

Q. Then again: "Have you signed a deed for another piece of property in Wildwood before you signed this? A. Sure. Q. When was that, how long before the transaction, just about? A. Oh, well, I couldn't tell you. Q. All right. A. Why, I signed that was the lot next to me the Douglass house was on that side of my house here, and the big lot, and here was going to build a church, and I thought probably they were buying the property for a

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priests' home or minister's house for the church and I let it go away cheap and whether it was going to be transferred over that way, I don't know." Does that show comprehension in your judgment?

A. No. In the first place he didn't answer the question asked and second place what he said was rather an unreasonable sort of thing.

Q. "Don't you feel well enough to come out?" He was asked about coming out and the question was

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"Don't you feel well enough to come out. A. I think if you was up there you would stay too. Q. Have you ever told them that you wanted to get out and they wouldn't let you go? A. Well, I asked Dr. Cotton years ago whether he cared to let me go and he said I was too good a man, I better stay." Does that indicate comprehension on his part?

A. No.

Q. "Did you know them? A. I didn't know them at the time coming right in the room but I knew Mayhew, he was sitting in a chair something like this (illustrating) and, of course, I couldn't see who he was. Q. Did he appear to be trying to hide himself? A. No. He just, what I think, he didn't think I was coming right in. I was out at the gate sitting there while the trolleys go by and different things." That is all of that part. Now, Doctor, you heard

10

him on the stand this morning?

A. I did.

Q. What is your judgment as to his mental capacity?

A. Very incompetent.

Q. The testimony is that his condition has not changed in the twelve years he has been there; it is the same now as it was when he went there twelve years ago.

20

Mr. Cole: That is not true in fact. Testimony is the contrary.

Mr. Bourgeois: Dr. Funkhouse says he is the same today as he was when he went there.

The Court: No; he said he was less nervous.

Mr. Bourgeois: I asked him, if your Honor please, whether or not he was—

30

Mr. Cole: I withdraw the objection. Go ahead. The jury will remember.

Mr. Bourgeois: Yes, the jury will remember.

Q. Assume that he has not changed during the twelve years he has been there, that he was sane now, that is according to the testimony of a witness and was sane when he came in there; now you have heard him today. In your judgment was he competent in September of 1925 to comprehend the nature and the extent of the signing of a deed to property for \$160,000?

A. In my judgment he was not.

10 Q. Now, Doctor, what particular things did you observe in him today that leads you to the judgment that he has not his own mind?

A. I observed that Mr. Witte was very excitable at times, that his memory was impaired, for instance, didn't know just when it was this hundred dollars was given to him that he has recorded in his check book, he likewise don't know how much his business was paying him prior to his illness, that is when you asked him if it was a hundred dollars or 20 a thousand dollars a year that he put in the bank, he didn't know. In those respects his memory is defective. He exercises bad judgment. For instance, his attitude towards his attorney here in the court room sometimes almost hostile, he was inclined, in fact he insisted upon following things out his own way. His judgment is not good when he stays in a mental hospital as long as he has without making an effort to get out, that is, making the usual effort that men do. He has no insight into his condition.

30 By that I mean he does not recognize that he has mental disturbance. He says that there is nothing wrong with him except in his legs, they are weak. And then his child-like enthusiasm in which he describes the way he cares for the little chapel, the way he keeps it clean and the way he looks after the beds and helps make them and describes them as having

two pillows on them, how clean they are kept. Well, he has this defect of his memory, his judgment and in his insight, then he speaks of a conspiracy, about his having been placed in the Trenton hospital through a conspiracy. He speaks of revenge, that he would like to put colored people into the hotel at Wildwood to bust up the place, as he spoke of it. Then he sometimes talks in a threatening way about getting money compensation for his having been detained in the State hospital when he was not insane. 10 He sometimes speaks of the State hospital as—he said it was a general hospital, that the mental cases, insane cases were up in Morris Plains, that what they have in the Trenton Hospital are paralytics and epileptics, then another time he did say there were insane there and two or three times referred to the place as a bug house. Those are my reasons for believing he is insane.

Q. Now, what about the manner in which he transacted this business, his relying or stating that there was to be a paper drawn up, but it wasn't drawn up. 20 What is your judgment about his business and his ability to care for himself where he conveyed this property for a dollar to his daughter, if worth about \$160,000, conveyed to her for a dollar, absolutely to her, and his relying on her drawing up a paper and that he is going to draw it up to see that the other people get it right?

A. Exercised very bad judgment.

Q. What is your opinion about his comprehension, 30 his business comprehension? Do you think he comprehends the business phase?

A. No.

Q. What do you think about his business comprehension when he talks about putting, forming a corporation and putting colored people in that hotel

after he has conveyed the property to his daughter? Does that show a business judgment?

A. No. Ridiculous and absurd.

Q. What is your judgment about his coherence? Did he appear to you to be coherent?

A. No. He drifts from one subject to another without logical connection, besides when you asked a question he didn't answer it, he starts to talk about something else, talks his own way about it. He is not coherent.

10 Q. Would, in your judgment, a man who had a successful business, making, as he thought, barrels of money or something of that sort, be content if he were sent to remain in an insane asylum and pay his board and work for nothing and have no business at all?

A. No, he would not.

Q. Would a sane man be content to remain in an insane asylum?

20 A. No, not for any period of time. As patients recover and get practically well then they may be content to stay a few days longer until satisfactory arrangements made for them to go home, not for any long period of time.

Q. Now, what is your judgment about his statement that he cares nothing for money as compared with the money and the tenacity with which he holds on to that check book that has a hundred marked in it, not dollars?

30 A. Well, I don't believe he properly appreciates the value of money and he doesn't probably have very much in a State institution and he holds on to what little he gets.

Q. This inappreciation of money indicate mental acumen or indicate mental defect?

A. Well, a man who has a sane mind should properly appreciate money, its value and its uses.

Q. Doctor, let me ask you this question, and I think it is founded on the testimony in this case: Assume a man, formerly in good health, conducting his own business and active in it, having been placed in Kirkbride's Asylum or Hospital and after coming out leaving his home on one occasion and was later found wandering upon the meadow about a mile away, throwing about his arms screeching and talking and when approached would start to fight and scream, and thereafter was adjudged by the Common Pleas Judge of Cape May County, upon the certificate and testimony of two doctors, witnesses, and who had hallucinations that the spirits ordered him not to talk, and would write what he had to say, and had hallucinations that somebody was throwing garbage on the walls, to be insane, that is adjudged to be insane and ordered confined in the State hospital for the insane twelve years ago, and who has never been discharged therefrom, and who is contented to remain therein, doing a certain amount of simple routine mental work, who was the owner of property in his own name which was agreed to be sold for \$160,500, and who signed a deed therefor to his daughter for one dollar, claiming he was afraid fortune hunters would get it away from his wife and he wanted it to go to his children, making no provision for his wife, and claiming that the signing of the deed would make him a free man and he would get a hundred dollars and go to Pocono Mountains to live, and who is the same mentally as when he was placed in the asylum twelve years ago, what is your opinion of his mental condition?

Mr. Cole: I object to that, that all the statements of fact propounded to the doctor were present before the defendant closed his case. They were present

when the plaintiff closed his case, therefore this cannot possibly be rebuttal, and upon the further ground that it assumes an adjudication of insanity and I submit there has never been in this case any adjudication of insanity.

Mr. Bourgeois: If your Honor please, that portion of the question is based upon the report of the proceedings in insanity in this court in the Orphans' Court and the cases hold that is prima facie evidence of the statements contained therein.

The Court: Yes, as far as this is concerned that is so. You are offering this as rebuttal, you are offering it as I understand it on a reopening of the main case?

Mr. Bourgeois: For the purpose of determining

20 The Court: I will permit it.

(Exception noted for defendant.)

A. I believe he is insane.

Q. What would be the nature of his insanity?

A. I haven't any data about his symptoms further than what was mentioned there. It might be several different forms of insanity, a man violent, and delusional and hallucinatory, these conditions arising in several different mental diseases.

30 Q. On the same question, what in your opinion was his capacity to appreciate the effect of signing a deed on the fourth of September, 1925?

A. I don't believe he properly appreciated it.

Q. Does it make any difference, Doctor, to your

judgment because he claims and here says over again, "I knew what I was doing and I wanted it to go to go my daughter and she was going to make a agreement to give to the other brothers and sisters?" Does that make any difference in your judgment?

A. I think his whole manner and his actions, replies, and symptoms, lack of replies, shows an unbalanced mind. I don't just get the idea of your question.

Q. What I want to know is whether or not a man with an unbalanced mind such as you consider he has, whether he could be taught or whether he could say, "Yes, I know what I did, I want it to go to my daughter, I want the children to get it," would that be feasible?

A. He could be taught to say things?

Q. Yes.

A. Yes, he might be taught.

Q. And the fact that he did say that, would that change your mind?

A. That he said it? I don't know. I don't see that would have any influence on it one way or the other.

Q. In other words, you wouldn't base your judgment on that; you would base your judgment on the whole trend of his testimony?

A. Sure.

Cross-examination.

By Mr. Cole:

Q. When were you asked to come here as a witness?

A. Probably Friday of last week.

Q. Why weren't you here yesterday?

A. Yesterday was Sunday.

Q. I mean Friday—

A. Probably.

Q. What time Friday?

A. Probably about two-thirty in the afternoon.

Q. Who asked you to come?

A. Mr. Bourgeois.

Q. Are you here under pay or promise of pay?

10 Mr. Bourgeois: He didn't mention it but I think he expects it.

Mr. Cole: Listen a moment, if you don't mind; let the doctor smile but you stop talking.

The Court: Judge Cole is entitled to an answer without interruption.

A. The question is am I here under promise of
20 pay?

Q. Don't you remember my question?

A. You have talked some since.

Q. Don't you remember my question?

A. Not quite.

Q. Then your memory is bad in that?

A. Well, you were asking my advice too, which is a matter of—

Q. Then you don't remember the question just
now?

30 A. I just said—

(Question repeated.)

A. I am not here under promise of pay. I expect to be paid.

Q. You expect to be paid?

A. I do.

Q. What do you mean when you say that something that a man does is foolish?

A. Well, I mean in the act that he does shows that he lacks judgment, insight, perhaps memory, just acts as if he is a child, like a child might do.

Q. Have you ever done or said anything that was foolish?

A. Sometimes.

Q. Did it ever occur to you that you were insane
because of that? 10

A. Oh, not because of that, no.

Q. All right, we will take one thing at a time. In other words, merely because a person says or does something that is foolish don't mean they are insane does it?

A. Not of itself.

Q. Then you admit you have done those foolish things yourself and said foolish things, don't you? 20

A. I have sometimes done foolish things.

Q. Now, it appears in this case that Mr. Witte had the deed read to him before he signed it. To have that done was that a wise or unwise thing for him?

A. Have it read to him before he signed it?

Q. Yes.

Mr. Bourgeois: If the Court please; that is not the testimony.

The Court: Yes, the testimony is that it was read
to him by the notary. 30

Mr. Bourgeois: Yes, but he didn't request it.

The Court: I don't think the question says requested it.

Mr. Cole: My friend's memory is bad, too.

Mr. Bourgeois: My memory is bad.

Q. Was it a foolish thing for him to have the deed read to him?

A. I should think ought to do more than that, ought to not only do more than that but he ought to read it himself.

10 Q. You did more than answer the question. I think you said a moment ago one of the indications of insanity was that he did not only answer the question—

A. Yes, sir.

(Last question and answer repeated.)

Q. Don't you think you overanswered that question?

20 A. I might not have answered it quite—

Q. Don't you think you overanswered that question?

A. Perhaps so.

Q. Did you hear him say here today that, in fact, he did read that deed, after it was read to him and he borrowed the glasses of the notary public to read it?

