Real Property–Landlord and Tenant–Measure of Damages on Breach of Covenant (Ganz v. Clark, 252 N.Y. 92 (1929))

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\footnote{Engle v. Fitch, 3 Law Rep. Q. B. 314, per Chief Judge Cockburn.}

\footnote{In an action against the vendor of real property for breach of warranty the vendee can recover substantial damages "if the vendor is guilty of fraud;
failure to act, evidently born of a refusal to incur expense which would enable the covenantor to fulfil his contract. To permit mitigation of damages in such an instance would be to sanction the breach of a contractual duty, due entirely to lack of good faith or diligence. Such is not the intendment of the rule enunciated in Mack v. Patchin nor of any concept of the law.

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Trusts—Validity of Conveyance of Real Property.—Decedent had been engaged in the real estate business, taking title to property in the names of dummy corporations, of which he was president and sole stockholder, or in the names of his clerks. He executed two instruments certifying that certain property which he had conveyed and property to be thereafter conveyed to one of these corporations belonged to his son; he also stated to others that he had given the property to his son. The conveyance of the property was made after the declaration of trust; the corporation received the deed upon this trust and for the purpose of carrying it out, and all the partners regarded the property as belonging to the son. There was no consideration for the conveyance, but an implied promise and understanding to execute a deed to the son for whose benefit the property was so transferred. After the father's death, the papers were found in the possession of the son and subsequently the corporation, by his direction, transferred the property and paid him the proceeds. By his will, the decedent attempted to divide his property equally between his son and daughter. On the accounting of the son as executor, he claimed the moneys which he had received as the purchase price for these properties, to which objections were filed by the daughter's children, through their guardian, and the co-executor of the estate. The Appellate Division, affirming the Surrogate, held that the money must be accounted for; that it belonged to the corporation. On appeal, held, reversed; the title which passed to the corporation was held for the son to whom the property belonged, and he was entitled to the proceeds thereof; the corporation was chargeable with the knowledge of its president that the conveyance was subject to a trust for the benefit of the son, and the entries in the corporate books that the properties belonged to the son were evidence of the fact that the corporation recognized the trust. Matter of Brown, 252 N. Y. 366, 169 N. E. 612 (1930).

or can convey but will not, either from perverseness or to secure a better bargain; or if he has covenanted to convey, when he knew he had no power to remedy a defect in his title; or where it is in his power to remedy a defect in his title and he refuses or neglects to do so; or when he refuses to incur expenses which would enable him to fulfil his contract.” Supra Note 1, Mack v. Patchin, at p. 172, per Chief Judge Earle.