

In Re Daisie

In Re Estate of Matilda Heck McCready
Suit of
Dr. R.J. McCready, Widower



Lawyers summary statements as documented by
Helen Chalmers Official Reporter. About 1938.

In Re Daisy

This document is part of a collection of documents related to Craig family history. Please refer to *Burchfield-Craig: Two Pittsburgh Families* Second Edition by Albert B. Craig, Jr. and Gregory L. Craig. That book and further information can be found at: <http://burchfieldcraig.org>.

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IN RE ESTATE OF MATHILDA HECK McCREADY

SUIT OF

DR. R. J. McCREADY, WIDOWER

*Summary Statements of the
lawyers @ 1938*

HELEN CHALMERS
Official Reporter
Union Trust Building
Pittsburgh, Penna.

HELEN CHALMERS - OFFICIAL REPORTER - UNION TRUST BUILDING - PITTSBURGH, PA.

MR. WILSON:

If the Court please, you have before you a somewhat unusual case, in that an agreement, made between a man and a woman whom he was about to marry is attempted to be set aside by the man instead of the woman. There are many cases in our books where a woman has come into court to set aside as unconscionable such a contract. This is only unusual in that the man instead of the woman seeks to strike down a solemn contract.

I would like Your Honor to review very briefly the testimony which was presented before Your Honor in the trial last week. Being as brief as I can and bringing out the important parts of that evidence, I would like to apply that evidence to the law as we have it on the books.

Dr. R. J. McCready, a man 73 years old, a widower, on November 18, 1924 signed a contract in the office of Edward B. Scull, an attorney of this bar, with Mrs. Matilda S. Hecht, who was then a widow of about 63. Dr. McCready had passed the three score years and ten, but they had left him a man in full vigor, full mental and physical vigor. You have not here a contract signed by a man senile, but a man who was in the full bloom of mental and physical vigor. But that contract I would like to read to Your Honor because I can do that easier than quote from it.

(Contract is read to the Court).

A Notary was called to the office of Mr. Scull and before that Notary Public, Dr. R. J. McCready acknowledged the foregoing instrument to be his act, etc.

On the next day, these parties were married and for 9½ years they lived together in Sewickley. Mrs. McCready then died, in June, 1933, and a few days after, Dr. McCready, notwithstanding this solemn contract and covenant, filed and served on the executors of the estate an election to take against the will of his wife. A petition was then filed by the executors, asking that the petition be stricken from the record. Answer was filed by Dr. McCready and the case came on for hearing before Your Honor. It was incumbent then, with a prima facie case having been made out, for the respondent to show one of three things: First, that there had been fraud in the procuring of this contract. Now, Your Honor, there was not one bit of evidence in this case of actual fraud, but the respondent relied upon the cases which said that where a woman about to marry a man of means and who enters into an ante-nuptial agreement with that man, unless the provision made for her, the woman, is inadequate provision, and we are not left in doubt as to what the court means by inadequate provision, because Judge Simpson says, means which will permit her to live in the comfort that she lived in prior to her marriage.

The burden is there to prove this was without fraud. There are presumptions of two kinds, conclusive presumptions and rebuttal presumptions. If the woman shows that the provision made for her was inadequate, then it shifts the burden to show there was no fraud. There is no conclusive presumption there was fraud, but the burden shifts and they must show the agreement was entered into without fraud. I know of no case in Pennsylvania where a man comes into a court and has an agreement set aside forsooth because the woman he was about to marry did not make a proper provision for him. I did find in 196 Pa. this statement:

"The Courts have ever jealously guarded the rights of married women and widows. In their distress they preeminently require all proper protection by the courts."

Schooler, in Domestic Relations, a handbook which Your Honor knows about, in Section 518 says: (See Ref.)

It is very questionable in my mind whether or not there is any obligation on a woman about to marry to provide for her husband, any provision whatever. It is the obligation of the law for a husband to provide for the wife. I know of no obligation on the wife to provide for the husband. I state to Your Honor that people about to marry are in a confidential relationship and there must be the greatest con-

fidence imposed one in the other, so I'm not going to argue whether or not there was any obligation on Mrs. McCready to make provision for her husband, but I'm going to say that the provision which she did make under the will in the opinion of the law was adequate provision, that until it was shown by this man that the provision made by her was not adequate provision, it was absolutely immaterial as to how much money Mrs. McCready (Mrs. Hecht) had prior to entering into this agreement. She could do what she saw fit with her money, and if she made adequate provision, it makes no difference how much money she had.

So I insisted in the trial of this case, I offered no objection whatever and was very lenient in the testimony going in because it was not a matter where a jury could be swayed by some immaterial evidence, but there was no evidence whatever as to whether or not \$12,000 a year was not adequate provision. The will was offered in evidence also and the will provides that \$1000 per month shall be paid to Dr. McCready. I thought, of course, that my friend, Dr. McCready's counsel, would show what the living expenses of his client were prior to his marriage, to show this would not keep him in the comfort that he had enjoyed before marriage, but no testimony was put in to this effect. On cross examination it was brought out he was worth \$30,000 to

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\$50,000 before and only half as much after he had lived 9 years with Mrs. McCready. I showed that this man before he was married lived in a room in East Liberty, that he was paying \$35 a week for room and board and bath. It is true that he gave medical assistance free to the members of the family, but so far as out-of-pocket expenses, he was living on \$35 a week for room and board. He was paying \$135 to \$165 for an office in the Keenan Building, occupied by himself and his son. We have here before Your Honor his living expenses and professional expenses both together amounting to about \$300 a month. Now, Your Honor, the provision made by this woman is three times as much as that, \$1000 per month. It is true that this man is in a class by himself, that he is without a peer in Pittsburgh, but I submit to Your Honor that it did cost him \$300 a month to live prior to his marriage and the provision of \$1000 a month has been made. It does not come under the law to show how much he was worth, because if the provision was adequate, the case stops right there.

