

The foregoing Petition having been duly read and considered, it is hereby this 21st day of June, ordered and adjudged by the Circuit Court for Frederick County, sitting in Equity, that the Plaintiff be and she is hereby granted permission to amend the Bill of Complaint filed in this cause.

Glenn H. Worthington.

Filed June 21st, 1915.

No. 9162 Equity.

Gertrude E. Hickman

Vs.

Annie Kroeger et al.

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In the Circuit Court for
Frederick County, sitting
as a Court of Equity.

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O P I N I O N

On November 30, 1912, Thomas Hickman bought of Joseph H. Hamilton eight lots of ground located opposite the Fair Grounds in Frederick City, for which he agreed to pay the sum of \$400.00 of which sum a part was paid cash, and subsequently, on March 29, 1913, he took a deed for the same in his own name from the vendor, Hamilton. It appears from the testimony in the case that \$100.00 of the purchase money paid for the lots was the money of Hickman and the residue \$300.00, the money of his wife, Gertrude E. Hickman, the plaintiff in this cause. The Bill was filed by her on May 1, 1914, and alleges an understanding between her and her husband, Thomas Hickman, to the effect that she was to furnish \$300.00 of the purchase money and the deed was to be taken in their joint names so that the survivor of them would be entitled to the whole. It also alleges the death of Thomas Hickman on November 30, 1913, and the discovery by her soon afterward of the fact that the deed for the lots has been made to her husband alone, and her name did not appear therein as one of the grantees, as was her understanding and agreement with her husband before the lots in question were purchased by him.

The prayer of the bill is for the annulment of the deed in question and the passage of an order requiring Joseph H. Hamilton to execute a deed to the complainant, as the sole survivor of the tenants by entireties, for the lots of land mentioned, and for general relief. We do not think the testimony clearly sustains the allegations of the bill in regard to the alleged understanding about having the deed made to the husband and wife, jointly. Where it is sought to reform a contract the proof must conclusively establish that both parties understood the contract as it is alleged it ought to have been expressed.

Gaver vs Gaver, 119 Md. 639.

"The proof must be such as to leave no doubt whether in the mind of the Court that mistake has intervened, and that the instrument sought to be rectified is variant from the actual contract of the parties." Ibid.

Of course it was no concern to Mr. Hamilton, the vendor, whether he made the deed for the Lots to Thomas Hickman alone or to Thomas Hickman and Gertrude E. Hickman, his wife, jointly. But in fact the deed was made and executed so as to convey the whole title to the husband. As Thomas Hickman made the purchase and accepted the deed to himself alone, that fact tends to throw doubt upon the nature of the alleged understanding between him and his wife as to how the deed should be drawn. In fact the complainant's own testimony as to this understanding is not wholly convincing, and, in the circumstances, we do not think that the specific relief asked for can be granted. But it is apparent that the money of Mrs. Hickman was advanced by her to pay \$300.00 of the purchase price of the lots at the time the transaction was completed and that this was paid as her own money and was not a loan to her husband. All the evidence tends to show that before the conveyance to Thomas Hickman of the lots in