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Notice of Appeal.

(Filed October 1, 1924.)

New Jersey Prerogative Court

HARRY MOHRING, Appellant, and MARY E. WILKINS FREEMAN and SALLIE B. FREEMAN, Respondents.	On Petition, etc. Notice of Appeal.

Harry Mohring, the appellant and the proponent, hereby appeals from so much of the decree made in this court in the above entitled cause bearing date the twenty-third day of September, nineteen hundred and twenty-four, as affirms the order of the Middlesex County Orphans Court made on the twenty-third day of November, 1923, denying probate to the paper writing purporting to be the last will and testament of Charles Manning Freeman, deceased, bearing date the 12th day of July, nineteen hundred and twenty-two, to the Court of Errors and Appeals in the last resort in all causes.

Dated,

THEODORE STRONG,
Proctor for Harry Mohring,
Appellant, etc.

I conceive that there is good cause for appeal from the above stated decree.

J. THEODORE STRONG,
of Counsel with Appellant.

Petition of Appeal.

(Filed October 11, 1924.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between HARRY MOHRING, Appellant, and MARY E. WILKINS FREEMAN and SALLIE B. FREEMAN, Respondents.	On Petition, etc. Petition of Appeal.

To the Honorable the Court of Errors and Appeals in the last resort in all causes:

The petition of Harry Mohring, the appellant in the above entitled cause, respectfully shows that your petitioner finds himself aggrieved by a certain final decree made in the Prerogative Court by the Honorable Malcolm G. Buchanan, Vice Ordinary of the State of New Jersey, bearing date the twenty-third day of September, in the year nineteen hundred and twenty-four, in a cause wherein your petitioner was appellant, and Mary E. Wilkins Freeman and Sallie B. Freeman, were respondents, in this respect: that said decree affirms an order of the Middlesex County Orphans Court made on the twenty-third day of November, nineteen hundred and twenty-three, denying probate to a paper writing purporting to be the last will and testament of Charles Manning Freeman, deceased, bearing date the twelfth day of July, nineteen hundred and twenty-two.

And your petitioner respectfully appeals from the said portion of the said decree upon the ground that the same is erroneous for that the evidence in said cause was not sufficient to sustain such decree, and for that the said paper writing was and is the last will and testament of the said Charles M. Freeman, deceased, and should have been admitted to probate as such, and for that the said decree is contrary to equity, and for that the parts of the said order of said Orphans Court appealed from, and each of them, should have been reversed, set aside and for nothing holden.

Your petitioner therefore prays that the said decree of the said Vice Ordinary may in the particulars aforesaid be reversed, set aside and for nothing holden and that said paper writing may be admitted to probate as the last will and testament of the said Charles M. Freeman, deceased, and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

THEODORE STRONG,
Proctor and of Counsel with Appellant.

Answer of Mary E. Wilkins Freeman to Petition of Appeal, Filed Dec. 9, 1924.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between HARRY MOHRING, Appellant, and MARY E. WILKINS FREEMAN and SALLIE B. FREEMAN, Respondents.	On Appeal from the Prerogative Court. Answer to Petition of Appeal.

The answer of Mary E. Wilkins Freeman the above named appellee to the petition of appeal of Harry Mohring the above named appellant.

This appellee not admitting the truth of all or any of the matters in the said petition of appeal contained for answer thereto nevertheless admits that a decree was on September 23rd, 1924, made and entered in the New Jersey Prerogative Court in the above entitled cause for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said decree this appellee begs leave to refer thereto when the same shall be produced.

This appellee is advised and believes that the said decree is agreeable to equity; and she prays that the same may be affirmed with costs to be taxed in favor of this appellee.

THOMAS BROWN,
Proctor for and of counsel with appellee Mary E. Wilkins Freeman.

Answer of Sallie B. Freeman to Petition of Appeal, Filed Dec. 10, 1924.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between HARRY MOHRING, Appellant, and MARY E. WILKINS FREEMAN and SALLIE B. FREEMAN, Respondents.	On Appeal from Prerogative Court. Answer of Sallie B. Freeman, respondent to the Petition of Appeal.

The answer of Sallie B. Freeman, a respondent, to the petition of appeal of Harry Mohring, the above named appellant.

This respondent not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto neverthleess, admits that a decree was on the 23rd day of September, 1924, made and entered in the Prerogative Court in the above entitled cause, but as to the substance and form of the said decree this respondent begs leave to refer thereto when the same shall be produced?

This respondent is advised and believes that the said decree is valid and she prays that the same may be affirmed, with costs to be taxed in favor of this respondent.

R. E. & A. D. WATSON,
Proctors for and of Counsel with
Sallie B. Freeman, Respondent.

Exhibit.

WILL.

IN THE NAME OF GOD, AMEN:

I, CHARLES M. FREEMAN, of the Borough of Metuchen, in the County of Middlesex and State of New Jersey, being of sound and disposing mind, memory and understanding, do hereby make, publish and declare this, my last will and testament, in manner and form following, that is to say:

1. I do order and direct that all my just debts and funeral expenses be paid by my executor hereinafter named as soon as conveniently can be done after my death.

2. I desire and direct that my body be cremated and request that my executor hereinafter named dispose of my ashes according to instructions given him verbally.

3. I give and bequeath to my friend, Harry Mohring, now in my employ at Metuchen, the sum of ten thousand dollars.

4. I give and bequeath to Letty Patterson, an old and faithful servant, the sum of one thousand dollars.

5. I give and bequeath to my sisters, Nellie Bloomfield Freeman, Jane Parker Freeman, Augusta Stockton Freeman and Sally Bostwick Freeman, each the sum of two hundred dollars.

6. I give and bequeath to my wife, Mary E. Wilkins Freeman, now living separate and apart from me, the sum of One dollar.

7. In case any of the above named beneficiaries shall not survive me, the bequests to such as shall not be living at the time of my death shall be null and void, and the amount or amounts thereof shall form part of my residuary estate.

8. It is my will, and I order and direct that all of the foregoing bequests shall be paid to the respective beneficiaries, living at the time of my death, free of inheritance or other taxes, either under the laws of New Jersey or of any other State, and that all such taxes, by whatever name called, be paid out of the funds of my estate.

9. All the rest, residue and remainder of my estate, wheresoever situated and of whatsoever it shall consist, I give, devise and bequeath to my friend Harry Mohring, to have and to hold the same, to him and his heirs forever. This bequest is made in appreciation of a loyalty and devotion which I have appreciated and which I have failed to receive from those nearer by ties of blood, marriage and business.

10. I hereby nominated, constitute and appoint the above named Harry Mohring sole executor of this, my last will and testament, with full power and authority to sell and convey any and all real estate of which I may die seized, within or without the State of New Jersey, and I hereby order and direct that no bond be required of my said executor, either in the State of New Jersey or elsewhere.

IN WITNESS WHEREOF I have hereto set my hand and affixed my seal this twelfth day of July,

in the year of our Lord One Thousand Nine Hundred and Twenty-two.

CHARLES M. FREEMAN (Seal)

Signed, sealed, published and declared by the above named testator, Charles M. Freeman, as and for his Last Will and Testament, in the presence of us, who, at his request, and in his presence and in the presence of each other have hereunto subscribed our names as witnesses.

Interlineation on page 2 first made.

W. H. K. Davey, 155 Academy St., Belleville, N. J.

Louisa B. Davey, 155 Academy St., Belleville, N. J.

Louis Mohring, 37 W. 35 St., Bayonne, N. J.

Caveat.

(Filed March 12, 1923.)

MIDDLESEX COUNTY ORPHANS' COURT.

In the Matter of The Probate of the Will of CHARLES MANNING FREEMAN.	Caveat against probate of will.

To Charles Forman, Surrogate of the County of Middlesex:

I, Mary E. Wilkins Freeman, wife of next of kin of Charles Manning Freeman, late of the Borough of Metuchen, County of Middlesex and State of New Jersey, who died on or about the seventh day of March, 1923, do hereby caveat and protest against admitting to probate any paper purporting to be the lest will an dtestament of the said Charles Manning Freeman, until examination and decree thereon by the Orphans' Court of the said County of Middlesex.

Dated, Perth Amboy, N. J., March 9th, 1923.

MARY E. WILKINS FREEMAN,
Executrix.

THOMAS BROWN,
Attorney of Caveatrix.

Caveat.

(Filed March 14, 1923.)

MIDDLESEX COUNTY ORPHANS' COURT.

In the Matter of The Probate of the alleged Will of CHARLES M. FREEMAN, deceased.	Caveat.

To Charles Forman, Surrogate of the County of Middlesex:

I, Sally B. Freeman, one of the sisters and next of kin of Charles M. Freeman, late of the Borough of Metuchen, who died on the seventh day of March, nineteen hundred and twenty-three, do hereby caveat and protest against the admitting to probate of any paper writing purporting to be the last will and testament of the said Charles M. Freeman, until examination and decree thereon by the Orphans' Court of the County of Middlesex.

Dated at New Brunswick, N. J., March 9, 1923.

SALLIE B. FREEMAN.

Caveat.

(Filed April 3, 1923.)

MIDDLESEX COUNTY ORPHANS' COURT.

In the Matter of The Estate of CHARLES MANNING FREEMAN, deceased.	Caveat against probate of will.

To Charles E. Forman, Surrogate of the County of Middlesex:

I, Mary E. Wilkins Freeman, wife of Charles Manning Freeman, late of the Borough of Metuchen, County of Middlesex and State of New Jersey, who died on the seventh day of March, 1923, do hereby caveat and protest against admitting to probate any paper purporting to be the last will and testament of the said Charles Manning Freeman and particularly the paper dated July 12th, 1922, purporting to be the last will of the said Charles Manning Freeman and purporting to have been signed in the presence of a witness by W. H. K. Davey, 155 Academy Street, Belleville, N. J., Louisa B. Davey of the same address, and Louis Mohring, 37 W. 35th Street, Bayonne, N. J., making one Harry Mohring, the principal beneficiary and sole executor, until examination and decree thereon by the Orphans' Court of the said County of Middlesex.

Dated, Perth Amboy, N. J., April 2nd, 1923.

MARY E. WILKINS FREEMAN.

Opinion.

(Filed November 20, 1923.)

MIDDLESEX COUNTY ORPHANS' COURT.

In the Matter of The Probate of the Will of CHARLES M. FREEMAN, deceased.	On Probate Conclusions.

KIRKPATRICK, Judge.

Doctor Charles M. Freeman died a resident of this County on the Seventh day of March, Nineteen Hundred and Twenty Three. At the time of his death Doctor Freeman was about 64 years of age. He left a Will, the subject of this inquiry, dated July the Twelfth, Nineteen Hundred and Twenty-two.

Doctor Freeman about 20 years ago married Mary E. Wilkins, a celebrated American writer. Doctor Freeman and his wife lived together in Metuchen, New Jersey, from the time of their marriage in apparent happiness and accord, until sometime in 1919 or 1920. At this time Doctor Freeman and his wife separated and did not thereafter live together. It does not appear very clearly from the testimony whether any particular or specific incident or circumstance in their life brought about this separation, but it seems clear that the habits of Doctor Freeman continued over a long period of time, as hereinafter mentioned, had so completely changed his character, temperament and disposition as to make continued living together not only uncomfortable for Mrs. Freeman, but dangerous as well.

Doctor Freeman in his early life studied medicine, having graduated from the Classical Department of Rutgers College and from the Medical School of Columbia University. He never, however, actively practiced medicine, but was for sometime connected with the Bureau of Immigration in a medical capacity.

During practically all of his adult life Doctor Freeman was engaged in the Lumber, Coal and Building Material business in Metuchen, N. J., being for many years the President and General Manager of the corporation of Manning Freeman and Son, which Company was successful and did a large business throughout the central portion of Middlesex County.

Doctor Freeman never had any children. At the time of his death his next of kin and heirs at law were his widow, Mary E. Wilkins Freeman and his four sisters, Sallie B. Freeman, Nellie B. Freeman, Jane Freeman and Augusta Freeman. None of his sisters ever married, and all work in some capacity to support themselves. In his early life and up to a period shortly before his death, Doctor Freeman was a cultured and brilliant man. He was a desirable and congenial companion and a man with whom it was a pleasure to converse and to meet socially and otherwise. This is abundantly disclosed by the testimony of many of his intimate friends. The testimony, uncontradicted, disclosed that Doctor Freeman even in early manhood over indulged in alcoholic drink to such an extent that as early as 1907 he either had suffered from delirium tremens or had been on the verge of an attack of that malady. He also during that period, that is as early as 1907, and from that time on to the time of his death, used Veronal, a drug described by medical experts as a sedative or hypnotic

medicine taken for the purpose of inducing sleep. There is also testimony that he had taken morphine and other opiates, but apparently in no very great quantity nor over a very extended period.

The Doctor's use of liquor or of drugs or both, so affected his condition that sometime between 1909 and 1911 he became an inmate of an institution for the treatment for drug users and persons with drink habit. The testimony does not disclose the result of the treatment received by Doctor Freeman in this institution. We may, however, infer that it was beneficial, because we find that he did not again become an inmate of any institution until 1919 when at the suggestion of his friend Mr. Dinwiddie he went to an institution at Belle Meade, New Jersey. At that time he was unable to get into his car without assistance and did not recognize the road that he was traveling on. He was willing to leave the car at Belle Meade only upon the promise that he could get a drink upstairs. He was utterly helpless mentally and almost so physically. Doctor Freeman remained at Belle Meade for a period of two weeks and then having responded to treatment was liberated in a much improved condition.

Doctor Freeman also was a patient at Dr. Towne's Sanatorium in New York City, but it does not appear whether this was before or after he was at the Belle Meade Institution. Nor does it appear how long he remained at Dr. Towne's Sanatorium.

In 1920 Doctor Freeman voluntarily went to the State Hospital for the Insane at Trenton, being induced to do so through the urging of his friend Mr. Dinwiddie. At the end of four weeks he escaped and came back to Metuchen. In August, 1921, he was again committed, after an examination

by two physicians, to the State Hospital at Trenton and remained until October 3rd, 1921, when he was released upon Habeas Corpus proceedings instituted in his behalf in the Court of Chancery. At the time of his release in October, 1921, the testimony discloses that he was greatly improved in physical appearance and gave evidence of marked improvement in his mental condition and that this improvement continued for a period of about two months after his release. Early in December, however, Doctor Freeman, according to the testimony, commenced again to over indulge in alcohol. Early in the year 1922 Doctor Freeman, who up to this time had lived in an apartment on Volkmar Place over the garage used in connection with the lumber business, discontinued the services of the family of one Breen with whom he had up to that time been living and engaged the proponent Harry Mohring and his wife, to come and live with him and care for his physical needs. From that time on to the time of his death Doctor Freeman continued to live in the same apartment and the proponent and his wife continued to administer to his physical wants.

In March, 1922, Doctor Freeman secured the services of an old family servant, Lettie Patterson, who came to live in his family and continued there until the time of Doctor Freeman's death. Lettie Patterson was called as a witness and testified that during the year that she was there, the Doctor drank and became intoxicated once a week so that he could not control himself. His speech was thick and his thoughts scattered and that during that time he took drugs. That on the day that he went to execute the will he had been drinking that day, his condition was very bad and he could not walk very good and could not talk very good and he did

not know just what he was doing. He had been drinking practically all day long that day. That he had had some drugs a couple of days before that. She also testified that she put daily, while she was with him, a half pint of liquor under his pillow and that he would drink it during the night. That this happened every night while she was with him. Her testimony is entitled to the utmost consideration, not only because of her demeanor upon the stand, her apparent sincerity and intelligence, but also because her testimony must be considered as being against her own interest, because by the terms of the will under attack she was a beneficiary to the extent of a Thousand Dollar legacy, which if the will is denied probate must fail.

During the last years of his life it appears that Doctor Freeman had alienated himself from many, if not all of his former friends and companions, and that the last two years of his life his social intercourse was with persons much younger than himself and of a different social and intellectual station from those with whom he had spent the earlier years of his life. This briefly and without mentioning specifically the great mass of testimony from which this sketch is fabricated, shows a picture of the outstanding circumstances connected with the life and career of this unfortunate man.

After Doctor Freeman had been released from the State Hospital in October, 1921, he to a certain degree managed the business of his corporation, but in May, 1922, his condition had become such that creditors of the corporation refused to continue to do business with the corporation if Doctor Freeman continued in its management. Some of the creditors discussed the advisability of having a receiver appointed, because of Doctor Freeman's mismanagement or lack of management of the corporation's affairs. However this step was not taken,

but instead Doctor Freeman was persuaded to make an assignment of his shares of stock in the corporation to Russell E. Watson, a reputable officer of this court, as a Trustee. This assignment was made and Mr. Watson was elected the president of the corporation and its business was thereafter conducted by Mr. Watson and Mr. Breen, who had long been the superintendent and active manager of the corporation's business. Shortly after Doctor Freeman had made this assignment he was introduced by Mr. Louis Mohring, the father of the chief beneficiary under the will offered for probate, to Mr. William H. K. Davey, an attorney of this state, living in Belleville and practicing in New York City. Doctor Freeman consulted with Mr. Davey with looking to the filing of a bill in chancery to set aside the assignment of his stock to Mr. Watson as trustee, and also at the same time discussed with him the making of a new will. At that time Doctor Freeman wrote out instructions for the preparation of his will in his own hand and a will was prepared and executed by him some time in June. This will did not make any provision for his sisters. The discussion concerning the making of the will took place in Doctor Freeman's automobile in his garage with Doctor Freeman and Mr. Davey seated in the automobile, Mr. Louis Mohring, the father of the chief beneficiary, standing outside of the automobile, very near by it, Mr. Harry Mohring being in and out of the garage during all of the time. This discussion extended over a considerable period of time, although I do not recall that any of the details of the discussion is testified to by anyone. After this lengthy discussion all parties went to the dining room in Doctor Freeman's home and there Doctor Freeman wrote a lead pencil memorandum,

which has been offered and marked as an Exhibit in this case.

At the time this memorandum was written there were present in the room, Mr. Davey, Mr. Louis Mohring, Lettie Patterson and Mrs. Harry Mohring and Mr. Harry Mohring during a portion of the time. Mr. Davey reduced the will to writing and it was executed at his house at a later date being witnessed by Mr. Davey, by Mrs. Davey and by Mr. Louis Mohring.

Later the present will was prepared, we are told by Mr. Davey, because Doctor Freeman was afraid that his sisters might say that because they had not been mentioned in the other will, that he had forgotten them. This second will was executed on July 12th, 1922, at Mr. Davey's house in Belleville, N. J., in the presence of Mr. Louis Mohring, the father of the chief beneficiary, Mrs. Davey, the wife of the scrivener of the will and Mr. Davey as subscribing witnesses, and present in attendance upon its execution were Mr. and Mrs. Harry Mohring and their children and Lettie Patterson. Doctor Freeman arrived at Mr. Davey's house in company with the persons above named except Mr. and Mrs. Davey, early in the evening of July the 12th. Mr. Davey had been away fishing and they were compelled to wait for some little time on Mr. Davey's veranda until he was ready to proceed with the execution of the will. Yet none of the witnesses can testify to any incident nor happening in that long wait in which Doctor Freeman engaged either in conversation or any activity that would lend to support their testimony that he was competent, sane and knew what he was doing, except the single incident of his having dropped cigar ashes on the floor and having suggested that the ash tray should be painted a different color than the porch screen.

The subscribing witnesses to the execution of the will all testify that Doctor Freeman was sober and appeared to be of sound mind and thoroughly competent to make a will. In this they are supported by Harry Mohring and by his wife, but contradicted by Lettie Patterson. They all testify that all of the legal requirements for the valid execution of a will were complied with and Mr. Davey testifies that the will was read to Doctor Freeman paragraph by paragraph and after one or two minor changes, signed by him in the presence of all three witnesses. The will consists of three typewritten pages, fastened together with blue silk ribbon. The last page contains merely the testimonium clause, the attestation clause, the signatures of the testator and of the subscribing witnesses. No part of the body of the will appears on the last page. In physical make up, the will provides first for the payment of debts, then for a legacy of Ten Thousand Dollars to Harry Mohring, then the bequest of a dollar to Mrs. Freeman, a Thousand Dollars to Lettie Patterson, Two Hundred Dollars each to his four sisters, the appointment of the residuary legatee as his executor and then the residuary clause in which all of his estate is given to Harry Mohring, the same individual mentioned in the first legacy of Ten Thousand Dollars. The physical make up of the will is in these particulars unusual and seems not to be based upon any logical reason.

After the death of Doctor Freeman caveats against the probate of his will were filed by his widow and by Sallie B. Freeman, one of his sisters, attacking the probate of the will upon the ground that it was the result of undue influence, that at the time that it was made Doctor Freeman did not possess testamentary capacity and that the will was

the result of fraud. I am unable to find in the testimony any support for the accusation of fraud. There is no direct testimony from which fraud could be determined and the argument of counsel that the manner in which the will is fastened together and the fact that no part of the body of the will appears upon the same page with the signature of the testator, has not convinced me that there was present fraud. I am further supported in this view by the demeanor of Mr. Davey, upon whose shoulders chiefly would fall any accusation of fraud. Upon the witness stand, he appeared to be frank, sincere and truthful in his statement as to the manner in which the will was executed and I feel that the allegation of fraud must fail.

It has been argued at length and with vehemence by the counsel for the proponents, that the court can not set aside the will in question without having found that Mr. Davey was guilty of fraudulent practice, that he was a forger and a perjurer. This argument does not impress the court at all. Mr. Davey may very well have been deceived into believing Doctor Freeman possessed a much greater mental capacity than he had. He may very readily have been mistaken and honestly mistaken, as to Doctor Freeman's mental capacity. In fact I am inclined to believe that he was over credulous and that he did not use the care that a more prudent and less credulous individual would have done in the preparation and execution of the will in question. If he had attempted to perpetuate a fraud upon the court, I do not believe he would have left open so many doors for the entry of suspicion.

Thus we have before us the picture of this man, feeble physically, almost blind, advanced in years and possibly aged beyond his actual years by his excessive alcoholic indulgence, separated from his

friends and acquaintances of earlier years, estranged from his wife, and refusing to associate with his own sisters, surrounded by strangers in the home of a lawyer, a stranger to him, to all of his earlier associates, and only a casual acquaintance of two or three weeks, gathered together for the purpose of executing a solemn document. There was present no disinterested person and the court does not have the benefit of a single disinterested witness to what transpired at the time of the execution of this will. No person disinterested in the result of this case can testify as to its execution. None of the subscribing witnesses attempt, with the exception of Mr. Davey, to recite any facts showing that they had attempted in any manner to find out whether or not Doctor Freeman possessed testamentary capacity. He was surrounded at the time of the execution of the will by those who would benefit by its terms, or by the friends of those who would so benefit. He had no opportunity to secure the benefit of independent advice.

Where confidential relations exist between a testator and the principal beneficiary "slight additional evidence" will place on the beneficiary the burden of showing that testator's mind was not unduly influenced.

Re: Morrisey's Will, 91 N. J. Equity, 480;
Sparks Case, 63 N. J. Eq., p. 242.
Dale v. Dale, 38 N. J. Eq., 274.

Doctor Freeman made Mohring his chief companion and called him "son"; he was constantly in his company; they rode miles together and frequented road-houses and places of entertainment together. Harry Mohring was the confidant of Doctor Freeman in business and personal affairs

and he and his wife entertained Doctor Freeman at cards and generally they lived a family life together. It was through Louis Mohring that Mr. Davey was introduced to Doctor Freeman. From that time to the execution of the will the same faces appear constantly on the screen, and there was abundant opportunity to exploit and coupled with the circumstances surrounding the execution of the will show the confidential relations together with slight additional evidence sufficient to shift the burden of proof to the proponent to show that the will was not the result of undue influence.

The proponent has stoutly protested that he exerted no influence whatever over the testator in the making of his will, and that while he knew the will was being executed he did not know he was a beneficiary under it and that he had never discussed with the testator the provisions of his will.

I feel that his testimony must be believed and that he has satisfactorily sustained the burden of proof that was cast upon him and that the will was not the result of undue influence exercised over the testator by the proponent.

It has been repeatedly held that the burden of neutralizing the presumption of undue influence may be met by the testimony of those implicated, where the weight of that testimony is, as it appears in this case, impeccable and convincing.

> In re: Morrisey's Will, 91 N J. Esq., p. 480 and cases therein cited.

I am satisfied that neither the charge of fraud or of undue influence has been sustained.

The third reason urged by the Caveatrices—lack of testamentary capacity—remains to be considered. It has already been mentioned that Doctor Freeman was a constant periodic drinker during

the major portion of his life. As already mentioned, his condition at times became so bad because of the effect of his indulgence in alcohol that it became necessary for his own protection and the protection of others that he be confined in institutions for the care of those mentally afflicted. He was pronounced insane by two physicians in 1921, at the time of his committment to the State Hospital for the Insane. He was found by the physicians in charge at the State Hospital to be insane. His physical condition indicated the ravage that alcohol had made in his system.

After having been in the Hospital at Trenton for about six weeks he was released by Order of the Court of Chancery on Habeas Corpus proceedings. The file of the proceedings in the Court of Chancery releasing him have been offered as Exhibits in this case because it is claimed by the Proponents that the Order of the Court of Chancery directing his discharge from the State Hospital declares him to be sane. It appears in the recitals preceding the Order that the following language has been used, "and it appearing to the Chancellor that the said Charles M. Freeman is sane, etc.," then follows the Order directing the Discharge.

The Vice-Chancellor in his conclusions says "there appears to be no condition of the kind known as insanity—at least under the terms of the Asylum Act, and if there is no contest on the part of Mrs. Freeman nor the State, nor any further testimony to be offered, then I see nothing to be done under the Statute, than to direct the discharge of the patient." I take it therefore that the determination of the Vice-Chancellor was merely that the deceased should be discharged from custody and this conclusion was arrived at by him, after only hearing, in an uncontested case, one side. But

aside from that it is my understanding that while the findings of lunacy or insanity in a collateral matter are competent evidence, they are not final upon the question of a mental capacity to make a will. The whole effect of the findings of the Court of Chancery was merely that Doctor Freeman need not be longer confined and no finding was made as to his mental capacity to transact business or make a will.

The Caveatrices called as expert witnesses to show the mental capacity of Doctor Freeman, Doctor Henry M. Cotton, Medical Director of the State Hospital for the Insane at Trenton, Doctor William E. Ramsay, a physician practicing in Middlesex County with a number of years' experience specializing in mental diseases, and Doctor Alfred L. Ellis of Metuchen a general practitioner. All of these men had known Doctor Freeman in his life-time and at one time or another examined him to ascertain his mental condition. Doctor Ramsay had known him for many years and had at one time been intimate with him socially. Doctor Ellis had lived for many years in the same community as Doctor Freeman. Doctor Cotton had had opportunity to observe Doctor Freeman upon his two periods of confinement in the State Hospital at Trenton. Each of these physicians therefore was able to testify, not only in answer to the hypothetical question propounded, but from their personal observation of Doctor Freeman.

Doctor Cotton testified that upon his first admission to the Asylum he was very nervous, confused and restless. His eye-sight very bad. His reflexes were very sluggish. The pupils were very stiff. He suffered some from hardening of the arteries. He had an enlarged liver. Very shaky. Mentally he was restless, confused, had been smoking to excess and used alcoholic drinks to excess

for a number of years and had delirium tremens. Had lost interest in his work and home affairs. He had hallucinations of sight and hearing. He had some delusions that were not fixed, however. His memory was very defective. He had been a dispomaniac all his life. He was considerably deteriorated mentally. Had no plans for the future. He showed little if any improvement and escaped from the hospital at the end of twenty-six days. And that at the time he was in the hospital he had paranoid ideas, with marked lack of judgment, showing a dementia, a mental deterioration, designated by Doctor Cotton as alcoholic deterioration.

That upon his second admission in October, 1921, his condition was much the same and he had been drinking to excess and taking a large amount of Veronal and seemed to be more deteriorated than at the time of his first admission, showing a progressive disease. His blood pressure was very high. He was almost blind. He had very marked delusions about his wife, claiming that she was intimate with the chauffeur, but did not suffer at that time from hallucinations. That there was a very marked progression of his mental symptoms, with marked paranoid ideas against his wife and the doctor comparing his condition upon his second admission with that of his first admission considered that he had gone from bad to worse mentally. And in answer to a hypothetical question he testified unequivocally, that in his judgment Doctor Freeman lacked testamentary capacity on July 12th, 1922. He further testified that Doctor Freeman's condition was much worse in 1921 than in 1920. That at that time he had all the symptoms of a chronic alcoholic deterioration. He testified further that he had delusions of infidelity upon the part of his wife. Doctor Cotton definitely stated from his experiences with other cases that Doctor

Freeman's condition was one of chronic alcoholic deterioration with lack of judgment, with periods of hallucinations, with delusions, and taken in connection with his use of drugs and alcohol would make him a great deal worse.

He also testified on cross-examination in answer to direct questions that the written memorandum which has been heretofore mentioned indicated to him that it was the result of an insane mind. And that the will itself showed on its face lack of testamentary capacity.

Doctor Ellis testified that he had known Doctor Freeman nineteen years. Had been one of his physicians. That he had known him socially. Testified that he was not mentally able to make a will on July 12th, 1922.

Doctor William E. Ramsay testified that he had known Doctor Freeman many years. I think from about 1889 or 1890. That is some thirty years. They had been quite intimate in their early manhood. That the witness had not seen much of Doctor Freeman in the last ten or fifteen years because Doctor Freeman's change of character was so marked that their relations were not as agreeable or cordial as in early life. This change in Doctor Freeman towards Doctor Ramsay and other friends was attributed by the witness, to his excessive use of alcohol. Doctor Ramsay was one of the doctors who committed him to the State Hospital in 1921. At that time he was rather depressed, his responses were slow, he was indifferent to his condition, his surroundings, his eye-sight was very poor, he had quite a distinct tremor, and lacked proper conception of his surroundings or of his condition. He testified that he could not say that there was an acute intoxication at that time. That there was a chronic condition from which he was suffering at that time and that this condition was an advanced

stage of chronic alcoholism. He testified further that with the excessive use of alcohol a marked change in the structure of the brain takes place. The first action of alcohol is a functional disturbance. The continued use of it produces a structural disturbance. This structural disturbance is to a very limited degree repairable. That Doctor Freeman had reached this stage of structural disturbance and that chronic alcoholism the disease from which he was suffering, is a chronic condition that does not improve. And that the stopping of the use of alcohol would improve the condition of the patient suffering from chronic alcoholism only in so far as it would improve the functional disturbance, but the structural condition would not change.

Thus we have the testimony of three physicians who were personally acquainted with Doctor Freeman, that he was mentally incapable of making a will at the time this will was made.

Against this the proponents called Doctor Funkhouser, the assistant medical director at the State Hospital and Doctor Rostow, who had for a time been connected with the medical staff of that institution. Doctor Funkhouser substantially agrees with Doctor Cotton, Doctor Ramsay and Doctor Ellis that when alcoholism has reached the chronic stage that there is no recovery from it and testifies that he is unable to state whether or not Doctor Freeman's condition was that of a chronic alcoholic.

Having in mind that he was called by the proponents and interpreting his testimony in the most favorable light to them, it cannot be said that he contradicts materially the testimony of Doctor Cotton, Doctor Ramsay and Doctor Ellis.

Doctor Rostow's testimony is that of an ordinary physician having had a limited experience

with mental diseases and while it tends to contradict that of the other physicians is not in my opinion sufficiently credible to cause me to disregard their testimony.

It seems to me also that the very physical construction of the will itself and its provisions indicate that the will was the result of a disordered mind. It contains a legacy of Ten Thousand Dollars to Harry Mohring and then disposes of Eighteen Hundred Dollars in other legacies and makes provision concerning the payment of taxes on the estate, etc., and then gives all the rest, residue and remainder to Harry Mohring to whom the Ten Thousand Dollar legacy had earlier been given. It has been argued that this is a perfectly natural disposition because he wanted to be sure that Mohring received the largest portion of his estate. If this argument correctly states the reason why Doctor Freeman made the provisions in his will, then it certainly indicates that he did not know the estate that he had to dispose of because it is agreed that it exceeds One Hundred Thousand Dollars and this argument itself therefore demonstrates that he did not possess, at the time the will was made, one of the elements required, that is, a knowledge and comprehension of the estate that he had to dispose of.

The will and the written memorandum prepared for an earlier will, but which the will offered closely follows, support the opinion of the physicians that he lacked testamentary capacity.

Counsel for the proponents, as well as counsel for the Caveatrices, have cited many cases, bearing upon the question of the effect of intoxication upon the execution of a will. The present case does not fall in that class of cases, but rather in those cases mentioned in the exception to the rule laid down by Chief Justice Denio in Peck v. Cary,

27 N. Y., 9, 23, which rule has been adopted in this State in a number of cases. Bannister v. Jackson, 45 N. J. Eq., 702 affirmed 46 N. J. Eq., page 593 and many other cases in this State. The rule laid down is as follows: "It is not the law that a dissipated man cannot make a contract or execute a will, nor that one who is in the habit of excessive indulgence in strong drink must be wholly free from its influence when performing such acts. If fixed mental disease has supervened upon intemperate habits, the man is incompetent and irresponsible for his acts. If he is so excited by present intoxication as not to be master of himself his legal acts are void, though he may be responsible for his crimes.

In this case it appears to me that it has been abundantly proven by the witnesses that fixed mental disease had supervened upon the intemperate habits of Doctor Freeman.

Having reached this conclusion it is necessary to determine whether or not the mental impairment resulting from this fixed disease of the brain was sufficient to render him incapable from making the will.

The test of testamentary capacity in this State is that the testator can comprehend the property he is about to dispose of, the objects of his bounty, the meaning of the business in which he is engaged, the relation of each of these factors to the others, the distribution that is made by the will and be able to deal rationally with those elements. The medical testimony shows conclusively that Doctor Freeman's mind was diseased. The effect of that disease was to cause him to suffer from delusions of persecution and that his wife had been unfaithful to him and he had in his mind towards her a fixed feeling of resentment because she had had him committed to the State Hospital, although any

sane man would have known that her act in that regard was only for his own good. He had turned against others who had served him many years, notably Mr. Breen and had taken up and spent the last year of his life with comparative strangers. He became unwarrantedly suspicious of a man who had worked for him for twenty years and against whom he had never felt suspicion while in his normal mental condition.

There is no doubt that he knew the nature of the business that he was engaged in when he made the will. I do not believe that he comprehended the value of his estate at the time his will was made. The will itself would indicate that he did not and the fact that he had left over a hundred thousand dollars to a man who had been in his services only about six months and who had been adequately compensated for the services he had rendered, indicates to me that the will was an unnatural one, the act of a disordered mind. Made in ignorance of the value of the estate thus bestowed upon a comparative stranger or as the result of an insane caprice. Nothing in the services rendered by Mohring to Doctor Freeman over the very short space of time that he had known him would warrant the bestowal upon him of the gift of over one hundred thousand dollars as a reward for services rendered. And I can find nothing in the relations of these parties that would warrant the conclusion that such a disposition was a natural one. I am unable to find anything in the testimony justifying Doctor Freeman in disregarding the natural claims of his wife and sisters. After applying the test above mentioned, while I am convinced that Doctor Freeman knew the general objects of his bounty, the business that he was engaged in at the time the will was made and the distribution that that will made, I am unable to

find that he did know the value of the estate that he had to dispose of. And I am of the opinion that he did not have the mental capacity to deal rationally with each of those elements. His delusions of persecution, his unwarranted resentment of his wife's act in having him committed to the State Hospital for the Insane, his bitterness towards his sisters, were all the results of a disordered and diseased mind directly affecting the disposition of his estate.

In conclusion I find that this will was made by Doctor Freeman, not as the result of undue influence exercised upon him, but was made by him at a time when he lacked the necessary mental capacity to make a valid and effectual will and in view of this finding a decree will be made denying the will probate.

JOHN P. KIRKPATRICK,
Judge.

Decree in Orphans' Court.

(Filed November 23, 1923.)

MIDDLESEX COUNTY ORPHANS' COURT.

In the Matter of The Estate of CHARLES MANNING FREEMAN, deceased.	On Petition, etc. Decree.

This matter being opened to the court by Theodore Strong, proctor, and William H. K. Davey, of counsel, for proponent, and Thomas Brown, of

counsel and proctor for caveatrix, Mary Wilkins E. Freeman, and R. E. and A. D. Watson, proctors and of counsel for caveatrix, Sallie B. Freeman, and it appearing that Harry Mohring, the executor named in a paper writing dated July 12, 1922, purporting to be the last will and testament of Charles M. Freeman, deceased, late of the Borough of Metuchen, in the County of Middlesex and State of New Jersey, duly presented the said paper to the Surrogate of the County of Middlesex aforesaid, for probate, and it appearing that caveats against the probate of said will or paper writing had been duly filed with said Surrogate, and citations having been issued to all persons in interest and returned duly served and the matter coming on to be heard, and the court having taken testimony and examined into the matter and being of the opinion that the said Charles M. Freeman, at the time of executing said paper writing was not of sound and disposing mind, memory and understanding, and it appearing that said estate is valued at the sum of $175,000 according to the inventory this day filed by the administrator pendente lite;

It is thereupon on this 23rd day of November, 1923, ordered, adjudged and decreed that the aforesaid paper writing offered for probate in this matter is not the last will and testament of the said Charles M. Freeman, deceased, and that probate of the same is hereby denied, and it is further ordered that a counsel fee of $4,500.00 be paid by Thomas H. Hagerty, administrator pendente lite, out of the estate of Charles M. Freeman to each of the following named proctors and counsel, Theodore Strong, William H. K. Davey, R. E. and A. D. Watson, and Thomas Brown, and that said administrator also pay out of said estate a fee of $250.00 each to Doctors Henry A. Cotton, Edgar

B. Funkhouser and Clarence Rostaco and the sum of $300 to Doctor William E. Ramsay for services in the matter of the probate of said paper writing and a further sum of $70 to Thomas Brown for expenses in connection therewith.

JOHN P. KIRKPATRICK,
Judge.

Conclusions.

(Filed August 16, 1924.)

BUCHANAN, V. O.

This is an appeal from a decree of the Middlesex County Orphans' Court denying probate to a proper writing (dated July 12th, 1923) offered for probate as the last will and testament of Charles Manning Freeman, deceased, that court having reached the conclusion from a careful consideration of the very voluminous testimony and other evidence that the testator lacked testamentary capacity at the time of the execution of the document *sub judice*.

The facts and the reasons resulting in this conclusion are set forth at length in the opinion filed by Judge Kirkpatrick, and inasmuch as the conclusion of this court, after reviewing the evidence and proceedings, coincides with that of the Orphans' Court, so far as concerns the point mentioned, they need not here be reiterated.

I do not however desire to be understood as concurring in the conclusion of the court below that the proponent sustained the burden of proving absence of undue influence.

The case is one in which the costs of appellant and respondents should be paid from the estate.

Decree of Prerogative Court.

(Filed September 25, 1924.)

NEW JERSEY PREROGATIVE COURT.

HARRY MOHRING, Appellant, and MARY E. WILKINS FREEMAN and SALLIE B. FREEMAN, Respondents.	On Petition, of Appeal. Decree.

Harry Mohring, proponent of, and the executor, devisee and one of the legatees named in, a paper writing purporting to be the last will and testament of Charles M. Freeman, made in the County of Middlesex, State of New Jersey, bearing date the 12th day of July, nineteen hundred and twenty-two, having filed his petition of appeal from a decree of the Middlesex County Orphans' Court denying probate to said paper writing, and this court having considered the record and proceedings and the briefs submitted by counsel for the appellants and respondents, and the court having concluded that the said decree should be affirmed;

It is thereupon on this 23rd day of September, one thousand nine hundred and twenty-four, on motion of Thomas Brown, proctor and of counsel with Mary E. Wilkins Freeman, respondent, ORDERED, ADJUDGED AND DECREED that the said order of the Middlesex County Orphans' Court made on the twenty-third day of November, 1923, denying probate to said paper purporting to be the last will, and testament of Charles Manning Freeman, deceased, be and the same is hereby affirmed; and

It is further ordered that the costs of appellants and respondents be taxed and paid from funds of the estate;

It is further ordered that the following sums be and the same are hereby adjudged and determined as and for reasonable allowance by way of counsel fees to the respective parties, to wit: To the appellant, Thirty-five hundred Dollars; to the respondent, Mary E. Wilkins Freeman, Two thousand Dollars; and to the respondent, Sallie B. Freeman, Two thousand Dollars; and that the said allowances be paid to the said parties respectively, or their respective proctors, out of the funds of the said decedent's estate.

E. R. WALKER,
Ordinary.

Respectfully advised.

MALCOLM G. BUCHANAN,
Vice Ordinary.

Testimony.

MIDDLESEX COUNTY ORPHANS' COURT.

In the Matter of The Paper Writing Purporting to be the Last Will and Testament of CHARLES M. FREEMAN, Deceased.	On Caveat.

Transcript of stenographer's notes of evidence in the above entitled cause, taken before Hon. JOHN P. KIRKPATRICK, Judge, at the Middlesex County Court House in the City of New Brunswick, New Jersey, on the sixth day of April, A. D., 1923, at 11:05 A. M.

APPEARANCES:

THEODORE STRONG, Esq., WILLIAM H. K. DAVEY, Esq., for the Proponents.

THOMAS BROWN, Esq., for the Caveator Mary E. Wilkins Freeman.

RUSSELL E. WATSON, Esq., for the Caveators Nellie B. Freeman, et als.

Mr. Brown: I am under the impression that all that is expected here today, between counsel, attempt to be made to make formal proof of the execution of the will and that those opposed to its probate will be heard later.

Mr. Strong: Attempt—no question but proof will be made.

The Court: That has been the custom. That has

always been followed out in this County and I see no reason why we should depart from it. Would be rather a hardship upon the Caveators to expect them to be present with witnesses until they knew what they have to meet. No pleadings of that character to give them notice.

Mr. Brown: Great number of witnesses—many of them coming from distant points.

The Court: I want to suggest to counsel that, in this case, while we will not go any further today than counsel has advised is necessary, in examination of the subscribing witnesses to the will, that the court would desire that no very long adjournment be taken; that is that the matter be set down for a very early day and continue the hearing, if counsel feels it should be continued. These matters are apt to drag along if we do not keep them moving, and I want to keep the docket; that is reasonable clear now. I want to keep it that way as much as possible. On the other hand I do not expect to subject counsel to any unnecessary hardship in fixing of date. In other words, I would like, when you get through today, I would like counsel to agree on as early a date as possible to continue the matter.

Mr. Watson: I was going to suggest May 4th. A special reason. In the first place there is really a great deal of preparation in the case. The case will go into the last few years of testator's life in detail. One of the important witnesses, not a party to the suit, yet much interested in the outcome, Miss Nellie Freeman, is at Havana, Cuba, and must make a trip special to this country for this hearing. It is impossible for her to get away during the next two or three weeks. That will be four weeks from today. I think that will give counsel time for preparation.

The Court: Set down for May 2nd, May 3rd, and part of May 4th, 1923.

Mr. Brown: I think it ought to be established that proper citation has been issued.

Mr. Strong: It is also a matter of agreement between counsel concerned that after the testimony of the caveators is in that the proponents shall have further time, reasonable time in which to meet that testimony, so that after they get through with their proof say on the second, third and fourth of May, we would have an opportunity, at least a week or two, in which to bring forward our proof—we cannot do it the next day.

The Court: We will have to meet that when we meet it. I am not going to make an agreement as to what time I will give you.

Mr. Brown: I find a citation here that was not sent. I have signed it and now return it.

Mr. Strong: Record clear now?

The Court: It seems to be. You may proceed.

Mr. Strong: May it please your Honor, paper writing purporting to be the last will and testament of Charles M. Freeman, deceased, bearing date July 12th, 1922, was offered for probate and caveats against that probate have been filed, citations issued and returnable today and the matter now comes on for proof.

The Court: Before proceeding I would like to have an opening by the caveators.

Mr. Watson: If your Honor please, I think it is sufficient to say at this time that the defense is undue influence and mental incapacity. I am not really in position to set it out in any great detail. The defense will revolve about those two issues. It will establish that this residuary legatee had been acquainted with the testator only a few months. Lived with his family and lived with the

testator during that time; show that the testator was of weak mentality, but extremely open to suggestion and that during the period within which this will was executed he was mentally incapable of executing any legal document.

The Court: Are you prepared at this time to say that your defense will be limited to those two items?

Mr. Watson: No, I am not. Those will be the two principal grounds of defense. I will say to the court, at this time, it may also be a ground for defense that the testator did not, in fact, execute this document.

Mr. Brown: If your Honor please, the defendant, or party that I represent, states generally too, as a defense to the probate of this will, two major grounds of undue influence and that of mental incapacity. I think that it will be shown, in the course of the trial, that attendant upon the mental incapacity is that of physical incapacity. I think it will be shown that Dr. Freeman was without his sight and had other physical inabilities that rendered him unable to make a will in the form that this is made. I would like to have the court bear with the objectors to this will and allow them the chance or opportunity to make more definite their issue before the next hearing and furnish a copy of it to the proponents of the will or his counsel.

The Court: I suppose it is only for the purpose of getting issue before the court that any statement is made, that counsel are required to make any statement at all, Senator. It is merely that I wanted to know what counsel were able to tell me at this time as to their defense in the matter, and so far as I can see it is not necessary that any statement be made in writing either to the court or counsel on the other side. If you are taken by

surprise at any time I am going to give you every opportunity that is proper to meet any issue that arises.

Mr. Brown: As to the probate of this will today, we deny that this is the will of Dr. Freeman, that is the decedent, or executed by him.