. As I said, the provision that was given this man of \$12,000 per year was passed over lightly by Dr. McCready because, at the suggestion at the end of this case, by the agreement itself, no provision was made for Dr. McCready, the ante-nuptial agreement makes no provision, and this provision was made by will subsequent to this agreement. I read this

paragraph to show a possible testamentary agreement was in contemplation. And if we had come into this court with no testamentary provision, I could see you might argue that he was led into signing this agreement with the hope, the false hope, that he would receive some consideration under her will. But when the provision under the will was not only just but generous, I say they have no complaint there has not been adequate provision made for this man.

I say, Your Honor, that without proof that the provision made for Dr. McCready was inadequate, there is nothing further before Your Honor to decide because it was an adequate provision, and if the contract was signed, as it undoubtedly was signed, while he was in the full vigor of his mentality, then this agreement must stand.

But, Your Honor, they went on to prove the volume of Mrs. Hecht's estate. Actual testimony as to that was very meager, though they testified that there was real estate to which the witness, Mr. Nerr, without much objection on my part, testified that he knew the properties and that he thought the properties were worth about \$293,000 at the time of this marriage. Though they showed the quoted values of certain stocks, like the Guarantee Trust Company, National Bank of Commerce in New York, stocks that had daily quotations, and I'll say to Your Honor I admit that probably Mrs.

Hecht can be presumed to have known these values, but the great part of her estate, Your Honor, was in closely held companies, family companies, the stocks of which she had inherited from her brother Joseph W. Craig in 1912, the Chartiers Oil Company, Freedom Oil Company, not quoted on the exchange, no sales shown to have been made about this time, and the value put on that by Mr. Albert Craig and Mr. Pressley Craig was somewhat meager, as I said, but there wasn't one word of evidence that Mrs. Hecht when she signed this agreement knew the values of these stocks that were not quoted. How could she have concealed from this man if she had wanted to something she didn't know, and I say it was incumbent on them not only to show the value of these stocks but to show this woman knew these stocks had that value, and there was not one word of evidence on that. If this solemn agreement is to be set aside, there must have been concealment from him at the time of this contract.

The courts have shown that you don't have to tell the woman you are about to marry just how much you are worth, not a balance sheet, but she must know or have means of knowing, that the man she is about to marry is of comfortable circumstances. She must have some knowledge or means of knowledge that he is in comfortable circumstances. Now the testimony as to the knowledge of this man of the worth of this woman is overwhelming. We started with the fact that this

woman had inherited from her brother, Joseph W. Craig, in 1912 many of the stocks and bonds which she held during her lifetime and which she had in 1924. There is testimony before Your Honor and quite rightly that there was much publicity at the time of Mrs. Craig's death. There had been litigation about it. Much of this had been inherited from his first wife and it was testified that there was publicity to the effect that there were four or five million dollars in the estate and the names of the heirs were given, and Mrs. Hecht's name was among them. This was in 1912, but if Dr. McCready didn't see the papers, he had been at the death bed of this man, wouldn't he have been interested more than the ordinary person in Pittsburgh, wouldn't he have seen this publicity more than the ordinary person, being at the death bed. So I say it couldn't be presumed that this man did not know and see the public record made at the time about the worth of this man.

Dr. McCready had been the physician of Edwin S. Craig and of Mrs. Hecht's first husband, he had gone south in private cars and pullman cars with this woman, he knew her house in Sewickley which witness said was worth \$55,000, and the year before, the testimony discloses, he had received \$18,300 in checks from this woman. I don't care that the services, or whether the services were worth that, but I do say that no man who received from a woman \$18,300

drawn on four different bank accounts, who had gone on trips with her as her physician to the south, to Los Angeles, back by way of Banff, during 1924 he received \$18,300 and this long trip, I say to Your Honor I would be stretching your credulity to say that x man did not know when he entered into this agreement that he was entering into the agreement with a woman in more than comfortable circumstances, a wealthy woman. And he comes now and says, "I wouldn't have signed that agreement if I'd known this woman was rich. She had about \$54,000 income that year, about which he would have known, and then to say he didn't know she was worth considerable -- nothing was concealed from this man, Your Honor, and he had every opportunity to know.

Mr. Scull here on the stand testified that on November 18th, the day before the marriage, this gentleman came into the office quite late in the afternoon, possibly 3:30 or 4:00 o'clock, and this agreement was read to him. Mr. Scull said he started to read it, read it through some part of it and his voice became husky and he handed it to Dr. McCready and said, "You can read as well as I", and that Dr. McCready took it and that he didn't go on where Mr. Scull left off but that he turned back to the beginning and read this paper from first to last. Mr. Scull said he said to both of them, "Do you understand what this is?" and both said they did. And then there had been another agreement, giving power of at-

torney to certain of the Craig family to handle large holdings of Joseph W. Craig, and as Dr. McCready was going to marry Mrs. Hecht, it would be necessary to join in that, and as that agreement had been prepared and talked about, Mr. Scull said to Dr. McCready, "You know about the properties in which Mrs. Hecht has interests," and he mentioned the Pike Street property with large warehouse, the property on Smithfield across from the Post Office and two or three others, and then as he was going along, Dr. McCready said, "Perhaps, Mr. Scull, I know more about Mrs. Hecht's property than you do" or words to that effect, and he said, "Probably you do". What was the use, when the man said "I know more about this property than you do" to go on and tell the man. Wouldn't it have been a futile thing to have gone on and given every piece of property Mrs. Hecht owned, and unless you can disbelieve Mr. Scull, this man who has not one cent to gain by this, unless you say he is not telling the truth, he see a full opportunity was given this man before he signed Exhibit No. 1 to know anything he wanted to know, and that very probably, in his own words, he knew more about it than his attorney.

Was there concealment, such concealment in this case that Your Honor could set aside this solemn agreement in writing under seal and acknowledged before a Notary Public? I say to Your Honor there could not have been any conceal-

ment in this case. If there was no concealment, there was no proof of fraud in this case. I say to Your Honor that an ante-nuptial agreement is not a rare thing at all, but just an ordinary written agreement. The courts don't throw any aura around these ante-nuptial agreements, they must be proved just like any other agreement, and that to set it aside, the same rules apply as apply to any other contract. The cases all show that fraud which will set aside a written agreement must be proved and if there was no concealment, and I submit to could not have been, then I say that fraud must be proved. We get down to the nub of this case. If you believe Mr. Edward B. Scull and Miss Bushman, his secretary, who are disinterested witnesses here and who have not one cent to gain no matter what the decision is, if you believe them, there was no fraud in the execution of this agreement, and if you say there was fraud, then you must disbelieve these witnesses.

