nizes in the form of decree rendered; the suit is dismissed without prejudice to any future actions on any patent involved in the suit. The opinion of the lower court distinctly contemplates the commencement of new actions as to all five patents, or at least as to the four patents not involved in the agreement to suppress evidence; see *General Excavator Co. v. Keystone Driller Co.*, 62 F. (2d) 48, 51 (C.C.A. 6th 1932). This result, however, gives the "clean hands" maxim a very insubstantial effect; it requires plaintiff to pay the costs of the present suit, and then institute another. It would seem that, if the maxim is to be applied in a practical manner, it should result in barring plaintiff's rights as to the entire subject matter of the suit, or in barring plaintiff's rights as to part of the subject matter involved but permitting him to recover for the balance of the subject matter in the same suit. The maxim should not result only in a dismissal of the present suit, and the bringing of a new one. But see opinion of court below, denying rehearing, *General Excavator Co. v. Keystone Driller Co.*, 64 F. (2d) 39, 40 (C.C.A. 6th 1933) (maxim bars only the present suit and has no application to the future).

JOSEPH J. ABBELL

Evidence—Hearsay—Dying Declarations—States of Mind—[Federal].—The defendant, Dr. Shepard, was indicted for the murder of his wife who had died from poisoning. The prosecution introduced in evidence as a dying declaration the statement of the deceased: "Dr. Shepard poisoned me." Both the Circuit Court of Appeals and the Supreme Court of the United States held that sufficient ground had not been laid to make the statement admissible as a dying declaration. The Circuit Court of Appeals, however, sustained its admission on the theory that it was evidence of a state of mind, rebutting evidence of suicide introduced by the defendant. *Held*, that such statement was not admissible for this purpose. *Shepard v. United States*, 54 Sup. Ct. 22 (1933).

The evidence fell short of showing that at the time the deceased stated that Dr. Shepard poisoned her she had a settled hopeless expectation of death, and so the statement was quite properly excluded as a dying declaration. *State v. Weaver*, 57 Iowa 730, 11 N.W. 675 (1882); *Bell v. State*, 72 Miss. 507, 17 So. 232 (1895); *Smith v. State*, 161 Miss. 430, 137 So. 96 (1931); 3 Wigmore, Evidence (2d ed. 1923), §§ 1440, 1442; but see 82 Univ. Pa. L. Rev. 290 (1934).

The most interesting aspect of the case is the light it throws on the attitude of the Supreme Court as to the use of hearsay evidence in proving states of mind. Justice Cardozo, in whose opinion all the justices concurred, clearly sought to limit the admissibility of such evidence to show a state of mind as a step in the proof of an act consistent with that state of mind. He accepted the suggestion of Professor Maguire that the rule should be limited to cases where the argument is from a state of mind to subsequent conduct, as contrasted with prior conduct, of the speaker, or perhaps the joint conduct of the speaker and another. Maguire, The Hillmon Case Thirty-three Years After, 38 Harv. L. Rev. 709 (1925).

The use of the statement, that Dr. Shepard poisoned her, which the Circuit Court of Appeals allowed in this case cut far deeper into the hearsay rule than any of the cases so far decided with the exception of the cases which admit statements of a present state of mind to prove past acts in will contests. *Thompson's Estate*, 200 Cal. 410, 253 Pac. 697 (1927); *McMurtrey v. Kopke*, 250 S.W. 399 (Mo. 1923); *Behrens v.*

Behrens, 47 Ohio St. 323, 25 N.E. 209 (1890); 3 Wigmore, Evidence (2d ed. 1923), § 1736; *contra*, *Throckmorton v. Holt*, 180 U.S. 552, 21 Sup. Ct. 474, 45 L. Ed. 663 (1900). These are now regarded as a separate class. *In re Shelton's Will*, 143 N.C. 218, 55 S.E. 705 (1906); Hutchins and Slesinger, Some Observations on the Law of Evidence —State of Mind to Prove an Act, 38 Yale L. Jour. 283 (1929); Maguire, The Hillmon Case Thirty-three Years After, 38 Harv. L. Rev. 709, 715 n. 22 (1925). The statement, "Dr. Shepard poisoned me," on analysis means, "I believe that Dr. Shepard poisoned me." Hinton, States of Mind and the Hearsay Rule, 1 Univ. Chi. L. Rev. 394 (1934). This is using a hearsay statement to prove a state of mind, which is permissible according to *Mutual Life Insurance Co. v. Hillmon*, 145 U.S. 285, 12 Sup. Ct. 909, 36 L. Ed. 706 (1892), and cases following it. *State v. Journey*, 115 Conn. 344, 161 Atl. 515 (1932); *State v. White*, 52 Nev. 235, 285 Pac. 503 (1930); *Commonwealth v. Marshall*, 287 Pa. 512, 135 Atl. 301 (1926). The next step in the analysis is that since the deceased believed that Dr. Shepard poisoned her, it follows circumstantially that she believed that she did not poison herself. But the following step is that if she believed that she did not poison herself, then as a matter of fact she did not. This step, involving the element of memory and possibly perception, clearly conflicts with the hearsay rule. It is just this step which the courts refuse to take in excluding evidence of overt acts to show belief as to a state of facts to prove the state of facts believed. *State v. Piernot*, 167 Iowa 353, 149 N.W. 446 (1914); *Wright v. Doe d. Tatham*, 7 Ad. & Ell. 313 (1837); 1 Wigmore, Evidence (2d ed. 1923) § 267.

The language of the opinion in refusing to accept the evidence was, nevertheless, unfortunate, for it was said simply that "the testimony now offered faced backward not forward." If the statement were used to show a present state of mind as the basis for an argument that that state of mind probably extended into the past, there would be no objection to it. *State v. Hudspeth*, 159 Mo. 178, 60 S.W. 136 (1900); *Rawson v. Haigh*, 2 Bing. 99 (1824). Only when the argument is from past belief to the truth of the facts believed is it to be condemned.

The argument has been made that if declarations are admissible to a show state of mind in order to prove a future act, then logically they should be admissible to show a state of mind in order to prove a past act. Seligman, An Exception to the Hearsay Rule, 26 Harv. L. Rev. 146 (1912). The present case is an excellent example of the answer thereto made by Professor Chafee, that when a declaration as to state of mind is used to prove a past act, it is apt to be in a testimonial form so that it is practically impossible for the jury to consider it as anything but a direct statement of the fact to be proved. Chafee, Review of Wigmore: Evidence, 37 Harv. L. Rev. 513, 519 (1924). Thus in this case the statement is sought to be used simply to prove that Mrs. Shepard did not commit suicide. It would be impossible for the jury to use the statement for this purpose alone and to overlook the fact that it is a direct statement of the ultimate issue in the case. No such difficulty arises when a declaration of a state of mind is used to prove a future act, because the only use that the jury can make of the evidence is purely circumstantial.

BRIMSON GROW

Federal Jurisdiction—Construction of Uniform Laws in the Federal Courts—[Federal].—A suit was brought in federal court on a note executed in Florida, bearing interest on the principal amount and on overdue interest payments. *Held*, the note was non-negotiable under the Florida Negotiable Instruments Law, in spite of decisions