The Court: Any question as to the execution? Or don't you know at this time? Aside from the one you outlined.

Mr. Brown: The general statement that has been outlined and the investigation showed that he did not sign it.

The Court: I think we have the issue before us. I am ready to proceed. Call your first witness.

WILLIAM H. K. DAVEY, a witness produced on behalf of the proponents, being duly sworn, on his oath saith:

Direct Examination by Mr. Strong:

Q. You are slightly hard of hearing Mr. Davey? A. A little so.

Q. And where do you live? A. In Bellville, N. J., 155 Academy Street.

Q. What is your profession? A. I am an attorney and counsellor at law.

Q. And are member of what bars? A. New Jersey, State of New York and the Federal courts in several states.

Q. When were you admitted as an attorney in New Jersey? A. As an attorney in 1889 and as a counsellor in 1892, in June term of both years.

Q. In whose office did you study law? A. Richard V. Lindabury, then in Elizabeth, N. J.

Q. I think you have a case on the Middlesex

Trial List for the present term? A. In the Supreme Court list, for this term, in this county, yes, sir.

Q. I show you a paper writing, bearing date the Twelfth day of July, 1922, and purporting to be the last will and testament of Charles M. Freeman of the Borough of Metuchen, Middlesex County, New Jersey, and ask you whose signature that is at the bottom of the will? A. Signature of Dr. Charles M. Freeman, deceased.

Q. How do you know that? A. I saw him sign it.

Q. I ask you whose signature that is directly underneath the attestation clause, following the will? A. First signature is mine, second is that of my wife and the third that of Mr. Louis Mohring.

Q. How do you know that is your wife's signature? A. I saw her sign it. I also saw Mr. Mohring sign his.

Q. Where did—where were these signatures—Where did this signing take place? A. At my home in Bellville.

Q. State whether or not all the signatures were made at the same time? A. They were made one after the other at one interview. Dr. Freeman signed first, Mrs. Davey signed her name next, Mr. Mohring third and my name was signed last although it appears on the top line.

Q. And state whether or not these signatures were all made in the presence of all the signers? A. They were.

Q. Give us the— State the other circumstances with respect to the signing of this will—what, if anything, was said by the testator? A. At the time of signing?

Q. Yes. A. I called Mrs. Davey and Mr. Mohring into the room where Dr. Freeman and I had

sat; they had prior to that been on the porch in front of the house; and when they had come in and the door was closed, I took the will up in my hand, as it lay before Doctor Freeman; he was sitting at the dining room table; and I indicated to him where he was to sign it; the Doctor's eyes were very bad, he could hardly see; but I gave him his pen—my pen—and showed him where he was to sign and he signed his name. I then turned back to the second page where there had been an interlineation made and he initialed that, at my request. I then took the will in my hand and said to him: "Dr. Freeman, you sign, seal, publish and declare this to be your last will and testament and request us to sign it as witnesses?" He repeated substantially the phrase after me. He said, "I declare it to be my last will and testament and I want you to sign as witnesses." He turned to Mrs. Davey and asked her if she thought he was able to sign a will. She said she did. He turned to Mr. Mohring with the same words. Mr. Mohring said he certainly thought he was. I thereupon asked Mrs. Davey to come around the table where we were, and she came and signed her name on the line as I indicated it, leaving one line at the top. The words of notation of the interlineation had been made before that, before they came into the room. After she had signed and put down her address, Mr. Mohring, at my request, came around and put down his—

Q. Mr. Louis Mohring? A. Mr. Louis Mohring.

Q. The father? A. Father. After both put theirs down I signed my name as witness, appending my address. The will was then folded up and placed in an envelope, which the Doctor asked me to keep. Been in my possession from the day it was executed until it was offered in the Surrogate's office for probate.

Q. Merely ask one question. What was the interlineation you referred to? A. The two words "or other." Refers to taxes. On the second page.

Q. Appears in handwriting? A. Appears in my handwriting.

Q. That is all. State how you came to prepare this last will? A. This will was the second that I had prepared for Doctor Freeman. He came to my house on the evening of the fifth of July, with a request, or a statement that he wanted to make a change in his will. That statement was made at the door and I invited him into the house and had a conversation with him with reference to the change that he wanted to make. Following that, the next day or the day after, I do not know which, I prepared this will and the Doctor had asked me if the same witnesses could serve and I told him they could. Telephone arrangements were made, appointment was made for the attendance of Mr. Mohring as a witness; that was communicated to Dr. Freeman and on the twelfth they met at my home, by that appointment, for the execution of this document.

Q. Who was present at the time he told you what changes he wished made? A. No one was present at the time when changes made, wanted to be made. My wife heard him say he wanted to make a change in the will.

Mr. Brown: I object to the statement what his wife heard him say. The witness attempting to testify as to the sense of his wife. We are not concerned about that.

The Court: It is not very important, Senator.

Mr. Brown: Except that this man is an attorney and the first witness on the stand and he can blaze the way very much for

the other witnesses. I do not say that with undue rancor, but that sort of testimony, naturally—

The Court: If it is objected to I will strike it out. Of course he cannot say what his wife heard. Let it be stricken out. You may ask him who was present when the statement was made.

Mr. Strong: I think I have asked him that.

Q. What changes were made from the former will?

Mr. Brown: Just a moment. I object to the statement of the changes. If the former will is here we ought to have that, be the best evidence of changes.

Mr. Strong: I will withdraw that question.

Q. After this will, which you have just testified as to the signatures to, was executed, what, if anything, was done, with respect to the former will that you had? A. After this will had been signed and folded, placed in an envelope, I said to Dr. Freeman that the other will, the older one, might as well be destroyed. He said, "Yes, it may just as well." And he took it from the table and tore it across and handed me— It was folded and he tore it in two halves. I tore those in smaller pieces and stepped into the other room, which is a kitchen, and put them in a waste basket with other papers to be burned.

Q. What changes were made in this last will? A. In what way?

Q. Was the last will changed from the other will that you had prepared and which testator had

executed? A. Two changes were made. The insertion of a paragraph which left a small bequest, $200, to each of his four sisters, and the bequest to his wife in the other one had been one dollar a year and that was changed to one dollar.

Q. Yes. Now his sisters had not figured as beneficiaries in the former will? A. They were not mentioned in the earlier will.

Q. How did you come to make that earlier will for Charles M. Freeman? A. At his request and following written memorandum in his own handwriting which he gave me to guide me in drawing it.

Q. And how did you come to know him? How were you brought in contact with him? A. I was introduced to him by Mr. Louis Mohring.

Q. That is the father of Harry Mohring? A. Yes.

Q. Where? A. At Dr. Freeman's then home, at Metuchen, on Volkman Street, I think it is.

Q. How did that come about? A. Mr. Mohring came to see me during the week preceding—June 18th it was, a Sunday.

Q. June 18th of what year? A. 1922. And asked me if I could go with him to meet Dr. Freeman at Metuchen. I had never known Dr. Freeman, and on Sunday morning following we arranged to go. I told him I could go and we arranged to go. On this Sunday morning, June 18th, he drove out to my house in his car and we left his car in my garage and took mine, and I drove Mr. Mohring, and Mrs. Mohring, Mrs. Davey and myself down to Dr. Freeman's home. There I was introduced to him.

Q. Then what took place? A. Well there was a little, after the introduction there was a little general conversation, and the ladies, Mrs. Louis Mohring and Mrs. Davey, went upstairs. Harry Mohr-

ing went to do some work around in the garage. I do not know exactly what he was doing. Dr. Freeman said he would like to walk to me and we got in his car which stood in the garage and we sat in the rear seat of his car for, I think, two hours at least, talking, and then we were called to dinner. We went upstairs. There was a general conversation at the dinner table. After dinner we went out for an automobile ride and on our return he sat down in the dining room at the dining table and wrote out a memorandum of instructions or somewhat in the form of a will, in his own handwriting and from that data I prepared, during the course of the next day or so, a will. That day an appointment was made that we should come down again and execute the will on the succeeding Wednesday night, which was done. We went down to Metuchen, that will was executed there at his home.

Q. Have you the instructions that he wrote out? A. Yes, I brought them, you have them there.

Q. I show you— A. That is the paper that he handed me, that he wrote and gave me on the eighteenth of June, 1922. That bears also his signature on the margin and my own and Mr. Louis Mohring.

Q. And for what purpose did he give you that? A. Purpose of having a will prepared in substantial accord with that.

Q. And was that done? A. It was done.

Mr. Strong: We offer the paper.

Mr. Brown: May I see it please. This is in the nature of a will, not a memorandum to make a will, it has the solemn invocation calling on God, has a preamble to his testamentary disposition. It seems to me out of the ordinary memorandum of instructions to

any one to make a will. It seems to be complete in its form. If that is so I would object to its admission that it is now being attempted.

Mr. Strong: It has no attestation clause.

Mr. Brown: That would not stop it from going in.

Mr. Strong: Of course not, even a will might be changed for another will, but this was made for the purpose, as the witness testified, of a guide for the preparation of another will that was actually made.

Mr. Brown: That may be true if it was a will that was made, and as I understand that it is, that is the direction and basis of the present will that you are attempting to probate.

Mr. Strong: No, basis of the first will.

Mr. Brown: And the first will was basis of the last will.

Mr. Strong: The first will was changed and destroyed. Want to develop the circumstances fully.

The Court: What is your objection, Mr. Watson?

Mr. Watson: My objection is that expression of testamentary intention is inadmissible. Either oral or written expression of testamentary intention are inadmissible.

The Court: It does not appear to me to be competent at this time. I can anticipate a circumstance under which it would be competent. It does not seem to be. Permit you to mark it for identification at this time. You will not be stopped if later on it appears competent.

Mr. Strong: Easy to lose sight of the fact that a paper is not offered.

The Court: I will not let you lose sight of it.

Marked Exhibit #1 for identification.

Cross Examination by Mr. Brown:

Q. Mr. Davey, you say that you have been admitted to the bar of the State of New Jersey in the year 1888? A. 1889.

Q. And after you were admitted to the bar, where did you go, where did you carry on your profession? A. I practiced in Elizabeth until 1895, then I was out of the country until 1900, in South America.

Q. 1895 you had an office in Newark? A. In Elizabeth.

Q. Practicing law alone? A. Yes.

Q. You had an office with help, I suppose? A. Yes.

Q. Stenographers? A. Well I usually have done my own stenographic work. I had, part of the time, stenographer, and part of the time I did not have.

Q. Telephone and usual equipment? A. Oh, yes.

Q. Then in 1895 you left Elizabeth and went out of the country? A. Yes.

Q. And you went to South America, you say? A. Yes.

Q. What was the matter, were you sick or well? A. No, I went on business.

Q. What is that? A. No, I went on business.

Q. Closed up your office? A. Yes.

Q. Never returned back to Elizabeth? A. Not to practice, no.

Q. Where was your office in Elizabeth, what number? A. It was on that block that faces the Central Railroad Station. I do not know the number of the building. Faces the crossings of the railroad.

Q. Whose car did you sit in when you were at the garage. A. I beg pardon?

Q. Whose car did you sit in at the garage in Metuchen, yours? A. The car that Doctor Freeman had. Essex sedan.

Q. And did you notice the car? A. I beg pardon?

Q. And did you notice the car? A. I sat in it, talking to him, for a long while.

Q. Over an hour? A. Oh, yes, more than an hour.

Q. Two hours? A. I think all of two hours.

Q. And you had Mr. Mohring, is that his name? Senior. A. Yes.

Q. He was present, wasn't he? A. Part of the time he stood outside of the car leaning his elbow against the corner of the window, which was down. Part of the time he was away from there, in other parts of the garage or outdoors.

Q. He was hard by so you could get him when you wanted him? A. I could have called him any minute.

Mr. Strong: Which Mr. Mohring?
Mr. Brown: Mr. Louis Mohring.

Q. You expected to use him at any minute didn't you? A. No.

Q. Why did you have him so near by? A. I did not have him near by.

Q. Where did you have him? A. I didn't have him. He had me. He took me there.

Q. How did you know Mr. Mohring? A. I have known Mr. Mohring for twenty years, over twenty years.

Q. Where did you first meet him? A. I first met him while in New York City.

Q. How many years ago? A. Twenty years ago. I think it was 1901 or 1902.

Q. How did you come to meet him? A. I was, at that time, employed in the office of the Federal Court, under Mr. John A. Shields, as Deputy Clerk of the Federal Court, and Mr. Mohring had business that brought him every week in that building and I met him there.

Q. What Federal Court do you mean? A. United States Circuit Court for the Southern District of New York.

Q. With offices in the post office building? A. The old Post Office Building.

Q. It is there yet? A. Yes.

Q. The court is there yet? A. Not that court.

Q. Was Mr. Mohring a litigant? A. He was not.

Q. He had no business with you as Clerk of the Court? A. None at all, our meeting was purely social meeting.

Q. He lived where? A. In Bayonne, and does yet.

Q. He saw you frequently after that? A. For some years I saw him practically every week, very frequently oftener than that. After I left the service of the court I haven't seen him with any regularity or with any more frequency.

Q. How long were you employed? A. Almost ten years. I left when the present Judiciary Act went into effect.

Q. How long after you came back from South America you got this position? A. I think I went there in 1903.

Q. Where did you write this will? A. When?

Q. Where did you write this will? A. The will was written at my office, 154 Nassau Street, New York City.

Q. How long have you had an office there? A. Since 1913, I think.

Q. Got a stenographer? A. No, I haven't, not now.

Q. Did you at that time? A. In July, no.

Q. Who wrote the will? A. I did, with my own hand, typewriting.

Q. Have you written wills before in your practice? A. Dozens and dozens of times.

Q. And all prepared along this line? A. I prepared them myself on my own typewriter, if that is what you mean.

Q. Yes? A. Yes, surely.

Q. And you completed the will, excepting signatures and its execution, in your office? A. Yes.

Q. Every part and parcel of it? A. No, not the interlineation.

Q. All but that? A. All the typewriting was done in my office.

Q. Everything was done but the interlineation? A. All of the typewriting, everything that is in typewriting was done in my office. Everything that is in handwriting was not done in my office.

Q. You did not do anything else with the will when you brought it to your home except to have it signed by the doctor, by the witnesses and the interlineation made by you? A. Yes, the date was filled in, that is in handwriting.

Q. There was nothing else done? A. No.

Q. Nothing physical was done to that will? A. I do not understand your question.

Q. What is there about that, you don't understand, that question? A. I have answered your question that all the typewriting was done in the office and all the handwriting was done at home. I do not know any other physical act that appears on it. Except the filing, the filing of it was done in the office.

Q. Take a look at that will, will you please? A. I have looked at it.

Q. You knew that this was a solemn declaration or disposition of property? A. I surely did.

Q. Of a man who was quite infirm? A. Quite what?

Q. Infirm? A. No I do not think infirm. I am not prepared to say that he was infirm.

Q. You don't think he was? A. He didn't strike me as—

Q. He couldn't see? A. No, his eyesight was very bad.

Q. You knew he was a user of narcotics? A. I knew he had been. He told me that.

Q. All his life? A. Not by any manner of means.

Q. You could see that plainly written on his face? A. I do not think so.

Q. Will you please tell the court why it was that you fastened that will, a lawyer that was admitted in 1888 and practiced, with the experience that you have had, and written as many wills as you have, under the conditions why you fastened the will with a blue ribbon? A. I happened to have that ribbon in the office. I have used it for very many years. I do not know the color of the ribbon ever affected me at all. I did not pay any attention to it.

Q. Did you ever see any other attorney use blue ribbon, of that delicate shade and color—I think it is a satin ribbon—to fasten pages of a will together? A. I cannot say. I do not recall fastening any other will together.

Q. You have seen other wills than the ones you have prepared? A. Hundreds of them.

Q. Did you ever see a will with that little, bonny blue color on, fixed up that way, with the pages all loose and just tied with a neat little bow? A. I cannot say.

Q. Did you tie that bow too? A. I think I did. I tied the papers together, yes.

Q. I suppose you call that a legal knot? A. I do not call it any knot.

Q. Why didn't you fasten those pages together when you drew the will? A. I did.

Q. I mean fasten in a permanent form, so they could not be easily removed? A. I fastened them as they are because I thought that quite sufficient.

Q. Why didn't you put a knot in the string, or in the paper, or fasten it so at the time, by a seal, or in some way indicating that it could not be removed? A. I cannot say why I did not do something that I did not do. I did not do it, that is a fact. Why I didn't do it I am not now prepared to say any reason except it did not occur to me, I imagine.

Q. What were you doing in South America? A. Planting.

Q. For how many years? A. Five years, 1895 to 1900.

Q. You weren't practicing law? A. No, I was not.

Mr. Brown: I ask that the exhibit that was filed by Senator Strong be impounded as well as the will.

Exhibit was put in care of Surrogate.

Recess until One o'clock P. M.

Continued at 1:20 P. M., After Recess.

Mr. Strong: If your Honor please, with respect to this pencil memorandum, with such vigor requested to have impounded; I have no objection to the paper passing from our possession, where we have had a good

many months, could have done all kinds of things to it if we had any disposition to do so; I think it ought to go into the hands of the court and stay there and only be subject to inspection in the presence of the court.

The Court: I presume you mean in the hands of the Surrogate?

Mr. Strong: Yes, and the Surrogate will not allow any inspection except in his presence.

Mr. Watson: That is what we understood meant by impounding.

Mr. Brown: Want to preserve the paper, if the court please.

Mr. Strong: I would like to ask one question referring to the execution of the will.

The Court: No objection to that?

Mr. Brown: None at all.

Re-direct Examination by Mr. Strong:

Q. Mr. Davey, how do you know that Doctor Freeman knew the contents of that will, if he did? A. Before the witnesses were called into the room the Doctor and I were in our dining room and I opened the will before him as he sat at the table, putting the table so that it was under the strongest of the light, under a dome which was over it, and read it to him, line by line, and paragraph by paragraph, following the reading with the point of a pencil. Several occasions he asked me to read back, repeat a paragraph or a word. He apparently could follow and said he could follow my reading as I went along. It was after the close of that, the making of the one change in the notation of the change appears at the end of the attestation clause, he said "Well, that is all right." Then I told him that I would call in the witnesses and

it was after that reading had been finished that I called Mrs. Davey and Mr. Mohring in as witnesses and the will was executed as I have testified.

Q. Did you or not read the entire will to him? A. I did read every word of it.

Q. He was not entirely blind? A. Oh, no.

Mr. Brown: Let the witness testify. He would have to be an expert to testify as to the exact condition of his eyesight.

Mr. Strong: It is not important.

The Court: It is not going to have much effect on the court one way or the other.

Q. What was the condition of Dr. Freeman's eyesight as well as you could judge? A. His eyesight was impaired. He could see somewhat. He could see to walk alone and did. He told me that he could read the headlines, larger print, or headlines at the top of newspapers' columns, but had difficulty in reading the print, ordinary letter press of the columns.

Cross Examination by Mr. Brown:

Q. Why, didn't you testify on your first direct examination that Doctor Freeman could hardly see? A. That may have been the word I used. That is true.

Q. Isn't it so? A. It is true in a broad sense.

Q. In any sense is that not correct that you said that Doctor Freeman could hardly see, you meant that? A. Yes, I mean it now.

Q. You know what that word means? A. He had difficulty.

Q. You want it that way now? A. No, I do not change any of my testimony.

Q. You say you went to South America in 1895? A. Yes.

Q. And you stayed there five years? A. I came back to the United States on the Fourth of July, 1900. I had been back for a couple of months, one summer before that, just for a vacation trip.

Q. And it was about the Fourth or Fifth of July that you made this will? A. Not that same July.

Q. Not July? A. 1900. I returned to the United States. 1922 was when the will was made.

Q. July around the Fourth impresses itself upon your mind? A. It always has, as an American citizen, ever since I was a small boy.

Q. Can you remember what your address is in New York City? A. Surely. 154 Nassau Street.

Q. How long has it been that? A. I think it is since 1913. Since that time.

Q. What building is that in? A. Tribune.

Q. What floor are you on? A. Eleventh. 1110.

Q. You occupy an entire office or just desk room? A. The office is in my name. I rent the office from the building.

Q. Who drove Doctor Freeman to your home? A. When?

Q. When was he there? A. He has been there a great number of times, quite a number of times.

Q. Tell us the great number of times he was down there?

Mr. Strong: He said quite a number of times.

Mr. Brown: He said a great number of times and changed that to quite a number.

A. I should say he has been there eight or nine times.

Q. When was the first time he was there? A.

My impression now is that the first he was there, the fifth of July, 1922.

Q. When was the second time he was there? A. The twelfth.

Q. Who came with him? Who drove him on July the Fifth? A. Mr. Henry Mohring.

Q. That is the time the changes were made in the will or suggested, were they not? A. That is the time he came to say that he wanted to change the first will or earlier will.

Q. That is the time he came to your door and told you about the changes? A. He did not tell me about the changes at the door, he told me at the door that he wanted to make changes and then we went inside and he told me what changes he wanted to make.

Q. After you got him inside and closed the door —you closed the door? A. Not the outer door. I closed the door of the room we were in.

Q. Yes? A. Certainly.

Q. It was in the night time, wasn't it? A. No it was not night time. It was in the evening or late afternoon. It was daylight saving in effect at that time. He got there, I should say, about seven o'clock.

Q. Was that why you got under the dome to read the paper? A. No, he did not get under the dome to read the paper, it was broad daylight then.

Q. Broad daylight? You had the will executed in the night time, didn't you? A. In the evening, yes.

Q. It was after twilight? A. Yes, it was.

Q. You had the lights lighted? A. At that time we had the lights lighted.

Q. And this man had— Who drove him over that night, the twelfth? A. Mr. Harry Mohring drove him and the whole family and servant Letty Patterson were with him.

Q. Let us get this right. Mr. Harry Mohring is the chief beneficiary and executor and sole beneficiary under this will? A. The same man.

Q. That is the man who drove him over? A. Yes.

Q. When you said you went down to Doctor Freeman's home to be introduced it is that you went to the home of Harry Mohring where Doctor Freeman was staying? A. We went to the rooms over the garage at Metuchen which was Dr. Freeman's home and Harry Mohring lived there with his wife and two children.

Q. The impression might prevail— A. Just Doctor Freeman was there.

Q. It was Harry Mohring's father that went to you first, was it not? A. Yes.

Q. And brought you down there and talked this matter over for a few hours? 9. As a matter of fact I drove.

Q. You understand that. Is that so? A. Not in that form. I drove him. He did not. He asked me to go.

Mr. Brown: I will withdraw the question.

Mr. Strong: Let your whole question be stricken out.

The Court: The record is clear, the question is withdrawn, nothing appears on the record .

Mr. Strong: I would like to know the question.

The Court: Just the last question.

Q. When you say "not in that form" you mean that Mohring brought his automobile up—whose automobile did Mohring bring to your house? A. He drove himself and Mrs. Mohring to my house in his own car.

Q. Mohring's own car? A. Mr. Louis Mohring.

Q. He has an automobile? A. Certainly.

Q. They left the automobile there and came down in your automobile? A. Precisely.

Q. And all of the persons or people connected with this transaction—I refer now to the execution of those wills—was confined to you and your wife, Mr. Mohring and his wife and Harry Mohring, and Mrs. Mohring. A. Mr. Mohring's wife had no concern with it at all, of the execution or drawing of the will at all, except that she happened to go on one trip to Metuchen when I went.

Q. I do not want your conclusion. I want to know if those were not the only persons who were about or near the transaction? A. The persons about or near the transaction, in my understanding of it did not include Mrs. Louis Mohring.

Q. She did go with you, did she not? A. She went to Metuchen.

Q. She was the person who went with Mr. Mohring to see you first? A. No, Mr. Mohring saw me in my office in New York first.

Q. When did he first see you in your office? A. Some day during the week prior to June Eighteenth. I do not know which date.

Q. That was the first time? A. Yes.

Q. How long before that had you seen him? A. That I cannot answer.

Q. Why cannot your answer? A. I do not remember.

Q. Was it a week or a month or a year? A. I should say it was probably—I should say it was probably more than a month.

Q. A month? A. Yes.

Q. You had talked about this matter before that time? A. Never before the day he came.

Q. You never heard Dr. Freeman's name men-

tioned before then, did you? A. I do not recall that I ever heard his name mentioned before.

Q. You did not know where Mr. Mohring's son was working? A. No. I knew he was working at Metuchen. I did not know for whom or with whom.

Q. When were you admitted to the Bar of New York? A. I think it was 1904.

Q. And when you say you were admitted to the Federal Courts, you mean in the Federal Courts of the State of New Jersey and New York? A. All of them in New Jersey and New York. I am admitted in the Circuit Court of Appeals in Cincinnati; I think in Boston. I am not certain whether I was admitted in Boston or not.

Q. After you came back from South America? A. Yes.

Q. Where were you in South America? A. At Bocadel Toro in Panama. It was then Columbia.

Q. You went down there for your health? A. For business.

Q. Farming? A. Yes.

Q. Not legal business at all? A. Farming. Plantation work.

Q. You had not been a farmer up to that time, you had been a lawyer? A. I lived on a farm all my boyhood days.

Q. Long time before that since you were a boy? A. Yes, I imagine a little longer than you.

Q. What is that? A. I imagine that I have been away from boyhood a trifle longer than you.

Q. There is no disputing that? A. No.

Q. Your boyhood days did not drive you to Panama? A. No.

Q. You waited until you got old and good and strong to start a new life? A. I went in 1895.

Q. Did you advertise your going? A. I do not think I did in the newspapers, if that is what you mean.

Q. Anywhere? A. Everybody that I was acquainted with knew I was going and why.

Q. Mr. Mohring knew? A. I did not know him.

Q. I thought you said— A. I said twenty years.

Mr. Strong: Mr. Louis Mohring.

Q. You knew him at the time you went? A. Did not meet him until my return from Panama.

Q. What was the occasion of your meeting Mr. Mohring? A. Mr. Mohring used to come to the Federal Building once a week regularly.

Q. What for? A. He had charge of the clocks in the building.

Q. He was the timekeeper? A. I do not know what official title he bore.

Q. He was the fixer of the clocks? A. He attended to the clocks in all the Federal buildings all over the New York District.

Q. You used to watch him, grew to be companions? A. We met and grew very friendly.

Q. He would see you in New York and you called at his home almost once a week? A. No, I saw him once a week when he came to the building. Nearly ten years I was there. We frequently went off boating nad fishing trips of various kinds in our motor boats.

Q. Dr. Freeman could hardly walk could he? A. I did not notice any difficulty about his walking, except have to watch his step.

Q. There is no difficulty in that? A. There was for him, on account of his eye sight, some difficulty about it.

Q. When were you admitted to the Cincinnati Court of Appeals? A. I went out there a year and a half ago, to argue an appeal, and they required me to be admitted.

Q. What case have you, if any, in the Supreme Court of this State, in this Circuit? A. Case against—Steinhart against Waters, automobile accident case.

Q. What is your Elizabeth address, or was your Elizabeth address? A. The Rogge Building. I do not know the numbers.

Q. How do you spell it? A. R-o-g-g-e.

Q. Have you that will before you? A. No, I haven't. Now I have.

Q. Of course you wanted to see that Dr. Freeman had a free and untrammelled expression of his mind in the disposition of his property, didn't you? A. Certainly.

Q. When Mr. Mohring came to see you in New York about going out to see the doctor, did you not think it rather peculiar that he should go to you about bringing you away out to Metuchen to see a man that you never had seen before, to draw a will? A. He did not tell me that I was to draw a will. I do not think that he knew it.

Q. What did he tell you? A. Told me Doctor Freeman wanted to get some lawyer outside of Middlesex County who did not know anybody around Middlesex County, some business he wanted him to attend to.

Q. You came out there to Metuchen and you did not know that you were going to draw a will? A. I did not until after I got there.

Q. And then, then after you got there and you found out that you were to make a will you could readily appreciate Doctor Freeman's condition, couldn't you? A. Yes, very readily.

Q. And you could appreciate to that it was incumbent upon you as the brains of this arrangement, the making of this will, that Doctor Freeman should have independent advice and independ-

In the name of God Amen
I Charles M. Freeman of
the borough of Metuchen of
County of Middlesex State
of Jersey being of sound mind
will & testament to be my last
will & made by me especially
of me the possession of Russell
E. Watson of Pattersonsor Ct
New Brunswick N J
1 I desire that my funeral
expenses and just debts be
paid
2 I leave and bequeath in
restrictively to Harry Mohrmann also the
the sum of $10000
use of the apartment over the
garage on Volkman Place
Metuchen N. J.
I leave and bequeath to Sethe
Patterson and old and faithful
Revent the sum of 1000

Freeman Will Matter
Ex 1 For Identification
April 6/23 EED.a.
Charles M. Freeman
Louis Mohrmann

4 I leave to Mary E Wilkins Freeman
if she should outlive me the
sum of 100 a year
5 The balance of my estate I leave
to Harry Mohrmann to be
disposed of as he sees fit
6 If any of the above legatees dies
without issue then bequests
heretofore make shall revert to
my estate
I hereby appoint Harry M
as my sole executor
shall not be requ[illegible] why

Phone Metuchen 263

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41 PARK ROW
N. Y. CITY
TEL. CORT. 2565

ent opportunity to exercise his testamentary capacity, didn't you?

Mr. Strong: I object. I do not think that is a fair question, as I understand it. I do not see any legal obligation at all to have any other advice than what Mr. Davey could give.

The Court: I do not understand the question goes to any advice outside of what Mr. Davey might have given. Simply says—simply asks if he did not see from his condition that he was a proper man to have independent advice. He does not say independent of what.

Mr. Strong: Independent of Mr. Davey's advice.

The Court: From being influenced. It seems to me the question is proper. This is more in the nature of an investigation and there is no jury and the court isn't going to be influenced, consciously, by illegal testimony.

A. I do not know that it was any more incumbent for him to have independent advice or exercise independent testamentary capacity than any other man who makes a will. I think he had both of those.

Q. So you did not consider this man's inability, physical condition and his mental condition and lack of eyesight as being matters that you should take into consideration before permitting him to execute the will? A. I did not notice any particular feebleness to consider. His eyesight was considered very carefully in the making of this will.

Q. Why didn't you, as an attorney admitted in

New Jersey and New York and Cincinnati and the Federal courts, and a man who has served his time on a plantation and all the world wide experience that you have had, why didn't you permit somebody else to be around and witness the will or have something to do with it other than you, the maker, and your wife and Mohring and his son? A. His son was not around at any time, in the sense of being present at the making of the will.

Q. What is that? A. His son, Mr. Mohring's son, was not present on the occasion of the making of the will, not in the room, or had no knowledge or touch with the making of the will or giving of instructions.

Q. How did you know that he had no knowledge? A. I say he was not in the room.

Q. You said he had no knowledge. A. Of the conditions, of the making of the will, that I do say. He could not see. He wasn't in the room.

Q. You mean to say that Harry Mohring did not know that you were making this will and that he was to be the chief beneficiary? A. I do not know what Harry Mohring knew. He did not know it from me certainly and he did not see it certainly.

Q. Will you answer the question that was first propounded to you before this last question or two? A. If I can have it read.

Q. If you will just answer the question. (Question repeated.) A. Doctor Freeman asked us to witness his will and I saw no impropriety in our doing it. There was no necessity of having any one else.

Q. You did not think there was any necessity in having any other person to witness a will except the father of the chief beneficiary of a man so—

Mr. Strong: It is not right. There were two witnesses outside the father.

The Court: The Senator has not finished his question.

Mr. Strong: That is what the witness is complaining of. He puts two or three questions into one.

Mr. Brown: May I withdraw what I have said and start again?

Q. You did not think it was necessary, in order to give a free and untrammelled opportunity to the testator to declare, to make and publish his will, to have other persons present than you, the attorney for the father of the chief beneficiary, and your wife, and the father of the chief beneficiary, where the testator was a man whose sight was impaired so that he could hardly see, and where you had taken him from, or he had left his natural surroundings and went to a strange place in the dark of night? A. I cannot answer that question, Mr. Brown, there are so many things in it that are not in accordance with my understanding of facts that I cannot answer.

Q. What is there in that question that is not according to your understanding? Tell me one thing. A. Referring to myself as being attorney for the father of the chief beneficiary.

Q. Yes. A. I was never Mr. Louis Mohring's attorney. Never had one atom of legal business for him.

Q. You knew what I mean. Mr. Mohring went and got you as the attorney? A. Yes, he came to ask me to come as a friend, to ask me to go and see Dr. Freeman, to represent Dr. Freeman as an attorney.

Q. What more? A. His coming to my house in the dead of night or dark of night. He did not come in the dark of night. He came in broad daylight.

Q. Didn't Dr. Freeman execute that will after twilight? A. Yes, he had been there for an hour and a half or two hours.

Q. It was after dark the deed was done? A. After dark that the will was executed.

Q. With that modification, is it what you want? A. I think that is all.

Q. With those modifications, what answer have you to make to that question. A. I knew it was not necessary.

Q. You knew it was not necessary. You did not think it was necessary, under those circumstances, to prepare a will the pages of which were fastened together so that if they should be changed it could be readily detected? A. I think it is always necessary to so prepare a will that if any changes are made in pages it can readily be detected and I think that was done in this case.

Q. You think under the circumstances I have related that it was a proper thing for you to make a will in the fashion that it has been made, it was made in this case, and have the testator sign his name on the last page of a loose set of sheets that could be easily detached and changed? A. I think it was entirely proper.

Q. Where did you make the holes in this will, the top of the will? A. In my office.

Q. And you tied the knot in your office? A. Certainly.

Q. You can easily untie that knot can't you? A. I assume so.

Q. You know so, don't you? A. I suppose so, yes. I haven't examined the knot since it was tied, Mr. Brown.

Q. Who did, anybody? A. I do not know. You seem to have paid more attention to it than I have paid.

Mr. Brown: I move it be stricken out.

A. With all due respect.

Q. The holes in this will were pressed with a punch? A. I think it was one of the puncher kind.

Q. Yes, puncher. Kind of punches you use with a metal clip? A. Not mine, there are those, but I haven't that kind. This is just the punch.

Q. Is that the way you prepare all your legal documents, in that fashion, punch a hole in and fasten blue ribbon? A. Many of them.

Q. You do not remember where you got that ribbon? A. I do not. Supply of it in the office.

Q. What would you call that? Holland Blue, what do you order when you order ribbon of that kind? A. The office boy got it. I do not know where he got it. Man by the name of Louis Freund, law student.

Q. You never used any more secure fastener than blue ribbon of this kind? A. Staple fastener sometime.

Q. You have plenty in the office? A. Yes.

Q. Why didn't you in this case? A. I do not know of any better answer to say that just because I did not.

Q. You knew that you were disposing of property valued at over one hundred thousand dollars or more? A. Yes.

Q. And you did not think, under the circumstances, it was necessary to execute the will with the precaution that the circumstances demanded, that is, the testator's condition and the great amount of property and the fact that he was neglecting the natural objects of his bounty?

Mr. Strong: I object to that.

A. I do not accord with the premises of that question.

Q. What is wrong with those premises that you don't agree? A. He did not exclude the natural object of his bounty.

Q. He gave his wife a dollar a year. A. A dollar in this will. He took care of her. It is not exclusion.

Q. That is what you call inclusion? A. Inclusion with a definite purpose.

Q. High cost of living? A. Quite different from that.

Q. What is the purpose then? A. The purpose that Dr. Freeman had in those bequests to his sisters and his wife, he told me was so that the sisters could not contest the will on the ground that he did not remember, at the time of making, that he had four sisters. That is the reason the change was made.

Q. That is the reason that you know. You know what the natural object of his bounty is? A. He had no children. The sisters and wife would be the natural objects of his bounty.

Q. Those to whom, in nature and under nature's law, the natural object of a man's bounty? A. Yes.

Q. You knew they were being excluded from the terms of his will? A. Yes, and I knew why.

Q. Even under those circumstances, as I have just related the great bulk of the estate, this man's condition and the unnatural terms of the will, you did not think it was necessary to get someone out of the sphere of the benefits of this transaction?

Mr. Strong: Objected to as an unfair question.

Q. To see that it was properly and securely fastened and to see that it was properly attested to by someone other than you and those who were to benefit?

Mr. Strong: Objected to as an improper and unfair question and not stating the facts. Speaks of it being an unnatural will.

The Court: Of course that is a conclusion for the court to determine, but I assume on the face of it, that the fact that it has so materially ignored the widow and the sisters, that it may be reasonably called an unnatural will. It is not going to influence the court because counsel called it an unnatural will.

A. I think all due precautions were taken.

Q. What instruments do you use permanent fasteners on? A. Why didn't I use them.

Q. What instruments do you use them on? A. Any kind of papers that require them. I do not use them with ribbon. If I tie a paper with tape or ribbon. If I use the metal fasteners I do not.

Q. Do you distinguish between tape and ribbon. A. Tape or ribbon. Red tape I thought every lawyer knew. I do not know any better.

Q. You know what red tape is? A. This is a little better than red tape. I call that ribbon. I don't know.

Q. You have a stock of tape and a stock of ribbon on hand? A. Yes.

Q. I want to know what instruments you use the secure permanent fasteners? A. Staples are not permanent fasteners any more than ribbon. Usually on court papers. Not any more permanent than ribbons.

Q. You have not been making numbers of wills. One hundred thousand dollars involved, in your practice? A. Not many.

Q. Are you an expert in will making? A. I have drawn some.

Q. How many? A. Twenty, twenty-five.

Q. All over the United States? A. Not all over the United States. Covering quite a substantial area.

Q. Mr. Mohring drove the Doctor over to your house you say on the fifth of July? A. Henry Mohring, yes.

Q. The chief beneficiary in that will? A. Yes.

Mr. Strong: Any need of stating that?

The Court: I cannot say, Senator.

Mr. Brown: If I don't get the right Mohring.

Mr. Strong: Harry Mohring, you get the right Mohring.

Q. I suppose the Doctor walked up on your porch unaided? A. On which night do you mean, Mr. Brown, the fifth or the twelfth.

Q. What night have I been speaking about? A. You asked whether Mr. Harry Mohring drove him over and I said "Yes." That was true of both nights.

Q. I told you the night. A. If you did, I did not catch it.

The Court: The fifth.

Q. The fifth. A. Mr. Harry Mohring drove him over and I do not know whether they came up the steps together or Doctor came up alone.

Q. You went to the door? A. No, we were on the porch.

Q. Who was on the porch? A. Mrs. Davey and myself, the whole family.

Q. Is that your whole family? A. That is my whole family.

Q. You cannot tell whether Doctor came up or whether someone came with him? A. I cannot now tell.

Q. Why not? A. I have no recollection.

Q. Don't you know how many? Cannot you tell the Doctor, couldn't you remember the Doctor coming up the driveway, or are you on the Street? A. Didn't make any impression on my mind. Came up and came to the door and I met him, coming out from the screen door of the porch to the front part, to meet him. Whether he walked up the walk alone or with Mr. Mohring I cannot say.

Q. Mr. Mohring anyway did not go in? A. No, he did not. Yes, there were others in the car.

Q. Who was in the car? A. I do not know.

Q. And you did not go out to speak to them? A. No.

Q. You knew Harry Mohring at that time? A. I have known Harry Mohring ever since he has been a little kiddie.

Q. Even though you knew him you did not go out to say good evening to him? A. No, I did not. My business was with the Doctor.

Q. Didn't you think rather suspicious circumstances? Why didn't you go out to speak to him? A. Why should I? The Doctor came to consult me as an attorney. I took him in my dining room. I have no office in New Jersey except my home. I talked to him as an attorney.

Q. A boy you have known since he was a kiddie came all the way up to your place and brought you a good client—

> Mr. Strong: I object—the boy has not brought him a good client in the ordinary sense of the term.

Q. Brought the Doctor there that night, brought the client there to your house that night, you did not think it was worth while to go out and say "Good evening"? A. I thought the client's busi-

ness came first. I attended to it. Before they went away I certainly spoke to Mr. Harry Mohring.

Q. When did you think of that? A. I do not know.

Q. When did you think you spoke to him? A. I spoke to him before they went away.

Q. Why didn't you answer? A. It hasn't been asked.

Q. I have asked you several times about that and you haven't answered that? A. I will ask to have the record read.

The Court: Senator Brown asked Mr. Davey whether he spoke to Harry Mohring that night, and Mr. Davey's reply was, "Why should I?" My recollection of that is very clear. If you want the record read it can be read, but there is no doubt in my mind at all as to what Mr. Brown's question was and what Mr. Davey's answer was, and there wasn't any time designated in Mr. Brown's question, whether it was before he had completed his business with Doctor Freeman or after.

Mr. Strong: Right after he had been asking why he didn't go out to meet him.

The Court: The question is perfectly proper.

Q. Isn't it a reason that you recall that you spoke to him after, is that you saw the danger of keeping away from a conversation with Mohring under the circumstances? A. The only reason is, Mr. Brown, that I thought your question had reference to the moment of their arrival.

Q. Is there any difficulty with answering my question that you did not have with Senator Strong's? A. If I made a mistake about the point

of the question, I regret it and apologize. I understood your question to refer to the moment of arrival.

Q. Did you leave your porch that night? A. Did I what?

Q. Did you leave your porch that night? A. Yes, when Dr. Freeman arrived, I went in to the room.

Q. I mean leave the building? A. No.

Q. Did Harry Mohring go into your house that night? A. I think he came to the porch. I think we were on the porch.

Q. When? A. Before they went away.

Q. Who was there? A. Dr. Freeman and Mr. Mohring, they were the only ones who left the car, as I recall it.

Q. What did Mr. Mohring say to you about the Doctor's errand to your place? A. Mr. Mohring did not say anything to me about the Doctor's errand.

Q. What did you say to him? A. Nothing whatever.

Q. When did you make the arrangements for their return? A. The arrangement for their return was made over the telephone after I had assured myself that Mr. Louis Mohring could be in attendance on the night when the will was executed, the twelfth.

Q. Why did you want Louis Mohring there? A. Dr. Freeman wanted him there. I did not want him there.

Q. How did you know he wanted him there? A. Said so. Asked me to make arrangements to have him come so we would have the same witnesses.

Q. You did not suggest that? A. I did not.

Q. You showed the Doctor where to sign? A. I showed him where the place was for his signature.

Q. You made the interlineation? And showed

him where to put his initials? A. Yes, sir. Certainly.

Q. You put the seal on? A. Yes.

Q. You showed the witnesses where to sign? A. Certainly I did.

Q. When was the next time the Doctor came there? A. After the twelfth?

Q. No, the next after the fifth? A. The twelfth, the night the will was executed.

Q. Who drove him there that night? A. Mr. Harry Mohring. Mr. Mohring always drove him.

Q. That was the night the will was executed? A. That was the night the will was executed.

Q. What did you do with Harry that night? A. That night they were there before I got home, some time.

Q. Don't tell what happened before you got there, tell us what you know of your own knowledge. A. I know that.

Q. How did you know that? A. I found them there when I came home.

Q. What did you do with Harry when you found them? A. I left them all sitting on the porch until I went in and cleaned up and had dinner. I was late getting home that night. I had been fishing. After I had dinner I came out on the porch where they were all sitting.

Q. Who is all? A. Mrs. Davey, Mr. Harry Mohring, Mr. Louis Mohring, Dr. Freeman, Mrs. Harry Mohring and her two little children and I think Letty Peterson was there that night.

Q. So you had the whole crowd? A. The whole family.

Q. How many automobiles drove up that night? A. They had one, Essex sedan.

Q. Essex sedan? A. Yes.

Q. How many? A. An Essex sedan holds about four people. Essex held that night Dr. Freeman

and Mr. Mohring on the front seat and Mrs. Mohring and Letty Peterson and the two children on the rear seat.

Q. Where was the driver? A. Harry Mohring drove.

Q. Where was the other witness, Louis? A. He did not come in that car, or go in it. He came in a trolley car and I took him home in my car after they had left.

Q. What time did— Where were you fishing that day? A. Off Sheepshead Bay, off the Cholera Banks.

Q. You did not get home until late? A. Some thing after seven o'clock.

Q. You had started out in the morning about four o'clock? A. Before that I think.

Q. Fished all day in a hot sun? A. Fished all day out at sea. I don't remember about the sun. Q. And you journeyed away back to Belleville? A. All the way from Sheepshead Bay.

Q. Made the trip by machine? A. No, public conveyance. Brooklyn Rapid Transit and the subway and the bus.

Q. Then you had to wash up and clean up and eat dinner? A. And eat dinner.

Q. And eat dinner? A. Yes.

Q. What time did you get home? A. Few minutes after seven.

Q. You left the party sitting outside? A. Mrs. Davey prepared my dinner and fixed my dinner and she went out after she fixed it.

Q. After eight o'clock? A. When we sat down to the will I should say it was pushing nine o'clock.

Q. What kept you all that time settling down to the will? A. I had to wash up first of all and then I had to eat my dinner second of all, then the dishes were removed and the cloth from the dining room table.

Q. Is that what you mean by settling? A. Then I went out on the porch and there was a little general chat out there.

Q. Nothing about the will? A. Not a word. Then the doctor came in with me and by the time we got seated at the table to give any consideration to the matter of the will I think it was almost nine o'clock.

Q. How many hours did you consider the will after that? A. I do not know. About twenty minutes was occupied in reading the will.

Q. When were you through? A. I should say we were all through by half past nine.

Q. Then you sat around after that? A. Went out on the porch and sat out for a few minutes.

Q. Then you drove all the way from Belleville to accommodate Mr. Mohring? A. No, as a matter of fact, I did not drive all the way. I went and got my car and there were two young boys—

Q. How far was your car? A. Five or six blocks away from my house.

Q. Walked around there? A. Walked around there and picked up a couple of young boys who are near neighbor's sons, and asked them if they wanted to go for a drive; then we came back to the house and picked up Mrs. Davey and we drove over across the Belleville Pike to the Hudson Boulevard, and we left Mr. Mohring to take a jitney down home.