I would like to show, Your Honor, what there is opposed to the testimony of Mr. Scull and Miss Busman as to the execution of this case. We have the testimony of Edgar Robinson, the chauffeur who testified that he drove Mrs. Hecht, his employer, in town on November 18th and he recalled, very, very strangely to me, he recalls every movement he made on that date. I think Edgar Robinson was trying his very

hardest to tell the truth on that stand but if Your Honor will do what I have tried to do, take a day 10 years ago, unless there was something particular to fix, unless there was some reason to remember, I submit to Your Honor, you cannot be accurate in your memory of what happened 10 years ago. This man, Edgar Robinson, and I say he meant to tell the truth, said he took Mrs. Hecht back about 3:00 o'clock and he didn't bring her to town again that day. He was asked, "How do you remember that?" And he said, "I cleaned the car" and when reminded that he did that every day, he said, "Yes, but I did it this day". There is nothing that would fix the memory of this man as to the happenings of the afternoon of November 18, 1924.

We then have Dr. McCready who says that he went with Mrs. Hecht to the license office, went over and took some money out of the bank in the Real Estate Savings, and then up to Marshall Avenue to see a patient. Mrs. Hecht left him there and he came back to town on the street car and he wasn't in Mr. Scull's office that day. And he appeared at a chicken dinner at the church in the East End sometime after 6:00, but from the time he got on the street car on Marshall Avenue until the turkey dinner, there is nothing to fix what took place, where Dr. McCready went. Unless, you say he was not there that day but this agreement was signed hurriedly after 6:00 o'clock in the office of Mr. Scull, signed if not

acknowledged, and the paper was dated back and acknowledged November 18th, unless you say there was a deep laid plot to do that, then I take it that Dr. McCready's recollection is at fault. Your Honor, he says he came in after his marriage and signed this paper and that his wife, whom he had just married, concealed from him things that he ought to have known when he signed that paper, and at the same time he testified she gave him power of attorney to draw checks on her bank account in the Union Trust Company, and there was evidence that the account at that time was over \$100,000. Can you for a minute believe in the duplicity of this woman, giving him on the one hand this power of attorney on this large bank account and on the other concealing values of real estate? Unless you disbelieve Mr. Scull and Miss Bushman and take instead the testimony of Edgar Robinson and the testimony of Dr. McCready, a most interested party here, you must see that this contract was entered into without fraud, without concealment, either designed or undesigned, and this agreement must stand.

Now, Your Honor, I am through except for one or two statements from cases, which of all the cases, I felt they were closer to showing the straight facts that are before Your Honor. Before I do that, I notice one other thing in my brief. There was some mention made in this case that there was no delivery of this contract, that this contract

was not delivered. It was not made one copy only, but made in duplicate, both copies were acknowledged, both copies signed. Mr. Scull asked whether or not they wanted to put this on record and they both said they didn't want their private affairs to be published. And he said Mrs. Hecht or Mrs. McCready said, "You take that and keep it with the other papers, my will, deeds, etc." and in the hearing of Dr. McCready the request was made by Mrs. Hecht that her copy of this agreement be put by Mr. Scull in his safe with her other papers. Miss Bushman testified that she was there and saw Mr. Scull hand the other paper to Dr. McCready and Dr. McCready shook his head and said he didn't want it. And as to the third copy, the office copy, I don't know whether it is stretching the presumption from the testimony as to whether or not Dr. McCready didn't by mistake take the office copy instead of the other duplicate copy. As I say, that is not in evidence, and whether or not from the testimony that could be presumed is for Your Honor, but I do say there was delivery. That would not have to be proved in this case, although it has been shown that the agreement was delivered. Delivery was not essential to be proved, but if it were essential, then there is enough evidence to show there was delivery.

Now, Your Honor, as to the burden of proof, Mr. McCready, the counsel, insisted throughout that the burden of

proving lack of fraud was on me. I insisted just as strenuously that the burden was on him. I don't care who had the burden because Your Honor has all the testimony, you have all the facts. Just let me read to you one or two cases which indicate why I think I was right, that the burden has been and has always been on Dr. McCready:

(There follows portions which were read from various opinions)

I say to Your Honor, that is our case. Dr. McCready is an old man, and I speak with respect, but he is seeking in this case to reap what he did not sow. He had nothing to do with getting this wealth together, and this woman that trusted him, that died in the firm belief that this charity so generously conceived would bring from time immemorial to the people of this community great comfort, will Your Honor now strike it down in order that this man, who did nothing to help, should have the half of this estate. I say to Your Honor in this case, I know Your Honor will not permit this thing to come about.

MR. MCCREADY:

Speaking for Dr. McCready as well as for myself, it is a gratification that this case is largely free, I may

say entirely free, from difficult contradiction in the testimony. We are not taxing Your Honor with disputed questions of fact and except for what has been interjected under consideration of the relationship of these parties and certain questions of law, this case has been, from the earliest background down to the close of the case, remarkably free from anything that might resemble unjust reflection.