A. I don't recall his saying that.

Q. Now, he did say that. Now, what have you got to say about the sanity of that act?

30 A. Well, that as far as it goes, is proper and right.

Q. That is pretty good, isn't it?

A. As far as it goes.

Q. That is pretty good far as it goes?

A. As far as it goes.

Q. Is there any indication of insanity in the fact that he deeds his property to his own children, his own flesh and blood?

A. It might be if he had other children.

Q. Well, if he plusses the fact that he said that he deeded it to the daughter because she was crippled, would that have some reason in your mind why he should prefer her over the others?

A. I would want to know how badly crippled she was and how deserving.

Q. You wouldn't want to take his judgment for that?

A. No, I wouldn't want to take his judgment. 10

Q. Then he also added that there was to be a division of this property among all the children by this daughter; now, assuming that he knew what he was doing when he signed that deed, was the fact that he said there was to be distribution an indication of sanity?

A. Yes, in my judgment.

Q. You think it was?

A. Yes.

Q. Now, he also said something about a fortune 20 hunter, somebody might get his wife's property, did you ever know of a case where men who were perfectly sane have conveyed their property to the wife, then some fortune hunter did get it?

Mr. Bourgeois: I object as irrelevant and immaterial.

The Court: I will permit it.

(Exception noted for plaintiff.) 30

Q. Ever known of such case?

A. I just don't recall it.

Q. Doctor, don't you know such things have happened?

A. I just said—

Q. The fact that a man deeds a property to his wife or doesn't want to deed it because he is afraid someone else might get it, is that of itself an evidence of insanity?

A. No, sir.

Mr. Bourgeois: I object as irrelevant.

10 The Court: I think he is entitled to cross-examine.

Mr. Bourgeois: Only thing I object to there is no evidence of conveyance ever proposed to his wife.

The Court: Yes, but he has testified himself one of the reasons being because he didn't want some fortune hunter to come in. You opened that subject. I will permit it.

20 (Exception noted for plaintiff.)

Q. Now, do you say that it is an evidence of insanity because a man does not appreciate the value of money?

A. It may be an evidence of insanity.

Q. Is it a necessary evidence?

A. Not necessarily so.

Q. Have you ever known of men of strong mentality who did not appreciate the value of money?

A. Yes, some men don't appreciate it.

30 Q. Isn't it a historical fact that Daniel Webster did not appreciate the value of money?

A. I don't know just about that trait in his character; it might be.

Q. Did you ever hear of his being insane?

A. I don't think I did.

Mr. Bourgeois: I never heard—

Mr. Cole: Never mind about that. We will put you on the stand in a moment. I object to counsel interrupting; if you have any objection, make it.

The Court: Nothing pending at all.

Mr. Cole: You think the witness is getting uncomfortable and you want to help him. He is my 10 witness for the time being.

Q. So that of itself, that is not an evidence of insanity, is it?

A. Not of itself.

Q. Has he got any memory at all?

A. Yes, for some things, I believe.

Q. For some things?

A. Yes.

Q. What has he memory for? 20

A. Well, he remembers about his being up in the State hospital, he seems to remember about the work that he does there, he makes statements about his former life, which I am inclined to think some of them are correct, for instance men in his state, I know very often their memory is more satisfactory for things that happened long ago than recently. Well, there are many things, I believe, he says that his memory is correct about, and others I don't believe he is correct about. 30

Q. Could you, from listening to him today, percentage his memory?

A. Percentage it?

Q. Yes.

A. No, I wouldn't attempt that, be purely a guess.

Q. He happened to remember former Judge Garrison; he was a real person?

A. Yes.

Q. That is some indication of memory, isn't it?

A. Yes.

Q. Some indication of sanity?

A. It is to that extent.

Q. He also remembers Thompson Baker who was a real live person and he has been dead, by the way, some time; he said he understood he was dead; is that an indication of sanity or insanity?

10 A. As far as it goes it is.

Q. Indication of memory?

A. As far as it goes.

Q. He also remembers he has been in Kirkbride's fifteen years ago.

A. So long as that? He has been in Trenton twelve years ago, just prior to that.

Q. Well, we will say twelve years ago?

A. That was his statement, yes.

20 Q. If that was true, is that an indication of memory?

A. To that extent.

Q. And sanity?

A. To that extent.

Q. Now you said that one of the indications that he lacked sanity was the fact that he was antagonizing his own lawyer, is that right?

A. Yes, that is one evident to my mind.

Q. What made you think that I was his lawyer?

30 A. Well, the impression I got from watching the progress of the case today.

Q. Is that all?

A. What I drew my conclusion from, yes, sir.

Q. From that you tell this jury under oath, don't you, that I was his lawyer and he was antagonizing me?

A. That was my understanding.

Q. Where did you get that from?

A. As I just said I got that impression.

Q. Don't you know that this suit is entirely against Helene Witte?

A. I didn't know it; no.

Q. If you didn't know why did you try to leave the impression with the jury he was antagonizing his own lawyer?

A. I wasn't thinking of that part of it.

Q. When do you want the jury to know where you 10 are thinking and not thinking?

A. We will not get excited—I am not a lawyer. I am not taking the different legal aspects of the thing and I only got the impression, as I sat here in the courtroom that you were his attorney. I have never asked any questions about it.

Q. Doctor, if you don't mind, you needn't criticise me getting excited. I will be responsible for that because I will admit I am not perfectly sane so far as I am concerned. We won't have any debate about 20 that.

A. You are not dangerous, anyway.

Q. I want to repeat why did you tell the jury that this man was antagonizing his own lawyer, therefore that was an indication of insanity when you didn't know that I was his lawyer?

A. Now, I can only answer, as I have I am not a lawyer and I didn't go into all the legal sides of the situation. May I finish my answer, sir.

Q. Proceed. 30

A. I got the impression from sitting here and listening to the testimony that you were his attorney.

Q. Is it an indication of insanity that I take it as you assume facts that do not exist?

A. No, I don't think so.

Q. What?

A. Errors in judgment.

Q. That is not an hallucination, is it?

A. No.

Q. Not a delusion?

A. No.

Q. That is simply assuming something you haven't any right to assume?

A. I wouldn't have a right to, not trying to do anything wrong about it.

10 Q. Is there any difference between insanity and a man's ability to appreciate some things and know what he is doing as to that thing?

A. There may be. That is a pretty general question. Be a little more specific about it and I can answer, I think.

Q. That is specific enough for me now.

A. It isn't for me, and I have the answer to give.

(Question repeated.)

20

A. Any difference between insanity and a man's ability to appreciate some things and know what he is doing as to that thing? Yes, surely there is a difference.

Q. Well, if in point of fact, Mr. Witte knew the nature of the act he was doing when he executed this deed on the fourth of September, 1925, and appreciated the effect of that transaction, on him, would you say he was insane as to that transaction?

30 A. If he knew the facts and properly appreciated them, then I think that particular thing was a sane act.

Q. Then that may have been a perfectly sane act and yet he may be insane on some other subject, is that correct?

A. Well, I didn't get the impression that this man has had lucid intervals, it sometimes occurs —

(Question repeated.)

A. Yes, he might be if he properly understood it.

(Question repeated.)

A. That might be.

Q. In other words a man might be sane as to some subjects and insane to others?

A. He may be, surely. 10

Q. You have had experience of that sort, haven't you?

A. Oh, yes; I have seen people insane one way and not another.

Q. Now is it an evidence of insanity that a patient doesn't follow the instructions of a doctor?

A. Not necessarily. He is not exercising good judgment if he doesn't.

Q. But it isn't an evidence of insanity?

A. Not necessarily so; it might be. 20

Q. Did you ever have a patient whom you regarded as sane who did not follow your instructions?

A. Yes, sometimes I have those patients.

Q. But they had bad judgment if they did that?

A. Yes, I would consider it so.

Q. Now, suppose that particular patient happened to think maybe in that particular respect he knew as much about his condition as you did, what then?

A. I couldn't feel he was exercising very good judgment in that conclusion. 30

Q. In other words, you couldn't feel he could know as much about that subject as you?

A. No.

Q. Well, is there such a thing as a man being defective mentally because of a large ego?

A. No. They are all different. A man can have both.

Q. I think that will be all, Doctor.

By Mr. Bourgeois:

Q. Doctor, I suppose it is not an evidence of insanity for a man to refuse to follow the advice of his doctor and not evidence of insanity for him to refuse to do several other different things one at a time; suppose all are combined in the same person, that is, defective memory, bad judgment, unwilling to listen to his doctor, antagonistic, lack of insight into his own condition, incoherent memory, childish pride in small things, hallucinations of conspiracy against a town, what would you then say? Would you say that was just a peculiarity or is that a mental defect?

A. I would say that man was insane.

20 Q. Then it doesn't follow that a man may do one particular thing?

A. Not at all.

Q. That is all.

By Mr. Cole:

Q. What is your definition of insanity?

A. Well, that is rather a difficult question to answer.

30 Q. That is all I want to know. I thought so.

A. I haven't finished yet. I haven't answered. I am just opening up.

Q. Pardon me.

A. Insanity is a condition of the mind in which the individuals no longer think, feel or act in the way which is in proper conformity to the social

customs and usages of the community in which he lives. There might be certain exceptions to that, for instance, if that man was living in a lunatic asylum wouldn't apply and this state of affairs would have to go on for a considerable period of time.

Q. Now this man was put in the insane asylum about twelve years ago and today he recognizes that he has four children, whom he named and one of whom he said had died; is that an indication of insanity to your mind? 10

A. No, that is not an indication of insanity.

Q. That is an indication of insanity, isn't it?

A. As far as it goes.

Q. I think you said a while ago it is perfectly possible for a person to be sane on one subject and insane on some other?

A. Yes.

Q. It is happening every day?

A. Yes, it is happening right along. 20

Q. Would you regard it as an evidence of insanity that this man preferred to deed this property to his single daughter rather than to deed it to all his children when he recognized that this daughter was the one perhaps who would most need the property? Is that an evidence of insanity or sanity in your mind, if that be the truth?

A. That is not an evidence of insanity?

Q. That is an evidence of sanity, isn't it?

A. Well, I don't know how badly she might need it, how badly the others might need it, but the matter would have to be gone into more fully; I would have to know more of the details. 30

By Mr. Bourgeois:

Q. Doctor, wouldn't the amount of the property have a bearing on it?

A. Yes.

Q. If he had property enough to take care of the four of them wouldn't show a question of sanity by deeding it all to one, would it?

A. No.

10

SHEPPARD W. COOMBS, recalled.

Direct examination.

By Mr. Bourgeois:

Q. Mr. Coombs, Mr. Witte said that the \$16,000 that you paid to his wife was used to build thirteen
20 new rooms, bedrooms in the hotel.

Mr. Cole: I don't think he said that.

The Court: I understood him so to testify.

Mr. Cole: He talked about a previous expenditure in enlarging the property.

The Court: I understood him to testify that the
30 money obtained through this sale was used in the making of additions to the hotel, just how many rooms I forget.

Mr. Cole: That was before this event.

Mr. Bourgeois: Certainly it was but he said it was afterwards; he said this money was used for it.

Q. Is that true? Was that true?

A. No. To the best of my knowledge all the alterations as to the expenditures had been done before I went into the agreement to purchase that property.

Q. And they were done at the time when you went into the agreement, they had been made?

A. They had been.

BOTH SIDES REST. 10

MOTION FOR DIRECTION.

Mr. Cole: Defendant moves the Court to direct a verdict in her favor upon the following grounds:

1. The question of insanity of Witte or his ability to execute the deed, which he did, to his daughter is not and cannot be involved in this issue and cannot properly be tried and since that is the only question that now remains for the consideration of the jury there should be a direction. 20

2. There is not sufficient evidence to go to the jury from which they would be warranted in finding that he was not capable of executing the deed to his daughter.