Q. You were driving him away from home? A. I was driving him towards home.

Q. You drove him almost to his home? A. I drove him in distance approximately a trifle more than half way.

Q. You drove him over to the Hudson Boulevard? A. Drove him over to where it was convenient to get a commercial conveyance.

Q. For five cents he could get a bus and ride to his home? A. I presume so.

Q. So for all intents and purposes you drove him home? A. I drove him home.

Q. You got back around midnight? A. No, we were back before that.

Q. That was a long day for you? A. Yes.

Q. How much did you get for executing this will? A. I never made no charge against the doctor. I made notation. He sad he could not pay me until he got his business back in his own hand.

Q. How much did you get for making this will? A. Not one penny up to date.

Q. From anybody? A. From anybody.

Q. What do you expect? A. For drawing the will?

Q. Yes. A. I expect to charge $25.

Q. You have that charge? A. Yes, the fact, not the figures.

Q. That includes a trip to Metuchen? A. No. It does not. I have noted each item of service, or each visit or attendance or conference separately.

Q. How much are you going to get acting as witness for the whole job? A. I do not—

Mr. Strong: I object.

Mr. Brown: I do not say it with any degree of aspersion. If he is going to get anything he might say.

Mr. Strong: It is an improper question.

The Court: Why do you think it is improper? I presume he has a right to probe as to his fees. His interest may be in the fee he is about to receive.

Mr. Strong: I cannot see how it is. I have the objection noted on the record there. If your Honor overrules it.

The Court: I am not particularly interested, but if Senator Brown wants to press the question I will allow it.

A. It has been answered.

By Mr. Strong:

Q. What was the answer. A. Not one cent.

By Mr. Brown:

Q. Then when was the next time you met Dr. Freeman? A. Next time I saw the doctor after the twelfth?

Q. Yes. A. I think it was three or four weeks. I haven't the date.

Q. Where did you see him at? A. Came up to the house.

Q. What did he come up for? A. I cannot say Mr. Brown on what particular errand he came each time. I know the different things he came to consult me about, but I am not positive about the order of those happenings.

Q. Who came with him? A. Every time he came to my house he was driven by Mr. Harry Mohring.

Q. Why did they bring Letty along that night, the twelfth? A. Brought her along for the drive.

Q. Letty is the colored lady of considerable avoirdupois who was here this morning? A. She was in court this morning. She thought she was under subpoena. It developed, when I saw it, to be citation.

Q. What had you to do with it? A. She asked me.

Q. Have you been working this case up? (No answer.)

Q. You have been working in this case? A. I have.

Q. You consulted witnesses in the City of New Brunswick, haven't you? A. Some of them.

Q. And in New Jersey or Metuchen? A. Yes.

Q. You have been working constantly on this case since the doctor died? A. Not by any means.

Q. How much time? A. About four days.

Q. Who is going to pay you for it? A. I presume Mr. Harry Mohring will.

Q. You intend to continue in the employment of Mr. Harry Mohring to investigate and to prepare the case for him, do you not? A. I anticipate doing so.

Q. And you expect to get paid a counsel fee? A. I expect I will be paid.

Q. Contingent upon the results of this case? A. Not at all.

Q. You know that Mohring cannot pay unless he is successful in this event? A. I do not know that.

Q. You don't know he is a man without property? A. I do not know anything about his property. I know him. I do not know about his property.

Q. You are going to take a chance? A. No. I am not going to take a chance. I am going to make a charge.

Q. Don't you think you are taking a chance if you work for a man without property to pay you for your services? A. I wouldn't put it that way.

Q. How would you put it in this case? A. I think he is honest and will pay his honest bills, win, lose or draw.

Q. You cannot tell then when the doctor came on that third visit, that is the time after the twelfth, you cannot tell what his mission or errand was? A. I know the different errands he came on, but I do not know which particular time he came

on one particular errand. I find by inadvertence I haven't brought my memorandum from my office with me.

Q. Have you a copy of the will you wrote? A. Yes, I got a copy in my pocket.

Q. What did you do with the copy of the first will that you drew? A. The copy of the first will?

Q. You heard that question. A. I do not know that there was a copy made.

Q. You had a typewritten will? A. I don't hear it.

Q. It was a typewritten will was it not? A. It was.

Q. Why didn't you make a copy? A. It is possible I did.

Q. What did you do with it? A. I do not know. I have no recollection of it. The original was destroyed and of course the copy would have naturally been destroyed. I do not now recall the destruction of it.

Q. You knew I did not ask anything about the original? A. You asked me about the copy.

Q. Why did you speak about the original? A. It may have been argumentative. I was trying to get the sequence clear.

Q. You were trying to get a chance to answer? A. I am here to answer every question asked.

Q. What did you do with the copy of the first will? A. I cannot tell you. I have no copy now.

Q. Do you know what you did with it at any time? A. It was destroyed, but when or under what circumstances I do not now recall.

Q. Where did you have it? A. In my office.

Q. Why do you repeat my question? A. I want to be sure I get that right.

Q. You want to be sure to get a chance to answer, chance to think?

Mr. Strong: You don't always give him a chance to answer.

Q. Have you got the copy tied up in blue paper or blue ribbon? A. No.

Q. Let us see the copy, where is it? A. It is exactly the same as I mailed you; one is an original and one is a carbon, made at the same time with copy furnished you.

Q. I mean the copy of the will that you drew, original? That is a copy, but I mean an exact copy of what you made, page for page? A. I made—

Q. Duplicate. A. I made one and it is here somewhere. I do not know whether it is here or on file in the office.

Q. And is that fastened with blue ribbon? A. I imagine it is clipped. I do not know. It is not fastened with ribbon. I wouldn't fasten a carbon copy with ribbon.

Q. You would fasten that more securely? A. I think it is clipped. Fast with a wire clip, may be staple, I do not know.

Q. Where is the duplicate to the first will? A. That has been destroyed. I have searched and cannot find it. It is lost.

Q. You said that the doctor called at your place eight or nine times? A. Yes. No, I said I had seen him eight or nine times. He called at my place a number of times though.

Q. Don't you remember the controversy that Senator Strong and I had about the great many times and the number of times and you finally settled it, it was eight or nine times? A. I remember that very well. I think that was the times I seen him, as I recall it now.

Q. The first time was on July 5th? A. First time he called at my house was July 5th.

Q. And the second time was the twelfth? A. Yes.

Q. And the third time about a week or two? A. I think more than that. A month. Then he came in October; then the last time 26th of February.

Q. After July 12th he came in October? A. He was there in October, October 16, I know that date.

Q. Why? A. Because I looked it up.

Q. Why did you look it up? A. I looked it up with reference to another matter.

Q. What other matter? A. Matter of the lease of the coal trestle, which was brought to my attention the other day from a letter from Mr. Strong enclosing one from MacCurdy.

Q. How could a letter you received the other day bring you back and give you an impression of the date that Dr. Freeman called in last October? A. It referred to the matter of the report of purchase of the coal trestle. That is the letter.

Q. Was that his business with you at that time? A. I looked back to see when he called on me.

Q. What did you look to for that? A. My record.

Q. You keep a record? A. I keep a record.

Q. In your office? A. Yes.

Q. He did not call at your office in New York? A. He called at my home.

Q. Did you bring the record home every night? A. No.

Q. How did you get the record entered? A. I made the entry the following day.

Q. When was the next time he called? A. Couple or three weeks after that.

Q. That you make it was in October or November? A. October or early November.

Q. What was the occasion then of his coming to see you? A. That was about the trestle.

Q. Yes. A. Trestle and lease of land.

Q. When did you see him again after that? A. If I remember rightly I did not see him again until the 26th of February, that was the last time he was at my home.

Q. How long after that did the Doctor die? A. March 7th.

Q. So that you saw him from time to time from the time you drew the will up to a few days of his death? A. I saw him sometimes at his place in addition to the times when he came to my place.

Q. So you managed to keep in touch with him right along? A. Certainly.

Q. During all that time you haven't received one dollar from the Doctor or his estate? A. Not one penny.

Q. And you didn't ask? You knew the Doctor was worth considerable property? A. I knew he was the owner of the stock of the Manning Freeman Son Incorporated, yes.

Q. And you knew that the property or the title must rest somewhere; that is the title of that property was resting somewhere? A. Yes, I knew that and I knew where.

Q. Will you please explain why it was that you did not make a demand to be paid for the making of the will or those other services? A. Yes, I will explain. He told me in the very first interview that he could not make payment until such time as he got the property into his own hands.

Q. When did you hear that the Doctor died? A. The same day.

Q. Who told you? A. I received a telegram from Mr. Mohring, and on my arrival at my home that evening.

Q. The executor? A. Yes.

Q. And you advised him what to do right away didn't you? You advised him what to do? A. I believe I called him up on the telephone the fol-

lowing morning. He had been to my house before I got home and spoke to my wife.

Q. Did you call in the coroner? A. No.

Q. Why? A. There was a death certificate, as I understood it. There was a physician in attendance at the time of his death.

Q. At the time of his death? A. Dr. Ellis.

Q. You had him cremated right away? A. I did not have him cremated. I communicated with Mr. Mohring.

Q. Whereabout? A. And asked him to communicate with Dr. Freeman's wife his desire to be cremated.

Q. You had him cremated then how many hours after his death? A. I did not. The funeral was the second day after his death and he was taken to the Linden Crematory.

Q. After that what was done? A. After what?

Q. After the cremation? A. After the cremation, after we went to the Crematory at the Linden Cemetery I came out. The funeral party drove away. Mrs. Freeman in her car with some others.

Q. You were at the funeral? A. I was.

Q. After the death you came to Metuchen, didn't you? A. On the day of the funeral.

Q. Not before that? A. Not before.

Q. And you went to the Mohring house? A. I went direct from the depot by depot taxi direct to the funeral ceremony.

Q. You went to the funeral where? A. After the services at the house I went to the cemetery, to the crematory.

Q. Where at? A. Linden Cemetery.

Q. Why did you go to the funeral? A. I went to that funeral as to any other of friend and client and I attended the services as they were.

Q. And you saw that the cremation was carried through? A. I did not.

Q. You went there for that purpose? A. At the crematory there is a car; I do not know by what name they call it; elevator. The casket is placed on that and lowered below the floor to which the public and funeral party are admitted and after that had been accomplished the party withdrew and I with them.

Q. You had been in communication with the Doctor from the time of drawing the will and you attended the funeral and you went up to the point to where the body was about to be consumed in the flames? A. I attended the funeral and went until the funeral party withdrew from the cemetery and I came along with the rest of them.

Q. Is that a practice that you attend funerals of clients? A. When I attend a funeral of a client or friend I try to act as a gentleman should.

Q. How many funerals of clients have you attended? A. I cannot tell you.

Q. Do you think it was a hundred? A. I think not.

Q. How many? A. I do not remember now but two.

Q. They were all cases were they? A. Pardon?

Q. All cases, all clients? What kind of client? A. One client was a Doctor in New York, Doctor Halleck.

Q. How many years had you known him? A. I do not know. A number of years. Five or six I should say.

Q. And another client? A. I do not recall any other client whose funeral that I attended except Dr. Freeman's.

Q. So you got a great liking for the Doctor before his death? A. I have had those two gentlemen, neither of them practicing physicians but both bore the title of Doctors, as clients.

Q. You had enough of liking for the Doctor to

go to his funeral and see that his wishes were carried out? A. I had nothing to do but transmit the fact of his wish to Mrs. Freeman and that I found had been anticipated by letter that he had written one of his sisters, so that that was unnecessary.

Q. You have been instructing Mr. Mohring in this case right along, haven't you, about the provisions of the will and how to carry them out? A. Before the Doctor's death or since?

Q. Both? A. Not before.

Q. I do not suppose that you ever said a word to the Doctor about this will at the time it was executed until after his death? A. To Doctor Freeman?

Q. Yes. A. I do not think I did.

Q. Or he to you? A. I do not think so.

Q. You don't want to change that? A. I do not recall any occasion on which he spoke about this will after it was executed.

Q. And you did not speak or anybody else speak to you about that will from the time it was executed up to the time the Doctor died? A. I do not recall any one speaking of it till after the Doctor's death.

Q. Then who spoke? A. What happened after the Doctor's death was not speaking of the will.

Q. Then who spoke? A. Mr. Mohring spoke to my wife.

Q. How did Mr. Mohring know anything about the will? A. I do not think he did, excepting the fact. Not from me certainly.

Q. Which Mr. Mohring? A. Harry Mohring.

Q. Now how did he know anything about the will? A. As to its contents I do not think he did. That was not the point at all, Mr. Brown. He came to the house and left a message that he thought Mrs. Freeman wanted to have the body

removed to her home for the purpose of holding the funeral there. I did not see him, but the next morning I called him up and said that she was his widow, not divorced and only separated, I did not for a moment advise interposing any objection to that course and I communicated to him the fact, for her, that it was the Doctor's wish, expressed in his will, that he be cremated and Mr. Mohring told me that one of the sisters had a letter from the Doctor in which the same wish was expressed, but said he would tell Mrs. Freeman any way. That is how the will was mentioned.

Q. And then Mr. Mohring did not mention the fact about the will, as you said, but you mentioned it to him? A. I did.

Q. What did you mean when you said he was the first one that spoke to you about the will? A. I said he was the first one that the will was spoken about to.

Q. I did not say that. I asked you who it was that first spoke to you about the will? A. To answer that literally, I think you were, at the conclave that followed the funeral.

Q. Who told you to come down to the conclave which followed the funeral? A. Mrs. Freeman.

Q. How did she know you were interested? A. I cannot answer that except as it may have resulted from my message to her.

Q. How did anyone know that you were connected with this will if you did not speak to them about it? A. I told Mr. Mohring over the 'phone to tell Mrs. Freeman that that was the Doctor's wishes as expressed in his will. He told me he did it. She told me he did it.

Q. Who—

Mr. Strong: He interrupts and shuts off the answer.

The Court: Finish your answer.

A. She told me that she had that word, when the party were about to go out, following the removal of the body from the room at the time of the funeral. Mrs. Freeman stopped and spoke to me. I had never known her. How she knew me I cannot say. She stopped and spoke to me and asked me if I would wait until they came back and offered to have luncheon served for me.

Q. Outside of the luncheon and the other matters, will you please explain why it was, if you were instructing or carrying out the provisions of the will that you did not go all the way and see that the ashes were cremated or buried afterwards? A. I have no instructions, or there are none as I recall it as to the disposal of the ashes afterwards.

Q. Do you know why it was that you so religiously kept away from the will and the Doctor did not speak about it and no one else spoke about it until after he died, from the time it was executed?

Mr. Strong: Where is there any evidence of religiously?

Mr. Brown: Strike out religiously.

Mr. Strong: Strike out the whole question.

A. I had no occasion to do anything further about the will and Doctor did not speak to me about it. Certainly I did not speak to any one else about it. For that reason nothing was said about it. I saw him a number of times on other business. I do not recall that the will was ever mentioned after it was executed.

Q. Why did Letty Paterson, why was she brought up to the place the night you mentioned? A. I understand Mrs. Mohring and Mrs. Patterson and the babies were brought along for the ride.

Q. Was the Doctor's automobile? A. Yes.

Q. What other connections or what other business did you have with the Doctor other than you have recited here in your testimony? A. On the twenty-second of June, on the eighteenth of June which was the date on which I first saw the Doctor, after we had had dinner at his home we got into the two cars, his and mine. Mrs. Davey and Mrs. Louis Mohring and Doctor and Harry Mohring were in his car. Mr. Louis Mohring and myself were in my car and we drove over to Mr. Watson's home, Highland Park. Doctor wanted to consult with Mr. Watson, wanted me to meet with him. We got out in front of the house and as I recall there was some repairs being made to the house; we went to the rear door and were told that Mr. Watson was not there, he was away, so we went for a little drive, got back to the house somewhere around four or half past, as I recall it. On the following day, on the day following the execution of the will I came down to Metuchen in the morning and we came to Mr. Watson's office. Dr. Freeman and myself, in his car driven by Mr. Mohring, who went with us into the office and had an interview with Mr. Watson over the trust agreement then existing between him and Doctor Freeman. In anticipation of that I had prepared certain papers which was served on Mr. Watson at that time, and following that I had a telephone communication from Doctor Freeman not to proceed further in that matter. Then I saw him about some insurance and he called to see me about some work that the expert accountant had been doing on the books and its results. He called to see me a couple of times about the trestle and pockets and he called me again on the twenty-sixth of February with reference to some information he received from the expert accountants' report regarding payments that had been made from the corporation funds.

Q. Now, when you were having this will executed you say the Doctor turned to Mrs. Davey and asked if he was able to sign a will? A. Asked, as I recall it if she thought he was able to sign a will. Something of that kind.

Q. Did you ask him to do that? A. I did not.

Q. And she said? A. Yes. She assented—what words she used I do not now remember.

Q. But when he turned to Mr. Mohring, your friend of twenty years' standing, Mr. Mohring said "Certainly you are able to sign the will." Didn't he? A. That is his expression as I recall it. I may not be correct as to the words, but I certainly am as to the substance.

Q. You remember that word "certainly"? It stuck right in? A. I think it was his expression.

Q. Did Mr. Mohring at that time know what was in the will? A. Mr. Louis Mohring?

Q. Any of the Mohrings? A. Not from me they didn't.

Q. Did they know what was in the first will? A. Not from me, they didn't.

Q. They never made any expression to you about it or you to them? A. Not until after Dr. Freeman's death.

Q. Did Mr. Mohring, Sr., ever communicate to you about any business of Dr. Freeman's other than the making of this will? A. Why he has spoken to me about matters of Dr. Freeman since the time when he first came to me to ask me to go down there.

Q. How many times since? A. Two or three times.

Q. What would he talk about? A. The way matters were going down at Metuchen.

Q. About the business? A. Yes.

Q. Did you know why it was Mr. Mohring, Sr.,

had such an interest in coming way from Bayonne and driving down to Metuchen and back again and calling at your house and coming around as a witness to two wills and then inquiring about the business? Do you know why he manifested all that interest? A. His son lived there with Dr. Freeman, and his son's wife and grandchildren. It was his habit as I understood it to come down there every other Sunday and visit the son. Had been for somewhat considerable period of time. The alternate Sundays he would go in the other direction and visit his daughter who is also married.

Q. There was no interest in Dr. Freeman's affairs until after the first will was signed? A. I cannot answer that. I had no knowledge of Dr. Freeman until the first day I saw him on June 18th and know absolutely nothing regarding Mr. Mohring's acquaintance or interest with him.

Q. What sort of room was it where this will was drawn or executed? A. At my home?

Q. Yes. A. Dining room at my home.

Q. What is your house? A. Two story and attic, frame building. Has an isolated front room or parlor and then across the hall which extends beyond the parlor, the dining room to the east and the front door.

Q. The layout in front, steps leading up to the porch? A. Steps come up not in front but on the side.

Q. How many steps? A. Eight steps up the terrace in front of the walk.

Q. Eight steps up the terrace? A. Eight steps up the terrace in front of the walk and then a walk which passed alongside the side part of the porch.

Q. To the right or left. A. To the east. The porch is L shaped reaching alongside the parlor and across its front, and the front part of the porch was screened.

Q. Every time the Doctor came there he came up those steps himself and walked into your house without assistance? A. Yes. He did not need assistance except to see that he did not stumble over things that he did not see or notice.

Q. He did not need any assistance you say? A. Not in walking. He was perfectly able to walk.

Q. Did he use a cane? A. No, I never saw him carry a cane.

Q. All the time you saw him, from the first visit until the time he died you never saw him that he wasn't able to walk? A. No, never did.

Q. Without assistance? A. I never did.

Q. The rooms are separated in your house by doors? A. They are.

Q. And the dining room is on what side of the house? A. Dining room was practically south from the hallway, toward the back of the house.

Q. Could you draw us a little diagram as how your house is laid out? A. Yes, I could do that.

Q. Give us the porches and the interior and exterior. (Witness draws diagram.) A. That is approximately the lay out of the house.

Q. Will you please indicate by letters. First the street. A. Street is further out. "P" stands for parlor, "D" for dining room, "H" stands for hall, "K" stands for kitchen. I will put porch.

Q. Put the arrow on the diagram.

Mr. Watson: Meridian.

Q. North and south, indicate. A. The house faces almost exactly north.

Q. Will you please describe the entrance that was used by the Doctor at his frequent visits to your place?

The Court: Hasn't he already done that, Senator?

Mr. Brown: He has, but refer to the diagram. Just this one question is all.

A. The street runs along east and west and there are eight terrace, concrete terrace steps with an iron hand rail each side, then a concrete walk up to the door where there are three steps up to the porch level.

Q. And then the entrance from the porch is to the hall? A. Entrance from the porch is to the hall, stairs commence right here.

Q. From the hall you pass, you go past to the parlor or dining room? A. Parlor is on the front of the house and dining room toward the rear of the house.

Q. This night the will was executed, when the will was executed; you had prepared it, as I understood, several days before that? A. Several days before.

Q. You arranged with Mr. Louis Mohring, is that his name? A. Yes.

Q. To get the Doctor up there to have it executed? A. Not at all. I arranged for him to come over and sign it as a witness.

Q. How did you get word to the Doctor? A. By telephone.

Q. Did you telephone to the Doctor? A. I did.

Q. Who took the message? A. I think he took it himself.

Q. You know he didn't don't you? A. Yes.

Q. Isn't it Harry Mohring took the message or his father? A. No, Doctor. Father wasn't there.

Q. Every time you wanted Doctor Freeman how would you get the message to him? A. Why he talked over the phone. I talked to him over the phone.

Q. Every time? A. That was the only time I

wanted him. When he wanted me he would call up.

Q. Well, then, you had made arrangements previous to speaking to Mohring for the Doctor to come to execute the will? A. The Doctor said he could come any night, make it any night it would suit Mr. Mohring. I asked him when he could come. He fixed Wednesday night and I telephoned Doctor Freeman that Wednesday night would suit him and he said all right he would be there on Wednesday night.

Q. And Harry came with him? A. Harry drove him, yes.

Q. And the Doctor came in without Harry? A. Doctor came in to the room without Harry. When I got there the whole party were on the porch in the screen part.

Q. Is that the night that Letty and all were there? A. Yes, that is the night I saw all.

Q. Who spoke about the will first, you or the Doctor? A. When we got to the room I told him I had the will ready.

Q. Which spoke about that before you got into the room? A. I beg your pardon. When I got home nothing was said about the will. I went on the porch and spoke to the people that were there and then hurried in and washed and got ready to eat my dinner, and did eat it. After I had finished I went out.

Q. We have been over that dinner. I do not want to repeat. Who first mentioned it, and how did you come to the will proposition? A. In the first instance?

Q. This night when he came into your house? A. I asked him to come on in and he came. I got the will out and showed it to him and where it disagreed.

Q. When the Doctor came inside he was all alone was he not? A. He was all alone at the time he came in and I read the will to him. He and I were there in the dining room alone.

Q. No one else was there at all? A. Not there, no. Not until after the reading was completed.

Q. The dome is in the middle of the room, isn't it? A. Right in the middle. Right over the dining room table in the middle of the room as near as can be.

Q. Is it impossible for any one to hear when you are in that room? A. Rest of the party were all on the porch, twenty-five feet or over away. Has two big doors.

Q. The making of this will as to the reading over of the will and talking about it, the only persons that knew anything about that was you and Doctor Freeman? A. Absolutely.

Q. So that when—then after you had satisfied yourselves, if you did so, that everything was all right, you called in the witnesses did you not? A. When I had satisfied him that everything was all right I called in the witnesses.

Q. Who did you call in? A. Mrs. Davey and Mr. Louis Mohring.

Q. And you closed the door? A. Certainly did.

Q. Why did you close the door? A. Closed the door to be private and alone, of course.

Q. What was there private about it? A. Making of a man's will I consider to be highly private.

Q. With all those around that were interested? A. No one there that was interested except Harry Mohring.

Q. Wasn't Letty there? A. Yes, I beg your pardon, Letty was there on the porch.

Q. And the witnesses were there? A. Yes.

Q. Outside of that no one else was there? A. Mrs. Mohring was there and the two children.

Q. When you got ready you took the will up? A. I did.

Q. Where had it been lying? A. Right in front of the Doctor, where I had finished reading it.

Q. He didn't touch the will at all? A. He did touch it at all.

Q. Did he read it? A. He followed my indicating pencil as I read it, word for word and he said he followed it and I think he could because once or twice he asked me to read back a paragraph or line.

Q. After you got through reading you indicated and showed him where to sign? A. After I got through reading it I made the correction he wanted, two words, and made the notation at the foot of the attestation clause and asked him if it was all right and he said yes it was all right, and then I went and got the witnesses. After they came in I showed him where to sign.

Q. You are sure that is what you related on direct examination? A. Certainly.

Q. Did you not say after the Doctor signed it that you turned to the correction that was to be made? A. No, after he signed his name he initialled the correction that had been made.

Q. So that the only physical opportunity, or in fact the only time that the Doctor had this will in his hands was the brief period between the time that you read it and the time that he signed it before you? A. I did not say that he had it in his hand during all that interval. It lay on the table directly at his hands. I do not think he had it in his hand.

Q. At any time in the sense of picking it up? A. At any time.

Q. So that as far as this will is concerned, the Doctor never physically had that in his hand; the

closest he got to it was to sign his name to it? A. He had his hand resting on it as I read any part of it. No, I think he never took it off the table entirely as I recall it to have it supported wholly by his hand at any time.

Q. So that the Doctor depended upon you entirely as to the making of that will and its execution? The Doctor depended upon you entirely as to the contents of that will and its execution? A. I think he could see enough to be certain that the reading was right. He said he could and I think he could. I read it to him, literally to him, word for word as it is.

Q. What did you mean when you said in direct examination that the Doctor's eyes were very bad? A. Just that.

Q. That he could hardly see? A. Just that.

Q. Then after the will was read you asked Mrs. Davey to come in and Mr. Mohring? A. Yes.

Q. But before they came in you had the Doctor sign, did you not? A. No, I did not. He signed it in the presence of all three of us.

Q. The order of signing was Mrs. Davey first with a line above vacant for you to sign it? A. Yes.

Q. That was in accordance with your instructions? A. Yes, I showed her where.

Q. And you showed the other witness where to sign? A. I did.

Q. And after the signing was done they passed out on the porch again? A. No, not immediately.

Q. Was there any conversation about the will in their presence? A. I do not think there was any about the contents of it, if that is what you mean.

Q. Yes. A. I do not think so.

Q. So as far as you know there was not? A. There was not.

Q. The only living person who knew the contents of that will except you was Doctor Freeman, and you know that Doctor Freeman is dead? A. I have heard of two or three others who he has told parts of what were in the will, but no one heard from me.

Q. Who were those persons you speak of, refer to? A. Mr. Mohring, Letty Patterson and Mr. Higgins.

Q. Which Mr. Higgins? A. I do not know his name.

Q. Where does he live at? A. Lives at Madison, N. J.

Q. What connection has he with the case? A. He hasn't any, with this case.

Q. Do you know him? A. Very well.

Q. How did you come to know him? A. Doctor Freeman sent him to see me.

Q. What is his first name? A. I do not know.

Q. Where does he live at? A. At Madison.

Q. What place in Madison? A. I haven't the remotest idea.

Q. How could you get to see him? A. I went over to his office. He is connected with the Western Audit Company in New York. Those are the people who did the expert accounting work on the Manning Freeman books.

Q. How did you come to keep the will? The Doctor asked you to keep it? A. The Doctor asked me to keep it.

Q. Did he tell you how you should keep it or where? A. I do not know whether he told me or I told him.

Q. Do you always destroy the waste that you have in your waste basket by fire? A. I never have a will in my basket. There may be a torn paper in my waste basket and those are destroyed by fire, yes.

Q. Do you always destroy the papers that you have in your waste basket by fire? A. Yes.

Q. Why do you take that precaution? A. When I said waste basket, in answer to your question I meant the waste basket at home in which this torn document was put. That is a habit of our household, a basket that stands in the kitchen to catch loose papers that are to be burned and not things that go in the garbage pail and that has been a habit of the family for long years. I do not know how long.

Q. I suppose in driving home with Mr. Mohring that night from Bayonne you did not speak to him about the will? A. I do not think there was a word said there about the will, between Mr. Mohring and myself, after its execution.

Q. You have already said that you haven't spoken to anybody about it, even the Doctor? A. No, I do not think I did. I do not recall a single instance.

Mr. Brown: I do not think there is anything else than I can think of at this time, except the paper that has been impounded. I would like to reserve my cross examination for that if it should go in. At the present time it is not in. I want it clearly understood that I do not waive my right to cross examine.

The Court: You will have your opportunity.

By Mr. Watson:

Q. When and where was the first will executed? A. On the Wednesday following the Eighteenth of June, at Doctor Freman's home, in the evening.

Q. At night? A. Yes.

Q. That was on the twentieth of June? A. I think it was the 21st.

Q. You say you telephoned to Harry Mohring the Doctor's wishes as to cremation the morning following his death? A. No, the afternoon. I telephoned him in the morning to consent, that I should advise him to consent to allowing Mrs. Freeman to have the body buried from her home, and later in the day I called him again, it first having occurred to me about the cremation, to send that word.

Q. What time was that? A. I do not know. In the afternoon.

Q. What else did you speak to him about in the morning? A. Nothing else.

Q. He went to see you the day that the Doctor died? A. He came to see me, but he did not see me. He saw my wife.

Q. You were away? A. I did not get home from the office.

Q. He sent you a telegram that day? A. He sent the telegram immediately after the death, and it came shortly before he got there.

Q. The next morning you telephoned him? A. I telephoned him from the office. I have no telephone in the house.

Q. That was only with reference to the removal of the body to Mrs. Freeman's home? A. I do not recall anything else.

Q. You did not mention anything? A. I do not think so.

Q. You did not tell him you had a will? A. No, I certainly did not tell him I had a will.

Q. Of which he was executor and chief beneficiary? A. I certainly did not.

Q. Made no mention of it at all? Not in the afternoon? A. That it was Doctor Freeman's wish, as expressed in his will, that his body be cremated and asked him to convey it to Mrs. Freeman.

Q. Doctor Freeman's wish as expressed in the will? A. Yes.

Q. Did you tell him he was the chief beneficiary and executor of the will? A. I did not. I did not discuss the will beyond that one statement.

Q. You said, Mr. Davey, as I remember it, when I asked you if the instructions about the disposition of the ashes was carried out, you said you did not remember that there were any instructions? A. I said I didn't have any instructions.

Q. Were there any instructions? A. The will says—I do not call that instructions. It refers to instructions or directions.

Q. Did you say that they were carried out? A. I do not.

Q. How is it that you say that the terms of the will about the cremation of the body was carried out and you stayed there and did not see that the verbal instructions were carried out? A. Because the body had been turned over to Mrs. Freeman and I had no further part in the funeral arrangements whatever.

Q. Except to attend the funeral? A. Of course, I attended the funeral as a friend.

Re-direct Examination by Mr. Strong:

Q. Did Senator Brown attend the funeral? A. I did not see him until after the funeral. He was at the conclave at the house later.

Q. How long after the funeral? A. Some half hour or so. After we returned as I recall it.

Q. Did Mr. Watson attend the funeral? A. I did not see him.

Q. At the ceremony? A. I saw him later, at the family conclave held later.

Q. Who was present at the family conclave? A. Mrs. Freeman and Mr. Brown, the three sisters of Doctor Freeman and Mr. Watson and myself.

Q. What was said or done there? A. Mr. Brown, I think it was, asked me what knowledge I had of the Doctor's will, if any, and I told him. I told him I had a will in my possession, gave him the date of its execution.

Mr. Watson: Object to it.

The Court: Is it objectionable in any way?

Mr. Watson: There isn't any relevancy. What has that to do with testamentary capacity?

Mr. Strong: For the purpose of shaking the testimony as to the execution of the will they brought out the fact that he went to the funeral, that the witness went to the funeral, as being a very suspicious circumstance. That is the only business that it has in the case. I want to show the other lawyers were there.

The Court: Just a moment. I do not think the question is proper at this time. It seems to me that it would be, it may properly come in later time as rebuttal if it becomes necessary. I will overrule the question at this time.

Q. What was the business relationship between Harry Mohring and Doctor Freeman? A. Harry Mohring was employed, Doctor Freeman told me, by the corporation, by the business, was to drive and attend to Doctor Freeman personally.

Cross Examination by Mr. Watson:

Q. Which witness signed first? Which witness signed the will first? A. Mrs. Davey.

Q. What did she write? A. She wrote her name.
Q. Anything else? A. Address.
Q. Who signed next? A. Mr. Mohring.
Q. What did he write? A. Wrote his name.
Q. Anything else? A. His address.
Q. And then you signed? A. I did.
Q. Your name and address? A. Yes.

By Mr. Brown:

Q. Would you mind signing your name and your wife's name? A. I cannot sign my wife's name. I can write it.

Mr. Watson: And address.

Q. And address. A. You want me to write her name?
Q. Just as you did in the will— Your name as it is in the will.

Mr. Strong: Write your name and address as it is in the will.

(Senator Strong at that juncture exhibited the will to the witness.)

Mr. Brown: I will withdraw that question.

Q. Write your full name, sir, and that of your wife. A. My full name or my ordinary signature?
Q. Your ordinary signature. (Witness writes.)
Q. Will you please sign your name? A. I have done so.
Q. Is that the usual name you sign? A. Yes.
Q. Will you please sign your wife's name? A. I cannot do that.
Q. I mean write her name. (Witness writes.)

Mr. Watson: And address.

A. Her address is the same as mine.

Q. Write it again. (Witness writes.)

Q. Is that the pen that you used in the signing of the names of this will? A. No.

Q. What pen did you use? A. I lost a pen I did use and I had to buy this very recently, last week some time.

Mr. Brown: Have that marked for identification.

Paper written on by Mr. Davey is marked Exhibit 2 for Identification.

By the Court:

Q. Mr. Davey, what was there about the execution of this will that would suggest itself to you as a reason for Dr. Freeman asking Mrs. Davey whether she considered he was in proper condition to execute a will? A. I can only answer that a little indirectly. When Dr. Freeman drew the memorandum, which was marked for identification, on the eighteenth of July—of June—he put it into somewhat of phraseology of a will. I think —and I can answer your question no other way— that he seemed a little bit proud of his knowledge of legal wording. When the question was propounded as to the ordinary attestation, whether he signed, sealed, published and declared that to be his will, he repeated the phrase and declared that, and published and declared "this to be my will." I thought that his question to Mrs. Davey and Mr. Mohring were rather along the same line. I have no other knowledge. There was nothing more said about it.

Q. What was the Doctor's condition on that night? Physically. A. Physically—perfectly nor-

mal, man walked and talked with absolute propriety. He seemed in no wise any different from any man who had trouble with his eyesight. That seemed to be the limit of his trouble, an inability to see clearly.

Q. Was he nervous? A. Didn't seem to be.

Q. During this hour that he was in the room was he quiet or did he move around the room? A. He sat in the chair. He was smoking part of the time and as I read the will he gave very close attention, commented on the one question of the taxes and the interlineation was made only after consultation with him. I could not distinguish anything to raise the slightest suspicion that he wasn't normal. He was not nervous, not fidgety. In no sense restless.

Q. Did he talk to you about anything outside of the execution of the will? A. Not on that night. No other business was discussed, if that is what your Honor means.

Q. No, I don't limit my question to business. I ask you if he discussed anything outside of the will with you that night? A. On the porch when I came back there was the ordinary conversation.

Q. I mean in the room? A. No, nothing but the will.

Q. You were in there about a half an hour I think you said? A. I think a half hour would probably cover the entire time, approximately.

Q. During that time nothing was discussed excepting the will? A. Our attention was devoted entirely to the consideration of this will and to no other subject whatever.

Q. You had known the Doctor about a month when this will was executed? A. Trifle less than a month.

Q. You had visited him in Metuchen? A. I had

been down there three or four, five times, and he had been once to my house.

Q. Was there anything about the Doctor's actions that indicated to you that he might be suffering from any mental illness? A. There was not. He told me the history of his confinement in the State Hospital, on the first occasion when I met him, and the matter was brought to my mind in that way.

Q. Did you notice anything peculiar or unusual in his appearance or conversation at any time? A. I did not. His appearance—I want to qualify. I noticed on that day at dinner that he had a little difficulty apparently in gauging the contents of his spoon.

Q. You had talked with him? A. I had talked with him at length on several different dates about his business. Very great length.

Q. What was the character of his conversation with you? A. The character?

Q. Yes. A. Very exact and very particular in very many details he covered in the first conversation I had with him. Lasted somewhat more than two hours in direct personal touch with him and the rest of the day in more casual conversation shared by other people, but in that first two hours he went over the history of his business, its present situation, how he acquired it, his troubles, his habits and how he acquired habit of drinking and of drugs. Efforts he had made in getting rid of those habits and the difficulty. The fact of his confinement in the Hospital and the facts regarding his discharge, all other facts or circumstances leading up to the execution of a trust agreement with Mr. Watson and the details of complaint he had to make about the manner of its carrying out, were all gone into very fully.

Q. In his conversation with you was the conversation carried on in a manner of calm and dispassionate one and in the way that ordinary men carry on conversation with their legal advisors, or did you notice peculiarities? A. Absolutely normal in every respect. He did express some resentment against his wife for the fact that she had caused him to be confined but not in any sense nervous or excited about it. He showed some resentment and expressed some, but not any nervousness or passion in manner of speaking.

Q. Was he profane? A. He was, at times, somewhat profane.

Q. Was his manner of speaking emphatic? A. No, he did not speak with any undue emphasis. He spoke positively. I had to inquire carefully in many regards and many he gave me and some he said he could not. He talked that morning in the absence of any papers and later in the day he gave me copy of agreement with Mr. Watson. In that way and others I was able to check up very many of his statements and found them absolutely exact and accurate.

Q. You advised him that, before the will was executed, that it was what would be termed in law an unnatural will? A. I spoke to him about that and I had his reason for making it as he did. The reason that he gave for the bequest to his wife being limited was that, first of all, she had caused him to be confined, which he resented, and, second that she was fairly well to do in her own right and had considerable real estate that he had turned over to her name and considerable income from her writings and royalties.

The Court: I think that is all Mr. Davey.

Re-direct Examination by Mr. Strong:

Q. Did he give any reasons as to the sisters? A. Yes, gave reasons as to the sisters that was that they got other real estate when their father died and he got the business and they were as well fixed as he was and that there had been no particularly cordial relations between them, and when he was in the hospital one had come to see him for a few minutes, and that seemed to be the extent of their interest, and later when he came to having legacy included in the will in their behalf he said he did not want them to have as a ground of possible contest that they were not mentioned that he did not remember they were in existence.

Q. In consequence— Or did you prepare, at his request, any other legal papers? A. Yes, I did.

Q. What? A. I prepared a paper for the cancellation of the agreement with Mr. Watson, which Dr. Freeman signed, and which I offered Mr. Watson an opportunity to sign. I prepared a renunciation for Mr. Watson to sign, resigning his position with the Manning Freeman Company, which he did not sign. I prepared a notice of rescission of the agreement then existing between Dr. Freeman and Mr. Watson and I had prepared in substance a bill in Chancery which I expected to have used immediately after the declination of Mr. Watson to sign the cancellation and resignation.

Q. Yes. At whose request were those papers prepared? A. They were prepared at Dr. Freeman's request and on information received from him.

Q. And what was done with respect to them? A. We had the interview on the 22nd of June at Mr. Watson's office. I served the notice on him and nothing was ever done with the other papers be-

cause Dr. Freeman changed his mind that night after or the next day and directed me not to do anything that he was going to let the agreement expire.

Q. What reason did he give for that? A. Well he thought the other course would—

Mr. Brown: Counsel is getting outside of the proposition which is before the court now. We are getting to a field of inquiry that may come subsequent to the case. I desire to enter objection.

Mr. Strong: In line with your Honor's question. For that reason I entered upon it.

The Court: I do not think I had gone quite that far. I did not intend to.

Re-cross Examination by Mr. Watson:

Q. Didn't you say you came to my office on the nineteenth? A. No, I said the twenty-second.

Q. Didn't you say— A. I came to your house on the eighteenth, that was Sunday.

Q. Didn't you say you came to my office on the next day? A. It was the day after the execution of the will, the twenty-second was the day we came to your office.

Q. Didn't you say, in your examination, that you came to my office on the nineteenth? A. I said the next day I meant the day after the execution of the will, not after I got the instruction.

By Mr. Strong:

Q. The first will you prepared? A. Yes.

By Mr. Watson:

Q. My declination to sign these papers was made

positively and promptly in the presence of Doctor Freeman? A. Yes.

Q. My declination to sign these papers that you had prepared was made promptly and positively in the presence of Dr. Freeman and yourself and Harry? A. Very positively.

Q. And then Doctor Freeman directed you not to proceed? A. The next day or the second day following. I do not know which.

Re-direct Examination by Mr. Strong:

Q. What did he say at the time was the reason that he did not want you to proceed? A. Yes. There were so many threats and threatened trouble. The easiest way was to let it expire.

Q. Did he state anybody had been to see him with respect to it afterwards? A. Yes, he said Mr. Watson had.

Q. And done what? A. Threatened all kinds of proceedings.

Q. Was there anything said about a bond? A. There was at the first interview. The bond was the one called for by the agreement with Mr. Watson and it had not been delivered.

The Court: Is this important at this time? It does not seem to me that it has any bearing on the execution of the will at this time. I do not know how it may be brought into the case collaterally. I am sure that I am not going to be influenced by this testimony at all in determining whether or not this was a properly executed Will. I mean by the connection I see now. I have let Counsel go to extreme lengths because I appreciated the importance of the entire investigation, but I cannot let you go further unless you have some very competent reasons.

LOUISE B. DAVEY, a witness produced on behalf of the proponents, being duly sworn, according to law, on her oath saith:

Direct Examination by Mr. Strong:

Q. You are the wife of the previous witness? A. I am.

Q. I show you paper writing purporting to be the last will and testament of Charles M. Freeman, bearing date July 12th, 1922, and ask you whose signature that is at the foot of that will? A. That is Doctor Freeman's.

Q. How do you know it? A. I saw him make it. I saw him sign it.

Q. And whose is the first signature underneath the attestation clause following that will? A. Mr. Davey's.

Q. How do you know that? A. I am familiar with his handwriting.

Q. Any other reason? A. Well, I saw him sign it.

Q. And did you sign it yourself under your husband? A. Yes, that is my own handwriting.

Q. And whose signature is that underneath yours? A. That is Mr. Louis Mohring's. I saw him write it. I saw all three of them written, in fact, all four.

Q. When those signatures were made who were present? A. The four of us, no one else was present.

Q. And where were they made? A. In the dining room of our own home in Belleville.

Q. And were they made all at the—on the same occasion? A. Yes, one after the other.

Q. Who signed first? A. Well I think I—you mean as witness?

Q. The will? A. Dr. Freeman signed it in our presence.

Q. Then whom? A. Then I signed it.

Q. Then whom? A. Then Mr. Mohring and I believe Mr. Davey signed it last, as I recall it.

Q. Where was—about where were you located in the room at the time of the signing? Was there a table there? A. Just the ordinary square dining room table. Our family is small and our table is small. We sat around the table. I don't remember just what order.

Q. You all sat around the table? A. Sat around the table. I remember very well where Dr. Freeman sat. He sat on the north side of the dining room, of the table.

Q. State whether or not you could each see the others sign? A. Oh, yes, clearly.

Q. How did you happen to be there to sign this paper? A. Well I was in my own home where I belong.

Q. How did you come to sign? A. At his request. We had signed the earlier will and it was his wishes that we should sign the later will.

Q. Was it at his request while you were all present in the room there? Yes. He came by appointment.

Q. And what did he say, if anything, with respect to this paper before he signed it? A. When he signed? Mr. Davey called us in from the porch, from the porch to the dining room, and the first thing he said to me, he said, "Mrs. Davey do you think I am capable of signing this will?" I said "Yes. I think you are capable. I don't think there is anything the matter with you." He seemed to be a perfectly normal man that night. He had been in our house an hour then waiting for Mr. Davey. We had sat on the porch talking about ordinary events.

Q. What did your husband say, if anything in the presence of you three witnesses and the testator, Dr. Freeman? A. After he asked last will and treatment, he said I declare this to be the last will and testament.

Q. Do you remember what your husband said, if anything, before that? A. Oh I don't know, only I do recall that.

Q. You remember the Doctor saying that he declared that to be his last will and testament? A. Very clearly.

Q. Do you recall whether your husband said anything to him before that, whether or not it was his last will and testament? A. I think Mr. Davey mentioned that to him and that was his answer.

Q. I call your attention on page—on the second page of this paper to certain letters in the margin, what are those? A. Dr. Freeman's handwriting. I saw him make those in our presence.

Q. In our presence, you mean whose presence? A. The three witnesses. The four of us. I do not know the contents of the will if that is what you mean. I never had any knowledge of that.

Cross Examination by Mr. Brown:

Q. You have been married for a number of years I take it? A. Quite a number. Would you like to know the number.

Q. I am not asking you about that. What I want to know I will ask you, if you don't mind. Will you please sign your name on that paper? A. Certainly. If you will give me a pen. I am not used to using anything but a fountain pen.