Just to review the background for a moment, Dr. McCready has been, as has been amply shown, by eminent associations in his profession, one of the leaders in the medical profession in the community, that he was viewed as a physician of good standing and it appears evidently from all his relations with the various members of the Craig family that he was so considered by them. When he was married this second time he had been a widower for 14 years. He had been the physician of Mrs. Hecht's husband, formerly a proprietor of a drugstore in the City, he had been the physician of Edwin Craig, a brother of Mrs. Hecht who lived with her after the death of her first husband at this home in Sewickley, Dr. McCready was called in emergencies in the Hecht family, both Mr. and Mrs. Hecht, in the emergency of Edwin Craig's sickness and he was called in the last day or two in the older brother Joseph's sickness and death bed in 1912. I need not go into any further details in that con-

nection but it is some value to me as a starting point in the relationship of these parties, he went down to Florida with them, spent a great deal of time in the home, and when Mrs. Hecht first became ill at the time of her brother's illness and developed pneumonia at that time, this whole series of close relationships, and then came the time, the early part of 1924, Mrs. Hecht having been through illness and the death of her husband, the long illness of her brother Edwin who lived with her, and during that same period, 1923, the automobile accident in Florida, all the distressed conditions of 1921, 1922 and 1923, it is easy to understand why Mrs. Hecht having been through all this, would want to take this trip to the west and she took Dr. McCready on that trip as her physician, and right at that point, it is genuine disclosure that is called for. It must be clear when genuine disclosure is so easy to be made and so important to be made, that the party affected is not expected to gather facts out of thin air. Our experience tells us that casual observation of how anyone is living means little with respect to the wealth which they may leave after them. The fact that this woman was living comfortably and making occasional trips and using substantial sums of money would not necessarily indicate that she was going to leave any large fortune. Her own records show that during this period when Dr. McCready was supposed to have a chance to ob-

serve and conclude that Mrs. Hecht was in comfortable circumstances, Edwin Craig had been paying \$400 a month toward the maintenance of the home, as appears in the books, and Pressley Craig was paying \$375 a month. Also it is shown that at the time of the taking of this trip, this extensive trip to the west in 1923, she received \$13,000 from these properties in which she had only a life interest. It has developed that she received that year, 1924, something in excess of \$4000, but the books show that there was an accumulation from the time of Edwin Craig's death, so during 1923 she received in that year from that trust \$17,093.69. Then as I say, the accumulation, from the time it took effect at the time of Edwin Craig's death, to that year 1923, quite a trip could be taken on that one thing without any reason to infer that there was some estate which was producing that which would remain after death. From 1924 there was \$8083, \$8300, \$8200, \$1200, \$1305, and on up until the period from January to April last year \$6954.75. I mention these things to show there was an income of around \$10,000 a year when these two brothers were living for maintenance of the house and the household expenses, and from this trust, so that any one attempting to figure anything about Mrs. Hecht's worth from the way she was living might have gone very much astray.

The marriage resulted and I just want to go on to say that there is no evidence in this case of anything except a

devoted married life as between these partners, Mr. Craig was living in the house there, and for 9 years there is no evidence of anything like a disturbing relationship. So I say as I said in the beginning, we have a case here free largely from recriminations. Undue emphasis was placed on confusion, as there was bound to be, at the time this ante-nuptial agreement was signed. Far be it from me, and I wouldn't for the world suggest that there was any fraudulent action or intent on the part of Mr. Scull, that esteemed member of this bar. I have no thought of any reflection of any description coming out of the fact that I feel it proper to give Your Honor the fullest view possible of the things that happened in connection with the execution of this agreement, just to show that as is manifest, it is an agreement signed in haste of marriage preparations and marriage itself. There is some confusion, I take it, as to just when this agreement was signed. I merely touch on that to explain my view that it has a bearing on the situation, the bearing being, as I have indicated, that the confusion is obviously there, and merely relates to the haste of the presentation and preparation of this agreement. The haste was such, and the haste was obvious from everyone's testimony, that is, the slight time for inspection and consideration, and there is some emphasis given to that, by the fact of this uncertainty as to just when it was signed.

We have Mr. Robinson's and Dr. McCready's statements and neither of them has any recollection that would indicate these parties were there on the 18th. Whether they were there on the 18th or the 19th, as I say, it is of little importance, has little bearing on this case except as it does bear on the lack of deliberation and consideration given to this whole matter. Dr. McCready has the recollection of just one visit before this Notary Public on the 19th and he gave quite positive recollection as to the afternoon of the 18th. Mr. Robinson, the driver, gave his recollection of the 18th. I simply repeat that that doesn't mean any charge of actual fraud. No charge of actual fraud is made in this case, in view of the strength of evidence which results in the conclusion of constructive fraud.

Now, there has been quite an effort made here to interject considerations of feeling and the efforts to discredit Dr. McCready in relation to this case by charges that he attempts to repudiate an agreement and reflections that he isn't satisfied with \$12,000 a year, although he only paid \$35 a week for board and room and other things, which have no reasonable bearing on this case except as they go to indicate the reliance on Clark Estate, in which Judge Simpson made a comment as to the test to be applied, which taken by itself would indicate the view of the Supreme Court as expressed by Judge Simpson at that time, that the only thing to

consider was whether or not the profits actually resulting from the agreement whether marriage were sufficient to enable the party benefited and later complaining to live as well as though the marriage had not taken place.

All I can say about that is, it isn't a test and never intimated in any other of the great scores of cases in Pennsylvania, that state what the court is to weigh in coming to a conclusion. Moreover, an examination of that case shows that it was merely one of the views that comes into an opinion sometimes to be misleading. I have examined with great care the paper books in the Clark Estate, 303, and in my brief I will quote somewhat the actual report of the case. The record shows that the ante-nuptial agreement was sustained in that case, not because of the indicated test of whether Mrs. Clark, the widow, had lived as well on what she got under this agreement as she lived as the housekeeper of Dr. Clark before she married him, but it was sustained upon the application of the same test which appears throughout the whole line of cases in Pennsylvania going back to the beginning of our recorded cases on this subject.

In the Pennsylvania Reports, the ante-nuptial agreement was sustained in that case on the showing that there was a definite disclosure of the value of this estate at the time the agreement was made and definite considered agreement on the part of the ones about to marry, this woman

about to marry Dr. Clark, and that in the face of definite information as to what he was worth, she was willing to take the share of a child in his estate and the agreement gave it to her. There were several children of Dr. Clark by a former marriage, he was about to marry his housekeeper, and it was testified by the complaining widow herself that she was told what Dr. Clark was worth and was shown beyond any question that she agreed to accept the share of a child.

The primary complaint in this case was that Dr. Clark told her he was worth more than he was and she tried to have the agreement set aside because the complaint was, Dr. Clark was worth only one-eighth of what he told her he was worth.

You have heard here this morning consistently throughout the argument, an attempt to push aside the thoroughly established rule with respect to test of ante-nuptial agreements, and it is stated positively in 92 Pa., "If the provision secured by the wife is manifestly unreasonable and disproportionate to the means of the intended husband, it raises a presumption in intended concealment". See also 239 Pa., Herman.