3. The agreement signed by the defendant includes land other than that described in the deed from Witte to Witte and as to that there has been no suggestion of a legal inability on the part of Witte to convey. 30

4. There is not sufficient evidence to go to the jury to justify a finding by it that the defendant was not able to convey such a title as she agreed to convey.

5. It appears uncontradicted that all negotiations in this case were between the plaintiff and Sophia Witte, that the money was actually paid to her by plaintiff's check to her order, and which she cashed, 11) and that no money ever reached the hands of the defendant and that the testimony shows that the plaintiff treated the transaction as one between himself and Sophia Witte.

6. The question of the sanity or insanity of Witte or his ability to execute the deed from himself to his daughter is not before this court. The deed by himself and wife is a deed of general covenant of warranty and cannot be attacked in this proceeding in the way that it was. 20

7. At the time of the negotiations between the plaintiff and Sophia Witte and at the time of the execution of the agreement between plaintiff and Helene F. Witte, the plaintiff had full knowledge of the fact that for twelve years Henry Witte was an inmate of the State hospital at Trenton and he is now estopped from setting up the inability of the defendant to make a good and marketable title, having at the time of the execution of the agreement all the knowledge concerning Henry Witte that he had at the time he instituted this suit. 30

8. On the previous trial of this case there was a direction in favor of the defendant, Sophia Witte, she having been made the defendant. It now ap-

pears in the case beyond cavil by the plaintiff himself that all his negotiations were with Sophia Witte, that he treated the negotiations as with her, that he paid her the check and that she got this money, that Helene Witte, the defendant, never received a cent of it.

The Court: He didn't testify to that. He testified the check was made out to Sophia Witte. 10

Mr. Cole: Check is in evidence, she endorsed it and got the money.

The Court: That it was paid to Helene Witte and it now appears Helene Witte was also the owner of a portion of the property that was being conveyed.

Mr. Cole: I know, but they are now repudiating the whole agreement. We never got any of this money. That is the point anyhow. That judgment 20 having previously gone in favor of Sophia Witte, and it now appearing that she was the one who got the money, and that the plaintiff having testified she was the one with whom he was negotiating, he cannot now claim judgment against Helene.

(Motion overruled.)

(Exception noted for defendant.)

(The case was argued to the jury by Mr. Bourgeois for the plaintiff and Mr. Cole for the defendant and the Court's charge adjourned until Tuesday, April 19, 1927.) 30

April 19, 1927.

CHARGE OF THE COURT.

SOOY, J.:

Gentlemen of the jury: The plaintiff contends that prior to September 5th, 1925, he negotiated with the defendant, Sophia Witte, for the purchase of the hotel premises known as the Adelpia-Witte, situate in Wildwood; that such negotiations were had, as he says, after a promise on the part of Mrs. Witte to convey for the consideration of \$160,500; that on September 2nd, 1925—if I make a mistake as to dates you will correct me—that on September 2nd, 1925, defendant Sophia and her husband conveyed a portion of the property, the east portion of the property being owned by Helene, to their daughter Helene for the purpose of having her make the agreement of sale with plaintiff and for the purpose of conveying all the property to Mr. Coombs on the east set forth in the agreement of sale, to wit, on January 5th, 1926. That on the 5th of September, Helene Witte entered into a written agreement of sale with the plaintiff, in which plaintiff was to pay to the defendant, Sophia Witte, as a deposit or down money the sum of \$16,000. Plaintiff says that at the time of the conveyance to Helene by Mr. Witte and Mrs. Witte, he, Mr. Witte, was insane so that neither Sophia nor Helene were able to convey a good and marketable title free and clear of encumbrances as they had agreed to do under the contract between the parties.

On January 5th, 1926, the date fixed for the settlement under the agreement of sale, Mr. Coombs re-

fused to take title, alleging, among other things, that Mr. Witte's insanity made his deed void and that therefore neither Sophia nor Helene could give title. Mr. Coombs demanded his \$16,000 back, the Wittes refused, and hence this suit. The defendants filed an answer and counter-claim and in their answer they say that they admit that Henry Witte was an inmate of of the New Jersey State Hospital for the Insane on September 2nd, 1925, the date he executed the deed to Helene Witte, and they deny that he was of unsound mind and incapable of executing the deed from him and Sophia, his wife, to Helene; and, further, that on January 5th, 1926, defendants were ready, willing and able to carry out the agreement of sale by a valid conveyance, free and clear of encumbrances, and by a marketable title.

By way of separate suit, or, as we call it, by counter-claim, defendant asks for damages from Mr. Coombs by reason of his refusal to take title to the premises, claiming the difference between the contract price and the \$16,000 down money. I have dealt roughly with the pleadings. You will have the pleadings before you when you go out to consider your verdict.

Now, let us deal with the main issue between these parties. We find that by the terms of the sale agreement of September 5th, 1925, Helene Witte, acting for her mother and her father and for herself, agreed to convey to Mr. Coombs the property in question and to deliver a title as per paragraph 3 of that agreement, which reads:

“The title to the premises shall be free and clear of all encumbrances, including municipal liens and assessments, excepting municipal improvements in the course of construction and not assessed, obvious easements, usual restrictions running with

the land, and shall be a marketable title, and the seller shall have a plain warranty deed conveying such title at the time of the final settlement, or in the event that such title cannot be as above, then this deposit shall be returned to the buyer."

It appears that Mr. Coombs was entitled to have a title free and clear of all encumbrances and a marketable title. What is a marketable title? I charge you that our courts have repeatedly
10 held that "marketable" means salable, and that the title in order to be marketable must be such as to make it reasonably certain that it will not be called into question in the future so as to subject the purchaser to the hazard of litigation with reference thereto.

Now, maybe I would better read that again to you. "Marketable" means salable, and that the title in order to be marketable must be such as to make it reasonably certain that it will not be called into ques-
20 tion in the future so as to subject the purchaser to the hazard of litigation with reference thereto.

If the title which defendant offered to plaintiff on the date of settlement was not a marketable one, as I have defined it, then plaintiff did not have to take it and is entitled to recover on this branch of the case. If, on the other hand, the title was marketable, then plaintiff was in duty bound to take it, and he cannot recover back his down money or any other sum. This, then, is an issue of fact which you must
30 decide from the evidence and the inferences that reasonably arise from that evidence.

I think you may answer this question by considering, first, the mental capacity of Henry Witte on September 2nd, 1925, the date he conveyed his interest in the property to his daughter, for, if he was mentally incompetent on that date, his deed to

Helene was voidable, at least Helene could not have conveyed a marketable title on January 5th, 1926.

The rule as to the mental capacity requisite in cases of this kind is well settled and is thus stated. The test is, did Mr. Witte on September 2nd, 1925, possess sufficient mental ability at the time he signed the deed in question to understand in a reasonable manner the nature and effect of his act and the busi-
ness he was transacting. If he did, he did not lack the mental capacity to convey his interest to his
10 daughter. If not, he did not have such mental capacity, and if he was lacking in that respect, then his deed to Helene was either void or voidable, and under either aspect of the law, plaintiff should re-
cover.

Now, then, in considering this question of mental capacity of Mr. Witte on September 2nd, 1925, you must have before you all the evidence on both sides. You must weigh it carefully, giving to each piece or
part of the evidence the credit or weight you think it
20 entitled to. Consider the probabilities or just inferences that arise from the evidence and each part of it; consider the witnesses as they appeared on the stand, their interest in or lack of interest in the outcome of this suit. Consider the exhibits, remembering that the correspondence was admitted not for the purpose of proving marketability of title, as I have heretofore charged you. Consider also the fact
that Mr. Witte was originally committed by judg-
ment of a court of competent jurisdiction sitting in
30 this county, by taking the testimony of doctors and on the application of members of his family. Remember the testimony of plaintiff's doctors who say in their opinion Mr. Witte was insane on September 2nd, 1925, and still is. Consider the testimony of the doctors for the defendant who say that Mr.

Witte was not insane on that date and is not now insane, and I think one or more of them say he never was insane. Weigh this evidence of the medical experts, give their testimony that weight and credit to which you think it is entitled. Remember that the original commitment of Mr. Witte to this asylum as an insane patient is only *prima facie* evidence of his insanity and subject to be rebutted or overcome by testimony showing a contrary mental condition.

- 10 Consider, also, the appearance of Mr. Witte himself as he appeared on the stand, his testimony, the manner in which he gave it, the impression he made on your minds as he testified. Consider all these things and answer the question, did Mr. Witte on the date he executed the deed to his daughter Helene have the mental capacity I have defined to you. If you find he didn't, your labors are at an end and your verdict must be for the plaintiff. The question is, did Helene Witte on the 5th day of January, 1926,
- 20 offer to Mr. Coombs a marketable title to the property in question, all of it, not just a portion of it, all of it, and a marketable title to the entire property, that is, that which she owned, as well as that which she received by conveyance from her father and mother. Was the title such as to make it reasonably certain that it would not be called into question in the future, so it would subject Mr. Coombs to the hazard of litigation?

- 30 In answering this, you have before you evidence, all the evidence in the case which I have heretofore referred to, as well as that on which I have not touched. The evidence is for you. You are the sole judges of the facts. I didn't attempt to recite them all, and my omission is not to be construed by you as intending that you should omit consideration of them. You are supposed to consider all of the evi-

dence in the case, both that to which I have referred and that to which I have not referred, and if in my reference to any of the testimony I have made a mistake, you are to be guided by your recollection of the facts and not my recollection as I give it to you in my charge. And remember that my recital of the facts as I have called your attention to them, if erroneous, you are to correct. You are to answer this question: Did the Wittes offer to Coombs a marketable title as I have defined it? In answering 10 the question you will take into consideration that Mr. Witte had been committed to the New Jersey State Hospital; that he is still an inmate thereof; that his commitment therein was *prima facie* evidence of his insanity at the time of his commitment; that the question of his sanity was then and is now subject to evidence to contradict the commitment. Remember that sanity is the normal state of mind and every person is assumed to be sane until the contrary is shown; that when insanity existed at a certain time, if it did exist, that that insanity is 20 presumed to continue until the contrary is shown.

There has been something alleged in this case as to the title not being marketable because of certain restrictions imposed on the land. I remember no evidence that these restrictions were unusual. If I am wrong you may correct me.

I charge you that the plaintiff, under the terms of his contract, was bound to take title subject to the usual restrictions running with the land, if the title was otherwise marketable. 30

If you find that the title was marketable as I have defined it under both forms of the question I have submitted to you, then your verdict must be against plaintiff and in favor of the defendant. Otherwise, against the defendant and for plaintiff in the sum of \$16,000 with interest from January 5th, 1926.

Remember that the burden of proof is upon the plaintiff. He must satisfy you by the greater weight of the evidence that the title to the premises in question on the date of settlement was not marketable.

10 With reference to the counter-claim, if your verdict is for the plaintiff you will, of course, not consider the counter-claim. But if you find for the defendant on the question of marketability of the title, then you may consider the counter-claim. Under the counter-claim, defendant would be entitled to recover from plaintiff, if they recover at all, such a sum as you find from the evidence will represent the difference between the contract price and the value of the property, deducting therefrom the \$16,000 already paid.

Now, I am requested to charge by the plaintiff six requests to charge, all of which I refuse to charge excepting as I have already charged them.

20 I am requested by defendant to charge ten specific requests to charge, all of which I refuse to charge excepting as I have charged them.

Gentlemen of the jury, in reference to my charge as to the measure of damages on the counter-claim, you would fix the value of the property as of January 5th, 1926, if you start to compute that value. In other words, the date of the settlement was January 5th, 1926, and that would be the date on which you would fix the value of the property from the evidence.

