

which was unknown, the total quantity of coal to be mined was very largely a matter of uncertainty. *Held*, that specific performance of the agreement would be decreed at suit of the lessee, on the ground of the inadequacy of his remedy at law for nonperformance, arising from the impossibility of determining the amount of his damages with any reasonable degree of certainty.

This was a suit in equity, by James W. Oakford against Mrs. Frances A. Hackley, to enforce the specific performance of an agreement to enter into a lease of certain coal lands owned by defendant.

Samuel B. Price, for complainant.

James E. Burr, H. W. Palmer, and Robert G. Ingersoll, for defendant.

BUFFINGTON, District Judge. This is a bill to enforce specific performance of an agreement for a lease of coal land in Lackawanna county. The bill was filed in the court of common pleas of that county, and by the respondent, a citizen of the state of New York, removed to the circuit court. The proofs show that Frances A. Hackley, the respondent, by the will of her husband, who died in the summer of 1894, became the owner in fee of 150 acres of land situate in Lackawanna county, known as the "Thomas Bell Tract," and underlaid with anthracite coal. By letter of attorney, dated August 1, 1894, Mrs. Hackley constituted Judge William H. Jessup, of the city of Scranton, her attorney. On August 30th, Judge Jessup wrote Mrs. Hackley in reference to the Bell tract as follows:

"I have had applications for the leasing of the 150-acre tract of Thomas Bell. \* \* \* It occurs to me that it would be a very good time to get the 150 acres leased now. There are not many tracts that are not under lease, and, of course, the sooner you get your tract under lease, the sooner you will be realizing from it. The borings that were made, of which I found among the papers the reports, would seem to show that quite an extensive fault exists in the tract, and under a portion of it there was no coal. As to whether any recent developments in the vicinity have changed this, it would be well for us to find out before making any definite arrangements; and, above all, it is worth more to you to have thoroughly reliable men to deal with, as it may run as long as you live, perhaps, than even to get a little better price from unreliable men, and being continually annoyed. That is my experience, and I know it was the experience of your husband, Col. Hackley; and I know, for that reason, he declined to negotiate with certain parties with reference to the property."

The reference to the report in this letter is to maps of borings which were found among the papers of Col. Hackley at the time of his death, by Judge Jessup, concerning which he testified as follows:

"The two maps of borings I told Mrs. Hackley I would bring home with me, because, in future leasing of the Thomas Bell tract, they would be important to show the parties who might desire to lease the land and the coal there was on it."

Additional letters were written by Judge Jessup to Mrs. Hackley, which were not put in evidence by either party; but on October 23d she wrote the judge as follows:

"Dear Sir: Your letter of the 16th instant, and also your telegram of yesterday, came duly to hand. \* \* \* Note what you say in regard to the Thomas Bell tract, and will be glad to receive proposals for lease, which will have my immediate attention."

It should also be noted that Judge Jessup testified as follows:

"I had several talks with Mrs. Hackley, but I told her my advice would be, if she was anxious to be freed from annoyances and trouble of business, and as her property consisted of the Archbald property, which was then under lease, and this Thomas Bell tract in Pennsylvania,—that my advice would be to get both of them under long-term leases at the earliest date, so that she would know to a certainty what would be her regular income; and, as she had some matters in view in the way of charities, which she then talked about, she would thus know how much she could give to charity, or any object she pleased; and that was my advice to her. She seemed to consent to that."

The Archbald property was then under lease, but a renewal of the lease was arranged for by Judge Jessup, and executed by Mrs. Hackley. On the 27th of October, Oakford, the plaintiff, made an offer to lease the coal by the following letter:

"Scranton, Pa., Oct. 27th, 1894.

"To Hon. Wm. H. Jessup, Att'y for Mrs. Frances A. Hackley:

"I hereby offer to lease from you all the merchantable and minable coal in, under, and upon the Thomas Bell tract of land, in Lackawanna county, Pennsylvania, at the following rents, or royalties, viz.: For the first two (2) years, forty-two (42) cents for prepared sizes, one-half ( $\frac{1}{2}$ ) of the price of prepared sizes for pea, and one-fourth of the price of prepared sizes for buckwheat, and one-eighth ( $\frac{1}{8}$ ) of the price of prepared sizes for birdseye and culm, if sold and removed from the demised premises. After two years from date of leases, the royalty on prepared coal to increase at the rate of one (1) cent per annum up to a maximum of fifty (50) cents, and the smaller sizes proportionately. Lease to contain usual mining privileges and a reasonable minimum.

"[Signed]

J. W. Oakford."

On November 8th, Judge Jessup took this offer to New York City, and submitted it to Mrs. Hackley, and, after consultation, the following acceptance was appended to the offer:

"I accept the above offer, and direct W. H. Jessup to draw up the proper lease for the coal mentioned.

"Nov. 8, 1897.

Frances A. Hackley."

On the same day Judge Jessup wrote Mr. Oakford as follows:

"Dear Sir: I write to inform you that your proposal to lease the coal on a part of the Thomas Bell tract owned by Mrs. Hackley is accepted by her, and I am directed to prepare a proper lease for the same. The acceptance is predicated upon the signing of such lease as I shall advise her to prepare.

"Very truly yours,

"W. H. Jessup, Attorney for Mrs. F. A. Hackley."

Subsequently Judge Jessup prepared a lease, which is printed as Exhibit C to plaintiff's bill, and on the 26th of November, 1894, the same was executed by Mr. Oakford. Without now going into detail, it is sufficient to state that respondent refused to execute the lease. Her position with reference thereto, for present purposes, is summarized by her answer to the request of Mr. Oakford for its execution, embodied in a letter, dated December 24, 1894, in which he says:

"(1) Have you any modifications of the present lease to suggest, which would make you willing to execute it? (2) If not, on what do you base your refusal to sign the lease with me?"