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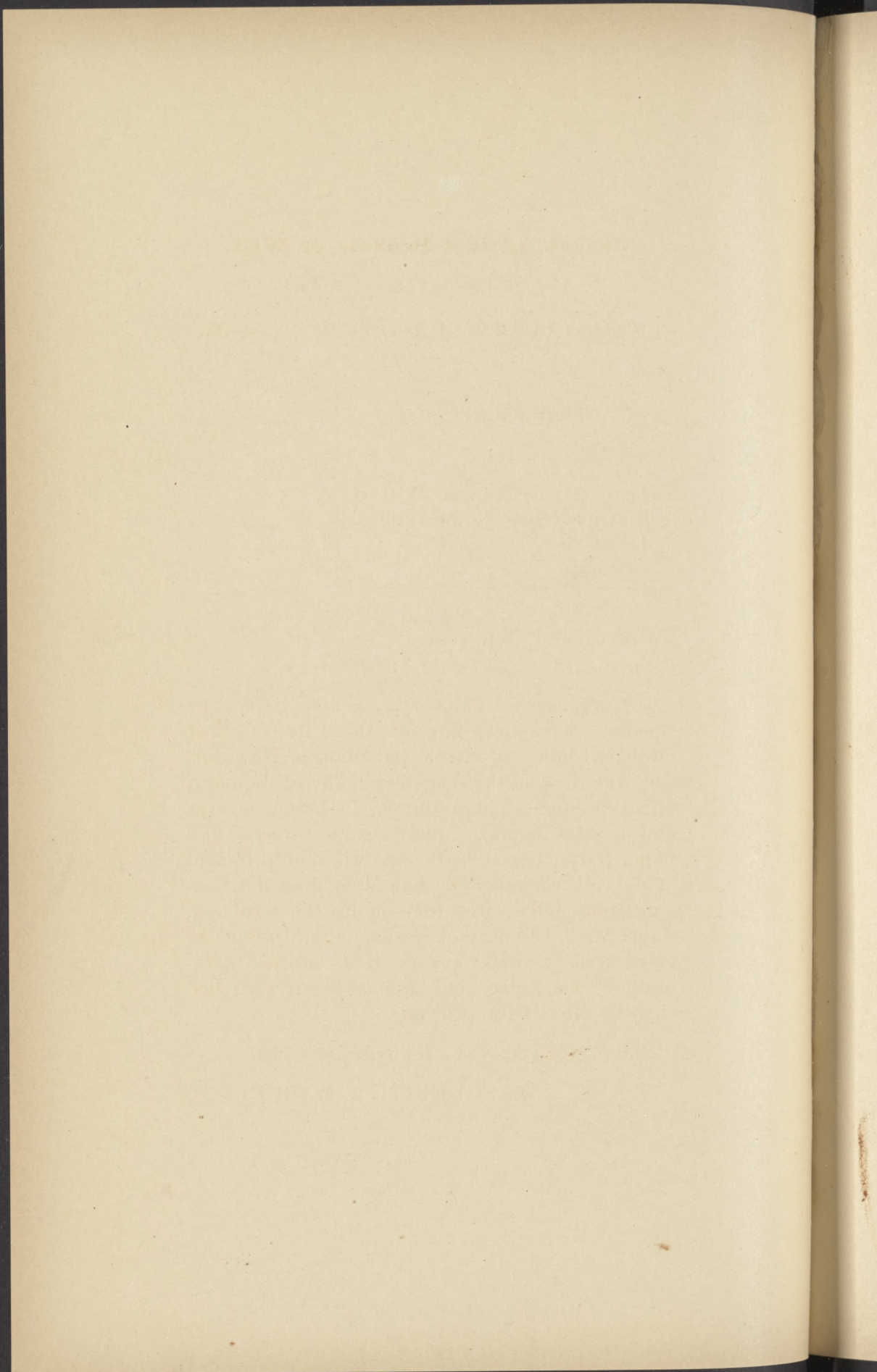
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Caveat Against Probate of Will.

(Filed January 25th, 1930.)

ESSEX COUNTY SURROGATE'S COURT.

IN THE MATTER
of the
Probate of the Alleged Will of
Emanuel Sinclair Margulies,
deceased.

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TO ANDREW J. WHINERY,
Surrogate of the County of Essex:

I, MARGUERITE Z. MARGULIES, widow of Emanuel 20
Sinclair Margulies, late of the City of East
Orange, County of Essex and State of New Jer-
sey, who died on the seventeenth day of January,
nineteen hundred and thirty, do hereby caveat
and protest against admitting to probate any
paper purporting to be the last will and testament
of the said Emanuel Sinclair Margulies, until ex-
amination and decree thereon by the Orphans'
Court of said County of Essex, or until notice be 30
given to this caveator and all others entitled there-
to of the time, place and tribunal where the same
shall be offered for probate.

Dated, Newark, N. J., January 24th, 1930.

MARGUERITE Z. MARGULIES.

40

Petition for Probate of Will.

(Filed February 19, 1930.)

NEW JERSEY PREROGATIVE COURT.

TO HIS HONOR EDWIN ROBERT WALKER,
Ordinary of the State of New Jersey.

10 The petition of DAVID L. PODELL, of the City, County and State of New York, respectfully shows that:

1. Emanuel Sinclair Margulies, late of the City of East Orange, County of Essex and State of New Jersey, died on January 17, 1930, having first duly made and executed a Last Will and Testament bearing date May 22, 1928.

20 2. Petitioner, David L. Podell, is the sole executor named therein.

3. Said Emanuel Sinclair Margulies left him surviving as his next of kin and heirs at law the following: Marguerite Zender Margulies, residing at 25 South Munn Avenue, East Orange, N. J., the widow of the said deceased; Isidore Margulies, residing at 634 High Street, Newark, N. J., father of said deceased; Tillie Margulies, residing at 634 High Street, Newark, N. J., mother of said deceased; Jerome Margulies, residing at 777 High Street, Newark, N. J., a brother of said deceased; Miriam Margulies Segall, residing at 493 Central Avenue, Newark, N. J., a sister of said deceased; Ada Margulies Ginsberg, residing in the Borough of Brooklyn, State of New York, a sister of said deceased; all of whom are of full age.

Petition for Probate of Will.

4. A caveat was filed against the probate of said Will in the Essex County Surrogate's Court by Marguerite Z. Margulies, widow of Emanuel Sinclair Margulies, on January 24, 1930.

5. The value of the estate of said deceased is, as nearly as your petitioner can learn, not in excess of \$5,000.00. 10

6. Petitioner is desirous that proof of said Last Will and Testament should be taken and therefore prays that said Will may be proved and letters granted thereon according to law.

DAVID L. PODELL,
Petitioner.

MERRITT LANE, 20
Proctor for Petitioner.

STATE OF NEW JERSEY, }
County of Essex, } ss.:

DAVID L. PODELL, the petitioner named in the foregoing petition, being duly sworn, upon his oath according to law, deposes and says:

I have read the foregoing petition subscribed 30
by me and know the contents thereof and the same
is true to the best of my knowledge, information
and belief.

DAVID L. PODELL.

Sworn and subscribed to before }
me this 27 day of January, 1930. }

JOHN S. CLANCY,
Master in Chancery of New Jersey. 40

Order for Hearing on Probate of Will.

(Filed February 19, 1930.)

NEW JERSEY PREROGATIVE COURT.

IN THE MATTER

10

of the

Probate of the Last Will and
 Testament of EMANUEL SIN-
 CLAIR MARGULIES.

20 The alleged last will and testament of Eman-
 uel Sinclair Margulies having been lodged for
 probate in this court on the 27th day of January,
 1930 with a petition for probate duly verified, and
 it appearing that a caveat was filed against the
 probate of any last will and testament of Eman-
 uel Sinclair Margulies in the Office of the Surro-
 gate of Essex County, and application being now
 made to fix a day for probate in solemn form
 upon notice as required by the statute in such
 case made and provided:

30 It is, on this 19th day of February, 1930,
 Ordered that the matter of the probate of the
 last will and testament of Emanuel Sinclair Mar-
 gulies be set down before the Ordinary on Tues-
 day the 18th day of March, 1930, at ten o'clock in
 the forenoon of that day, or as soon thereafter as
 counsel can be heard, at the Chancery Chambers,
 Industrial Building, Newark, New Jersey, and
 that notice of this order be given to all of the next
 of kin and the persons interested in said will who
 40 may reside in this State by serving a copy there-

Order for Hearing on Probate of Will.

of, which need not be certified, either personally or by leaving at their usual place of abode or business if individuals, and if corporations, then by leaving a copy thereof at the usual place of abode or business of one of their officers, at least ten days before the date set for the hearing and that notice be given to non-residents of the State of New Jersey by mailing like copies with the postage thereon prepaid, addressed to their last known residences, within the same time. 10

Respectfully advised,

E. R. WALKER,
C.

ALONZO CHURCH,
V. C.

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Petition for Appointment of Administrator *Pendente Lite*.

(Filed February 20, 1930.)

NEW JERSEY PREROGATIVE COURT.

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IN THE MATTER

of the

Probate of the Last Will and
Testament of EMANUEL SIN-
CLAIR MARGULIES.

20

To HIS HONOR, EDWIN ROBERT WALKER, Ordinary
or Surrogate General and Judge of the Pre-
rogative Court of the State of New Jersey:

The petition of David L. Podell, residing in the
City, County and State of New York, respectfully
shows to the Court:

30

1. Emanuel Sinclair Margulies died on the
17th day of January, 1930, leaving a last will and
testament dated May 22nd, 1928, in which said
last will and testament he designated your peti-
tioner as executor and your petitioner has pre-
sented said will to this court with an application
for probate.

40

2. Your petitioner shows that on the 24th day
of January, 1930, the widow of the said Emanuel
Sinclair Margulies, to wit, Marguerite Zender
Margulies, filed a caveat against the probate of
said last will and testament in the office of the
Surrogate of Essex County. That by reason of
the filing of said caveat it is impossible to obtain

Petition for Appointment of Administrator.

immediate probate of said will and notice will have to be given to those interested in the said estate before probate can be obtained.

3. Your petitioner shows that the said Emanuel Sinclair Margulies left his affairs in an inextricable condition and although the said last will and testament of the said Emanuel Sinclair Margulies purports to dispose of an estate of a substantial sum of money, investigation has disclosed that the said estate will practically consist of nothing. Investigation has also disclosed that the said Emanuel Sinclair Margulies has used moneys belonging to corporations of which he was an officer for his own purpose and as a result of his death a receiver has been appointed by the Court of Chancery for the Great Eastern Casualty Company, of which company he was president. Claims undoubtedly will be assented by said company against the estate of the said Emanuel Sinclair Margulies and there are other matters in which the said Emanuel Sinclair Margulies was concerned which need immediate attention: it is absolutely necessary for the protection of the estate of the said Emanuel Sinclair Margulies that an administrator *pendente lite* be forthwith appointed.

Your petitioner therefore prays that this court may appoint an administrator *pendente lite* with all the powers of such administrator in such case made and provided.

And your petitioner will ever pray, etc.

DAVID L. PODELL,
Petitioner.

MERRITT LANE, 40
Proctor for Petitioner.

Petition for Appointment of Administrator.

STATE OF NEW JERSEY, }
 County of Essex, } ss.:

DAVID L. PODELL, of full age, being duly sworn according to law, upon his oath deposes and says:

I am the petitioner named in the foregoing petition. The matters and things therein set forth
 10 are true.

DAVID L. PODELL.

Subscribed and sworn to before me }
 this 27th day of January, 1930. }

JOHN J. CLANCY,
Master in Chancery of New Jersey.

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**Order Appointing Administrator
*Pendente Lite.***

(Filed February 20, 1930.)

NEW JERSEY PREROGATIVE COURT.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">of the</p> <p style="text-align: center;">Probate of the Last Will and Testament of EMANUEL SIN- CLAIR MARGULIES.</p>	}	10.
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Upon reading and filing the petition of David L. Podell, and it appearing that the appointment of an administrator *pendente lite* is essential to the preservation of the estate of Emanuel Sinclair Margulies, deceased, and that there will be delay in the appointment of the executor or other representative of the estate and the Ordinary having inquired into the circumstances and good cause appearing therefor, it is on this 27th day of January, 1930, on motion of Merritt Lane, proctor of petitioner,

30

ORDERED, ADJUDGED AND DECREED, that administration *pendente lite* on the estate of Emanuel Sinclair Margulies is necessary for the preservation thereof,

And therefore I, Edwin Robert Walker, Ordinary or Surrogate General and judge of the Prerogative Court of the State of New Jersey, do hereby appoint Charles M. Meyer of Newark and State of New Jersey administrator *pendente lite*

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Order Appointing Administrator.

of all and singular the goods, chattels and credits of said Emanuel Sinclair Margulies, who is duly authorized as said administrator *pendente lite* to administer the same agreeable to law.

And I do further direct that said administrator *pendente lite* before entering upon the discharge of his duties shall enter into hand with the
 10 Ordinary in the sum of Five Thousand Dollars conditioned for the faithful performance of his duties as said administrator *pendente lite*, same to be approved by Ray F. Anthony, a special master, and filed with the Registrar of this Court.

Respectfully advised,

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ALONZO CHURCH,
 V. C.

-----,
Ordinary.

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Oath of Administrator *Pendente Lite*.

(Filed January 28, 1930.)

NEW JERSEY PREROGATIVE COURT.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">of the</p> <p>Application of David L. Podell for the Probate of the Last Will and Testament of Emanuel Sinclair Margulies, deceased.</p>	<p>ON PETITION, 10 ETC.</p>
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STATE OF NEW JERSEY, }
County of Essex, } ss.:

CHARLES M. MYERS, of full age, being duly sworn according to law, upon his oath deposes and says: 20

I am the administrator *pendente lite* of all and singular the goods, chattels, rights and credits of Emanuel Margulies, deceased.

I will well and truly administer all and singular the goods, chattels, rights and credits of Emanuel Sinclair Margulies, deceased, late of the City of East Orange, in the County of Essex and State of New Jersey, which have or shall come to my hands or possession or to the hands or possession of any other person or persons for my use and I will make and exhibit into the Register's office of the New Jersey Prerogative Court, at Trenton, N. J., a true and perfect inventory of the said rights and credits and render a just and true account thereof as and when by law required so to do. 30

CHARLES M. MYERS.

Sworn and subscribed to before me } 40
this 28th day of January, 1930. }

JOHN J. CLANCY,
Master in Chancery of New Jersey.

Bond.

(Filed January 28, 1930.)

KNOW ALL MEN BY THESE PRESENTS that we,
 CHARLES M. MYERS, of the City of Newark, New
 Jersey, as Principal,

of and LIBERTY SURETY
 BOND INSURANCE COMPANY, as Surety, are held
 10 and firmly bound unto the Ordinary of the State
 of New Jersey in the sum of \$5,000.00, to be paid
 to the said Ordinary or his assigns; to which pay-
 ment well and truly to be made we bind ourselves,
 our and each of our heirs, executors and admin-
 istrators, jointly and severally, firmly by these
 presents. Sealed with our seals and dated the
 27th day of January, 1930.

The condition of this obligation is such that if
 20 the above-bounded CHARLES M. MYERS, adminis-
 trator *pendente lite* of all and singular the goods,
 chattels and credits of Emanuel Sinclair Mar-
 gulies, deceased, do make or cause to be made a
 true and perfect inventory of all and singular the
 goods, chattels and credits of the said deceased,
 which have or shall come to the hands, posses-
 sion or knowledge of the said CHARLES M. MYERS,
 or into the hands or possession of any other per-
 son or persons for the said CHARLES M. MYERS,
 30 and the same so made do exhibit or cause to be
 exhibited into the registry of the Prerogative
 Court, in the secretary's office of this state, at or
 before the expiration of three calendar months
 from the date of the above-written obligation, and
 the same goods, chattels and credits of the said
 deceased, at the time of his death, which at any
 time after shall come into the hands or posses-
 sion of the said CHARLES M. MYERS, or into the
 hands or possession of any other person or per-
 40 sons for the said CHARLES M. MYERS, do well and
 truly administer according to law; and further

Bond.

do make or cause to be made, within twelve calendar months from the date of the above-written obligation, or should the said CHARLES M. MYERS' administration cease before the end of such twelve months, then, at the time such administration shall cease—and, in case his administration shall continue after said twelve months, then, also, at the time his said administration shall cease a just and true account of his administration; and if the will of said Emanuel Sinclair Margulies, deceased, which is now on file in the Prerogative Court, and propounded or to be propounded for probate, shall be duly proved, or, if it shall hereafter appear that any last will and testament was made by the said deceased, and the executor or executors therein named or any other person or persons do exhibit the same into the said Prerogative Court, or into the Surrogate's office of the County of Essex, making request to have it allowed and approved; if the said CHARLES M. MYERS, being thereunto required, do render and deliver the said letters of administration (approbation of said testament being first had and made) to the said court, and shall in all things faithfully discharge the duties of his trust as administrator, and obey all lawful orders and decrees of the Ordinary or other competent authority touching the administration of the said estate committed to him, then the said obligation to be void and of no effect, otherwise to remain in full force and virtue.

CHARLES M. MYERS. (L. S.)

MERON G. WIENER.

LIBERTY SURETY BOND

INSURANCE COMPANY,

By FRANK W. STRICKY,

Attorney-in-fact.

Witness as to surety:

H. F. BOICE.

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Letters.

(Filed February 20, 1930.)

PREROGATIVE COURT OF NEW JERSEY.

I, EDWIN ROBERT WALKER, Ordinary or Surrogate General and Judge of the Prerogative Court of the State of New Jersey, do hereby appoint
 10 CHARLES M. MYERS administrator *pendente lite* of the goods and chattels, rights and credits which were of Emanuel Sinclair Margulies, deceased, late of the County of Essex, who is duly authorized to administer the same according to law.

Witness my hand and seal of the Prerogative Court at Trenton in the said State this Twentieth day of February, A. D. Nineteen hundred and
 20 thirty.

(SEAL)

JOSEPH F. S. FITZPATRICK,
Register.

Affidavit of Mailing.

(Filed March 27, 1930.)

NEW JERSEY PREROGATIVE COURT.

IN THE MATTER

of the

Probate of the Last Will and
 Testament of EMANUEL SIN-
 CLAIR MARGULIES.

10

AFFIDAVIT OF ELIZABETH LEE.

STATE OF NEW JERSEY, }
 County of Essex, } ss.:

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ELIZABETH LEE, of full age, being duly sworn,
 according to law, upon her oath deposes and says:

On Friday, February 21st, 1930, I mailed an
 order marked "Filed February 19, 1930" in the
 above entitled cause by depositing copies of said
 order inclosed in envelopes with the proper post-
 age thereon in the United States Post Office Box,
 Prudential Building, Newark, New Jersey, ad-
 dressed to the following persons at the following
 addresses:

30

Father Edward F. Murphy, Epiphany Col-
 lege, New Windsor, Newburgh, N. J.

David L. Podell, 39 Broadway, New York
 City.

Ada Margulies Ginsberg, 864—49th Street,
 Brooklyn, N. Y.

ELIZABETH LEE.

Sworn and subscribed to before me }
 this 21st day of February, 1930. }

40

FREDERICK A. LOWITZ,

An Attorney-at-Law of New Jersey.

AFFIDAVIT OF EUGENE F. FREY.

STATE OF NEW JERSEY, }
 County of Essex, } ss.:

EUGENE F. FREY, of full age, being duly sworn, according to law, on his oath deposes and says:

On Thursday, February 20th, 1930, I served an Order dated February 19th, 1930, in the above
 10 entitled cause upon the following persons in the following manner:

Upon Tillie Margulies by handing a copy to her personally at her home, 634 High Street, Newark, N. J.

Upon Isidore Margulies by leaving a copy with his wife at 634 High Street, Newark, N. J.

On Friday, February 21st, 1930, I served other copies of said order on the following persons in
 20 the following manner:

On Jerome Margulies by handing a copy to him personally in the Prudential Buiding, 763 Broad Street, Newark, N. J.; on Dr. Alfred Mamlet by handing a copy to him personally at his office, 126 Clinton Avenue, Newark, N. J.; on Miriam Margulies Segall by handing a copy to her personally at her home, 30 Fairchild Place, Hillside, N. J.

On Monday, February 24th, 1930, I served another copy of said order upon Marguerite Zender
 30 Margulies by leaving the same at the office of Raymond Berry, Esq., her attorney, at 60 Park Place, Newark, N. J.

EUGENE F. FREY.

Subscribed and sworn to before me }
 this 24th day of February, 1930. }

F. A. LOWITZ,
An Attorney-at-Law of New Jersey.

Designation.

(Filed June 4, 1930.)

NEW JERSEY PREROGATIVE COURT.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">of the</p> <p>Probate of the Alleged Last Will and Testament of EMANUEL SINCLAIR MARGULIES.</p>	}	10
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Application having been made to fix a time and place for the hearing in the above stated cause.

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It is, thereupon, on this twenty-first day of May, 1930, ORDERED, that the 3rd day of June, 1930, at the hour of ten o'clock in the forenoon, daylight saving time, at the Chancery Chambers, 1060 Broad Street, in the City of Newark, County of Essex and State of New Jersey, be, and the same is hereby designated as the time and place for the hearing of the said cause.

ALONZO CHURCH, 30
V. C.

We consent to the making of the above order.

MERRITT LANE,
Proctor for Petitioner.

POTTER & BERRY,
Proctors for Caveatrix.

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Order Admitting Will to Probate.

(Filed June 30, 1930.)

NEW JERSEY PREROGATIVE COURT.

IN THE MATTER

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of the

Probate of the Last Will and
 Testament of EMANUEL SIN-
 CLAIR MARGULIES.

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Application having been made before the Ordinary to probate the last will and testament of Emanuel Sinclair Margulies, late of the County of Essex and State of New Jersey, bearing date the 22nd day of May, 1928, and it appearing that a caveat was filed against the probate of said will in the Surrogate's office of Essex County by Marguerite Zender Margulies, the widow of said Emanuel Sinclair Margulies, and that notice was given to all parties concerned of the date and place fixed for the hearing upon the said application for the probate of said will before the Ordinary, and the executor designated in said will, *i. e.*, David L. Podell, appearing by Merritt Lane, Esq., as counsel, and the caveator Marguerite Zender Margulies appearing by Raymond H. Berry, Esq., her counsel, and the testimony offered by the proponent and caveator having been taken and considered; and it appearing upon the proofs taken that the said will was duly executed according to law, and that said testator at the time of executing the same was in all respects com-

Order Admitting Will to Probate.

petent to dispose of his estate and that the execution of said will was not induced by any undue influence and more than ten days having elapsed since the death of the testator:

It is, on this 10th day of June, 1930, ORDERED and DECREED that the said will be and the same is hereby established as a valid will and that the same be admitted to probate and recorded and that letters testamentary issue thereon according to law. 10

E. R. WALKER,
O.

Respectfully advised,

ALONZO CHURCH,
V. C.

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Notice of Appeal.

(Filed June 28, 1930.)

NEW JERSEY PREROGATIVE COURT.

10	<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">of the</p> <p>Probate of the Last Will and Testament of EMANUEL SIN- CLAIR MARGULIES.</p>	} On Petition of Appeal.
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20 MARGUERITE Z. MARGULIES, the wife of Emanuel Sinclair Margulies, deceased, who has filed a caveat against the alleged will of Emanuel Sinclair Margulies, hereby appeals to the Court of Errors and Appeals in the last resort in all causes from the decree entered herein on the 10th day of June, 1930, admitting to probate a certain paper writing as the last will and testament of Emanuel Sinclair Margulies, deceased, and every part thereof.

Dated, June 18, 1930.

30 POTTER & BERRY,
Proctors for Appellant.

I conceive there is good cause for appeal in the above entitled cause.

RAYMOND V. BERRY,
Of Counsel with Appellant.

Petition of Appeal.

(Filed June 21, 1930.)

NEW JERSEY COURT OF ERRORS
AND APPEALS.

IN THE MATTER
of the
Probate of the Last Will and
Testament of EMANUEL SIN-
CLAIR MARGULIES.

10

On Appeal from
the New Jersey
Prerogative Court.

To the HONORABLE, THE COURT OF ERRORS AND AP-
PEALS, in the last resort of all causes:

20

The petition of Marguerite Z. Margulies, appel-
lant in the above entitled cause, respectfully shows
that:

1. Petitioner was the wife at the time of the
death, of Emanuel Sinclair Margulies, late of the
County of Essex, deceased. On the tenth day of
June, 1930, the New Jersey Prerogative Court
made its order admitting to probate a certain
paper writing purporting to be the last will and
testament of the said Emanuel Sinclair Margulies.

30

2. Your petitioner complains and alleges that
the whole and every part of the aforesaid decree
is erroneous, improper and illegal, and that your
petitioner is aggrieved thereby, and your peti-
tioner appeals from the decree of the Ordinary
on the ground that the same is erroneous in that

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Petition of Appeal.

(a) the said Emanuel Sinclair Margulies was insane at the time the said alleged writing purporting to be the alleged last will and testament of Emanuel Sinclair Margulies was made, and (b) that the said Emanuel Sinclair Margulies made the said last will and testament as result of the undue influence and control of David L. Podell, who is named as executor of said alleged last will and testament of Emanuel Sinclair Margulies.

Petitioner therefore prays that the decree of the said Ordinary may be wholly reversed, set aside, and for nothing holden, and that the petitioner may have such other relief in the premises as to this court may seem proper.

POTTER & BERRY,
Proctors for Appellant.

RAYMOND H. BERRY,
Of Counsel with Appellant.

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Notice of Deposit.

(Filed June 21, 1930.)

NEW JERSEY COURT OF ERRORS
AND APPEALS.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">of the</p> <p>Probate of the Last Will and Testament of EMANUEL SIN- CLAIR MARGULIES.</p>	}	<p>On Petition of Appeal.</p>	10
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<p>To MERRITT LANE, Esq., <i>Proctor of Proponent.</i></p>	20
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SIR:

PLEASE TAKE NOTICE that we have filed with the clerk of the Prerogative Court at the State House in Trenton, New Jersey, One hundred dollars (\$100.00) as a deposit on appeal in the above entitled cause.

<p>POTTER & BERRY, <i>Proctors of Appellant.</i></p>	30
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<p>RAYMOND H. BERRY, <i>Of Counsel with Appellant.</i></p>	
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Answer to Petition of Appeal.

(Filed June 27, 1930.)

NEW JERSEY COURT OF ERRORS
AND APPEALS.

10

IN THE MATTER

of the

Probate of the Last Will and
Testament of EMANUEL SIN-
CLAIR MARGULIES.On Appeal from
the New Jersey
Prerogative Court.

20

The Answer of David L. Podell, the proponent below, to the Petition of Appeal of Marguerite Z. Margulies, appellant in the above entitled cause.

30

This respondent not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto nevertheless says and admits that an order was on the 10th day of June, 1930, made and entered in the New Jersey Prerogative Court in the cause for that purpose mentioned in the said petition as is therein stated; but as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced, and this respondent is advised and believes that said order is agreeable to equity and he prays that the same may be affirmed with costs to be adjudged to this respondent.

Dated, June 26, 1930.

40

MERRITT LANE,
Solicitor for and of Counsel
with David L. Podell.

Transcript of Testimony.

NEW JERSEY PREROGATIVE COURT,

(June 3, 1930.)

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">of the</p> <p style="text-align: center;">Probate of the Last Will and Testament of EMANUEL SIN- CLAIR MARGULIES.</p>	}	10
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Transcript of testimony taken in the above entitled cause before His Honor, Alonzo Church, V. C., at the Chancery Chambers, Newark, New Jersey, in the presence of Merritt Lane for proponent; Raymond H. Berry, proctor, for caviatrix. 20

LILLIAN SISKEN, sworn for proponent.

Direct Examination by Mr. Lane:

Q. Miss Sisken, where do you live? A. 186
Hooper street. 30

Q. By whom are you employed? A. Arm-
strong, Keith & Kern.

Q. By whom were you employed on the 22nd
day of May, 1928? A. Hays, Podell & Shulman.

Q. And do you know Mr. Emanuel Sinclair
Margulies? A. I do.

Q. Or, did you? A. I did.

Q. I show you a paper writing and ask you
whether the signatures which appear on the last 40

Lillian Sisken—Proponent—Direct.

page of that paper, in both places, are your signatures? A. They are.

