

This action was brought on 28th August, 1907, for the \$950. The defendant defends upon the ground that there was a representation of absolute title by the plaintiff, which has turned out not to be true by reason of the claim of Edna Clark. The will of G. W. Clark is pleaded, but not the will of his widow. The defendant further pleads that he "has always been ready and willing, and is now ready and willing, to carry out the said agreement and pay the said purchase money, upon receiving from the plaintiff a proper conveyance free from any other claim or incumbrance on the same," and "denies that he has ever refused to pay for the said household goods and effects on a good and sufficient title being given to him therefor." . . .

Several technical objections were taken by counsel for the defendant—none of them of substance, I think—and I should not perhaps mention them here, as no amendment to the pleadings being asked for or made, the defendant should not complain if he is held to his offer in the pleadings. It may be well, however, briefly to dispose of them.

The first point . . . is that the dealings between the parties, the one as owner and the other as lessee, puts an end to the agreement to buy. The answer is obvious. In that very transaction a new promise was made by the defendant to pay.

Again, it is contended that the original document was a mere offer to purchase. The succeeding documents get over that difficulty if there were one.

The real questions are three: First, upon a sale of this character, is there an implied warranty of title? Second, had the plaintiff a good title to these chattels? And if not, third, have the dealings between the parties modified their rights?

As to the first, it seems free from difficulty. "It is well settled that in an executory agreement the vendor warrants, by implication, his title in the goods which he promises to sell." Benjamin, 4th Eng. ed., p. 622.

The second, if it depended upon the only will pleaded, would also, I think, not present any difficulty. The provision for maintenance is that it shall be at the hotel—the testator himself distinguishes between the hotel and the furniture.