Q. What kind? A. I signed with my own fountain pen, which I am very familiar with.

Q. You are signing with another fountain pen? A. I have my own pen. I use it on all occasions.

The Court: Will you please write your name on that paper with that pen and don't talk so much.

(Witness writes.)

Q. Will you sign it a second time for me please, your usual signature now. (Witness writes.)

Q. Will you sign your address after it. (Witness writes.)

By Mr. Strong:

Q. You have just written not with the pen that you signed the will with, but another pen?

The Court: That appears in the record, Senator, already. There has not been anything suggested to the witness to sign as in the Will. Only been asked to sign her name.

Paper on which witness wrote is marked Exhibit 3 for Identification.

Q. Do you say that Doctor Freeman requested you to sign the will as a witness for him? A. Yes, he asked me if I would.

Q. Where were you when he asked you? A. In my own home? He had asked me down in his home for the earlier one. Then he wanted to know if we would sign the second will.

Q. Where were you? Certain parts of your home? A. I think it was in the dining room. I do not remember just exactly where.

Q. What did he say to you? A. Wanted to know if I thought he was capable of making a will and if I was willing to sign it as a witness.

Q. Where was the will then? A. I do not know what Mr. Davey—Mr. Davey had not come home from his fishing trip.

Q. He requested you before Mr. Davey came home? A. He had spoken to me before that.

Q. He wanted to know if he was able? A. No, he asked that afterward when I went into the dining room.

Q. You have witnessed a number of wills in your time? A. No, I do not think I have. I do not recall more than two or three.

Q. Do you recall anything about this will, the contents of it? A. No. I don't know anything about the contents of it.

Q. Don't you know the contents of the attestation clause? A. Yes, I suppose I know that. I do not know whether I can repeat it.

Q. As nearly as you can tell. A. I declare it to be my last will and testament, to the best of my ability, so help me God.

Q. Then the other. A. Signed, sealed. He said that.

Q. Repeat that, the language of the attestation clause—not the attestation clause, "signed, sealed and delivered in the presence of." A. Each of the witnesses. Well I don't know just what the rest of that is. Before each other. Not even correct language.

Q. Put it as you remember. A. "In the presence of the Doctor and of each other," something of that sort.

Q. What else after that? A. Well, I am sure I don't know. It is too technical for me I am afraid.

Q. You only heard that once? A. I heard it both wills. Once for this will.

Q. And that was how long ago? A. This last will was drawn?

Q. How long ago have you heard this? A. It was the twelfth of July.

Q. Almost a year ago? A. July the 12th, 1922. Pretty nearly a year ago.

Q. You remember this "signed, sealed and delivered in the presence of and declared to be" by him, his "last will and testament in our presence"— A. Our presence and the presence of each other.

Q. That is how it was made, "In our presence and in the presence of each other?" A. That is the way it was signed.

Q. No one has gone over those qualifications, the signing in the presence of each other, and in our presence, or that wording, with you since July 12th? A. It is familiar to me because I have heard it often enough. Heard other wills talked about. That particular term. I heard. Mr. Davey talks over wills with me. That has had something to do with it. I know it is a proper clause at the end of the will.

Q. You are familiar with that "signed, sealed"? A. Yes. This was not the first time I heard it.

Q. You can almost tell, word for word what it is? A. Not able to repeat it in order.

Q. Were there chairs all around the table when you signed this will. A. I think so. I think I sat down next to Doctor Freeman, if I recall right, and signed, though I do not remember whether I remained seated. There are four sides of the table, a square.

Q. Square table? A. Yes.

Q. One at each side? A. I don't know so. I think so, as far as I remember.

Q. That was before there was any signing? A. I sat down as I signed it. I sat down for the purpose of signing it.

Q. How do you know whether the Doctor saw you sign it or not? A. I cannot swear that he did. I suppose he did. He sat right there and watched me sign it. If he could see at all. He was able to write his own.

Q. He had to be shown to sign his own? A. That is what Mr. Davey said.

Q. He signed first. And then Mr. Davey showed him where to sign? A. Yes.

Q. What was the next act of signing, who signed next? A. I signed next, I think.

Q. Did you sign before the initials were put on page 2? A. I do not recall about that.

Q. You cannot tell that? A. I am not sure.

Q. After the Doctor got through signing he did not have the will in his hands at any time? A. I do not know. I am not sure about that. He might have had it.

Q. As far as you know, you won't say he had? A. I didn't see him take it up or take it away. It still remained on the table. He may have took it up. He leaned over the table I think.

Q. Do you know it or you so think? A. He sat at the table.

Q. Did he rest back after it was signed? A. No, leaned over the table.

Q. Did he have glasses on? A. I do not know. Cannot be sure about that. I cannot say.

Q. Did you all remain around the table after signing the will and at the time of the signing of the will? A. Yes, I think we were all around the table, right around the table. I am not sure we sat at the table. I know we sat as we signed it.

Q. You say "I think." I just wanted to know if it is speculation with you or if it is a fact? A. No, I am trying to tell the truth. We sat at the table.

Q. You say "I think." A. Perhaps that is a habit.

Q. Do you mean to say it is so when you say "I think"? A. Yes.

Q. One after another? A. I think we sat all at

the same time. We sat at the same time at the table, around the four different sides.

Q. The Doctor, after signing the will, what was his physical motions after that time? Did he rest back or move away from the table or what? A. It seems to me that we went to the front porch again and joined the party. I think that was the next.

Q. I mean the Doctor. After he got through signing where did he go? A. Well I am not sure about that. He might have remained in the room for a while. I know we went to the porch later. I do not know how much later.

Q. After the Doctor signed the will and before any of the witnesses signed, where did the Doctor go? A. He stayed in the dining room, where we were.

Q. Where? A. At the dining table. I do not think he got up from his chair at all.

Q. Do you know whether he did or not? A. No, he did not.

Q. Why do you say "think" at one time? A. It may be a habit. Perhaps I have a bad habit of saying that.

Q. You know the difference, of course? A. I do not mean to mislead you.

Q. Do you see that bow tied so evenly and the nice little knot there that is tied so nicely, do you see that? (Showing will to witness.) A. Yes. I see that.

Q. Who tied the knot of that bow so nicely? A. Who did it?

Q. Yes. A. I did not see it tied.

Q. Can you tell the court how you got a knot of a bow nice and tasselled like that tassel, whatever you call it, see how it is? A. Yes I see.

Q. How did you do that? A. I do not know. I had nothing to do with it.

Q. Your husband not a seamstress? A. He makes fishing rod covers, if you call that a seamstress.

Q. Can you tell how that was done? You cannot imagine how that was done? A. I have absolutely no knowledge of the tying of that bow.

Q. Not confining yourself to the bow itself. A. I thought that is what you were talking about.

Q. You see the knot of that string, that I am showing you? A. I see what you have reference to.

Q. You know it now? A. Yes.

Q. Can you tell how that is made in that way? A. No. I do not know.

Q. If you cut one ribbon off another can you—

Mr. Strong: How far has this got to go? You don't want to waste time.

The Court: It may have a great lot to do with it. I do not know Senator.

Mr. Strong: He is asking her as an expert.

A. I have no idea.

The Court: I think the examination proper. It seems so to me.

Mr. Strong: I object.

Q. Can you tell us, as a housewife or lady that has much experience no doubt in sewing, just how that is accomplished? A. Well I do not know. Is there anything unusual about that?

Q. When you cut a piece of tape it does not form itself that way? A. No, I do not think it would ordinarily.

Q. How did you do it then? A. I do not know how it was done. I had nothing to do with it. I cannot tell you or help you.

Mr. Strong: Any questions, Mr. Watson?

Mr. Watson: No questions.

Re-direct Examination by Mr. Strong:

Q. Mrs. Davey read that attestation clause to me (reading). "Signed, sealed published and declared by the above named testator, Charles M. Freeman, as and for his last will and testament in the presence of us who, at his request, and in his presence and in the presence of each other, have hereunto subscribed our names as witnesses." "Interlineation on page two first made," and ask you if that attestation clause correctly stated the facts, signed by you, correctly stated the facts? A. Do you want me to read this paragraph and see if it states what happened?

Q. Yes. A. Yes, that was the way it was stated.

Q. That is the fact? A. That is the fact as far as I am able to remember.

Cross Examination by Mr. Brown:

Q. Dr. Freeman was just as normal as you are here? A. At that time?

Q. Yes. A. June 12th?

Mr. Strong: No, July 12th.

A. Absolutely. He had been sitting—

Q. How far from you there was Dr. Freeman? His speech was congent, coherent and so you could understand it, and that of a normal man? A. His speech was always clear and coherent. Understand him every time I saw him.

Q. You saw him the first time, the second time— A. Only three times.

Q. How many other times? A. I saw him July 5th, I think. I do not recall that clearly, and the time before, the eighteenth of June was the first time I met him, when we went down to his house.

Q. That time you saw the Doctor, as far as you could see he was normal in every particular? A. I think he was a little feeble.

Q. What do you mean by that? A. On account of his blindness. He seemed to step with care and sort of drag his feet sometimes. Whether that was due to his eyesight or other causes I do not know.

Q. He did not act to you as a man who was suffering from the use of drugs or liquors or any vices of any kind? A. I think he showed the effects of drink.

Q. When? A. When I saw him the first time. I do not mean he was under the influence at that time. I mean the effects of it.

Q. How? A. I thought maybe his feebleness was from that. He said his eyesight might have been impaired, he had taken liquor.

Q. The first time you saw him, noticed that time his feebleness? A. I said it might have been due to that. No, he was very much the normal man the night he signed the will. I did not see a thing wrong and he had been at our house an hour before Mr. Davey came, sitting on our porch, chatting about current events.

Q. Had been normal? A. I said the first time. On June 18th, he showed effects of liquor. I do not know whether he had been drinking that time. Effects of long drinking.

Q. How long do you think? A. He said himself that he had taken liquor more or less too much for his own good. He told me himself that.

Q. That was the first visit? A. I think it was June 18th.

Q. First will he was normal? A. Perfectly. That was not the 18th, that was later.

Q. It would be impossible for any one to get advantage of the Doctor? A. I do not think any one could take it.

Q. Even his blindness or his impaired eyesight? A. So far as I saw. He said he could not see very clearly, but he could see a little.

Q. How do you know what he could see? A. I do not know what he could see. I did not test him. I do not know.

Q. You do not know whether he was stone blind or not? A. I do not say he was from the way I saw him walk around. He could come up and down by himself.

Q. You have seen blind people walk? A. I think I have. Not noticed them particularly. I never saw him use a cane.

Q. You cannot say whether he could see or not? A. I can say he could see by the way he acted.

Q. There was no hesitation or stammering in his speech or no depression in his spirits or no expressions of excitement? A. July twenty-first, twelfth, I should say?

Q. Any time? A. No, I did not see any time.

Q. All the time he was evenly tempered, cool and collected and calm? A. Each time I saw him do you mean?

Q. Yes. A. As I say, excepting the first time he might have shown the influence of it.

Q. But, that didn't amount to anything? A. No.

Mr. Strong: Any question, Mr. Watson?

Mr. Watson: No.

LOUIS MOHRING, a witness, produced on behalf of the proponents, being duly sworn, according to law, on his oath, saith:

Direct Examination by Mr. Strong:

Q. Where do you live, Mr. Mohring? A. Bayonne, N. J.

Q. And have for how long? A. About fifteen years; twelve, between twelve and fifteen years in Bayonne.

Q. What is your business? A. Jeweler.

Q. With whom are you connected or by whom are you employed? A. B. I. Seckle Company.

Q. Where? A. In New York City. B. I. Seckle.

Q. How long have you been employed by them? A. Over twenty-three years.

Q. I show you a paper writing purporting to be the last will and testament of Charles M. Freeman, bearing date, Twelfth day of July, 1922, and ask you whose signature that is at the bottom of that paper? A. That is Dr. Charles M. Freeman.

Q. How do you know that? A. I saw him write it.

Q. And I ask you whose signature that is at the, first one under the attestation clause, at the foot of that will? A. This is W. H. K. Davey.

Q. How do you know? A. Because I have seen him write it many times.

Q. How do you know that particular signature is his? A. I saw him write it.

Q. I show you—And whose is the next signature, just below? A. Louise B. Davey, wife of William H. K. Davey.

Q. How do you know that? A. I saw her write the name there in my presence.

Q. And whose the signature at the foot of the attestation clause? A. My signature, written by myself.

Q. State whether or not Charles M. Freeman and W. H. K. Davey and Louise B. Davey and yourself were all present at the time those signatures were made? A. We were all present. Dr. Freeman wrote his name first; Mrs. Davey wrote her name second; I wrote my name third, and Mr.

Davey, as Counsellor, wrote his name last, but on the first line.

Q. I do not get the first? A. Dr. Freeman wrote his name first.

Q. Charles M. Freeman had been a physician and was called Doctor? A. We always called him Doctor.

Q. How did you come to sign that paper? A. How come I signed it? By his request.

Q. What? A. Charles M. Freeman's request.

Q. Before you came into the room to sign the will as a witness, where was Dr. Freeman? A. Dr. Freeman was in the dining room, in consultation with Mr. Davey.

Q. Who called you in? A. Mr. Davey called me in.

Q. Called anybody else? A. Called Mrs. Davey in at the same time.

Q. And then what was said after you and Mrs. Davey came into the room, as nearly as you can remember? A. Charles M. Freeman spoke to us and said, "I have here my last will and testament. Are you willing to sign as witnesses?"

Q. What, if anything did you and Mrs. Davey say? A. Answered that she would.

Q. And Mr. Davey? A. And Mr. Davey signed afterwards. I said I certainly would sign it or anything that he would request me to do.

Q. Had you known him for some time? A. I have known him for several years.

Q. Now, what question if any, did Mr. Davey ask Dr. Freeman with respect to this paper after he signed it? A. As near as I can recall he said, "Doctor you take this your last will and testament, are you willing to sign it now in the presence of these here." Or something to that effect, words, I cannot exactly tell.

Q. What did the doctor say? A. Said, "This is my last will and testament." And he asked me the question if I was willing to sign it.

Q. He asked the others whether they were willing to sign it? A. Asked each one, individually.

Q. As witness? A. As witness.

Q. Then followed the signatures as you have testified? A. Signatures as I have stated.

Q. I read you this attestation clause, "Signed, sealed, published and declared by the above named testator, Charles M. Freeman, as and for his last will and testament, in the presence of us who, at his request and in his presence and in the presence of each other have hereunto subscribed our names as witnesses." "Interlineation on page two first made," and ask you if that attestation clause, signed by you and the other witnesses, as you have stated, correctly states the fact? A. That was read by Mr. Davey to us.

By the Court:

Q. Question is, "Does it state the facts?" Does it state what happened there that night? A. Yes.

By Mr. Strong:

Q. Is that true, is this attestation? A. To the best of my knowledge and belief.

Q. Any doubt in your mind that— A. No doubt whatsoever. I know it is the paper because I know nobody can put my signature on it.

Q. The facts stated in that attestation clause, as I have read to you, is that true? A. That is true.

Q. I call your attention to the notation on the second page. A. I saw him write that himself.

Q. On the margin to the left. A. Mr. Davey called his attention to the notation to be made on the second page.

Q. You say he signed those initials? A. I saw him put those initials there.

Q. What are those intials? A. "C. M. F."

Cross Examination by Mr. Brown:

Q. You are the father of Harry Mohring? A. That is what the Doctor said.

By the Court:

Q. What do you mean by answering that question that way? A. I beg your pardon.

Q. You answer the question in the proper manner or I will put you somewhere where you will have to. A. I beg your pardon. I am the father of Harry Mohring.

By Mr. Brown:

Q. The principal beneficiary in this will? A. Harry B. Mohring—I am the father of.

Q. You are a jeweler by trade? A. I am a jeweler by trade.

Q. What jewelry did you get after Dr. Freeman died? A. I did not get any jewelry.

Q. You haven't any of his jewelry? A. No.

Q. Never had any of it? A. Never had some from Dr. Freeman.

Q. None from your son? A. None from my son.

Q. Who did you get it from? A. I have none that came from the Freeman family.

Q. When the Doctor signed this will he had a watch and other jewelry? A. That I know nothing about.

Q. Did you ever see this will until today and the night that you signed it? A. I did not see that will until the night I signed it.

Q. And haven't seen it since? A. I cannot say that I have. I cannot say that I have.

Q. How do you know it is the same will? A. Because my signature is on it.

Q. How do you know it is the same will? All that you know is that your signature— A. My signature in it and when the signature is there it is pretty hard matter for anybody to make a change and put my signature on to it.

Q. Pretty hard matter to change the contents? A. That I know nothing about.

Q. You had nothing to do with that? A. I did not.

Q. Who did? A. That I don't know.

Q. How did you know that the facts, that of the way the occurrences were that Dr. Freeman "signed, sealed, published and declared by the above named testator, Charles M. Freeman, as and for his last will and testament." How did you know that happened? A. Was read off.

Q. Can you tell me now what was said there, tell me that? A. No, I cannot.

Q. Tell me as nearly as you can? A. That I cannot say. I cannot repeat it.

Q. What part of it can you repeat? A. I do not believe I can repeat any part of it, that is not my line of business. I don't know any of those legal phrases.

Q. You, a jeweler, have been associated with a lawyer for twenty years? A. I have known him for twenty years.

Q. You called each other by first names and are in each other's company now and then? A. I cannot say I did.

Q. Do you know the house where he lived? A. I do.

Q. Why did you send for Mr. Davey? A. I did not send for him. I simply called to see him. I did not send for him. I went to see him at the request of Dr. Freeman.

Q. How long has your son been employed by Dr. Freeman, do you know? A. To my knowledge, before that, possibly a year.

Q. So that and during that year your son lived in Dr. Freeman's house? A. Dr. Freeman's place, yes, sir.

Q. And he had the Doctor living with him, in the same household? A. He did.

Q. And Letty Peterson lived there too? A. She did.

Q. When did you begin to call there? A. When my son went there. Right away? A. Surely.

Q. Did you drink? A. Not very often, no. I have drank, have drank a little.

Q. And you were the one that carried the message to Mr. Davey that the Doctor wanted to see him? A. I did.

Q. How did the Doctor know about Mr. Davey? A. I told him about Mr. Davey.

Q. What did you tell him? A. Dr. Freeman asked me if I knew of a lawyer that I could get outside of Middlesex County that would take care of some business.

Q. What business? A. That I don't know. He didn't tell me.

Q. Didn't say anything about a will? A. No mention about a will.

Q. You never knew he was going to make a will? A. No.

Q. You never knew at any time what was in the will? You never knew at any time what was

in any will? A. I do not believe I have ever read a will over in my life.

Q. You don't know what was in those particular wills of the Doctor? A. No, I don't.

Q. Then you have Mr. Davey come all the way to Perth Amboy, or Metuchen? A. Yes, he came to Metuchen.

Q. You drove him down, did you not? A. I did not.

Q. How did you get him down? A. I did not get him down. Mr. Davey came down in his own car. Drove his own car.

Q. And then came where? A. To Mr. Freeman's place. Dr. Freeman's house where he lived.

Q. And you met him? A. I met him at Belleville.

Q. And you drove down with him? A. I went with him, yes.

Q. Why, if the Doctor wanted to see Mr. Davey, why did you go back? A. Why did I go back. It is natural I should go out if he asked me. Asked me to bring him out, why shouldn't I bring him out?

Q. Who asked you to bring him out? A. Dr. Freeman.

Q. How many hours did you spend in doing this, bringing him out? A. I took no record of it. I don't know.

Q. It was in the day time, wasn't it? A. Took Mrs. Davey out. No, we went out in the morning. Sunday morning.

Q. That wasn't the only time was it? A. Mr. Davey knew the way.

Q. When was it that you went after Davey, Sunday or what day? A. To take him out I went on Sunday morning.

Q. You left Metuchen on Sunday? A. No, I left Belleville on Sunday.

Q. When did you see the Doctor, how long before that Sunday? A. Previous to that.

Q. A week before? A. A week before that.

Q. And had you spoken to Mr. Davey about going out to Metuchen? A. I spoke to him on the Friday after the Sunday that I was over and Dr. Freeman spoke to me.

Q. And what did you do then? You brought him out the following week? A. Came out with me or I came out with him.

Q. Did you stay with him all the time? A. No, I wasn't with him all the time.

Q. When you got out there, what did you do? A. Wandered around. Went upstairs, around the place, across next door neighbor, around the garage, just passed time. Naturally spent part of time with my son, he and I together.

Q. Where did the Doctor go to? A. Doctor went in, sat in his car. His Essex Sedan.

Q. Where did Mr. Davey go? With him? A. He went with him.

Q. How long were they? A. I should judge at least an hour.

Q. Will you say they did not leave that car during all that time? A. Not to my knowledge they didn't leave it.

Q. Did they stay in there? A. That I don't know. I cannot say that because I wasn't there all the time.

Q. How many hours did you stay there? A. We were there all day.

Q. How many hours did you hang in the garage near the automobile? A. No hours to speak of. That is the living quarters. In and out.

Q. Weren't you standing in the garage where the automobile was for a long time? A. No simply walked around back and forth.

Q. Back and forth where, in the garage? A. In the garage, yes.

Q. Did you keep walking around the garage? A. No, not all the time.

Q. In the garage and out of the garage and around the garage? A. Outside, down the street, over, across the way, back again.

Q. Always back to the garage? A. Naturally.

Q. Why? And Davey was in there all the time? A. To the best of my knowledge.

Q. Did you speak to Davey after it was all over? A. Certainly.

Q. Did you ask him what it was all about? A. No.

Q. Did you ask him what success he had? A. No.

Q. The Doctor never said anything to you about it? A. No.

Q. You had a drink on it, did you or not? A. Not at that time.

Q. How soon after? A. Possibly an hour or two.

Q. Opened a bottle? A. No, the bottle was already opened.

Q. Who opened it? A. It was opened by I suppose Letty Peterson.

Q. And you all had drinks around? A. We all had drinks that wanted it.

Q. Doctor did not take any of it? A. Yes, he did.

Q. How many did he take? A. One.

Q. That was before you went into the garage? A. No, that was after.

Q. And how many more did you have? A. I do not think I had any more after that.

Q. What time did you arrive there that morning? A. Possibly between ten and eleven.

Q. What time did you leave? A. I should say four or five in the afternoon.

Q. Had dinner there? A. I did.

Q. Did the Doctor go into the garage before dinner or after? A. He goes in both times, every time. You cannot get into the house unless you go through the garage.

Q. You don't have to go through the automobile? A. Don't have to go through the automobile. No.

Q. That is where he was for two hours? A. Pardon me?

Q. He was in the automobile? A. Speaking to Mr. Davey in the automobile before dinner.

Q. For how many hours? A. As near as I can say possibly an hour. Didn't keep no track of time.

Q. But you were around there until they came out? A. I was around, in and out.

Q. Who helped the Doctor in the car? A. No one.

Q. Who helped him out? A. Nobody as I know of.

Q. You were there? A. I was there part of the time as I said.

Q. And you didn't know what happened that day? A. I did not know.

Q. What was the next that you knew about the Doctor's business—by the way, was that the first call of aid that the Doctor had ever summoned from you? A. What do you mean by that?

Q. Was that the first time the Doctor sent you to get a lawyer or do any other business for him? A. That was the only time.

Q. Both before and after, that the only time he ever? A. The only time that he asked me to get anybody for him before or after.

Q. How did the Doctor know Mr. Davey? A. I told the Doctor. The Doctor asked if I knew a good lawyer that he could get to transact some business for him. I told him I was acquainted with a party that I thought could treat him right.

Q. Did you tell him he was a friend of yours? A. No, I didn't say a friend of mine.

Q. He was a friend of yours? A. Just the same as anybody else would be that you know.

Q. No difference at all? A. Not that I can say.

Q. Did you ever have Mr. Davey on any other Will? A. No.

Q. You never lived in Middlesex County? A. No, never did.

Q. Before the Doctor's death—how long before you signed the will was it that you knew the Doctor, was that the first time you ever met him? A. No, I have known the Doctor I think in the neighborhood of three years.

Q. How did you come to know him? A. Because the son was employed here in Metuchen long before he went with the Doctor.

Q. Where was he employed? A. At Raritan Arsenal.

Q. How did you come to know the Doctor before the son worked for him? A. My son lived opposite where the Doctor's place is.

Q. How did you come to get acquainted with the Doctor? A. Coming up to see my son, I was introduced to him.

Q. Who introduced you, your son? A. If I remember rightly I think his name Breen, Mr. Breen. He was then living with the Docotr.

Q. Breen was? A. Yes.

Q. Had been living for many many years? A. That I don't know anything about, sir.

Q. When the Doctor got through with Mr. Davey

on the day in question, that was about June the eighteenth? A. If I remember rightly.

Q. Then what happened after that? A. Took a ride in the afternoon.

Q. Who did? A. Mr. Davey, the Doctor.

Q. Who else? A. Mrs. Davey.

Q. And who else? A. My wife. Drove to Highland Park.

Q. In whose machine? A. In the Doctor's machine and Mr. Davey's machine. The two machines.

Q. Who all sat with the Doctor in that drive? A. If I remember rightly; my son always drove the car; I think Mrs. Mohring and Mrs. Davey was in the Doctor's car. Mr. Davey and myself were in Mr. Davey's car.

Q. Why did you go driving? A. When.

Q. Why did you go driving that day? A. Because the Doctor wanted to see Mr. Watson.

Q. Was that the same day they were talking in the automobile? A. I think it was.

Q. The very same day? A. I am not too sure but I think that is the day.

Q. Why were you all chasing around with the Doctor on that day? Do you know why you followed him up? When you got Mr. Davey down there wasn't your business through? A. Where should I go?

Q. I should think you would mind your own business? A. That is just what I did do.

Q. You thought looking after the Doctor's business was your business? A. That was nothing to me. I did not look after the Doctor's business.

Mr. Strong: Let him answer.

Q. That was my son's home. I was on a visit to my son's home.

Q. Your son's home. To get this man almost blind, hurried him around— A. The man, I followed him.

Mr. Strong: Object to that question and ask it to be stricken out. No evidence he hurried.

Q. Who drove first? A. The Doctor was in the first car.

Q. And you followed? A. Yes.

Q. How close? A. As close as traffic would allow. Sometimes fifty feet behind, sometimes one hundred fifty feet, two hundred. Sometimes one or two cars between us.

Q. But you never lost sight of the Doctor's car? A. I cannot say he was ever far out of sight.

Q. You did not get out of the car at Mr. Watson's? A. No.

Q. You stayed outside? A. Yes.

Q. Waited for Mr. Davey? A. Waited for Mr. Davey.

Q. When you got out who got out first, Doctor or Mr. Davey? A. Doctor got out first and Mr. Davey followed.

Q. You stayed in, you and your son? A. I wasn't with my son. I was alone in Mr. Davey's car. I stayed there until they came out and said Mr. Watson was not at home.

Q. Then what did you do? A. Metuchen.

Q. What did you do after that? A. Light supper.

Q. Did you have any drinks when you got back? A. Light lunch, got back to Metuchen, and then we went back to Belleville.

Q. You went back to Belleville very late that night? A. Not very late.

Q. You did not talk about any business? A.

Had nothing to talk about. No business was mentioned.

Q. You did not know why you went to Mr. Watson's? A. That was business concerning Mr. Watson.

Q. You don't know what it was? A. I do not.

Q. You had not signed a will up to that time? A. No mention made of Will.

Q. No mention made about a paper that was to be used for the making of a will? A. No.

Q. When was the next time that you got in touch with the Doctor or his business? A. I think it was the following week.

Q. Yes. What did you do? A. The Doctor called at my house, told me that he had made a will or prepared one, and wanted me to sign it and I called at Mr. Davey's house.

Q. Now you were at Mr. Watson's house on the Eighteenth of June as you remember? A. I am not sure of the date. It was about the Eighteenth. It was on a Sunday.

Q. You did not go back on Monday? A. No.

Q. And the week following that day you were called upon by the Doctor to witness a will? A. One moment—You refer to this will?

Mr. Strong: No, he is—

Q. I am referring to June the 18th. This will is dated July 12th, I think it is. A. I cannot recall whether there was any mention made of it.

Q. What is the address of your business? A. 56 New St., New York City.

Q. When you went home on Sunday night, as you say it is, the eighteenth of June, being that time as I understand you to say, you signed no will, knew nothing of the Doctor's business transaction; all that you did was to get Mr. Davey down there and let him talk to the Doctor for a long while and then

you took—or followed behind the Doctor over to Mr. Watson's house, on a Sunday? A. I believe so.

Q. And you knew that you were going over there on business purposes? A. I was simply told so.

Q. Who told you that? A. The Doctor told me that he was going over to Mr. Watson's to see Mr. Watson.

Q. What about? A. That he did not say.

Q. Didn't you think it was rather out of your line of business or your duty to go over with the Doctor on a Sunday to a lawyer's house? A. No, I did not.

Q. What was all the urgent necessity of crowding the mourners, you might say? A. Well, I tell you, whenever I came down the Doctor always asked me to go out riding with him. It made no difference where he went.

Q. How long had you been ingratiating yourself with the Doctor?

Mr. Strong: I object.

Q. How long had the Doctor been driving you out? A. Up to that time I should say, up to June 18th, practically only two months, two or three months, only when the season opened so I could drive out myself.

Q. Did you drive out or did you go out with the Doctor? A. I drove out in my car and the Doctor took me in his and we road around and then came back and I went home in my own.

Q. You went driving with the Doctor? A. I did.

Q. Where did you go to? A. Nowheres objectional, as far as I was concerned.

Q. What do you mean, "objectional"? A. When he decided to go I went with him.

Q. How many times had you been with him before June the 18th? A. Usually I was out alternate

weeks, visiting son, and on those days we went out driving.

Q. On Sundays? A. Yes.

Q. Always on Sundays? A. Yes.

Q. You don't know where you would go to? A. No object we got at all.

Q. After you got there and it is all over, can you tell? A. I can tell where we were at different times.

Q. Where? A. Sometimes we would drive through Plainfield, Roselle, up over the mountains, Oranges, through Newark, back again in to Elizabeth and back to Metuchen.

Q. So that you would drive past your place? A. No, didn't come in my place.

Q. Never drove around to get hootch any where, without mentioning any names? A. That I cannot say anything about.

Q. Why can't you? A. Because I never saw any.

Q. If you did see it, you wouldn't remember it? A. Certainly. There is no objection to seeing it.

Q. Isn't it a fact that the Doctor was pretty well loaded up every time you went out or before you came back? A. Certainly not.

Q. A few drinks? A. I know a person when he is intoxicated, but he was not intoxicated.

Q. How many would it take to make him drunk? A. I do not know his capacity.

Q. How many could he drink before you see any signs of it? A. I do not know.

Q. Could he drink five? A. I never saw him take five.

Q. How many did you see him take? A. Two at the most.

Q. Was that on the Eighteenth? A. Possibly on the Eighteenth. May have been before and other times.

Q. But you were in the habit of having a little drink with him now and then? A. Occasionally.

Q. Have a drink before you started and when you came back? A. Sometimes and sometimes not.

Q. Take a little in your hip? A. If I had the opportunity, I would.

Q. Nothing to stop you? A. But I didn't have the opportunity of getting it.

Q. You and the Doctor had the thirst? A. I cannot say I had the thirst.

Q. Had the opportunity in the automobile lots of times? A. Had the opportunity and refused it.

Q. You say you came back on the following Sunday after the Eighteenth, or the Doctor came to your house? A. Came back the following Sunday.

Q. Did the Doctor drive down to your place or did you drive down to New Brunswick? A. I drove to Metuchen.

Q. The next Sunday? A. I think it was the following Sunday. I am not positive.

Q. You hadn't seen the Doctor in the meantime? You hadn't heard from your son in the meantime? How did you know you were to come down? A. I promised when I left him I could come down. He asked me to come down.

Q. Didn't you say a few minutes ago he asked to come down and sign a will? A. I did not say. I asked you if you meant this will was showing me.

Q. You were talking about a will that he asked you to sign the following week? A. I simply asked you the question if that was the will you referred to.

Q. You mentioned the will, first, didn't you? A. I don't think so.

Q. Didn't you say you saw the Doctor the week following and that he wanted you to sign the will. A. I cannot say absolutely.

Q. Is that the truth? A. I told you everything as far as I know.

The Court: Answer the question.

Q. Is that the truth, did he want you the following Sunday to sign the will? A. If I remember rightly.

Q. How did you know that? A. I wouldn't know it unless he told me.

Q. When did he tell you? A. Must have told me at his home.

Q. Was the week before? A. The week before.

Q. Was on the Eighteenth of June you were talking about a will, weren't you? A. Possibly it was the eighteenth, but I don't know.

Q. It was the week before you came down to sign the will wasn't it? A. I cannot remember.

Q. Why do you say you cannot remember? A. I cannot tell you.

Q. You must have talked about the will before you came down to sign it? A. As far as dates go, I don't know.

Q. It was a week after he talked about the will that he had you to come down and sign it.

Mr. Strong: You mean a week after or the following week. A week after, or the week after? Which is the question?

A. I do not recall whether it was one week after or not. It was about that time.

Q. About a week after? A. Yes.

Q. You say that the reason you knew that you had to come down and sign the will was that the Doctor told you the week before? A. He arranged it, yes.

Q. Where did he mention it at? A. At his home.

Q. Where at his home? A. In his dining room.

Q. Was that after Mr. Davey and he came out of the automobile or before? A. That was after.

Q. Who mentioned it first, Mr. Davey or the Doctor? A. Doctor Freeman.

Q. What did the Doctor say and who was present? A. I am under the impression he wrote out synopsis of the will on the dining room table. That was the time it was mentioned.

Q. Who did he mention in his will and what was he going to give? A. I wasn't near enough to hear.

Q. He mentioned about the will, what did he mention? A. Was going to make a will and have Mr. Davey draw it up.

Q. Yes. A. He took paper and wrote out the will himself and Mrs. Davey and himself, and Mrs. Davey signed it there as a memorandum. I believe Mr. Davey took the will afterwards and had it made, and then the Doctor notified me to call at Mr. Davey's house.

Q. I don't want to know what was in the paper. I want to know what was said. What did the Doctor say, and what were you all talking about the will? What did Letty say? Did she say she was satisfied with a thousand dollars? A. No, she wasn't in there.

Q. Where was she at? A. She was out the room.

Q. Did you tell her she was going to get a thousand dollars? A. I did not know anything about it.

Q. Did you know what your son was going to get? A. No, I did not.

Q. Where was he at when all this was going on? You put him out? A. No, he was not in the room.

Q. Mrs. Mohring was there? A. She was not in the room. Part of the time and then she went out.

Q. What time was she in? A. While we were

having dinner; and the door was closed when the Doctor said he wanted to write, no one in there but Mr. Davey, myself and the Doctor.

Q. Who did the talking? A. Mr. Davey and the Doctor only.

Q. What did you do? A. Nothing, sat one side.

Q. Didn't say a word? A. I had nothing to say.

Q. How many hours were you in there? A. I don't suppose we were there in that room more than an hour.

Q. You were in a room with the Doctor, this lady, this man, and what did you talk about during that hour? A. Had nothing to say because the Doctor was busy writing.

Q. Did it take him an hour to write? A. No, it didn't take him an hour.

Q. What were you talking about all that hour? A. You asked me how long we were in that room. Said about an hour.

Q. What were you doing for that hour? A. Simply sitting there while that was written.

Q. That didn't take two minutes to write? A. Oh, yes, it did.

Q. What did you do then, how long did it take to write it then, in your estimation? A. Possibly fifteen or twenty minutes.

Q. What did you do with the other sixty or forty minutes? A. Talking generally, on general topics.

Q. What did you talk about, general topics? A. That I cannot recall.

Q. Why don't you recall? A. Because I don't remember.

Q. After you got through talking about something you don't remember about, what did you do? A. Nothing special. Went down stairs, walked around, came back again.

Q. Who stayed with the Doctor, Davey? A. I

cannot say that Mr. Davey stayed with him any more than any one else.

Q. Who kept an eye on him, who was with him? A. I do not know.

Q. You did not leave him all alone? A. Sometimes.

Q. Rare occasions that he was left? A. I don't know how he was left. That is something I know nothing about.

Q. On this day, after you got through with things you don't remember in this room, you and the others left the Doctor there? A. I am under the impression that we left the Doctor and I went out, downstairs.

Q. When did you start to go to Watson's? A. Immediately after dinner.

Q. Wasn't that when you were in this room, immediately after dinner? A. No. After we came back from Mr. Watson's. Went to Mr. Watson's first, if I remember rightly.

Q. Why where did Mrs. Mohring go after dinner? A. She went across the street to see Mrs. Rorh.

Q. She left you all alone? A. Yes.

Q. She cleared the table and you all went into the room? A. Table was cleared.

Q. Didn't you say that Mrs. Mohring, after dinner, cleared the table and you all went into the room? A. We were still in the room. We hadn't left the room.

Q. Then it was that you had this hour's peace and tranquility? A. I do not know for a certainty whether it was immediately after we had dinner or whether after we came from Mr. Watson's. That I am not sure.

Q. When you came from Mr. Watson's it was time for supper? A. Sometime before. Didn't take long to go to Mr. Watson's house.

Q. What were you doing with the Doctor, that is you and Mr. Davey, from the early morning until you started for Mr. Watson's house? A. I had nothing to do with Mr. Freeman.

Q. As soon as you got on the spot Mr. Davey got in the automobile? A. Not as soon as got on the spot. After general introductions.

Q. Who introduced them and what was said? A. I said, "Doctor, this is Mr. Davey." That is all I said to him.

Q. You didn't tell him he was a lawyer or jeweler or what he was? A. Didn't say.

Q. Upon saying those words, what did you do? A. I walked away.

Q. Why did you walk away? A. I simply walked back to speak to my son, a few steps in the rear.

Q. In the rear, waiting? A. In the rear of the garage.

Q. Was this introduction downstairs? A. Downstairs.

Q. And without any explanation of what Mr. Davey was or where he came from you said "Doctor, this is Mr. Davey," and you walked away? A. I walked away then.

Q. Can you explain why your son was standing in the back? A. Why he was there at his business, his business to be there. I don't know why.

Q. How long did he stand there? A. That is hard to say.

Q. An hour? A. In and out and around. Had different things to look after.

Q. What did he have to look after? A. Things like fixing.

Q. What fixing did he have? A. Exactly what he done I cannot say.

Q. What did he do on Sunday morning? A. I think he was charging battery at the time.

Q. In the garage? A. In the garage.

Q. Alongside of the car? A. In the rear end of the garage.

Q. Back of the car? A. Distance of two cars away.

Q. In the same garage? A. In the same garage.

Q. He started at what time to charge the battery? A. That is all. I don't know.

Q. All he had to do was to turn the generator? A. I don't know how it is done.

Q. No matter what he was doing, he was around the garage all the time Davey was there? A. He was in the garage portion of the time and he would go upstairs and come down again.

Q. He wouldn't stay upstairs long? A. Naturally not.

Q. When he would go upstairs would he talk to you? A. Not necessarily.

Q. Where were you? A. Upstairs, downstairs and outside.

Q. But you all hung around the garage all the time the Doctor was there? A. We were around the garage.

Q. Where were you when the Doctor came out of the automobile? A. I think I was outside.

Q. You saw him step out? A. No, I didn't see him step out, that I can recall.

Q. Who told you that the Doctor was through with Davey or Davey through with the Doctor? A. See it when the Doctor walked outside.

Q. You saw it? A. I saw the Doctor.

Q. Where was your son then? A. I do not know where he was at that moment.

Q. Then the Doctor went upstairs? A. I believe he did.

Q. Did you have any conversation with him at that time? A. I did not.

Q. About what hour was that when you got

through with the Doctor at that time? A. I should say around 12 o'clock.

Q. You went upstairs then and had your dinner? A. We had dinner at later than that.

Q. All sat around the same table? A. All sat around the same table.

Q. And Letty served? A. And Letty served.

Q. And then the table was cleared away and you got down to business is that right? A. I am quite sure that we then went and took the car and went to see Mr. Watson.

Q. Who suggested Mr. Watson? A. Mr. Freeman.

Q. When did he say that? A. At the dining room table.

Q. What did he say? A. That he wanted to see Mr. Watson.

Q. What about? A. That I don't know.

Q. As soon as he said that you all left? A. No, not as quick as that. Nobody would leave as quickly as that.

Q. How did you act so in concert. Dr. Freeman wanted to see Mr. Watson, and on a Sunday, and you left and went with him? A. I am quite sure that I mentioned that when the Doctor wanted to go out driving we always went with him.

Q. On this Sunday? A. On this Sunday it was just the same as any other Sunday.

Q. You were always going driving with the Doctor? A. Driving with the Doctor.

Q. He went to Watson's and came right back? A. Came back to the house.

Q. That wasn't a very entertaining drive on a May—June day, was that, the highway blocked up with cars? A. Cannot say it was very much blocked up that time of day, right after dinner.

Q. Not a nice Sunday? (No answer.)

Q. In June? A. In June.

Q. I suppose you passed two cars coming from Metuchen to Highland Park? A. You pass a great many cars, but you don't mind that.

Q. What time were you at Mr. Watson's house? A. I am not sure exactly, I cannot say.

Q. Was it noon or night? A. I said right after dinner.

Q. Was it four o'clock? A. Before that.

Q. Was it one? A. I am quite sure we were back at the house by four.

Q. By four? A. I think so.

Q. How long did it take you to drive out and back? A. Not more than forty minutes to go from Metuchen to Highland Park and back again, forty minutes back again.

Q. So you must have had the talk about the Will before you went to Watson's? A. I did not have any talk about it. I didn't know anything about it.

Q. You heard about the Will? A. I know, but I had nothing to say about it.

Q. Who had to say? A. Doctor and Mr. Davey.

Q. And what did they have to say? A. That I cannot say.

Q. Why? A. For the reasons I wasn't near enough, and I am not, haven't good enough hearing to hear if I am not close up.

Q. You were in the same room? A. Oftentimes I cannot hear the person sitting in the same room.

Q. Did you know they were talking about a will? A. I didn't know it at the time.

Q. When did you know it? A. After the Doctor wrote out a portion of it for Mr. Davey to take along and make a will.

Q. How did you know it then? A. Because he mentioned it.

Q. What did he mention? A. He said "I am

writing out a synopsis so that Mr. Davey can rewrite it for me and it is to be my will." Said "Would you mind just signing it just for the time being and then we will resign when the other is finished."

Q. The Doctor said all that? A. He did.

Q. Then he passed this paper over to whom? A. He did not pass it at all. Left it lie where it was, and moved one side. It was turned around sideways.

Q. He didn't say anything about who should take it or what should become of it? A. Mr. Davey should take it.

Q. How long did it take to get the Doctor's signature on that paper? A. Didn't take him any time.

Q. How many hours were you talking about it before it happened? A. I wasn't talking about hours. I don't know anything about that, sir.

Q. After you had dinner and the table was cleared away, you don't know you left that room or the Doctor or any of you until you went to Watson's? A. Yes, we left the room and come down and walked around, and then decided to go, we went and then returned to the Doctor's home.

Q. Did the Doctor come down stairs? A. He did.

Q. Who was talking to the Doctor all the time? A. No one talked to him all the time.

Q. Someone necessarily. You didn't leave him alone that day? A. That is with the other present.

Q. Those present? A. Alone with those present.

Q. You were one? A. I was one.

Q. Davey one? A. Davey, Mrs. Davey.

Q. Did Mrs. Davey talk to him? A. On general topics.

Q. When he was writing out this paper, what was said how it should be written? A. What was said?

Q. I don't want to know the contents of it. What was said about who he was going to give his property to? A. Not a word said. The Doctor wrote the whole thing himself, without a word.

Q. What was the beginning of the conversation about this will, who first mentioned it? A. I do not know. There was no mention that I know.

Q. You went home with Davey that night? A. I did.

Q. In the same seat? A. I sat in the same seat, yes.

Q. And you knew he had this paper? A. Yes.

Q. And you went to Watson's and you didn't know why he went there? A. No.

Q. And when you came back you didn't know why you had gone or what happened? A. No.

Q. What was the next arrangement about the will that you were to take care of? A. I believe the Doctor called at my house, left word before I got home, that he wanted—the will was ready to be signed over at Mr. Davey's house. I wasn't at home.

Q. Have you a telephone in your house? A. I had at that time.

Q. Take it out? A. At this time.

Mr. Strong: Which will are you speaking of now, Senator?

Mr. Brown: The first one.

Q. That is the one you are talking about? Questions about the first will? A. First will.

Q. There is no confusion in your mind about the first will? A. The first draft written on foolscap paper. Written on two sides.

Q. What arrangements were made between you and the Doctor about what you should do after that about the property or the will? A. Nothing. I know nothing about the property.

Q. About the will? A. Simply asked me to come over and sign it.

Q. And on that day you were leaving? A. Nothing was mentioned to me.

Q. Nothing? A. No, sir.

Q. When did you next hear about it? A. When the Doctor called at my home.

Q. A week afterward? A. I do not know what time it was.

Q. Ten days, or whatever it was? A. He called during the week, I believe.

Q. During the week, yes. A. I am quite sure it was the first of the week.

Q. You had a telephone then? A. I had a telephone at the time.

Q. Hadn't you been telephoning back and forth between Metuchen and Bayonne at that time? A. No.

Q. What is your telephone number in Bayonne at that time? A. 1397 at that time.

Q. What was your telephone in New York? A. 5417 Broad.

Q. You didn't do any telephoning to your son or your son? A. No.

Q. What was Mr. Davey's telephone? A. I have forgotten.

Q. You didn't do any telephoning to him? A. No.

Q. He didn't do any telephoning to you? A. I think that it was on Wednesday afternoon that the Doctor called at my house and I was not at home and I think it was on—I think it was about next Tuesday, I am quite sure it was Tuesday that Mr. Davey called up and asked if it would be convenient for me to call at his house on Wednesday evening, the Doctor would be there and had some papers to sign.