Q. Will you tell me the circumstances under which you affixed your signature to that paper?

A. The three witnesses, Mr. Machson, Mr. Solniker and myself were called by Mr. Podell. Mr. Podell asked Mr. Margulies if he declared it to
 10 be his last will and testament. Mr. Margulies said he did. Thereupon Mr. Margulies signed his name at the end and also initialed the various margins of each page, and also initialed a certain insertion. Thereon Mr.— we signed as witnesses. Mr. Podell told us that Mr. Margulies requested us to act as witnesses. Then Mr. Podell read the attestation clause and we each signed, one after the other, in the presence of all of us.

20 Q. I show you the signature of Mr. Emanuel Sinclair Margulies, at the end of the will, and ask you whether that is his signature and whether that was signed by him in your presence and the presence of the two other witnesses? A. That is his signature and was signed in our presence and in the presence of the witnesses.

Q. I show you the signatures on the last page of the will, your own and Herman Machson and Hyman Solniker, and ask you whether those signatures were all signed there in the presence of the testator and the presence of the witnesses?
 30 A. They were.

Mr. Lane: I offer the will.

(Will marked C-1.)

Mr. Berry: I object. I am going to contest this will on the ground of undue influence and insanity.

40 The Court: You can cross-examine.

*Lillian Sisken—Proponent—Cross.**Cross-Examination by Mr. Berry:*

Q. By whom were you employed at the time that you witnessed this will? A. Hays, Podell & Shulman.

Q. Hays, Podell & Shulman. And for whom were you working, anyone in particular, any person? A. No, just the firm. 10

Q. Did you take dictation from Mr. Podell and do his work? A. Once in a while, when he needed some extra help.

Q. And who actually requested you to witness this will? A. Mr. Podell in telling us that Mr. Margulies requested us.

Q. And this will was signed in Mr. Podell's own office? A. Yes, right in his private office.

Q. In his private office. Had you seen Mr. Margulies before that will was signed? A. I had. 20

Q. Where? A. In the office.

Q. How long before the will was signed had you seen him in the office? A. Only about a month before, of course, on various occasions.

Q. Had he been there more than once? A. Yes, he had, during that time.

Q. How many times? A. About once or twice a week.

Q. Once or twice a week? A. Yes. 30

Q. For a period of how long? A. A month.

Q. And do you know whether or not any former drafts of that will had been prepared in the office? A. Yes, one.

Q. And had you prepared that? A. No, sir.

Q. Who did prepare it? A. I believe, some other girl who was employed by Mr. Podell.

Q. Who dictated it? A. I believe, Mr. Podell. I don't know.

Gertrude M. Berk—Respondent—Direct.

Q. Do you know who dictated this will? A. Mr. Podell.

Q. Did he dictate it to you? A. He dictated certain changes to me.

Q. In Mr. Margulies' presence? A. Yes, sir.

Q. Always? A. Yes, all the time.

10 Q. Was the original will dictated in his presence? A. Well, I copied part of the draft and part of it—just—the only part that was dictated in my presence were the changes; the balance I copied from the draft.

Q. Do you recall when you first saw Mr. Margulies come into Mr. Podell's office? A. I believe it was just after we moved into 39 Broadway.

Q. When was that? A. The beginning of May. That is when Mr. Podell moved into the office.

20 Q. Had you been with Mr. Podell before they moved into that office? A. No, sir.

Q. So that you don't know whether he saw Mr. Podell before that in his office? A. No, sir.

Mr. Berry: That is all.

The Court: That is all.

Mr. Lane: That is all. Proponents rest and I offer the will for probate.

30 Mr. Berry: Is Dr. Beling here? I will call Miss Berk.

GERTRUDE M. BERK, sworn for respondent.

Direct Examination by Mr. Berry:

Q. Miss Berk, where are you employed? A. At present?

Q. Yes. A. Macfadden Publications.

40 Q. And where were you employed in May of

Gertrude M. Berk—Respondent—Direct.

1928? A. Why, I don't know if it was as late as May, but I was with Mr. Podell for about two weeks.

Q. And do you recall just about when your employment with Mr. Podell took place? A. It was in April or May, two years ago, 1928.

Q. Do you mind speaking up a little bit louder? 10
A. All right.

Q. Did you have any occasion to come to Newark during the period of your employment with Mr. Podell? A. Yes, at one time.

Q. And will you tell us about that occasion? A. Mr. Podell asked me to go to the office of Mr. Margulies to list—help list certain securities that Mr. Margulies had. When I arrived at the office, it was rather late, it was about eleven-thirty when I got there and Mr. Margulies said the securities 20
had already been listed, so it was not necessary for me to do that, but he had a slip with some figures on it and he called these figures off to me on an adding machine and I added them on the machine.

Q. Did you see anything that purported to be securities? A. Nothing whatsoever.

Q. Did you see any packages? A. Mr. Margulies had on his desk one or two packages of money or what he said was money. It looked like dollar 30
bills and he said it was money, thousands of dollars. Just how much money it was, I don't know.

Q. What did you do after you were there for a while? A. Well, he talked about the radio and the lamp on his desk, then Mrs. Margulies was over there, too; and then he went to the bank.

Q. Then he went to the bank? A. We went to the bank.

Q. When you say "we", who do you mean? A. 40

Gertrude M. Berk—Respondent—Direct.

Mr. Margulies and I, and in the back seat two policemen.

Q. Two policemen were in the back? A. Yes.

Q. And whose car did you ride in? A. I believe it was Mr. Margulies' car.

Q. And how did you sit in the car? A. In the front with Mr. Margulies.

10 Q. And the policemen were in the back? A. Yes, sir.

Q. And was there anything in the car with you at the time? A. Well, I don't remember that at all.

Q. Would you say there was nothing there? A. Well, there were four people.

Q. Well, when you went to the bank, what happened there, then? A. Mr. Margulies stopped at
20 two banks: first, at one, he said he wanted to cash a check, and then he went to another bank—I don't remember the names of the banks—and the policemen got out.

Q. The policemen went in the bank with him, didn't they? A. I think so. I am not sure.

Q. Did you see them carrying anything? A. I don't remember that because I was interested in the shop window displays so I didn't notice whether the policemen had anything or Mr. Mar-
30 gulies gave them anything.

Q. Do you recall what bank it was you went to? A. No, I am sorry, I do not.

Q. Do you know about the general location? A. Well, I think it was on Broad street, but I am not sure.

Q. You are not very familiar with Newark? A. No, not very.

Q. How many times have you been in Newark?

Gertrude M. Berk—Respondent—Direct.

A. Oh, I have been there, on and off, but I have never been there so much.

Q. Do you know what the purpose was of going to the bank? A. Well, Mr. Margulies said he wanted to take care of—I don't know whether he wanted to deposit the money or the securities, that is—I don't remember that.

Q. He wanted to deposit moneys or securities? 10
A. I say, I don't remember.

Q. In the bank. And isn't that the reason he had the policemen there? A. That is what he said.

Q. The policemen were there to protect the money or the securities that you were taking to the bank? A. Evidently.

Q. Well, when, exactly, was it that you—as closely as you can recall, that this journey to the bank took place in Mr. Margulies' automobile? 20
A. It was shortly after Easter, 1928.

Q. Shortly after Easter in 1928? A. (Witness nods yes.)

Q. Do you recall what day of the week it was?
A. I think it was Thursday.

Q. Do you know why you were sent from the office of Mr. Podell with Mr. Margulies? A. Mr. Podell asked me to help list certain securities that Mr. Margulies had there, but, when I arrived there, it was rather late and—(interrupted) 30

Q. And do you know why you were listing those securities? A. No.

Q. Were you assisting in the preparation of a will? A. No.

Q. Did you have any conversation at that time with Mr. Margulies with reference to his wealth?
A. To his what?

Q. To his what? A. Why, yes, he said to me 40

Gertrude M. Berk—Respondent—Cross.

that he was a very successful business man and he was in his early thirties and deserved credit for his wealth, expanding.

Q. Did he give you any figures as to how much he was worth? A. No; he said he owned some apartment houses in Newark, that he was generally considered a millionaire. He said that to me.

10 Q. Did he tell you anything about the value of the securities that he owned? A. He said that there was a big amount of securities, it might have been a million dollars, but he just said that, because I didn't see any.

Q. Did he mention a million dollars? A. He might not have mentioned a million dollars, but he mentioned big sums.

20 Q. Do you recall the list of securities that you took back with you to Mr. Podell's office? A. I didn't see the list. He had some papers which he put in his pocket, his inside coat pocket.

Q. You don't know the amount of those securities? A. No, sir.

Mr. Berry: That is all.

Cross-Examination by Mr. Lane:

Q. Miss—

30 Mr. Berry: Pardon me. Did you take that list back to Mr. Podell?

Witness: I did not.

Mr. Lane: She said she did not have any.

Mr. Berry: Do you know whether the list that was made up was delivered to Mr. Podell?

Witness: I do not.

40 Mr. Berry: Did you go back to Mr. Podell's office?

Gertrude M. Berk—Respondent—Cross.

Witness: And Mr. Margulies and Mrs. Margulies and I went to—back to Mr. Podell's office together.

Mr. Berry: You all went together?

Witness: Yes, sir. And then Mr. Margulies went into Mr. Podell's private office alone and I assumed that he had given—(interrupted) 10

The Court: No.

Mr. Berry: No. That is all.

Q. Did you, at Mr. Podell's request, attempt to locate these banks that you have referred to on Broad street? A. Well, he asked me if I had remembered them and I said, no, I had not remembered them; if I had know at the time I had not remembered them. 20

Q. Do you remember actually coming over here to Newark with Mr. Clancy? A. Not with him. I went to his office.

Q. Well, then, didn't you and he go up Broad street to see if you could locate these banks? A. No, we didn't go up Broad street. I went to his office and his office looked as though it was the building at which we had stopped.

Q. That is the Prudential Building, or do you know the name of it? A. I don't know the name. 30

Q. Well, at any rate, you cannot give us any information as to where those banks are and cannot help us to locate them? A. No, sir; I am sorry, I cannot.

Marguerite Margulies—Respondent—Direct.

MARGUERITE MARGULIES, sworn for respondent.

Direct Examination by Mr. Berry:

Q. Where do you live, Mrs. Margulies? A. I live in Flushing, Long Island.

Q. Are you the widow of Emanuel S. Margulies? A. Yes.

10 Q. When did you marry Mr. Margulies? A. In May of 1926.

Q. Do you know Mr. David Podell? A. Yes.

Q. How long have you known Mr. Podell? A. I should say about eight years.

Q. Did Mr. Podell know your husband? A. No. I introduced Mr. Podell to Mr. Margulies.

Q. When did you introduce him? A. I think it was the first month in 1928. It was after the 20 holidays, in January, I think.

Q. Did your husband see Mr. Podell? A. What is it?

Q. Did your husband see Mr. Podell after that? A. Yes. I telephoned Mr. Podell, on the occasion, and there was some legal matter that Mr. Margulies had, so I telephoned Mr. Podell and he invited us over for dinner and we went over, and I think that was their first meeting, at Mr. 30 Podell's apartment at Fifth avenue.

Q. And, to your knowledge, did your husband see Mr. Podell after that, after you introduced him to him? A. Oh, yes, they saw each other.

Q. Would you say frequently? A. I would say frequently, yes.

Q. How frequently? A. Well, Mr. Margulies would go over several times a week and always saw Mr. Podell and when Mr. and Mrs. Podell came over, I think, two or three times to our 40 apartment, and then we used to meet and have

Marguerite Margulies—Respondent—Direct.

dinner, and I think went to the theater a couple of times.

Q. Were your husband and Mr. Podell simply business friends—simply social friends? A. Well, it started that way, and then, of course, they talked business. I was not always present or did not pay much attention to it.

Q. And do you know what business relations they had? A. Yes. I know that they were in partners on two or three different—(interrupted) 10

Q. And can you name any of the ventures that they were interested in jointly? A. Yes. Mr. Podell and Mr. Margulies were half partners in the New Jersey Mortgage Company and Marpole Airways—"Mar" was for Margulies and "pole" for Podell—and I don't recall whether Mr. Podell was in on the Zender Investment or not. I don't know about that. I think that was organized before Mr. Margulies knew Mr. Podell, as I recall. I don't know about that. 20

And then, of course, he was—he had the stock in the Great Eastern Casualty, of course, and they used to discuss all matters together. Mr. Margulies would call him—in fact, he depended upon him, admired Mr. Podell, liked him, was very fond of him and respected his judgment, and all of that, and used to phone him on every occasion from my residence and also from the office—I think we have a record of the calls from the office—because he liked him and relied on him, and I think went up to Boston to see them, when Mr. and Mrs. Podell were in Boston last summer, or outside of Boston, and then, when I was out in Ohio, Mr. Margulies would occasionally go out and spend a week-end with Mr. and Mrs. Podell. He saw Mr. and Mrs. Podell more than I did— 30 40

Marguerite Margulies—Respondent—Direct.

than I saw Mr. Podell, I mean, because often he would go in to see Mr. Podell, then he would stay over and have dinner with them.

10 Q. Did you observe the nature of the relationship between your husband and Mr. Podell? A. Well, they were on very intimate terms, that is, they were very friendly. They exchanged gifts, and, as I say, Mr. Margulies was very fond of Mr. Podell, and would have done anything for him.

I know, when we were in Ohio, Mr. Podell telephoned us and wanted to know if he could borrow the Packard car to go down to Atlantic City and Mr. Margulies was very glad to let him do it. He always wanted to share everything with him.

20 Q. Did he ever tell him anything about the disposition he had made of his property, in the event of his death? A. Well, of course, he always—I knew that Mr. Podell had drawn up the will and I knew the day Mr. Margulies went in to sign it, before he went to the hospital, I recall that very vividly, but he never told me the nature of that will. He always assured me, of course, that I was well taken care of, and so forth and so on, and I knew the will was drawn. I never asked the nature of it; I never discussed it with Mr. Podell or Mr. Margulies.

30 Q. Did you ever have any instructions as to who to turn to in the event of death? A. Yes, I always felt that Mr. Podell was my friend and I knew he was our counsel and I felt that if anything happened I could always turn to him.

Q. Was that merely a feeling on your part? A. Oh, no. Mr. Margulies assured me of that, that—
40 (interrupted)

Marguerite Margulies—Respondent—Direct.

Q. When did he assure you of that? A. Well, he always has and the same—I have had two people, at least, tell me that, since this thing has happened.

Mr. Lane: I object.

Q. Never mind that. Do you recall any exact date when your husband told you—spoke to you with reference to Mr. Podell in the event of his death? A. No, I cannot remember any exact occasion. I used to say that it was—he was taking chances, this aeroplane and all. He said that Mr. Podell was his counsel and our friend and he knew all about the affairs. Of course, I didn't know anything about the business end of it, so I never questioned it. 10

Q. Did you ever have any conversation with your husband with reference to his worth? A. Yes. 20

Q. His financial worth? A. Yes.

Q. And what did he tell you he was worth? A. Well, I—he had those securities and bonds that I had a list of and they were listed. They amounted to over two million dollars' worth. And I recall that we had—I was in Mr. Podell's office with Mr. Margulies one time when Mr. Podell looked over some of these lists—I can't say it was the entire list—he told Mr. Margulies that there were a lot of foreign things that could be turned into—well, shall I say, American or something on our local market, at least, dispose of those things, that they were things that should be gotten rid of. 30

Q. Did your husband ever give you a list of these? A. Yes, I have a list of them.

Q. I show you this list of securities and ask 40

Marguerite Margulies—Respondent—Direct.

you if you recognize it? A. Yes, this is the same list that I had.

Q. That is the list that was given to you by your husband? A. Yes.

Q. And when did he give you that list of securities? A. Well, around the Spring of 1928.

10 Q. And they total how much? A. Well, they total over two million dollars' worth of securities and bonds.

The Court: Is that all?

Mr. Berry: No.

Q. Had you ever heard of these securities prior to the Spring of 1928? A. No, I cannot say that I had.

20 Q. Had you ever discussed the question of your husband's wealth with him prior to these bonds? A. Yes, I had discussed it.

Q. Did your husband ever tell you where these bonds came from? A. Yes—No, at least, he didn't tell me where. He told me where this money was coming from, and I just naturally supposed that these bonds were a part of that. They were foreign bonds.

30 Q. Did you ever see any securities? A. Yes, I have seen those securities and bonds. As I say, I don't know much about securities and bonds and I didn't pick them up to find out whether they were the ones that were listed on his list, but, the day Miss Berk was over there, I happened in the office and these things were on the desk and some of them the coupons had not been clipped, because I remember remarking, "The coupons have not been clipped on some of these bonds." Now, whether these were the bonds there was a list of
40 I don't know. As I say, I did not pick up the

Marguerite Margulies—Respondent—Direct.

bond and see whether it was listed on this list, but there were bonds there and the list was there.

Q. Had you noticed that some of the securities had coupons and the coupons were uncut? A. Well, I don't know that. I just noticed some had not been clipped and Mr. Margulies had said he had some bonds, the coupons were not clipped. I think, in fact, the bonds had expired, but he was just keeping those for, you know—(witness stops of her own accord). 10

Q. Now, your husband died on what date? A. On the 17th of January.

Q. What did you do—when you were informed of his death? A. The hospital telephoned me he had been injured and I immediately said that I—I told the Sister at the hospital, who telephoned me, that I would take the next train, I didn't know what time it would go, so, of course, telephoned the station and they told me it left 8:53 and I knew—or, from that time they phoned back and told me he had passed away. 20

Q. What did you do? A. I immediately telephoned Mr. Podell. I had to take the train. I couldn't notify anyone. I had a very short time, 7:30, when I got the word, and the train left eight something—8:53, and I telephoned Mr. Podell and told him—and asked him if he would go over to the office—I didn't know, I thought he could go over and close the office, and then I left on the train. 30

Q. Did you hear from Mr. Podell while you were in Florida? A. On the train—Mr. Podell said that night if it were not for home conditions just at that time that he would go down with me, and I told him that I was taking this friend with me, this woman who was stopping with me while 40

Marguerite Margulies—Respondent—Direct.

Mr. Margulies was in Florida, so on—on the train, yes, Mr. Podell sent me two wires, one to the effect that he would have his brother-in-law meet me in Washington and go down to Florida with me, and then the second wire came, but I didn't get these wires until luncheon time the next day and I asked the conductor why and he said I

10 hadn't given my name and he didn't want to go through the sleeping car.

Q. You got two wires? A. I got two wires. The second wire said his brother-in-law could not join me, but he would send someone from his office down, if I so desired.

Q. Did you hear from Mr. Podell when you got back home? A. I telephoned Mr. Podell from Jacksonville. I telephoned Mother and Father

20 Margulies and I telephoned Mr. Podell.

Q. Did you hear from Mr. Podell when you returned from Florida? A. Yes, when I was putting the key—(interrupted)

Q. You left for Florida? A. On the night of the 17th.

Q. On Friday night? A. On Friday night.

Q. When were you back? A. I couldn't get back until Monday night.

Q. The next Monday night? A. The following

30 Monday night.

Q. That is about three days? A. Yes.

Q. Did you hear from Mr. Podell the night you got back? A. Yes. I came up from the train, and, as I was putting the key in the front door, Mr. Podell—even when I came in, I didn't have my hat off, and it was Mr. Podell on the phone.

Q. Mr. Podell have anything to say to you then? A. Yes. He said that he felt that—he did

40 not tell me he was sorry or ask about my condi-

Marguerite Margulies—Respondent—Direct.

tion or how I felt, he simply asked me immediately where my jewelry was, and I told him, of course, on the way up, of course, I had heard something about this Great Eastern going into the hands of a receiver, from the train, and he asked me about my jewelry and I said, of course, the jewelry was bought and paid for long before the Great Eastern Casualty was ever thought of and I said, "What about those securities you sent the secretary over to list?" Well, he said he didn't know—he hadn't thought anything about this and he said the secretary he had, he had only had a couple of weeks. I said, "You certainly would not send someone on a mission of importance, someone who is not responsible." So he assured me he would look up this girl. It was Miss Berk. He finally got in touch with Miss Berk and told me the following Saturday that he thought Mr. Bernhard was examining Miss Berk that afternoon, but, when I was called to testify before Mr. Bernhard, Mr. Bernhard didn't know about it, even. 10 20

Q. Did Mr. Podell say anything about anyone else who was present that evening? A. He said those men—he assured me he thought I would be much happier now, and so forth and so on, and he felt that it was better all the way around, and he said, "Some men will be up in your apartment and I want you to help them all you can." And I said, "I certainly will. I will do all I can," and before I left the telephone they had been admitted in the room and I called Mr. Clancy, I think, or Mr. Hollander to the phone and Mr. Podell talked with him. While I was talking with Mr. Podell, they were admitted, and I said, "Here they are now," and either Mr. Clancy or Mr. Hol- 30 40

Marguerite Margulies—Respondent—Direct.

lander, I don't know which, came in and talked with Mr. Podell over the telephone.

Q. That is Mr. Clancy from Mr. Lane's office?

A. Mr. Clancy from Mr. Lane's office, so I—(interrupted)

Q. What were those people here to do? A. They came to break into my safe, and brought
10 several men to open my safe, in case I didn't know the combination, and I assured them it was not necessary to do that. I took the keys that they had given me from Mr. Margulies' body and I handed them to Mr. Clancy. I also went in and opened the safe.

Q. This is the night you brought your husband's— A. Brought my husband's body
20 home. And I took the things out of the safe and handed them to Mr. Clancy and said, "Here is anything you are entitled to have or want." And Mr. Clancy handed me back the keys and back everything, I guess, and they left.

Q. Did they examine the safe? A. Oh, yes, I opened the safe for them.

Q. Did they look everything over? A. And Mr. Clancy went over to the closet and Mr. Hollander looked everything over and they all did. There were, I should say, five of them, five or six people,
30 I don't know. I was so—(interrupted).

Q. Did you ever see your husband with any money, Mrs. Margulies? A. Yes.

Q. Much money? A. Yes, much money.

Q. Can you recall any occasions when you saw him with money? A. Yes. I remember that, oh, on many occasions he had a lot of money and on one occasion—(interrupted)

Q. What do you call "a lot of money"? A.

Marguerite Margulies—Respondent—Direct.

Well, I know this one occasion it was something like \$16,000. I would call that a lot of money.

Q. In what form was it? A. This was in gold. And then on one occasion he had—(interrupted)

Q. Where was this \$16,000 in gold? A. He brought it home.

Q. And do you recall—how was it, in a paper bag, what form? A. No, it was in a bag and it was in gold, this money. 10

Q. Gold pieces? A. Gold pieces, all of it.

Q. Did you count it? A. Well, yes, we had counted it at luncheon at Father and Mother Margulies' house before he took it up to our house.

Q. And when was it that you saw this \$16,000 in gold? A. Well, it must have been just around that time?—no, I think it was a little later in that summer of 1928. 20

Q. The summer of 1928. Did you ever see him at any other time with money? A. Yes. On another occasion, he had a safe deposit box and my mother and I counted this money. There was eighty some odd thousand dollars.

Q. Eighty? A. Eighty some odd thousand dollars. I don't remember just the amount. It was that amount in the safe deposit box.

Q. And in what form was that? A. In bills and silver. 30

Q. Give us some other instances, if there are any. A. Well, he used to come home on occasions with a lot of money.

Q. Would you see him with bills? A. Oh, yes, bills. And I know one time he came up from Boston, after seeing Mr. Podell, and he had quite a lot of money.

Q. Do you know how much? A. No, I do not.

Q. When was it, you say? A. It was last sum- 40

Marguerite Margulies—Respondent—Cross.

mer, I think. Mr. Podell was up in Massachusetts some place. Mr. Margulies went to Boston and Mr. Podell came into Boston to see him.

Q. Had he gotten this money from Mr. Podell, do you know? A. Oh, I have no idea about that, no.

10 Q. Who was your husband's advisor, if he had—did your husband have a business advisor? A. Mr. Podell. He took everything up with him.

Mr. Berry: That is all.

Cross-Examination by Mr. Lane:

Q. Mrs. Margulies, I show you a yellow paper and ask you whether you can identify your husband's signature? A. Well, this looks like his signature, yes, Mr. Lane.

20 Q. Yes. And the initials? A. The initials don't look like his. I never saw the initials. They don't look like his. The signature, though, looks like his.

Mr. Lane: I ask it be marked for identification.

(Yellow paper marked Exhibit C-2 for identification.)

30 Mr. Lane: That is all.

Re-direct Examination by Mr. Berry:

Mr. Berry: I have just one more question I omitted.

Q. You are familiar with your husband's handwriting, Mrs. Margulies? A. Yes.

40 Q. Have you seen him sign his name? A. Yes, many times.

Christopher Beling—Respondent—Direct.

Q. I show you the last will and testament, Exhibit C-1, and ask you if you recognize his signature at the end of that will? A. Yes, that looks like his signature.

Q. And do you recognize his initial on that last page? A. No. The initials do not look like his to me.

Q. Which initials do not look like his? A. 10
These on the side and these—(indicating).

Mr. Berry: That is all.

The Court: Is that all?

Mr. Berry: That is all.

The Court: That is all, madam.

Mr. Berry: Dr. Beling.

20

CHRISTOPHER BELING, sworn for respondent.

Direct Examination by Mr. Berry:

Q. Dr. Beling, are you licensed to practice medicine?

Mr. Lane: Qualifications are admitted.

The Court: Waive the qualifications.

Q. Have you examined Emanuel Sinclair Margulies at any time, doctor? A. Yes. 30

Q. Have you your record? A. Yes.

Q. Of your examination. Did you on the occasions of those visits note his symptoms and take his history? A. Yes.

Q. Can you tell us what symptoms you observed in Mr. Margulies? How many times did you examine him? A. My first examination of him was made on April 20th, 1921. The examina- 40

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tion was made at the request of Dr. Vausberg of the United States Public Health Service.

Q. Where was the examination held, doctor?

A. Made at my office. At that time the examination was made—I made the examination—a man by the name of John J. Conway. That was the assumed name he had taken.

10 Q. Yes. And do your records show what symptoms you noted in him at that time? A. Yes.

Q. And what were they? A. The examination on that date showed as follows: His complaint, his present complaint at the time: "I imagine things; I hear hissing sounds; I cannot concentrate my mind; it does not seem right. I don't get along well at school."

20 The physical examination revealed sudden changes in the eye grounds. I diagnosed this case as dementia præcox and advised hospitalization.

Q. Did you examine him after that, doctor? A. And again, and here, further, the mental examination was as follows—

Q. On the same date? A. On the same date.

30 Q. Yes? A. He was abstractive, stared vacantly at times. He said, "I want to be a doctor. I have been going to high school for four years and I am only in the first part of the second half. I want to be great like you. They all know you, even all the way up to Saranac. I like you, too. In the night time I hear voices, they came and wake me up. Sometimes I see my granddad, my mother's father. He comes over and tells me something, different things, I don't remember what he tells me. There are a whole lot of voices come in to me and they wake me up. I believe in
40 Spiritualism. There are big people like that who

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can tell you everything. They can read your mind. Yours, too, and everybody's. Sometimes they tell me to do things and I do them, too. They say it every two weeks or so. What is the matter? I can't remember things steady. I can't seem to grasp things. The damned old army ruined me and the majors and captains and the lieutenants examined me in the army. I was never that way until I got in the army." That was the examination the first time. 10

Q. And you diagnosed that, you say, as dementia præcox? A. Yes.

Q. Did you examine him subsequent to that? A. On September the 27th, 1921.

Q. And where did you examine him that time? A. At my office.

Q. At whose instance? A. That was also at the request of the Public Health Service. 20

Q. Yes. And what did you notice his symptoms to be on that occasion? A. There was no material change in his mental condition since the examination of April the 20th, 1921. The father stated that he talked to himself, he took no interest, he was irresponsible, abstractive, irrelevant, unreliable and contradictory in his statements, he wanted to be a doctor, buy instruments, little glasses. He makes jests and falls asleep on the bed, talks to himself again and gets nowhere, constantly changing his mind, advertises himself as a doctor with cards under the name of Jack McCormick. 30

The same diagnosis was made and advised commitment to the Essex County Hospital.