That, except for one or two points I will mention later is the real crucial point of this case. First, was there gross disproportion, and second, was there adequate disclosure. I give little attention to the suggestion that

the point to which we should have directed our attention was the point of showing that \$12,000 was not enough. Dr. McCready was about to marry Mrs. Hecht as a result of long years of friendly relationship, he had a marriage portion which the law brought into view; the marriage portion of the husband as well as the marriage portion of the wife is always jealously guarded by the courts. We could cite cases by the scores where the issue was perhaps not with respect to ante-nuptial agreements but with relation to safeguarding the marriage portion of the husband, where the courts have been called on by the score to safeguard that. In all these cases, the right of the husband is safeguarded just as jealously as the right of the woman, where conveyances without the consent of the husband are inevitably set aside.

So we come to the point of disclosure to Dr. McCready. I am a little surprised that any reference would be made to the so-called meagerness of our testimony with regard to these values. Over all the long processes that were come through, we tried to inform the court what the values were, Against all obstructions thrown our way, here is what we have shown, and these figures I expect to submit to Mr. Wilson. On November 18, 1924, when this agreement was sought to be signed and the date I say it was signed for the purpose of argument, Mrs. Hecht had in 10 banks in

in this city, including one in Sewickley, \$366,135.05 in cash, one-sixth interest in \$140,000 balance on a mortgage or \$23,333.33. She owned her own home in Sewickley and another residence just next door appraised by real estate expert at \$68,500 aggregate, undivided interest in 38 parcels of real estate in various parts of the City of Pittsburgh, out in the produce district, north side, all along the commercial district, Sewickley, Moon Township, etc. that had been owned by Joseph W. Craig, and these interests amounted to \$294,877. She had stocks and bonds on which we didn't have the market values but appraisal of book value of these stocks and bonds in 25 important companies totaled \$783,587.70 or an aggregate worth comprised of items in full view at the time referred to, some of which values were low, \$1,536,433.08. That total figure might very conservatively be close to \$2,000,000, when we consider that an item like the Greensboro Gas Company, within the year this marriage was consummated, or the year following, was being offered for sale, the holding price way above \$800 or \$900 a share, and a few months later actually sold on the basis of \$937 per share, including the cash dividend of over \$100. Now an eminent juror, Chief Justice of this State, referring to such a situation, I believe in Thompson 80 Pa. said, (See brief).

How otherwise can we look at this situation; Dr. Mc-

Cready when his lips were unsealed and he could testify said that shortly before this agreement was mentioned, and the only mention was the suggestion that they were about to start on the long trip, and of course it was in full view that Mrs. Hecht had been through all these trials and was sick herself, seriously ill from pneumonia, this automobile accident, etc., and leaving to go on this western trip, she said to him, "Dr., we are about to take this long trip, (first west and then this Mediterranean trip) and if anything should happen to me while we were gone, I shouldn't come back, it would hardly be right for you to take a full share of my estate" and then the agreement was mentioned. She asked if he would sign the agreement, presumably such an agreement as was presented, and he said yes.

The case I quoted is pertinent here at least to this extent, it must be presumed that anyone as between the request to sign an agreement to meet a temporary condition with no reference to values would have such a serious problem to consider from that which he would have had to consider if it had been proposed as a permanent agreement, relinquishing this million and a half or more of values laid out before him. The cases are so different that it can't be the conclusion - it can't be otherwise than that of Justice Thompson and apart from the psychological consideration of the law of Pennsylvania, that under such a situation as we

have here, whether Mrs. Hecht having this \$366,000 cash and having so carefully accounted for in her accounts, mortgage interest and real estate and stock and bonds covering about a million and a half dollars, no matter how unconscious she was of the importance in the eyes of the law of disclosing those facts, no matter how unconscious the failure to disclose, the result is the same. There is no occasion for bringing in here any consideration of any charges of fraud. That isn't the situation that is now to be considered here, for the determination of this case. We have to consider the bald facts, whether Mrs. Hecht knew or did not know her obligations to disclose, and I would certainly assume she didn't know, whether Mr. Scull realized the weight of that consideration or not, whether or not Mr. Scull said to Mrs. Hecht, "You had better bring out your records and tell Dr. McCready all about this", with her natural reluctance and desire to keep her affairs to herself, whether that governed so that these things were not disclosed, all these things are immaterial. They were not disclosed. Dr. McCready said he knew nothing about her property when he married her. He knew where she lived and how, he knew she took trips from time to time, he knew she paid liberally her doctor's bills, but beyond that he said he didn't know about her property, what she had either before she married or after. It was the disclosure of the inventory filed by these peti-

tioners that gave him his first knowledge of what she had. And that testimony which Dr. McCready gave can hardly raise a shadow of a doubt when we had from the mouths of so many other witnesses just what Mrs. McCready's ideas were about managing her own business, not discreditable, she had the capacity for keeping a fine set of books, the books which are now in evidence. And I defy any man to keep a better, more accurate clean-cut set of books for the purposes to be covered. Now with that capacity, with the interest in keeping her affairs, we are not pointing any finger of discredit or suggesting any manner of discredit when we point out that obviously that was her practice and that fact is made certain by a number of witnesses who would have no occasion to make any but correct statements in that regard.

Miss Mcane in from a sick bed in a hospital to testify that she was there down to the fall of September, 1932, from 1929 or earlier, and Mrs. Hecht said freely to her that she looked after her own affairs and no body knew anything about them except Mr. Scull and Albert Craig, her nephew, who made out her income reports. Miss M. was succeeded in September, 1932, by Mrs. H. another trained nurse, and she was told the same thing by Mrs. Hecht, truly enough the conversation of sick rooms, especially with something to call it forth. She testified that it was the habit of Mrs. Hecht

from time to time to let them leave the room for the time being, that she wanted to be alone to work on her books, and so this naturally came forth, the other statement that she took care of her own books and her own affairs. And Mr. Scull testified that Mrs. Hecht or Mrs. McCready, was an exceedingly competent business woman. Now we have other witnesses to the same effect, 4 or 5 witnesses to whom that same comment was made, indicating that it was a matter of pride and a habit of mind on the part of Mrs. Hecht. She had these facts at her command, and with her natural desire to keep things to herself, if Mr. Scull did say to her, you should disclose these things, it might have been very natural for her to say she didn't care to do it. It is not in the record what happened, but this is in the record, there was no disclosure and no attempt at disclosure. Mr. Scull testified very clearly on that point. His recollection was that it was 3:00, 4:00 or 5:00 o'clock in the afternoon.