Q. Was that the Wednesday following the eighteenth? A. I am quite sure the Wednesday following the eighteenth. I am quite sure that is the day.

Q. On Tuesday the Doctor called at your house? A. I think it was Tuesday.

Q. And Wednesday went to Mr. Davey's? A. Wednesday.

Q. What is it that you want to say? A. I am quite sure that the Doctor called on Wednesday afternoon, on the way over to Belleville; I not being at home I was called from New York and I went directly from New York to Belleville.

Q. When Wednesday? A. Wednesday evening.

Q. What did you do Monday and Tuesday about this Will? A. Nothing. I know nothing about it.

Q. Didn't hear from anybody? A. No, sir.

Q. You met your son and Mr. Davey then at Mr. Davey's house? A. At Mr. Davey's house, yes.

Q. Did you know what you were going there for? A. I was told so, yes.

Q. What? A. Wanted me to sign as a witness to his will.

Q. When you got over there who was there? A. When I got there? I arrived there, why the Doctor, Mr. Harry Mohring, his wife, two children and Letty Peterson, Mrs. Davey.

Q. That was on what day? A. I believe that was on Wednesday evening.

Q. That would be about the twenty-first or the twenty-second? A. Around the twenty-first.

Q. In the day time? A. It was early.

Q. On Sunday? A. Wednesday.

Q. What time of the day was it? A. Must have been around six, half past six when I arrived there.

Q. So you must have quit work early? A. It was light, but quit at that time. We were in daylight saving.

Q. What did you do with the Doctor after you had him sign up? A. I had nothing to do.

Q. Did you let him go home alone? A. He and his family went off.

Q. Who was his family? A. Mrs. Mohring, the two children, Harry and Letty.

Q. You did not know who benefitted? A. No.

Q. Practically understood? A. Only understood in that way that I wanted to be as a witness to the Doctor.

Q. That is all? You didn't know that your son was going to get a big fortune? A. I positively did not.

Q. Nobody said a word to you about it? A. I cannot say they did.

Q. Your son didn't say or Davey or no one? A. I don't believe my son knew anything about it.

Q. He was there? A. He was not present on the inside.

Q. Why didn't you let him in on it? A. I had nothing to do with that.

Q. Can't you tell why your son wasn't even permitted to be around where you and the Doctor was when this was going on? A. It was up to the Doctor to let him around.

Q. Did he say he did not want the son around? You never heard him say an unkind word about him? A. I do not know.

Q. It was all right for you to be around and Mrs. Davey and Mr. Davey and the chauffeur kept away, although nobody said anything to him, Harry? A. You are trying to misconstrue things. I wasn't around all the time. I was out on the porch with the rest. Only time I was in the presence of the Doctor I was called in.

Q. The first will? A. The will signed at Mr. Davey's house.

Q. The first will? A. I believe that was the first.

Q. And how long was Mr. Davey and Dr. Freeman alone inside? A. We had to wait some time for Mr. Davey to come back. He was away.

Mr. Strong: Which will are you referring to now, the one that is here or the one before?

Mr. Brown: I am not through, Senator.

The Court: You may proceed.

A. I don't know whether it was the first or not.

Q. Were both wills signed up at Belleville? A. Signed at Belleville.

Q. Both wills? A. In the dining room at Mr. Davey's house.

Q. The two wills?

Mr. Watson: If the court please, Mrs. Davey spoke to the witness. I heard her.

The Court: I didn't hear her, but I won't have the witness interfered with.

Mr. Watson: I heard it audibly.

The Court (to Mrs. Davey): You must make absolutely no comment, sign or anything else that communicates to this witness, and if you do you will be removed from the court, removed and punished for contempt beside. You must communicate to this witness in no manner or form. Perhaps you had better sit over the other side of the court room.

(Mrs. Davey thereupon left the court room.)

Q. There were two wills signed, that you witnessed, two wills signed? A. Yes.

Q. Where were they signed at? I do not want to confuse you, I want to know just what you say about it? A. One was signed in the dining room at Mr. Davey's house, I am quite sure that the other was signed, the first one that was signed in the dining room of Dr. Freeman's house.

Q. Yes. What day was the one signed in— Which was the one signed in Dr. Freeman's house, the first or the second? A. First will.

Q. Then when you said that on the night of the twenty-first at six o'clock that you went to Mr. Davey's you were mistaken? A. That was the signing of the second will. I was mistaken, yes. Possibly I was.

Q. Mistaken about the date? A. As far as the date.

Q. Mistaken about the hour? A. I am quite sure about the hour because I left the store at five o'clock and the time it takes to go over there would be about that time.

Q. Now where was the first will signed? A. At Doctor Freeman's house.

Q. When? A. I do not recall the date.

Q. It was shortly—a few days after you were down to see Mr. Watson? A. (No answer.)

Q. I do not care just exactly the date? A. I cannot say.

Q. Was it a week after that? A. I would say it was around that.

Q. About a week? A. I am not sure.

Q. Well how did you, how did you know that you had to come back to Metuchen? A. From where.

Q. Where were you? A. Where was I at the time?

Q. You were at Bayonne or New York, or did you stay down here all week? A. I did not stay down here all week.

Q. You went back with Davey that night? A. That night.

Q. With the paper in his pocket? A. I judge so.

Q. And did not say anything to him about it? A. No.

Q. How did you know when to come back to Metuchen to witness that will? A. I am quite sure I told you that Mr. Davey telephoned me to the store.

Q. When was that? A. Sometime during the week.

Q. How did you come to Metuchen? A. I came to Metuchen whatever the time was.

Q. How did you get there? A. I think I came out by train.

Q. By train, you are sure about that? A. I am quite sure. I have come both ways.

Q. Who met you at the train? A. My son.

Q. So you must have told him that you were coming? A. Telephoned him after I arrived.

Q. After you arrived? A. Quite often I did that.

Q. Then when you got to— He drove you to the house? A. Drove up to the house.

Q. Who was there when you got there? A. I do not recall exactly.

Q. Was Mr. Davey there? A. I do not think he was at the time.

Q. You waited for him? A. I think we did.

Q. How long did you wait? A. I do not know.

Q. What time did you get there? A. I cannot say.

Q. Was it day or night? A. Left early in the afternoon.

Q. Take a day off or half a day? A. No.

Q. Took some time off? A. I think I took an hour or so early off, evening.

Q. In the evening? A. Early evening.

Q. Was the will signed in the evening? A. Yes.

Q. After supper or before? A. Before supper.

Q. Had no conversation about it? A. Not as far as I was concerned.

Q. How long were you there before Davey came? A. I cannot say. Not very long.

Q. Were you there an hour before he came? A. I cannot say for a certainty. I know I was there.

Q. What did the Doctor talk about with you at that time? A. Nothing particular.

Q. You came all the way down for something, took a few hours off— A. The Doctor as a rule he did not talk about anything.

Q. You paid your carfare out from New York, left your home and came down there, didn't you ask what you were down there for, or what you were going to do? A. I told you a moment ago that I knew what I was coming for. He asked me to come.

Q. Did you say anything to your son? A. No.

Q. Although you knew that you were coming down to sign a will for Doctor Freeman and your son met you downtown and you were with him along back to the house and waited, that you never said anything to your son about the will? A. I am sure that I didn't.

Q. You never at any time mentioned— You never at any time told your son that you ever witnessed a will for Doctor Freeman? A. I may have told him afterward.

Q. About when? A. After he died.

Q. But before he died? A. No.

Q. You are quite sure when you rode back that night that you did not tell him that you came down as a witness to that will? A. Positively.

Q. Why were you afraid? A. Not afraid. If the Doctor asked me not to say anything.

Q. Did he tell you not to say anything? A. I am quite sure he did.

Q. You say he did say that? A. I am quite sure that he told me not to mention it.

Q. When did he say that? A. That I don't know.

Q. Cannot remember when and where? A. No.

Q. Anybody present when he told you that, was there? A. Wouldn't say there was.

Q. Told you on the quiet? A. Yes.

Q. Now, when Mr. Davey came in was he the first that spoke about the will? A. I do not recall who spoke of it first.

Q. When did you know that Mr. Davey came? A. Naturally knew it when I saw him.

Q. Made immediate appearance? A. Surely.

Q. And you and the Doctor were there in the room? A. With the rest of the family.

Q. Harry there? A. Sometimes, sometimes not.

Q. Well when Harry came in, when Davey came in Harry went out? A. He did.

Q. Every time Davey came in Harry got out? A. In and out.

Q. Harry wouldn't be there when Davey would be there talking about business? A. Mr. Davey talked about business with the Doctor off to one side.

Q. That night when he came down he talked one side again? A. (No answer.)

Q. Where did he take him again? A. I don't know whether he went in his own room, downstairs or outside.

Q. You waited there until he came back? A. Naturally.

Q. How long did you have to wait? A. Not very long. I do not know how long.

Q. When they came back what did they have? A. I cannot say that they had anything.

Q. Well did they come into the room at the same time, Davey and Freeman? A. They did.

Q. Didn't you see any papers or anything? A. Saw no papers at the time.

Q. When did you see the paper? A. When later after everybody left the room except Mrs. Davey. Mr. Davey, and myself and the Doctor; the papers Mr. Davey took them out of his grip, laid them on the table and he asked us to step out for a moment. He spoke to the Doctor. He called us back.

Q. Was there a blue ribbon on that paper? Was there a blue ribbon on that paper? A. That I don't know. I didn't notice.

Q. What happened after that? A. Doctor asked me if I was willing to sign his will as a witness.

Q. And you signed? A. I signed his will as a witness.

Mr. Strong: May I ask which will you are referring to?

Mr. Brown: The first. He knows.

Q. After that where did you go? A. Went out.

Q. Did the Doctor go with you? A. No.

Q. Did you go home? A. Not right away, shortly after.

Q. Shortly after? A. Went back with Davey. Went back with Mr. Davey.

Q. Did he have the Will with him? A. He did.

Q. Did you speak to him about it? A. No, sir.

Q. Where was Harry all this time? A. Outside somewhere.

Q. Did he come in afterward? A. Yes.

Q. After the will was signed? A. After the will was signed about an hour.

Q. Who sent for him, anybody? A. Nobody that I know of.

Q. Just came in? A. Yes.

Q. How did he know that the will was signed? A. I do not know that the will was signed or that it was to be signed. Door was open and all clear to come.

Q. Was the door open while the signing was going on? A. No, sir.

Q. Closed then? A. That was closed.

Q. Then you went back to your business? A. I went home.

Q. Did you see the Doctor after that? A. I think it was two weeks after. Just general visit.

Q. Talk about the will then? A. No, sir.

Q. Didn't talk to Harry about it? A. No, sir.

Q. Talk about the business at all? A. Nothing about that business.

Q. What business did you talk about? A. Nothing special.

Q. Nothing about his business at all? A. Not about his business, no.

Q. Two weeks afterward what occurred? A. If I remember rightly nothing was said, but we took, we went out driving.

Q. Took the Doctor with you? A. The Doctor always went.

Q. Mr. Davey too? A. Mr. Davey wasn't present.

Q. You and the Doctor? A. Harry, the Doctor, my wife and Harry's wife, two children.

Q. In one car? A. In one car.

Q. And then when did you see him again after that? A. About two weeks after, about two weeks, alternate two weeks I went down there.

Q. That would make it about when? A. I don't know the date, just followed up about two weeks.

Q. That would be four weeks after the will was

signed? A. I always made it a point to go one week to Harry's place one week to my daughter's place.

Q. After you signed the will— A. No mention was made to my knowledge.

Q. After you signed the will at your son's house, you did not see the Doctor until two weeks thereafter? A. Two weeks thereafter?

Q. Then you went to a ride? A. Yes.

Q. Then two weeks after that, it was four weeks after the will was signed, where did you see the Doctor then? A. At his home.

Q. Sunday? A. Sunday.

Q. Anything about wills? A. No.

Q. You in the meantime didn't telephone about the wills, didn't telephone to Davey? A. Never was mentioned.

Q. Didn't telephoned about anything? A. Hadn't seen Mr. Davey in that interval.

Q. Then you went home the fourth week? A. Always went home.

Q. When next did you know that you were wanted for the Doctor or he wanted you? A. Regular routine that we made, alternate every other week.

Q. End of the fourth week, when did you next see him? A. Possibly two weeks after that.

Q. Then what happened? A. Nothing special, just an ordinary visit.

Q. That would be six weeks, would it? A. Alternate weeks we went down there.

Q. Yes. When was it that you learned about the second will, how many weeks after the first? A. I do not know the date. It was late in the fall.

Q. Late in the fall? A. I think it was late in the fall.

Q. October or September? A. No, nothing was mentioned then, no, because in October—

Q. Yes? A. (Cont.) In October I was, I got an infection of the finger, blood poison set in and was laid up at home for eight weeks. I did not get out October till November, the last of November I went down to Harry's house and I stayed there about a week.

Q. You stayed there about a week? A. Week at Harry's house.

Q. Was it after that that the second will was signed? A. After that the second will was made.

Q. You are quite sure about that? A. Quite sure.

Q. No doubt in your mind about that? A. Quite sure it was after that the second will was signed.

Q. You know when you had the infection? A. I know when I had the infection, positive of that. Never forget.

Q. You had a Doctor? A. I surely did.

Q. Who was your Doctor? A. Several. Three Doctors.

Q. In Bayonne? A. One local Doctor in Bayonne.

Q. What was his name? A. Dr. Dexter.

Q. And others after Doctor Dexter? A. I had a specialist by the name of Dr. Fazen.

Q. Can you tell this, when you signed to the second will, was your infection cured? A. Practically cured.

Q. Did you have it bandaged up at that time? A. Yes.

Q. It was in November? A. My finger was bandaged for over six months from the time of infection. There is the condition yet. It started about the eighth of October.

Q. Started when? A. Infection on this finger. The infection of this finger started the eighth of October.

Q. Eighth of October. When did you say the second will was signed? A. I am not sure exactly when it was.

Q. How do you know it was signed? A. I was asked to come over.

Q. Who asked you? A. Mr. Davey asked me.

Q. Where were you at when he asked you? A. Telephoned to my store.

Q. To your store in New York? A. New York.

Q. And you came over did you? A. Went over to his house, yes.

Q. And you signed as a witness there? A. Signed as a witness.

Q. That is the time Letty and all the others were present? A. They were out on the porch there.

Q. That was in November? A. Not November.

Q. When was it? A. I don't know the date of that, I can't recall.

Q. Can you tell the month it was in? A. I cannot. I do not recall just what time.

Q. You said you had your finger. That there was an alternating two weeks and two weeks and two weeks, and nothing was done during that six weeks, and then your finger got infected, and then after that what did you do? How long after the infection was it that you signed the will? A. I do not recall.

Q. Was it before the infection or after the infection? A. I am positive. I am not sure. I am not positive. I am not sure. I do not know the date. I don't remember the date.

Q. Well, how many weeks was it after the first? A. I cannot say.

Q. Can you say whether it was a month or two weeks or before or when? A. I wouldn't say. I am not sure.

Q. Do you know whether after you stayed at Harry's house a week? Did you have your wife with you that week? A. No.

Q. You stayed at Harry's house a whole week without your wife? A. Yes.

Q. Left her alone? A. Not alone. At home.

Q. Nobody else there? A. Her sister.

Q. When did you come down to Harry's house and stay a week? A. That was simply a matter of personal feeling.

Q. For the Doctor or? A. Myself. Put in my own time on family.

Q. Didn't talk about the will all that time? A. Nothing mentioned.

Q. Was it after your visit to Harry that the second will was signed? A. I do not recall that.

Q. Why can't you tell? A. Because I don't remember.

Q. When you did sign was long ago? Just a few minutes ago you said that the infection brought the matter to your mind very vividly. A. At the time of the infection. I know that began. I never forget what date that started.

Q. I ask you if you knew, because of the infection of your finger, that you knew after that the will was drawn? A. I am quite sure it was but I cannot be too positive.

Q. You are quite sure it was? A. Yes.

Q. Did you mention anything about the will during the week you were with Harry? A. I am positive I did not.

Q. You were with the Doctor that week? A. In and out.

Q. All day long? A. Yes.

Q. All night? A. I lived in the house with him. I wasn't in his room. Room by himself at night. Through the house and around during the day.

Q. Was Mr. Davey down during that time? A. No, sir.

Q. When did you see Mr. Davey down at Metuchen again after the time you signed the will? A. I do not know that Mr. Davey was there after that.

Q. Never was there? A. That I don't know.

Q. Will you say he was or was not? A. I was told he was in Metuchen, but I wasn't with him.

Q. After the will was signed, the second will I mean, did you make many other visits to Doctor Freeman's place? A. No, not at all. The winter happened.

Q. And then you would come down only through the summer? A. From spring and summer.

Q. Didn't you come down about Christmas time and New Years? A. I think Dr. Freeman called on me on New Year's day and spent the time with me.

Q. At your home? A. Yes.

Q. You invited him up there? A. Yes.

Q. What did you do after that week Doctor had 'phoned, did you see him? A. Didn't see him. I didn't see him after that. I didn't see him at all until after I was told that he had died.

Q. He died? A. I wasn't up to Metuchen at all.

Q. You stopped your visits? A. Through the winter, yes.

Q. You saw him during New Years, did you stop your visits, alternate? A. Always through winter.

Q. Didn't you keep in touch with him at all, through telephone or anything of that kind? A. We have no telephone in the house after that time. We had it removed.

Q. When did you first tell anybody that you signed this will; when did you tell Harry; as a witness?

Mr. Strong: Which one, Senator?
Mr. Brown: Either one.

A. I do not think that was mentioned until after the Doctor was buried, had died.

Q. What caused you to mention it then? A. The others mentioned it, Mr. Davey.

Q. Mentioned it to whom? A. To Harry.

Q. You were there? A. I was there in the dining room.

Q. What did he say to him? A. Said he had a will the Doctor had made.

Q. What did he say about Harry's share? A. Said good portion left to Harry.

Q. Say how much? A. Didn't say positively how much.

Q. How much did he say? A. He didn't know.

Q. Did he say that? A. He didn't know how much.

Q. Did he say he didn't know? A. He said he didn't know the value of it.

Q. Did he say how much it was? A. No. Didn't know the value of the estate was so he couldn't say.

Q. Did he say that? Didn't you talk about the Doctor's estate, about how much it was worth or anything like that? A. I cannot recall that I did.

Q. Why can't you recall that? A. I don't think anything was mentioned of it.

Q. So your son never knew what the will said about his share? A. I am quite sure he never did.

Q. In your hearing Mr. Davey never told him and you never told him? A. I do not think Mr. Davey told him in my hearing.

Q. To whom did you speak about the amount that was in the will? A. There was no amount so far as I saw, as I know of.

Q. You don't know? A. No, because I do not know what the estate amounts to.

Q. You didn't know what it is worth? A. Positively, yet, the value of it I don't know.

Q. What was said in the will about Harry, what he should get? A. I was told to, a certain few bequests made to the sisters and Letty Paterson was remembered and the balance would go to Harry.

Q. Who told you that? A. Mr. Davey.

Q. When did he tell you? A. That was the day of the funeral.

Q. Nothing before that? A. He didn't mention what the contents of it was before that.

Q. This second will that you have mentioned, it was signed inside of Dr. Davey's house? A. Inside of Mr. Davey's house.

Q. Who was called in first? A. Dr. Freeman was called in first.

Q. He was called in first? A. Mr. Davey and Dr. Freeman spoke for some time inside.

Q. Then who was called in? A. Then, I believe, Mr. Davey came to the porch and called Mrs. Davey and myself.

Q. Both of you in? A. Both.

Q. What did he say to you? A. He said, "The Doctor wants you to witness another will."

Q. You didn't speak to anyone about signing so many wills? A. No. I don't see that there was any reason for mentioning it.

Q. You didn't think that you had signed three times already made any difference? A. Only twice before.

Q. This would be the third? A. The first was not a will. It may have been in legal sense. It was simply a copy of what was to be drawn.

Q. You knew that if the Doctor died you had

him fast? A. I didn't have him fast, because I am not interested.

Q. You were not interested at all? A. Not that I know of.

Q. When you and Mrs. Mohring were called in? A. Mrs. Mohring was not called in. Mrs. Davey.

Q. Where did you sit and what did you do? A. On the porch?

Q. After you got in, what did you do? A. After we got into the room?

Q. Yes. A. Simply took the chair off to one side.

Q. Where did you sit? A. Sat about six feet from the Doctor, in an easy chair.

Q. Back of the Doctor? A. In front.

Q. In front of the Doctor? A. Yes.

Q. How far away from the table? A. As far as you are from me.

Q. Where did Mrs. Davey sit? A. Mrs. Davey was sitting on the opposite side, to my left.

Q. How far away from the table? A. About the same distance.

Q. And the Doctor, where was he? A. He was sitting at the table, close at the table.

Q. Who was with him, anybody? A. Nobody with him, outside of Mr. Davey.

Q. He sitting close to him? A. He was standing just to one side.

Q. Mr. Davey said, "Doctor, sign here," did he not? A. I believe he did.

Q. And then the next thing he said, he called—Were you the next to sign? A. Was Mrs. Davey.

Q. Then he called Mrs. Davey over and he told her to sign here? A. He called Mrs. Davey over and gave her the pen, she picked up the pen and signed the paper.

Q. This was the paper, was it? A. I believe it was.

Q. And he told the Doctor, "You sign right here," where his signature is? A. Yes.

Q. Right there, and he called Mrs. Davey over? A. Mrs. Davey turned the paper around. He didn't say where to sign it. Turned the paper around to her, this way, and Mrs. Davey signed on the second line.

Q. What were you doing when the Doctor was signing? A. Nothing, simply sitting just in the chair at the time.

Q. You weren't paying any attention to what was going on? A. I was paying attention.

Q. Why? A. I saw the Doctor, I got up, I stood up.

Q. Why did you stand up? A. So I could better see him write, as he said, he asked Mrs. Davey if she thought that he was capable of signing his will or something of that effect and when he said that Mrs. Davey went forward and I stood up straight and alongside of the table. I was on the opposite side of the table, and the Doctor signed that. Mrs. Davey signed the second line and he asked me at the time if I thought he was capable of signing a will?

Q. What did you say? A. I said I certainly did. "You are capable. I gladly sign it for you at any time."

Q. If he wanted you to sign fifty wills you would have done it? A. Don't make any difference.

Q. Give up your job, come down any time, to sign? A. Sign any time.

Q. What did Mrs. Davey do after signing? A. Pushed the paper over to me and I signed after her.

Q. Pushed the paper where? A. Across the table. Not off the table. Over the other side of the table.

Q. And who pushed the paper to her to sign?

A. Mr. Davey gave her the paper to sign and the Doctor himself, at the same time, he took his hand, this way, and pushed it over the same way; and the Doctor moved the paper first and Mrs. Davey moved it around that way.

Q. What did the Doctor do then, rest back in his chair? A. Simply sat as he was at the table, arms on the table.

Q. Then the paper was shoved over to you to sign? A. Shoved just a little bit, and I stepped in Mrs. Davey's place where she was standing.

Q. Of course, you cannot swear whether the Doctor saw you sign or not? A. I cannot say.

Q. You cannot say positively? A. He was looking at me I know and saw me write.

Q. After the will was signed, Mr. Davey took the will? A. Took the will.

Q. You never heard anything about it until after the death? A. No, I did not.

Q. Would you mind signing, if you have not already done so, your name? A. Name?

Q. Yes, name and address. (Witness writes.)

Paper written by witness is marked Exhibit 4 for identification.

Q. What arrangements, if any, did you make about paying Mr. Davey for his services? A. I made no arrangements.

Q. Who did? Anybody? A. I don't know anything about that.

Q. Who paid you for all your trouble? A. I haven't received any pay.

Q. You expect to be paid? A. I don't say I can expect any payment or look for any. I did what I did. Was just the same as I would do for any friend or party that I know.

Q. This was quite a hasty friendship? I mean

by hasty in the fact that you had met the Doctor but just a short time and suddenly kept in his company until he died? A. No.

Q. You know of no other friend in your existence you were so urgent in your attention? A. Yes, I have gone to others in the same way.

Q. Not at the time you were friendly with the Doctor? A. Just as much at my daughter's home as I was at the Doctor's home.

Q. I mean for matters outside of your family, you had more relation with Doctor Freeman than anyone else in years? A. I cannot say I did. I did not go to see the Doctor especially. I went to see my son.

Q. The Doctor's condition, as far as you could see, at all times he was perfectly normal? A. I cannot say perfectly normal.

Q. He could sign a will at any time you say he would be good in your estimation? (No answer.)

Q. He could see and knew what he was doing? A. Could see fairly well.

Q. How could you tell whether he could know what he was doing? A. I should judge you were in a fit condition from your appearance, to say that you would be able to write your name and do your business.

Q. The Doctor was in just such a condition? A. In fit condition.

Q. At all times? A. Never saw in bad condition while I was there.

Q. Every time you saw the Doctor he was in fit condition? A. Fair condition, sometimes better and sometimes not so well.

Q. His mind was always clear, wasn't it? A. He had a very good mind, yes.

Q. You did not see him write this paper or see him read it? A. At times I have seen him where he said he could read headlines.

Q. Headlines of what? A. Of the paper.

Q. What paper?

Mr. Strong: That wasn't the question you were asked.

A. The large lines of the newspapers.

Q. How did you come to speak about his reading the large heads of the newspapers? A. The Doctor asked me some time before if it was possible for me to get him glasses. I told him I would do what I could for him. I brought two or three different sizes, glasses, out, different focuses and let him try the glasses and he told me he could not see with any of them.

Q. As far as you know he never could see? A. He could not see to read with any—

Q. And, of course, he could not see to read this will, could he? A. That I don't know, what he saw, that I cannot answer.

Q. So far as you know, he could not see with the glasses you brought or any he had? He could not see to read? A. I cannot say that he could. I cannot say whether he did or didn't.

Q. You were getting glasses for him and he talked to you about it? A. He told me he couldn't read. I told you I tried to get glasses for him, a number, different pairs from the store out to him, and he told me then that he could not see any better with one than with the other and he could not read the fine print.

Q. You never heard him read anything? A. I never heard him read anything.

Q. Never saw him read anything? A. Saw him look at the paper. Whether he read or not, that is something I don't know.

Q. He didn't read those wills you speak about? A. That, I don't know. I wasn't present when he looked them over.

Mr. Brown: That is all.

Re-direct Examination by Mr. Strong:

Q. I show you again the paper writing which you say Dr. Freeman signed in your presence and which you signed as a witness and that Mr. Davey and Mrs. Davey signed as a witness and ask you what that date is there? A. Says the Twelfth day of July.

Q. Then I ask you what date that will was executed? A. It must have been executed on that date.

Q. Any doubt in your mind about that? A. I have no doubt at all. I simply said I did not know the dates of any of those proceedings.

Q. What was the Doctor's mental condition the night he executed that will? A. To the best of my knowledge I believe, he was in normal condition.

Q. Does that will look as it did the night it was executed? A. The only part I saw of that was this here last page. I saw nothing else but that. It was folded that way.

Q. At the time you signed it? A. At the time I signed it, didn't see any part of it before or after.

Q. Didn't read it over? A. Had no occasion. No occasion and I wasn't permitted to.

Q. State whether or not you saw that initialing there that night? A. Yes, I saw that, because Mr. Davey put his hand down this way and took his pencil, I believe, and he pointed, he said, "Doctor, put your initials on that."

Q. Did you see anything suspicious about that will at all?

Mr. Brown: I object to that.
The Court: Objection sustained.

A. I don't know anything about that.

Mr. Strong: That is all. We offer the Will.

By the Court:

Q. Mr. Mohring, did I understand you to say that the Sunday afternoon when you came to Mr. Watson's house with Dr. Freeman that you came alone in the car? A. No, sir, I did not say that. I sat alone in the car. Dr. Freeman, Harry, Mrs. Mohring and I believe, Mrs. Davey, were in the Doctor's car; Mr. Davey and myself were alone in Mr. Davey's car.

Q. Who stayed home, in the house? A. In the house, Letty Paterson was home with the children.

The Court: I think that is all.

Mr. Strong: I offer the Will.

Mr. Brown: If your Honor pleases, we object to its being accepted as probated will until we have a chance to put our defence in at the next hearing.

The Court: Naturally, that motion will be denied at this time, Senator. And of course, as we have already fixed the date, continued to the Second of May, continued on the Third and Fourth if necessary.

May 2, 1923.

Mr. Strong: I would like to offer in evidence the order of the Court of Chancery, dated October 3rd, 1921. In the Matter of Charles M. Freeman, on Habeas Corpus, Order of Discharge, ordering the discharge of Doctor Freeman from the New Jersey State Hospital at Trenton, for the reason that he

was sane. This, I think, will simplify matters very much when it comes to taking the testimony in this case, and we hold that bars any testimony of insanity offered, or any acts of the testator, or any alleged evidences of insanity, prior to the making of that decree.

The Court: If I understand what you propose, Senator, or what you mean is that by offering this order of the Court of Chancery, that that would prevent the Caveators from introducing evidence of acts indicating insanity, or lack of mental capacity on the part of Doctor Freman, at any time prior to October, 1921, the date of the order?

Mr. Strong: Yes.

The Court: I do not agree with your conclusion in that regard.

Mr. Strong: It will do no harm to admit that paper.

The Court: I do not see that it will do any particular harm to admit the paper. On the other hand, I do not see that it will have any particular probative force.

Mr. Strong: I would ask permission of your Honor to introduce the paper.

The Court: It seems to me, Senator, it is not the proper time to introduce it now. It might more properly come in in rebuttal. You have the benefit of the offer at this time. I have no objections, unless the counsel for the caveators have objections, to the paper coming in for whatever weight it may have.

Mr. Watson: So far as we are concerned, there is no contention on our part that Doctor Freeman was insane, in the legally accepted sense of that term. We contend that he was mentally incompetent. Not insane, as insanity is defined in the statute under which Doctor Freeman was committed, which resulted in the habeas corpus.

The Court: You have no objection to the order coming in?

Mr. Watson? A. No.

Mr. Brown: I want to have this objection entered: Counsel stated his intention as being for the purpose of showing that Doctor Freeman was sane at the time he was discharged from the hospital on October 3rd, 1921, at the time this order was entered. I agree with Mr. Watson that this decree has no probative force, to show the mental competency or capacity of Doctor Freeman. It does show what was defined by the statute, and was determined at that ex-party hearing, that the Doctor was not violently insane, and he was not so insane that he should be incarcerated, and he was released. I think your Honor is perfectly right in saying it is a little premature to introduce an order of this kind. We have not arrived at that issue yet.

Mr. Strong: With that order in evidence, the court is then informed of the finding of the Court of Chancery, and we will be in a position to object to the introduction of any evidence.

The Court: In order to get the record straight, whether the paper goes in or whether it does not go in, I am going to permit the Caveators to introduce any evidence they have, and want to offer, concerning Doctor Freeman's mental condition, prior to and subsequent to the date of that order; whether it is introduced, or whether it is not introduced in evidence.

Mr. Watson: I object to the introduction of this paper at this time on this ground: That it is properly the subject of rebuttal. That the Proponents' case thus far has had to do merely with the taking of the testimony of the attesting witnesses. Therefore I object to its introduction.

The Court: I think, Senator, the burden of proof

is on the Caveators to prove the lack of mental capacity on the part of the testator.

Mr. Strong: There is no doubt about that.

Mr. Watson: No.

The Court: There is not any burden of proof on you, or there is not any obligation on you to prove that he is sane. The presumption is that he was sane, not only at the time when he was discharged under this proceeding, but at all subsequent times up to the time of his death, and that presumption must be overcome by the testimony that the Caveators will produce here, if it is overcome at all. And then if they do sustain that burden of proof, or make out a prima facia case of insanity, then the burden shifts back to you to overcome that by such evidence as you may be advised is proper. I think this is not the proper time to offer that paper which you have in your hand, and you will have the benefit of the offer, and I will deny the introduction of that at this time as being premature.

Mr. Strong: Our contention is that evidence cannot be produced to overcome this finding of the Court of Chancery.

The Court: I rule against you on that. You have the benefit of the record.

Mr. Davey: We do not want to be precluded from introducing, at the proper time, an objection along the line indicated.

The Court: You will not be precluded from anything at all, in this court, if it is proper.

CAVEATORS' CASE.

WILLIAM DINWIDDIE, a witness produced on behalf of the Caveators, being duly sworn according to law on his oath, saith:

Direct Examination by Mr. Watson:

Q. Mr. Dinwiddie, where do you reside? A. Metuchen, New Jersey, Raritan Township.

Q. How long have you lived there? A. Since 1907.

Q. What is your business, Mr. Dinwiddie? A. Well, I have had quite a number of them. I call myself a farmer. I am also a newspaper man. At the present time I am employed as an editor on the New York World.

Q. Did you know Doctor Charles M. Freeman in his lifetime? A. I have known him since 1907, sir.

Q. How well did you know him, Mr. Dinwiddie? A. So intimately that Doctor Freeman and Mrs. Freeman have often said that they were the best friends that we had in the world.

Q. What was Doctor Freeman's business? A. He was in the coal and lumber business in Metuchen.

Q. Manning Freeman & Son, Inc.? A. Manning Freeman & Son, Inc.

Q. And he was president of the corporation? A. I believe he was.

Q. Well, your understanding is that he was the owner? A. He was at the head of the business, he controlled the business.

Q. And you also understood, did you not, that he was the owner of it? A. Yes, sir.

Q. How frequently, during your acquaintance with Doctor Freeman, did you see him? A. Why, for a great many years they either spent at least

one night a week in our house, or we spent one night a week in their house. That is, we saw them at least twice a week socially.

Q. And that lasted over a period of how many years, Mr. Dinwiddie? A. Very intimately up to 1916, '17 or '18, and gradually becoming less, due to Charlie's condition.

Q. When was it, do you recall, that Doctor Freeman and Mrs. Freeman separated?

Mr. Davey: I think that is leading.

Mr. Watson: I will withdraw the question.

Q. Do you know whether Doctor Freeman and Mrs. Freeman separated? A. I do.

Q. Do you know when that was? A. Not exactly, sir, but it was several years ago.

Q. After that how frequently did you see Doctor Freeman? A. Why, Charlie came up to my house—

By Mr. Strong:

Q. Who is Charlie? A. I always speak of Doctor Freeman as Charlie. That is, I mean we called one another Bill and Charlie.

By Mr. Watson:

Q. No reason why you should not continue to do so, Mr. Dinwiddie. A. Why, he came to my house probably on an average of once or twice a week.

Q. Take meals with you? A. Very often, sir.

Q. Going back to the time that you met Doctor Freeman in 1907, when you first met him, what do you know, if anything, about his habits with reference to the use of alcohol or drugs? A. I knew,

early in 1907, that Doctor Freeman used veronal. I also knew that he was a periodic drinker, who had periods of being very seriously under the influence of liquor.

Q. I didn't hear the last. A. I said I knew that he was a periodic drinker. That is, he would keep sober for months at a time, and then go on very serious bouts of intoxication.

Q. What was his mental and physical condition when he was intoxicated in those early days? A. Do you mean in the early days?

Q. Yes. A. Are you speaking of both intoxication and drugs?

Q. I am speaking of intoxication. A. Well, it depended on whether it was the beginning of a period, or the end of a period. Of course, he very rapidly got to the point where he actually had delirium tremens.

Q. Did you ever know him to have delirium tremens? A. I have known him to be on the verge of it, but I am not a medical man, and I have been told that he did have delirium tremens.

Mr. Davey: I object to what he was told.

Q. You cannot say what others have told you. In order that you may understand, let me say that you may give only what you yourself saw or heard. A. May I state it the other way, from what I know personally of delirium tremens, Doctor Freeman, I have seen him at times on the verge of delirium tremens.

Mr. Strong: I do not believe he is qualified himself as an expert on delirium tremens.

The Court: Well, Senator, we haven't any jury, you have nothing but the court

here, and I suppose the court knows a little bit about the rules of evidence.

Mr. Strong: I object to it.

The Court: And will probably be able to give the testimony of the witnesses the weight that it ought to have.

Q. Mr. Dinwiddie, tell us how he acted when he was in this condition that you refer to, his speech and general conduct and appearance? A. Well, may I say this, that Doctor Freeman—

Mr. Davey: I think, unless the time be fixed, the question is subject to objections as being immaterial. Your Honor, of course, is conversant with the rule, and while I concede the right of the caveators to go far into a question of a potent habit, a vague question reaching anywhere from 1907 to date seems to me to be out of point, unless the time be fixed with some approximation.

The Court: I understood the time was fixed at the beginning of the period when this gentleman knew Doctor Freeman in 1907.

Mr. Brown: I suppose what Mr. Davey wants is the chronological order of the growth of this disease.

Mr. Watson: We are going in chronological order. He is speaking of the early days of his first acquaintance with him, back in 1907.

Mr. Davey: If that is continued, and it is so understood, then I have no objection to make to the question.

Q. Confine yourself to the early days of your acquaintance with him. A. May I say that in 1907

Doctor Freeman was a very talented and brilliant man.

Q. Yes. A. One who could talk on almost all the world and national problems. He struck me as a very effective business man when he was sober. On a periodic, in the early period, he was equally talented and brilliant, but always his mind worked in one way, that is, as the period of intoxication went on he became very vituperative, suspicious of his friends, and then his mind slowly began to be dulled, until he was in no condition to do anything, and if I may use the word megalomania, not in the technical sense, but he did suffer from a megalomania that constantly increased, that is, I mean the belief in his own importance, and his own powers, becoming rapidly less effective in everything he did, until he was actually unintelligible.

Q. How did it affect him physically? A. Of course, toward the end it affected his locomotor senses so he couldn't locomotor.

Q. Couldn't walk? A. Couldn't walk; no, sir. You are speaking now of alcohol?

Q. Yes. How did you get to know, Mr. Dinwiddie, later, in 1908 and 1909, if you did, how did you get to know of his use of drugs? Did he ever speak to you of it himself? A. He has; yes, sir. I hesitate to answer that, but the fact that he used veronal was brought to me first by Mrs. Freeman herself.

Q. That was your first knowledge of it? A. Yes. That was 1907.

Mr. Watson: I think counsel will agree that was hearsay testimony, and I did not intend to bring out anything hearsay.

Mr. Strong: I ask it be stricken out.

Mr. Watson: All right.

Q. How did you come to learn of it in any other way subsequently thereto, Mr. Dinwiddie? A. Well, I immediately knew, after that first allusion to it, by Doctor Freeman's own admission. I protested and said it was a habit forming drug, and Doctor Freeman insisted it was not a habit forming drug, it was merely one that would put you to sleep, and he had used it, and it was absolutely harmless. And we had quite a scientific discussion as to whether veronal was or was not a habit forming drug, and that was in the latter part of 1907.

Q. How many times after that did you speak to him about his drug habits? A. Oh, constantly, and always when he got on to his periodic drunks, and the drug habit. I have for years been trying to dissuade him.

Q. Back in those days of your first acquaintance with him, how did the use of drugs affect him mentally and physically? A. Well, in the early days, sir, it did not have the profound influence on him that they did in the last few years of his life, and neither did alcohol. That is, I mean his recovery was very quick and prompt and rapid.

Q. Prior to his prompt recovery how was he affected by the use of drugs, in those early days? You say that he recovered promptly. What was the condition from which he recovered? You see, Mr. Dinwiddie, your conclusions do not help the court. You have to relate to the court just what this man did, just what he said, and just how he acted, and the court will draw the conclusions. My question is, how was he affected by the use of drugs, in the first days of your acquaintance with him, if in any way? A. Why, he lost his locomotor ability, his capacity for movement, his speech became thick, his ability to think slowly became obliterated, and he became utterly incapable of transaction intelligent business.

Q. Why, Mr. Dinwiddie, do you attribute that to the use of drugs? A. Why, by his own personal admission to me. I accused him of being under the influence of drugs, and he has frankly admitted it.

Q. In those early days did he tell you what quantity— A. In the early days; yes, sir.

Q. Did he tell you in what quantities he took drugs? A. Not in the early days. He did later, sir.

Q. As the years went on, Mr. Dinwiddie, what did you notice about his use of alcohol and drugs, either or both? A. The periods became very much shortened, and the use of the drug unquestionably became greater as the years went on.

Mr. Davey: I move to strike that out, "unquestionably." If the witness knows the fact, that is one thing, but I think that is a conclusion.

Mr. Watson: Is the motion to strike out the word "unquestionably"?

Mr. Davey: The motion is to strike out that part of the witness' answer as being a conclusion.

Mr. Watson: We have no objection to that.

The Court: All right.

A. It is a personal conclusion.

Q. Do you remember when he first took treatment for this habit? A. Not by hearsay, but personally, you mean?

Q. Yes. Personal knowledge? Do you remember when he went to Oppenheim's Institute? A. Not the year, sir.

Q. Do you remember the occasion of it? A. Yes, sir. And he also told me.

Q. How long ago was that, as nearly as you can recall? A. Well, I should place it offhand somewhere around between 1909 and 1911.

Q. It was more than ten years ago? A. Yes, sir.

Q. You know where Oppenheim's Institute is? Do you know what it is? A. Well, is it the New York Institute?

Q. Yes. A. Yes.

Q. Do you know what it is? A. I don't know its technical name, but it is an institute for reforming drunkards, and drug habit people.

Q. Do you know why he went? A. No, I don't.

Q. Did he tell you why he went? A. No, I don't think so.

Q. You just know that he went? A. And that he told me that he had been.

Q. You stated that during the years the periods of intoxication and drug using became more frequent?

Mr. Brown: You mean as the years advanced.

Q. As the years advanced. Can you tell us when that culminated in his going anywhere for treatment?

Mr. Davey: I object to that, because there is not anything to show that it did culminate. Even if he went, it would not show that it culminated.

The Court: I will overrule the objection. I will permit the question. There is a wider latituted allowed in this sort of investigation than there is when we have a jury, and it will save time if counsel will not object every time there is technical objection to the question, because the court is going to weed the thing out.

Mr. Davey: I quite appreciate the latitude that is allowed, but once in a while I think it gets a little far. I will restrain myself as much as I can.

A. If you will let me bring you up to the period of 1919.

Q. Very well, that is just what we want you to do. A. In 1919 Doctor Freeman went on a very serious drug and alcohol spree, that lasted for several weeks, until he was wholly incompetent and unable to transact business, and his wife was very fearful of bodily harm.

Mr. Strong: I object to that. He cannot tell that.

The Court: You object to the competency of the witness to draw a conclusion?

Mr. Strong: Yes.

The Court: The objection, of course, is well taken. But I did not understand that was his conclusion. He was stating a fact.

Mr. Watson: He was there at their house every week.

Q. At that time did you see Doctor Freeman and Mrs. Freeman together? A. I am stating positive knowledge of assertion on the part of Mrs. Freeman, and speaking of Doctor Freeman's condition, as known to me personally.

Mr. Strong: I object.

The Court: Objection overruled. You may have an exception, if you want it.

Q. How long did you say that spree lasted? A. Several weeks.

Q. Just tell us what happened, Mr. Dinwiddie?

A. I finally coaxed Charlie to permit me to take him to an institution, and with the aid of Mr. John Breen, who was his head man in the lumber business, we took him down to Belle Mead in New Jersey.

Q. Just stop there to tell us just what his condition was, mental and physical, at the time that you took him? A. He agreed to go with us to see a doctor.

Mr. Davey: That is not responsive.

Q. Before we come to what you did, Mr. Dinwiddie—

Mr. Watson: We will get along faster, and save a lot of the court's time and counsel's time—

The Court: I think we will. I have suggested that to counsel two or three times, but I cannot stop him from making an objection.

Mr. Watson: I shall not intentionally ask a question that is not in conformity with the rules of evidence.

Mr. Davey: The question is all right, but the witness did not start to answer the question.

Q. Now, Mr. Dinwiddie, tell us, as you did before in the early years, tell us just what his condition of mind and body was when you took him? A. He was unable to get in the car without assistance; he did not know where he was going on the road, he recognized no places en route. He was willing to get out of the car at Belle Mead, on the assurance that he would get a drink upstairs, and we left him in the physician's care, waiting for that

drink to arrive. But he could carry on no intelligent conversation, and he was utterly helpless mentally, and almost so physically. With our aid he was able to get up the stairs.

Q. Tell is what happened at Belle Mead, just what you did, and how long you saw him while he was there, and when you saw him again, and how long he stayed, and how he came away? A. Doctor Freeman always bragged of his ability to get out of any institution that he was put into. I so told the physician at Belle Mead, and that I would like to have him kept for at least four or five weeks, if it was possible; and he said he would stay there until I released him. He stayed there two weeks. And then I went back for him, with Mr. John Breen, and took him out.

Q. What was his condition when you took him out? A. He was in an extremely fine physical condition, and in a very alert mental condition.

Q. He had responded to treatment then? A. Absolutely.

Q. Do you know, Mr. Dinwiddie, whether he previously had been to Doctor Towne's Sanitarium in New York City? A. Only from what he has said to me. I think I have heard him mention Doctor Towne's name to me, and the fact that he had been there.

Q. Did he tell you how he got away from there? A. I think that he jokingly referred to the fact that he had gone into Central Park, or something of that sort, with a keeper, and gone behind some bushes and disappeared and came home. He was always proud of his ability to get away from keepers.

Mr. Strong: What institution was that?
Mr. Watson: Doctor Towne's.