Q. Did you ever have any further correspondence with reference to Mr. Margulies? A. Yes.

Q. When? A. On December the 10th, 1921. 40

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Q. Yes? A. I wrote to Dr. Alexander McAllister, Secretary of the State Board of Medical Examiners, Trenton, N. J.

Q. What was the occasion of your writing that letter? A. Because—I will read the letter.

10 The Court: No. Is that objected to?

Mr. Lane: I have no objection.

Witness: No.

The Court: Go ahead, if there is no objection.

20 Witness: "I was informed by Dr. Corwin, the State Inspector, that you desired some information from me regarding Emanuel Margulies. In my opinion, this man is suffering from dementia præcox and should be committed to an institution for treatment. If the father thinks that this man is fit to be at large, then he must assume the responsibility and the law will have to take its course in order that the proper disposition will finally be made of this case. I do not deem it advisable that this young man should be allowed to be at large to practice medicine under his delusional system."

30 Q. Now, that last examination you made of him was under what date, doctor? A. That was on September 27th, 1921, I made that examination.

Q. That is the second examination? A. Yes.

Q. Have you seen him since that time? A. I saw him again several times.

Q. Yes. When did you see him next? A. I made an examination of him on August the 9th and August the 11th, 1922, and on August the 9th he stated: "I have improved a hundred per cent.

40 I feel lots better than I ever have. I suppose you

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know I am married. I married Mathilde Daniele, an Italian girl, merely that I cared for her enough to marry the girl. I married her on April the 27th, 1922, and lived together for a period of two months. I know she was pregnant for the reason that her nipples were brown and she did not menstruate and her abdomen was larger. When I married I had some money and my dad gave me a sum of money, but had no position or occupation. I want you to take a reflex of me this morning to see whether I am a nut or not. I don't think I am. You understand French, don't you, because your name sounds French? I merely brought that up—brought that in because I was merely wondering whether you were or not. I wanted to ask you for my own personal benefit that if I am graduated in college and had a degree of M. D. and I came to Newark to take State Board, the fact that I was a dementia præcox years before you don't think they could hold that against me, do you?"

He said, "I was reading in a book on physiology, a hygienic book, the word "mediastinum" and I want to ask you how to pronounce it. The thing that most interests me is to be cleared of being a dementia præcox, if I am one; and next is to do the best I can for my wife, and, thirdly, to get a good schooling in order to obtain the title of doctor of medicine. That is a nervous fellow, isn't it, doctor? (Pointing to somebody.) The State Board fined me \$200 for practicing medicine without a license. My dad paid the fine. I didn't want to make a fuss about it and defend it to have notoriety, it would have been in the papers. I think, in fact, I know I can do—I can become as good a scholar as the next person can, provided I put my head down to study. I went

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to the bad in high school in Elizabeth under an assumed name, Bruce Martyn, and there I made a very good showing. The marks received were 7 in physics, 9 in chemistry, 8 in geometry and 9 in Spanish. I went there for one month. If I had not gone under an assumed name they would have asked for my record from the school I had attended previously.”

10 Q. Did you see him—is that all, doctor? A. Yes, that was that examination.

Q. And did you make diagnosis upon seeing him at that time? A. Yes, sir.

Q. And what was that? A. He was still suffering from the same disease.

20 Q. And did you see him subsequently? A. Yes, I saw him on August the 11th, 1922. Then he talked and said that, “I studied psychology in school. As far as medicine is concerned I studied psychology at high school. I have studied gynecology and obstetrics, read books, I am going to study medicine. Nobody can get that idea out of my mind. My mind is made up on it and you or my dad and sixteen others can’t get that idea out of my head. It is a great study. I like it. It does so much in the interest of mankind. I did not practice medicine, I only wrote some prescriptions. I want to get through school, a prep school. If they should find out that I was a dementia præcox, I would be out of luck. You said I was a d. p. Am I a d. p.? You ought to know, knowing you are an expert in your line, you could tell me. Judge Stickel recommended you highly. He said you are a noted alienist. If you said I was a d. p. they could annul the marriage. Don’t you know? Does the knee reflex show d. p.? Won’t you tell me if I am a d. p.? I don’t intend to be this way

40

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all my life. I really want to become a physician. I want to go at it from a different angle. If you will give me seven years time I will be a brother in the profession in the United States and the State of New Jersey. I will be a doctor in surgery, not in nerve work, but in the surgical line.”

And those are some of the notes. Of course, I had long conversations with him on different occasions. 10

Q. And did you make a diagnosis on that occasion, doctor? A. Yes.

Q. And what was your diagnosis? A. It was the same diagnosis.

Q. Have you seen him since that time? A. I saw him on different occasions. Once in a while I would meet him on the street, and I think on one occasion he came to see me about 1928. 20

Q. 1928? A. Yes.

Q. Did you have a conversation with him then? A. He drove up in a Packard car and talked to me about the wonderful things he was doing.

Q. And what can you say of your opinion, as based upon that observation that you made of him? A. Well, I thought he was still somewhat exalted and flighty. He told me a great many things that I can not repeat in detail, or I cannot recall the exact words, but the impression was that he was still exalted and big ideas of himself. I could not say about his delusions, because I did not test them out. 30

Q. Did you ever testify in this Court of Chancery in any other proceedings with reference to this Emanuel S. Margulies? A. I did.

Q. And when did you testify? A. On May the 22nd, 1923.

Q. And on that occasion you gave your opinion. 40

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as you have today, is that correct, doctor? A. Yes. And on that occasion—(interrupted).

Q. What can you say— A. What?

Q. What can you say of dementia præcox as a kind of insanity? Is it one that is readily curable or is it permanent? A. Well, the outlook in dementia præcox, once it is established, is not favorable for recovery.

10 Q. Is it a dangerous type of insanity? A. I cannot say that. Some of them are, some of them are not. Some of them are very dangerous.

Q. Would it, in your opinion, affect his ability to properly dispose of his estate or affect him in any way in the making of a will? A. Yes, if he was still suffering from præcox, it would.

Q. It would take away his capacity, you mean, doctor, to make a will? A. It is a disorder that interferes with the proper co-ordination of the emotions and the intellectual field—emotional and intellectual field—and disorders the judgment.

Mr. Berry: That is all.

Cross-Examination by Mr. Lane:

Q. Doctor, you would not say that dementia præcox was incurable, would you? A. I didn't say that.

30 Q. I say, you would not say that, would you? A. Well, a lot of those patients do pretty well and they seem to get along all right. The disease seems to remain in abeyance, very often.

Q. Is it your professional opinion that dementia præcox, once established, is incurable? A. I think that as a rule it is incurable, as a rule.

Q. As a rule. That allows for certain— A. Exceptions.

40 Q. —exceptions? A. Yes.

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Q. You would not say, either, that every man who is flighty or exalted suffered from dementia præcox or any other form of insanity, would you?
A. No.

Q. And there are many persons suffering from dementia præcox who are never committed to an asylum and who go about their business with others and live and die without apparent interference with their conduct by reason of resistance of the disease? A. There are a great many of those on the outside of institutions who make fair adjustments and get along and generally they pass satisfactorily under the eyes of the public. 10

Mr. Lane: That is all.

The Court: That is all, doctor.

20

DAVID L. PODELL, sworn for respondent.

Direct Examination by Mr. Berry:

Q. Mr. Podell, your business is that of a lawyer? A. Yes.

Q. You are a New York attorney? A. Yes.

Q. You are acquainted with Mr.—with the late Emanuel S. Margulies? A. Yes. 30

Q. You drew his last will, did you not? A. Yes.

Q. And, under his will, who was appointed as executor, Mr. Podell? A. I was.

Q. You were appointed as executor. I show you this exhibit C-1 and ask you when the interlineation was made, that appears on the will? A. It was made after the will was drawn, but before it was executed. 40

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Q. And that will gives you \$25,000 a year for the management of the estate, Mr. Podell? A. Yes.

Q. That is a sum of money that involves the handling of a considerable sum of money, does it not?

10 The Court: Well, that is a matter of conclusion.

Q. Do you know the size of the estate that you were preparing this will for? A. I can only tell you, sir, what he told me.

Q. What did he tell you? A. He told me it would be between four and five millions of dollars. I don't think he limited it to five; he intimated it was more.

20 Q. Did you draw more than one draft of this will? A. Yes, sir.

Q. Are you licensed to practice law in New Jersey, Mr. Podell? A. No.

Q. Did you consult with any New Jersey attorney as to the form of this will? A. No. It was drawn in New York.

Q. Mr. Margulies was then living in New Jersey, was he not? A. He was living in New Jersey, yes.

30 Q. Do you know whether there was any former will? A. No.

Q. You don't know? A. I don't know.

Q. Did he have any fixed testamentary ideas when he asked you to draw this will or did you suggest the form of the will? A. Well, he had some very definite ideas about certain things and we discussed certain phases of it.

40 Q. Yes. Do you recall the phases that you discussed? A. Oh, yes.

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Q. What were they? A. I think the divesting of his property as outlined in the will was entirely his; he wanted a clause inserted that in the event of the re-marriage by Mrs. Margulies that she would lose the trust interest. We discussed that at some length. I advised him against it and he accepted my advice in that regard.

In the first draft he had, he made provision for an annuity to Dr. Murphy and Dr. Mamlet. He came in later and told me he preferred to give them definite sums, \$20,000, I think, one, and \$30,000 the other. We discussed the trust clause. I wanted to know from him whether he wanted the trustee to—I explained to him as to the scope of power that he could give his trustee under the trust arrangement made, that he could give him full power to make investments, and all kinds of securities, or limit him to legal investment, first grade bonds or first mortgages. At first, he thought he would like to give the trustee full power. He came in and changed his mind and said he preferred to have them limited to first grade securities. The will was under discussion for several weeks, three or four weeks, I should say.

Q. Now, when was it that you first met Mr. Margulies? A. I think it was the latter part of 1927.

Q. In December of 1927? A. I wouldn't fix the month. I am inclined to agree, as Mrs. Margulies has said, it was on the occasion when she and her husband came to dinner. I had known her I think it was more than eight years. I had known her for many years. I had frequently advised her—small matters, but I felt whenever she wanted any advice she could come to me, and she did.

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I do not believe I ever charged her a penny for legal advice, in all those years, and there was not very much to be charged for, as a matter of fact, but I did meet them in the latter part of 1927 at that evening at my house at dinner.

10 Q. Did you discuss with Mr. Margulies the question of your serving as administrator or as executor without bond? A. Oh, yes. There was not much discussion about it. I read him the clause. He read the will and I think the provision in the will is that I am to serve without bond. I took a stock clause, I think, out of either a form book or a former will, I don't recall which.

Q. Well, who has had possession of this will since it was drawn? A. I have had possession.

20 Q. And where has it been? A. In my safe deposit box, I think.

Q. Where is that? A. At the New York Safe Deposit Company in the Chatham Phoenix Bank Building.

Q. And has the will been sealed or unsealed? A. Well, just what do you mean by "sealed"?

Q. Was it sealed up? A. In a sealed envelope?

Q. Yes. A. I couldn't tell you.

30 Q. You don't know whether it has ever been opened or not? A. It probably was sealed in a sealed envelope in the box.

Q. Now, Mr. Podell, you met Mr. Margulies late in 1928, is that correct? A. Late in 1927.

40 Q. Late in 1927. Pardon me. How many business ventures were you involved in with him, after meeting him? A. Well, there were a lot of them discussed, that came to nothing, but there were the New Jersey Mortgage Company, the Great Eastern Casualty & Insurance Company and the Marpole Airways.

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Q. You at one time held stocks in the Zender Investment Corporation? A. I was never a stockholder in the Zender Investment. When I made some investments in the Marpole Company, he gave me as collateral—signed a letter to that effect, which I have here—for my investments and the investments of my friends. I may be in error as to whether it was the mortgage company or the insurance company, but the letter speaks for itself—gave me as collateral a certificate of 1,300 shares of Zender Investment Company, which I held for some months. He told me they were extremely valuable. He told me they were worth—oh, I don't recall the exact sum, but it was a large sum. I gave him a receipt for it. I subsequently returned it to him and he gave me a receipt for it, all of which has been gone into and the writings have been produced at various hearings.

Q. You, likewise, have a partnership agreement for these, for certain investments in the stock market? A. Well, we—after the mortgage company was to be liquidated, we entered into an arrangement whereby the moneys—the total was \$50,000—that is \$25,000 that I had given him, and we were supposed to buy mortgages on New Jersey real property. I knew nothing about that. It was in the line of his business. I relied on his judgment completely. Found out subsequently that there never were any mortgages except one, and that the financial statement that he furnished me under the head of a certified accountant was false, just as certain securities that he showed me were forged, and I did not find that out until after the man died.

Q. When did you retain an attorney in the mat-

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ter of his estate in reference to his death? A. The night that Mrs. Margulies called me up.

Q. You retained Mr. Lane the night he died?
A. Pardon me. That same night she called me up and asked me to take charge. I thought I would have a substantial matter to handle here and I called Mr. Lane on the telephone, who had
10 been associated with me in some litigation in New York and whom I had met shortly before that, and told him I was coming over the next morning, that I believed there was a substantial estate there and that I may ask him to act as attorney in the matter. That was Friday night—I believe it was Friday night.

Q. That is the same night he died? A. The same night he died.

20 Q. You asked him if he wouldn't have some-one, or if he couldn't be there himself the following morning.

Q. When did you discover—(interrupted) A. He said he couldn't be there, but he would be pleased to have Mr. Clancy there with me, and, when I came the next morning at the office, with Mrs. Margulies, Mr. Clancy was waiting for me. He—I don't know how much in detail you want me to go.

30 The Court: No. Just answer the question.
Witness: I felt I had not fully—I felt that I had not completely answered one of the questions that counsel had asked, that is the only thing.

Q. When did you say you found out all these things were false, all the mortgage company securities were false? When did you make that
40 discovery? A. I found—when I came in, the first

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thing I did was to ask Miss Kay, "Where are the mortgages?" She said, "There are no mortgages." I said, "What do you mean?" And I again questioned her. And she told me there were strange things going on in that office that she did not want to talk to me about, because she had been in Mr. Margulies' employ. I asked for the mortgage file. She couldn't produce any— 10
didn't produce any.

Q. Well, did you go through his books and compare to see if there—(interrupted) A. I went through—the only thing that I did was to examine the directors of the Great Eastern Casualty Insurance Company, because the minute we found that things were suspicious—(interrupted)

Q. When you say "we", whom do you mean? 20
A. Mr. Clancy was there with me every minute of the time, and there was a Mr. Rourke in there, and there was a Miss Kay in there.

Q. Miss Kay was Miss Kowalski? A. Miss Kowalski. I have known her as Miss Kay. And I immediately caused as many of the directors as I could get together to come down to the office, because it looked serious to them, the insurance company.

Q. I thought you had discovered the defalcations or disappearance of the assets of the mortgage company. A. Yes. She said there were no mortgages. 30

Q. Well, how would that affect the insurance company? A. He was in the insurance company and I was in the insurance company and I had persuaded a number of my friends to come into the insurance company.

Q. You merely inferred because the mortgage 40

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company was apparently bad that the other company was also bad? A. I didn't know at the moment what to infer, but I did want to find out. I felt it was my duty to them and to myself to find out all about it, and I examined all the directors—well, examined all—as many of them as I could get hold of to come down, and the attorney
 10 for the company, and it was then that we opened the box and we found—(interrupted).

Q. That was the box that was pried open? A. Pried open by a friend of his, a Mr. Rourke. They were all insisting it should be opened, that we should find out what the situation was, and we opened this box, that he frequently showed us, and we looked at the certificates, 500 shares of Otis Elevator stock which he had shown me
 20 and represented as worth two or three hundred thousand dollars, and would have been, if genuine, and we looked at the stamps on it and the signatures and called up the registrar, the Corporation Trust Company, and found there was no such number and the thing was a fake. He had shown me that two or three times to reassure me.

Q. The Department of Banking & Insurance had passed on— A. Yes.

30 Mr. Lane: I object to that as immaterial, Your Honor. Do not answer.

The Court: I will sustain the objection.

Q. Did you ever receive any money from Mr. Margulies for services which you rendered? A. I never charged him a cent for any services.

Q. Did you ever receive any checks, any moneys, from Mr. Margulies? A. I may have received
 40 checks, yes.

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Q. I show you a check dated December 13, 1928, drawn on the Port Newark National Bank, for \$5,000 and endorsed by you, and ask you if you recall the occasion on which you received that check? A. Well, now, there were—I believe there were two occasions when there was \$5,000 that passed. On one occasion, there was a check given by me for \$10,000 and I have the cancelled voucher here—I believe you have seen it; it was all produced—where we were both buying—each was buying \$5,000 worth of stock, additional stock in the Great East Casualty Company, and he gave me a check for \$5,000 and I issued my check for \$10,000 to the Great East Casualty and received stock, and wrote him a letter that I am holding \$5,000 of that stock for him. 10

There was another occasion when I was out of the city, he had had my \$25,000 in the mortgage company in cash that I had given him and securities, and he had had \$20,000, I think, in the insurance company; perhaps the full \$20,000 in the insurance company had not come in yet in my money and I believe I got an accommodation for him of \$5,000 for a month. I don't know whether this was the date. It may be either one of those two occasions. 20

Q. That was December 13, 1928. I show you a check drawn by Mr. Margulies—a check of the New Jersey Realty Company to David L. Podell, and endorsed by you, dated October 12, 1929, for \$5,000. A. That may be— 30

Q. Do you recall that transaction? A. That may be the occasion when there were some notes that he repaid. I should have to look at my figures, but, if it is not in repayment of a note, then it is that advance which was repaid him. 40

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Q. Can you recall the occasion of October 31, 1929, when you received from Mr. Margulies a check in the sum of \$500, which is endorsed by you? A. That was in payment of a note that went through the bank. I don't want to be positive about it, but, subject to check-up, I would say that was in payment of a note for moneys I had advanced him.

10 Q. And do you recall the transaction in which you received a check on November 8th, 1928, for \$23? A. I don't recall that.

Q. Do you recall an occasion— A. My records will show each one of these things. I have an auditor.

Q. And have you a recollection of March 30, 1929, when you received \$5,000 from Mr. Margulies? A. Now, let me look at those papers a minute and I will tell you exactly what they were for.

The Court: Oh.

Witness: Mr. Berry, would you mind telling me about the dates of these checks and I will tell you just what they were.

Q. All right. I will be very glad to. A. The \$5,000 one. We will straighten those out first.

30 Q. All right. A. October nineteen twenty—

Q. Besides the checks I have mentioned, did you —(interrupted) A. Now, pardon me. There is one thing that you referred to as a check for \$500. That is a promissory note signed by him, payable to me, for \$500, which he subsequently paid. It is not a check.

Q. Oh, pardon me. A. Now, where are the \$5,000 checks?

40

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Q. There is one \$5,000 check dated March 30, 1929; one \$5,000 check dated December 13, 1928; and one check dated March 30, 1929, for \$4750. Then there is a check of March 11, 1929, for \$75, a check for November 2, 1928, for \$110, a check to your order on March 27, 1928, for \$25, and a check of December 28, 1928, for \$100. A. Those small checks, probably, were cash exchanges or some adjustments on little things. For instance, he loaned a fellow a thousand dollars and he could not get it back and we had to retain an attorney in Washington to try and collect it, and his bill was \$125, and he said that I ought to stand half of that bill. Those little things I cannot answer offhand. This \$4750 was in—purchase—given me, I believe, in purchase of \$5,000 worth of Associated Gas & Electric Bonds, first grade bonds that he bought from me, and you will find that those bonds are scheduled—I believe they are among the assets of the Great Eastern Casualty Company—the numbers can be traced and identified. I sold him \$5,000 worth of those bonds, so that checked that \$4750.

Now, there remain these three \$5,000 checks. If you will bear with me just a minute, I will tell you what they were for. Here is a check from me to him dated October 4, 1929, and, as I say, again, subject to check-up, I believe that that was an advance that I made to him on October 4th of \$5,000, which he repaid on October 12th. I don't want to be positive about it. If my accountant was here, I could tell you each one of these things precisely.

And this check of \$5,000 that I said that he advanced to me, I repaid to him by my check of April 23rd for \$5,000, which I produce now, and

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that accounts for your three checks, the \$5,000, the \$5,000, and the \$4750.

These smaller checks I would be very glad to write you about and give you details about them, because my records are complete on each one of these checks and on each one of these items.

- 10 Q. You advised Mr. Margulies in all of his business affairs, did you not, Mr. Podell? A. I can't say that, Mr. Berry. I will tell you this, that, so far as the mortgage company is concerned, I certainly knew nothing about Jersey mortgages; I left that to him. I never dealt in any Jersey first mortgages; that was his business. So far as the insurance company was concerned, I had never been in the insurance business. It was his business. He had been in it for years, and I
- 20 depended on him. So far as the Airways company was concerned, I had never been a flier—he had been the flier—and my investment there—all of which is practically a total loss—was dependent very largely upon him.

- Q. Did you advise him in the matter of Mr. Andrew and Mr. George M. Chappel? A. There was not any matter about which I remember his talking to me about those people. I remember meeting those people and would be very happy to
- 30 tell you all I know about it.

Q. Did you ever suggest a letter to him, to be written to him with reference to their exclusion—from the country? A. No, I believe I—(interrupted).

Q. I show you— A. —favored, or, rather, advised against doing a thing like that. I may be in error, but that is my recollection.

- Q. I show you a letter on your stationery dated
- 40 April 16th, 1928, and ask you whether that was

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dictated by you. A. Yes, I believe, though, that he had written a different kind of a letter before that, which came close to being libelous, and I advised him that he should write a letter such as this, as set forth in my letter. Those details I won't be sure about. I remember the incident.

Q. I show you a letter on your stationery dated May 7th, 1928, and ask you if you wrote that letter or dictated it. A. Yes, I believe I did. 10

Q. And are you familiar with this? A. Or, either it was dictated at my request.

Q. Did you receive those letters, carbon copies of which I handed to you? A. Yes. There is a letter that I referred to, that I advised against. Yes, that correspondence passed.

Mr. Berry: May I offer this in evidence, Mr. Lane? 20

Mr. Lane: I have no objection.

(Several checks marked Exhibit D-1.)

Mr. Berry: May I offer these checks?

Mr. Lane: No objection.

(Several letters marked Exhibit D-2.)

Witness: Mr. Berry—

The Court: No.

Witness: Oh, I have a letter here. 30

Q. Now, isn't it a fact, Mr. Podell, that you were in constant touch with Mr. Margulies, and, in general, superintended the various transactions that Mr. Margulies was engaged in? A. I was—he came to the office very frequently, used to hang around in the outer office, sometimes for hours at a time before I could see him, because they keep me very busy in New York. I came 40

David L. Podell—Respondent—Direct.

over here, probably, in the two years, probably, no more than half a dozen times. I did not superintend the various business transactions. I did talk with him frequently about the moneys that I had invested and that my friends had invested in enterprises that he was managing. I was not superintending.

- 10 Q. And how much money had you and your friends invested? A. Well, I—my total is \$25,000 in the mortgage company, \$20,000 in the insurance company—that is forty-five—about seventy-five—\$10,000 in the Airways Company—fifty-five,—I agreed before he died, I agreed with him to accept \$7,500 in cash and take a loss on that Airways Company of twenty-five, and he agreed to pay it to me. Actual cash advanced to him at the
- 20 time of the crash was eight or ten thousand dollars, so it would come between sixty-five and seventy-five thousand dollars of my own. In addition to that, I got my clients and friends in to the tune of about fifteen or twenty thousand, part of which I had to guarantee before they would come in. I made good on some of the guarantees. I, also, since his death, have had to pay my bank ten or twelve thousand dollars on his notes, which I hold which were not met. The
- 30 total loss to me will come pretty close to \$75,000 unless we recover something from the insurance company.

- Q. And you made all of this investment without an investigation or without closely making yourself acquainted with the affairs of Mr. Margulies? A. I believed the man, I trusted him. I had known Mrs. Margulies for many years. I know that if there was anything dishonest about the man that she would let me know about it, if
- 40 she knew about it, and the arrangements were all

David L. Podell—Respondent—Direct.

in writing. The first arrangement with regard to the mortgage company was it was to be first mortgages at six per cent., no other mortgages, and he gave me collateral, from time to time. I hold now from that investment from sixty to seventy thousand dollars. I hold underwritten agreements with him about fifty thousand dollars worth of stock of the Great Eastern Casualty Company, and, if he had not imposed on the Banking Department here by those forged certificates, every dollar of that would have been good. 10

Q. How do you know he imposed on the Banking Department?

Mr. Lane: I object and move to strike it out.

The Court: All right.

Mr. Lane: It hasn't anything to do with the case. 20

The Court: I will sustain the objection.

Witness: I will put it this way—(interrupted).

The Court: No. Do not volunteer anything. Just answer questions.

Q. In fact, you dealt at length with Mr. Margulies, didn't you? A. I dealt in a business way, I believe. 30

Q. I show you a letter on your stationery dated April 2nd, 1929, with reference to the \$5,000 checks which have been offered in evidence and ask you whether you wrote that letter. A. That is the letter I was going to call your attention to a moment ago.

Mr. Berry: I offer it.

(Letter marked Exhibit D-3.)

David L. Podell—Respondent—Direct.

Q. And I show you a letter on your stationery dated December 26, 1928, and ask you if you wrote that letter? A. Yes.

Mr. Berry: I offer that.

10 Mr. Lane: No objection. I suggest they all be put in in bulk. I do not see their materiality on their relevancy. If you want to put them in, put them in all together.

The Court: Yes.

Mr. Berry: I offer, then, the correspondence between Mr. Podell and Mr. Margulies over their period of acquaintance.

(Bundle of letters marked Ex. D-4.)

20 Mr. Lane: Just what relevancy a letter written on February 28, 1929, by Mr. Margulies to Mr. Podell has, "enclosed please find police cards which I received from Atlantic City. With best wishes I am, Very truly yours," I do not see, to this case.

The Court: The easiest way to get rid of them is to admit them.

(Witness looks over pile of letters.)

30 Mr. Lane: Don't waste time. Read those at recess.

The Court: Are they all yours or not?

Witness: Well, so far.

The Court: All right. We will put them in. You can look them over afterwards.

Witness: May I look them over afterwards?

The Court: Is there anything further?

Mr. Berry: That is all.

40

*David L. Podell—Respondent—Cross.**Cross-Examination by Mr. Lane:*

Q. Mr. Podell, one or two questions. The depositions—or, rather, the disposition of the property which is made by this will was his instructions or your suggestion? A. The entire disposition was his. He had figured the thing out, just how he wanted to divide it. 10

Q. During the time which you knew Mr. Margulies, was there anything—or, did you see anything which indicated to you any insanity? A. Certainly not. He impressed me as being a very shrewd business man. In fact, the insurance company operations, I think, show it.

Mr. Lane: That is all.

Re-direct Examination by Mr. Berry: 20

Q. Do you think, Mr. Podell, that his immense wealth was a delusion on his part or that it actually did exist? A. Well, I know that he lost a substantial sum of money in the crash. The stock-brokers account would show you that.

Q. Several millions of dollars? A. Oh, no, nothing like that. He certainly had me convinced he was a man of exceeding wealth, and we have clients in the office worth a whole lot. He carried cash from time to time and he had a habit of flashing certified checks—he did that with several people—of large figures. 30

Q. What do you mean when you say “large figures”? A. Oh, hundred thousand dollars.

Q. Did you ever see him flash a hundred thousand dollars? A. He would hold it in his hand and show a certified check and, I think, on one occasion, two or three hundred thousand.

Q. He showed them to you? A. What? 40

David L. Podell—Respondent—Re-direct.

Q. Showed them to you? A. He never let them go out of his hand. Just as he did securities in the office. I became dubious after the crash, and went down and had a talk with him and wanted to get an idea what his condition or financial wealth was and he took out this package of securities—pulled out this 500 shares of Otis Elevator stock—he pulled out 500 shares of some bank stock and he pulled out a bundle of bonds. I left him that afternoon in the firm belief the man was worth three quarters of a million dollars, from the securities he showed me, and we are not accustomed to dealing with forgers; it never entered my mind the man was forging the things. No doubt they were forged.