(The jury retired.)

Mr. Cole: The defendant excepts to the Court's refusal to charge its eleven requests. Also excepts to the Court's statement to the jury that the order

and proceedings before Judge Eldredge were *prima facie* evidence of insanity.

Also to the Court's telling the jury that they may take into consideration on the subject of insanity the fact that Mr. Witte is still in the State Hospital.

Leaving to the jury any question as to the binding effect of the alleged restrictions.

To all that the Court said to the jury upon the subject of insanity, on the ground that that is not in issue, could not be in issue, because Mr. Witte is no party to this proceeding, and that the only legitimate question, so far as mental capacity is concerned, is whether or not he appreciated the nature and effect of his act in which he was engaged.

To all that the Court said in commenting on the order and proceedings before Judge Eldredge, because they are no part of the case.

To all that the Court said in defining marketable title, on the ground that it has no relation to this case, and the circumstances of Mr. Witte's knowledge of all the facts existing at the time that he executed the agreement with Miss Witte.

To all that the Court said upon which the jury would have a right to assume that this contract was between Mr. Witte and Coombs. The fact is that the contract was between Miss Witte and Mr. Coombs, and that neither her father or mother had anything to do with it.

Mr. Bourgeois: Exception to what the Court said about the condition of Witte, about his condition on September 2nd, 1925.

Also to what the Court said when he said the question was, did Witte have mental capacity on September 2nd, 1925.

Exception to the refusal of the Court to charge the several requests as requested.

Mr. Cole: Specifically I want to except to the Court's statement of fact to the jury that Miss Witte was acting for her father and mother.

PLAINTIFF'S REQUESTS TO CHARGE.

10 A title that is defective or doubtful is not a marketable title.

The purchaser should have a title which shall enable him not only to hold his land but to hold it in peace and if he wishes to sell it to be reasonably sure that no flaw or doubt will come up to disturb its marketable value.

Insanity being proved is presumed to continue.

This title is open to attack by heirs of Witte.

20 The commitment papers and order are *prima facie* evidence of their contents.

The question is not simply if Witte comprehended his act of signing the deed on September 4, 1925, but if he was of such a degree of sanity as to remove his act from reasonable doubt as to his sanity.

DEFENDANT'S REQUESTS TO CHARGE.

30 1. The mere fact that Henry Witte was an inmate of the State Hospital at the time he signed and acknowledged the deed to his daughter does not raise a presumption that he was mentally incapable of executing the deed.

2. The burden of proof to establish that Henry Witte was not mentally capable of executing the

deed is upon the plaintiff and he must establish his claim of incapability by the preponderance of the evidence.

3. The only question the jury can consider touching the question of marketability of title is that which questions Witte's mental capacity to execute the deed.

4. The jury has no right to consider the claim that 10 there are restrictive covenants against the land.

5. If at the time Witte executed the deed he had ability to understand the nature and effect of the act in which he was engaged and the business he was transacting, then he had capacity in the law to make the deed.

6. If the jury should find under the test stated that Witte was capable of making the deed there 20 must be a verdict of no cause of action.

7. If the jury find by the test stated that Henry Witte was capable of making the deed there must be a verdict in favor of the defendant on her counterclaim for the sum of \$144,500 with interest from January 5, 1926.

8. The plaintiff cannot recover unless he establishes his claim to the satisfaction of the jury by 30 the preponderance of the evidence.

9. If the jury believe that Coombs knew when he signed the agreement that Witte was in the State Hospital and believed that he was mentally incapable

of executing the deed he cannot recover and defendant is entitled to a verdict on her counter-claim.

10. If the jury believe that at the time Coombs signed the agreement and paid the \$16,000 (which was after Witte had executed the deed) without any knowledge that Witte was in the hospital and that he was mentally incapable of executing the deed he cannot recover.

10

EXHIBIT P1.

THIS AGREEMENT, MADE THE fifth day of September A. D. 1925

BETWEEN Helene Witte of Wildwood, N. J. singlewoman of the first part, hereinafter called the "SELLER," and Sheppard W. Coombs of the same place of the second part, hereinafter called the "BUYER."

20 WITNESSETH, That the "SELLER" agrees to sell and convey and the "BUYER" agrees to buy all that certain lot, tract, or parcel of land and premises situate in the City of Wildwood County of Cape May and State of New Jersey, more particularly described as follows: all that certain property known as the Adelpia-Witte situate on the N. E. Cor. of Atlantic & Pine Avenues including the entire plant, garages, furniture and fixtures therein contained. for the price or sum of One Hundred sixty-two thousand five hundred Dollars, under and subject to the following terms and conditions:

30

1. A first payment of Sixteen Thousand Dollars, receipt of which is hereby acknowledged by the "SELLER."

2. The balance of the purchase price shall be paid in the following manner: Forty-six thousand five hundred dollars cash at time of settlement and a

first mortgage of \$76,000 will be given and accepted for a period of Eight Years and a second mortgage of Twenty-four thousand dollars payable in annual instalments of Three Thousand dollars, both mortgages to bear interest at six per centum per annum, payable semi-annually and contain tax and insurance clauses at the time of final settlement, which shall be made at the office of John Bright 113 E. Wildwood Ave., Wildwood, N. J. on or before January 5, 1926 or the deposit Sixteen Thousand Dollars made herewith, at the option of the "SELLER," may be applied on account of the purchase price or be forfeited as liquidated damages to the "SELLER," and not as a penalty, provided that the necessary title searches can be obtained from any first-class New Jersey title company by that date. Should there be any delay, not the fault of the "BUYER" in the procuring of such searches, the time for the final settlement shall extend until such searches can be obtained.

10

20

3. The title to the premises shall be free and clear of all incumbrances, including municipal liens and assessments, except municipal improvements in the course of construction and not assessed, obvious easements, usual restrictions running with the land, and shall be a marketable title, and the "SELLER" shall tender a plain warranty deed conveying such title at the time of the final settlement, or in the event that such title cannot be as above, then this deposit shall be returned to the "BUYER."

30

4. All adjustments shall be made as of January 5, 1926 and possession shall be given the "BUYER" January 5, 1926

5. The "BUYER" shall pay for searches and all other expenses, excepting the preparation of the deed and the necessary revenue stamps attached

thereto, which shall be paid for by the "SELLER."

6. This agreement shall extend to and be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

7. Time is the essence of this agreement.

8. This contract includes all fixtures and appurtenances permanently attached to the building or buildings on the land herein described and also specifically the following items:

10 IN WITNESS WHEREOF, The parties hereto have set their hands and seals the day and year first above written.

Helene F. Witte (L. S.)
Sheppard W Coombs (L. S.)

Signed, sealed and delivered
in the presence of
John Bright

20 State of New Jersey }
Cape May County, } ss.
BE IT REMEMBERED, That on this fifth day of September in the year of our Lord one thousand nine hundred and twenty-five before me, a Notary Public in and for said County & State personally appeared Helene Witte who I am satisfied is the grantor mentioned in the above deed or conveyance, and I having first made known to her the contents thereof she acknowledged that she signed, sealed and delivered the same as her voluntary act and deed. All of which is hereby certified.

30 John Bright
Notary Public of New Jersey
AGREEMENT
FOR SALE OF LAND
Helene Witte
to
Sheppard W. Coombs

EXHIBIT P2.

Wildwood, N. J. Sept 5th 1925 No.
UB THE UNION BANK 55-405
of Wildwood, N. J.

Pay to the order of Sophia Witte \$16,000 00/100
Sixteen Thousand xx/100 Dollars
For 1st deposit on Hotel Adelpia Witte.

Sheppard W Coombs 10
Safe Deposit Boxes
for Rent

[ENDORSED]
Sophia Witte
Sophia Witte
(Perforated)
PAID
9-8-25
55-405

20

EXHIBIT P3.

Julius Way, President
Hon. William H. Bright, Vice-President
Hiram S. Mowrer, Vice-President
Hon. Henry H. Eldredge, Vice-President
John Sayre, Secretary and Treasurer
William D. Gibby, Title and Trust Officer 30
Robert Bright, Solicitor

CAPE MAY COUNTY TITLE AND TRUST
COMPANY
Cape May Court House, N. J.
Title Insurance Address all Communications
Searches to the Company

Briefs of Title
#13967

December Fifth
1925

Mark R. Sooy, Esq.
Wildwood
New Jersey
Dear Sir:

10 We understand that in the above numbered matter we are to be asked to guarantee a title made by deed from Helene Witte, single, to Sheppard W. Coombs, et al; and that the title of said Helene Witte was vested in her by deed to her from her father, Henry Witte, for a consideration of \$1.00 etc., made and executed by the said Henry Witte while he was an inmate of the State Hospital for the Insane at Trenton. We understand that it is claimed that Mr. Witte was sufficiently compos mentis at the date of the execution of this deed to
20 pass the title, but we cannot take upon ourselves the powers and authority of a competent Court and decide that this is the case. The fact that he was, and is, in the Hospital for the Insane is sufficient to prevent our approval of this deed, which could only be established as a valid conveyance by a Court of competent jurisdiction.

30 It will be necessary, before we can guarantee this title, that the said deed from Henry Witte be established as a valid conveyance in the law under a proper proceeding brought for that purpose or under a proceeding in which that question is properly before the Court for decision, or that a proceeding be brought under the statute in the Court of Chancery to sell the lands belonging to a person of unsound mind.

#13967
12/5/25
Mark R. Sooy

If either of these courses be pursued and proceedings thereunder be brought without delay this Company will probably be in a position to make report on the title about the time that a decree shall be made by the Court of Chancery.

We are advising you of our position in this matter so that you may take such steps as you think 10 advisable and that the matter may be expedited as much as possible.

Yours very truly,
CAPE MAY COUNTY TITLE AND
TRUST COMPANY

By Wm D Gibby
WM. D. GIBBY
Title Officer

WDG/mth

20

EXHIBIT P4.

January 13, 1926.

John Bright, Esq.
Wildwood, N. J.

Dear Sir:

Enclose you herewith an exact copy of letter transmitted to me by the Cape May County Title & Trust Co., concerning the title to the Hotel Adelpia 30 Witte, the purchasers of which I represent.

Under the conditions set forth in this letter which I construe as a preliminary report, it is clearly evident that the Company considers this title defective, and therefore pursuant to the terms of the

agreement, I hereby demand in behalf of the purchasers, the return of the deposit money heretofore paid.

Trusting to hear from you promptly, I remain,
Very truly yours,

RS:MC

10

EXHIBIT P5.

COLE AND COLE
Counsellors at Law
Atlantic City, N. J.
Guarantee Trust Building

C. L. Cole
C. L. Cole, Jr.
Maurice Y. Cole

March 1, 1926.

20 Mark R. Sooy, Attorney,
Wildwood, N. J.

My dear Mr. Sooy:

Miss Witte has conferred with me concerning yours of the thirteenth of January last to John Bright, Esq. Assuming that she is correct in her statement to me, I think she can convey to your client such a title as she agreed to convey and stands ready to do so. She will not return the deposit money. Your client will have a reasonable time after the receipt of this letter if he is willing to exercise his rights, otherwise, my client will regard his silence as a refusal and will forfeit the earnest money paid.

Very truly yours,
C L Cole

CLC VDM

EXHIBIT P6.

Bell Phone 341
Keystone Phone 458

Law Offices
MARK R. SOOY
3317 Atlantic Avenue
Wildwood, N. J.

April 26, 1926. 10

Clarence L. Cole, Esq.
Guarantee Trust Bldg.,
Atlantic City, N. J.

Dear Sir:

I called at your office last Thursday afternoon, but found that you were in Wildwood attending the hearing on the Bulkheading of the Beach Front here.