A. Doctor Towne's.

Q. Between 1907 and 1919, the occurrence you have just referred to, what did you personally observe as to his use of drugs, if anything? A. Do you mean whether I actually saw him take drugs?

Q. Yes. A. Up to 1919; no, sir; I did not.

Q. After 1919, did you? A. I had seen him twice; yes, sir.

Q. What did you see him take? A. What I believe to be veronal, and which he told me was veronal.

Q. In what quantities did he take it on those two occasions? A. About ten grains, five grain tablet.

Q. What was his condition when he took it? A. Almost unable to locomotor.

Q. What was his condition mentally? A. Extremely bad.

Q. Did you ever see him take any other drug? A. I have seen him take as much as one-fifth of a grain of strychnine, to prove to me that he could balance veronal with strychnine.

Q. When did he do that? A. He did that in his own home in 1919; I think that that was the time that he agreed to go to Trenton with me, which was in 1920, as I recollect it.

By Mr. Brown:

Q. Trenton, or Belle Mead? A. No. Trenton. This was another time that he went with me.

By Mr. Watson:

Q. He was in Trenton twice, wasn't he? A. Yes.

Q. Do you refer to the first time he went to Trenton? A. I refer to the first time when he went with me voluntarily.

Q. Do you recall the date of the first time that he went voluntarily? A. It was some time, I

think, in the summer of 1920. Somewhere around my own birthday, I remember it, and my birthday is the 23rd of August.

Q. Tell us how you came to take him, and what happened? A. Well, by my personal influence on Doctor Freeman, when he was in that condition, I could slowly but surely talk him into a willingness to do anything, or go anywhere with me, and that was the influence I used on him at that time.

Q. What was his condition at that time, Mr. Dinwiddie? A. Extremely bad, sir. Both mentally and physically. He was incapable of any sustained thought, or any sustained business.

Q. When you say Trenton, you refer to the State Hospital for the Insane? A. I am speaking of the State Hospital, and I got his permission to take him down to Doctor Cotton, to have Cotton make an investigation of his physical condition.

Q. Did Doctor Cotton do so, do you know? A. Doctor Cotton,—not to my personal knowledge. Doctor Cotton told me that he had.

Q. Doctor Freeman went voluntarily? He was not committed? A. No, sir.

Q. How long did he stay there? A. About four days. He promised me he would stay there two weeks.

Q. What did he do at the end of four days? A. Just ran away.

Q. Came home? A. Came home.

Q. Did you see him again when he came home? A. Yes, sir.

Q. Do you recall when he went to Trenton the second time, in August, 1921? A. I was not in Metuchen, sir. I was up in Maine.

Q. You knew of his going? A. Yes, sir.

Q. Prior to his going that time in August, 1921, had you seen him? A. I had seen him very often up to the time that I left, because Mrs. Freeman

was calling on me to come over there to talk with Charlie, and things of that sort.

Q. What was his condition then? A. Very bad.

Q. Mentally and physically? A. I should say that he was mentally and physically incapacitated; yes, sir.

Q. And you saw him how often, can you tell us? A. Prior to his going to Trenton the second time?

Q. Yes. A. I should say that I saw him four or five times during the month before he did go to Trenton the second time.

Q. Was his condition, mentally and physically, similar in detail to that you have described before on other occasions? A. Surely.

Q. How long did he stay at the hospital that time, do you know? A. The second time?

Q. Yes. A. I don't know, sir. You see, I went up into Maine and Canada, really partially to get away from the domestic troubles that were going on that time.

Q. When did you return, about? A. I think we were gone six weeks.

Q. When you returned had he been released from the hospital? A. No, sir. He was still in Trenton.

Q. Did you see him again after his release from Trenton? A. I did; yes, sir.

Q. What was his condition then? A. Immediately after his release?

Q. Yes. A. I think it was the next day after his release that he came up to our house and had dinner with us. And he was in excellent shape, very jubilant over the fact that the doctors had pronounced him sane, and talked on almost every subject under the sun, including his own business, and his domestic troubles, and he struck me, and I remember having said to Mrs. Dinwiddie afterwards that I have never seen Charlie in better shape than he is today.

Mr. Brown: I move that be stricken out.

Mr. Strong: Not at all.

Mr. Brown: The part he said to Mrs. Dinwiddie.

Mr. Strong: No.

The Court: The form of the answer is bad.

Q. Never mind what you said to Mrs. Dinwiddie. Just tell us what was the fact. What was his condition? A. My impression of his condition?

Q. Yes. A. When he came from Trenton he was in better condition than I had seen him previous to his return from Belle Mead. I mean there are two high points; one was when he came from Belle Mead, and the other was when he came from Trenton on his protracted stay down there. The intermediate period at Trenton he was not in as good shape, because he only stayed there four days.

Q. You say he was at your house for dinner the day after he returned? A. That is my recollection. It was either that day or the next day.

Q. Was he under the influence of liquor or drugs? A. Not at all, sir.

Q. What was Doctor Freeman's condition during the month after his return? A. My recollection is, sir, that he not only kept clear during that month, completely clear mentally that month, but I think that it was at least two months that he was in very excellent shape, without any breakdowns of any sort.

Q. Can you say whether or not he made a serious, determined fight against his habit, during that time. and tried to overcome it? A. He told me, the night he had dinner, that he was never going to use drugs again, but I couldn't get him to promise that he wouldn't drink whiskey.

Q. How often did you see him during those two

months, Mr. Dinwiddie? A. Why, we tried very hard to have him up at our house at least once a week to dinner, in the hope that we could keep him straight, and I think that we did actually have him in our house as often as that, or oftener, and, of course, I saw him much oftener than that on the street, and in the lumber yard.

Q. How did he get along after these two months ended? A. My recollection is that he did start a small spree at the end of a month or two, and that that didn't last very long, and then with not so long a period before he had another one, and after that it was a question as to whether he kept away from it at all for month after month.

Q. How did his condition become as compared with what it was before he went to Trenton? A. Will you state that again?

Q. How did his condition become as compared to what it was before he went to Trenton? A. Well, there is a period of months in there, you know.

Q. Yes. A. In which he slowly and progressively became worse and worse.

Q. When was the last time that he was at your house? A. The last time that he was at my house was, I think, in the last week of June, last year.

Q. What day of the week was it? A. I can't tell you positively.

Q. What was your employment at that time, Mr. Dinwiddie? A. I was an editor on the New York World.

Q. What day of the week did you have off? A. I had Sunday off.

Q. Was it in the day time that he came to see you? A. Yes, sir; it must have been Sunday, I should have said, from necessity.

Q. Were your duties at the New York World such then that you could be spared on any other

day except Sunday? A. No, sir; I never got away during the weekdays.

Q. So that it was during the day time that he came to see you, and it was the latter part of June? A. Yes, sir.

Q. What was his condition then? A. He was unable to get out of the automobile.

Q. Who came with him? A. With his chauffeur.

Q. Anyone else? A. Miss Nellie Freeman.

Q. His sister? A. His sister.

Q. Go on, Mr. Dinwiddie, and tell us what his condition was then? A. Why, I tried to get him to come into the house, and he said, why Bill, I can't walk; and his speech was very thick, and muddled, and vituperative. Shall I say what happened?

Q. Yes, tell us what he said? A. Well, he made a very violent attack on yourself personally at that time?

Q. Yes. A. He was thoroughly vituperative in the language.

Q. Well, just say what he said? A. And he said he was going to get a new lawyer, and he wanted to make a new will, and that was about as far as you could get in the intelligent part of it, that is, I mean, if that could be called intelligent. It was horribly vituperative and the main part of it was that he wanted to make a new will, and he wanted me to help him, and that everybody was a scoundrel except myself.

Q. How was his speech at that time? A. So thick that it was almost impossible to understand him.

Q. What was his mental condition? A. I should say that he was absolutely incapacitated from doing anything that would be accepted by other men as normal.

Q. At that time in your opinion was he men-

tally competent to carry on an important business transaction? A. Unquestionably no.

Q. In your opinion was he capable mentally of knowing the nature and extent of his property, and the natural objects of his bounty? A. No, sir.

Q. How long did he stay? A. I should say about thirty to forty-five minutes.

Q. Did he go in the house at all? A. No, he couldn't.

Q. Did Miss Freeman go in the house? A. She was in the house; yes, sir.

Q. How was his condition on that day as compared with his condition before he went to Trenton Hospital the second time? A. You make too fine distinctions.

Q. Well, just tell us in a general way? You can say whether it was not so bad, or worse. A. May I repeat a conversation I had with Miss Freeman?

Mr. Davey: I do not think it is the purpose of the witness—I have restrained myself somewhat, as your Honor will recognize; I object to this question as calling for the conclusion of the witness. He is allowed to state a condition on one time, and a condition on the other. I do not think the witness is permitted to draw a comparison. I do not think the question is proper.

The Court: I think what the question is directed to is for the witness to state what the appearance and condition of Doctor Freeman was on this date, as compared with the date prior to the time he went to the hospital.

Mr. Davey: If he simply wants an answer that he was better or worse, I do not want to stop the examination. I do not care anything about that.

The Court: That is it. This witness cannot qualify as an expert, and his testimony is not going to be given the weight of the testimony of an expert. His conclusions will be given no more weight than they are properly entitled to.

Mr. Davey: I only thought if we were going to get a muddled up record when it comes to be written out, it would not mean much.

Mr. Watson: I say to the court the conclusions of the witness as to sobriety and mental capacity are admissible.

The Court: They are admissible, absolutely.

Mr. Watson: Speaking only as to their probative force.

The Court: As to their probative force, that is different.

By the Court:

Q. The question is, Mr. Dinwiddie, how did Doctor Freeman's condition, on this day that you have testified that he called at your house with Miss Freeman, compare with his condition just prior to his second admission in the hospital at Trenton? A. I really think, your Honor, that it was worse, if anything.

Q. You mean it was worse on this day when he saw you, than it was prior to his admission to the hospital? A. Yes. But that is making a fine technical distinction, you know, which it is impossible for me to delineate.

Q. Speak louder. A. I say that makes a fine technical distinction, which a layman is almost impossible to answer. I should say that his condi-

tion was worse than it was on any other occasion that I had seen him.

Q. What you mean when you say that his condition was worse, you mean that the symptoms of his condition were more pronounced than you had seen before he went into the hospital on the second occasion, is that right? A. May I answer that, your Honor, by saying that I told Miss Freeman—what I said to Miss Freeman in relation to his condition?

Q. No. I suppose they will object to that. Just tell me what you saw in relation to his condition? A. Then I will say it in my own way. I thought that he was absolutely crazy, that he was about to destroy his business, and to break away from whom I considered his best friends, to his own personal destruction, and I said so to him very vehemently, in front of his chauffeur, and told him that he was under extremely bad influence. I personally felt very keen about it.

Q. By his chauffeur do you refer to Harry Mohring? A. I am speaking of Harry Mohring; yes, sir.

Mr. Strong: That is altogether out of order. That is leading the witness there.

The Court: Maybe it was a little bit leading, but if you want to press the objection I will strike the question and answer out.

Mr. Strong: I object.

The Court: All right.

By Mr. Watson:

Q. Who was the chauffeur? A. Harry Mohring.

Q. How long had Harry Mohring been his chauffeur, do you know? A. I don't know, sir, exactly.

Q. You stated that after his release from the

hospital his condition was good for a month or two, and then he began to commit these indulgences again, in which you saw him for the last time this Sunday the last part of June. Meantime what was his condition, Mr. Dinwiddie, when you saw him? A. Between what times?

Q. Between the first of the year and the latter part of June, 1922? A. May I answer that by saying that he was progressively becoming worse and worse, and more and more incapacitated, both physically and mentally, during the last year of his life.

Q. Yes. A. It was apparent to all of us.

Q. After this Sunday in June, how often, and when and where did you see him? A. He never came back to my house again.

Q. Why was that?

Mr. Davey: If you know.

The Court: That is understood.

A. I can't answer why.

Q. You don't know why. All right, if you don't know. A. I have a conclusion.

Q. If you don't know, just say so. After that when and where did you see him? A. I saw him on the street, and with Harry Mohring in the automobile. I saw him in front of the lumber yard; perhaps all told a dozen or fifteen times.

Q. What did you observe about him when you saw him? A. That his gait was—when he was on his feet that his gait was very slow and shuffling. That he seemed to be almost incapable of locomotion. I have a recollection of seeing him at one time down town, and that Harry Mohring was carefully helping him out of the car, in front of the barber shop.

Q. Were there times when he was not in this condition, Mr. Dinwiddie? A. Do you mean after?

Q. Yes. A. Well, I can only speak of the times that I saw him, and those were only incidentally.

Q. That is what I am speaking of, just to get your knowedge of it? A. Every time I saw him he was in what I considered a helpless condition.

Q. You spoke of his megalomania. How did that manifest itself, Mr. Dinwiddie?

Mr. Davey: That is away back now?

Mr. Watson: At any time during your acquaintance with him.

A. His megalomania, as years went on, became worse.

Q. How did it manifest itself? What did he do? A. It manifested itself in the belief that he was a very influential and powerful citizen, and he would write vituperative letters to the President of the United States, and the Governor of the State of New Jersey, and various Senators. He would visit the officials of the Lehigh Valley Railroad, to tell them how to operate the road, and then come back and tell me where he had told them how they got off, and things of that sort.

By Mr. Strong:

Q. What? A. He would come back and tell me of all the things that he had done, and how important his particular acts were in influencing acts of Government and State and corporations.

By Mr. Watson:

Q. Did he tell you of these letters that he wrote

to officials? A. He not only told me, but one or two of them I have seen.

Q. What were they about?

Mr. Strong: One minute.

A. Generally rather incoherent—

Mr. Davey: I object. That is not the best evidence.

Mr. Watson: The witness has spoken about several of them, and one or two he showed to him.

Mr. Davey: Now he asked the witness what those that were shown to him were about, and I do not think that is the best evidence. There is no proof shown of attempt to get them.

The Court: There were shown by Doctor Freeman to the witness?

Mr. Davey: These were shown by Doctor Freeman to the witness, but there is no evidence they were ever sent. There is no evidence that he ever tried to get them.

Mr. Watson: We do not care whether they were sent, or not. It shows his condition of mind.

The Court: I will permit the witness to testify.

Mr. Davey: Prays exception.

Q. Answer the question, Mr. Dinwiddie? A. The letters always impressed me as incompetent and incoherent. I mean, he made no—

Q. What did he say in them? A. I can't remember with sufficient accuracy to answer that.

Mr. Watson: That is all.

Mr. Brown: I suggest that the proponents proceed, and if there is any question I want to ask, I will do so, and that will save re-rebuttal.

The Court: You mean that the proponents now proceed to cross examine?

Mr. Brown: Yes. If that is agreeable to counsel.

Mr. Watson: Perfectly.

The Court: All right. Proceed to cross examine then, Senator.

Mr. Davey: We have no objection to Mr. Brown proceeding.

The Court: Mr. Brown says he has no questions at this time.

Mr. Brown: I said counsel proceed to examine, and that may save a re-rebuttal. I have a few questions I want to ask in the main, and I thought I would join it all together.

Mr. Strong: I think they should be limited to rebuttal, when the time comes.

Mr. Brown: I will proceed then.

By Mr. Brown:

Q. How old was Doctor Freeman when you first knew him? A. I can only answer that by saying that he was about ten years older than I am.

Q. Well, what would that mean, translated? A. I am fifty-four now, and that would make Freeman sixty-four.

Q. So that Doctor Freeman, when you met him in 1907— A. That is fifteen years ago.

Q. Yes. A. That would make him forty-nine.

Q. Around forty-nine or fifty years of age? A. Yes, sir.

Q. When you first met Doctor Freeman did he not appear to be a free handed, liberal minded man in the use of intoxicants, and tobacco, we will say, and stimulants? A. I don't get the word free handed. Do you mean a constant drinker?

Q. No. I don't mean that. You realize, do you not, that men, when they get to be fifty years of age, begin to conserve their energies and their physique too, if they can, do they not? A. Yes.

Q. And they do that very often by abstaining from stimulants of any kind? A. Yes.

Q. Did the Doctor, at that time a user of alcohol, or did he give the appearance of one who used it? A. He was. He did, sir.

Q. And his appearance was that of a man who was a free drinker? A. I don't think, in between his sprees, that you would have said that Doctor Freeman was a chronic alcoholic. He was a periodic at that time. He was not a chronic alcoholic.

The Court: This refers, as I understand it, to the period of 1907 and 1908?

Mr. Brown: Yes. When he first met him.

The Court: That is the first year or two of his acquaintance.

Mr. Brown: I wanted to establish the condition when he first met him, if I could.

Q. When you met the Doctor in 1907 he was a drinking man, wasn't he? A. Yes, sir.

Q. Every time you met him he would take a drink? A. I never took a drink with him in my life.

Q. Well, I mean you saw him drink then at times when you would meet him? A. Never except when he was on a spree.

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Q. Well, in 1907, how soon after you met him did you find him on a spree? A. Within a very few months.

Q. And during the sober moments before this spree, do you know whether he used liquor or not? A. That I cannot say, sir.

Q. At that time was he using veronal? A. I knew, in 1907, by his own statement, and his wife's statement, that he was using veronal.

Q. Wasn't the veronal used by him, as you heard him say, to overcome the effects of drinking? I mean by that, that it would relieve him from the pain and suffering?

Mr. Strong: I object to leading the witness that way.

The Court: It is leading, but I do not think I will exclude it for that reason.

Q. Didn't he take veronal at that time to relieve the suffering he had from the excessive use of alcohol? A. No, sir. He said that he took veronal because he couldn't sleep.

Q. In 1907 did he state to you how long it was that he was without sleep at times? A. No. I have no accurate recollection.

Q. Well, his use of veronal, as he told you, and what you saw of it at that time, you made up your mind that he was using it to quite an extent, didn't you? A. Only from his statement.

Q. How soon after you met him did you actually see the use of veronal? A. I did not see him take veronal until ten years later.

Q. When you saw him in 1907, there had already set in, had there not, from what you saw, a disintegration of his physical makeup, his mental makeup? A. No, sir. It didn't strike me that there was disintegration in 1907. I considered him, on the contrary, a talented man.

Q. Fifty years of age, and using veronal, and using alcohol, and going on sprees, he was an intelligent man, is that right? A. Yes, sir.

Q. How long did the first spree last, do you remember? A. I do not.

Q. Well, did it last over a day? A. Oh, I think it lasted for a month or two.

Q. Month or two straight? A. Yes.

Q. Do you know what quantity of alcohol and veronal he took at that time? When I say alcohol, I mean intoxicating liquors too? A. I haven't the slightest idea, sir, personally.

Q. Well, was he helpless during all that two months? A. My recollection is that he went away somewhere during that period for a while, and he was not helpless, because he was always on his feet in the morning, and around town. I think there was a period when he was actually in the house for a week.

Q. Do you not know, as a fact, that during those sprees, particularly that spree now that we are referring to, that Doctor Freeman would drink himself drunk, and then take veronal and sleep, and sleep day after day, and then when he sobered up, get more drink and more veronal, and keep it up until he had— A. You are speaking of 1907?

Q. Yes.

Mr. Davey: That can be answered yes or no, and I think it is the only fair way to answer that question. The witness either does know, or does not know.

The Court: Yes, or no, Mr. Dinwiddie.

(Question repeated by stenographer.) A. Does that mean 1907 precisely?

Q. Yes, that means that first spree that you spoke

of. A. I shall have to answer no. I didn't know the man well enough in 1907 to—

Q. You have just referred, Mr. Dinwiddie, to a period of one week that he stayed in the house. What period were you referring to, what year? A. I am speaking of my recollection of the period along back in 1907.

Q. That is the period I am referring to? A. But remember that I only knew him slightly socially in the first year of my acquaintance with him.

Q. But you knew that he was in bed for a week, did you not? A. Yes.

Q. And that he was drunk during that week? A. That is my impression.

Q. That is what we want, as you remember. Wasn't he drunk continuously during that week, and using veronal? A. That is my impression; yes, sir.

Q. And stayed in bed all the time?

Mr. Strong: I object, and ask that the answer be stricken out.

The Court: Yes, it will be stricken out, unless he shows how he arrives at the impression.

Q. How did you gain your impression? A. I think by the actual sight of Doctor Freeman, and from hearsay evidence.

Q. Were you at his home during that week? A. Yes.

Q. When you say actual sight, that is, to see him in the place? A. No, I didn't actually see him in bed in his own house. I was not intimate enough at that time.

Q. How often did you see him the first year of your acquaintanceship? A. Oh, I presume once a

month, socially, and perhaps a half a dozen times in business dealings. 1907.

Q. What part of 1907 did you notice that he was on a spree for several weeks? A. I can't tell you.

Q. When again did you notice this periodic jubilations? A. Well, at that time he often went from six months to two years; I think I recollect of one period of which he was nearly two years without going on a serious spree.

Q. What was he using for stimulants in that time, when he wasn't intoxicated, or when he wasn't on a spree? A. I have stated to you that in the early years, that I never saw him take stimulants. It is only what he has told me. That is, he has told me that he took veronal, but he has also bragged of the fact that he had on occasions used heroin, opium, smoked the pipe, used hasheesh, and almost every other form of stimulant. That is, he has told me that personally, and bragged about his ability to use those sort of things.

Q. His resisting powers? A. His resisting powers.

Q. When did he first tell you about the use of those opiates? A. Of the opiates?

Q. Yes. A. Oh, that was several years later, sir, in 1912, '13 or '14, when he had a confidential conversation with me.

Q. Well, did he look to be a man who was accustomed to the use of those narcotics? A. No, sir; I didn't think he was using opium.

Q. How did he come to speak about the use of heroin and morphine and the other opiates that you have referred to? A. Because I was always insisting that he would absolutely ruin his health, and he would create a drug forming habit that he couldn't get away from, and he insisted it was all nonsense on my part, that he had better heart ac-

tion than I had, and would outlive me, and would live to bury me.

Q. When did that controversy first begin, or advise? A. The active controversies, in which I was attempting to use a moral influence on him, began as early as 1911 and 1912.

Q. Had the doctor's stage of subjection to the use of alcohol and stimulants grown so unsatisfactory that you thought it was advisable to advise him at that time?

Mr. Strong: I think these questions are very leading. It works in an answer in his question.

Mr. Watson: It is virtually cross examination. I am perfectly alive to counsel's reason, and I am not going to object.

Mr. Strong: This is not cross examination.

Mr. Watson: Although in this controversy Mr. Brown and I represent different caveators, we are against the will, I myself think Mr. Brown ought to be held to the ordinary rules of examination. I am not going to press any objection.

The Court: The questions are quite leading.

Mr. Brown: This witness is not produced by us.

The Court: I recognize technically that he is not, and yet your interests are so nearly alike, so far as the testimony of this witness is concerned, that your questions are objectionable upon the ground that they are leading. I think you can probably get along without leading so much.

Mr. Brown: This witness is not our witness.

The Court: I understand that thoroughly.

Mr. Brown: He is not produced by us.

The Court: I understand that thoroughly But you are really so closely together on your interests, in his testimony, that it is almost the same as if it was your witness.

Mr. Brown: We don't want to be bound by his testimony, and we believe he is hostile to us.

Mr. Watson: It is not hostile to you in this proceeding.

Mr. Brown: That is my impression.

(Question repeated by stenographer.) A. I will answer that yes.

The Court: I will permit that question.

Q. That was in 1911 or '12. What were the doctor's habits, or conditions, both mental and physical at that time, that prompted you to advise him to desist in the use of alcoholic intoxicants, and opiates, or drugs? A. I have to use the word periodic again; when he was in one of his periodics his condition was, of course, dreadful. When he was sober, and using only opiates, his condition was very much better, and there were times that his condition, he was absolutely a brilliant man.

Q. So that I take it, when he was not using intoxicants at that time, he was using opiates, as you have just stated, is that true? A. I think that he used opiates constantly; yes, sir.

Q. And you were as fearful about the use of opiates, in fact more so, were you not, than you were of— A. Of alcohol; yes, sir.

Q. Well, what ravages, or what change in the doctor's mental and physical condition manifested

itself at that time, that prompted you to give this advice, that is, in 1911? A. Well, it was only the immediate ravages of his periodics that made me give him the advice. A man who was on a bad drunk, and in a bad condition, is a type of man you give advice to.

Q. Can you tell just what he would do then at that time, or what his acts were, what his condition was, that is to say, describe his condition and his conduct? A. His condition was a numbed drunken man, incapable of sustained thought, or sustained effort, either mental or physical.

Q. For how long a period? A. The periods were never the same, but it was usually a question of weeks at that time.

Q. What did you notice was the progress of his inclination to use opiates and alcohol more frequently between the years 1907, when you first met him, and the year 1911? A. I have no means of knowing whether or not the amount of opiates increased during those periods.

Q. Well, there was something that prompted— A. Alcohol, it is true that the periods of intoxication, the periods between, rather, of soberness, became less and less as years went on.

Q. Did you notice, or not, that there was a permanent disintegration of his make-up, both mental and physical?

Mr. Davey: I object as leading.

A. Yes, sir.

Mr. Brown: I would like to have the question repeated.

(Question repeated by stenographer.)

Mr. Davey: I think that is a subject of medical inquiry, that this witness is not competent to answer. Permanent disability.

The Court: I do not thing the witness is incompetent to answer. I think the probative force of the witness's answer is very slight, whatever it may be. Easily overcome by medical testimony. I think the question is perfectly proper. It is merely directing; it is not leading.

Mr. Brown: Not only that, but a lay witness may observe the gradual permanent deterioration of a man's make-up, both of sight, walk, and everything.

Mr. Davey: The question of permanency is for a doctor.

Mr. Brown: He can see gradual permanent,—and when I say permanent I mean whether sober or drunk he had a certain debilitation.

The Court: I have permitted the question.

Q. What is your answer? A. Yes.

Q. Could you state to what degree the permanent impairment in his mental and physical make-up manifested itself between 1907 and 1911? A. No, sir.

The Court: I think you use the word permanent there in the same sense as gradual, don't you? You do not mean by the use of the word permanent, that his condition was such that there was no recovery from it?

Mr. Brown: It is not progressive. What I mean is this:

The Court: I want to get the record straight.

Mr. Brown: When a man uses alcohol, and when he uses drugs, whether it is periodically or whether it is constantly, one

or the other, there is a gradual breaking down of the mental and physical tissues, and that gradual breaking down of the mental and physical make-up, part of that cannot be restored, because those drugs and alcohol are permanently destroying them. There can be no recovery to an extent, but there is a degree of progressive, permanent impairment that cannot be cured. Now, sometimes that manifests itself, as I understand it, in a man's gait, it manifests itself in his appearance, it manifests itself in his communication, whether by writing or orally, it manifests itself in every act and transaction that he has. He may grow vituperative, he may grow peculiar, and other things manifest themselves, or that is, he has other acts that manifest a permanent change in the man, as it is commonly termed. Now, those things remain. Even thought he is sober, and even though he desists in the use of alcohol and opiates, and I want to get, if I can, before the court, from this witness, the degree of permanent change that he noticed. That is, the doctor must have been getting worse all the time, and anything about it is—

The Court: You do not want this witness, by his answer, to indicate that the doctor could not recover, at some future time, from this, if proper remedies were applied? You do not mean permanent in the sense that there could be no possible recovery? As I take it, you mean permanent in the way the witness was referring to, these conditions were gradually showing more marked symptoms?

Mr. Brown: Yes.

The Court: And that they were present, regardless of whether he was on a spree, or whether he was what we might call sober?

Mr. Brown: Yes. What the general average of progress was. That is what I want to get at.

The Court: In other words, the slope of the curve.

Mr. Brown: Yes.

Mr. Strong: The Senator's interpretation of what he had in mind makes the question entirely improper. He is journeying into the domain of medicine now. A layman does not know anything about the impairment, temporary or otherwise, of mental tissues.

The Court: He can only state what he observed. The actual symptoms that he observed. His medical opinion will not have any weight with the court.

Q. Do you mean you can't tell it in degrees, or that you can't tell about it at all? A. I am unable to determine, between 1907 and 1911, what impairment there was.

Q. Well, did he look to be getting better or worse, between 1907 and 1911? A. I don't believe that I can answer that.

Q. Well, in 1907, you say he was subjected to delirium tremens, was he not? A. Not to my knowledge in 1907. I have been told that he had delirium tremens in 1907.

Q. When did you first know that he had delirium tremens, of your own knowledge? A. I think I have stated before that of my own knowledge I did not know that he had ever had delirium tremens, but it was my opinion that he was on the verge of delirium tremens.

Q. You stated on your examination that you constantly spoke to the doctor to prevent the use of drugs. When was that constant admonition given, and when did it begin? A. It began in 1907, and perhaps it may have been reiterated once or twice during a year in the earlier periods; as my intimacy became greater with him, as the years went on, in the later years, the urging and appeals on my part, of course, were progressive. It is impossible for me to state, over fourteen years ago, whether once every month I pled with a man who was at that time only a social acquaintance of mine.

Q. What have you to say about the extent of the use of opiates or drugs at that time, including veronal? A. I have no idea, sir, at that time how much veronal or opiates he used.

Q. What occasion had you to speak to him so frequently to prevent the use of those drugs and the opiates? A. You say why did I speak to him?

Q. So frequently, yes, if you didn't know—if there wasn't something to impel you to speak to him? A. Your Honor, does he use the word frequently right there to mean—he is conveying the idea that frequently means every week or two.

Q. Now, Mr. Dinwiddie, I don't want to spar with you. You testified on direct examination that in 1917 began to constantly—constantly was the word you used. A. 1917, sir, but you are speaking 1907 to 1911.

Q. Yes. A. If you will come up to 1917, why, you will get a different answer.

Q. I know, but I am talking about what you testified to on your direct examination. I have 1907 that you constantly spoke to the doctor to prevent the use of drugs.

The Court: I do not think he testified as early as that, Senator.

Q. When was it that you began to speak to him constantly about it? A. Why, I should say—

By the Court:

Q. When was it, Mr. Dinwiddie, that you first spoke to him and remonstrated with him about the use of drugs? A. In 1907. But that was a social remonstrance.

Q. That was confined to one occasion? A. That was confined to one occasion.

Q. When after that did you remonstrate with him about the use of drugs and liquor? A. Well, I think, sir, the same year. I think later in that same year that he went on a spree.

Q. These times that you remonstrated with him were after a spree? A. Yes, sir. Or sometimes during a spree, but in the early days there were long intervals. It was only as I became more intimate with him, and towards the latter part of his life.

Q. Well, in your testimony before you have said sometime during the period that you constantly remonstrated with him concerning his use of drugs and liquors. Now, when was that? Bring us down to that period when you would term your remonstrance— A. Using the word constant, I beg the right to change that, if I might, if the word constant is going to mean day by day, or week by week, or month by month. That is, when I say constant—

Q. Well, what word would you use in place of it? Frequently? A. I would rather use the word often, instead of constant.

By Mr. Brown.:

Q. Well, at any time did you constantly remon-

strate with him about the use of opiates and drugs? A. Was there any time?

Q. Yes, that you constantly? A. Will you define the word constantly for me first?

Q. Well, as you used it, and as you think it is? A. The last five years of Doctor Freeman's life I probably discussed his drug using and alcohol using habits with him at least once a month. An average of that. Don't make me say later that it was once every month that I did it on a certain day.

Q. What would you say about Doctor Freeman's condition, mental and physical, or his habits, or his conduct, that prompted you to remonstrate with him at least once a month about the use of opiates and intoxicants? A. We were close social friends; he would bring up the discussions himself very often, or I would bring them up; he might be in perfect condition, or it might be due to the exigency of the fact that he was on a spree, that would cause me to do it. There are any number of reasons. I used to debate medical subjects with him. The doctor thought that he was a medical man himself, and he liked to talk medical things, and he was very proud of his own physical condition, and things of that sort, and would often bring these things up himself, and say that he was ironclad, and a man of wonderful physique and mentality, and these things didn't harm him and, of course, I always protested.

Q. Well, can you state now what his condition and conduct was at that time that prompted you to remonstrate with him to stop the use of alcohol? A. At what time, sir?

Q. Well, at the time you have mentioned, the last five years of his life, constant remonstrances that you made to the doctor? A. When he was in an intoxicated condition I remonstrated with him be-

cause it was self-evident that he was destroying himself mentally and physically. In between the periods of intoxication, when he was, to my mind, mentally clear and fit, I would point out to him then, showing him what fine shape he was in, and why he should not use alcohol and drugs; two different reasons there; when he was drunk I remonstrated to try to save him from himself. When he was in a clear condition, why, I did the same thing to make him see that he must not go back to it.

Q. Did the doctor's egotism grow as he progressed in the use of opiates and alcohol?

Mr. Strong: There you go again on a leading question, to which I object.

Q. Well, what was the progress?

Mr. Strong: If any.

Q. Yes, if any? A. I submit he should have a medical expert to answer such questions as that.

By the Court:

Q. Well, did you observe any? From your observation can you answer that question? A. Was the mental and physical deterioration, is that the way you put the question, progressive during the last few years of his life?

By Mr. Brown:

Q. Last five years, yes sir? A. Yes, sir; he was, in my opinion.

Q. Now, about his delusion, or impression about his own importance, and his vituperative expressions, did they progress, as his mental and physi-

cal debilitation progressed? A. His megalomania always took an acute form when he was intoxicated. When he was on a spree. Not in between. In between he was a fairly modest man.

Q. When was it that he wrote to the President of the United States, and which president was it? A. That was at the beginning of the war. I can't state the precise date.

Q. 1917? A. Somewhere around there, sir.

Q. And when would he write to other public officials, senators, and the like? A. I can't remember accurately, but I think he showed me a letter to Frelinghuysen, about a year after the letter he wrote to President Wilson. I can't state the precise date.

Q. Now, were those writings consummated, and were the references made to you during periods that he was sober? A. No, sir.

Q. Always while he was drunk? A. But he was practically incapacitated.

Mr. Strong: When he wrote the letters? Is that what he said?

A. Yes, when he wrote.

Q. What did the passage of the Eighteenth Amendment have to do with his use of alcohol, anything at all?

Mr. Davey: If you know.

A. Do you mean increase or decrease?

Q. Yes. A. I should rather say that it stimulated his imagination and his desire to see whether he could beat the law, or not.

Q. He was very much impressed with the fact that his liberties were being curtailed by the enactment of that amendment, was he not?

Mr. Strong: I object. That is very leading. The only way that the question could possibly be justified would be on the theory that Senator Brown is dissatisfied with the results of Mr. Watson's examination, and that he was surprised. Certainly their interests on the record are—

The Court: Well, senator, the questions are leading, of course, but I do not think that they are objectionable for that reason at all. You have Mr. Dinwiddie on the stand here, a very highly intelligent man, and a man, so far as my impression of his testimony here is concerned, is going to testify in the way he thinks, and what he has observed, regardless of what counsel may want him to testify to. And I do not believe that his answers are at all controlled by the questions that Senator Brown asks at all. Merely that the senator is directing the witness as to the point about which he desires the witness to testify.

Mr. Watson: With reference to the remark I made some time ago, I think the proceeding will be very much expedited if Senator Brown is permitted virtually to cross-examine. That is what it amounts to. It will save a lot of time.

Mr. Brown: I thought after the other side got through with their cross-examination, it may be they would cover much of the field that I would want to cover, and I had the thought that would be the procedure to save time.

The Court: I am going to permit the question.

(Question repeated by stenographer.)

A. Did you ask another question, sir?

Q. Did that impression stimulate the use of alcohol by him?

Mr. Strong: I object. That is a question he cannot possibly answer.

The Court: The question is, I take it, after the passage of the Eighteenth Amendment, and the Volstead Act, did or did not the doctor's use of intoxicating liquor increase? That is the question, isn't it?

Mr. Brown: Yes.

A. I can't answer that that way, your Honor.

By the Court:

Q. Why not? I am fixing a time, and I am asking you whether after that time it increased, regardless of the cause? A. Regardless of the cause there was a progressive increase in the use of alcohol.

By Mr. Brown:

Q. Did the passage of the amendment, and the doctor's view of that, as far as you know, result in an increased consumption or a decreased consumption of alcohol on his part? A. There was an increased consumption, but I can't say that that was the cause. I can only say that it stimulated his imagination to beat the law, like it has millions of other people.

Q. The doctor was constantly talking about it, wasn't he? A. Truly.

Mr. Strong: He is leading all the time.

Q. How many times, to your knowledge, was

he intoxicated, or had one of those periodical sprees in 1907? A. Only the once.

Q. 1908? A. I don't remember.

Q. How long did the 1907 one last? A. My recollection was it was several weeks.

Q. 1908 you can't remember whether he had one of those sprees or not? A. I think that he did, but I couldn't answer.

Q. How long did that last, do you remember? A. I don't; no, sir.

Q. In 1908? A. Senator, there is no use to try to pin me down to accuracy in those early years. I can't do it.

Q. As nearly as you can tell? If you don't know you can say so. A. I have already stated that in the early years that I feel confident that there were periods of a year in between, and that there was one time that I seem to remember two years.

Q. Well, when was that, do you remember? A. I think that that was around 1910, '11, '12, or '13, that is, I mean there was one long period that he was absolutely sober, so far as alcohol.

Q. What were the average sprees that you speak of as periodic between 1907 and 1912? A. I should say one a year, on an average, increasing as the years went on.

Q. Well, how did they increase numerically? We will say one the first year. Did he average an increase to two the second year? A. The last few years of his life he was almost constantly intoxicated.

Q. What do you mean by the last few years, the last five? A. No. I mean the last, I should say the last three years of his life, two or three years of his life.

Q. What was the progress between 1911, '12, and '19, that is, either one of those years, to 1919? A. I can't answer that accurately.

Q. Well, you took him to Belle Mead? A. Yes.

Q. At the time you took him to Belle Mead he was a physical wreck and mental wreck then, was he not?

Mr. Strong: I object to that.

Mr. Brown: I will reframe the question.

Q. You have testified, have you not, that when you took him to Belle Mead, or induced him to go there, that at that time he wasn't capable of a sustained thought, or carrying on any business transactions, and that he was physically and mentally incompetent? A. Yes, sir.

Q. And that incompetency was almost complete, was it not? A. Yes, sir; at that time.

Q. How long was he in that condition before he was taken to Belle Mead? A. Well, that was progressive again, beginning with the spree. Coming up from a fairly normal, or normal mental and physical condition, taking a week to get himself partially submerged, two weeks to get himself almost three-quarters submerged, and three weeks to get himself wholly submerged, until he was absolutely mentally and physically incompetent.

Q. Did his resisting powers increase or decrease as he continued the use of alcohol and opiates?

Mr. Strong: I don't know that he is competent to pass upon that.

A. That is a technical question.

Mr. Strong: The man may not have exercised his resisting powers.

The Court: I will permit the question anyway.

By the Court:

Q. You cannot answer it? A. It is a highly technical question. I can't answer.

Q. You can tell from your observation—and this is what the senator means, really—whether you noticed that he yielded more readily to the desire as time went on? Whether you noticed that he did? A. It is my impression that he did. That his moral resisting fibre was constantly decreasing.

Q. That impression is gained from your observation of the frequency of the sprees, and the length of the sprees? A. And the fact that they changed from long time periodics to a more persistent, constant drinking, and apparent use of drugs.

By Mr. Brown:

Q. After the Belle Mead incident, you say the next confinement was at Doctor Towne's, or some other institution in New York City? A. No, I did not say so.

Q. Well, when was the next confinement? A. Do you mean to my personal knowledge?

Q. Yes. A. My next personal knowledge was taking him down to Trenton.

Q. You testified to Doctor Towne's? A. I testified only that I had heard that he had been to Doctor Towne's, and that he had spoken to me of getting out of another doctor somebody's institution, and I think that Doctor Towne's was one of the places that he got out of. But I have no actual, personal knowledge of that.

Q. How soon was that after the Belle Mead incident? A. Oh, I don't know.

Q. Was there more than one place that he was in after leaving Belle Mead, beside the State Hospital? A. I don't know.

Q. Well, as nearly as you could find out from him, and his conversations? A. I don't think so. I think you are confusing dates.

Q. I am what? A. I think you are confusing dates there.

Q. Where is the confusion? A. That I don't know.

Q. Why do you think I am confusing, if you don't know? A. My personal opinion is that after the State Hospital, I mean after Belle Mead, that he did not go to Doctor Towne's.

Q. When did he go there? A. I think he went there earlier.

Q. Well, I have it here that soon after—this is from your direct examination, and maybe I can give your own testimony word for word—

The Court: Well, is it important, Senator Brown?

Mr. Brown: Except this, to show the frequency of the incarcerations, or the terms.

Q. I have it here that Charlie, after the Belle Mead incident—

Mr. Watson: I asked the question, and here is my note: I questioned the witness about Belle Mead, and then it came into my mind that I have overlooked Doctor Towne, and I put this note here "Towne previously," and then my question was whether he had been to Doctor Towne's previously.

Mr. Brown: I have it here Doctor Towne soon after Belle Mead. So which are you going to take?

By the Court:

Q. What is your recollection, Mr. Dinwiddie, as

to whether Doctor Freeman was in Doctor Towne's institution before or after he was at Belle Mead? A. I think that he was in Doctor Towne's insti tution before, sir.

Q. How long before? A. I don't know, sir. My recollection is that I was off on a trip, or something, at that time.

Q. Can you tell us about how long before? A. No, sir; 1 cannot.

Q. Can you say whether it was more or less than a year? A. No, I cannot.

Mr. Watson: Those dates will be proven by the testimony of other witnesses. For instance, Mr. Breen paid the bills.

Mr. Brown: Here is his testimony, that at the time—

The Court: Is it really important, senator?

Mr. Brown: No, but I have it here in the order that he gave it, that he first went to Belle Mead, spoke about his condition, and then he said doctor bragged to him about getting out of institutions, and that he told the keeper at Belle Mead of the doctor's bragging about getting out of institutions, and then he goes on and testifies that he was alert, after he came out of the hospital that he was alert physically and mentally.

The Court: Then he must have been at the institutions before he went to Belle Mead.

Mr. Brown: No. After getting out of Belle Mead he is alert physically and mentally, and then he says he saw the doctor, and the doctor was telling him that he had hidden in Central Park.

Mr. Watson: That was all prior.

The Court: You are really getting the record all twisted up here, and the court up above will not know anything about what we are driving at, if it gets up above, and that is what we are making the record for.

By Mr. Brown:

Q. Was there an examination of Doctor Freeman when he went to Belle Mead? A. Not while I was there, sir, no.

Q. You stated that you advised a four weeks' sojourn at that place, and instead of that he escaped in two? A. He didn't escape, sir. I had to take him out.

Q. Why did you have to take him out? A. He wouldn't sign any papers, so that the business couldn't operate, his lumber yard couldn't operate. There were important papers to sign.

Q. So that the reason you took him out was to get his signature to papers? A. Yes, sir.

Q. You thought, however, that he should have stayed there a little while longer, a couple of weeks more?

Mr. Strong: One minute.

The Court: I think that is objectionable.

Mr. Brown: As leading, or what?

The Court: Leading, and the court is not concerned with this man's thought, how long he should stay in the institution.

Q. How soon after the Belle Mead confinement was it that you took him to, or he went to the State Hospital? A. I think it was about a year afterwards, 1920, but I can't give you the exact date.

Q. What was his condition at that time that

prompted him being sent away? A. He had started one of the alcoholic sprees, which was progressive from an alert mental condition to a submerged mental condition, and finally got almost helpless mentally and physically, and I personally used my influence on him and talked with him and got him finally to consent to go down and put himself in the hands of Doctor Cotton, so that Doctor Cotton could make a physical examination of him and determine whether or not he was all right.

Q. The period of five years that you speak of, of the constant drinking, and constant use of opiates, and the constant progression of his ailments, and your constant remonstrance, began five years before his death, did it not? A. I object to your word constant, sir, as applied to each one of the things, if I may.

Mr. Strong: Yes, and we object to it too.

Q. May I ask you why you object? A. Because I have not used the word to his constant drinking. I have tried to keep saying that he was a periodic, not a constant drinker.

Q. I know what you are trying to do, but I am asking you what actually happened. What you are trying to do is to show lucid intervals, and the other side is trying to do it.

Mr. Watson: I object to that characterization of the witness' testimony. The witness is presumed to be telling the truth, and I mean to protect him all I can. I object.

Mr. Strong: I don't think I ever saw the witness before he came on the stand here, and I don't know how he is connected up with our side at all.

The Court: Change the word constant to frequent.

A. I have stated carefully that this was a question of periodic drunkenness.

The Court: I understand that. You have also testified that you remonstrated with him about twelve times a year.

A. Yes.

The Court: And that is what Senator Brown now refers to.

Mr. Brown: Yes, and he also testified, if your Honor remembers, that the use of opiates and drugs, in the last five years of his life—

The Court: Three.

Mr. Brown: Was constant, as I understand it.

The Court: That is right. But not his remonstrances.

Mr. Brown: Then I will confine it to that.

Q. That was three years before his death that there was a constant use of opiate and alcohol? A. You state—you are asking the question three years before his death was there a constant use of opiates and alcohol?

Q. The three years that you referred to in your testimony as being a constant use of opiates and alcohol, was that the three years before his death?

Mr. Strong: Did he say that?

Mr. Brown: Yes. It is the testimony.

Mr. Strong: I don't think quite as strong as that.

A. It is not said in that way. I think, Senator, that I stated that, if I may say it, that there was a constantly progressive increase in the use of opiates and alcohol during the three years.

By the Court:

Q. Didn't you say that the use of drugs became constant? A. Constant; yes, sir. And that obtained for many years. But I have been trying to keep away from being forced into the statement that he was a constant user of alcohol, which I don't know. He was a periodic. I am trying to keep those two things clear.