10 Q. Why do you say “no doubt they were forged”? A. Because I checked up on them.

20 Q. From what did you check up on it? A. I checked up with the corporation trust company, the registrar had every mortgage.

Q. Of one stock? A. Of the principal, the most valuable stock, the 500 shares of Otis Elevator Company, which was selling, even after the crash, somewhere around—(interrupted).

30 Q. Did you ever check up on any others? A. I had a man from the Upstate Bank down to come and see this certificate and they all told me they had no such certificate number; and then the bonds, those were fake bonds, they were specimen bonds, not filled in or signed in. He had them wrapped up and showed them to me. They looked like a great big bundle of bonds. I hadn't dreamed that I was dealing with that type of man.

40 Q. Did you get a report back as to the nature of bonds he was supposed to own at the time Miss Berk was sent over from your office? A. Miss

David L. Podell—Respondent—Re-direct.

Berk came back that afternoon and told me exactly what she told you on the witness stand here today. Mr. Margulies came in and he showed me that list.

Q. What list? A. List of securities.

Q. List of securities? A. List of securities, with his pencil handwriting on it—the one Mr. Bernhard had. 10

Q. Will you examine that list and tell me whether you were ever advised of his passing those? A. I never saw this physical list before this minute.

Q. But did you ever see a similar list, a list of those securities? A. I can't tell you whether the securities are the same, to save my life, but, if you will get Mr. Bernhard's list, that is the list I saw, it has pencil handwriting on and that is the list Mr. Margulies brought back that afternoon and showed to me. 20

Q. From looking at that list, Mr. Podell, can you tell me whether those securities that are there listed purport to be the same as the securities which you say were forged or fake or blank securities? A. They were.

Q. Did they correspond with the false securities which you say were found in his office? A. You mean this list? 30

Q. Yes. A. Well, we had—all that Mr. Clancy and I saw in this box—and the other directors—were bonds. We didn't look to see what company's bonds they were, but we opened them up, because we were suspicious, because we had found this one certificate a fake, and we opened them up and found they were not signed, they were just simply specimen bonds; I can't tell you what kind of bonds or what company's bonds 40

Beatrice Kowalski—Respondena—Direct.

they were. If I could tell you that, I could tell you whether it was the specific—(interrupted).

The Court: In other words, you can't tell us.

Q. You can't answer the question? A. The answer is, "I can't tell you."

The Court: Now, is there anything further?

Mr. Berry: That is all.

Witness: Mr. Lane, do you want to mark—(interrupted).

Re-cross Examination by Mr. Lane:

Q. Mr. Margulies was killed in an airplane crash in Florida, was he not? A. Yes.

Q. In a machine which was driven by himself? A. Well, there were two in there, I am informed.

Q. There were only two in the machine? A. Mr. Moon was with him, and he was flying with Mr. Moon.

Q. And ostensibly they were on the way back from Florida to New York? A. Apparently. He wrote me a card the day before leaving. Mr. Lane, do you want to mark that yellow sheet that you marked for identification?

Mr. Lane: No.

BEATRICE KOWALSKI, sworn for respondent.

Direct Examination by Mr. Berry:

Q. Were you employed by Mr. Margulies at the time of his death? A. Yes, sir.

Beatrice Kowalski—Respondent—Direct.

Q. And how long before that had you been in his employ? A. Well, I started to work with Mr. Margulies in August, 1927, but I was out for eight months and was—from January until December, 1929.

Q. I show you two books and ask you if you can identify them. A. Yes, I can identify this one. 10

Q. What is it? A. It is the book we used for making a record when calls came in, Mr. Margulies' calls or any calls that came in the office.

Q. That is a record of the incoming telephone calls in your office? A. Exactly.

Q. And it shows in it the period of time it covers? A. Yes, from day to day.

Q. From day to day. A. These check marks are Mr. Margulies'. 20

Mr. Berry: I ask it be marked for identification.

(Book marked D-5 for identification.)

The Court: You have no objection to it be introduced, have you, Mr. Lane?

Mr. Lane: No. But I don't know what its materiality is.

Q. And the other book, that is outgoing telephone calls? A. Yes. 30

Mr. Berry: I ask that be marked.

Mr. Lane: No objection to that.

The Court: Let that be marked.

(Second book marked Exhibit D-6.)

Matilde Daniele—Respondent—Direct.

MATILDE DANIELE, SWORN for respondent.

Direct Examination by Mr. Berry:

Q. Miss Daniele, were you acquainted with the late Emanuel S. Margulies? A. I was.

Q. And were you at one time his wife? A. I was.

Q. And is that the same Mr. Margulies that was president of the Great Eastern Casualty Insurance Company of New Jersey? A. I presume it is.

Q. And has your marriage to him been annulled? A. It has.

Q. On what date? A. I can't say exactly the date.

Q. The year? A. Some time in June, 1923.

Q. On what grounds? A. That I can't say, either; that is a matter of record, I believe.

Q. Did you testify in that suit? A. Well, on one occasion, I believe. I don't remember. I was quite ill at the time and I don't recall that.

Q. You cannot recall whether you testified in your own case or not? A. I don't think I did at court.

Q. You testified in someone's office? A. Yes, I believe it was Judge Stickles'.

Q. Mr. Richard Stockton? A. Well, I don't remember whether it was he or not. It is seven years ago and I can't just remember.

Q. Do you recall what you testified to with reference to your husband?

Mr. Lane: I object to that, if the Court please.

The Court: I will sustain the objection.

Matilde Daniele—Respondent—Direct.

Q. What did you complain of in your action against your husband?

Mr. Lane: I object to that.

The Court: I will sustain the objection.

Q. Did your husband admit to you that he had been discharged from the army by reason of insanity? A. No, sir. 10

Q. Didn't you testify before Mr. Stockton—

Mr. Berry: I call Your Honor's attention to the fact that I have a hostile witness here. I ask an opportunity to check her up by previous testimony.

Mr. Lane: The question, in the first place, was immaterial. The question is, when counsel asks an immaterial question and gets an answer, he is bound by the answer. 20

The Court: Yes, that is right.

Q. Do you know an Edward Martyn? A. Mr. Margulies married me under the name of Dr. Edward Martyn, M-a-r-t-y-n.

Q. What did he do? A. He married me by the name of Edward— I believe it was Edward Martyn.

The Court: What in the world has this got to do with it? 30

Mr. Berry: It has a bearing on the man's sanity.

Q. You say he married you under the name of Dr. Edward Martyn? A. Yes, sir.

Q. And was he a doctor? A. That I don't know.

Graham B. McGregor—Respondent—Direct.

Q. Did he make any representations to you as to his wealth? A. No, not at that time.

Mr. Berry: That is all.

Mr. Lane: No questions.

The Court: That is all. Anything else?

Mr. Berry: Yes, sir. Mr. McGregor.

10

GRAHAM B. MCGREGOR, sworn for respondent.

Direct Examination by Mr. Berry:

Q. Mr. McGregor, your business is what? A. Banker.

Q. With what bank are you affiliated? A. Port Newark National.

20 Q. Were you acquainted with the late Emanuel S. Margulies? A. Yes.

Q. How long have you known him? A. About twenty years.

Q. Did he have deposits at your bank? A. Not individually.

Q. Did you ever have any conversation with him with reference to his estate? A. I did.

Q. When did that take place? A. About Octo-
30 ber or November, 1928.

Q. Will you tell us what that conversation was? A. I was led to believe that Mr. Margulies had a lot of money; in fact, he showed me a lot of money.

The Court: What you were led to believe is not competent. What he said and what you said is what we want to know.

Witness: I saw in his possession a lot of money and securities.

40

Graham B. McGregor—Respondent—Direct.

The Court: How much?

Witness: At times, as high as \$100,000 in cash and in securities, and evidenced by bank deposits in various savings institutions.

I asked him if he wouldn't designate the Port Newark Bank as executor and trustees of his will. He told me that he had a very good friend in New York, Mr. David Podell, who was his attorney and counsel, who looked after all his affairs and kept his securities and was the executor of his will and that the money he had, and the securities, was over in New York in Mr. Podell's office, or in the Chatham Phenix Bank. 10

Q. Did you have any subsequent conversation with Mr. Margulies with reference to money matters? A. I did. 20

Q. Around what time? A. As I recall it, three or four days prior to the time that the year was up for him to obtain the necessary two or three hundred thousand dollars to get his charter for the Great Eastern Casualty Company.

Q. And that was approximately what date? A. The latter part of September or the early part of October.

Q. What year? A. Last year, '29. 30

Q. 1929. And did you have a conversation or conversations with him, around that time? A. I did.

Q. And where were they held? A. They were held in the bank and at his office.

Q. And which was first? A. The bank.

Q. What took place at the bank? A. He wanted to borrow \$100,000 and we are limited to a loan of \$25,000 on account of our capital and surplus, 40

Graham B. McGregor—Respondent—Direct.

but I told him I could arrange a loan for him in the Guaranty Trust Company of New York on suitable stock exchange collateral, and I asked him what he had. He said he had a lot of bonds. I said, "I want to see them." He said, "Come up to my office and I will show them to you," and I went up to his office and I saw them.

10 Q. What did you see—when did you go to his office? A. That same afternoon that he was in the bank.

Q. What did you see in his office? A. I saw a big brown—three or four big brown envelopes full of security bonds. And I told him I would have to have \$125,000 or \$150,000 worth of these bonds to take over to the Guaranty Trust Company as collateral for this \$100,000 loan and he
20 said, "Take your choice," and I took up an envelope and I looked at it and pulled out all the bonds, in the neighborhood of \$125,000 or \$150,000, and I said, "I won't take these things over, Mannie, until I find out whether they will grant you the loan." So I took a list of the bonds over to Mr. Parker, the vice-president of the Guaranty Trust Company, and I said, "Mr. Margulies is president of the Great Eastern Casualty Company now being organized, and he is short,"—
30

Mr. Lane: I object to all of this conversation as irrelevant.

Q. Yes. Never mind anyone's conversation except that with Mr. Margulies. Did you get the loan? A. I took the bonds over there. Mr. Parker looked them over and said, "Being they are African and New Zealand and South Wales
40 bonds, I will have to look up the value—"

Graham B. McGregor—Respondent—Direct.

The Court: What Mr. Parker said has absolutely nothing to do with it.

Witness: Then I can answer that, Your Honor, by saying, if the bonds were acceptable, the loan would be granted.

Q. Was the loan granted? A. I was informed the loan would be granted. 10

Q. What did you do when you were so informed? A. I came back to Newark and the next morning I called up Mr. Margulies and told him he could have the money.

Q. And what did he say? A. He said, "I have made other arrangements with the department and I am going to put up cash and I won't have to borrow the money."

Q. Did he come to see you subsequently at the bank? A. He came in every day, practically. 20

Q. Did you have a conversation with him after that with reference to that money? A. He told me he had made an arrangement to get cash. Where he had gotten it, I don't know.

Q. Do you recall what bonds you saw in the office? A. I have a rough idea of what they were. I know they were a lot of New Zealand and South Wales. They were an unusual list of bonds.

Q. I show you that list of bonds and ask you if that refreshes your recollection. A. Some of these bonds I have seen. 30

Q. Will you inform us which bonds you have seen? A. The City of Brisbane, Victoria Convertibles, Melbourne Harbor, New Zealand, Wellington and Kenya and Sudan Government, Ltd., gold notes, Colony of Southern Rhodesia, City of Capetown and King Williamstown Corporation, Port Elizabeth Corporation Govern- 40

Graham B. McGregor—Respondent—Cross.

ment, Municipality of Eeroonstad, and Pietermaritzburg, Bomba Port Trust, City of Rangoon, New South Wales, Cape of Good Hope, South Africa, Southern Rhodesia, India, and City of Bruxelles.

Q. And did you carefully examine those bonds?

10 A. I wouldn't say that I examined every one of them, but I examined seventy-five or eighty per cent. of them.

Q. And what— A. And what I examined I found were O. K.

Q. Can you state whether there were any bonds that were forgeries or bad? A. What I examined appeared to be O. K.

20 Q. Did you notice whether the coupons, if any, were cut or not cut? A. The coupons on some were cut and on others were not cut. Some of the coupons were past due.

Q. Were any of them specimen bonds? A. Not that I know of. I didn't see any specimen bonds. They all looked regular and bona fide to me.

Q. And you were examining them for the purpose of a loan? A. Yes, sir.

The Court: Is that all?

30 *Cross-Examination by Mr. Lane:*

Q. Mr. McGregor, what officer are you in the bank? A. I am president.

Q. You never saw the originals—you never saw any others of these bonds, did you? What I mean by that is, have you seen other ones of— A. This same issue.

Q. —of South Africa, and so forth and so on, or are these the only ones of the type you saw? A.

George Gray—Respondent—Direct.

You mean other than Mr. Margulies' place or somewhere else?

Q. Somewhere else? A. I have, yes.

Q. And you would say they looked like the ones you have seen? A. To the best of my knowledge and belief.

Q. Did you know anything about them? A. Yes, I know what a good bond is and what a bad bond is. 10

Q. You don't know what a good bond is if you haven't seen one that is good to compare it with.

A. I know what a specimen bond is.

Q. You don't know what a forged bond is? A. No, sir.

Q. Nobody else does. A. (No answer.)

20

GEORGE GRAY, sworn for respondent.

Direct Examination by Mr. Berry:

Q. Mr. Gray, what is your business? A. Bond business.

Q. Where do you live? A. New York City—600 West 15th.

Q. You say you are a bond man? A. Yes.

Q. Are you with a certified house? A. Stock exchange house. 30

Q. Did you know the late Emanuel S. Margulies? A. I did.

Q. And where did you first meet him? A. In his own office.

Q. And what took place on the occasion of your visit there? A. Well, several things took place on the first interview. It was the question of the value of his bonds. 40

George Gray—Respondent—Direct.

Q. What bonds was there a question of the value? A. He showed me a list he had there and asked me to go over them and see what I thought about it.

Q. Could you identify the list if I showed it to you? A. I would say so.

10 Q. (Handing witness paper.) Is that the list of bonds that you were asked to find the value of?

A. I would say most of them here were on the list I saw, yes.

Q. What kind of bonds were they? How would you describe them? A. Well, they were—a number of—they made up a list of foreigners, mostly foreign bonds.

Q. Limited to any one particular locality? A. Well, generally through Africa.

20 Q. Well, how many times did you visit Mr. Margulies at his office? A. Three times.

Q. Did you ever see any money? A. I did.

Q. Or other securities when you were on— A. I did.

Q. What do you recall the date or approximate dates of these visits? A. I should say about October of '28 when I first saw him.

30 Q. And on what visit was it that you saw securities or other evidences of wealth? A. It was the last visit I made—I never saw the bonds, I saw the money. I counted the money.

Q. What did you see and where? A. I saw gold in his office which I counted.

Q. Gold pieces? A. Gold pieces, twenty-dollar gold pieces.

Q. And how much money did you see at that time? A. \$3600.

Q. Did you check up with this list of bonds or

George Gray--Respondent--Direct.

bonds in that description for Mr. Margulies? A. I did.

Q. And determine their value? A. An approximate value. Some of them I could not get a market on.

Mr. Lane: That is all.

Witness: I never saw the bonds.

10

Mr. Lane: That is all.

The Court: That is all.

Mr. Berry: Your Honor, I have one other matter. Mr. Lane suggested I make a statement on the record.

I have, with Mr. Bernhard's permission, gone over the list of bonds, which are specimen bonds, which were found in Mr. Margulies' drawer in his possession, and I have made a list of those. They all purported to be local securities and all securities which—
(interrupted).

20

Mr. Lane: Put in that they are not those referred to in this.

Mr. Berry: And they are in no way—(interrupted).

The Court: Is that admitted?

Mr. Lane: That is admitted.

The Court: All right. Is that the end of
the case?

30

Mr. Berry: One more thing.

I wish to offer in evidence the adjudication of insanity in the case of Daniele *vs.* Margulies. I have a special messenger who is bringing that up from Trenton at this time.

Mr. Lane: I am compelled to object to that, if the Court please, not evidential at all.

In the first place, it was an uncontested case, and it is between the parties.

40

George Gray—Respondent—Direct.

Now, the evidence of the lunacy inquiry may be admitted because that goes—

The Court: Prima facie.

10 Mr. Lane: That is only prima facie, that goes to the very facts of the insanity, but a litigation between a party, which has nothing to do with the state or the status, is not binding upon anybody.

The Court: I will consider this offered and I will decline to admit it.

Mr. Berry: This, of course, will be offered in evidence when we get it.

The Court: Yes. Do you want any to submit briefs? I am perfectly willing to decide this case at this time.

20 Mr. Lane: No, I don't want any time to submit briefs.

I want to say to Your Honor for the purpose of the record that the other two witnesses to this will have not yet been called. They are here in Court and subject to the orders of the Court, if the Court wants to hear them. I do not consider it is necessary to produce them.

The Court: I don't either.

30 The two grounds on which this will is attacked are undue influence and insanity.

As to the undue influence, it seems to me that whatever undue influence there was, was on the other side. This executor of this will was persuaded to part with about \$70,000 worth of his money and I cannot see that there is an iota of evidence that he in any way improperly influenced Mr. Margulies. They were intimate friends and Mrs. Margulies introduced Mr. Margulies to Mr.—

40 whatever his name is,—

George Gray—Respondent—Direct.

Mr. Berry: Podell.

The Court: —and therefore I think that is an untenable ground.

The second ground is that of mental incapacity.

Dr. Beling, of course, we all recognize as an eminent expert and he says that dementia præcox often occurs and persists in people who are practically normal, that is, they have exalted ideas, but they know how to conduct their affairs, only they conduct their affairs in larger numerals than there really are, and that does not make it impossible for this man to have selected the proper object of his bounty and to know what he desired to do and was doing with what money he thought he had, even though it does appear that he did not have anything like he decided to leave.

I will admit the will to probate.

30

40

THE HISTORY OF THE
 UNITED STATES OF AMERICA
 FROM 1763 TO 1876
 BY
 CHARLES A. BEAMAN
 VOL. I
 THE FOUNDING OF THE NATION
 1763-1789
 CHAPTER I
 THE PROGRESS OF THE REVOLUTION
 1775-1781
 SECTION I
 THE BATTLE OF BOSTON
 1775

The British evacuated Boston on March 17, 1775, and moved to Halifax, Nova Scotia. The Continental Army followed them and fought the Battle of the Clouds on March 19. The British then sailed to Halifax, and the Continental Army followed them to the Battle of the Clouds on March 19. The British then sailed to Halifax, and the Continental Army followed them to the Battle of the Clouds on March 19.

Exhibit C-1.

10

LAST WILL AND TESTAMENT

of

EMANUEL SINCLAIR MARGULIES

(5 sheets photostats.)

20

30

40

Edg

IN THE NAME OF GOD, AMEN!

I, EMANUEL SINCLAIR MARGULIEZ, being of sound and disposing mind and memory and realizing the uncertainties of this mortal life, and fully appreciating the objects of my bounty, do make, ordain, publish and declare this to be my LAST WILL AND TESTAMENT, in the manner and form following:

FIRST: I direct my Executor, hereinafter named, as soon as possible after my decease, to pay and discharge all my lawful debts and obligations.

SECOND: I give and devise all the rest, residue and remainder of my real and personal property of every kind and nature whatsoever to be divided among my heirs and next of kin as follows:

THIRD: I give and bequeath unto my friend FATHER EDWARD F. MURPHY of the Epiphany Apostolic College, New York, the sum of TWENTY THOUSAND AND NO/100 DOLLARS, (\$20,000), and hereby direct my Executor and Trustee, hereinafter named, to make payment thereof.

FOURTH: I give and bequeath unto my friend DR. ALFRED WAMLET, the sum of THIRTY THOUSAND AND NO/100 DOLLARS, (\$30,000), and hereby direct my Executor and Trustee to make payment thereof.

FIFTH: I give, devise and bequeath to my wife MARGUERITE ZENDER MARGULIES, if she shall survive me one quarter ($\frac{1}{4}$) of the rest, residue and remainder of my estate to her own use absolutely and forever; the remaining three-quarters ($\frac{3}{4}$) I hereby devise and bequeath as follows:

Edly

Handwritten scribble or signature in the bottom right corner of the page.

SIXTH: One-quarter ($\frac{1}{4}$) to my father, ISIDORE MARGULIES, to be his property absolutely and forever, if he should survive me.

SEVENTH: One-quarter ($\frac{1}{4}$) to my mother, TILLIE MARGULIES, to be her property absolutely and forever, if she should survive me.

EIGHTH: The remaining quarter ($\frac{1}{4}$) I hereby devise and bequeath to my Trustee, hereinafter designated to have and to hold the said property and estate upon and for the following trust purposes:

NINTH: To pay the income thereof quarter-annually to my wife until she reaches the age of fifty (50) years; then the trust to terminate and the principal and income thereof to belong to my wife absolutely and forever. In the event of her demise during the pendency of the trust, the trust shall terminate upon her demise, and the property both principal and interest to be devised or disposed of in accordance with the Will of my wife, or in the event of no Will, in accordance with the Laws of Decedents' Estates prevailing in the State of New Jersey.

This Will has been made, declared and published by me on the assumption that there has been no issue living of my marriage at the time of my demise. In the event that there be any issue of my marriage living at the time of my demise, the disposition of my estate shall be as follows:

TENTH: The amounts bequeathed to FATHER EDWARD F. MURPHY and DR. ALFRED MAMLET shall none the less be payable as hereinbefore provided.

Ray

Handwritten signature or scribble

ELEVENTH: The rest, residue and remainder of my estate, real and personal, of every kind, nature and description shall be divided into six (6) equal parts

One-sixth (1/6) to go to my father, ISIDORE MARGULIES, to be his absolutely and forever,

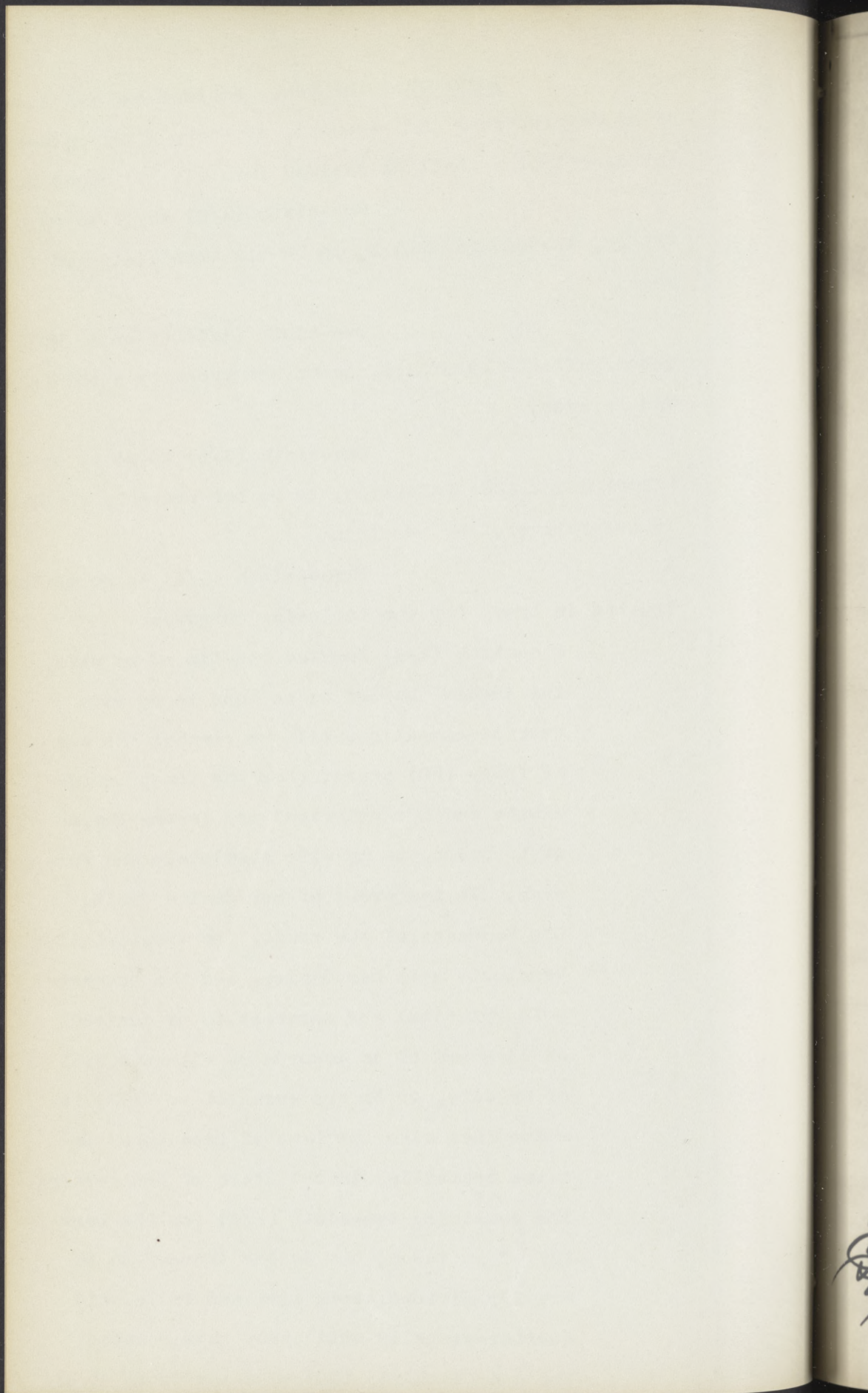
One-sixth (1/6) to go to my mother, TILLIE MARGULIES, to be her property absolutely and forever,

One-sixth (1/6) to go to my wife MARGUERITE ZENDER MARGULIES, to be her property absolutely and forever, the remaining

Three-sixth (3/6) to go to the Trustee in trust for the following purposes:

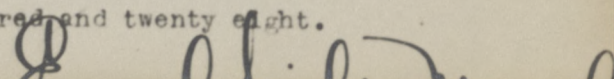
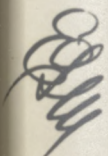
One-sixth (1/6) for the benefit of my wife, the income thereof to be paid to my wife quarter-annually until she reaches the age of fifty (50) years; then the trust to terminate and the principal and income thereof to belong to my wife absolutely and forever. In the event of her demise during the pendency of the trust, the trust shall terminate upon her demise, and the property both principal and interest to be devised or disposed of in accordance with the Will of my wife, or in the event of no Will, in accordance with the Laws of Decedents' Estates prevailing in the State of New Jersey; The remaining two-sixth (2/6) for the benefit of my issue, the income thereof to be equally divided among them and to be paid quarter-annually until they have reached the age of thirty (30) when the trust shall

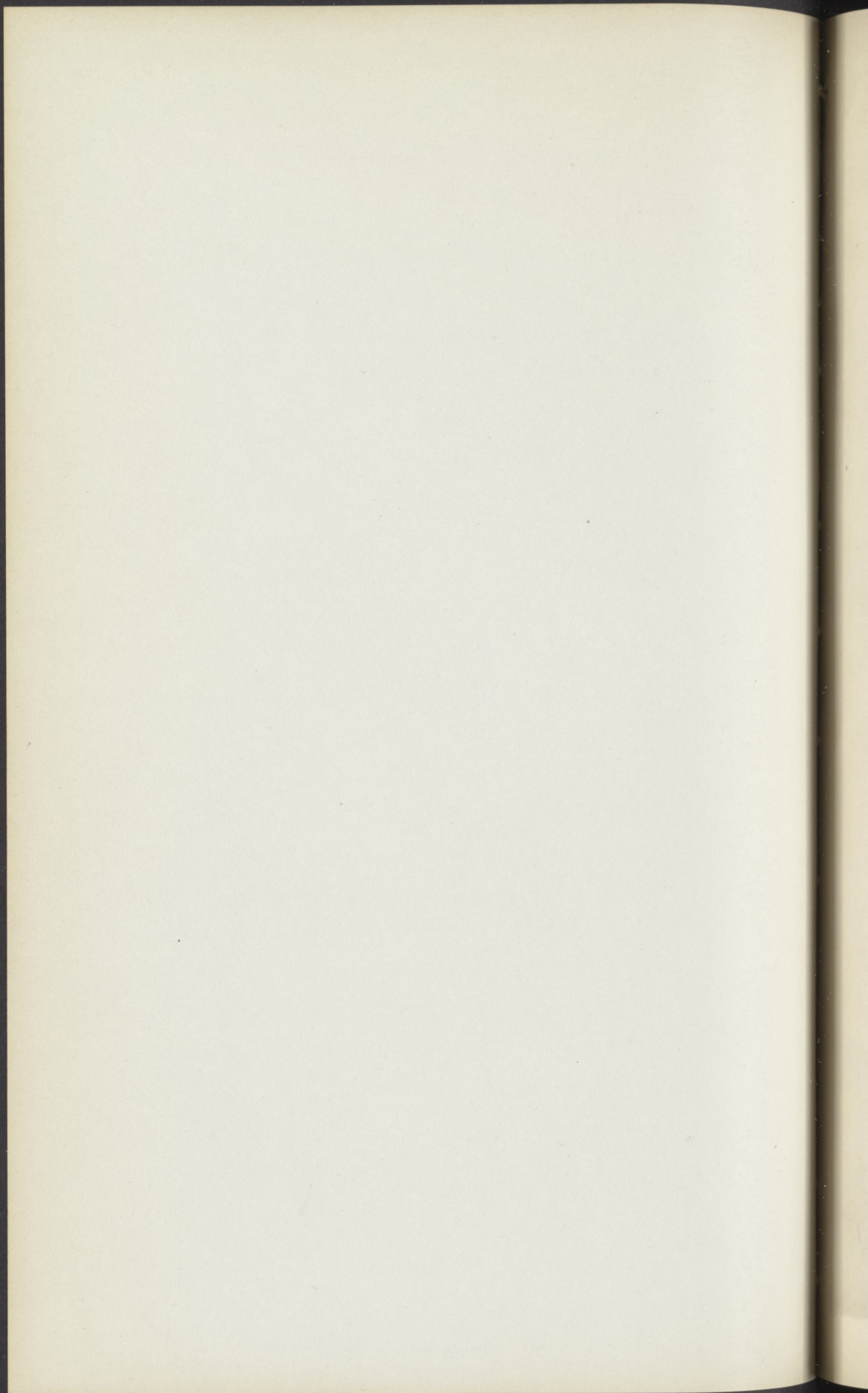
Copy



terminate and the principal and income remaining in the estate of said two-sixth (2/6) shall be divided equally among them.