In reference to the agreement of sale between Helene Witte to Sheppard W. Coombs, our reason 20 for refusal to take this title January 5, the time set in the agreement, at which time I appeared at the Wildwood Title & Trust Co., where settlement was to be made, and met Mr. John Bright, representing the Wittes' and Mr. Crane, the president of the Wildwood Title & Trust Co. is that our searches disclosed the record title remained in the elder Mr. Witte, who is an inmate of the New Jersey Hospital for the insane, and that the Title Company refused to insure the title on a Deed of Gift from him to Helene Witte, which it is our understanding has been executed but not recorded. They taking the position that the fact that he is such an inmate, renders him incompetent to make a valid conveyance without an order from the Court of Chancery. If 30 the title company will not insure the title, then the

title is not marketable, and if we accepted it we would be up against the refusal on the part of those to whom we sold to take the title without proper proceedings, and the Wittes' might then refuse to take such proceedings. It was my understanding at the time, that they would not permit such proceedings now, and of course my clients relying upon the advises of the title company refuses to accept a conveyance and demand the return of their deposit.

- 10 None of the Witte family were present at the time set for settlement, they being absent in California, and no Deed was tendered from Helene Witte to the purchaser. It is my believe that their reason for refusing to have a sale made in the proper manner was because they formerly sold a small property known as the Witte Annex, and the purchasers were satisfied to take a Deed from Mr. Witte upon the statement of Physicians that at the moment of execution of said Deed, he was of sound mind. Such a conveyance would be open to question however, and it might be shown that he was not actually sane at the time that it was executed.

Bell Phone 341
Keystone Phone 458

Law Offices
MARK R. SOOY
3317 Atlantic Avenue
Wildwood, N. J.

-2-

- 30 Clarence L. Cole, Esq.
Guarantee Trust Bldg.,
Atlantic City, N. J.

Dear Sir:

Having applied to two Title Companies for insurance on this title, and having been refused by both unless a sale was ordered and confirmed by

the Court, I feel that my clients are entitled to the return of their deposit, and if you know of circumstances which make the stand of my clients untenable I would like to be advised, so that we may either sue promptly for the return of the deposit or proceed with settlement.

Yours very truly,
M R Sooy

MRS:MC

10

EXHIBIT P7.

COLE AND COLE
Counsellors at Law
Atlantic City, N. J.
Guarantee Trust Building

C. L. Cole
C. L. Cole, Jr.
Maurice Y. Cole

20

May 3, 1926.

Mark R. Sooy, Esq.,
Wildwood, N. J.

RE: Witte.

My dear Mr. Sooy:

I sent to Miss Witte yours of the 26th ult., and she and her mother called this afternoon. They deny that they were not present at the time set for settlement and claim that a duly executed and acknowledged deed had been prepared in advance and that it was ready for delivery at the time of settlement. They showed me the deed which they say was tendered. They seem to be convinced that your client has not given the real reason for refusing to accept a deed, the real reason being that he pur-

30

chased for the purpose of sale and could not thereafter find a purchaser. I do not think that the refusal of the title company to insure the title necessarily makes it unmarketable. Title companies, like the rest of us frail humanity, occasionally do silly and unjustifiable things. I think the real question is whether Mr. Witte was capable of appreciating the nature of his act when he executed and acknowledged the deed. I think there can be no presumption that he was not so capable. Two affidavits by the physicians in charge say that he was capable, and the officer taking the acknowledgment must have thought he was capable otherwise he would not have taken it.

My client is unwilling to return the deposit money. She is willing, without prejudice, to listen to a compromise. If your client is willing to accept \$3,000 I think I can prevail upon my client to pay this sum, otherwise, I think you may as well institute your
20 suit.

Very truly yours,
C. L. Cole

NEW JERSEY COURT OF ERRORS
AND APPEALS.

—————
SHEPPARD W. COOMBS,
Plaintiff-Respondent,

v.

SOPHIA WITTE, and in the alternative,
HELENE F. WITTE,
Defendants-Appellants.

—————
ON APPEAL FROM SUPREME COURT.

—————
BRIEF OF BOURGEOIS & COULOMB,
ATTORNEYS OF PLAINTIFF-
RESPONDENT.

—————
STATEMENT.

This action was instituted in the New Jersey Supreme Court, Cape May County, by Sheppard W. Coombs, to recover from the defendants, Sophia Witte and Helene F. Witte, the sum of \$16,000.00 paid by the plaintiff as a deposit on account of the purchase price of certain premises known as the Hotel Adelpia-Witte situated in the City of Wildwood, Cape May County, New Jersey, and for the purchase of which the plaintiff entered into a written agreement, for the total price of \$160,500.00.

The complaint alleges that prior to the making of the agreement the property was owned by Henry Witte and Sophia Witte, his wife, and that during the latter part of August, 1925, the plaintiff entered into negotiations with the defendant, Sophia Witte, for the purchase of this property, which negotiations resulted in a verbal agreement between the defendant, Sophia Witte, and the plaintiff for the sale of the property for the sum herein above mentioned; that on September 5th, 1925, Henry Witte and Sophia Witte conveyed the said lands and premises to their daughter, Helene F. Witte, for the purpose of having the said Helene F. Witte make the agreement of sale with the plaintiff; that on September 5th, 1925, Helene F. Witte, entered into an agreement in writing for the sale of the said premises to the plaintiff for \$160,500.00 upon which date the plaintiff paid to the defendant, Sophia Witte, a \$16,000.00 deposit; that the agreement called for a conveyance of a good and marketable title by deed of plain warranty. The complaint then alleges that a conveyance was made of the premises in question by deed of gift from Henry Witte and Sophia, his wife, on September 2nd, 1925, to Helene F. Witte, which deed was duly recorded and that, at the time of the making and executing of this deed, Henry Witte was of unsound mind and incapable of executing a valid legal conveyance and was confined in the New Jersey State Hospital for the Insane at Trenton, New Jersey. The complaint then alleges that the conveyance from Henry Witte and Sophia to Helene F. Witte was made for the purpose of imposing an imperfect title upon the plaintiff and that on the day of settlement neither Sophia Witte nor Helene F. Witte were able to convey to the plaintiff a good and marketable title and that the plaintiff attended, at the time and place fixed for the settlement, and de-

manded a conveyance of a marketable title, which the defendants were unable to give, whereupon the plaintiff demanded the return of the deposit of \$16,000.00. The answer admits ownership of the land by Henry and Sophia Witte in August, 1925; the negotiations for the sale between the plaintiff and Sophia Witte; the conveyance of the lands in question by Henry and Sophia Witte to Helene F. Witte; the entering into a written agreement between Helene F. Witte and the plaintiff; and the fact that the agreement called for a good and marketable title. It further admits that, on the day that Henry Witte executed the deed to Helene F. Witte, he was an inmate of the New Jersey Hospital for the insane, but denies that he was of unsound mind and incapable of executing the said deed or a valid legal conveyance of his interest in the premises. It further denies that the conveyance to Helene F. Witte was made for the purpose of imposing an imperfect title upon the plaintiff, and also denies that the defendants were unable to convey to the plaintiff a good and marketable title. The defendants also counter-claimed for the sum of \$144,500.00 representing the balance of the purchase price.

The agreement in question contained the following clause:

“The title of the premises shall be free and clear of all encumbrances, including municipal liens and assessments, except municipal improvements in the course of construction and not assessed, obvious easements, usual restrictions running with the land, and shall be a marketable title, and the seller shall tender a plain warranty deed conveying such title at the time of the final settlement, or in the event that such title cannot be as above then this deposit shall be returned to the buyer.” (Case 287.)

The controversy centered on the question of marketable title, the contention of the plaintiff being that Henry Witte was committed to the insane asylum upon proof of his insanity; that he was insane at the time of the execution of the conveyance by him to Helene F. Witte, and that he did not understand the nature and effect of this act.

At the close of the evidence a motion for a direction of a verdict for the defendants was made and denied and the trial Judge left the case in the hands of the jury with the instruction that the issue involved was whether, on the day of settlement, the title which the defendants tendered to the plaintiff was a marketable title or an unmarketable title, stating that the title, in order to be marketable, must be such as to make it reasonably certain that it will not be called in question in the future so as to subject the purchaser to the hazard of litigation with reference thereto. He then stated to the jury that, in deciding whether the title was marketable, the jury should consider the mental condition of Henry Witte on the date when he conveyed his interest to his daughter, the test being whether, on the date in question, Mr. Witte possessed sufficient mental ability to understand in a reasonable manner the nature and effect of his act and the business he was transacting and then went on to elaborate on the facts and law.

The jury returned a verdict against both defendants in the sum of \$16,000.00.

The appellants allege thirty-five grounds of appeal. Some of these grounds are discussed in their brief, grouped under various headings. The remaining grounds are not argued in their brief and may, therefore, be considered as abandoned. We will assume the discussion of them in the same method adopted by the appellants.

ARGUMENT.

I.

Appellants' first proposition is that it was error to submit to the jury the question of whether the premises were free and clear of encumbrances. The agreement provided that the title to the premises should be "free and clear of all encumbrances," with certain enumerated exceptions, one of which was "usual restrictions running with the land." The plaintiff produced a witness, John Sayre, who testified that he had made an examination of the title to the property in question and that the title went back to the Wildwood Beach Improvement Company and that this particular piece of land was originally a part of a much larger piece owned by this company. When the lots were originally conveyed the deeds contained certain restrictions with regard to the character of erection of the buildings and prohibiting the erection of any such buildings as a slaughterhouse or any other nuisance (Case, pp. 107, 108). He also testified that subsequently some of the land which had been originally conveyed by the Wildwood Beach Improvement Company came back to it, and was then again conveyed away and in these latter conveyances there was a third restriction imposed to the effect that all buildings should be artistic in design and attractive in finish, and that no factory, livery stable, public garage, slaughterhouse or fish market should ever be erected or conducted on the premises conveyed. There were also other restrictions applying to the beach front, which had nothing to do with the premises in question (Case, pp. 108, 116, 117). The trial Judge charged the jury, on this phase of the case, as follows:

"There has been something alleged in this case as to the title not being marketable because of certain restrictions imposed on the land. I remember no evidence that these restrictions were unusual. If I am wrong you may correct me."

It is contended by the appellants that the trial Judge was in error in so instructing the jury, and that the Court should have either withdrawn the question of the restrictions from the jury altogether or should have given the jury binding instructions that the given restrictions were usual restrictions.

It is submitted that in so instructing the jury the trial Judge charged more favorably for the defendants than for the plaintiff. The contract provided that "The title to the premises shall be free and clear of all encumbrances, including municipal liens and assessments, except municipal improvements in the course of construction and not assessed, obvious easements, usual restrictions running with the land, and shall be a marketable title." The plaintiff proved that the land in question was encumbered by certain building restrictions. It has been held that building restrictions constitute an encumbrance. *Propper v. Colson* (86 N. J. Eq. 399, 401). The plaintiff, having proved the building restrictions upon the property, thereby proved that the premises were not free and clear of encumbrances and the question would then arise as to whether the restrictions in question came within the exception of usual restrictions running with the land. The burden of proving that these restrictions were usual restrictions was upon the defendants. The trial Judge, by his charge, instructed the jury that to his recollection there was no evidence that the restrictions were *unusual*, thereby casting upon the plaintiff the bur-

den of showing that the restrictions were unusual rather than requiring the defendants to sustain the burden of showing them to be usual.

Aside from the question of burden of proof, the question of whether the restrictions were usual or unusual was one of fact for the jury. Whether the restrictions were those ordinarily and customarily imposed in that locality was certainly not a question for the Judge to pass upon but one for the jury.