Q. Let us get the things down, in answer to a direct question, and find out just what you mean. As I understand it, you want me to understand that for many years prior to his death, Doctor Freeman used drugs? A. Yes, sir.

Q. Veronal? A. Veronal only, sir.

Q. Veronal only? A. Only, sir. But that he has bragged to me—

Q. But that he at other times periodically during the last years of his life, did use other drugs, but not constantly, is that correct now? A. No, sir. I want to re-state that by saying that Doctor Freeman has told me, not to my knowledge, that he has used all the other drugs, at different times, but to my own personal knowledge I do not know whether he has used any of the opium by-products.

Q. And you also want the court to understand that during the time that you have known him, from 1907 to 1922, that he was a periodic user of alcohol? A. Yes, sir.

Q. To excess? A. Yes, sir. It became more frequent as the years went on.

Q. That is, you mean the periodic sprees or using

of the alcohol became closer together? A. Closer, sir.

Q. And during the last three years how frequently did he indulge to excess in alcohol? A. I think that he became almost a constant drinker and a constant user of drugs, during the last few years of his life. That is, I don't think he was capable of going by twenty-four hours. It had changed its condition, from being a periodic drinker, who could go a year without going on a spree, to a man who could not live without stimulation.

Q. I want to get this clear: You want me to understand that during the last three years of his life he was constantlly under the influence of drugs? A. Not when he was confined in an institution?

Q. Except during the time that he was confined in an institution? A. And the immediate period after his coming out of the institution, when he was cleared up and perfectly normal.

Q. Except for those periods, that is, the period of his incarceration, and the period immediately succeeding it, that he was constantly under the influence of drugs? A. Yes, sir.

Q. And constantly more or less under the influence of alcohol? A. Yes, sir.

Q. That is correct? A. And that his condition varied, I mean even then it varied up and down, dependent upon the volume, or the amount. That is, I mean there was no absolute condition of sottishness. He would go all the way from being fairly sober to being extremely drunk.

Q. Was there any time, during the last three years of Doctor Freeman's life, except while he was in the hospital at Trenton, and the period of about six weeks or two months immediately succeeding

his release from the hospital, that you saw him, when he was not under the influence of either drugs, or liquor, or both? A. I think not, sir.

The Court: I think we have that all cleared up, haven't we, Senator?

Mr. Brown: I think so. Your Honor has done more than I could.

Mr. Watson: He went about it in the right way.

By Mr. Brown:

Q. You say that the Doctor took a dislike to his friends, during his drunken sprees, or his off periods, if I may so term them? A. Did I use the word dislike, sir?

Q. I don't know whether you used that, or not. A. I think I used the word vituperative, that is, meaning he always attacked his friends.

Q. That included you, did it? A. Oh, I have no doubt, but not to my personal knowledge.

Q. Mr. Watson? A. Mr. Watson, I personally know of one very virulent attack.

Q. Mrs. Freeman? A. Mrs. Freeman quite often.

Q. Do you know whether those were delusions, or whether they were based upon fact?

Mr. Strong: I object.

The Court: The question is whether he knows. He can answer that yes or no.

Mr. Strong: I do not see how he can answer it yes or no, and I object to it.

Mr. Brown: He certainly ought to know that.

A. Does he ask my opinion?

By the Court:

Q. He asked you whether you knew that feeling was a delusion, or whether it was justified by fact? Not your opinion at all, but whether you know, as a matter of fact? A. Most assuredly they were delusions.

By Mr. Brown:

Q. What have you to say, Mr. Dinwiddie, about the first time that you noticed the Doctor having those delusions? A. I can't remember the first time, sir.

Q. Well, not exactly the first time, in day or month, but we will say in period, whether it was three, five, or ten years ago, or one year ago, or six months ago, or as nearly as you can tell? A. Why, the personal attacking of his friends, during periodic sprees, has gone back, I am sure, five or six years.

Q. Now, were those delusions as progressive as his intoxication and use of opiates? That is, did they progress hand in hand?

Mr. Strong: I do not think he is competent. I object.

The Court: I think he can answer what he knows about that.

Mr. Davey: This seems to me to be the first time when the objection regarding the point of time has come in. The witness has testified this goes back five or six years and, therefore, it antedates the decree of the Court of Chancery, October 3rd, 1921, and I might just as well put in our objection to any testimony antedating that decree, at this

time, and have your Honor's ruling on the record.

The Court: I certainly overrule that objection.

Mr. Davey: I understood your Honor had already done that, but we want to get that ruling, if we may understand that we make a blanket objection to such questions, where that would be pertinent, and that your Honor has overruled it, and we may have the benefit of it, and we will not have to interrupt the testimony.

The Court: I am not quite clear of the practice, but my judgment is that you are not held to the same requirement in the matter of objections in the Orphans' Court that you are in the law court.

Mr. Davey: I understand that to be so.

The Court: It shall be noted on the record that you now object to any testimony concerning the Doctor's condition prior to 1921.

Mr. Davey: The objection runs to any question affecting his sanity. This question relates to what may be called an insane delusion.

The Court: Yes. And the ruling of the court is that the testimony will be permitted.

Mr. Strong: We also ask that any testimony already in the case, of that nature, prior to October 3rd, 1921, be stricken out.

The Court: That motion will be denied. Whatever exceptions you think you ought to have, you may have.

Mr. Davey: And that may run through?

The Court: That may run through the entire case.

By Mr. Brown:

Q. Now, Mr. Dinwiddie, will you answer the question? A. I think his megalomania, delusions, his vituperation of friends did increase in practically the same ratios with the increase in his use of alcohol, from necessity, that it was during the periods of intoxication that he was vituperative and attacked his friends.

Mr. Brown: That is all.

Cross Examination by Mr. Davey:

Q. Mr. Dinwiddie, you spoke of doctor speaking to you about the use of strychnine and of opium. Do I understand that those were in use during the latter years of his life, or that he told you they had been earlier? A. I think, sir, that that is a period half way between when I first knew him and the time of his death. Perhaps a little this side of the median line.

Q. Do you understand that he continued that use into the later years of his life? A. You are speaking now of opium derivatives?

Q. Opium and strychnine? A. Strychnine always, sir.

Q. To counter-balance the veronal? A. To counter-balance the veronal; yes, sir.

Q. And the opium? A. I do not think, sir, that he was an opium user, or an opium derivative user to any extent.

Q. You spoke of his having written to the President and advised him with reference to the war, and written to other people, one of whom you mentioned as Senator Frelinghuysen? A. Yes.

Q. Did you see the letter to the President? A. My recollection is that I saw one letter to the

President, and one letter to Senator Frelinghuysen.

Q. Did you know that the doctor was personally acquainted with Mr. Wilson? A. I do not know that, sir.

Q. Did you know that he was a schoolmate or collegemate of Mr. Frelinghuysen? A. I have heard him say that he was a personal friend of Joe Frelinghuysen.

Q. You spoke of his visiting the officials of the Lehigh Valley Railroad. Did he tell you anything about the purpose of his visit to them? A. To make an attack on them in relation to the delivery of coal.

Q. With reference to the physical condition of the siding at Metuchen, wasn't it? A. No sir. The non-delivery of coal, and the high prices that they were charging him for coal.

Q. Do you know when that visit was? A. I would like to amend that by saying that my recollection is now that there were two different periods in which he was visiting, and that they were a year or two apart. I think one of them was prior to Belle Mead, and I think the last one was probably in 1920, or possibly '21.

Q. Did you hear of a still later one? A. No, sir.

Q. In May of 1922? A. Not to my recollection, sir.

Q. Did the doctor talk over his business with you frequently? A. At times he talked it over very intimately, but at other times he was extremely secretive.

Q. Do you know whether there was in fact trouble about the obtaining of coal? A. I think that there was a great deal of trouble at that time, market conditions, and distribution conditions.

Q. Now, you said that he made some personal comments regarding Mr. Watson? A. Yes, sir.

Q. On one occasion when he was under the influence of liquor, that I think was in June, you said, the last time you saw him, is that right? A. As nearly as I recollect, it was in the last week of June; yes, sir.

Q. You are not positive about that date, are you? A. I have no way of being absolutely positive, sir, except that in discussing it with Mrs. Dinwiddie, our general recollection was that it must have been around the last of June.

Q. Did he tell you anything at that time regarding the contract that was in existence between him and Mr. Watson? A. You mean—you say did he tell me in that conversation?

Q. Yes. A. No, sir.

Q. Had he told you earlier? A. He had; yes, sir.

Q. Was his comment in any wise directed toward the holding of the corporation stock by Mr. Watson, under that contract? A. Will you re-state that again, so that I can get it?

(Question repeated by stenographer.)

A. I don't think so, sir.

Q. Was any mention made in that conversation, or earlier, to his having been requested to leave or stay away from his office, the office of the corporation? A. No, sir; not to my knowledge.

Q. Do you mean that he never spoke to you of that? A. He has said that he had nothing to do with the business, that he had made—I have forgotten whether he spoke of Mr. Watson as the administrator—that is not the term that he used.

Q. Trustee? A. Trustee; that he had made Mr. Watson his trustee, who had a right to absolutely run the business, and that he had no say in it.

Q. And did he say anything about being away

from the office? A. Only that he intended, that he was now able to stay away from the office, and was laying plans to visit the sea coast, and travel over the country, and talked about the possibility of going to Europe.

Q. You say that Doctor Freeman, when he wasn't intoxicated, was a man of education? A. Well, wasn't he always, sir, a man of education, either intoxicated, or not?

Q. I suppose the education was there all the time. Did his conversation show him to be a man of education, when he was not intoxicated? A. When he was sober; yes, sir.

Q. What would you say as to his characteristics, as to his opinions, were they strong or weak on general subjects? A. Well, the doctor always had a very strong, a very active personal conceit, so that his remarks on any subject were very definite and very positive.

Q. And his opinions on general subjects were well fixed and definite? A. Quite; yes, sir.

Q. Would you say that he was a bit obstinate in character? A. I should say that he was not obstinate at all, sir, except when he was drunk.

Q. I thought you said that he was somewhat proud of his accomplishments normally, I mean when not intoxicated? A. Quite; yes, sir.

Q. Did he ever speak to you of having held office, public office? A. In Washington; yes, sir.

Q. Did he tell you what office? A. In the pension office.

Q. Do you know whether he ever held any office of appointment with the Government? A. No, sir; I didn't happen to know.

Q. You were not as well acquainted with Doctor Freeman during the last three or four years before his death, as you had been earlier, were you? A. No, sir.

Q. Can you fix the last time that you saw him at all? A. I understand you said that you saw him occasionally on the street, after his last call at your home? A. No, sir. I cannot fix positively, but I should say that it was a week or two, or possibly three or four weeks before his death.

Q. Before his death? A. Yes, sir.

Q. How frequently did you see him on the street, or elsewhere, after this Sunday when he came to your house and didn't get out of the car? A. I think it is fair to say a dozen or fifteen times, I mean in his own car, or standing, I saw him once standing on the roadside. I saw him once in front of the—down at the lumber yard on the main road. I saw him once getting out of the car, with the help of Harry Mohring, in front of the barber shop. And then I certainly have passed him, so as to recognize him, quite a number of other times.

Q. Did you, on any of those occasions, speak to him more than just a casual word in passing? A. I didn't speak to him at all, sir, because he was incapable of recognizing you.

Q. Then after the Sunday in June you had no conversation with him at all? A. No, sir.

Q. And after some day in July, or thereabouts, you had no vision of him, you didn't see him any more? A. I had a vision of him, but he had no vision of me.

Q. Yes, that is my mistake. But after the Sunday in June, that was the last conversation you had? A. Yes, sir.

Q. I understand that the purport of your whole testimony, as summed up in your answers to the court, was that he was always, in your acquaintance with him since 1907, what you would call a periodic drinker? A. I have tried to make it very plain, sir, that he started as a periodic, that the periods, the intervals between the periods be-

coming less and less, until he had finally arrived at a point where I believe it was impossible for him to live either without alcohol, or drugs, day by day.

Q. Yes. That you have said. You don't mean, as I understand it, to imply that he was in this condition which you have described him as being in when he had been on sprees, during the entire last three years of his life, with the exception of the time he spent in the hospital, do you? A. You mean that he was in the constantly submerged condition?

Q. Yes. That is not your testimony, is it? A. No, sir; that is not my testimony, because the wave would run this way (indicating).

Q. As I understand it, you mean during the last three years he drank some every day, in your judgment, except during the period he was in the asylum, and shortly after? A. Except the periods that he was in the asylum, and shortly afterwards, you are stating there?

Q. Yes. A. I think it would be fair to assume that.

Q. You have no personal knowledge of it? A. I have no proof of it; no, sir.

Q. And during that period do you know whether or not he was what you would call drunk all the time? A. No, I don't think that would be fair, sir.

Q. You saw him and talked to him for the last time in June? A. Yes, sir.

Q. He died March 7th, did he not? A. I believe so, sir.

Q. 1923? A. Yes.

Q. In those eight months you saw him some twelve times? A. Yes.

Q. At irregular intervals, I take it? A. Yes, sir.

Q. And on the other occasions, that is, the periods between those twelve times, when you saw him, you have no knowledge of his condition, or habits, have you, personal knowledge? A. I have the impression on several of those occasions that he was in extremely bad condition.

Q. No. You are not answering my question, I think. You mean now the several occasions when you saw him, dont' you? A. I had no way of judging, many of those occasions, because he was passing in the car. But I had a very definite impression, when I saw him being helped out of the car, that he was in a very helpless condition.

Q. Precisely. Now I am asking you as to the other times, the intervals when you didnt' see him, the intervals between the times when you saw him, you have no knowledge whatever as to his condition? A. Only hearsay knowledge.

Q. I am asking of your knowledge? A. No, sir; I have no knowledge.

Q. And have you any knowledge whatever as to his condition on the 12th of July of 1922? A. I have not, sir.

Mr. Davey: That is all.

By Mr. Brown:

Q. How many times did you see him, between the last time you saw him in June, and the date in July that this will was made, July 12th? A. I have said I estimate about twelve or fifteen times, Senator.

The Court: No, you misunderstand the question.

(Question repeated by stenographer.)

A. I couldn't swear, sir, that I saw him at all in the interval.

Re-direct Examination by Mr. Watson:

Q. When he was in the condition that you saw him in on this last week in June, how long had those conditions customarily existed prior to that time? A. Oh, I think it was almost a constant condition, sir, varying a little day by day, but I think the year before that, that he was really quite helpless, except at the intervals where he was in an institution, or the few weeks afterwards.

Q. Do you mean when you saw him the last week in June he was in very much the same condition that he had been for some time? A. May I re-state that by saying, except at the times that he was in an institution, or the few weeks following that, he was always in extremely bad condition, which varied up and down, that is, sometimes he could talk intelligently, and carried on sustained conversation, that showed you that he wasn't as much submerged by alcohol and drugs. The next few days that condition would get so that he was mumbling and shuffling and almost wholly incapacitated. That is, I mean, it simply varied in waves.

Mr. Watson: I overlooked one thing.

Q. What was Doctor Freeman's condition of eyesight? A. Doctor Freeman said that he couldn't see, but curiously enough, when he was free of alcohol, and fairly free of drugs, his eyesight improved greatly. But on the whole it was extremely bad, that is, I mean usually he couldn't see you, and he couldn't see print.

Q. Could he read a newspaper? A. No, sir. There was one time, after he came out of Tren-

ton, the last time, he held a paper up and read a few lines, and bragged to me of his eyes getting better, and I told him frankly, I said, for God's sake, Charlie, if you will only quit this thing, if you will let dope and drink alone, don't you see that you will get your eyes back. And he promised then to let drugs alone, but he never would promise me that he would let alcohol alone.

Q. His eyesight was better then at that time? A. Just immediately after he came out, yes.

Q. He was able to read print? A. I say that he read a few lines in a newspaper to me at that time at my house to show that he was better.

Q. Did his eyesight become bad again after that? A. His eyesight always disappeared the minute he loaded himself with drugs and alcohol.

Re-cross Examination by Mr. Davey:

Q. And improved when he sobered up? A. And improved when he was sober; yes, sir.

Q. You spoke of reading, and I refreshed my recollection as to one question: do you know of Doctors being read to? A. Quite; yes, sir.

Q. For how long? A. Well, for a great many years.

Q. By whom? A. By his wife.

Q. Anyone else? A. Oh, yes, he had a professional reader; yes, sir.

Q. Doctor Bogart? A. Yes, sir.

Q. Do you know how often he went to Doctor Bogart? A. Doctor Bogart came to him, as I recollect.

Q. Came to him? A. Came to his house, or to his wife's house.

Q. When did Doctor Freeman leave his house, as you call it, that is, the home now occupied by

Mrs. Freeman? A. I don't remember that precise date. It was some time prior to his being sent down to Trenton.

Q. Some time prior then to June of 1921? A. He went to Belle Mead in 1919, and went to Trenton with me later; yes, sir.

Q. And after that do you know whether or not he went to Doctor Bogart to continue his readings? A. I think that he told me that, and I was rather amazed, because he got one of his vituperative spells against Doctor Bogart. You refreshed my memory on it.

By Mr. Watson:

Q. What was that spell, Mr. Dinwiddie? A. Of vituperation?

Q. Yes. Against Doctor Bogart? A. Well, it was just slighting remarks about his ability as a reader, and the subjects that he selected.

Q. The same way that he referred to Mrs. Freeman, and to me, and to others? A. I don't think quite as violent.

By Mr. Brown:

Q. How soon after he got out of the hospital was it that you saw him reading the four lines, or stated that he read them? A. You are speaking now of when he came from the State Hospital?

By the Court:

Q. No. The time when he read to you, and said that he could read? A. That was immediately after he came out of the State Hospital the last time.

By Mr. Brown:

Q. The next day, or two days, or how soon after?

A. I have said, I think, before, Senator, that we had him to dinner either the next night, or the night after that. I don't dare be accurate, but I know that it was only a few days afterwards that we had him up to dinner, and it was then that he showed me that he could read lines in the newspaper.

Q. How soon after that was it that he couldn't read? A. Well, I don't think that he made any effort not to. I don't think he made any effort to read. That was purely a sort of a trick that he was showing me that he could see the paper. It was almost like asking a seven-eighths blind man to read. It was more in the nature of a trick than it was of actual ability to read.

Mr. Brown: That is all.
Mr. Watson: That is all, Mr. Dinwiddie.

By the Court:

Q. When you say that during these twelve or fifteen times that you saw the Doctor after the Sunday in June, you say he was incapable of recognizing you, do you mean because of his eyesight? A. His eyesight.

Adjourned Until 2:00 P. M.

Afternoon Session, 2:00 P. M.

LUCIA R. LOCKWOOD, a witness produced on behalf of the Caveators, being duly sworn according to law on her oath, saith:

Direct Examination by Mr. Watson:

Q. Mrs. Lockwood, where do you reside? A. My home has been with Mr. and Mrs. Dinwiddie since November 7th, 1921.

Q. Continuously? A. Continuously.

Q. Did you know Doctor Charles M. Freeman? A. Only as he came as a guest to the Dinwiddie home.

Q. What relation are you to Mrs. Dinwiddie? A. None.

Q. Mrs. Dinwiddie? A. None.

Q. Mr. Dinwiddie? A. No, sir. None.

Q. I understood you were some relative. A. I am an only niece of Mrs. Dinwiddie's step-mother.

Q. You were in court this morning? A. Yes, sir.

Q. Did you hear Mr. Dinwiddie testify about an occasion the latter part of June, 1922, when Doctor Freeman and his sister, Miss Nellie, came to Mr. Dinwiddie's home? A. Yes.

Q. Were you there on that day? A. Yes.

Q. Did you see Miss Nellie Freeman on that day? A. I did not. I was upstairs.

Q. Well, did you know they were there? A. Yes.

Q. You know of the occasion? A. I know of the occasion.

Q. A short time prior to that did Doctor Freeman visit Mr. Dinwiddie's house, and did he see you? A. Yes, sir.

Q. And how long before was it? A. I don't know, but I think it was with a few days. A week before, possibly.

Q. What did Doctor Freeman say to you? What did he do? A. Doctor Freeman came to the house about four o'clock in the afternoon; Mr. and Mrs. Dinwiddie were both in New York; and he said to me, is Mr. Dinwiddie at home. And I said, no, you know that Mr. Dinwiddie is in New York every day, he is one of the editors on the New York World; and he said, when will he be home. And I said, not before six, possibly a little later. And Mrs. Dinwiddie is in New York today too.

Q. What else did he say? A. Doctor Freeman said, well, I will wait, I want Bill to write me will. I said, yes. He said, I have several, a half dozen, but I want a new one, I want it changed. Well, I said, very well then, if you will wait Mr. Dinwiddie will probably be here.

Q. Anything else? A. Soon after that Mr. Dinwiddie called me over the 'phone and said that Mrs. Dinwiddie would stay in and have dinner with him, and they wouldn't be home until later, eight or nine o'clock. I went back into the pool-room and told Doctor Freeman. And I left the room and walked out to the dining room, and he followed me and said, will you call my chauffeur over the 'phone. And I, in endeavoring to be courteous, said, what is your 'phone number, Doctor Freeman, and he gave me a number, and it did not prove to be the number. And I said, I am afraid you have made a mistake, Doctor, in the number. He said, well, try so and so, which I did, and it was not his number. And still endeavoring to be polite and courteous, I didn't look his number up in the book, and I also had the impression that he had a private number. I am not sure about that, but that was my impression at that time. So then he gave me another number, and I thought—shall I say this?

Q. Yes. A. I thought, you are certainly in an irresponsible condition, and not mentally fit to write a will. And he was certainly not physically fit.

Q. What was his physical condition that day? A. Well, I saw at once, when he came, that he was not in normal condition.

Q. In what way was he not normal, Mrs. Lockwood? A. Well, his speech was rather thick, and he didn't walk well at all.

Q. How did he get in and out of the automobile? A. I didn't see him get out of the automobile. I was upstairs, and the car drove up, and someone walked in the front door, and I called down to know who it was, and he said, this is Doctor Freeman; but when he left, I went out on the porch, and his chauffeur got out of the car and assisted him into the car. And I said to the chauffeur, Doctor Freeman is not well today, and he said, he is worried, he is having lots of trouble.

Q. Who was the chauffeur? A. I do not know.

Q. Is he here? A. I could identify him. The young man sitting in front of me, but I do not know his name.

Q. Where does he sit, Mrs. Lockwood? A. Between the two lawyers.

Mr. Watson: The witness identifies Harry Mohring.

Q. What was his condition of mind, Mrs. Lockwood? A. Well, I think I will have to say I don't know. It was not clear, certainly, because he didn't know his own telephone number.

Q. Was he rational, or irrational? A. Well, in saying that the mind is not clear, doesn't that mean that it is irrational?

Q. Yes. You say that he was irrational? A. I don't know what meaning will attach to that.

Q. Never mind the importance of it, Mrs. Lockwood. What did you think on that day? A. To a certain extent yes, but not fully so.

Q. What did you think caused his condition? A. I did not know. Only from what I had heard. I supposed he was either intoxicated—

Mr. Strong: One minute.

Q. What was his appearance? A. His appearance was—well, pardon me, I am from the State of Kansas, and I haven't seen a half a dozen drunken men in my life.

Q. You know what the term intoxicated usually means? A. I would have said that he either was under the influence of liquor or drugs.

Cross Examination by Mr. Davey:

Q. Did the doctor say that his number was a private number, his telephone number? A. No, sir.

Q. How did you get that impression? A. I expect that was my impression, that I had heard that.

Q. How did you get that impression? A. I think that Mr. Dinwiddie had his number on a little pad at the telephone he used.

Q. Do you know whether or not the number had been changed? A. I do not.

Q. Did he say anything about his number having been changed? A. No.

Q. Was that the only time you saw him? A. No, sir.

Q. When did you see him since? A. He dined at the Dinwiddies' twice before that.

Q. No. When did you see him since? A. Not at all.

Q. Not at all since then? A. Not at all.

Q. Did you know before that who his chauffeur was? A. I did not.

Q. Did you think anything strange of his sending for his chauffeur, when he found that Mr. Dinwiddie was not there? A. No.

Q. You say he walked out to the porch? A. Yes, sir.

Q. Walked out to the car? A. The car was drawn right up at the edge of the porch.

Q. So he walked out of the room on to the porch. How far? A. Well, I suppose the width of the porch, ten or twelve feet, probably.

Q. Where was he in the room, just in the doorway? A. He had formerly been in the living room.

Q. And walked from his seat—was he seated? A. He walked from the living room to his car.

Q. Without assistance? A. Without assistance.

Mr. Davey: That is all.

Cross Examination by Mr. Brown:

Q. Mrs. Lockwood, when did you first see Doctor Freeman? A. In the early spring, I would think in March.

Q. Well, may I ask this: You come to Metuchen November 7th, 1921, you say? A. Yes.

Q. Was it after that that you saw him, the March following? A. After that.

Q. That was one of the occasions at which he dined at the house where you were staying? A. Dined at Mr. Dinwiddie's.

Q. His condition then, how was it? A. Not at all good.

Q. Well, was it about the same as it was in the month of June, that you speak of? A. Well, I can't say, because I saw him under different conditions. He was at the table, and Mrs. Dinwiddie cut and prepared his food, and when he called that afternoon he simply sat and smoked until he got word that Mr. Dinwiddie wouldn't be at home.

Q. His conduct at the table, his speech and his actions, as you saw it in March, did all these indicate to you that he wasn't rational? A. Indicated to me that he was irresponsible.

Q. And when you say irresponsible you mean too that he had mental irresponsibility, do you not? A. Yes.

Mr. Strong: One minute. I think that is very leading.

Mr. Brown: The question is answered.

Mr. Strong: I did not hear any answer.

Mr. Brown: She said yes.

Q. And about his physical responsibility, or capacity, in the month of March, was that impaired? A. Very much.

Q. Did he have as much difficulty in moving about in March as he did in June? A. Well, yes, fully as much, on that particular date.

Q. The occasion that you saw him in March wasn't one of those periodic occasions when he came in intoxicated, and charged with opiates, was it? A. I do not know. We didn't discuss it.

Q. Well, did his condition indicate to you that it was a periodic condition, or that it was a permanent condition, substantially permanent? A. Well, not knowing him, and being a stranger in Metuchen, just from general observation I would say that physically he was very much impaired.

Q. You saw him again once after that, didn't you? A. I think he dined at the Dinwiddie home once after that, before I saw him when he came to ask Mr. Dinwiddie to write his will.

Q. Was his condition comparable the second visit with that of the first? A. I don't remember about that.

Q. You don't remember? A. Practically, I really didn't—I hardly came in contact with him, and I wouldn't be able to tell.

Re-direct Examination by Mr. Davey:

Q. You say you only saw him once after that June visit? A. I didn't see him after that. After he called at the house I did not see Doctor Freeman.

Q. Then you only saw him twice, March and June? A. I think he dined at the Dinwiddie home twice in the Spring, and then he called in June.

Q. How many times did you see the Doctor altogether? A. Three.

Q. Do you mean to say that those were the only occasions that he was at the Dinwiddie house between November 7th and his death? A. To explain this I will say that Mrs. Dinwiddie's mother was very ill, Mr. and Mrs. Dinwiddie were away from November 9th until the 16th of December, and they returned then, and just before Christmas Mrs. Dinwiddie's mother was taken ill, and she was very ill all through January, and part of February, and we did not entertain.

Q. Then he wasn't dining at the house, except on those two occasions? A. Not until Spring.

The Court: That is all, Mrs. Lockwood.

RUBEIN COBBS, a witness, produced on behalf of the Caveators, being duly sworn according to law on his oath, saith:

Direct Examination by Dr. Watson:

Q. What is your name? A. Rubein Cobbs.

Q. Where do you live? A. Metuchen.

Q. Did you know Doctor Charles M. Freeman? A. Yes, sir.

Q. Did you ever work for him? A. Yes, sir.

Q. How long ago? A. I worked for him in 1920.

Q. How long? A. About two years.

Q. What work did you do for him? A. Well, I was working around the yard. I was kind of an odd man in everything. Sometimes I used to build

on the road, sometimes I would be around the yard. Anything that come.

Q. When did you stop working for him? A. In 1920.

Q. You haven't worked for him since 1920? A. No, sir.

Q. What did you observe about Doctor Freeman's habits as to the use of alcohol, when you worked for him? A. Well, I have seen him under the influence of it.

Q. How badly? A. Well, I have seen him—I have never seen him so that he couldn't—well, I have seen him so, not on the road, but so anyone could help him, he didn't have exactly the use of himself.

Q. You mean so that he needed help? A. Yes.

Q. How was his mind when he was that way? A. Why, I don't think he was himself, his mind.

Q. How often did that happen? A. Well, that didn't happen so often; I think he was under the influence, but at times come that he would be a man that looks like he wasn't of himself.

Q. How was he other times? A. Why, I have seen him, well, at times he was all right.

Q. You mean when he wasn't under the influence? A. Well, I don't know whether altogether. Sometimes I thought he wasn't under the influence, and he wasn't just all right. You wouldn't say he was all right then.

Q. What did he do when he wasn't all right? A. I have seen him, I have been out and come in, and I seen him one day to take—I brought a check, I think, from the brother's for seventy dollars, I goes into the office and he stands up there and takes the check right out of my hand and takes it and tears it right up, and throwed it away, just like he would paper.

Q. Why did he do that? A. I don't know why did he do that.

Q. No reason for it? A. No reason for it. I couldn't see any.

Q. I mean, that you could see? A. No, not at all. Only just I say that he seems to be a man of—didn't know what he was doing.

Q. Did you ever see him do any other things of that kind, that you can recall? A. Well, I have seen him take—at times sit there in the office, and I see him drop this money out of his pocket, and hand, and just drop it right down on the floor and pay no attention, he didn't think as much of it, drop it, and put it in his pocket, and then he would take it and drop it in his overcoat pocket most any kind of way.

Q. Outside overcoat pocket? A. Yes.

Q. Can you recall any other incidents? A. No, no more than usual at times, why, he didn't seem to be of himself.

Q. Beg pardon. A. No more than usual at times he didn't seem to be of himself.

Q. Where are you employed now? A. I am employed at Governor Silzer's.

Q. After you left Doctor Freeman's employ did you see the Doctor very often? A. Not so often. I used to see him around town different times, like, coming in mornings, and sometimes on Sunday. Last two years I have been very little in Metuchen. I was working in Orange, and New York, and I just seen him along on the street.

Q. How often did you get to Metuchen? A. Every night.

Q. And you would see him around the streets of Metuchen sometimes? A. Sometimes I would; yes, sir.

Q. Have you ever observed anything unusual or

peculiar about his condition? A. Well, one thing, he seems to be a man that he used to,—I been knowing him for a good many years, he would always speak, and sometimes he would speak to me, and then again he didn't notice me no more than if he didn't see me, and once about, I guess about two years ago, as near as I can recollect, I think my mother's—at the death of my mother, he was there and he told me that he didn't know me. He said, I didn't know you. He said, I about forget everything. He told me those words. He said, I about forget everything.

Q. During the last two years, when you have seen him around Metuchen, have you ever noticed anything peculiar about his condition? A. Well, I didn't think he has been the same as he was years ago, when I known him he was all right. He didn't seem to be a man of himself.

Q. In what way? A. He seemed to be a man in the way he didn't have any mind, just like, you would say, like a child, need someone to guide him, like.

Q. Did you ever see him on the road in his automobile? A. No. I don't remember any particular time, no more than last Summer, I think it was, once I was going from Orange to New York, and I passed Doctor Freeman on the road, but I don't know his chauffeur, and I was telling my wife—I said, I got home that night, I said, I passed Doctor Freeman to-day between here and New York, I said, I wonder what he doing down that way, and she laughed it off.

Q. Never mind what you said to your wife. Just tell us what you observed about his condition? A. Well, I just passed him on the road, and he was sitting in his automobile, with his cap kind of one side, as usual, and looks like he could be a little

flushed up, but I couldn't see much, you know, just passing him, you know, on the road.

Q. Have you seen him in the road at any other time? A. No, I haven't seen him, no more than around the street in Metuchen.

Mr. Watson: Cross examine.

Cross Examination by Mr. Brown:

Q. Mr. Dobbs, your employment was continuous, as long as you were at the Freeman home, that is, winter and summer? A. Yes.

Q. You were at the yard? A. Yes, I was at the yard, and I used to take care of his lawn around the house, during the Summer, for one year. And there is one thing I want to say, he used to come to me sometimes and tell me, have I paid you. And I said, yes, you have paid me. He says—he went in the house and he come out again later on, I guess about an hour, and he said, now you are sure I paid you. I said, yes, you paid me. And I said then the man now wasn't honest in a way that probably he would set a trap for him, and he would accept that money.

Q. How long ago was that, Mr. Dobbs? A. Well, about 1920.

Q. The latter part of the year? A. Yes.

Q. How long was the Doctor childish, as you expressed it, how many years? A. Well, my experience there, about two years, 1918, and from the time I was there, I tell you.

Q. Down to the last time you saw him? A. Yes.

Q. When you saw him in 1921? A. Yes.

Q. And 1922? A. Yes, sir.

Q. Was his condition improved, or was he worse? A. He didn't seem to be improved. Seemed to be worse.

Q. You say that the Doctor, when under the influence of liquor, was beside himself, that is, he wasn't in his right mind? A. No.

Q. And when he wasn't drinking liquor he seemed to be peculiar too? A. Yes. You wouldn't say he seemed to be a clear minded man at that.

Q. At that? A. Yes. When he wasn't drinking any.

Q. Do you know what it was that caused his peculiar condition, as you express it, when he wasn't under the influence of liquor? A. Well, I don't know, I couldn't say positive what it was, but I have heard things, but I couldn't say, because I don't know what it was.

Q. Well, since the year 1920, do you say that the Doctor, every time that you saw him, whether under the influence of liquor, or without its influence, that he was irresponsible? A. He didn't seem to me—yes.

Mr. Brown: That is all.

Cross Examination by Mr. Davey:

Q. When was it in 1922 that you saw him? A. 1922?

Q. Yes. A. Where was it?

Q. What part of the year? A. Why, I been see him in 1922, around Metuchen, most any time that I was around there, sometime Sundays, or mornings or evenings around. But no business with him personally at all.

Q. No conversation? A. No, not at all.

Q. Just passed him on the street? A. Just passed him on the street.

Q. When you saw him on these casual occasions in 1922, did he appear to you to be drunk? A.

Why, he didn't appear to be drunk, but he just appeared a man that he didn't seem to be of himself.

Q. I didn't catch that. A. He didn't appear to be drunk, but he appeared to be a man that looks like he wasn't of himself. He needed help.

Q. Well, by reason of what? A. Why, I couldn't say by what reason.

Q. Would you say that he wasn't drunk? A. He didn't seem to be drunk. If he was drunk, he could walk all right.

Q. Did he seem to be under the influence of any drug that made him stupid? A. Well, I would say that he was under the influence of something, but I coudln't say, because I wasn't in his presence at that. I didn't see.

Q. Did he seem to have any business worry on his mind? A. He seemed to be a man what was worrying.

Q. Worrying? A. Yes. Of something. I don't know. Whether it was business, or something.

Q. He looked, as you saw him customarily, like a man that was worrying? A. Yes.

By Mr. Brown:

Q. The man wasn't like a man that would be worrying, and still be of himself, as you term it? A. Well, I wouldn't say that he was of himself; when a man seems to be in trouble, the way it is, just the same as he woudln't look like about his—peculiar about his eyes, and then he would look like a man would be, didn't care, look like at times, anything. No fear. Seemed to be on the order of a child, as near as I can get it.

Q. You mean to say, when you make the reference, or demonstration of the actions of a child,

that the Doctor's actions were similar to a child's? A. At sometimes, I have seen him at times.

Q. During the two years, that is, from 1920 to 1922, you say that he was childish all the time that you saw him?

Mr. Strong: No, he didn't say that.

A. No, I didn't say that, not all the time.

Q. How then? A. Well, I couldn't say how often, but at times he seemed to be wasn't of himself. He seems to be a man would go peculiar. He wouldn't be the same all the time.

Q. I asked you if he was irresponsible since 1920, and you said yes. A. Well, I wouldn't think that he be the man who would be responsible for him whole self, as a man was, a business man of any description. But the man seemed to be would go and come.

Q. Was he, in your opinion, able to carry on business for the last two years? A. I don't think so.

Mr. Brown: That is all.

NELLIE FREEMAN, a witness produced on behal of the Caveators, being duly sworn according to law on her oath, saith:

Direct Examination by Mr. Watson:

Q. Miss Freeman, where do you live? A. I have just returned from Cuba. I have been living all winter in Cuba.

Q. How long have you been in Cuba? A. Since last January.

Q. Where did you live before that? A. New York City.

Q. Miss Freeman, what relation were you to Doctor Freeman? A. His sister.

Q. Were you older or younger? A. Younger.

Q. Doctor Freeman was one of five children? A. Yes.

Q. Himself and four sisters? A. Yes.

Q. He lived at Metuchen all his life? A. Yes.

Q. He graduated from Rutgers College? A. Yes.

Q. When? A. I do not know.

Q. In the '80's? A. Yes. I do not know.

Q. Well, it was in the '80's sometime, was it not? A. I do not know.

Q. You know that he graduated from Rutgers College? A. Yes.

Q. And he lived with your parents and family at Metuchen? A. Yes.

Q. His father was Manning Freeman? A. Yes.

Q. Who, at the time of his death, owned and operated the lumber and coal business of Manning Freeman & Son? A. Yes.

Q. When did your father die, Miss Freeman? A. I don't know. I don't remember.

Q. You don't remember the year? A. No.

Q. About how many years ago? A. About nineteen, I think.

Q. About nineteen years ago? A. Yes.

Q. Your mother died when? A. Three years ago, I think.

Q. Wasn't it in 1918? A. I really don't know the date. I don't try to remember the date. She has been dead about three or four years.

Q. Did you live at Metuchen until the time of your mother's death? A. Practically.

Q. And your sisters too? A. No. Two of my sisters were away.

Q. What sisters lived at Metuchen with your mother? A. My sister Jane and myself.

Q. You lived at the family homestead? A. Yes.

Q. After your mother's death where did you go? A. Well, I don't know that I could tell you. We have been travelling continuously from then. It seems to me, I think we went back to Kingston, my mother died in Kingston, New York, and I think we went back there.

Q. Have you lived in this vicinity, New York, or Brooklyn, or New Jersey, since then? A. Yes.

Q. Have you been in business? A. Yes.

Q. Continuously since that time? A. No.

Q. Nearly so? A. Yes.

Q. After your mother's death, when you moved away from Metuchen, how often did you see your brother, Doctor Freeman? A. I don't know. I saw him whenever he sent for me. I don't know how often that was.

Q. Did you see him a few times each year?

Mr. Strong: I object now. That will not do to lead the witness that way.

The Court: I do not think that is harmful leading.

A. Probably about once a year. Possibly more.

Q. Do you remember seeing him about the time of his separation from Mrs. Freeman? A. I don't know. I saw him after that, but I do not know whether—how soon after.

Q. Well, was it after? A. After.

Q. Did you have a conversation with him? A. Yes.

Q. About his living conditions? A. Yes.

Q. What was that conversation, Miss Freeman? A. I wanted him to let me come and keep house for him.

Q. What did he say? A. And he said he didn't think that would do, and afterward I saw him later and urged him to do it again, and he said that he didn't think that would do; he knew I disapproved of his way of living; and that he was going to get our old family servant to keep house for him, and as she had lived with us for many years, I knew he would be well taken care of.

Q. You refer to Lettie Patterson? A. Lettie Patterson.

Q. You said he knew you disapproved of his way of living. What did you mean by that? A. His indulgence in drugs and liquor.

Q. Had you ever spoken to him about it? A. Yes.

Q. After your mother's death was there any unwillingness on your part to see him? A. No.

Q. Well, did he welcome your company and society? A. Always, whenever I came to him.

Q. Well, generally, Miss Freeman, do you think he wanted you to be with him? A. Not to live with him.

Q. Why not? A. Because he knew that I had the right to criticise him, and consequently he didn't enjoy that.

Q. When you spoke to him about his drug and liquor habits, what was his attitude? A. He resented it.

Q. Can you say whether he was ashamed of his habits?

Mr. Strong: I don't think that is fair.

A. Yes.

Q. How did he express himself about those things?

Mr. Strong: What was said?

Mr. Brown: As far as I am concerned, in this case, we want to give every latitude to the sisters of the decedent to explain, if they can. We feel those ladies will tell the absolute truth, and whether it is by leading questions, or otherwise.

Mr. Strong: We all join in that, but I do not think we ought to put the answers in the mouths of the witnesses, just the same.

The Court: I agree with you, Senator but I do not think that was counsel's intention at all.

Mr. Strong: It may not have been his intention.

Q. What was his attitude, Miss Freeman, towards you, on that point? A. He resented my criticism.

Q. Did you ever write to him, Miss Freeman? A. Yes.

Q. How often? A. From time to time.

Q. Well, can you state any more definitely than that how often you wrote to him? A. No.

Q. When was the last time that you saw him, Miss Freeman? A. On the last Sunday in June.

Q. Of what year? A. 1922.

Q. How do you fix the time, Miss Freeman? A. Because I was very busy, my only time to see him was on Sunday. I was in business. And my sisters objected to my going down that Sunday, as I was a bit over done, and I said, well, the Fourth of July week end I am going away, so I shall have a nice rest, so I shall go and see him, on this particular Sunday, the last Sunday in June, which I did.

Q. Did you go away over the Saturday and Sunday of the Fourth of July following? A. I did.

Q. Where did you go? A. At Mount Pocono.

Q. Where did you stay Miss Freeman? A. At the Heneryville House.

Q. What time did you get to your brother's house on that day? A. About twelve o'clock.

Q. At noon? A. At noon.

Q. Where was he? A. Living where he died.

Q. That was in the apartment over the garage on Volkmar Place? A. Yes.

Q. Who else were living there, Miss Freeman? A. His chauffeur and his wife, and Lettie Patterson, our old servant, who was taking care of him.

Q. To whom do you refer when you say chauffeur? A. Harry Mohring and his wife.

Q. What was his condition physically and mentally, that day, Miss Freeman? A. Very bad.

Q. Will you describe it, please, as well as you can? A. He did not know me when I entered, and he called me by my sister's name, and I said to him, it is not Augusta, it is Nellie, you sent for me. He said, my eyes are so bad I cannot see. He moved about the room for something, and he moved so badly I was alarmed, and I asked the attendant if he had been paralyzed, as he could barely move about the room. And he said, oh, no, he is very much better, he has been much worse. I knew what that meant. He told me that he couldn't eat. He said, I can't eat. I said, how are you, and he said, well, I can't eat. And it disturbed me so I asked the attendant again before him if that was true, what did he eat, and she told me that it was not true, that he ate very well, and she told me then what he took usually for his breakfast, a cereal, coffee and eggs; and I said, you take more than I do for my breakfast, and I am very active, that is all you should eat. He asked me if I would go to Mr. and Mrs. Dinwiddie's. I did not wish

to go with him in the condition he was in, but said that I would. I knew Mr. and Mrs. Didwiddie had seen him so. He asked me if I would go with him to Mr. and Mrs. Schenck's. I told him yes, but I had made up my mind that if possible I should not; I was ashamed to go with him.

Q. Before you go on with that, Miss Freeman, tell us more in detail what was his mental condition? A. Very bad. He would start to say something, and forget what he was talking about, and he talked so thick that I had great difficulty in understanding what he said. I had to frequently have Lettie tell me what he did say. Although we drove by Mr. Schenck's residence, he forgot that he had asked me, apparently, to go there, and we did not stop at Mr. Schenck's. We went over to Mr. Dinwiddie's, and he said, I want to talk with Mr. Dinwiddie, you go in and talk with Mrs. Dinwiddie. Which I did. So I did not hear the conversation with Mr. Dinwiddie.

Q. After leaving Mr. Dinwiddie's where did you go? A. To the train.

Q. How did your brother get in and out of the automobile? A. With great diffculty. The chauffeur had to assist him. He had great difficulty. I was afraid he would fall downstairs, going down.

Q. What caused this condition of mind and body which you have described, do you know? A. Drugs, undoubtedly.

Q. Did you notice anything about his eyes? A. Very bad indeed.

Q. In what way? A. Well, they looked expressionless, like a man who was blind. He didn't seem to focus.

Q. Was he on that day, Miss Freeman, in your opinion, competent to transact business affairs? A. Impossible, absolutely. I had some business affairs

that I wanted to discuss with him, and I could not think of mentioning them to him.

Q. What was it about, Miss Freeman? A. Some personal business matter.

Q. Well, was it a small sum of money that he owed you? A. Yes.

Q. You felt you could not discuss it with him? A. Yes.

Q. Did you mention it? A. No.

Q. In your opinion, Miss Freeman, was he mentally able to comprehend the nature and extent of his property, and the natural objects of his bounty? A. Impossible.

Q. Do you think he was capable of executing a legal document, like a will? A. Impossible. He had not the slightest knowledge. He didn't even sense what I was saying to him.

Q. Did he carry on any connected conversation at all, that you can recall? A. No.

Mr. Watson: Cross examine.

Cross Examination by Mr. Strong:

Q. Miss Freeman, what did you think, at the time you have spoken of, was he under the influence of liquor then, or of drugs? A. Of drugs.

Q. Your father, under his will, left the lumber business to your brother, the Doctor, and the rest of his estate to your mother and the daughters, including yourself, wasn't that right? A. Yes.