TWELFTH: I hereby nominate and appoint MR. DAVID L. PODELL of 39 Broadway, to be my Executor and Trustee and to serve without bond, and in order to effectually carry out the terms of this Will, I hereby empower and direct said Trustee, for the best interest of my estate, to sell either at public or private sale the whole or any part of the real or personal property of which I may die, seized or possessed, or any interest therein, and shall collect or otherwise convert into money such parts of the trust premises as shall not consist of money and shall out of the proceeds of the said trust estate pay my funeral and testamentary expenses and debts and the pecuniary legacies bequeathed by this Will, and shall invest the residue of the said moneys in the name, or under the legal control, of the said Trustee, in any bond of the United States, or in the bonds or notes of any municipal corporation regularly paying its interest, or in mortgages of improved real property situated within the United States, or in any investment authorized for Trustee by the laws of the State of New Jersey, and I hereby authorize and empower the said Trustee, in his discretion to retain any of my property in the same form of investment in which it may be at the time of my death. The compensation of my said Trustee to be fixed at the rate of \$25,000. per annum, payable semi-annually during the life of the trust. IN WITNESS WHEREOF, I, EMANUEL SINCLAIR MARGULIES, have to this my Last Will and Testament, consisting of five (5) sheets of paper, subscribed my name and set my seal this 22nd day of May, in the year one thousand nine hundred and twenty eight.





WITNESSES:

Lillian Teskin

Norman Mackison

Hyman Schiker

The within instrument consisting of five (5) pages was on this 22nd day of May, A. D. One thousand nine hundred and twenty eight, signed, sealed, published and declared by the testator EMANUEL SINCLAIR MARGULIES, to be his said Last Will and Testament, in the presence of us and each of us, the undersigned, who thereupon, at his request and in his presence and in the presence of each other, have hereunto subscribed our names as the attesting witnesses thereof, the day and year last above written.

Lillian Teskin residing at 18 Cooper St.
Brooklyn, N.Y.

Norman Mackison residing at 2595 Edgewood
Brooklyn, N.Y.

Hyman Schiker residing at 37 1/2 Le Marchant
New York City

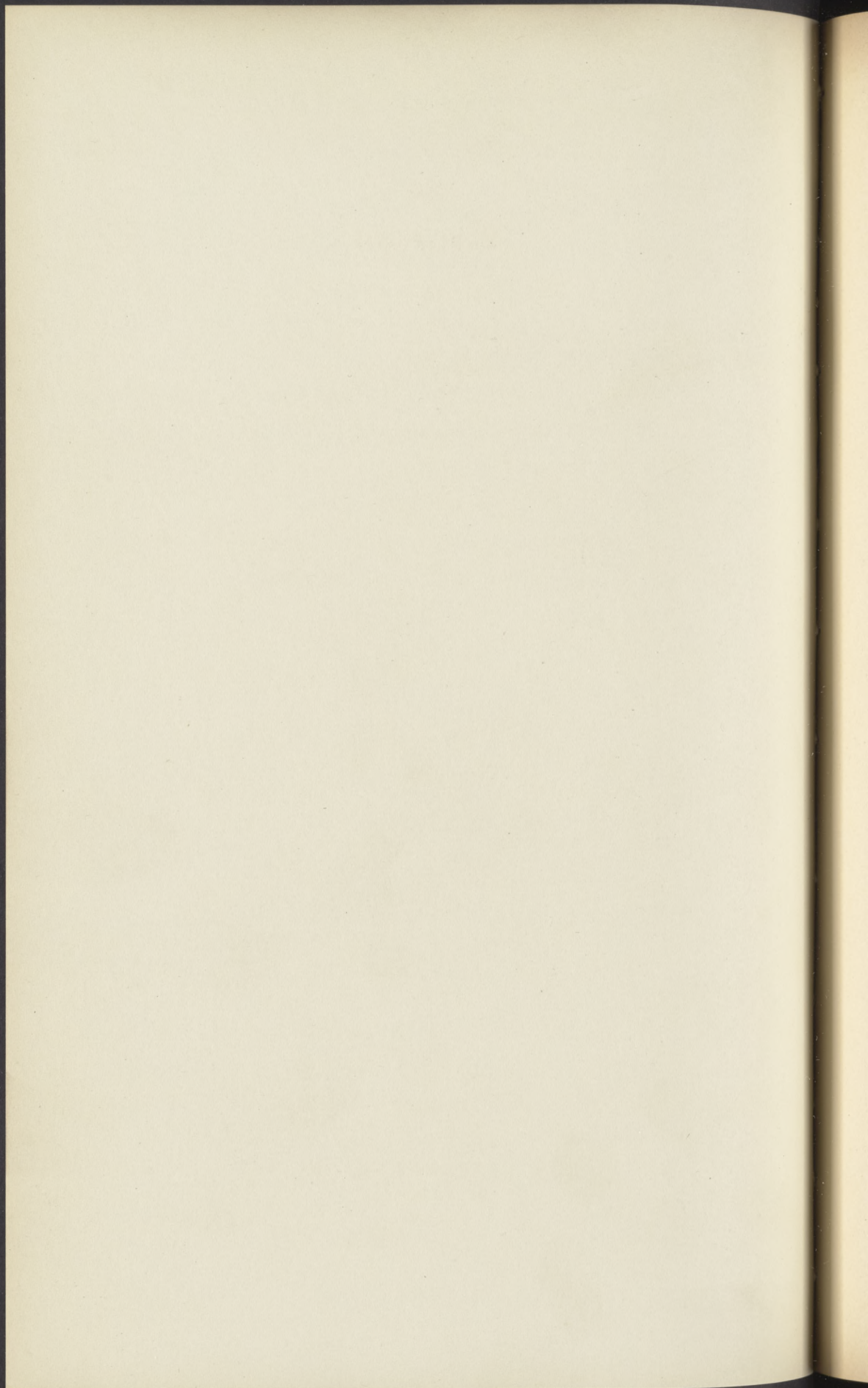


Exhibit D-1.

December 13, 1928 No.

PORT NEWARK NATIONAL BANK
Newark, N. J.

Pay to the
order of ----- DAVID L. PODELL ----- \$5000.00/100 10

Five Thousand and 00/100 ----- DOLLARS

EMANUEL SINCLAIR MARGULIES

[ENDORSEMENT]

DAVID L. PODELL

20

March 30, 1929 No.

MERCHANTS & NEWARK TRUST Co.
Newark, N. J.

Pay to the
order of ----- DAVID L. PODELL ----- \$5000.00/100 30

Five Thousand 00/100 ----- DOLLARS

EMANUEL SINCLAIR MARGULIES

[ENDORSEMENT]

DAVID L. PODELL

40

Exhibit D-1.

THE NEW JERSEY REALTY Co.
Ten Sixty Broad Street

No. 1464

Newark, New Jersey, October 12, 1929

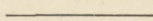
10 *Pay to the order of*-----DAVID L. PODELL-----\$5000.00
Exactly Five Thousand Dollars No Cents Exactly-----DOLLARS

To
THE PORT NEWARK NATIONAL BANK
of Newark
NEWARK, NEW JERSEY

THE NEW JERSEY REALTY Co.
EMANUEL SINCLAIR MARGULIES
Atty.

[ENDORSEMENT]

20 DAVID L. PODELL



March 30, 1929 No.

MERCHANTS & NEWARK TRUST Co.
Newark, N. J.

30 *Pay to the order of*-----DAVID L. PODELL-----\$4750.00
Forty seven hundred fifty-----DOLLARS

EMANUEL SINCLAIR MARGULIES

[ENDORSEMENT]

40 DAVID L. PODELL

Exhibit D-1.

March 11, 1929 No.

PORT NEWARK NATIONAL BANK
Newark, N. J.

Pay to the
order of-----DAVID L. PODELL-----\$75.00 10
Seventy five -----DOLLARS

THE NEW JERSEY REALTY CO.
EMANUEL SINCLAIR MARGULIES
Atty.

[ENDORSEMENT]

DAVID L. PODELL

20

THE NEW JERSEY REALTY CO.
Ten Sixty Broad Street

No. 629

Newark, New Jersey, November 2nd, 1928

Pay to the
order of-----DAVID L. PODELL-----\$110.00 30
Exactly One Hundred Ten Dollars No Cents Exactly-----DOLLARS

To
THE PORT NEWARK NATIONAL BANK
of Newark
NEWARK, NEW JERSEY

THE NEW JERSEY REALTY CO.
EMANUEL SINCLAIR MARGULIES
Atty.

[ENDORSEMENT]

DAVID L. PODELL

40

Exhibit D-1.

March 27, 1928 No.

FIDELITY UNION TRUST Co.
Newark, N. J.

210 Ferry St. Branch

10 *Pay to the*
order of----- DAVID M. PODELL ----- \$25.00*Twenty-five* ----- DOLLARS

THE NEW JERSEY REALTY Co.

EMANUEL SINCLAIR MARGULIES
Atty.

[ENDORSEMENT]

20

DAVID L. PODELL
ABRAHAM PASSMAN

Dec. 28, 1928 No.

PORT NEWARK NATIONAL BANK
Newark, N. J.30 *Pay to the*
order of----- J. J. PODELL ----- \$100.00/100*One hundred 00/100* ----- DOLLARS

NEW JERSEY REALTY Co.

EMANUEL SINCLAIR MARGULIES
Atty.

[ENDORSEMENT]

40

J. J. PODELL
(for Deposit)

Exhibit D-1.

THE PORT NEWARK NATIONAL BANK
OF NEWARK

Newark, New Jersey, Nov. 8, 1928 No.

Pay to
the order of ----- DAVID L. PODELL ----- \$23.00 10

Twenty three 00/100 ----- DOLLARS

EMANUEL SINCLAIR MARGULIES

[ENDORSEMENT]

DAVID L. PODELL 20

15269

\$500.00 New York, October 31, 1929

Two months after date we promise to pay to the order of DAVID L.
PODELL *Five hundred* ----- DOLLARS 30

Payable at Port Newark National Bank, Newark, New Jersey, Value
received.

NEW JERSEY REALTY CO.

No. 18020 Due Dec. 31.

EMANUEL SINCLAIR MARGULIES
Atty.

[ENDORSEMENT]

DAVID L. PODELL 40

Exhibits D-2, D-3 and D-4.

April 13, 1928.

Mr. David L. Podell,
111 Broadway,
New York City.

Dear David:

- 10 Confirming our conversation of today Mr. Andre Perugia is a shoe manufacturer and his address is 19 Rue Lous Le Grande.

The other gentleman is Georges M. Chapelle and he is connected with the Alpena Corporation, his address is 18 Rue De Miromesmil, Paris, France.

Will you kindly give this your attention at once and advise.

- 20 Thanking you, I am

Very truly yours,

THE NEW JERSEY REALTY CO.

By:

BK

General Manager.

30

40

Exhibits D-2, D-3 and D-4.

DAVID L. PODELL
COUNSELLOR AT LAW

111 Broadway
Rector 5200

New York

April Sixteenth, 1928

Mr. Emanuel Sinclair Margulies,
The New Jersey Realty Company, 10
1060 Broad Street,
Newark, N. J.

Dear Manny:

I suggest the following letter:

Immigration Authorities,
Ellis Island,
New York.

20

Gentleman:

I am advised that Mr. Andre Perugia, 19 Rue
Louis Le Grande, Paris, France, and Mr. Georges
M. Chapelle who is connected with the Alpena
Corporation of 18 Rue De Miromesnil, Paris,
France, are expecting to visit this country. Be-
fore they are admitted I would appreciate it if
you will let me have notice of their arrival and
a chance to be heard with respect to their admis-
sion to this country.

30

Very truly yours,

DLP/CW

DAVID.
CW

40

Exhibits D-2, D-3 and D-4.

April 17, 1928

Mr. David L. Podell
111 Broadway
New York.

Dear David:

10 I have your letter of April 16th, and please advise me whether I should write this or you have written directly to the Immigration Authorities.

With best wishes, I am

Very truly yours,

ESM:ET

THE N

20 DAVID L. PODELL
COUNSELOR AT LAW

111 Broadway
Rector 5200

New York

April Nineteenth, 1928.

30 Mr. Emanuel S. Margulies,
The New Jersey Realty Co.,
1060 Broad Street,
Newark, N. J.

Dear Manny:

The letter incorporated in my letter to you of the sixteenth was a suggestion for one to be written by you to the Immigration Authorities.

With best wishes,

Sincerely yours,

40 CW

DAVID L. PODELL.
CW

Exhibits D-2, D-3 and D-4.

April 20, 1928.

Immigration Authorities,
Ellis Island,
New York.

Gentlemen:

I am advised that Mr. Andre Perugia, 19 Rue 10
Louis Le Grande, Paris, France, and Mr. Georges
M. Chapelle who is connected with the Alpena
Corporation of 18 Rue De Miromesnil, Paris,
France, are expecting to visit this country. Be-
fore they are admitted I would appreciate it if
you will let me have notice of their arrival and a
chance to be heard with respect to their admission
to this country.

Very truly yours,

20

ESM:ET

30

40

Exhibits D-2, D-3 and D-4.

April 24, 1928.

Mr. David L. Podell,
111 Broadway,
New York City.

Dear Sir:

10 Enclosed please find copy of letter received this morning from the Immigration Authorities.

Kindly advise me what I should write to them. Also shall I advise them that when I came to their suite they had a girl stupified under the influence of liquor and were no doubt holding her there for immoral purposes.

Your advices will be appreciated.

Very truly yours,

20

THE NEW JERSEY REALTY CO.

By:

BK

General Manager.

30

40

Exhibits D-2, D-3 and D-4.

U. S. DEPARTMENT OF LABOR

IMMIGRATION SERVICE

Office of
COMMISSIONER OF IMMIGRATION
Ellis Island
New York Harbor, N. Y.

In Answering Refer to
No. 99114/957

April 23, 1928 10

Emanuel S. Margulies, President,
The New Jersey Realty Co.,
Ten Sixty Broad Street,
Newark, N. J.

Dear Sir:

I am in receipt of your letter of April 20, concerning the probable attempt of Mr. Andrew Perugia and Mr. Georges M. Chappelle to visit the United States, but unless you can supply the name of steamship and approximate date they are expected to arrive, it will be impracticable for this office to notify you when they actually arrive. If you have information concerning these two men which you think should bar them from admission, I shall appreciate being furnished same and instructions will be issued to our inspection officers to keep a lookout for them.

Very truly yours,

BYRON H. UHL,
First Assistant Commissioner.

EF

Exhibits D-2, D-3 and D-4.

DAVID L. PODELL
COUNSELOR AT LAW

Harriman Building
39 Broadway
Whitehall 7036-9

NEW YORK

May Seventh
1928

10

Dear Manny:—

How is everybody? I have not heard from you in a long time.

With regard to your letter of the twenty-fourth, I should certainly *not* give them that information. When I see you next I will discuss it with you further.

Cordially yours,

20

DAVID L. PODELL

DLP: CW

C. W.

Mr. Emanuel Sinclair Margulies,
The New Jersey Realty Company,
1060 Broad Street,
Newark, N. J.

30

40

Exhibits D-2, D-3 and D-4.

Received from David L. Podell, 50 shares of Universal which I have this day purchased from him for the sum of \$4250.00, 10 bonds of "21" Holding Company which I have this day purchased for \$700.00 and 10 shares of the common stock of the United States Freight which I have purchased for \$730.00, making a total of \$5700.00.

The said sum of \$5700.00, together with checks for \$7500.00 previously given by David L. Podell, representing a total of \$13,200.00 to be applied toward the \$25,000.00 worth of New Jersey Mortgage Corporation stock that David L. Podell has bought.

10

May 17, 1928

OK DLP

20

May 31, 1928.

Mr. David L. Podell,
37 Broadway,
New York City.

Dear David:—

Enclosed please find card I received this morning from the sheriff's office in Atlantic City.

30

With best wishes, I am

Your partner,

BK

POST CARD

Hello Partner

This place has Newark beaten a mile for Real Estate Insurance Banking Blondes, Shikshas and Schnopps.

DAVE.

MANNY MARGULIES
Permanent Industrial
Bldg.

Newark 40
N. J.

Exhibits D-2, D-3 and D-4.

November 20, 1928.

Mr. David L. Podell
39 Broadway
New York City

Dear Dave:—

10 I received the enclosed literature this morning and I am referring it to you for your attention and advice.

Will you kindly read it at your convenience and give me your opinion on this in a more concise manner than is outlined in this literature.

With best wishes, I am

Sincerely yours,

20 GREAT EASTERN CASUALTY INSURANCE CO.

By:—

President.

BK

30

40

Exhibits D-2, D-3 and D-4.

Nov. 28, 1928

Mr. Emanuel S. Margulies,
1060 Broad Street,
Newark, N. J.

My dear Mannie:

I beg to acknowledge receipt this date of Certificate #22 for 1300 shares of the Zender Investment Corporation, which is dated February 6, 1927, and signed by yourself as president and Marguerite M. Margulies as treasurer, and duly endorsed by you in blank. 10

This certificate is to be held by me subject to the terms and conditions of the letter written by me to you under date of November 15th 1928 and that by you to me under date of November 20 26th 1928.

Sincerely yours,

DLP:r

Accepted:

30

40

Exhibits D-2, D-3 and D-4.

DAVID L. PODELL
COUNSELOR AT LAW

Harriman Building
39 Broadway
Whitehall 7036-9

New York, December 26, 1928.

Mr. Emanuel Sinclair Margulies,
10 Newark, New Jersey.

Dear Sir:

I am herewith returning by registered mail stock certificate No. 1499 for 250 shares of Great Eastern Casualty Insurance Company stock which is in the name of Beatrice M. Kowalski. This stock should be endorsed by Miss Beatrice M. Kowalski, and returned to me.

20 Thanking you, I am

Very truly yours,

DAVID L. PODELL

SR
ENCLOSURE

30

40

Exhibits D-2, D-3 and D-4.

DAVID L. PODELL
COUNSELOR AT LAW

Harriman Building
39 Broadway
Whitehall 7036-9

New York, January 31, 1929.

Dear Dave:

I am hereby acknowledging check No. 9196 10
made payable to me in the sum of \$10,000.

It is understood that \$5000. of this money is to go to the Marpole Airways, Inc. for additional stock, and the other check of \$5,000. is made as a loan to me which I agree to pay back next month.

The stock for Marpole Airways, Inc. will be issued as soon as we get our stock book back from the printers, and we will issue to each other 50% 20
each of the stock of the company for which each has paid the sum of \$8500. making a total of \$17,000. thus far paid. The total capital stock is to be increased to \$20,000. and each of us is to put in an additional \$1500. a piece.

Very truly yours,

EMANUEL SINCLAIR MARGULIES

Accepted: 30

DAVID L. PODELL

Exhibits D-2, D-3 and D-4.

WESTERN UNION

TELEGRAM

Received at 1060 Broad St., Newark, N. J.

28NK D 20

WA FtWayne Ind 1045 A Feb 15 1929

10 Emanuel Sinclair Margulies

MARPOLE AIRWAYS

Hello partner just passing Lima and Peter
Marpole phone Marty to phone me Chicago out-
side wire be outdoor this afternoon

DAVE

1226P

20

WESTERN UNION

To David L. Podell
Francis-Drake Hotel
San Francisco, Calif.

30 Howdy partner sure I'll raise blondes stop
Haven't received license yet stop expect it next
three weeks stop Parachute arrived yesterday
plane arrives Saturday stop How are you feeling
stop make a lot of whoppee nows your chance.

PARTNER

40

Exhibits D-2, D-3 and D-4.

POSTAL TELEGRAPH

COMMERCIAL CABLES

FRANCIS-DRAKE HOTEL

NA 117 711AM 44 NL

FD San Francisco Calif Feb 20 1929 10

Emanuel Sinclair Margulies

Pres Marpole Airways Inc Permanent Industrial Bldg Newark NJ Greetings from the Golden West how about going into ranching raising cattle oranges figs blondes and hens great business has the plane crashed yet hows Duchy what about the license Cis will give you list of things I bought recommend same for you wire

Your partner.

20

POSTAL TELEGRAPH

COMMERCIAL CABLES

NA72 730A 23 Nite

J San Francisco Calif-Feb 26 1929

Emanuel Margulies

30

Permanent Industrial Bldg Newark NJ

Hello borrow stenographer or get mine and dictate letter about every thing address it Hotel Ambassador Los Angeles expect see you end next week

DAVID

40

Exhibits D-2, D-3 and D-4.

POSTAL TELEGRAPH

COMMERCIAL CABLES

NA174 45 Blue 1137A

FD San Francisco Calif Feb 23 1929

Emanuel Sinclair Margulies

10

Room 555

Permanent Indst Bldg Newark NJ

Hello pard how they coming did you liquidate
holdings expect market rise continual ten or more
pints on good stuff recommend Att Atchison
Central Hupp Macy no margin hold for while have
bought some myself how is Newark property
doing wire or write regards Marguerite

20 Not listed 11-47

DAVE.

30

40

Exhibits D-2, D-3 and D-4.

February 27, 1929.

Mr. David L. Podell,
Hotel Ambassador,
Los Angeles, Cal.

Dear Dave:

Your wires received and I was mighty glad to
hear from you. No doubt you are having a wonder- 10
ful time. You can bet your life I wish I was
with you.

Now, Marpole Airways is progressing very fine
in the way of sales of ships. We have right now
on our list about seven prospects that we intend
to sell.

We have received a good deal of our equipment
but we have not received our ship yet. It should 20
have been here a week ago but due to freight, etc.
I expect it here probably today or tomorrow, or
Friday at the latest. We have shown a Mr.
Frank Morgan of Summit, N. J. a ship with pon-
toons that is a small job and due to certain rea-
sons he is going to buy it through Curtis Field,
Long Island, but we do not care because he lives
in our territory and is going to use his ship in our
territory so the factory protects us and we get 30
the commission.

Last night I was over to see a gentleman in
Union City and he is waiting for our ship to come,
and I think we can sell him a ship. If these pros-
pects all pan out we will have 1/3 of our invest-
ment back. I think that is an elegant thing, don't
you?

We have not received our license yet but I am
expecting it as the inspectors have passed us. A
new Commissioner has been appointed and we 40

Exhibits D-2, D-3 and D-4.

have to meet with his personal requirements. I have not paid Sadie yet because I have not cashed in our check as yet, but I expect to do so most any time at all. Right now I am carrying in the market:

- 10 3000 shares of Karlstadt
- 200 shares of Great Northern Ore
- 850 shares of Columbia Graphophone
- 1000 shares of Barnsdale
- 500 shares of Montgomery Ward
- 1200 shares of International Nickel
- 100 shares of American Cynamid
- 300 shares of National Supply

20 This is all I can afford to carry at the present time as it takes a lot of money to carry them. Some of these are paid outright, and the others on about a 70% margin.

 The New Jersey Mortgage Corporation is going along fine. I have talked to the accountant about the income tax report and he says it is not necessary to file it at the present time because our fiscal year is from May to May.

30 I have talked with Sis over the telephone several times and she wants to buy a sunlight lamp that is a mercury quartz lamp and that costs about \$440., but I had a talk with Dr. Mamlet and he advised not to buy this kind because, first, it is expensive, and second, it takes a skilled person to operate it because a person can suffer from severe burns if operated by unskilled hands. So I advised her to buy a cheaper lamp which costs \$137.50. A person has to sit a little longer to get the effect of the rays but it is not as dangerous as the other. I have not heard from Sis after I
40 told her this.

Exhibits D-2, D-3 and D-4.

Of course, Dave, you realize I wish to not only save money for you but not to expose your family to any danger. I think I did right in advising this.

Well Dave, I suppose you won your case as usual and you are now going to make lots of Whoopee in Los Angeles. You know there are a lot of beautiful girls there so take a round out of one for me. 10

Last night while reading the papers I noticed Mortimer Hayes name appear on the front page in some big transaction, but I did not read the entire thing because it was too much to read.

Everything is going along fine and please wire me on what train you are going to arrive as I would like to be on hand to meet you and want you to stop at some of those Mexican towns on your way back and buy me a pair of buckskin pants. I am size 36 around the waist. I would like to use these pants for flying purposes. 20

Well, Pal, here's hoping that you won your case and the only regret I have is that I was not with you to help you make a lot of Whoopee. Every time I pull out my beautiful watch I think of you and think of what a wonderful pal I have.

So long, and I will see you real soon. 30

Your pal,

EM:MC
Airmail

Exhibits D-2, D-3 and D-4.

February 28, 1929.

Mr. David L. Podell,
33 5th Avenue,
New York, N. Y.

Dear Dave:

10 Enclosed please find police card which I received from Atlantic City.

With best wishes, I am,

Very truly yours,

EM:MC

WESTERN UNION

20 TELEGRAM

1929 Mar 7 A M 3 47

NB97 31 NL—ALAMY NMEX 6

Emanuel Margulies

Permanent Industrial Bldg Newark N J

30 Hello old top nearly missed my train at Albuquerque trying to get your flying suit and couldnt Period Expect arrive Saturday but may be detained Chicago will wire you regards Marguerite.

DAVE.

Exhibits D-2, D-3 and D-4.

DAVID L. PODELL
COUNSELOR AT LAW

Harriman Building
39 Broadway
Whitehall 7036-9

New York, March 11, 1929.

Mr. Emanuel Sinclair Margulies, 10
1060 Broad Street,
Newark, New Jersey.

Dear Mr. Margulies:

I wish to acknowledge receipt of your check in the amount of \$5000, which amount covers payment of loan made by you January 30th, 1929.

I have also received today certificate of stock for 100 shares of Marpole Airways, Inc.

Thanking you, I am 20

Very truly yours,

DAVID L. PODELL
By S. RHODES

SR

30

40

Exhibits D-2, D-3 and D-4.

DAVID L. PODELL
COUNSELOR AT LAW

Harriman Building
39 Broadway
Whitehall 7036-9

New York, March 12, 1929.

10 New Jersey Realty Co.,
1060 Broad St.,
Newark, New Jersey.

Gentlemen:

I am herewith enclosing physician's report of Mr. Podell's illness while staying at the Ambassador Hotel in Atlantic City.