Defendants' fourth request was, "The jury has no right to consider the claim that there are restrictive covenants against the land." The defendants also excepted to the charge of the Court as follows: "Leaving to the jury in question as to the binding effect of the alleged restrictions." In view of the terms of the contract above quoted and of the proof as to the restrictions, which, in law, constituted an encumbrance, it would have been impossible for the Court to charge as requested. This request, moreover, did not touch the question of usual restrictions but went far beyond that. The same applies to the exception of the defendants to the Court's charge.

II.

Appellants' second proposition is based upon the refusal of the trial Court to charge the jury that if the jury believed that Coombs knew, when he signed the agreement, that Witte was in the State Hospital and that he was mentally incapable of executing the deed he could not recover and the defendant was entitled to a verdict on her counter-claim. The theory of the appellants seems to be that if Coombs knew of Mr. Witte's confinement in the insane asylum he should be estopped from asserting that the title tendered him was unmarketable. If it be a fact

that Mr. Coombs knew that Mr. Witte was an inmate of the asylum and had been for some years it could not operate as a bar. This is established by the authorities. In *Simpson v. Klipstein* (89 N. J. Eq. 543), where the contract provided for the sale and conveyance of certain real estate by a "good and marketable title free and clear of all encumbrances," the defendant declined to accept the deed tendered for the reason, among others, that the complainant's title was encumbered by various easements. Judge Trenchard, speaking for the Court of Errors and Appeals, said, at page 547:

"The fact that the defendant before making his contract saw the map showing the paper street (of which there were no physical indications on the ground) does not constitute a waiver of objections to the title because of the public servitude created by the dedication of the street to public use by conveyance by reference to such map, or estop the defendant from insisting upon his contract right to a 'good and marketable title free and clear of all encumbrances.' *Propper v. Colson*, 99 Atl. Rep. 385; *McAndrews & Forbes Co. v. Camden*, supra; *DeLong v. Spring Lake*, 72 N. J. Law 125; *Demars v. Koehler*, 62 N. J. Law 203."

The remarks of Chief Justice Magie in *Demars v. Koshler* (62 N. J. L. 203, at p. 206), apply to the present situation:

"How does the grantee's knowledge of the existence of such an encumbrance alter the situation? Such knowledge does not ordinarily prevent recovery upon this covenant. It could not be contended that a grantee would be debarred from recovering for a breach of this covenant resulting from an outstanding mortgage, by

proof that he had constructive notice of the mortgage by its record or had actual knowledge of its existence."

Under these authorities it is submitted that Mr. Coombs' knowledge of Witte's confinement cannot constitute a bar to his right of action. In fact, such knowledge, coupled with the refusal of the title company to insure the title, is more reason why Mr. Coombs should make a claim that the title was unmarketable, for this constituted notice that defendant's title was questioned and in doubt and that there were facts which would justify the conclusion that the title was invalid. This could not be safely disregarded by a purchaser, as it directly involved the validity of the title. *Brokaw v. Duffy* (59 N. E. Rep. 196, 199).

III.

Appellants' third proposition is that it is error for the trial Court to instruct the jury that the order and proceedings before Judge Eldredge were *prima facie* evidence of insanity and also that it was error to admit the commitment in evidence.

The commitment was signed by Judge Eldredge, of the Cape May County Court of Common Pleas, and was filed on June 2nd, 1915, and was admitted in evidence as Exhibit P8 and is to be found on pages 82 to 84. It recites the application with physician's certificates attached alleging the insanity of Henry Witte; also the appearance at the final hearing of certain witnesses, including a physician and the finding of the Judge that Henry Witte was insane and that he be committed to the New Jersey State Hospital at Trenton, permanently or until restored to

his right mind. It was admitted that Witte was still an inmate of the hospital at the time of the trial (Case, p. 80), though he was later produced during trial. The trial Judge, in his charge to the jury, stated that the original commitment of Mr. Witte to the asylum as an insane person was *prima facie* evidence of his insanity, subject to be rebutted or overcome by testimony showing a contrary mental condition (p. 280).

No cases have been found in this State in which the Court has passed upon the evidential effect of an order of commitment such as the one in the present case, but there are a number of cases in which the Court has held that the findings of a commission *de lunatico* is *prima facie* evidence of insanity. The matter is discussed in *In re Coleman* (88 N. J. Eq. 284), in which case many of the authorities are reviewed. See also *Hill v. Day* (34 N. J. Eq. 150). The findings of the Judge in a proceeding for commitment are certainly entitled to as much weight as the findings of a commission in a proceeding *de lunatico*. As far as the taking of testimony is concerned, the proceedings are much the same. In proceedings for a commitment, the statute provides that the Justice or Judge may, in his discretion, upon the presentation to him of the said application and certificates, institute inquiry and take proof as to the insanity of the said person and may, in his discretion, call a jury to determine the question of the insanity of the said person and shall have the power to compel the attendance of witnesses and jurors. Notice of the hearing must be given either to the alleged lunatic, or to the next of kin, or the person with whom he resides (P. L. 1913, 449, *et seq.*). This was the law at the time of Witte's commitment. A further revision has since been made (Cum. Supp., Vol. 1, p. 310, *et seq.*). The fact that the findings of a

Judge upon application for commitment are entitled to so much weight as the findings of a commission is impliedly recognized in the statute concerning idiots, lunatics and drunkards (2 C. S., p. 2785, Sec. 3-e), where it is provided that whenever a person has been adjudged insane by a Judge of the Court of Common Pleas and committed to or confined in any lunatic asylum, and it shall appear that such person is seized of any property, real or personal, or entitled to any interest therein, it shall be lawful for the Orphans' Court to appoint a guardian of such lunatic, without its being necessary to have the idiocy or lunacy determined by an inquest on a commission to be issued out of the Court of Chancery. If the order of commitment is not *prima facie* evidence of insanity, it is difficult to see how there can be any legal justification for confining the alleged lunatic in an asylum.

We contend that the order of the Court was *prima facie* evidence of his insanity by virtue of the statute. Suppose, after Witte's confinement, he had been brought before the Court in a *habeas corpus* proceeding alleging that his confinement was unlawful and had caused to be offered in evidence the original commitment, but no other evidence, would he have been set free or would the Court have held that the commitment was *prima facie* evidence of his insanity? If the Court should refuse a discharge, there would seem to be no theory upon which he could have been restrained of his liberty except upon the theory that the Court order of commitment was *prima facie* evidence of his insanity.

It is also contended by the appellants that, even if the finding is *prima facie* proof, it is only so at the time of the finding. But insanity once proved is presumed to continue until the contrary is shown.

See *Boylan v. Meeker* (28 N. J. L. 274, at 280), the Court states:

"Where a state of insanity is shown to have existed at a certain time it is presumed to continue until the contrary is shown."

This answers the contention of the appellants that the trial Judge shifted the burden of proof to the defendants on the question of insanity. The trial Judge did not shift the burden of proof but stated that the commitment was *prima facie* evidence subject to be rebutted by the defendants.

IV.

Appellants' next point is that the trial Court was in error in discussing the question of insanity with the jury.

The Court in its charge to the jury stated as follows (p. 278):

"If the title which defendant offered to plaintiff on the date of settlement was not a marketable one, as I have defined it, then plaintiff did not have to take it and is entitled to recover on this branch of the case. If, on the other hand, the title was marketable, then plaintiff was in duty bound to take it, and he cannot recover back his down money or any other sum. This, then, is an issue of fact which you must decide from the evidence and the inferences that reasonably arise from that evidence."

Also, on page 280:

"The question is, did Helene Witte on the 5th day of January, 1926, offer to Mr. Coombs a marketable title to the property in question, all

of it, not just a portion of it, all of it, and a marketable title to the entire property, that is, that which she owned, as well as that which she received by conveyance from her father and mother. Was the title such as to make it reasonably certain that it would not be called into question in the future, so it would subject Mr. Coombs to the hazard of litigation?"

This was a plain statement of the issue involved. The question was whether the defendants offered the plaintiff a marketable title on the day of settlement.

The meaning of the term "marketable title" has been frequently defined by the Courts in this State. In the case of *Simpson v. Klipstein* (89 N. J. Eq. 543, at 545), the Court said:

"Putting out of view the mortgages specified (with which we are not concerned) under such a contract the vendor was bound to have and tender a title free from encumbrances, and dependent for its validity upon no doubtful questions of law or fact. The title must be such as to make it reasonably certain that it will not be called into question in the future so as to subject the purchaser to the hazard of litigation with reference thereto. *Vreeland v. Blauvelt*, 23 N. J. Eq. 483; *Methodist Episcopal Church v. Roberson*, 68 N. J. Eq. 431; *Van Riper v. Wickersham*, 77 N. J. Eq. 232."

Dobbs v. Norcross (24 N. J. Eq. 327), our Court of Chancery held that:

"Every purchaser of land has a right to demand a title which shall put him in all reasonable security, and which shall protect him from apprehension of suits. He should have a title which will enable him not only to hold his land,

but to hold it in peace; and if he wishes to sell it, to be reasonably sure that no flaw or doubt will come up to disturb its marketable value."

In *Smith v. Reidy* (92 N. J. Eq. 586), our Court of Chancery held:

"A title that is defective or doubtful is not a marketable title, and equity will not compel the acceptance thereof by the vendee."

In Maupin on Marketable Title to Real Estate, Third Edition, p. 841, it is stated:

"A title dependent upon a conveyance executed by one admitted to be an infant or a person *non compos mentis* is absolutely bad, for such a deed is void. But if the fact of infancy or the want of contractual capacity be in dispute, and there be a reasonable doubt as to the existence of either, then the title is technically doubtful or unmarketable, and the purchaser will not be required to complete the contract."

We contend in this case that the fact that Henry Witte had been committed to the insane asylum upon an order of commitment of the Common Pleas Judge raised a presumption of insanity which, coupled with the fact that he was still an inmate of the asylum down to the time of settlement raised such a doubt as to the validity of the title as to make the title uncertain and doubtful, and, therefore, unmarketable. The matter was well stated by the New York Court of Appeals in *Brokaw v. Duffy* (59 N. E. 196, at 199):

"We are not called upon to determine whether the defendant could convey a marketable title to a *bona fide* purchaser who had no notice of the alleged insanity of her grantor, but whether

she could convey a title which was marketable as to the plaintiff, while he possessed the knowledge acquired by his investigation. In determining that question the inquiry is not whether the defendant's grantor was or probably was insane, but whether the plaintiff received such notice of the probable invalidity of the defendant's title as to justify him in rejecting it as unmarketable, because he might be required to defend it upon the ground that her grantor was insane. While it may be that the lunacy proceedings which came to the plaintiff's knowledge and were admitted in evidence upon the trial were insufficient to establish the invalidity of the defendant's title, they were at least sufficient notice to the plaintiff to put a reasonably prudent man upon inquiry as to its validity. They constituted notice that the defendant's title was questioned and in doubt, and that there was existing proof which would justify the conclusion that it was invalid as against him. This notice could not be safely disregarded by a purchaser, as if directly involved the validity of the title. Under these circumstances, the defendant was bound to show by proof which would be satisfactory to a reasonable person that her title was unimpaired by the alleged defects of which the plaintiff had notice, and when she omitted and neglected to make any explanation the plaintiff was not required to accept the proffered title, but might recover the money paid upon the contract."

We, therefore, contend that it was proper for the trial Court to discuss with the jury the question of insanity, for this question bore a vital relation to the question of the marketability of the title. The

case of *Kern v. Kern* (51 Eq. 574), cited by the appellants in their brief, was a suit by husband, through his guardian, to annul a marriage on the ground of the alleged mental incapacity of the husband to enter into a marriage contract. The Court stated the rule at page 579, but in that case the Court was speaking of an action to set aside a contract between the parties to the contract. In the present case, the plaintiff's position was that of an outside person and the rule of the *Kern* case as to mental capacity as between the parties to a contract would have no application.