Now there were two duties incumbent on anyone proposing an agreement of this kind. I'll touch again on the positions of these parties. Here was Mrs. Hecht, a fine, competent, astute business woman, all her personal affairs at her fingers' ends, and with the responsibility back since 1912 or earlier of managing her affairs, what she got from Joseph Craig, the management of her husband's estate which

also entered into her books as he died in 1920. We have an understanding business woman, highly counseled by Mr. Scull as her attorney, over a period of many years.

On the other hand, we have a professional man, then perhaps considerably upwards of 70 years of age, who for 50 years had devoted himself to the care of the sick, professional duties in which by diligent attention he had acquired great confidence and great ability, with no business interests intervening to call for his attention, except as a man, a professional man might have a plaything, such as a farm from which he got \$300 a year. In other words he was a professional man, a student, not a business man, with no business experience worth mentioning.

That is the relationship of the parties as they met in Mr. Scull's office to consider and execute an agreement. There was another disadvantage to which Dr. McCready was subject and a corresponding great advantage to the other side. As Mr. Scull testified, I think it was 12 days before this meeting of the parties to have the agreement explained to Dr. McCready, I think about 12 days earlier, it all came from Mr. Scull's diary, Mrs. McCready came in and for two hours discussed with him the making up of an antenuptial agreement, previously going into all the technicalities and whatever would be considered in a protracted consultation of this kind bearing on this specific subject.

Some days later she called again, she had made up her mind, and gave him instructions for proceeding with two things, the drawing of the ante-nuptial agreement with Dr. McCready as second party, and the drawing of a paper to bring Dr. McCready after the marriage into what they called the Craig family arrangement which had been in existence since 1912, the death of Joseph W. Craig, an arrangement whereby two brothers were managing this real estate and had the power to settle it. At this second conference, and that was, we will say, a week or so before the agreement was signed, the first conference was when Mrs. Hecht was there for two hours discussing fully the matter of this contract, and more than a week later, before the time of the meeting to sign the contract, Mrs. Hecht called and gave these instructions under which he made the agreement, putting in the name of Dr. McCready. She also instructed the drawing up of a codicil to her will which was natural enough, considering the terms of this agreement, and her statement to Dr. McCready that he could depend on her to be fair to his interest if he signed this agreement in contemplation of this long journey.

Now then, came the third visit, November 13th, 5 days before the signing of the agreement as of November 18th. Mrs. Hecht called again at Mr. Scull's office, signed the codicil to the will which had been prepared under her in-

structions. Now then, what followed that, we have the history of these three conferences on this subject, but not a word to Dr. McCready except the general suggestion sometime in that period when it was perhaps, doubtless after this first conference and shortly before this agreement was signed, she did ask whether he would sign some such agreement. After all these conferences, Mr. Scull gives us the sequel by saying that 12 days after this first conference on November 6th when the whole thing was threshed over between him and Mrs. Hecht, then on November 18th, 1924, Mrs. Hecht and Dr. McCready came to the office and executed Exhibit No. 1.

As to what happened at that time in other words, I mention that there isn't a shadow of suggestion in this case that Dr. McCready was given any opportunity to deliberate, to consider, to take advice, he wasn't given the alternative of presentation of a list of values or anything like that. But what happened, they came in and Mr. Scull brought out this somewhat lengthy agreement, well drawn up in legal terms, and he started to read it, apparently with no preliminaries, so far as he states. Having a little trouble develop in his throat, he stopped and handed the paper to Dr. McCready and said he could read it himself. Dr. McCready took the paper and "instead of reading it as I handed it to him, he turned it over and instead of commencing there, I

remember he turned the paper around, commenced at the front, and read it through." And again, as far as interpretation, though and consideration, when Dr. McCready went through it, said Mr. Scull, after he had read it, we asked him, "That is all right?" and he said yes. That is meaningless, except that Dr. McCready knew from what Mrs. Hecht said, but as far as having any definite knowledge beyond that how long it was going to last or whether it was for anything except taking care of this trip; if it was plain enough to indicate to this physician that it meant a lot more than that, it was of grave importance, then there was nothing to do about it. According to the statement by Mr. Scull, it was the day before they were married, Dr. McCready was expected at the church to dinner, and as appears from what there was to do the next day, get down to Sewickley, be married, back to the William Penn for dinner, with all that on his mind, any man confronted with that agreement at that time, no matter how well he understood it, he had some sort of problem on his hands as to what to do about it. Here is an agreement, it doesn't say anything about temporariness I don't know just what I'm to do. I know enough about the estate that if I sign this agreement, I might lose something by it. If she was worth \$10,000 and he gave it up, he was losing something. What could a man say in a situation of that kind? "This thing ought to be

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rewritten, put in some different shape, it ought to be made temporary, and I ought to know about what the result of this thing was going to be". If he had been able to look forward, there were 9 years of devotion and duty following his marriage, and I'm not indicating that a man should take any particular credit for performing to the limit the duties following his marriage, but one thing, he looked upon this as a temporary agreement and he was not confronted with the idea of any great amount of wealth to be part of the married right. Here is the result. After 9 years of happily wedded life, this woman dies and leaves almost unbelievable wealth, as far as relates to cash resources and from this inventory it is shown there was \$800,000 cash in the bank and other great resources in the name of Mrs. Hecht, and it was shown there was \$366,000 in the bank at the time this was being talked about. It is just in my mind beyond argument to say that a man under these circumstances, confronted on the very eve of his wedding with an agreement and no suggestion or opportunity to go out and talk to anyone, an attorney or anyone else, or to measure or weigh the consequences, I assume he well knew it was expected of him, but whether he knew what was going to be the future of it, what would happen if they came back from this trip -- life went on as it does go on, year after year, he couldn't possibly have weighed these

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things under those circumstances with no knowledge of what was involved and no knowledge of the law, and he was bound to be in a haze over the situation, bound to do what the cases show is done repeatedly under circumstances of that kind, where the whole thing is set aside under pressure of those circumstances. Here was a man about to be married, and I recall to Your Honor Warner's Estate, where counsel for Warner said, "You should know and we want you to know what you are giving up here" and the man said he did, an acknowledgement was signed, and that agreement was set aside considering the situation of the shortness of time and the disclosure required in giving up that married right.