Very truly yours,

20 SR enclosure

DAVID L. PODELL
per S. RHODES

30

40

Exhibits D-2, D-3 and D-4.

DAVID L. PODELL
COUNSELOR AT LAW

Harriman Building
39 Broadway
Whitehall 7036-9

New York, March 21, 1929.

Mr. Emanuel S. Margulies,
1060 Broad Street,
Newark, N. J. 10

Dear Mannie:

I find that the certificate of stock of the Chicago
Fire & Marine Insurance Company is unendorsed
and I am sending it to you by hand so that you
can send it out tonight and not lose any time.
Endorse it in blank. The enclosed form of letter
should be helpful to you. 20

I will probably be in a position to see you some
time Saturday.

Cordially yours,

DAVE.

DLP:r enclosures

30

40

Exhibits D-2, D-3 and D-4.

DAVID L. PODELL
COUNSELOR AT LAW

Harriman Building
39 Broadway
Whitehall 7036-9

New York, April 2, 1929.

10 Mr. Emanuel S. Margulies,
1060 Broad Street,
Newark, N. J.

Dear Manny:

This is to acknowledge receipt from you of two checks, one in the sum of \$4,750 and the other in the sum of \$5,000.

The \$5,000 check is a loan to me, which I agree to repay within about a month.

20 The \$4,750 is in purchase of five bonds of Associated Gas & Electric. Those are now in Mrs. Podell's box and I will secure them from her. In making this purchase and sale we forgot to figure the interest up to the present time. I will let you know what that is. In the meantime, I intend getting the bonds and turning them over to you shortly.

Very truly yours,

DAVE.

30 DLP:R

Kindly acknowledge.

Exhibits D-2, D-3 and D-4.

DAVID L. PODELL
COUNSELOR AT LAW

Harriman Building
39 Broadway
Whitehall 7036-9

New York, April 11, 1929

Mr. Emanuel S. Margulies, 10
1060 Broad Street,
Newark, N. J.

Dear Mr. Margulies:

The enclosed is a copy of letter received from the Department of Public Affairs, Newark, regarding the location of a Hangar, etc.,

Very truly yours,

DAVID L. PODELL. 20
R.

RR-Enc.

30

40

Exhibits D-2, D-3 and D-4.

CITY OF NEWARK, NEW JERSEY
Department of Public Affairs

JEROME T. CONGLETON
Mayor

April 9, 1929.

10 Mr. David L. Podell,
Harriman Building,
39 Broadway,
New York City.

Dear Sir:

Your favor of the 6th instant stating that you have a client interested in the Newark Airport, desirous of locating a Hangar, and requesting the
20 privilege of conducting a school, hopping, the sale of aeroplanes, and all of the incidentals that go with the conduct of that business.

In reply, permit me to say that the City is at the present time granting no further permits for Schools or Hopping privileges.

If you are interested in the locating of a Hangar for a Aeroplane Sales Agency, we will be pleased to have your application, and give same
30 consideration.

Respectfully,

CFK/ED

C. F. KREAMER
Real Estate Manager.

Exhibits D-2, D-3 and D-4.

DAVID L. PODELL
COUNSELOR AT LAW

Harriman Building
39 Broadway
Whitehall 7036-9

New York, May 23, 1929.

Mr. Emanuel S. Margulies,
1060 Broad Street,
Newark, N. J. 10

Dear Manny:

In response to the enclosed communication, I have this day issued my check for \$125 to Mr. Ottenberg. Your share of it is \$62.50 for which I will appreciate your check.

Cordially yours,

DAVE. 20

DLP.R-Enc.

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Exhibits D-2, D-3 and D-4.

DAVID L. PODELL
COUNSELOR AT LAW

Harriman Building
39 Broadway
Whitehall 7036-9

New York, June 20, 1929.

Mr. Emanuel Sinclair Margulies,
1060 Broad Street,
10 Newark, N. J.

Dear Manny:

So that our arrangement with respect to the 1014-1020 Broad Street property (which you have recently purchased) will be in writing, let me confirm the arrangement for our records.

In no sense am I to be considered or am I a partner in the enterprise. My arrangement with you is that if the property is sold at a profit, we are to divide such profit equally. In consideration of that arrangement, I have agreed to pay you three (3%) per cent interest per annum on one-half of the amount of capital you have invested. I understand your total investment to be approximately \$341,000 less such amount as you received from the sale of a portion of the property.

It is understood, however, that my obligation is not to extend beyond two years from date of purchase.

I am, however, not to bear any part of your loss in the event that you sell the property for less than what you paid for it outside of paying you the 3% interest.

I understand you purchased the property in the name of the New Jersey Realty Company.

With my cordial good wishes to yourself and your charming wife, as ever

40

Yours,

DLP:R

DAVID.

Exhibits D-2, D-3 and D-4.

LOON LAKE HOUSE
Loon Lake, N. Y.

10th July, 29.

Hello Manny

Having a delightfully restful time up here just loafing. You ought to learn to do that. It puts you in great shape for the City. Sis and the kid are having the time of their young lives doing nothing. 10

How's everything with you. I expect to be in town Thursday (tomorrow) and Friday to attend to one or two matters and will give you a ring. If you are doing nothing Thursday evening let's do it together.

This is the first letter I've written since up here except to the office. There are not many things a fellow can do yet time slips right before you realize it. 20

Here's to seeing you soon.

DAVE.

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Exhibits D-2, D-3 and D-4.

July 11, 1929.

Mr. David L. Podell,
Loon Lake House,
Loon Lake, N. Y.

Dear Dave:

10 Your very kind letter of July 10th received and I was indeed glad to hear from you. I was wondering up to the time I received your letter what happened to you and why you did not write me.

I am very glad to hear that your baby is in good shape and is feeling better and I am sure that the air in the vicinity of where you are stopping will be of great help to both your wife and baby.

20 I do not expect to be in my office this afternoon or most of tomorrow but if I should happen to be in I shall surely call you as I would like to go out with you and have some fun with you.

Everything is going along hunky dory Dave, and the insurance company is lining up. I feel very sure we shall make some money with the insurance company and I have been receiving quite a number of applications from agencies but am afraid I cannot accept all these applications on
30 account of all the money involved.

Probably sometime next week I may take a day off or two days and drive up near you if you will send me the route to get there.

With best wishes to Sis, baby and of course not forgetting yourself, I am,

Sincerely your pal,

ESM:MC

Exhibits D-2, D-3 and D-4.

Wednesday, 4th Aug., '29.

Dear Manny:

I'm not much on letter writing as you have observed but am certainly anxious to see you all again. Got your note from Atlantic City and was glad to see your wife had at last prevailed on you to take a rest even if only for a day or two. Some day you will learn the wisdom of playing a little once in a while. I have reached the stage where I'll have to learn again how to work. 10

We are planning to return to the City next Monday or Tuesday. Keep a half day open for me.

I received the first subscription blanks but not that mass of figures you were going to send me.

Give my love to Marguerite. I do not know how the show turned out but it was a fine thing for her to get busy at it again. I'm sure she had lots of fund out of it and hope it is still going so we can see it on our return. If not I certainly would urge Marguerite to get into the next one. 20

Good luck and best wishes, from

CIS, PEG and DAVE.

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Exhibits D-2, D-3 and D-4.

September 6, 1929.

Mr. David L. Podell,
Vineyard Haven,
Marthas Vineyard, Mass.

Dear Dave:

10 Your letter of last Wednesday received, and was indeed glad to hear from you.

Yes, the show that Marguerite was in turned out to be terrible, and they are fixing it up. They may revive it at some future time. The entire trouble with the show was that they did not have enough money.

20 When I sent you the old subscription blanks, I also sent at the same time, insurance records, figures, and also specimen policies for your correction, and I wondered why you had not written me about them.

Well Dave, I had two days vacation for the first time in a long, long while, and believe me it went by so fast, and I was back at my desk at 7:30 Tuesday, that I did not think the vacation was much at all. But, I probably will be able to slip away some time this fall.

30 I have gotten all my things in shape now for the insurance company, and expect to be writing within the next few days.

Believe me Dave, it was a stupendous task, but as you know by this time, when I start anything I always finish it successfully.

Well Dave, I expect that you will be in town next week, and when you arrive there give me a call and lets get together.

Marguerite joins me in sending our best to Baby, Sis, and yourself.

40

Sincerely,

ESM:TW

Exhibits D-2, D-3 and D-4.

DAVID L. PODELL
COUNSELOR AT LAW

Harriman Building
39 Broadway
Whitehall 7036-9

New York, December 2, 1929

Mr. Emanuel S. Margulies, 10
1060 Broad Street,
Newark, New Jersey.

Dear Mr. Margulies:

I am enclosing a letter received from
Schlesinger & Schlesinger, Esqs., inquiring about
the Great Eastern Casualty Insurance stock. Mr.
Podell wishes you to answer same at your earliest
convenience.

20

Very truly yours,

S. RHODES
Secretary.

SR
enclosure

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Exhibits D-2, D-3 and D-4.

(COPY)

November 27, 1929.

David L. Podell, Esq.,
39 Broadway,
New York City.

10

Dear Dave:

How are you? I trust well.

I happened to come across the Great Eastern Insurance Co. stock the other day in my vault.

Will you be good enough to advise me the present status of same, whether you think it advisable for me to hold same, whether there is any market for same, and whether there will be any dividends
20 paid thereon, and if so when.

With kindest regards, I am

Sincerely,

WALTER

File

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Exhibits D-2, D-3 and D-4.

39 BROADWAY

December 27th, 1929.

Mr. Emanuel Sinclair Margulies,
1060 Broad Street,
Newark, N. J.

10

Dear Manny:

I have suddenly decided to take a week's vacation and am sailing for Havana tomorrow morning at eleven.

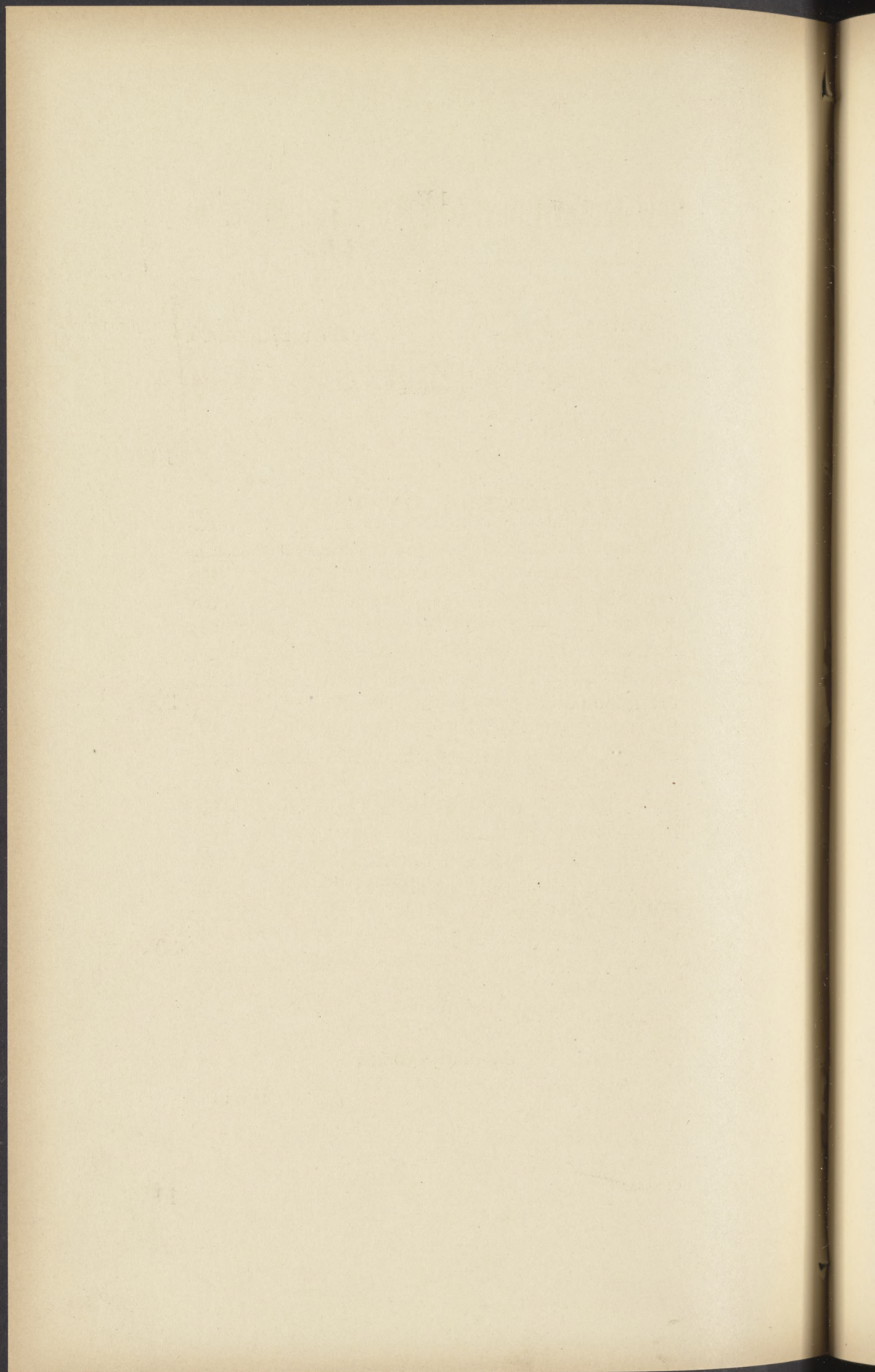
Before going, however, I want to put in writing what I have already told you—that I certainly appreciate the gift you sent me for Christmas and intend to have it along with me as a remembrance of a devoted friend. I expect to let you 20
hear from me when I get to Havana. The probability is that I will be back at the desk one week from Monday.

Let me take this opportunity to give you my heartiest congratulations for the marvelous job you have done with the Insurance Company. It should be a source of a great deal of joy and satisfaction to you as I know it is and will be to those who went into it with you. 30

Godspeed to you and yours and my heartiest good wishes to both you and Marguerite for the coming New Year.

Cordially yours,

DAVID



New Jersey Court of Errors and Appeals

IN THE MATTER
of the
PROBATE OF THE LAST WILL AND
TESTAMENT OF EMANUEL SIN-
CLAIR MARGULIES.

On Appeal from
the New Jersey
Prerogative Court.

STATEMENT OF FACTS.

Emanuel Sinclair Margulies died on January 17, 1930, as a result of an aeroplane crash in Florida (State of the case, pages 39-40 and 72). Decedent at the time of his death was a resident of New Jersey living at 25 South Munn Avenue, East Orange, New Jersey, and having an office and principal place of business for his various enterprises at 1060 Broad Street, in the City of Newark, New Jersey (State of the case, pages 295-296-103 and 106).

Mr. Margulies' name is associated with mystery, madness and "millions", and his life was checkered with policemen, alienists and aliases. Although still a young man at the time of his death, the magnificent array of his enterprises and the grandeur of his ventures attracted the notice and directly touched and affected the welfare of many people not only in the immediate community where he lived but elsewhere. Mr. Margulies was president and director of the Great Eastern Casualty Company, a New Jersey insurance corporation. He had a half interest in a New Jersey corporation known as the New Jersey Mortgage Company. He had a half interest

in a New Jersey corporation known as the Marpole Airways, Inc. He was interested in a corporation known as the Zender Investment Company, and he conducted a business under the name of the New Jersey Realty Company (State of the case, pages 35-56-67-77 and 100). He was likewise, as the record shows, involved in numerous personal transactions beside those of the aforementioned corporations. His life was picturesque and colorful. His first marriage, contracted under an assumed name, was annulled (State of the case, pages 74 and 75). The record of the annulment case showing that the annulment was granted on grounds of insanity (121 Atl. Rep. 772) was objected to and the objection sustained (State of the case, pages 83 and 84). He was not only Emanuel Sinclair Margulies, but John J. Conway, Jack McCormick, and Edward Martyn (State of the case, pages 46-47-75).

After decedent's death which occurred on January 17th, 1930, his widow, the caveatrix-appellant, filed a caveat against the probate of any paper purporting to be the last will and testament of the said Emanuel Sinclair Margulies. This caveat was lodged with the Surrogate of Essex County on January 25, 1930 (State of the case, page 1). Thereafter there was filed in the New Jersey Prerogative Court on February 19, 1930, a petition for the probate of a certain writing purporting to be the last will and testament of the said Emanuel Sinclair Margulies (State of the case, page 2). Photostatic copy of said alleged will appears in the state of the case on pages 87-89. At the same time that the petition for the probate of the will was filed, an order was filed for a hearing on the probate of said will (State of the case, page 4). On February 20, 1930, the proponent of said will filed a petition for the ap-

pointment of an administrator *pendente lite* (State of the case, page 6), and received thereon an order appointing an administrator *pendente lite* (State of the case, page 9), and from the record it will appear that letters were issued to said administrator *pendente lite* (State of the case, page 14). All of the proceedings hereinbefore set forth made by the proponent of the said alleged will were *ex parte* applications made without notice to anyone although a caveat had been duly filed and notice had been given of the filing of said caveat. Caveatrix was not notified or in any way apprised of the filing of the petition for the probate of the will, nor of the filing of a petition for the appointment of an administrator *pendente lite*, and caveatrix has no notice of the same other than that the papers stand of record as printed in the state of the case. Two adjournments of the hearing on the probate of said will were had on application of the proponent, and on June 3, 1930, a final hearing was had and the testimony taken as set forth in the state of the case (State of the case, page 25, *et seq.*). The Vice-Ordinary admitted the alleged will to probate (State of the case, page 85).

The proponent of the will, Mr. David L. Podell, a New York lawyer, was a close personal friend, business associate and counsel of the decedent. He was associated with the decedent in the Great Eastern Casualty Company, Marpole Airways, Inc., and the New Jersey Mortgage Company. He had stock of the Zender Investment Company as collateral, and he was engaged with the decedent in certain stock market transactions. The closeness of his relations with the decedent can be gleaned from the exhibits which are printed in the state of the case (pages 89 to 127 inclusive). They were attorney and client. They were the

warmest of personal friends. They were partners not only in business but in pleasures. They exchanged gifts. Their communications were constant no matter what distance separated them. They loaned each other large sums of money. Their affairs were to a very large extent intermingled in apparent mutual trust and confidence (State of the case, page 66). No one knew or could know so well as Mr. Podell what the actual status of Mr. Margulies' personal affairs were. No one else had the access to him that he had. Mr. Margulies gave an impression of tremendous wealth to all who knew him. He was, in the vernacular of the "underworld", "The Millionaire Kid". He liked to flash substantial sums of gold or bills. These were as specimens of vast treasures yet concealed. As the record shows his widow saw \$16,000 in gold in his possession at his home on one occasion and eighty some odd thousand dollars on another occasion (State of the case, page 43), and Mr. Graham B. McGregor, president of the Port Newark National Bank, was impressed by the display of cash securities and bank deposits that the decedent would show him at various times (State of the case, pages 76 and 77). So likewise a Mr. George Gray saw at his office \$3,600 in gold (State of the case, page 82). In fact, Mr. David L. Podell, the proponent of the will, himself tells us of the atmosphere in which Mr. Margulies lived and moved when he testifies (State of the case, page 54):

"Q. Do you know the size of the estate that you were preparing this will for? A. I can only tell you, sir, what he told me.

"Q. What did he tell you? A. He told me it would be between four and five millions of dollars. I don't think he limited it to five; he intimated it was more."

We have then, as the record shows, a young man who styled himself as president of many corporations; who asserted that he had millions in bonds, accustomed to Packard cars and other luxuries; who spoke quite freely and openly of his great wealth, and at times showed very small fractions of it in earnest as proof; who had had several aliases; who had been fined for practicing medicine without a license; whose first marriage, contracted under an assumed name, was annulled, but whose true standing remained a mystery. His wife did not know what he owned or possessed other than what she was informed by him. This same is true of all others with whom he came in contact except one, the proponent of the will. He gave an impression of wealth. He admitted he was a "big" man. Even when Mr. Podell's secretary came over from New York to list the securities, the illusive securities appeared to be non-existent. There were policemen present for protection (State of the case, page 31). They were protecting, however, a mystery.

If anyone in the world could or should have known of the true financial status of Emanuel Sinclair Margulies, it was David L. Podell, his business associate, his closest friend, his counselor and advisor. Mr. Graham B. McGregor, president of the Port Newark National Bank, endeavored to get Mr. Margulies, in the Fall of 1928, to appoint the Port Newark Bank executor and trustee of his (Mr. Margulies') will. Mr. McGregor's testimony (State of the case, page 77) in respect to this is as follows:

"A. I asked him" (Mr. Margulies) "if he wouldn't designate the Port Newark Bank as executor and trustees of his will. He told me that he had a very good friend in New York, Mr. David Podell, who was his attor-

ney and counsel, who looked after all his affairs and kept his securities and was the executor of his will, and that the money he had, and the securities, was over in New York in Mr. Podell's office or in the Chatham Phoenix Bank."

That Mr. Podell was Mr. Margulies' counsellor is clearly shown from the exhibits printed in the record. On page 124 we find Mr. Margulies asking Mr. Podell for advice with reference to insurance records, figures and specimen policies. In the state of the case on page 118 is printed a letter from the Department of Affairs of the City of Newark advising Mr. Podell with reference to an inquiry made in behalf of his client Mr. Margulies, which letter was forwarded by Mr. Podell to Mr. Margulies by letter (State of the case, page 117), and certainly the relation of attorney and client is shown throughout the correspondence with reference to the exclusion from the country of Georges M. Chapelle and Andre Perugia (State of the case, pages 94 and 100). Mr. Podell drew the will involved in this controversy.

The closeness of the relations of Mr. Podell and Mr. Margulies is likewise clearly shown by the exhibits printed in the record. They were business and social friends, chums, pals. They greeted each other by telegraph as "hello partner" and "howdy partner" (State of the case, pages 106 and 108). When Mr. Podell was in California, in February of 1929, he telegraphed to Mr. Margulies telling him (State of the case, page 107):

"Hello borrow stenographer or get mine and dictate letter about everything address it Hotel Ambassador, Los Angeles expect see you end next week."

The stenographer was gotten and the letter of February 27th, 1929, written (State of the case, page 109). Surely nothing could be more conclusive as to the relations between Mr. Podell and Mr. Margulies than this letter which talks of their various business ventures together and of private and personal affairs. There is a note of deference in it, a condescension to authority, a desire to please (State of the case, page 111):

“Of course, Dave, you realize I wish to not only save money for you but not to expose your family to any danger. I think I did right in advising this.”

and then follows an expression of admiration:

“Well, Dave, I suppose you won your case as usual and you are now going to make lots of ‘Whoopee in Los Angeles.’”

The concluding paragraph is also worthy of notice:

“Well, Pal, here’s hoping that you won your case and the only regret I have is that I was not with you to help you make a lot of Whoopee. Every time I pull out my beautiful watch I think of you and think of what a wonderful pal I have.

So long, and I will see you real soon.

Your pal.”

Mr. Margulies’ letters to Mr. Podell have something about them of the nature of a report—notice the letters of July 11, 1929, and September 6, 1929 (State of the case, pages 122 and 124). One feels sure that Mr. Margulies carried out instructions such as were given in the letter sent by Mr. Podell’s secretary, a Miss Rhodes, on September 2, 1929 (State of the case, page 125), and justly

earned the benediction that is given to him by Mr. Podell's letter of December 27, 1929 (State of the case, page 127) written some twenty days before Mr. Margulies died. In his business dealings with Mr. Margulies, Mr. Podell was not lax. The letters of March 11, 1929 (State of the case, page 113), April 2, 1929 (State of the case, page 116), June 20, 1929 (State of the case, page 120) and January 31, 1929 (State of the case, page 105) are careful and explicit records of business transactions.

Mrs. Margulies has testified that Mr. Podell and her husband were in constant communication; that Mr. Podell was her husband's attorney and counsellor as well as his business associate in many ventures, and that he was the person to whom she was to turn in the event that anything happened (State of the case, page 37). It will appear clearly from the foregoing that if there was any person in the world who could at all know about the affairs of the deceased, Emanuel Sinclair Margulies, it was the proponent, David L. Podell, and Mr. Podell, a New York lawyer, admits in his testimony (State of the case, page 66) that he had invested about \$75,000 of his own money in ventures with Mr. Margulies.

Mr. Podell was notified of the death of Mr. Margulies as soon as it occurred. This notification was in the evening of January 17, 1930, and on that same evening Mr. Podell retained counsel (State of the case, page 58). The next morning Mr. Podell appeared in decedent's office and in a very brief space of time alleges that he discovered that Mr. Margulies had practiced gross deceptions in his business transactions (State of the case, page 58); that the decedent had misled him with reference to the mortgage company and that there were no mortgages (State of the case, page

57); that the decedent had imposed upon the Department of Banking and Insurance (State of the case, page 67); that the securities which Mr. Margulies had shown to him and which he (Mr. Podell) believed to be the *corpus* of his estate were forgeries (State of the case, page 70). The proponent stated that he expected that he would lose all of his \$75,000 invested with Mr. Margulies

“unless we recover something from the insurance company.” (State of the case, page 66.)

It would appear, therefore, that this will contest is with respect to the administration of an insolvent estate. The four or five millions of dollars which Mr. Margulies represented to others that he had were found, within a few hours after Mr. Margulies' death, to be a gross deception by the only person who could know the true status of affairs.

This unusual and highly mysterious situation has, however, a clear explanation which gives an order of reason to the confused and chaotic jumble of counter-allegations and seeming factual contradictions. The decedent was insane. He was suffering at the time of his death and for a long time prior thereto from an incurable mental malady, well known to the medical profession, the nature of which in times past has been frequently before this court. This is not merely a matter of conjecture or deduction made from the peculiarity of the situation but the fact of madness is explicitly testified to by a well-known alienist who made periodic examinations and extended observations for a long period of time. From these examinations and observations, the nature of which are given in full, Dr. Christopher Beling

has testified that the decedent undoubtedly suffered from dementia præcox; that he had hallucinations and delusions, particularly those of grandeur; that he was obsessed with the idea of being a doctor, or more generally a "big" man, and that he had exalted ideas of himself. Dr. Beling further testified as to the nature of dementia præcox saying that it disorders the judgment and that it is a form of mental ailment that is not favorable to recover. Combining as he did an apparently agreeable and prepossessing personality with the pathological condition hereinbefore described, the decedent endeavored to live his dreams. Where those dreams left off and reality began, the testimony does not clearly show. Even Mr. Podell does not tell. He says that he believed Mr. Margulies and trusted him (State of the case, page 66) and in that belief he advised and directed him. On the other hand Mr. Margulies was fascinated by Mr. Podell. Mr. Margulies refused to act in any instance without first consulting his attorney. The uncontradicted testimony is that he put everything he had, delusional or not, in Mr. Podell's hands and arranged that Mr. Podell should manage this apparently not only during his life, where Mr. Podell says he acted without remuneration, but also after his death when Mr. Podell by interlineation in the will, the initials of which Mrs. Margulies, the caveatrix-appellant, cannot recognize, was to receive for a period of time a compensation of \$25,000 a year. Quite obviously an insolvent estate cannot pay specific bequests of \$20,000 or \$30,000, or an executor's fee of \$25,000 for even one year. If the proponent of the will be believed, the decedent could not have known of the estate he was leaving. If, on the other hand, the decedent did know what he was leaving and had proper testamentary capaci-

ty to make the will, as represented, the proponent by his very testimony in this will contest is shown to be unfit to be an executor of the estate, and the will should be set aside on the ground of undue influence on the part of the proponent.

There has been no testimony offered by the proponent other than of the young lady employed in his office who was one of three employees of the proponent, who acted as witnesses of the will in question. The one subscribing witness who testified had nothing to say other than that she saw Mr. Margulies, whom she had seen come to Mr. Podell's office before, sign the will and that she and the other witnesses witnessed the will at the request of Mr. Podell. She has no testimony to give otherwise as to the nature of the conduct of the testator. On the other hand, the testimony of Dr. Beling and of Mrs. Margulies stands unchallenged in any way.