V.

Appellants' next point is that the Court should have directed a verdict for the defendants. As has already been stated, the issue is whether the defendants were able to convey to the plaintiff a marketable title. The meaning of "marketable title" has been discussed under the last point and the position of the plaintiff was there defined, it being that the fact that Henry Witte was confined in the insane asylum was *prima facie* evidence of insanity which, coupled with the fact that he had continued to be an inmate of the asylum from that time forward down to the day of settlement raised a sufficient doubt as to the validity of the title to make the same unmarketable, as defined by our Courts.

The defendants' contention was that the question was whether Henry Witte had sufficient mental capacity at the time of executing the deed to his daughter to appreciate the nature and effect of his act. The trial Court charged the jury, on page 279, that the test was had Mr. Witte on September 2, 1925, possessed sufficient mental ability at the time he

signed the deed in question to understand in a reasonable manner the nature and effect of his act and the business he was transacting. This was the test for which the defendants were contending, although it was a narrower statement of the issue than that contended for by the plaintiff. However, even if this statement of the trial Court be taken at its face value, it is submitted that there was such a dispute as to the facts as to make it impossible for the Court to direct a verdict. It was in defendants' favor and he cannot complain of it.

Dr. Mayhew, testifying for the plaintiff, at page 104, said:

"Q. Going back to the question about capacity: In your judgment, from what you observed of him at that time when you examined him last, and what he said to you, are you of the opinion that he did have capacity to know what he was doing when he signed that deed?

A. He did not.

Q. Did not. Did he comprehend what he was doing?

A. He may.

Q. Would he comprehend the effect of what he was doing?

A. No, sir.

Q. Would he comprehend the importance, the enormity of it?

A. No, sir."

Dr. Yawger, testifying as an expert for the plaintiff, said, at page 254:

"Q. Assume that he has not changed during the twelve years he has been there, that he was sane now, that is, according to the testimony of a witness, and was sane when he came in there; now you have heard him today. In your judg-

ment, was he competent in September of 1925 to comprehend the nature and the extent of the signing of a deed to property for \$160,000?

A. In my judgment, he was not."

Dr. Charlesworth, testifying, at page 88, said:

"A. I asked him why he would sign that deed to his daughter and exclude the other children. I had as a point to determine the man's sanity. I said, 'Did you know what you was doing?' He says, 'Yes, I always know what I am doing.' I says, 'You realize, then, that you are excluding your children?' He said, 'I always know what I am doing.' That was an important thing to me in the examination. The man didn't know what he was doing.

Q. Now, what else did he say about that?

A. He said, 'If I signed this deed,' he said, 'they told me I would get my freedom and a hundred dollars.'

Q. And what with the hundred dollars?

A. And he says, 'Then I am going to the Pocono Mountains,' I says, 'Mr. Witte, why not come down to Wildwood, because there is a nice climate and that is where your people are.' He says, 'Well, I don't like Wildwood; the people don't like me. They say I am crazy. They persecute me. They annoy me. And I want to go to the Pocono Mountains for a hundred dollars.'

Q. And did he say that if he signed that he believed and understood if he signed that deed he would be free?

A. Said he would get his freedom and a hundred dollars and go to the Pocono Mountains.

Q. If he signed the deed?

A. If he signed the deed."

The defendants produced Dr. Funkhouser and Dr. Holland to testify on their behalf to the effect that Mr. Witte did comprehend the effect of his act. This certainly raised a question of fact for the jury and it was impossible for the trial Court to direct a verdict in view of this contradictory testimony. As to the appellants' contention that all the negotiations were between the plaintiff and Sophia Witte alone, this was answered by the Court when it pointed out that although the check for \$16,000.00 was made out to Sophia Witte and was endorsed by her, still Helene Witte was the owner in her own name of the part of the property that was being conveyed and that the \$16,000.00 was paid to her (p. 275). Moreover, Helene Witte signed the agreement with Coombs (p. 46). The judgment was against both defendants and the appeal is prosecuted on behalf of both.

VI.

Appellants' next point is that it was error for the trial Court to refuse to charge the jury that the mere fact that Henry Witte was an inmate of the State Hospital at the time that he signed and acknowledged the deed to his daughter, raised no presumption that he was mentally incapable of executing the deed. The Court charged the jury as follows (p. 281):

"Did the Wittes offer to Coombs a marketable title as I have defined it? In answering the question you will take into consideration that Mr. Witte had been committed to the New Jersey State Hospital; that he is still an inmate

thereof; that his commitment therein was *prima facie* evidence of his insanity at the time of his commitment; that the question of his sanity was then and is now subject to evidence to contradict the commitment. Remember that sanity is the normal state of mind and every person is assumed to be sane until the contrary is shown; that when insanity existed at a certain time, if it did exist, that that insanity is presumed to continue until the contrary is shown."

This was a correct statement of the principles and facts involved. The Court's statement that when insanity existed at a certain time, if it did exist, that that insanity is presumed to continue until the contrary is shown, is a correct statement of the law as laid down in *Boylan v. Meeker* (28 N. J. L. 274, 280).

VII.

Appellants' seventh point is based upon alleged error in overruling certain questions asked Dr. Funkhouser. He testified that he was present when Mr. Witte executed the deed before a notary public in the State Hospital at Trenton. After stating that he took Mr. Witte to the notary's office, he was asked what the notary said to Mr. Witte and his reply was, "I don't remember his exact words" (p. 138). He was then asked to state the substance of what the notary said to Mr. Witte. This was objected to on the ground that it was hearsay. It is now contended that the Court should have permitted this testimony in order that the jury might be better able to judge Mr. Witte's mental condition. In asking Dr. Funkhouser to state the substance of what the notary said

the defendant was clearly attempting to bring in testimony which was hearsay and which was not admissible under any of the exceptions to the hearsay rule and, this being so, the trial Judge was bound by the rules of evidence to exclude the testimony and acted properly in overruling the same.

VIII.

Appellants' eighth and last point is that the Court erred in admitting in evidence Exhibits P3, P4, P5 and P7.

Exhibit P3 was a letter from Cape May County Title and Trust Company to Mark R. Sooy, Esquire, attorney for Mr. Coombs, and is found at page 289. This letter states that the fact that Mr. Witte was in the hospital for the insane was sufficient to prevent the approval of the title company to the deed from Henry Witte to Helene Witte and that before the title would be insured it would be necessary that the said deed be established as a valid conveyance in the law under a proper proceeding brought for that purpose, or that a proceeding be brought under the statute in the Court of Chancery to sell the lands belonging to a person of unsound mind.

Exhibit P4 was a letter from Mark R. Sooy to John Bright, then representing the defendants, transmitting a copy of the letter from the title company.

Exhibit P5 was a letter from C. L. Cole to Mark R. Sooy stating that Miss Witte had conferred with him concerning the matter and that she was of the opinion that she could convey to Mr. Coombs such a title as she agreed to convey and refusing to return the deposit to him.

Exhibit P7 was another letter from C. L. Cole reiterating his statement that his clients would not return the deposit money and again contending that his clients were in a position to convey a marketable title.

These letters were all admitted for one specific purpose, which is stated by the Court on pages 36 and 63:

“The Court: For the purpose of showing the objections to the title, not for the purpose of proving the title I will permit the letter to be received in evidence.”

* * * * *

The Court: These letters are admitted subject to your connecting up the defects in title by proof of defects in title other than by statements contained in these letters.

Mr. Bourgeois: Certainly.

The Court: And if you do not follow it by such proof, then these letters will be stricken and the jury will be then charged with reference thereto.”

The plaintiff's contention was that the fact that Henry Witte was committed to the insane asylum was *prima facie* evidence of his insanity and the plaintiff further contended that Mr. Witte had continued to be insane from that time forward. This being so the question was whether the defendants could convey to the plaintiff a marketable title which meant a title dependent for its validity upon no doubtful questions of law or fact. The letter from the title company was introduced to show what objection had been made to the validity of the title, and the letters constituting Exhibits P4, 5 and 7, showed that these doubts and objections had been

brought to the attention of the defendants and for these purposes the letters were properly admitted in evidence.

It is submitted that there was no error and that the judgment should be confirmed.

BOURGEOIS & COULOMB,
MARK R. SOOY,
Attorneys for Respondent.

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New Jersey Court of Errors and Appeals

SHEPPARD W. COOMBS,
Plaintiff-Respondent,

v.
HELENE F. WITTE,
Defendant-Appellant.

ON APPEAL FROM SUPREME COURT.

APPELLANT'S BRIEF.

STATEMENT.

This is an action instituted in the Supreme Court and tried at the Cape May Circuit. There was a verdict for the plaintiff, and from the judgment thereon this appeal was taken. The action was to recover the down money paid by the plaintiff under a written contract signed by Helene F. Witte, in which the plaintiff agreed to buy and defendant agreed to sell certain real estate in Wildwood, this State. Among other things, the agreement provided:

“The title to the premises shall be free and clear of all encumbrances, including municipal liens and assessments, except municipal im-

provements in the course of construction and not assessed, obvious easements, *usual restrictions running with the land*, and shall be a marketable title, and the seller shall tender a plain warranty deed conveying such title at the time of the final settlement, or in the event that such title can not be as above, then this deposit shall be returned to the buyer."

The judgment was entered against both Sophia Witte and Helene F. Witt.

Paragraph eleven of the complaint says:

"That on the day of settlement, to wit, the 5th day of January, 1926, neither the said Sophia Witte or Helene F. Witte, defendants, was able to convey to plaintiff a good and marketable title, free and clear of encumbrance, as in said contract provided, and neglected and refused so to do."

This was the issue. Error is assigned on the Court's refusal to direct a verdict for the defendant and for alleged trial errors.

ARGUMENT.

I.

IT WAS ERROR TO SUBMIT TO THE JURY THE QUESTION OF WHETHER THE PREMISES WERE FREE AND CLEAR OF ENCUMBRANCE.

The allegation that the premises were not free and clear of encumbrance was grounded upon cer-

tain restrictive covenants running with the land. As per the quotation from the agreement, it will be observed that there was an exception, "usual restrictions running with the land." All the proof touching the restrictions was offered by one John Sayre, whose testimony begins at page 105. From his testimony it will be noticed that he refers to two sets of restrictions imposed on the land. One set was imposed by Wildwood Beach Improvement Company, the owner of a large tract, of which the premises in question were a small part. They are undoubtedly usual restrictions running with the land. They were imposed by two deeds from said company, and the witness said that they were exactly the same. The second restriction covered, among other things, the corner lot, and are usual in their character. Maps were filed by the grantors.

Notwithstanding that these restrictions were manifestly the usual restrictions running with the land, the trial Court permitted the jury to pass upon them as a question of fact. At page 281 the Court said:

"There has been something alleged in this case as to the title not being marketable because of certain restrictions imposed on the land. I remember no evidence that these restrictions were unusual. If I am wrong you may correct me."

However, he did not withdraw that question from the jury and because he did not an exception was taken at page 283, as follows:

"Leaving to the jury any question as to the binding effect of the alleged restrictions."

Thus, the Court's attention was explicitly directed

to the question and also by the fourth request to charge, at page 285, in this language:

"The jury has no right to consider the claim that there are restrictive covenants against the land."

Nowhere in the charge does the Court undertake to define what are "usual restrictions running with the land." This was a question for Court decision upon the undisputed facts.

It was, therefore, error in not withdrawing that subject from the consideration of the jury.

II.