Mr. Scull went on to say, he had already put in this agreement the points that Mrs. Hecht wanted, and there was enough property there that if they signed it away, it might be to their disadvantage, and it wasn't for Dr. McCready to ask why the thing was worded that way, and assuming he did know why it was worded, there was no reason why it shouldn't be accepted as it stood. Anyone knows if they give up something, it may be to their disadvantage to give it up.

I would like to mention this point. They try to charge Dr. McCready with the knowledge of this estate, the extent of it, the fact that he was at Joseph Craig's house

the day he died, perhaps the day before, his last illness, and two or three little clippings from the newspapers should have apprised him of the extent of the wealth there, of the mention of a \$46,000,000 estate left to two brothers to manage and sell when they saw fit, and the fact that his present wife was among the six different people named -- that Dr. McCready would have knowledge of the estate from things like that and from the fact that Mrs. Hecht was spending substantial amounts of money during the time he knew her. Most of that time she was living with her husband, and later there was money coming in from the two brothers, these sums of money from the trust, it is plain that no sound conclusion could be drawn as to her worth from observation of these facts.

So Mr. Scull said at that time to both of them, "Do you have each an understanding of the other's property that enables you to say that this is a fair contract between you?" and he doesn't even know what was said. "I think both said yes, that they had such an understanding." That calls for a legal inference, what would be a fair contract. But I'll not burden Your Honor with the numbers of cases on that general subject. I would like to attach a list of cases on this rule we have been discussing and referring to, because that, as I say, is the crucial point in this case. There was this large estate, fairly well

known, there was absolutely no disclosure, and the whole result of this affair is that Dr. McCready at the age of 83 years when his wife died last June, with threatened contingency relating to his continuance in life, is given the comfort of this monthly allowance of \$1000 as long as he may live. That is the point. The agreement itself has no consideration and I'm not at all certain that it is proper to read that testamentary provision into the contract, but presuming it is, it has no semblance of fairness under the test of these cases to which I have referred but it is a question of the reasonableness and fairness of the proportion as respects the means of the decedent at they were at the time the contract was signed.

One other thing, on this question of what Mrs. McCready said to Dr. McCready about this being an agreement for temporary use, a natural enough suggestion. Beyond its naturalness, being a natural suggestion, (there is no reason to discredit it) we have this fact:

The court would hardly find occasion, as I see it, to reject the statement of the scattered witnesses, witnesses who have no connection with each other, who testified that Mrs. McCready -- testified to facts that would make it seem that Mrs. McCready had no such agreement within her purview during these years of the married life. The trip had gone off successfully, they had come back here and

gone off to the Mediterranean, and after months of the wedding journey they had come back home and settled down to live in Sewickley. Mrs. McCready had the comfort of her husband and the attention of her husband and the benefit of his help and comfort, all these things had come about, they had continued the same for 9 years, and it is natural and it would be natural to think, starting with the statement made to Dr. McCready that the reason for the agreement was this long trip on which they were embarking, the agreement which Dr. McCready had never seen or heard of since the night they started on this journey, which, so far as the case shows, and it must be assumed to be true because Mr. Scull and his secretary have not raised a word to the contrary, it is assumed Mrs. McCready never saw it again up until the day of her death, from the evening it was signed, at the time they embarked on this trip.

In view of that, no possession of this agreement, nothing to remind Mrs. McCready of it, these witnesses say she had declared from time to time she had things in mind to do with Dr. McCready's estate insofar as it would come to her in the case of his death, and it is no remarkable coincidence when these scattered witnesses, Mrs. Paterson from Chicago, and Mrs. Schreiber formerly in charge of Dr. McCready's office as attendant each say the same thing, each understood Mrs. McCready clearly to say and know she did

say that should Dr. McCready be deceased before her, she knew what she was going to do, that she was going to give the farm to Raymond McMillen, who was there running the farm, a natural enough thought, and one that couldn't appear in the minds of these witnesses except through the declarations of Mrs. McCready, such as "I'm going to give the farm to Raymond McMillen, and where I have lived, I'm going to make a memorial." As I said, we don't need these more difficult considerations, because in this case we are precisely within the rule of the authorities and not a technical rule, a rule of right and justice. Dr. McCready is here presenting to the court as best he has been able, the facts around the execution of this agreement, and is leaving it with the court to say whether under this case it is a valid execution. As I say, I believe clearly that we are in a position, a definite position where there has been "constructive fraud^{ul} and repeatedly in cases it is said, "we don't need to inquire into the question of actual fraud". We are not considering actual fraud. The legal theory that arises when you find a situation such as this of gross disproportion and lack of consideration, so I say there is enough there to determine this case, but I feel I should not pass over matters that are properly in the case, and in view of this agreement could be taken to be designed as a temporary agreement, that there is evidence

here that it was regarded as temporary and not continuing in the fact that Mrs. McCready never took any charge of it, she left it where it was left to repose on the night they departed for their wedding journey, that Dr. McCready was never given any copy of it, and while it was executed in duplicate, the thing was just left there, both copies, and it is significant and interesting to consider that when Mr. Scull was reminded by his secretary 6 months or a year after the time of the signing that Dr. McCready's copy of the agreement, the one lawfully to be considered as his, was reposing in their correspondence file, the folder containing Mr. Scull's correspondence with Mrs. McCready, no one thought enough of it to take it out and send it to Dr. McCready.