It is respectfully submitted that the deceased, Emanuel Sinclair Margulies, was insane and suffered from delusions of grandeur, particularly with respect to delusions of great wealth, and that, suffering as he did, he was unable to appreciate the nature of his possessions sufficiently to enable him to make a will. Appellant contends that in addition to his demented condition, the deceased was fascinated by his friend, counsellor and business associate, Mr. David L. Podell; that he had no free or independent action beyond Mr. Podell's influence and control, and that the will should likewise be set aside on the ground of undue influence. We shall take these two points up in order.

P O I N T I .

The will should not be admitted to probate because the deceased, Emanuel Sinclair Margulies, did not have testamentary capacity to make a will at the time the said alleged will was made inasmuch as he was insane.

The uncontradicted testimony of the witnesses offered in behalf of the caveatrix establishes clearly the decedent's insanity. His conduct was clearly abnormal. Dr. Beling's testimony shows clearly that he had hallucinations. He heard voices (State of the case, page 46). He was obsessed with the idea of being a doctor (State of the case, pages 46-49-50 and 51) and apparently he was fined for practicing medicine without a license (State of the case, page 49). He married his first wife posing as a doctor (State of the case, page 75). In his mind to be a doctor was to be a great man. More than anything else, that is what the decedent wanted to be. This is clearly shown in the remarks which the decedent made to Dr. Beling (State of the case, page 46) where he said:

“I want to be a doctor. I have been going to high school for four years and I am only in the first part of the second half. I want to be great like you. They all know you, even all the way up to Saranac. I like you too.”

He assumed several names. He not only posed as Dr. Edward Martyn (State of the case, page 74), but he was also John J. Conway (State of the case, page 46), and Jack McCormick (State of the case, page 47). In this last name he was also a doctor. The decedent used to hear hissing sounds and could not concentrate his mind (State of the case, page 46). His delusions were those of gran-

deur. The careful and protracted examinations of Dr. Beling, which were made at the request of Dr. Vausburg of the United States Public Health Service (State of the case, page 46) occurred during the years 1921 and 1922. The alleged will was made on the 22nd of May, 1928, and it is significant that Dr. Beling saw him again in that year (State of the case, page 51). His opinion as to the nature of his ailment did not change. While Dr. Beling did not test his delusions, ^{in 1928 as he did in 1921 & 19} he talked with him and found him still exalted and flighty and still apparently suffering from delusions of grandeur. Dr. Beling is an unbiased and unprejudiced witness. His examinations were not being conducted for purposes of litigation. He made careful diagnosis of the decedent after extended observation which he made at the request of a governmental department, and Dr. Beling's observations are supported by the testimony of the other witnesses. A Miss Gertrude M. Berk employed by the proponent saw Mr. Margulies in 1928 apparently just before the will was drawn (State of the case, page 31). She was unacquainted with Mr. Margulies and was in Mr. Podell's employ for about two weeks in all. To this stranger Mr. Margulies said (State of the case, page 32):

“* * * that he was a very successful business man and he was in his early thirties and deserved credit for his wealth, expanding.

Q. Did he give you any figures as to how much he was worth? A. No; he said he owned some apartment houses in Newark, that he was generally considered a millionaire. He said that to me.

Q. Did he tell you anything about the value of the securities that he owned? A. He said that there was a big amount of securities, it

might have been a million dollars, but he just said that, because I didn't see any."

He told Mr. McGregor that he was an exceedingly wealthy man (State of the case, pages 76 and 77). His carrying about and displaying sums of money in specie, as he did to Mr. George Gray (State of the case, page 82), and at his home (State of the case, page 43) is not the conduct of a normal person. Proponent of the will himself has testified that Mr. Margulies claimed to be a millionaire owning property in excess of five millions of dollars (State of the case, page 54), and yet the proponent's testimony would show quite clearly that all of these assertions of tremendous wealth were purely delusions on the part of the decedent. As has already been mentioned there is not a shred of evidence offered in contradiction of this testimony as to the abnormal behavior and condition of the decedent. It has been held that it is the duty of attesting witnesses to a will to observe and judge the mental capacity of the testator and satisfy themselves of the existence thereof. A note collecting the authorities on this point appears in 35 A. L. R., page 79. This note sets forth the general rule as follows:

"With rare exceptions, those cases passing on the question hold that it is the duty of an attesting or subscribing witness to a will to observe and judge of the mental capacity of the testator, and satisfy himself of the existence thereof."

This is the rule in New Jersey. Ordinary Pennington held in the case of *Whitenack v. Stryker and Voorhies* (2 N. J. E., page 11):

"That of all the witnesses the testamentary witnesses, and their opinions, and the

facts they state as occurring at the time, are to be particularly regarded by the court. They are placed around the testator for the very purpose of attesting, after his death, to the circumstances under which so solemn an instrument is executed."

It is significant that of the three subscribing witnesses to the will, only one is produced. She, as well as the other two subscribing witnesses, were employees in the proponent's law office. Not one word of testimony is offered by these witnesses as to the testamentary capacity of the decedent and the surrounding circumstances with reference to the execution of the alleged will are not gone into. The attesting witness, a Miss Lillian Sisken, states only that she was called with the other subscribing witnesses by the proponent to witness the decedent's signature and that he signed the will and initialed likewise on the margin a certain interlineation, the authenticity of which initialing is denied by the decedent's widow, who was well acquainted with his signature.

Dr. Beling states quite clearly after his various tests and examinations that the decedent was suffering in 1921 and 1922 from a form of insanity known as dementia præcox; that he saw the decedent again in 1928 and in his opinion he was still so suffering although at that time he did not test him. Dr. Beling further testifies that dementia præcox is a form of insanity which disorders the judgment and that it would affect his ability to make a will; that

"It is a disorder that interferes with the proper co-ordination of the emotions and the intellectual field—emotional and intellectual field—and disorders the judgment." (State of the case, page 52.)

This court could in fact take judicial notice of this because it has passed before on the nature of this disorder. In the case of *State v. Noel* (Court of Errors and Appeals 1926, 102 N. J. L. 659), the Court of Errors and Appeals was asked to reverse the holding of Essex Oyer and Terminer which had sentenced the defendant, Noel, with the death penalty for murder. The defendant in the *Noel* case was suffering from dementia præcox. After a life of peculiar and eccentric conduct, he exhibited shrewdness and craftiness in the execution of two ghastly killings, and this court held that because the defendant, Noel, was suffering from this same mental disease with which the defendant was afflicted, that he was unable to exercise proper judgment; that he could not distinguish between right and wrong and that, therefore, he could not be held to account for the taking of two human lives.

It is a settled rule of law in this state that if insanity is established at any one particular time, the presumption is that that state of mind continues until the opposite is shown to exist. In the case of *Boylan v. Meeker* (New Jersey Supreme Court 1860, 28 N. J. L. 274, at page 279), the court says:

“Insanity is a state, a condition of the mind itself. Ignorance of a particular fact consists in this, that the mind, although sound and capable of healthy action, has never acted upon that subject because it has never been brought to the notice of the perceptive faculties. The one is an incapacity to act perfectly, the other is the never having acted, although perfectly capable of so doing. Upon this theory all the presumptions of the law in relation to sanity and insanity are based.

When a state of sanity is proved to exist

at a certain time, the law presumes that to continue until the contrary be shown, because that is the normal state; every person is presumed sane until the contrary be shown. Where a state of insanity is shown to have existed at a certain time, that is presumed to continue until the contrary is shown.

If insanity and sanity were not states or conditions of the mind—the sentient faculties—these presumptions would not obtain.”

This rule is the same with reference to testamentary capacity. The court held in the case of *Elkinton v. Brick* (New Jersey Prerogative Court 1888, 44 N. J. E. 154, at page 158):

“The presumption of the law is in favor of testamentary capacity, and those who insist on the contrary have the burden of proof. They may shift the burden by showing that insanity existed prior to the making of the disputed paper. After such proof, the proponents must show that the execution of the will was during a lucid interval. *Turner v. Cheeseman*, 2 McCart. 243; *Trumbull v. Gibbons*, 2 Zab. 117; *Whitenack v. Stryker*, 1 Gr. Ch. 8; *Cloan v. Maxwell*, 2 Gr. Ch. 563; *Day v. Day*, 2 Gr. Ch. 549; *Turnure*, 8 Stew. Eq. 437.”

This same principle has been upheld by the Court of Errors and Appeals, which has said in the case of *Coombs v. Witte* (Court of Errors and Appeals 1928, 104 N. J. L. 519, at page 523):

“For where a state of insanity is shown to have existed at a certain time, it is presumed to continue until the contrary is shown. Citing *Boylan v. Meeker*, 28 N. J. L. 274.”

If there were no other testimony in this case other than the testimony of Dr. Beling who made

careful examination and diagnosis of the decedent in 1921 and 1922 and found him then suffering from dementia præcox, the presumption would be definitely established that the decedent was afflicted with a mental disorder disordering his judgment which continued until the date of his death. Not a shred of testimony has been offered to confute or contradict the testimony of Dr. Beling. The proponent on cross-examination (State of the case, page 69), without any qualification as an expert, attempts to characterize the decedent as a shrewd business man. His shrewdness would be comparable to that exhibited by the defendant in the case of *State v. Noel, supra*. The undisputed testimony, however, shows that the decedent, right up to the date of his death, had exalted ideas of his wealth and station in life—delusions of grandeur. The testimony of Miss Daniele, decedent's former wife, of Mrs. Margulies, of Mr. Gray, of Mr. McGregor, and of the proponent corroborate Dr. Beling's statements.

In the *Johnson's Case* (Court of Errors and Appeals 1912, 80 N. J. E. 525) the Court of Errors and Appeals at page 536 cites and approves of the holding in the case of *Bennett v. Bennett* (50 N. J. E. 446) which sets forth the rule as to testamentary capacity as follows:

“If he (the testator) is capable of recollecting of what his property consists, and who, either in consequence of ties of blood or friendship, should be the objects of his bounty, and has a mind sufficiently sound to enable him to know and to understand what disposition he wants made of his property after his death, he is competent to make a valid will.”

This holding has the support of many other decisions in this state. It would seem quite

clear that in the present instance the decedent was so disordered in judgment as to be totally failing in one of the essentials of testamentary capacity. He did not know of what his property consisted. He disposed by will of his vast delusional wealth. His estate, which from his statements varied from hundreds of thousands to over five millions of dollars, has been found to consist, as the proponent has said, of non-existent mortgages and false securities. Obviously the insolvent estate of the decedent cannot pay a specific bequest of \$20,000 to Father Murphy, or \$30,000 to Dr. Mamlet, or \$25,000 to the executor per annum. From its four corners the will likewise shows a disordered intellect. The entire corpus of millions of dollars is turned over to the custody of one person without bond.

It is respectfully submitted that the uncontradicted evidence in the case shows that the decedent was so diseased in mind as to be unable to make a proper will, and the decree of the Prerogative Court admitting to probate the alleged writing purporting to be the last will and testament of Emanuel Sinclair Margulies should be reversed.

POINT II.

The decree of the Prerogative Court admitting to probate the alleged last will and testament of Emanuel Sinclair Margulies should be reversed on the ground that the said will was procured by the undue influence of the proponent, David L. Podell.

The mental condition of the decedent which has been discussed has of course an important bear-

ing with reference to undue influence. The decedent was of a highly unstable mental disposition. He was not himself able to dispose of his property. In the opening statement in this brief, reference was made to the exceedingly close relationship that existed between the decedent and Mr. David L. Podell, the proponent of the will. The testimony shows clearly that Mr. Podell was the decedent's closest friend. The relation of attorney and client undoubtedly existed between them. They were jointly interested in the Great Eastern Casualty Company, Marpole Airways Inc. and the New Jersey Mortgage Company. An agreement was introduced at the hearing in this matter which does not appear in the state of the case because it has been lost or inadvertently mislaid, which, however, the proponent identified at the hearing. This agreement, dated July 2nd, 1929, with reference to which Mr. Podell has testified in other proceedings, involved the winding up of the New Jersey Mortgage Company, the proceeds of which were paid into the hands of Mr. Podell who had charge of these funds, which were to be used by Mr. Podell and Mr. Margulies as partners in trading in securities on the stock exchange. Mr. Podell was to control the funds. Mr. Podell, according to the decedent's statement to Mr. Graham B. McGregor (State of the case, page 77), likewise controlled whatever funds Mr. Margulies had in his personal estate, for Mr. Margulies informed Mr. McGregor that both the money he had and securities were over in New York in Mr. Podell's office or in the Chatham Phenix Bank. Mrs. Margulies has testified in full as to the relation that existed between proponent and the decedent. The exhibits printed in the record, as well as the testimony of the witnesses, show conclusively that Mr. Podell dominated the affairs of

the decedent. Mr. Podell directed and Mr. Margulies carried out instructions. The alleged will was executed in Mr. Podell's office and witnessed by his employees. It was dictated by Mr. Podell who kept it at all times in his possession after execution. Although not a New Jersey lawyer, Mr. Podell made the will of a New Jersey resident without consulting a New Jersey attorney. Mr. Podell does not recall whether the will was sealed or not while in his possession. Mr. Podell was not only executor of the will but trustee of the trust estate created by the terms of said will, which was to last until decedent's wife, a woman in her twenties, became fifty years of age. The executor and trustee, Mr. Podell, was to receive an annual compensation of \$25,000 a year for serving as trustee. The effect of this was to give the proponent a substantial interest in the decedent's estate. The influence and control which Mr. Podell had while the decedent was living was augmented by the terms of the will after Mr. Margulies' death. He was to act without bond. Mr. Podell before drawing the will sent a Miss Berk from his office to Newark apparently to secure certain information for the drawing of the will. It is somewhat curious that the man who was the closest and warmest friend of the deceased, Emanuel Sinclair Margulies, who was constantly in touch with him in his various business enterprises, who had his personal effects, who had invested \$75,000 of his own money with Mr. Margulies, who controlled their partnership funds, who knew more thoroughly and intimately than any other person could know the actual financial status of the decedent, and who found so promptly upon Mr. Margulies' death that Mr. Margulies was engaged in deceit and forgery, should believe that his dead friend was sane.

The cases in this state show clearly that where the relation of client and attorney exists, and the attorney benefits from the will by virtue of the provisions of the will, and there are other surrounding circumstances showing undue influence, that a presumption of undue influence is raised. *Farnum v. Boyd* (New Jersey Prerogative Court 1898, 56 N. J. E. 766; *In re Gordon's Estate* (89 Atl. Rep. 33); *In re Banvard Estate* (Prerogative Court 1914, 83 N. J. E. 286; *In re Gaddis Estate* (Essex County Orphans' Court 1923, 1 N. J. Misc. Rep. 202; *Wattington v. Buzby* (43 N. J. E. 154); *Barkman v. Richards* (New Jersey Prerogative Court 1911, 63 N. J. E. 211); *In re Barnett Estate* (Essex County Orphans' Court 1924, 2 N. J. Misc. Rep. 135).

In the case of *Barnett Estate* (Essex County Orphans' Court 1924, 2 N. J. Misc. Rep. 135, at page 142) the court held as follows:

“It has been said that in order to shift the burden of proof to a proponent of a will, on an issue of undue influence, there must be some other elements ‘added to proof that testator’s mind was enfeebled so that it was difficult to resist improper influence and the establishment of intimate confidential relationship’. It is said that ‘slight circumstances’ are sufficient to be added. Among the elements which may be thus added, which have been mentioned in the authorities, are these: (1) The initiation of proceedings for the preparation of the instrument; (2) participation in such preparation; (3) presence at the execution of the will; (4) efforts to exclude the natural objects of testator’s bounty from his society; (5) concealing the making of the will, and (6) taking possession of the will. *Wheeler v. Whipple*, 44 N. J. Eq. 145; *In re Howard*, 9 N. J. L. J. 144; *Cooper’s*

In re:-Will of Emanuel Sinclair Margulies.

The following cases in addition to those already cited in appellant's brief are authority for the proposition that there is a lack of testamentary capacity where the testator does not know the size of his estate.

In the matter of the Probate of the Will of Charles M. Freeman, deceased, 1 Misc. 642, affirmed Court of Errors & Appeals 97 E. 347. (October, 1924)

Turner v. Cheseman, 15 N. J. E., 243 (Prerogative Court May Term, 1857)

Rusling v. Rusling, 36 N. J. E., 603 (Court of Errors & Appeals--March Term, 1883)

Stoutenberg v. Hopkins, 43 N. J. E., 577 (Prerogative Court October Term, 1867)

Wattington v. Buzby, 45 N. J. E., 173 (Court of Errors & Appeals--November Term, 1888)

Lee's Case, 46 N. J. E., 193 (Prerogative Court--Oct. Term, 18

Ward v. Harrison, 97 N. J. E., 309 (Court of Errors & Appeals--October Term, 1924.)

In re Hanes, 98 N. J. E., 645. (Prerogative Court, 1925)

CREST BOND

CHISHOLM PRINTING CO.

NEW YORK

Will, 75 N. J. Eq. 177; 76 N. J. Eq. 614; Morris's Will, 111 Atl. Rep. 26."

The facts of the present case under the above cases would seem clearly to raise a presumption of undue influence. Mr. Margulies was suffering from a mental disorder. His closest friend and attorney drew the will and kept it in his custody. He likewise, from the undisputed and uncontradicted testimony of the witnesses, had in his control Mr. Margulies' affairs while living and under the terms of the will, which he drew, was to retain that control after Mr. Margulies' death. He was to be the recipient of an income of \$25,000 for a considerable period of time. The proponent has offered no testimony to rebut or contradict the presumption of undue influence which has been raised. The proponent drew the will and supervised its execution. He was the decedent's closest friend and confidential advisor. He was his legal counsellor. He benefited substantially under the terms of the will, and it is respectfully submitted that the will should be set aside on grounds of undue influence.

POTTER & BERRY,

Proctors of Caveatrix-Appellant.

RAYMOND H. BERRY,

Of Counsel with Caveatrix-Appellant.



New Jersey Court of Errors and Appeals

IN THE MATTER

of

The probate of the Last Will
and Testament of EMANUEL
SINCLAIR MARGULIES.

On Appeal from
Prerogative Court
Decree Admitting
Will to Probate.

Sat Below,
Church, V. O.

(Italics, etc., mine, except where otherwise noted.)

BRIEF FOR PROPONENT.

Before considering the merits I advert to a statement in appellant's brief (p. 3) apparently complaining that she received no notice of the filing of the petition for probate or of the petition for the appointment of an administrator *pendente lite*.

What object appellant has in making this statement I do not know because all the notice to which she was entitled was given to her, and it is not suggested that any statute, rule or decision required any further notice.

Nor do I know why the proceedings with respect to the appointment of an administrator *pendente lite* are printed. They form no part of the record. No appeal was taken from the order and no application made to revoke it.

Statement of the Case.

The Will is Exhibit C-1 (Photostat, p. 88). The caviatrix was the widow of testator, Emanuel Sinclair Margulies (p. 34); she had married him in May of 1926, and lived with him up to the time of

his death, January 17, 1930 (p. 39); they lived in an apartment in East Orange and testator had a place of business at No. 1060 Broad Street, Newark; the Will was executed May 22, 1928; it was proven by the oath of one of the subscribing witnesses (pp. 25, 28).

Caviatrix offered testimony apparently for the purpose of proving: (1) that testator lacked testamentary capacity, and (2) that the Will was the product of undue influence of the executor, David L. Podell, a New York lawyer.

At the conclusion of the case (pp. 84, 85) the Court held that there was no proof of lack of testamentary capacity and no proof of undue influence, the Court stating upon the latter point:

“As to the undue influence, it seems to me that whatever undue influence there was, was on the other side. This executor of this will was persuaded to part with about \$70,000 worth of his money and I cannot see that there is an iota of evidence that he in any way improperly influenced Mr. Margulies.”

A statement is made on page 15 of appellant's brief—“It is significant that of the three subscribing witnesses to the will, only one is produced”. On page 84 of the record the following appears:

“Mr. Lane: No, I don't want any time to submit briefs.

“I want to say to your Honor for the purpose of the record that the other two witnesses to this will have not yet been called.

“They are here in Court and subject to the orders of the Court, if the Court wants to hear them. I do not consider it necessary to produce them.

“The Court: I don't either.”

These witnesses could have been called by appellant, upon whom, under the circumstances of this case, I submit, the burden rested.

There is much in appellant's brief as to the exalted ego of testator and his belief that he had great wealth which, because it now appears he did not have at the time of his death, indicates, in counsel's opinion, insanity. But appellant lived with him from the date of her marriage in May of 1926 to the date of his death, January 17, 1930 (p. 39), *without suspecting insanity, nor does she in her testimony state that she thought him insane*. David L. Podell, his friend and lawyer, associated with him in business and otherwise from the date he met him in December of 1927, having been introduced to him by appellant, who had known Mr. Podell for some eight years (pp. 34, 55), never suspected his sanity (p. 69). Testator obtained from Mr. Podell and his friends upwards of \$75,000 for investment in his (testator's) concerns (p. 66). Testator dealt with McGregor, President of the Port Newark National Bank, for upwards of twenty years, and it is apparent from McGregor's testimony that *he* never suspected his sanity (pp. 76 to 81). Indeed, it is not clear whether counsel with appellant in the examination of the witnesses Marguerite Margulies (p. 34), David L. Podell (p. 53), Graham B. McGregor (p. 76) and George Gray (p. 81) was attempting to prove lack of testamentary capacity of testator because he thought he was worth considerable money, whereas he was not, or that in fact testator had the money it is said he thought he had.

POINTS.

I.

The record shows testamentary capacity.

There was but one expert called, Dr. Beling (p. 45). He stated he had examined testator April 20, 1921, at the request of the United States Public Health Service; testator complained that he heard hissing noises and did not get along well at school; at that time testator was a pupil in High School; testator stated that he believed in Spiritualism. Dr. Beling said (p 47) that testator was at that time suffering from dementia praecox.

Dr. Beling again examined testator on September 27, 1921, at the request of the United States Public Health Service. The examination indicated about the same condition existing as in April, 1921. The father of testator told Dr. Beling that testator was constantly changing his mind and had advertised himself as a doctor with cards under the name of Jack McCormick. Dr. Beling advised commitment to the Essex County Hospital (pp. 47, 48).

Dr. Beling saw testator on several occasions in August of 1922 (pp. 48, 49, 50, 51) and thought testator was still suffering from dementia praecox.

On May 22, 1923 (p. 51), Dr. Beling testified in a suit brought by a prior wife of testator for annulment (pp. 51, 74). From 1922 or 1923 to 1928 Dr. Beling apparently had not seen testator. He met him in 1928, and, page 51:

“Q. Did you have a conversation with them then? A. He drove up in a Packard car and talked to me about the wonderful things he was doing.

Q. And what can you say of your opinion, as based upon that observation that you made

of him? A. Well, I *thought* he was *still somewhat exalted and flighty*. He told me a great many things that I can not repeat in detail, or I can not recall the exact words, but the impression was that he was *still exalted and big ideas of himself*. I could not say about his delusions, because I did not test them out."

Dr. Beling testified (p. 52):

"Q. Would it, in your opinion, affect his ability to properly dispose of his estate or affect him in any way in the making of a will? A. Yes, *if* he was still suffering from praecox, it would.

Q. It would take away his capacity, you mean, doctor, to make a will? A. It is a disorder that interferes with the proper co-ordination of the emotions and the intellectual field—emotional and intellectual field—and disorders the judgment."

On cross-examination (p. 52) Dr. Beling refused to say that dementia praecox was incurable, and (p. 53):

"Q. You would not say, either, that every man who is flighty or exalted suffered from *dementia praecox* or any other form of insanity, would you? A. No.

Q. And there are many persons suffering from *dementia praecox* who are never committed to an asylum and who go about their business with others and live and die without apparent interference with their conduct by reason of resistance of the disease? A. There are a great many of those on the outside of institutions *who make fair adjustments and get along and generally they pass satisfactorily under the eyes of the public.*"

This expert was called by appellant. He was not asked his professional opinion as to whether, at the time of the execution of the Will *May 22*,

1928, testator lacked those faculties which make up testamentary capacity.

The questions and the answers which he gave on p. 52 which I have already quoted are far from legal evidence that testator's ability to make a Will was affected at *any* time.

This is the only medical testimony in the case and it must be considered in the light of the facts that: the observations of Dr. Beling were made in 1921 and 1922; *dementia praecox* was originally known as adolescent insanity; testator, at the time of the examinations, was in an adolescent state; for six years thereafter testator conducted his affairs in a manner which won the confidence of his present widow and his associates who testified including a New York lawyer, a bond broker and a banker: at the time of testator's death, and for some time prior thereto, he had been the President and General Manager of an Insurance Company known as the Great Eastern Casualty Company, supervised by the Department of Banking and Insurance (p. 67) as well as the President and General Manager of a company known as the New Jersey Realty Company; he had engaged in other business enterprises; during that six year period no one seems to have suspected his sanity. He it was who obtained the charter for the Great Eastern Casualty Company in September or October, 1929 (p. 77).

It may be that testator had exaggerated ideas of his own importance and of his wealth. Many people have. If it be the fact that he stated that he had property which he never owned, there is no evidence whether he made this statement believing that he had the property or for the purpose of deceiving the persons to whom he spoke. Proof of the perpetration of a fraud by false representations as to wealth or the ownership of property is not proof of insanity.

Appellant was sworn (p. 34) and testified to: many business and social conferences between testator and Mr. Podell; testator's interest in the New Jersey Mortgage Company, Marpole Airways, Zender Investment and Great Eastern Casualty Companies; conversations with testator as to his ownership of bonds (p. 37); of occasions upon which she actually saw, at the office of testator, bonds and securities with coupons attached; an episode when testator showed her \$16,000 in gold (pp. 42, 43); the fact that he had a safe deposit box and that she (appellant) and her mother counted some eighty odd thousand dollars in bills and silver in that box; occasions when he came home with a great deal of money (p. 43).

There is nothing in the testimony of appellant of any act of testator indicating insanity and nothing to indicate a belief of appellant that he was insane.

Appellant (pp. 14, 15 of the brief) states that it is the duty of an attesting or subscribing witness to a Will to observe and judge of the mental capacity of the testator and that the testimony of the witnesses to the Will as to testamentary capacity should be particularly regarded by the Court, citing *Whiteneck v. Stryker and Voorhies*, 2 N. J. E., page 8.

The widow of testator was in a better position to judge of his mental capacity than the subscribing witnesses to this Will who were but casually acquainted with him. She *lived* with testator. She did not suggest insanity.

She knew of the Will (p. 36). She said (p. 36):

“Q. Did he ever tell him anything about the disposition he made of his property, in the event of his death? A. Well, of course, he always—I knew that Mr. Podell had drawn up the will and I knew the day Mr. Margulies went in to sign it, before he went to the hos-

pital, I recall that very vividly, but he never told me the nature of that will. He always assured me, of course, that I was well taken care of, and so forth and so on, and I knew the will was drawn. I never asked the nature of it. I never discussed it with Mr. Podell or Mr. Margulies."

There is no suggestion here that, at the very time this will was made, his wife, who at that time was closer to him than anyone else, suspected that he had not mental capacity to make it. On the contrary, she relied on it but now attacks it upon the ground of mental incapacity.

Graham B. McGregor, called for appellant (pp. 76, 80), testified he was the President of the Port Newark National Bank and acquainted with testator for upwards of twenty years; in October or November, 1928, he saw testator in the possession of sums as high "as \$100,000 in cash and in securities, and evidenced by bank deposits in various savings institutions" and "*I asked him if he wouldn't designate the Port Newark Bank as executor and trustees of his will*"; when testator organized the Great Eastern Casualty Company in 1929 he wanted to borrow \$100,000 and, the Port Newark National Bank being limited to a loan of \$25,000 to one person, McGregor told testator that he could arrange a loan for him with the Guaranty Trust Company of New York on suitable exchange collateral; testator showed him an envelope and the witness looked at it and pulled out "all the bonds, in the neighborhood of \$125,000 or \$150,000 and I said: 'I won't take these things over, Man- nie, until I find out whether they will grant you the loan'"; the witness took a list of the bonds over to the Vice-President of the Guaranty Trust Company; the securities were foreign bonds and the witness was informed that the Trust Company would have to investigate them and was then in-

formed that the loan would be granted; the witness came back to Newark and communicated with testator and was informed by him that he had made arrangements to get the cash elsewhere; the witness gave the names of some of the bonds which he saw (pp. 79, 80); he examined seventy-five or eighty per cent of them and "what I examined I found were O. K." (p. 80); he was examining them for the purpose of a loan.