IT WAS ERROR NOT TO HAVE CHARGED THE FOLLOWING: "IF THE JURY BELIEVES THAT COOMBS KNEW WHEN HE SIGNED THE AGREEMENT THAT WITTE WAS IN THE STATE HOSPITAL, AND THAT HE WAS MENTALLY INCAPABLE OF EXECUTING THE DEED, HE CANNOT RECOVER AND DEFENDANT IS ENTITLED TO A VERDICT ON HER COUNTER-CLAIM."

The title to a small portion of the property was in Helene F. Witte; the larger portion in Henry Witte. There was no question as to the title in Helene Witte. The controversy touches the title in Henry Witte. He had owned the property for years. He had been an inmate of the State Hospital at Trenton for a number of years, to the knowledge of the plaintiff. With this knowledge, he approached Mrs. Witte and told her he wished to buy the property. She told him that she would have to consult Mr. Witte and have him execute a deed. She

visited the hospital where her husband signed and acknowledged the deed to the defendant, Helen Witte, daughter, and Mrs. Witte executed and acknowledged the deed in Wildwood. The proof shows that this method was adopted in order that the daughter might negotiate the transaction with plaintiff, and as she owned a part of the premises he wished to purchase. He was informed of the deed having been made to Helene, and with this knowledge, the agreement in question was drawn and executed by him and Helene.

He made application to a title company for insurance, and when it learned that Witte was an inmate at the hospital, refused to insure the title upon the assumption that because he was confined in the hospital he was not mentally capable of executing the deed. Because of this refusal, the plaintiff assumed that Helene Witte could not convey a marketable title and refused to accept a warranty deed executed by her and tendered as a compliance with her agreement. There was nothing in the agreement which provided that she was to give an insurable title.

Being fully advised of the fact of Witte's confinement, and that it was necessary for Mrs. Witte to go to Trenton to have her husband execute the deed, with full knowledge that he had done so and vested the title in the daughter by a full warranty deed, he set up the defense of unmarketability, based wholly upon the title company's refusal to insure the title. These facts were not controverted.

He should be estopped now from asserting that the title tendered him was unmarketable for the reasons stated. His conduct has placed a cloud over the title that might never had occurred if he had not himself circulated the story of unmarketability, based upon the title company's refusal. In every

other respect, except the fact of Witte's confinement in the hospital, the title was marketable and free from encumbrance, and her deed warranted the title.

III.

THE COURT ERRED IN INSTRUCTING THE JURY THAT THE ORDER AND PROCEEDINGS BEFORE JUDGE ELDREDGE WERE PRIMA FACIE EVIDENCE OF INSANITY.

IT ALSO ERRED IN ADMITTING THE COMMITMENT IN EVIDENCE.

The commitment in question was made in 1915, and was made under the statute. It was not under a proceeding de lunatico. At page 280, the Court said:

"Remember that the original commitment of Mr. Witte to this asylum as an insane patient is only *prima facie* evidence of his insanity and subject to be rebutted or overcome by testimony showing a contrary mental condition."

In the first place, the order and proceedings were not *prima facie* evidence of insanity at the time of the making of the deed, even if they were at the time the order was made. We find no case which holds that such an order is *prima facie* evidence of insanity, in a collateral proceeding. The statute does not make it *prima facie* evidence of insanity.

At the trial, counsel cited *Kern against Kern*, 51 Equity, 574, in support of his contention that the order and proceedings were admissible in evidence and were *prima facie* evidence of insanity. That case does say that:

"The inquisition is competent evidence as *prima facie* proof of the finding therein contained, but is not conclusive."

But even there, it is only *prima facie* proof of the condition at the time of the finding.

It will be noted that the trial Judge shifted the burden of proof to the defendant on the question of insanity. Insanity was not the issue. The issue was, as so said in *Kern against Kern*, whether at the time of the act in question the alleged insane person was capable of appreciating the nature and character of the transaction in which he was engaged.

The Court also told the jury that in considering the question at issue they might take into consideration on the subject of insanity, the fact that Witte was still in the hospital. Exception was taken to this upon the ground above stated, to wit, that insanity was not the issue, and moreover the mere fact that he was in the hospital was not evidence of his inability to execute the deed.

IV.

IT WAS ERROR IN THE COURT'S DISCUSSING THE QUESTION OF INSANITY TO THE JURY.

Throughout the charge, the Court discussed insanity and mental capacity to make the deed as though they were synonymous. At page 281 he said:

"Remember that sanity is the normal state of mind and every person is assumed to be sane until the contrary is shown; that when insanity existed at a certain time, if it did exist, that

that insanity is presumed to continue until the contrary is shown."

This phase is lucidly discussed in Kern against Kern at page 577:

"The old doctrine that the mind, although it has different faculties, is one and indivisible, and that, if any of its parts is disordered, or if it is any way diseased, or its healthy operation in any function disturbed, it is an unsoundness which affects the whole organ and renders the person legally of unsound mind and incapable of entering into a civil contract, is no longer recognized.

The question, under the present state of the law, is not whether the mind of the party was in any way affected or impaired, but whether, such being the case, the impairment or defect of the mind influenced or inspired the act which is the subject-matter of consideration. For, admitting that the party was subject to some delusion, or that his mind was in some faculty impaired, if the act challenged is not traceable to, and has not probably been influenced by, the defect of intellect, but is the result, so to speak, of the action of the unimpaired faculties of his mind, it will not be disturbed."

The evidence in this case forcefully shows the accuracy of the foregoing statements. The head of the hospital, Dr. Funkhouser was asked, page 143:

"Q. What is your opinion as to whether on the 2nd day of September, 1925, when he signed the deed which has been offered in evidence, he had the ability to understand the nature and effect of that act in which he was engaged, and the business that he was transacting?"

A. I think he knew it perfectly well."

Dr. Holland was asked, page 160:

"Q. I ask you whether in your opinion, on the 4th day of September, 1925, when he executed this deed, he had the ability to understand the nature and the effect of that act in which he was engaged and the business that he was transacting?"

A. He was just as capable as now, and he is quite capable now."

Throughout the case, counsel for plaintiff constantly dealt with Witt's supposed insanity and the Court seems to have fallen into the same error, for at page 127 he said:

"The issue here is, was or was not Mr. Witte sane at that time."

We submit that was not the issue, and the fact that the Court stated in the presence of the jury that it was and then subsequently discussed the question of sanity with the jury could only have led them to suppose that if Witte was insane in any technical sense, that his deed was void. An appropriate exception was taken to the Judge's discussion, page 283.

It is true that the trial Court did, in several places, say that the question was whether Witte was capable of appreciating the nature of his act, but nowhere did he correct the false impression that he must have created in the mind of the jury, with his constant reference to insanity.

V.

DEFENDANT'S MOTION FOR A DIRECTED VERDICT SHOULD HAVE PREVAILED.

Nine reasons are assigned for a direction.

Our submission is that the question of Witte's insanity or his ability to execute the deed was not a subject for the jury's consideration. The title had passed out of him by a general warranty deed, good upon its face. Defendant complied with her contract by giving a warranty deed. The issue of insanity or ability was collateral, and the question of marketability of title should not have been raised or submitted in the way it was. If plaintiff could, in this collateral way, try the question of Witte's sanity or ability, there was nothing in the way of his challenging any number of deeds made by Witte's predecessors in title, upon the same issue.

There was not sufficient evidence to be submitted to the jury to justify their finding that Witte was not capable of making a valid conveyance. Witte was produced as a witness, and a reading of his testimony will make it perfectly clear that he fully comprehended what he was doing when he executed the deed, that he knew its purpose and that he was desirous of having his mind relieved of the burden of the property in order that his daughter might properly handle it. It is true that his testimony shows that he is what might be called queer, but far from being insane or not being able to appreciate what he did.

Dr. Charlesworth, produced by plaintiff, stated that Witte was insane, and insisted upon that (see page 86) even though he knew on the day he executed the deed that he owned the property, knew

that he wanted to convey it to his daughter, knew what he wanted to do with his property. At no time did he say that Witte was not capable of appreciating what he was doing.

To the same effect is Dr. Mayhew's testimony, who was asked this question (page 101):

"Q. Now, if in point of fact on the 2nd of September, 1925, when Mr. Witte signed this deed, he knew the nature of that transaction and knew its effect upon him, that is, that he was transferring from himself to his daughter this hotel property in Wildwood that he owned, would you say that he was insane?"

A. Yes, sir."

He did not say that Witte was not capable of appreciating the nature of his act.

Included in the motion was the question of plaintiffs being estopped because of his knowledge of Witte's confinement in the hospital.

Also the question of law, of the right to attack Witte's sanity or ability in the proceeding.

The fifth reason reads:

"It appears uncontradicted that all negotiations in this case were between the plaintiff and Sophia Witte, that the money was actually paid to her by plaintiff's check to her order, and which she cashed, and that no money ever reached the hands of the defendant (meaning Helene Witte), and that the testimony shows that the plaintiff treated the transaction as one between himself and Sophia Witte."

See his testimony at the bottom of page 43, the purport of which is that all his negotiations were with Mrs. Witte, and that he recognized her as the principal, and that he drew the check to her order.

The uncontroverted proof is that she got the money and that the appellant got none.

VI.

IT WAS ERROR IN REFUSING DEFENDANT'S FIRST REQUEST.

The request was:

"The mere fact that Henry Witte was an inmate of the State Hospital at the time he signed and acknowledged the deed to his daughter, did not raise a presumption that he was mentally incapable of executing the deed."

This request was refused and nowhere in the charge did the Court state the equivalent.

This request was made in the light of the constant reference to insanity, and the *prima facie* evidence of it from the record in the proceedings before Judge Eldredge. The burden of proving mental incapacity was upon plaintiff.

The proof shows that the state hospital has numerous patients who are there because of their highly nervous condition, but who are not incapable of appreciating their condition, or transacting business. Their mere presence there raises no presumption that they may not appreciate the nature and effect of some transactions.

The defendant should have been relieved from the false impression which was likely created by the mere fact that Witte was in the hospital, by being told that that fact did not raise a presumption that he did not understand what he was doing when he executed the deed.

VII.

THE COURT COMMITTED ERROR IN OVERRULING CERTAIN QUESTIONS TO DR. FUNKHOUSER.

An effort was made to show what took place in Mr. Connolly's office in the hospital at the time of the execution of the deed. At page 138 he is asked:

"Q. Won't you tell us what Mr. Connolly asked Mr. Witte, if you can remember it?"

The objection was:

"Mr. Bourgeois: I object. I have thought that his testimony, what took place in our absence, was hearsay. Now he is going to go on and state what some third party said to Mr. Witte in our absence, and I say that is hearsay."

The Court overruled the offer and allowed an exception and stated that he would permit Dr. Funkhouser to state what Mr. Witte said but not what Mr. Connolly said to Mr. Witte. We submit this was error. The jury was entitled to have the complete picture in order to ascertain if Mr. Witte appreciated what he was asked to do and what he did do. To have the jury know what Mr. Witte said, without knowing what was said to him was disjointed and did not aid the jury in ascertaining if he appreciated what Connolly asked him.

VIII.

THE COURT ERRED IN ADMITTING IN EVIDENCE EXHIBITS P3, 4, 5 and 7.

These exhibits were letters which had to do with the attitude of the title company because of its information that Witte was in the State Hospital. They were irrelevant and immaterial. They could not be evidential of lack of marketability and they afforded no opportunity to cross-examine the writers as to their contents.

Exhibit P3, being a letter from the title company to Mr. Sooy, was particularly objectionable and vicious and well calculated to divert the jury's mind from the real evidence and the real issue. All more or less were self-serving and were calculated to raise an impression in the mind of the jury that the fact that the title company hesitated to insure was plenary evidence of a defective title.

There was injurious error and the judgment should be reversed.

Respectfully submitted,
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Attorneys for Appellant.