I say we have a very different situation there that under certain situations would be very important to consider. Starting with the supposition that this case is determined by ordinary rules with respect to ante-nuptial agreements, this more difficult situation would perhaps not be important. On that question of delivery, where agreements are made between parties in confidential relationships and left with the attorney of one of the parties, it requires very clear showing to warrant the conclusion that that is ~~xxx~~ to be a valid and closely subsisting agreement. (See 166 Pa.) and 228 Pa.), etc.

The case is not free from doubt as to whether there ever was a delivery of the agreement of a character to make this a living, subsisting agreement, considering the number of years of the relationship, both copies reposing in the hands of the attorney and no one saying anything about it, emphasizing the point that it was designed as a temporary agreement, and supported by evidence of statements made by Mrs. McCready to the effect that she was not out of control with respect to Dr. McCready's estate.

With reference now to the considerable sum of money that Dr. McCready got the year before this agreement was signed, some \$18,000 in physician's fees, I make reference to the fact that there was some argument here as to Dr. McCready's charge against the Edwin S. Craig estate and the bill as rendered was not paid, and that Mrs. Hecht apparently mortified gave Dr. McCready a check for the difference. At that period, she was beginning to get these sums of money out of the trust, and I think it does not have any controlling significance, certainly, that she felt deeply enough concerned to want to right what she considered a wrong. As to a substantial part, I believe \$11,000 of this money referred to, was gotten by Dr. McCready this year, and we have it clearly shown, he was becoming her husband, they were traveling west and later to the Mediterranean, and she said she wanted him to pay the

bills but the expense was to be hers. I repeat that has no great significance, they were embarking on a trip, she was to pay the expense, there was no attempt to disguise the fact that Dr. McCready was simply her devoted physician and had been lavishing that devotion through a great many years, until in 1924 when they were married. He had assisted his son to establish this school for backward children, and with all these things it was well known, as was testified, that Mrs. Hecht had been clearly advised of that situation in July, several months before this agreement was made, that they had closed this school, had the buildings on their hands, the property, the mortgage, Dr. Bosworth McCready's health broken down in the flu epidemic of 1918, and Dr. McCready was hard put to render the assistance he must give growing out of the illness of his son and the whole situation there. All that was definitely known to Mrs. Hecht and the mere fact that she was able to pay for the rather expensive trip, while it has some significance, it would not signify, nor would the manner in which she lived, the extent of her wealth and that which he would be giving up. As I say it isn't usual and it isn't unusual, and not of any vital significance to this eminent physician who was highly prized for his services in this family, when these two were about to marry, she knowing as was admitted here in the pleadings by the other side that his resources in the status

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of physician of the medical profession were not great, and he knowing that she had money from some place enough to take this trip that she wanted to take, wanted to pay for, what discredit is there, what significance is there? It had no significance as to where it came from, and we know that more than \$17,000 at the end of the year 1923 was paid to her from this trust, and \$8000, making \$25,000 that came in these two years prior to these trips, from the income of the Union Trust Company stock set aside for her during her lifetime by her brother Edwin S. Craig, so that I say that the man that would have drawn an inference of established assets to live after her from the fact she was going to take a trip might have been greatly misled.

This money went into the traveling expenses, and in the 9 years that followed \$50,000 or \$60,000 went into the miscellaneous disbursements for both of them. Doubtless Dr. McCready got the benefit of a substantial part of it, he had some notes, one for \$8000 with the Burgettstown Bank and another \$4000, but Dr. McCready showed that his practice had dwindled to 1/6 of what it was during the natural devotion which he gave to his married life. And what remarkable thing is it that he got the benefit of these funds. Except for his marriage, he would have had these patients and other patients which he gave up, and life would have gone on as before. Marriage resulted, and anything that has been

said here on the part of anyone, it was the sort of marriage that usually happens between people of character and standing, these people lived there together in the normal fashion, the Dr. never inquired as to what Mrs. McCready had, he never looked in her books, he never saw her books, he knew nothing about what she had. I don't mean to say he had no general knowledge, but just as Mr. Scull -- why should Dr. McCready be suspected of knowing her affairs, when Mr. Scull who had been attorney for years, when I asked him what he knew, what did she discuss with him, he didn't even know she had any books, he didn't know about her holdings. Now this physician who had been devoting himself to the health of the family, why should it be assumed that he knew things that Mrs. Hecht's confidential attorney didn't know.

I went on to question Mr. Scull. I was surprised that he didn't know. I said, "You knew she had stock in the Greensboro Gas?" Yes, she consulted him about the sale. He knew she had stock in the Freedom Oil, the Chartiers Oil, but I imagine that no one except Mr. Albert Craig who made out these income tax returns for her dreamed she died with more than \$800,000, or dreamed when she was married she had over \$300,000.

It comes down to this point in the confidential relationship here between the Dr. and Mrs. Hecht, when they re-

turned from this trip on which Dr. McCready went as physician, they had this little supper at the William Penn, and the discussion there of Dr. McCready's circumstances and about his son's circumstances. Things went on until November when the definite marriage had been announced and Mrs. Hecht, a week or so before the marriage wrote to Dr. Bosworth McCready and his wife that letter in which she referred to the marriage and some information in connection with the marriage, something about the change in plans, etc.

I say this is the inference. The engagement was imminent, Dr. McCready had all this responsibility, Mrs. Hecht knew it, and now the time comes when she leaves this great estate and this will with its general provisions, and the contention here is that because this physician at the time of his marriage, devoted to his professional life, was living simply with a family in the East End with moderate expenses, that it is enough to say to him, "I have given the home where we have lived together in these years to a charity, I have given the contents of it to my brother, I have given my other personal property into this charity, and I have given \$1000 a month to you. You can live on that better than you were actually living, that pays more than your actual living expense was at the time you were married, and that is enough for you. It is no concern of ours that you had this responsibility which I knew when you were married.

It is no concern of ours that you live in these declining years with a consciousness that you have an incurably sick son, a physician of national repute, doing a great humanitarian work as you yourself have done a great humanitarian work during the 60 years of your medical practice, it is enough that you take the \$1000, that will enable you to live in a better boarding house than you had before, and it is not our concern that you live and die with a consciousness that your incurably sick son and his wife and their young daughter have themselves to look out for.

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