This witness, produced by appellant, a banker, who had known testator for upwards of twenty years, certainly did not have any suspicion that testator was insane when he asked him if he would not designate the witness's bank "*as executor and trustee of his will*", and when he arranged for a loan of \$150,000 for testator with the Guaranty Trust Company of New York.

From the testimony of this witness for appellant it would appear that testator actually had many bonds. From the testimony of his wife, heretofore mentioned, it would appear that he actually had large sums of cash.

George Gray was called by appellant (p. 81). He is with a stock exchange house in New York and met testator upon three occasions (pp. 81, 82) about October 1928; testator showed him a list of bonds and desired to get their value (pp. 81, 82); the witness saw \$3,600 in gold at the office (p. 82); the witness checked the list of bonds and determined approximate values on all those upon which he could get a market (p. 83). This witness certainly had no suspicion of the capacity of testator else he would not have gone to the trouble of getting values of these bonds.

Mr. Podell, the executor of the will, was called by appellant. He testified that he knew nothing of the size of the estate except that testator had informed him that it would be between four and five millions of dollars. He said he first met

testator in December, 1927 (pp. 55, 56); at the request of testator he made investments in the Marpole Company, the New Jersey Mortgage Company and the Great Eastern Casualty Insurance Company (p. 57); he had numerous business transactions with testator, loaning him money, taking collateral and the like (pp. 61, 62, 63, 64); he invested \$25,000 in the Mortgage Company, \$20,000 in the Insurance Company, \$10,000 in the Airways Company and advanced other monies making the total between \$65,000 and \$75,000 of money of the witness; in addition to these investments he got his clients and friends to invest between \$15,000 and \$20,000 (p. 66); the arrangements between the witness and testator were businesslike and in writing (pp. 67 and 69):

“Q. Do you think, Mr. Podell, that his immense wealth was a delusion on his part or that it actually did exist? A. Well, I know that he lost a substantial sum of money in the crash. The stock brokers account would show you that.”

Such a loss could not, however, have been several million dollars.

The witness said that he had seen testator carry cash from time to time and also display certified checks (p. 69). Testator showed the witness, after the stock market crash when the witness had become suspicious as to testator's financial condition, what purported to be valuable shares of stock (p. 70). There is nothing in this witness's testimony, and he was called by appellant, to indicate that he had any suspicion of the capacity of testator, and there is nothing in the conduct of testator, as described by Mr. Podell, to indicate that there was any lack of capacity. Mr. Podell stated that he knew that testator suffered severely in the stock market crash in October and November, 1929 (p. 69).

Testator was killed in an airplane crash in Florida, two being in the machine (p. 72). After his death it was discovered that securities which he represented he held were forgeries. An examination was made immediately of the securities of the Great Eastern Casualty Company and it was discovered that they were all forgeries (pp. 70, 71). Testator had by these forgeries succeeded in deceiving the Department of Banking and Insurance up to the time of his death.

Whether these securities were forged prior to the stock market crash in October and November, 1929, does not appear. The testimony of McGregor, President of the Port Newark National Bank, is that securities were shown to him aggregating in value large sums, which were good (pp. 80, 81). Certainly the cash which testator exhibited to his wife, to Mr. Podell and to McGregor, President of the Port Newark National Bank, was good. It is hardly conceivable that the State Department of Banking and Insurance should have been deceived by such an apparent forgery as was the Otis Elevator certificate of stock for 500 shares worth, if valid, upwards of \$200,000.00 (pp. 70, 71), and other securities consisting of specimen bonds, etc. (pp. 70, 71).

A more rational explanation is that testator was harder hit in the stock market crash in the fall of 1929 than anyone supposed and that, after that crash, he substituted these forged securities and then, on January 17, 1930, died at a psychological moment.

Lillian Siskin, a subscribing witness to the Will, testified that: she had seen testator on various occasions during the month preceding the signing of the Will, once or twice a week (p. 27); there were previous drafts of the Will (p. 27); changes were dictated to her in the presence of testator (p. 28); she described the execution of

the Will (p. 26). There is nothing in her testimony to indicate that she had any suspicion of the sanity of testator.

Gertrude M. Burke (p. 28) testified: in April or May, 1928, she went to the office of testator in Newark, at the request of Mr. Podell, to list securities; she was told that the securities had already been listed; she went to the bank with testator; they were accompanied by two policemen in the automobile (p. 30); testator stopped at two banks; she was informed that he had stopped to deposit securities and that that was the reason the policemen were with him (p. 31); testator informed her that he was a very successful business man and was in his early thirties and deserved credit for his wealth expanding. There is nothing in this witness's testimony to indicate that she had any suspicion of the sanity of testator.

The suggestion is made in appellant's brief that the Will gives intrinsic evidence that testator was insane. The Will provides for specific bequests of \$20,000 to a friend, Father Edward F. Murphy of the Epiphany Apostolic College, and \$30,000 to a friend, Dr. Alfred Mamlet. It then gives to testator's wife outright one-quarter of his estate, one-quarter to his father, one-quarter to his mother, and the remaining quarter to a trustee in trust to pay the income to testator's wife until she shall reach the age of fifty years, and, upon her reaching that age, the trust is to terminate and she is to take the one-quarter absolutely. If she shall die during the pendency of the trust, the principal is to be distributed in accordance with the provisions of the intestate laws. It then makes provision in case there should be any issue born after the making of the Will, cutting down the amounts given to his father, mother and wife and providing for the issue.

There is nothing in this Will which is not strictly in accord with what it would be assumed a person might provide for if he had, or thought he had, the wealth which it would appear testator thought he had. He provided for every object of his bounty and in a fair way. If he did not have the wealth which the Will contemplates, that is no proof of insanity, for, if he knew that he did not have that wealth, he may well have drawn the Will to impress Mr. Podell with the idea that he did have the wealth and as a means of inducing Mr. Podell to invest his own money and to secure the investment of the moneys of his friends in the enterprises of testator. It may be that the Will was a fraud, but that is no proof that it was the product of an insane mind. It is no cause for the setting aside of a Will that a testator deliberately inserted in it provisions for the purpose of defrauding a person who might read it.

“The standard of testamentary capacity has been properly fixed at a very low point in the scale of intelligence. The right of a testator, however feeble his powers of mind or body, to the control of his property by testamentary disposition, so long as he has the intelligence to assert it, has been by the courts of this State at least inflexibly maintained. It is right that it should be so.” *Executors of Moore v. Blauvelt*, 15 N. J. E. 367; *Clifton v. Clifton*, 47 N. J. Eq. 227; *Dillon's Will*, 82 N. J. Eq. 322; *In re Shimer's Will*, 103 Atl. 383; *Loveridge v. Brown*, 98 N. J. E. 381 (Court of Errors and Appeals); *In re Haines*, 98 N. J. E. 628.

The proof of lack of testamentary capacity must be as of the date of the execution of the Will, *In re Craft's Estate*, 85 N. J. Eq. 125, and the burden of establishing incompetency at the time of the execution of the Will is on the *caveatrix*. *In re Shimer's Will*, 103 Atl. 383; *In re McKinney's Estate*, 86 N. J. Eq. 211.

Appellant attempts to shift the burden by asserting that a condition of insanity was shown to exist in 1923, and, that condition having been once shown to exist, is presumed to continue, citing *Elkinton v. Brick*, 44 N. J. Eq. 154. The Ordinary made the statement quoted by appellant at page 158. Neither this case, nor any one of the cases cited by the Ordinary in *Elkinton v. Brick*, 44 N. J. Eq. 154 at p. 158, is authority for the proposition that because a doctor, an alienist, *expresses the opinion* that a man is insane five or six years before the execution of a Will, the burden of proof is on a proponent to prove mental capacity at the time of the execution of the Will, where, from the date that the alienist expresses the opinion that testator was insane, he went about his own affairs, unrestricted, engaged in business down to the date of his death and was generally considered as sane.

The courts of this State have held in many cases that the mere opinion of witnesses, including alienists, are entitled to little or no regard. The surrounding facts and circumstances must be taken into consideration. *Sloan v. Maxwell*, 3 N. J. Eq. 563; *Vanauken, an alleged lunatic*, 10 N. J. Eq. at p. 192; *Waddington v. Buzby* (Ct. of Er. & Ap., 45 N. J. Eq., at p. 174).

There was no adjudication of insanity of testator at any time. Appellant sought to prove that the first wife of testator had secured an annulment of her marriage because of insanity. The first wife testified at page 74. There was no proof from her that her annulment had been obtained on the ground of insanity. Dr. Beling said (p. 51) that he had testified in a suit in the Court of Chancery on May 22, 1923, which apparently was the annulment suit, that testator was insane (p. 52). The record in the case was offered (p. 83), but excluded. It was an uncontested annulment suit and any adjudication made in it was without

force or effect as establishing a status of sanity or insanity.

Had there been an adjudication of insanity, it would not be conclusive. In *In Re Colman's Will*, 88 N. J. Eq. 578, testator had been adjudged *non compos mentis without lucid intervals over the period in which the Will was made*. Notwithstanding this, the Ordinary held, 88 N. J. Eq. 284, that testator had testamentary capacity, and this Court affirmed 88 N. J. Eq. 578.

Here there was no adjudication of insanity admissible in this case.

Assuming that a condition of insanity was shown to exist in 1923, the evidence introduced by appellant as to the conduct of testator after 1923 is sufficient to indicate that there was no lack of testamentary capacity in 1928.

Appellant insists that testator had delusions of grandeur and that these delusions were of such a nature as that he could not comprehend the nature or extent of his property.

A testator is not required, to be capable of making a Will, to realize the nature and extent of his property to any greater extent than he is required to realize the natural objects of his bounty.

In *Smith v. Smith*, 48 N. J. Eq. 566, the attack upon the Will was that testator had a delusion that he was childless and never had been able to procreate a child. The fact was that he was not childless. Notwithstanding this, the Ordinary held that the testator had testamentary capacity because, while he was mistaken, his conclusion was based upon a process of reasoning. The Ordinary defined delusion as, "A delusion is the mind's spontaneous conception and acceptance of that, as a fact, which has no real existence except in its imagination, and its persistent adherence to it against all evidence", and, "Stupid error in either his reasoning or conclusion, is not lack of

testamentary capacity", and, "Mistake, whether of fact or law, moves from some external influence which is weighed by reason. Delusion arises from morbid internal impulse, and has no basis in reason."

In *Middleditch v. Williams*, 45 N. J. Eq. 726, the Vice Ordinary, Van Fleet, said (p. 734):

"According to these definitions, it is *only a delusion or conception which springs up spontaneously in the mind of a testator, and is not the result of extrinsic evidence of any kind, that can be regarded as furnishing evidence that his mind is diseased or unsound*; in other words, that he is subject to an insane delusion. If, *without evidence of any kind*, he imagines or conceives something to exist which does not in fact exist, and which *no rational person would*, in the absence of evidence, believe to exist, then it is manifest that the only way in which his irrational belief can be accounted for, is that it is the product of mental disorder. Delusions of this kind can be accounted for upon no reasonable theory except that they are the creations of some derangement of the mind in which they originate. To illustrate: In *Smee v. Smee*, L. R. (5 Pro. Div.) 84, the testator imagined himself to be the son of George IV, and that when he was born a large sum of money had been put in his father's hands for him, but which his father, in fraud of his rights had distributed to his brothers; and in *Smith v. Tebbitt*, L. R. (1 Pro. & Div.) 398, the testatrix imagined herself to be one of the persons of the Trinity, and her chief legatee to be another. The delusion in both instances, as will be noticed, was indisputably a wild and baseless fancy, *not the product of evidence of any kind*, but obviously the offspring of a disordered condition of mind. But where a testator is induced, by false evidence or false statements, to believe a fact to exist which does not exist, or where, in consequence of his faith in evidence which is

true, but which is wholly insufficient to prove the truth of what he believes, he believes a fact to exist which in reality has no existence; his belief may show want of discernment, that he is over-credulous and easily duped, or that he lacks power to analyze and weigh evidence, or to discriminate between what is true and what is false, but it furnishes no evidence whatever that his mind is diseased. His belief may show lack of judgment or want of reasoning power, but not that his mind is unsound."

The testator in that case believed in spiritualism, and the Vice Chancellor said (p. 735):

"Believing, as I do, that these manifestations were correctly described by Vice-Chancellor Gifford, in *Lyon v. Home*, L. R. (6 Eq.) 665, 682, when he called them 'mischievous nonsense, well calculated, on the one hand, to delude the vain, the weak, the foolish and the superstitious; and on the other, to assist the projects of the needy and of the adventurer,' still, it seems to me to be entirely clear, that it cannot be said that a person who does believe in their reality is, because of such belief, of unsound mind, or subject to an insane delusion. No court has as yet so held."

This Court has never departed from the doctrine of the two cases last cited.

In 1928 this Court decided *McDowell v. Montclair Trust Co.*, 6 N. J. Adv. Repts., p. 1516, affirming the Prerogative Court, Vice Ordinary Backes, 140 Atl. Rep. 281. The Vice Ordinary said (283):

"To justify the rejection of a will because of delusion, the evidence must establish that the false belief is the figment of a deranged mind, and not the result of impression produced by extraneous circumstances, and the burden is on the caveator to prove the non-existence of extrinsic evidence upon which the belief rested."

and this Court affirmed.

It cannot be said, upon the evidence in this case, that the idea of testator that he had great business ability and that he was worth considerable money, and would be worth more, was an *insane* delusion, for the facts are that he successfully operated his business ventures, induced men of standing and substance to believe in him and to go into his business ventures and accumulated a large number of securities and large sums of money.

His idea of his own powers may have been grossly exaggerated, but that is not insanity.

Or, I repeat, he may not really have had these ideas of grandeur at all, but merely expressed them for the purpose of obtaining money from other people, and, if that was his idea, he succeeded.

An attempt is made to compare the conditions existing in this case with the conditions that were said to exist in *State v. Noel*, 102 N. J. L. 659. Justice Katzenbach, writing the opinion for this court in *State v. Noel*, 102 N. J. L. 659 and p. 664, gives the history of the defendant in that case. A perusal of a few sentences will indicate how different the situation there was from that at bar.

I submit that there was no proof in this case which would warrant the Court below in denying the probate of this Will upon the ground of lack of capacity.

II.

There was no undue influence.

Many statements are made in the brief of appellant to the effect that Mr. Podell, who was designated executor, dominated the affairs of testator and that there was the relationship between them

of attorney and client and that there was such a close and confidential relationship as that there was a presumption of undue influence.

There is no contention in appellant's brief that undue influence as a fact was proven. It is conceded, page 22 of appellant's brief, that the mere fact of the relationship of attorney and client and that the attorney benefits from the will is not sufficient to raise any presumption of undue influence. There must be "*other surrounding circumstances showing undue influence*".

The record is as lacking in proof of "other surrounding circumstances showing undue influence", as it is in proof of undue influence.

The only testimony bearing upon the relationship between testator and Mr. Podell is that of appellant and Mr. Podell. She said that: she had known Mr. Podell for some eight years at the time she married testator; she introduced testator to Mr. Podell; they became very friendly; they often met and had dinner and went to the theater together (pp. 33, 35); testator and Mr. Podell were interested in business ventures; testator "depended upon him, admired Mr. Podell, liked him, was very fond of him and respected his judgment and all of that"; testator spent the weekends upon occasion with Mr. and Mrs. Podell; they were on very intimate terms and exchanged gifts; Mr. Podell upon one occasion borrowed testator's Packard car; she knew that Mr. Podell had drawn the Will, but did not know the nature of it; she always felt that Mr. Podell was her friend; she knew he was "our counsel"; she felt that, if anything happened, she could always turn to him; testator told her that Mr. Podell was his counsel and friend and knew all about his affairs. There was certainly nothing in this testimony, most of it incompetent as mere impressions and hearsay, showing anything more than a relation-

ship of attorney and client and a social and business friendship.

The only other testimony is that of Mr. Podell, called for appellant. He agreed with appellant as to his meeting testator (pp. 55, 56); they had many business transactions; Mr. Podell invested his own money and those of his friends in the ventures of testator in New Jersey, including the Great Eastern Casualty Co., the New Jersey Mortgage Co., and the Marpole Airways; the New Jersey Mortgage Co. was organized to buy mortgages on New Jersey real estate, about which Mr. Podell knew nothing, and "it was in the line of his (testator's) business. I relied on his judgment completely"; testator never used the money furnished by Mr. Podell, some \$25,000, to buy mortgages, with the exception of one; the financial statement furnished by testator to Mr. Podell with respect to the affairs of this company was false (p. 57); Mr. Podell advised testator from time to time, but made no charge for his services (p. 60). Mr. Podell described on pages 61, 62, 63 and 64 his financial transactions with testator, and it is apparent that, so far as the record goes, the transactions were evidenced by writings and all were in correct legal form. All checks from testator to Mr. Podell were duly accounted for (p. 63), Mr. Podell producing his own checks as against each of the checks of testator. Asked whether he advised testator as to all his business affairs, Mr. Podell answered (p. 64):

"I can't say that, Mr. Berry. I will tell you this, that, so far as the mortgage company is concerned, I certainly knew nothing about Jersey mortgages; I left that to him. I never dealt in any Jersey first mortgages; that was his business. So far as the insurance company was concerned, I had never been in the insurance business. It was his business. He had been in it for years, and I depended on

him. So far as the Airways company was concerned, I had never been a flier—he had been the flier—and my investment there—all of which is practically a total loss—was dependent very largely upon him.”

And (p. 65):

“Q. Now, isn't it a fact, Mr. Podell, that you were in constant touch with Mr. Margulies, and, in general, superintended the various transactions that Mr. Margulies was engaged in? A. I was—he came to the office very frequently, used to hang around in the outer office, sometimes for hours at a time before I could see him, because they keep me very busy in New York. I came over here, probably, in the two years, probably, not more than half a dozen times. I did not superintend the various business transactions. I did talk with him frequently about the monies that I had invested and that my friends had invested in enterprises that he was managing. I was not superintending.”

After describing his investment and those of his friends, which will mean a loss to him of close to \$75,000 unless something is recovered from the insurance company, Mr. Podell said (p. 66):

“Q. And you made all of this investment without an investigation or without closely making yourself acquainted with the affairs of Mr. Margulies? A. *I believed the man, I trusted him.* I had known Mrs. Margulies for many years. I know that if there was anything dishonest about the man that she would let me know about it, if she know about it, *and the arrangements were all in writing.*”

With respect to the drafting of the Will, Mr. Podell testified that testator came to him with definite ideas and that the details of the Will were discussed. Mr. Podell said (p. 55):

“A. I think the divesting of his property as outlined in the will was entirely his; he wanted a clause inserted that in the event of the remarriage by Mrs. Margulies that she would lose the interest. We discussed that at some length. I advised him against it and he accepted my advice in that regard.

In the first draft he had, he made provision for an annuity to Dr. Murphy and Dr. Mamlet. He came in later and told me he preferred to give them definite sums, \$20,000, I think, one, and \$30,000 the other. We discussed the trust clause. I wanted to know from him whether he wanted the trustee to—I explained to him as to the scope of power that he could give his trustee under the trust arrangement made, that he could give him full power to make investments, and all kinds of securities, or limit him to legal investment, first grade bonds or first mortgages. At first, he thought he would like to give the trustee full power. He came in and changed his mind and said he preferred to have them limited to first grade securities. The will was under discussion for several weeks, three or four weeks, I should say.”

And (p. 56):

“Q. Did you discuss with Mr. Margulies the question of your serving as administrator or as executor without bond? A. Oh, yes. There was not much discussion about it. I read him the clause. He read the will and I think the provision in the will is that I am to serve without bond. I took a stock clause, I think, out of either a form book or a former will, I don't recall which.”

The fact that the Will was left with counsel is no evidence of undue influence. Much is made of the fact that the Will provides that the compensation of the trustee shall be at the rate of \$25,000 per annum, payable semi-annually during the life of the trust. This provision was inserted in the

Will after it was drawn, but before it was executed, and is initialed by testator. Lillian Siskin, who witnessed the Will, at page 26 stated that the testator initialed this insertion. The clause that the executor should serve without bond is a usual one. The clause fixing the compensation of the trustee is not unusual. Assuming that the estate was four or five million dollars, as testator informed Mr. Podell it was (p. 54), the \$25,000 provision was a limitation, rather than the reverse.

Where is there in this record anything which approaches proof of undue influence? Where is there proof of "*other surrounding circumstances* showing undue influence" which Mr. Podell would be under the burden of rebutting? If any such presumption did at any stage of this case arise, has it not effectively been rebutted by the straightforward testimony of Mr. Podell as to his relations with testator and as to the way in which the Will happened to be drawn?

Appellant cites Barnett Estate, Essex County Orphans' Court, on appeal from probate, 2 N. J. Misc. Rep. 135, and quotes from the opinion of the Orphans' Court Judge in that case, at page 142. An appeal was taken from the decree of the Orphans' Court, but never decided, the case having been settled. It is significant that the Court states as among the other "*surrounding circumstances showing undue influence*" the following:

1. The initiation of proceedings for the preparation of the instrument. There is no proof in this case that Mr. Podell initiated the proceedings. The proof is to the contrary.

2. Participation in such preparation. Mr. Podell did participate in the preparation of this Will. He was the lawyer who drew it. The only benefit he received under it was that he became

executor. Under the circumstances of this case, Mr. Podell being the attorney for testator, this is not a circumstance which may be taken into consideration.

3. Presence at the execution of the Will.

What I have said with respect to the last subject applies here.

4. Efforts to exclude the natural objects of the testator's bounty from his society. There is no proof in this case under this head.

5. Concealing the making of the Will. The making of the Will was not concealed. Testator's wife knew when it was executed, where it was executed and who had it (p. 36).

6. Taking possession of the Will. In this case Mr. Podell being the executor of the Will and the attorney for the testator, it was natural that the Will should be left with him for safe-keeping.

Usually, where a will is attacked upon the ground of undue influence, the attack is made by someone who appears to be the natural object of testator's bounty who is not provided for by the Will, or who is inadequately provided for, with resulting benefit to the person charged with undue influence. The Will attacked is usually an unnatural Will. We have no such situation here. The provisions of the Will are natural, not unnatural. The compensation allowed by testator to his executor is not unreasonable, assuming the estate to be that which the testator represented it to be.

Very often during testator's lifetime, the person benefited and charged with undue influence has obtained property from the testator. In the case at bar we have the precise reverse. The testator obtained property from Mr. Podell and his friends to the extent of something in the neighborhood of \$75,000.

The court below at the conclusion of the case properly said (p. 84), I submit:

“As to undue influence, it seems to me that whatever undue influence there was, was on the other side. This executor of this will was persuaded to part with about \$70,000 worth of his money and I cannot see that there is an iota of evidence that he in any way improperly influenced Mr. Margulies.”

Undue influence which will result in the setting aside of a Will under the cases must be such influence as would amount to fraud. *Stackhouse v. Horton*, 15 N. J. Eq. 202, at page 231.

Influence alone is not sufficient. There must be influence which “must destroy free agency by amounting to moral or physical coercion. Our courts have uniformly held, that the influence of affection and kind offices, unconnected with fraud or contrivance, though it induces gratitude and testamentary recompense, is not undue”. *Clifton v. Clifton*, 47 N. J. Eq. 227, at page 244.

In *In re Shimer's Will*, 103 Atl. 383, at page 385, in which case it was also held (p. 386) that, where there is a presumption of undue influence shown by a state of dependency (which is not in this case), the naked presumption “may be overcome by the beneficiary's denial of interference”.

In *In re Hops*, 6 N. J. Adv. Reps. 1010, at page 1012, Vice-Ordinary Lewis, said:

“I am also unable to find the evidence to sustain the proposition that the will was the product of undue influence, as our law regards that factor. It is not every form of persuasion or influence, in the ordinary sense of those terms, that is condemned; it must be such influence as will overcome the will of the testator, so that judgment and testamentary plan of the one so balefully influencing him are substituted in the place of, and prevail over the judgment and testamentary plan

of the testator, contrary to his real will and intent.”

In *In re Eatley's Will*, 82 N. J. Eq. 591, Vice-Ordinary Backes said (p. 600):

“The burden of establishing the influence which is ‘undue’ rests on those who assert it. Mere possession of influence and opportunity, and motive to exert it, will not suffice. It must appear either directly or by justifiable inference from facts proved that the influence was exerted and operated to dominate testator and coerce him to make a disposition of his property which he would not otherwise have made.” *Schuchhardt v. Schuchhardt*, 62 N. J. Eq. (17 Dick.) 710.

In some of the cases the statement has been made that where a lawyer who drafts a Will or participates in its drafting obtains a substantial benefit under it, the burden is cast upon him to rebut a presumption of undue influence.

Vice-Ordinary Backes, *In re Bishop's Will*, 96 N. J. Eq., page 595, seemed to so think, citing *In re Cooper's case*, 75 N. J. Eq. 177, but when the *Bishop* case came to this Court *sub nom. Ward v. Harrison*, 97 N. J. Eq. 309, this Court unanimately said (p. 314):

“The courts of this state have *not* gone to the extent to hold that one actively participating in the drawing of a will, and who is *chief beneficiary* thereunder, is presumptively chargeable with undue influence. Such a circumstance may or may not be a factor to establish imposition upon the testator, for that is what is meant by the charge of undue influence, and, hence, whether or not there was imposition, must be disclosed by *other circumstances and conditions than the mere drafting of a will and being a beneficiary thereunder.*”

Referring to this supposed burden cast upon counsel who may have participated in the preparation of a Will, without noticing, however, what this Court had said in Bishop's case when it came to this Court, 97 N. J. Eq. 309 at page 314, Vice-Chancellor Church, *In re Babcock*, 106 N. J. Eq. 228 at page 229, in a case in which the lawyer who drew the Will was named as executor and also received a specific bequest, said:

“Counsel for the contestants insist that this amounts to a substantial benefit and casts the burden upon Meyer of establishing that the Will was not the result of undue influence. I do not so understand it. *In re Bishop*, 96 N. J. Eq. 595, is a case where the attorney was the residuary legatee. *In re Cooper*, 75 N. J. Eq. 177, the lawyer, who prepared the will, was the residuary legatee. The cases, therefore, holding that one who is substantially benefited has the burden cast upon him of establishing that the will was not the result of undue influence, are those in which the lawyer received the entire residuary estate. In this case the lawyer received nothing except some chairs and ‘chattels’ which he might select. I think the contention of contestants’ counsel that the word ‘chattels’ might be made to apply to all the stocks and bonds of the estate is stretching the meaning too far. It seems perfectly clear that the testatrix, as a lifelong friend of Mr. Meyer, meant that he should have what articles of household furniture he might select, and that is all.”

In the case at bar, Mr. Podell received no bequest. He received an appointment as executor and trustee. The \$25,000 per year which is provided for him in the Will was not given to him in the way of a bequest, but as compensation for services which he was expected to render.

There was not the slightest proof, I submit, upon which the Court could have declined to probate this Will upon the ground of undue influence.

Conclusion.

Surprise is expressed by appellant that Mr. Podell, under the circumstances of this case, in view of the fact that testator had defrauded him, should think testator sane (p. 21). There was no more to indicate to Mr. Podell that testator was insane than there was to indicate it to McGregor, the bank president, or Gray, the bond man, or appellant, testator's wife, or any of the others with whom testator came in contact, among others the representatives of the Department of Banking & Insurance, and, as Mr. Podell says (p. 69), the testator impressed Mr. Podell "as being a very shrewd business man". The fact that it developed immediately after his death that he had committed the grossest kind of fraud, is no evidence that he was insane.

It is stated that if the fact be that all these supposed moneys and securities of testator have disappeared, if they ever existed, the estate is insolvent and that it may be wondered why, under the circumstances, Mr. Podell as executor of this Will insisted upon its probate and defended it in the Court below and now defends it here. The answer is that, as executor of the Will, it was Mr. Podell's duty to offer it for probate, and it is his duty to defend it.

It is respectfully submitted that the decree admitting the Will to probate should be affirmed.

MERRITT LANE,
Of counsel with respondent-executor.