Q. And it was a large property? A. It was not a large property.

Q. It was not? A. It was not a large property.

Q. What is your occupation, Miss Freeman? A. At the present time I have just returned from Cuba. I have no occupation.

Q. What was your occupation just before—at the

time you went out to see your brother? A. A decorator.

Q. Doctor Freeman had no children? A. No.

Q. Never had any, did he? A. No.

Q. What was the name of the colored chauffeur who testified here just before you? A. Ask your man here.

Q. Do you remember Rubein Cobbs working for the Doctor? A. I do.

Q. When was it you made the proposition that you should go to keep house for him? After he separated from his wife, was that it? A. Yes.

Q. And that was about when? A. I do not know.

Q. You can't fix it definitely at all? A. No.

Q. Do you recollect how long the chauffeur I have just referred to lived with Doctor Freeman? A. No.

Q. Where did you say you are living now? A. I have just arrived from Cuba.

Q. And have no occupation at present? A. No.

Mr. Strong: That is all.

Cross Examination by Mr. Brown:

Q. Miss Freeman, would you mind stating the Doctor's age, as you know it? A. I couldn't possibly tell you his age.

Q. You can't give, within a few years, his age? A. Not at all.

Q. At the time your mother died there was some incident that refreshed your memory about the Doctor, at the time of your mother's death; can you tell what that was? A. I don't understand you.

(Question repeated by stenographer.)

A. I haven't the slightest idea what you refer to.

Q. You knew the Doctor was using drugs then for quite a while, did you? A. Yes.

Q. You remonstrated with him, of course, about the use of drugs? A. Yes.

Q. And you assign that as a reason for his not wishing to live with you? A. Yes.

Q. How many years had you been admonishing the doctor, if you had, about the excessive use of drugs? A. I do not know.

Q. Well, it is more than five years? A. I do not know.

Q. Is it more than two years? A. Yes.

Q. What first brought to your attention that the Doctor was using drugs, Miss Freeman? A. I really don't know how to answer that question.

Q. You were living in Metuchen at the time, weren't you? A. Most of the time.

Q. I mean, when you first learned of the Doctor's using drugs, you were then living in Metuchen? A. Yes.

Q. And you had been living there for quite some time? A. Yes.

Q. When you noticed or found that the Doctor was using drugs, was the use so extensive as to impair his business ability?

Mr. Strong: One minute.

Q. Or his capacity to carry on business?

Mr. Strong: That is too leading, I think. It calls for an answer of a mental situation.

The Court: I will permit the question. It is cross examination, Senator.

Mr. Strong: This is cross examination?

The Court: Yes.

Mr. Strong: I did not understand it to be.

The Court: It is a witness produced by the Caveators represented by Mr. Watson, and her interests may be antagonistic to the Caveator represented by Senator Brown. That is right, isn't it, Senator?

Mr. Brown: It may be. I do not know whether it is or not.

(Question repeated by stenographer.)

A. Certainly not at all times.

Q. Well, was there any time in the Doctor's career, or life, that the drug habit, or his excessive use of anything, produced a condition that was substantially permanent? A. I don't understand.

Q. A condition where he could not carry on business? A. At the time of the excessive indulgence he was unable to carry on business.

Q. I think you said on your direct examination, that when you called at the house of Mohring, in June of 1922, you found the Doctor in the state that you have related, that you knew what that meant. I suppose the characterization you made of that visit, when you said, I knew what that meant, related to the Doctor's moments when he was suffering from the use of drugs? A. Yes.

Q. Can you explain any more in detail what the effect of the use of drugs was upon the Doctor, as you saw it, and particularly at the time you say you knew what that meant, that is, the condition? A. Why, it affected his eyesight, it affected his motion, it affected his mind and his speech.

Q. And how long would that continue, the effect? A. Until he lessened the taking of the drugs. He had been much worse, the attendant told me, and that he was then getting better, and I knew—

Mr. Strong: I move to strike out what the attendant told her.

The Court: It was in his presence.

Mr. Strong: You say that he wasn't in condition—

The Court: I think it is competent on another ground, and I will permit it to come in.

Mr. Strong: We object.

The Court: Yes.

Q. When did you see the Doctor before that visit in June? A. I don't know. Some time. A long time.

Q. A year before that? A. No, not a year. But a long time. I have no way of fixing the date.

Q. Well, do the Christmas holidays refresh your memory about seeing the Doctor, the previous Christmas holidays, that is, Christmas and New Year's? A. No.

Q. Was it before that? A. I could not say.

Q. Well, when you saw the Doctor, before the June occasion, was he suffering from drugs? A. I could not say.

Q. When was it that you first noticed the Doctor suffering from drugs, about how many years ago? A. I think I told you, or someone, I did not know. It was a long time.

Q. Well, how many years has he been suffering, as nearly as you can remember? A. That I could not tell you.

Q. He has not been suffering for a number of years, has he? A. Yes.

Mr. Brown: That is all.

By Mr. Strong:

Q. When you speak of suffering from drugs, you mean when you have seen him under the influence of drugs, is that it? A. Yes.

Q. You filed a caveat against this will, did you not, Miss Freeman? A. My attorney took care of all that.

Q. Well, on your behalf he filed a caveat against the probate of this will, is that not so?

Mr. Strong: Is there any doubt about it? It is admitted, isn't it, Mr. Watson? It is admitted that you filed a caveat for this witness?

Mr. Watson: No. This witness is not a Caveator. This witness has no interest in the outcome of this litigation whatever.

Mr. Strong: She undoubtedly would have, if the will was set aside.

Mr. Watson: No, she would not. There is no real estate.

Mr. Brown: There is question whether there is real estate or not, I want to say. We say there is.

Mr. Watson: You think there is some?

Mr. Brown: Indeed there is. I know it.

Mr. Watson: I will put it this way: None that I know of.

Q. You are very friendly to the widow of Doctor Freeman, are you not? A. Yes.

Q. And always have been? A. Yes.

Q. Never have had any disagreements of any sort with her? A. Well, is that a question, Mr. Watson, to be put to me?

The Court: Answer the question.

A. Yes.

Mr. Strong: That is all.

By Mr. Brown:

Q. There is no enmity between you and Mrs. Freeman, that you know of? A. No.

The Court: She has already said that.

Mr. Brown: That is all, Miss Freeman.

The Court: That is all, Miss Freeman.

Mr. Strong: It appears this witness is on very friendly terms with the widow of Doctor Freeman, and is also interested in the determination of this contest, and it seems to me that Senator Brown's position can hardly be said to be that of cross examiner. I think that he should finish his examination before we cross examine.

The Court: I do not see how that changes the situation, because the witness is friendly, or might be interested.

Mr. Strong: The interests are identical.

The Court: I am not sure that they are.

Mr. Watson: I will assure the court they are not.

The Court: Their interests might be identical, so far as the disposition of this particular will is concerned.

Mr. Strong: That is it.

The Court: But I cannot anticipate beyond that point that their interests are identical.

Mr. Strong: With respect to this particular will their identity of interest is determined.

The Court: That may be so, Senator, but I do not see that that changes the situation with regard to whether Senator Brown's examination is cross examination or direct examination. This is a witness being pro-

duced by Mr. Watson, and any examination by anybody else must be in the nature of cross examination.

Mr. Brown: We would be bound by the Senator's rule, if it were invoked, by every witness that was called by Mr. Watson.

The Court: Further than that you would not have any right to examine at all. Two counsel cannot examine in the main.

CHARLES HARTMAN, a witness produced on behalf of the Caveators, being duly sworn, according to law on his oath, saith:

Direct Examination by Mr. Watson:

Q. Mr. Hartman, where do you live? A. Metuchen.

Q. What is your business? A. Barber.

Q. How long have you been in that business in Metuchen? A. Thirty-two years.

Q. Did you know Doctor Charles M. Freeman? A. Ever since I have been there.

Q. Did you shave him the last few years of his life? A. Well, I have shaved him all my lifetime, except while he was away.

Q. All of those thirty-two years? A. Yes, sir.

Q. How often did you shave him when he was in Metuchen? A. Well, when he was in general good condition shaved him every day.

Q. What do you mean when he was in fairly good condition? A. Well, good condition.

Q. What? A. When he was Charlie Freeman, or Doctor Freeman.

Q. What do you mean by general good condition? A. Well, good health, like. Every morning I get shaved myself.

Q. Did he do that every morning up to the time of his death? A. No.

Q. How long before his death did he stop doing it? A. Well, I should judge eight or nine months.

Q. During the last eight or nine months he did not go to your shop? A. Yes. Only he would get shaved about three times a week then.

Q. Instead of every day? A. Yes.

Q. What did you observe, Mr. Hartman, about his habits as to the use of liquor or drugs, if anything? A. Well, as far as I know, ever since I knowed him, he always drank, all his lifetime.

Q. Did he become intoxicated? A. Oh, yes.

Q. When you first knew him how often did that happen? A. Well, when I first knowed him, the first time I really knowed him, when I used to go up to the house, that is about seventeen or eighteen years ago.

Q. Yes. A. Up to his house.

Q. How often did that happen, that he would become intoxicated? A. Oh, well, that is shaved at home, I don't think I went up there about three times in maybe that many years, that is up to the house, about two weeks at each time until he get straightened out.

Q. You say that there were three times that you can remember when he was— A. That is three times.

Q. That he was kept at home for two weeks at a time? A. That is at the new home.

Q. What? A. That is at Mrs. Freeman's home.

Q. That is what I mean.

Mr. Strong: I did not understand the witness to say he was kept at home.

A. I said at home, that is where he was—

By Mr. Strong:

Q. You didn't say he was kept at home. A. Well, he wasn't able to get out.

Mr. Watson: I was going to ask him why he was unable to get out.

Mr. Strong: You put it that he was kept at home.

By Mr. Watson:

Q. Why was he unable to get out? A. Why, once I could say he was under the influence of liquor. He had a bottle right alongside of his bed, and couldn't get out.

Q. Bottle of what? A. Hunter Rye, it was, as near as I remember.

Q. What was his condition of mind and body, Mr. Hartman, when he was under the influence of liquor? A. Well, he just seemed to lay there, stupid like. That is as near as I could figure out. He wouldn't know what you were talking about, or he wouldn't even know he was shaved.

Q. Did he know you? A. Well, just about know and not hardly.

Q. Could he carry on a conversation with you? A. No.

Q. Did he ever come to your shop when he was intoxicated? A. Oh, yes; lots of times.

Q. During the last few years of his life, say the last five years, did he come to your shop many times in that condition? A. Yes, yes.

Q. How often? A. Maybe two or three times a week, sometimes every day.

Q. And then would he go times along there when he was not intoxicated? A. Well, sometimes a few days.

Q. Now, describe to us, Mr. Hartman, as nearly as you can, how his mind was when he was under the influence of liquor? A. Well, to tell you the truth about it, there was no sense to him at all, not a particle of sense.

Q. How was he physically? A. Well, he was practically, the last—after he came back from the hospital, that is, a few months, that is two months afterward, or three months afterward, he wasn't able to hardly walk sometimes. We used to help him in the shop, and help him in the shop every which way.

Q. After he came back from the hospital when? A. From the State Hospital.

Q. The last time? A. Yes.

Q. He was there twice, do you know that? A. Yes.

Q. You are referring to the second time after he came back? A. Yes.

Q. How long after he came back did you first notice that? A. Well, let us see, I should judge about two months. Maybe three months. I couldn't exactly tell you.

Q. From that time on how was he, up to the time of his death? A. Why, he seemed about fair, like. He seemed to have his senses, like, after he came back from the State Hospital.

Q. Then you say after two or three months— A. After, yes.

Q. He got drunk again? A. Oh, yes.

Mr. Brown: I object to that.

Mr. Watson: That is just what he said.

Mr. Brown: The objection was to the point that the witness testified that he wasn't able to walk two or three months after that.

Q. When was it, after he came back from the State Hospital the second time, that you first saw him when he was unable to walk? A. Well, practically, I should judge, about two months, or two months and a half, or something like that, he couldn't hardly walk in the shop, they had to help him in.

Q. Then from that time on how was his condition, as you saw him? A. Well, from that it got worse, only he started to walk a little bit, but he didn't have his right sense.

Q. Never was right after that? A. No.

Q. Do you know anything about his taking drugs? A. I couldn't tell you anything about it, except I used to see him go in the sink there, go in the poolroom and swallow something. I couldn't tell you what it was, no more than fly.

Q. Where did he get what he swallowed? A. I couldn't tell you. Out of his pocket. I don't know.

Q. After he swallowed it would you see him do anything? A. Kind of chew on to it like.

Q. Do you know what it was? A. I don't know.

Q. Did he do this openly, or was he secretive about it? A. No, just secret, like, that is, on the quiet, like. Take a glass of water and go in the other room sometimes.

Q. Take a glass of water? A. Yes. Sometimes take it right in the sink there.

Q. When he was under the influence of liquor, in the way you have described, in your opinion was he capable of carrying on a business transaction? A. No, sir; I do not.

Q. Do you think he was capable of executing a legal document, like a will? A. No, sir.

Q. Did he ever complain to you about the way in which you shaved him? A. Why, yes, at times, that is, the last part, that is, he didn't know what

he was talking about, so I told him rgiht up and down if he didn't like our style, to stay away from the shop. But he never did stay away. I gave him to understand to stay away, I didn't want nothing to do with him.

Q. What did he say about the way you shaved him? A. Well, he said, Harry told him he wasn't shaved right, and Lettie said he wasn't shaved right. I said, don't you know enough yourself, if you ain't shaved right. He never opened his mouth. I said, I shaved you for thirty years and you was always shaved right. After that he never said another word.

Q. Did you ever notice anything about his memory? A. His memory wasn't anywheres, the last part.

Q. What did you ever notice about his memory specifically, anything? A. Well, he come in, wanted to make all kinds of bets, for instance, like World's Series, the last, I guess in all I saved him over seventy dollars through foolishness, only for me he would lose more; didn't know what he was talking about, didn't know what he was doing; in this last World's Series. Chuck a lot of money on the counter, take me so much money on to it. And the men used to really take advantage of him, a dollar or so, and I had to stop that. I said, no use taking advantage of the poor man, I said. Don't take advantage of the poor man.

Q. Anything else of the kind that you recall? A. I don't know of anything exactly.

Q. State whether or not the Doctor ever tried to borrow money from you? A. Oh, yes.

Q. When was that? A. That was about four months after, just right after he quit the business.

Q. That was last Summer? A. Well, I couldn't exactly tell the date, but he wanted to borrow one hundred dollars off me and give me a note. That

is when he got out, at the time you took charge, right after that.

Cross Examination by Mr. Strong:

Q. How frequently did you see him during the latter part of his life? A. About five to six times a week. From four to six times a week.

Q. Where? A. Right in the barber ship.

Q. At the barber shop? A. Yes.

Q. He came there to be shaved, up to nearly the time of his death? A. Yes, sir; except while he was away.

Q. Away where? A. On vacation.

Q. Away where? A. On vacations, or wherever he was. While he was in town I am talking about.

Q. I think you spoke of his memory not being good for some time. For about how long a period before his death was that? A. Well, the worst part was, I should judge, about six months before he died, or seven months. Might have been eight months.

Q. And it began about when? A. Well, three or four years, or more.

Q. Did you accept a check from him, in payment of what he owed you, not a great while before his death? A. Why, part of a check, yes, what he owed me.

Q. A check for part of what he owed you? A. Yes.

Q. You accepted it, didn't you? A. Yes.

Q. He knew enough to sign a check to your order? A. No, sir, he did not sign it. Mr. Breen had the orders that time to give me the check.

Q. Mr. Breen signed it? A. Yes, sir. He was the secretary that time.

Q. The signature on that check was Mr. Breen's, and not Doctor Freeman's? A. Mr. Freeman gave him the privilege.

Q. Was the signature on that check written by Mr. Breen, is that right? A. Yes, sir.

Q. You are sure of that? You can't be mistaken about that? A. Mr. Breen made his checks out, I think, at the time. He gave him the privilege.

Q. You think. Now do you know? A. Yes.

Q. Then you can't be mistaken on it, that the signature on that check was made by Mr. Breen, is that right? A. Yes.

Q. Did you witness a will for Doctor Freeman on the fourth of October, 1921? A. Yes, sir.

Q. What? A. Yes, sir.

Q. Was he in condition to make a will at the time you witnessed it? A. Yes, sir; he was.

Mr. Strong: That is all.

Cross Examination by Mr. Brown:

Q. Mr. Hartman, how long, to your knowledge, has the Doctor been taking drugs? A. Well, I never seen him taking drugs.

Q. Well, whatever it was you saw him take? A. Well, I saw him drinking whiskey, or whatever you might call it.

Q. Well, what was this thing that he would put in his mouth and chew? A. Well, I couldn't tell you.

Q. What did it look like, a powder, or liquid, or what? A. It looked like a little powder, maybe. I don't know.

Q. Every time he came to your barber shop he would use the powder? A. Not all the time.

Q. How often? A. Well, just according to what kind of condition he might be. Nervous condition, why, he would take one of those.

Q. That is when he wasn't drinking? A. Well, he would be drinking at the same time, too, sometimes.

Q. Well, when he was under the influence of liquor he wouldn't take those powders, would he? A. Yes, sometimes too, I seen him go right to the sink and take them.

Q. But he generally took them when he wasn't under the influence, is that right? A. Not all the time. That is, only at certain times. Lately, he has, that is, the last two or three years. I never used to notice him before. He might have took it in the back room, I don't know.

Q. When was the World Series bet that you speak of? A. That was a year ago, this last World's Series.

Q. 1921? A. Yes.

Q. In the month of September? A. Yes.

Q. What time in September? A. Well, I couldn't tell you when the World's Series was on that time, I couldn't tell you the date, because I have stopped them. I hate to see him lose the money, because he was only making foolish bets, you know.

Q. Well, it wasn't the last World's Series? A. No.

Q. But the year before? A. Yes.

Q. You are quite sure of that? A. Yes.

Q. Was he intoxicated then? A. Why, certainly. Drunk every day he come in. I had more bother with him that way, trying to stop his money, you know.

Q. How long ago did you first notice that he was intoxicated most every day? A. Oh, I have seen Doctor since a kid, like, since I came to Metuchen, he drank always, all his life, as far as I know.

Q. In the barber shop, when did he come in daily, as you say, under the influence of liquor? A. Well, sometimes every day, and sometimes three or four times a week. Sometimes every day.

Q. That has been for how many years? A. Oh,

for— I have been shaving—well, the worst part the last fifteen years; the worst part. But he would be all right, in his right mind, until here lately.

Q. Well, he was never fit to do any business, or do any betting, or anything, was he? A. Why, he was, up to lately he would be sobered up, like, get straightened out, and be all right in the afternoon, like.

Q. Why did you have John Breen to sign checks? A. Well, he was private secretary. That is all I know. I didn't have nothing to do with that.

Q. You said that during the last five years you noticed that he was drunk two or three times a week, sometimes every day, as he came to your shop? A. Yes.

Q. Two months and a half after October, 1921, you noticed that he couldn't walk? A. He couldn't hardly walk. He couldn't walk. Had to practically lift him in the chair, almost, in the shop there.

Q. That was the worst he ever was? A. Yes.

Q. That was worse than before he went away to the hospital? A. Yes.

Q. When you called at his home you found him in a stupor, that would last for a week at a time, wouldn't it? A. Oh, yes.

Q. How often would that happen, in the years that you were going there? A. Well, I have been there about three different times; each time lasted about two weeks. That is, at the homestead, you know.

Q. At Mrs. Freeman's home? A. Yes.

Q. Did you see him before he was sent away the last time? A. Oh, yes; saw him about three or four days, I think, before. Three or four days, or something like that, before, I think.

Q. You saw him the day after he came out of the hospital, didn't you? A. Yes.

Q. And you saw him two and one-half months after he came out of the hospital? A. Yes.

Q. Did you see him in between that time? A. Yes, sir.

Q. Well, when did he start to—after coming out of the hospital, how soon did he begin the use of drugs and liquor again, and get in this condition? A. I don't know anything about drugs much. I know about drinking, as far as that is concerned.

Q. What caused him in two months to become so he couldn't walk? A. I don't know.

Q. How did you notice his condition, and what did you notice? A. Well, it was the rum, I understand it was the rum.

Q. He began right away, didn't he, as soon as he got out? A. Well, no. He was all right for about two months. He used to come in every day. Nice a man as you wanted to meet.

Q. You said two months and a half? A. Two or three months.

Q. Did his failure, or inability to walk, occur over night, or what? A. Well, he seemed to be stupid, his brain and everything else seemed to be gone away. Didn't know nothing.

Q. Did that occur just at the end of two and one-half months, or was it a gradual development, which? A. It seemed to start about two months, three months afterward, after he came back from the hospital, and seemed to gradually get worse, and then sometimes he would get a little better again.

Q. His condition was no better, after he came from the hospital, than before he went there? A. Well, it was good for about two or three months, I should judge, he was fine, you couldn't meet a better man, and a better sensible man.

Q. Isn't it a fact that he was quite nervous when he came out of the hospital? A. No.

Q. And shaky? A. No.

Q. Wasn't he trembling the day you saw him? A. No.

Q. Where was this will signed, that you speak of, on October fourth? A. Lawyer Watson's office.

Q. And who was there? A. Doctor Freeman, and Mr. Lawless, and Lawyer Watson.

Q. Where was Mr. Breen? A. I didn't see Mr. Breen.

Q. Who drove you up there? A. His son.

Q. Whose son? A. Mr. Breen's son.

Q. He went after you? A. No. He brought us over here. Brought Doc, and Mr. Lawless and I over here.

Q. Who drove you up from Metuchen? A. Will Breen, John Breen's son.

Q. When did you next see the Doctor after that? A. Saw him the next day. Shaved him the next morning.

Q. When did you notice any drink on him after that? A. Oh, for a couple of months afterward.

Q. Didn't drink for two months? A. Well, I don't know; he might drink, but I didn't take notice. He was just as jolly every day, and fine.

Q. What was the occasion of this World's Series bet that you speak of? A. Well, that was before he went to Trenton that time.

Q. Are you sure of that? A. Yes.

Q. Are you as sure of that as you are of the rest of your testimony? Isn't it a fact that it was after he came out? A. Well, maybe it was.

Q. What? A. Maybe it was, and maybe it wasn't.

Q. Sure it was. A. '21, let us see.

Q. Tell us about what it was, and we will come to your part afterward.

Mr. Watson: Let him answer the question now.

Mr. Brown: He is asking counsel a question.

Mr. Watson: No, he is not.

A. No, I guess it was two years ago when he done the most betting.

Mr. Brown: I ask my question be answered.

The Court: He says two years ago.

A. I think it is two years ago, when he done that betting.

Q. I asked you positively, or quite clearly, whether it was the series before the last year's series, and you said yes. That is true, isn't it? A. There has been lately he was betting on them, I stopped him on that. I forget whether it was two years ago.

Q. Didn't you say that it was the series before last year?

The Court: Yes, he said that.

Q. Now, is that right or wrong? A. This betting was done before he went to Trenton, I think. No, let us see. I can't exactly tell. A year ago last Fall, I think, is when it was, the last series.

Q. It was between the Giants and the Yanks, wasn't it? A. Yes, I think that was the time.

Q. And they played the series for the last two years? A. I think that was the one, the first one.

Q. So it was a year ago from last Fall? A. I think that is the time it was.

Q. Tell what happened that you thought was very foolish? A. Why, this man worked for me, he took really advantage of the man, don't you know, because he took the best sides every which way, don't you know, and he lost fifty or sixty dollars, or more, so I stopped it, you know, I wouldn't allow it any more.

Q. How did he bet? What indicated it to you? A. He bet on certain foolish places. It was on the regular series. On certain foolish places. I forget how it was, but anyhow this man took the advantage of him, and I wouldn't allow it.

Q. What else did he do foolish around that time? A. Just like take a handful of money and say, here, give me a dollar for that. Just chuck it on the counter, and this man always took advantage of him, and I stopped that. All such follishness as that.

Q. How long had that been going on before the World's Series? A. That was around the same time. It may be a little while before.

Q. Would that happen most all the time he came in? A. Not all the time. Until I stopped it. Always full of fun, and sober. But he always used to get foolish lots, you know.

Q. Take a handful of money and ask the man to bet— A. No. He said, give me a dollar and a half, or give me a dollar, you know. This fellow would get about five dollars for a dollar.

Q. How much would he have in his hand? A. Sometimes five dollars.

Q. The Doctor wasn't able to see for many years, was he? A. Well, he claimed he couldn't see at all.

Q. For how many years, do you know? A. Well, four or five years.

Q. What time of the day was it that you went to witness this will? A. I think it was after dinner.

Q. And the will was already prepared when you got there, wasn't it? A. I think it was.

Q. Had been prepared when the Doctor was in the hospital? A. No.

Q. What? A. I don't know. I couldn't tell you that. The will was there, and he was there himself.

Q. You knew that it was prepared while the Doctor was in the hospital, didn't you? A. No.

Mr. Brown: That is all.

Re-direct Examination by Mr. Watson:

Q. Mr. Hartman, who was this World Series bet made with? A. Man used to work with me.

Q. What is his name? A. I don't know what his name is. It is an Italian name, and I never could think of it.

Q. Where is he now? A. In Paterson.

Q. Did this betting go on before the World's Series started, or during it, or afterward? A. While it started.

Q. What? A. While it was going on.

Q. While the World's Series was going on? Was there more than one bet? A. Well, every day they used to bet it until I stopped it, that is, for three days straight, or four days.

Q. Did he do any betting before the World's Series started? A. No.

Q. Was he in there before that World's Series started, in your shop? A. Yes, every day.

Q. Right along? A. Yes.

Q. What? A. He used to come in every day, except at the last part he come in about three or four times a week, but there was a time he come in every day.

Q. He was in your shop every day for the few

weeks before this World's Series betting occurred? A. Well, sometimes every day, and sometimes maybe four times a week.

Mr. Watson: That is all.

Re-cross Examination by Mr. Strong:

Q. How long before the World's Series was he in your shop, did you say? A. How long before? Well, he used to come in every day. Sometimes four days a week, and sometimes five days a week. I couldn't exactly tell.

Q. As I understand it, when he came in there drunk, or under the influence of drugs, you wouldn't let him make any foolish bets? A. Well, I stopped it.

Q. Is that what I understood, you stopped it under those conditions? A. Yes.

Q. He wasn't the only one made foolish bets on the World's Series, was he? A. I suppose not. I don't know.

Q. You don't know? A. No.

Q. You didn't hear of any other foolish bets? A. Oh, sure.

Q. And he was a man who used to joke a good deal too, wasn't he? A. Oh, yes, sir.

Q. What? A. Always had a lot of fun.

Q. And he was a very positive sort of a man too, when he chose to be, wasn't he? A. He was always full of life. That is, providing he was right.

By Mr. Brown:

Q. The foolishness that you speak about wasn't the ordinary foolishness of a man betting on the wrong side? A. Well, he was out of his head, practically, then, betting that way.

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Q. And that is why you stopped it, you saw that? A. Why, certainly. He wasn't fit. If he had the right senses I would let him go on. It wouldn't make any difference to me if they wanted to bet amongst themselves.

By the Court:

Q. What were the bets that you thought were foolish? A. I don't know. It wasn't on the game. It was on different innings, like, and different players, like.

Q. What do you mean, a bet that Babe Ruth might knock a home run in the third inning? A. Something like that.

Q. You couldn't tell us exactly what they were? A. I couldn't tell you exactly what they were.

The Court: That is all.

JAMES LAWLESS, a witness produced on behalf of the Caveators, being duly sworn according to law on his oath, saith:

Direct Examination by Mr. Watson:

Q. Mr. Lawless, where do you live? A. Metuchen.

Q. What is your business? A. Automobile.

Q. How long have you lived in Metuchen? A. About twenty years.

Q. Did you know Doctor Charles M. Freeman? A. I did.

Q. How long had you known him? A. Ever since I have been in Metuchen.

Q. How often did you see him? A. Well, sometimes every day, and sometimes once a week.

Q. Where, and under what circumstances would you see him? Just meet him on the street, or what? A. Well, he used to drop in there quite often.

Q. In your place of business? A. Yes.

Q. Before you were in the automobile business what was your business? A. Liquor.

Q. Did he ever come in your place then? A. Quite frequently.

Q. What do you know about Doctor Freeman's habits with reference to the use of liquor? A. Well, he used it quite frequently. Sometimes he was in bad shape with it, and other times he was in good shape.

Q. Did you ever see him when he was in bad shape? A. Yes, quite often.

Q. What was his condition, physically and mentally, when he was in bad shape? A. Very bad.

Q. Can you tell us, could he walk? A. Well, sometimes you couldn't get in conversation with him at all.

The Court: The question is did he walk; not talk.

A. Sometimes. Sometimes he couldn't walk at all.

Q. What about his talk? A. Well, he wasn't fit to talk. It was thick, you couldn't understand him, didn't know what he was talking about.

Q. Toward the end of his life, the last two or three years, did he get that way quite often? A. Yes, quite often.

Q. Did you see him that way? A. Yes.

Q. When he was in that condition of mind was he, in your opinion, competent to transact business? A. No, not at all.

Q. Was he capable of executing a document like a will? A. No.

Q. Did you see him many times during the last few months of his life, last five or six months? A. Yes, quite often.

Q. He died last March. Did you see him last Summer quite often? A. Yes.

Q. What was his condition then when you saw him? A. Well, at times he was all right, and times he wasn't.

Q. Did you see him very often when he was not all right? A. Yes, quite often.

Q. Intoxicated, do you mean? A. Yes.

Q. Do you know anything about his using drugs? A. No, I do not. Never seen him taking drugs.

Q. Did you ever see anything about him that indicated that he used drugs? A. Well, his appearance.

Q. What about his appearance, Mr. Lawless? A. Well, you know, he was, in fact, he was like an old rag. There wasn't anything to him. He wasn't fit to talk, or do anything. He was helpless.

By Mr. Strong:

Q. Was he capable of executing a will on the fourth of October, 1921, Mr. Hartman? A. Yes, sir.

Q. You witnessed one that time for him, didn't you? A. Yes, sir.

Q. How did you come to witness that will? A. I was asked to by Mr. Freeman.

Q. When he was drunk, like many another drunken man, he sometimes had difficulty in walking, is that right? A. He had difficulty in walking, yes.

Mr. Strong: That is all.

Cross Examination by Mr. Brown:

Q. How often do you think, in your opinion, did you see the Doctor drunk, either partially or wholly, during the last five years? A. How often I have seen him drunk?

Q. Yes. A. Well, I couldn't very well tell you how often I have seen him drunk.

Q. Well, would he be drunk twice a week? A. Yes.

Q. I suppose during the time you were in the business of dispensing liquor, you didn't serve the Doctor when he was drunk, did you? A. Not when he was drunk, no.

Q. How often would you serve him drinks, if any, a week? A. Why, he would drop in mostly every morning early. It wouldn't take over two drinks to make him drunk.

Q. There were times that you noticed that he was debilitated, or in a ragged condition, like an old rag, as you expressed it? A. Yes.

Q. How often would that occur? A. Well, I couldn't just say how often.

Q. Would that be two or three times a week? A. Well, at times, and other times it wouldn't.

Q. So between coming to your place intoxicated, and getting liquor there when he wasn't intoxicated, and at times when he was suffering from the use of drugs, as you call it, he was kept in that condition most all the time, wasn't he, that is, debilitated? A. Well, there was times he would be all right. He would be fair for a while, a couple of weeks or so, he would be in pretty fair shape.

Q. But there was no time he was the full man he should be? A. Well, there was times he was.

Q. You said on your cross examination, or direct examination, that through last Summer that there were times that he was all right? Do you mean that? A. Last Summer?

Q. Yes. A. Yes, sure I do.

Q. What time last Summer was he all right? A. I can't just mention the time.

Q. Do you mean that he could see and that he could walk? A. No, I don't mean he could see. He always said his eyes was bad, for the last year or two. But there was times he was all right, to talk with.

Q. You said there were times you could talk to him so as to understand him? A. Yes.

Q. That is what you mean by all right? A. Yes.

Q. But you don't mean that he was all right so as to conduct business, or transact business? A. No, I don't think he was long enough in good shape to do that.

Q. How long was he out of shape to do that, how many years? A. I just can't tell you that, how many years.

Q. Three years, during the past three years? A. Yes, I should judge the last three years.

Q. This will was already prepared, that you speak of, on October fourth, wasn't it? A. Well, it was prepared, yes, I guess it was.

Q. Mr. Breen called you up there, didn't he, and took you up? A. Yes. Young Breen Junior drove us there.

By Mr. Watson:

Q. Do you mean Will Breen? A. Yes.

By Mr. Brown:

Q. When you got to Mr. Watson's office there was nobody there but Mr. Watson? A. That is all was in his office, Mr. Watson.

Q. And you signed the will? A. Yes. Mr. Hartman and Mr. Freeman was there.

Q. Was it all done in the one room, were you all sitting in the one room, or what? A. All sitting in the one room.

Q. When did Freeman call for you that day?

Mr. Strong: There is a caveat against the probate of this other will here.

Q. When did you see the doctor that day, on October fourth, what hour? A. Why, I think it was right about noon. I am not so sure.

Q. You didn't see him in the morning? A. Yes, I seen him in the morning, because I done business with him that same day, or day before. I am not sure which. We had a little business.

Q. Why aren't you sure? A. Well, I didn't have it all written down and bring it up here.

Q. What business did you do with him? A. Sold him an automobile.

Q. That same day? A. Same day, or day before, I am not sure which.

Q. He was in the asylum the day before, wasn't he? A. I don't know. I couldn't say.

Q. Did you sell it to him while he was there? A. While he was in the asylum?

Q. Yes. A. No.

Q. Or did you sell it through Mr. Breen? A. I sold it to Mr. Breen.

Q. Or through Mr. Breen? A. Not through Mr. Breen, no.

Q. Didn't Mr. Breen carry on the transaction? A. Yes.

Q. The will was drawn while he was in the asylum, was it not? A. I don't know anything about when the will was drawn.

Q. But it was all ready for you when you got there? A. It was all ready when we got over there.

Re-direct Examination by Mr. Watson:

Q. What do you mean when you say the transaction was handled through Mr. Breen? A. I mean when we brought the car over and Mr. Breen gave me the check for it. Mr. Breen didn't have anything to do with the deal, outside of he had authority to draw the check, I guess.

Q. Who told him to draw the check? A. Mr. Freeman.

Q. You went to the office to get the check? A. Yes, sir.

By Mr. Strong:

Q. Check for what? A. The automobile.

Q. Do you mean hiring the automobile, or purchasing it? A. Oh, purchasing the automobile.

Q. Who paid for the automobile? A. Mr. Freeman.

Q. And that was when? A. In October.

Q. Of 1921? A. '21; yes, sir.

Q. What make of automobile was that? A. Essex sedan.

Q. How much was paid you, do you remember? A. $2,485.

Q. Did the doctor know what he was doing when he bought that automobile? A. I think he did, yes.

Q. He was perfectly able to transact business that time, wasn't he? A. Yes.

Q. You said Mr. Breen took you over to witness the will, in his automobile? A. Mr. Breen Junior was the chauffeur. He drove us over.

Q. Who was in the automobile with you? A. Mr. Hartman and Mr. Freeman.

Q. And when you got there the will was already prepared, was it? A. Well, yes, it was already prepared.

Q. What time of the day was that? A. Oh, I don't know. I should judge around one or two o'clock in the afternoon.

Q. Was Mr. Breen the chauffeur for Doctor Freeman at that time, the same as Mr. Mohring was afterwards? A. Well, he was chauffeur.

Q. And lived in the garage with him? A. Yes, he was in the garage with him.

Q. Whose son is this Mr. Breen? A. Whose son? Mr. John Breen's son.

Q. Mr. John W. Breen's son. I suppose the condition of doctor's eyes enterfered with the general conduct of business, did it not? A. Well, I couldn't say.

Q. What was the condition of his eyes? A. Well, he claimed his eyes always was bad, for the last few years.

Mr. Strong: I guess that is all.

By Mr. Brown:

Q. Do you keep a record of the sale of your automobiles? A. Yes, sir.

Q. Do you have a book record? And this automobile was an Essex sedan? A. Yes.

Q. Had he any other automobile at that time? A. Yes, he had a Ford.

Q. This Essex sedan wasn't a commercial automobile, it was a pleasure car, was it? A. Well, he bought it for commercial.

Q. He bought it for commercial? A. Yes.

Q. Did you take another automobile in trade? A. Yes.

Q. What automobile did you take in trade? A. Took a Ford coupe.

Q. Who did the exchanging of the automobile? A. Who did the exchanging?

Q. Yes. A. Why, I don't know what you mean by exchanging.

Q. Well, the Doctor couldn't drive the car, and he couldn't see. I was wondering who did the exchanging of the automobiles? A. He could see good enough to see an automobile. Do you mean who brought the cars down and exchanged the plates on them?

Q. Yes. A. Why, his chauffeur.

Q. John Breen, Sr. and John Breen, Jr., weren't they present when the entire transaction was going on? A. When we made the deal Mr. Breen wasn't there at all. We made it over to our place. Took him out for a ride and brought him over there, and we made an agreement over in my place, and went over there, and he told Mr. Breen to give me a check, and a note for the balance.

By Mr. Strong:

Q. Who made that deal, do you say? Who made the deal with you? A. Mr. Freeman.

Mr. Brown: That is all.

BENJAMIN NELSON, a witness produced on behalf of the Caveators, being duly sworn according to law on his oath, saith:

Direct Examination by Mr. Watson:

Q. Mr. Nelson, where do you live? A. Metuchen.
Q. How long have you lived there? A. Six years.
Q. What is your business? A. Carpenter.
Q. How long did you know Doctor Freeman? A. Five years.

Q. Did you do business with him? A. Yes, sir.

Q. How often did you see the Doctor during those five years? A. Oh, about once a week, sometimes once every two weeks.

Q. Were there times when you didn't see him so often? A. Yes, sir.

Q. Did you do business with Manning Freeman & Son? A. Yes, sir.

Q. Depending on how much business you were doing with them? A. Yes, sir.

Q. Did the Doctor, during last Summer, try to sell you some lumber in large quantities? A. Yes, sir.

Q. When was that, Mr. Nelson? A. Why, I think it was—it wasn't last Summer. I think it was in the Fall of last year, or towards the late Fall.

Q. Do you mean last Fall? A. Yes.

Q. What did he try to do? A. Why, he wanted to sell me some hemlock, fir, or yellow pine at twenty-three dollars a thousand.

Mr. Strong: How has this any bearing? What has this to do with the making of the will, anyway? It is long after the will is made.

The Court: I presume it shows the condition of the man's mind shortly after the will was executed.

Mr. Strong: It is a long while after. The will was executed in July. This is in the late Fall.

The Court: That would be three or four months, five months, or six months.

Mr. Watson: I will withdraw the question.

Q. Did you ever observe anything about the

Doctor's use of alcoholic liquor, or other stimulants? A. Oh, yes, I have seen him several times under the influence of liquor.

Q. What was his condition when he was under the influence of liquor? A. Well, he would appear dopey; I would see him sitting in the office, there is where I saw him most of the time, at the office, and he wouldn't recognize you only half the time when you come in, know who you were, and other times he would just about recognize you, and that was all.

Q. How about his talk when he was that way? A. Well, I never talked with him a whole lot, because when I noticed him that way I would always clear out, because I knew the way he was.

Q. How did you say he was a while ago? What word did you use when he was that way? A. I dont' know.

Q. Just a question or two ago, when I asked you what his condition was, what was your reply? When you saw him sitting in the office? A. Oh, he act dopey.

Q. What made him that way, did you think?

Mr. Strong: I object.

A. Well, I only thought he drank, that is all. Booze.

The Court: Why? He has answered, I think, very satisfactorily. He said he thought it was booze. I suppose we are all sufficiently familiar with the effects of that to draw some conclusion, when we see a person we think is under the influence of it.

Q. When was it he tried to sell you this lumber? A. Late last Fall, in 1922.

Q. About what month was it? A. Well, I should

judge it was last part of November, or first part December.

Q. What did he try to sell you? A. Why, yellow pine, or hemlock, I don't know which just now. It was one of the two.

Q. What price? A. $23.50 per thousand.

Q. What was it worth in the market at that time, do you know? A. Well, I guess they were getting from $42.50 to $45 for it.

Q. Where were you when he made this offer to you? A. Why, he called me up one Sunday afternoon on the telephone. I was home at my house.

Q. Did you notice anything about his voice? A. Well, no, I didn't notice anything, only—I knew it was him all right, right away. I never knowed him only he was under the influence of liquor, and always happened I met him every time he was that way, and he talked as though he was under the influence of liquor, and I never paid no attention to it. I told Mr. Breen when I went down the next day I had an offer of lumber, but I didn't pay any attention to it, because I didn't think it was business.

Q. Why didn't you pay attention to that offer? A. I didn't think the man was in his right mind.

Q. At any other time did he ever try to sell you anything? A. Why, no, not that I know of.

Q. Did that happen more than once? A. No, sir.

Q. Just once that you recall? A. Only once.

Cross Examination by Mr. Strong:

Q. What day of the week was this that he called you up? A. Sunday afternoon.

Q. Sunday afternoon? A. Yes, sir.

Q. Your idea was he had been drinking at the time, was that it? A. Sir?

Q. Your idea was he had been drinking at the time? A. Yes, sir.

Q. You have seen plenty of other people dopey when they were under the influence of liquor, haven't you? A. Oh, yes.

Q. To how late did you use to see him sitting in his office? How late in the year? What was about the last date that you saw him in his office? A. In the office? Why, I guess the last I saw him in the office was close to Christmas of last year.

Q. Christmas 1922? A. Yes.

Q. 1922, or 1921? A. '22.

Q. Had you seen him there many times before that, recently before that? A. No. Only about, well, say once a month.

Q. Once a month? A. Yes, that is about all.

Mr. Strong: That is all.

Cross Examination by Mr. Brown:

Q. Mr. Nelson, so that every time you saw the Doctor, as you have stated, he was either drunk, or half drunk, or under the influence of liquor? A. Yes, sir.

Q. And you would see him a couple of times a week? A. Well, yes, sometimes I would see him a couple of times a week. It all depended on my business in the yard. Sometimes I would get there twice a week, maybe once in two weeks. I may not get there for a whole month.

Q. Wasn't this condition that you saw him in, of stupidity, or whatever you might call it, wasn't it a little bit different from the condition of a drunken man? A. Well, yes, it was. He appeared to be asleep half of the time.

Q. Didn't it appear to you peculiar that a man, every time you called there, would be in that con-

dition? A. Yes, it did, but I always thought the man was under the influence of liquor, because I never knowed him to use anything else.

Q. Did you ever see in the office a license from the United States Government to use narcotics? A. Yes, sir.

Q. How long was that there? A. Well, I tell you, I didn't notice that, only, I guess, oh, six months ago I noticed it.

Q. Six months ago? A. Yes.

Q. Didn't you notice it for the last two or three years? A. Never noticed it until then.

Q. You mean you noticed it since the Doctor died? A. No. Six months before he died.

Q. He died in March. Would you say it was Christmas time? A. Yes. I noticed it there, but I never looked at it particularly until about, oh, six months before Christmas.

Q. When did you first notice it? How many years ago? A. About nine months ago.

Q. Nine months ago? A. Yes.

Q. That was the first time you noticed it, and then six months ago you noticed it particularly? A. Yes.

Q. Six months before his death? A. Yes.

Q. When you say nine months, do you mean nine months before his death? A. No. Nine months ago from to-day, about.

Q. You noticed it particularly then? A. Yes.

Q. Well, when did you notice it at all, either particularly or generally, or otherwise? A. Well, I suppose about six months ago.

Q. Six months ago? A. Yes.

Q. You don't mean to say that it is in there since the Doctor died, do you?

The Court: The Doctor has only been dead a little over a month.

A. That is all.

By Mr. Strong:

Q. Whom was the license transferred to?

The Court: Wait a moment. Senator Brown is not through yet.

By Mr. Brown:

Q. It is not there yet, is it? A. I don't know. I haven't noticed lately.

Mr. Watson: There are three or four of them. It is a license to prescribe narcotics.

Q. How long have you noticed the Doctor being in the condition you have related, how many years? A. Oh, ever since I knowed him. Five years.

Q. No let-up at all? A. No, sir.

By Mr. Strong:

Q. You have seen him sober, as well as drunk, in that time, haven't you? A. I never know to see him sober; no, sir .

Q. What? A. I never know to see him sober; no, sir.

Q. How often did you say you saw him? A. Oh, sometimes twice a week, sometimes once in two weeks, once a month, maybe. It all depended on my business in the yard.

Q. Up in the yard there? A. Yes.

Q. That extended up to what time? A. Oh, up until about three or four months before he died.

Mr. Strong: That is all.

Adjourned until to-morrow, Thursday, May 3rd, 1923, at 10.00 a. m.

May 3, 1923.

HOWARD M. BYLES, a witness produced on behalf of the Caveators, being duly sworn according to law on his oath, saith:

Direct Examination by Mr. Watson:

Q. Mr. Byles, where do you live? A. Belleville, New Jersey.

Q. What is your business? A. I am a salesman for Tompkins Brothers, wholesale masons materials.

Q. Did your firm do busines with Manning Freeman & Son? A. They did, yes.

Q. How many years, to your knowledge? A. About ten years.

Q. Did you call there at Manning Freeman's office during that time? A. During the whole ten years.

Q. Did you know Doctor Freeman? A. Very well.

Q. How often did you see him during those ten years, Mr. Byles A. On an average about once a month.

Q. Do you know anything about Doctor Freeman's habits as to the use of liquor or drugs? A. Well, we always had an idea that he imbibed somewhat.

Q. What made you think so? Did you ever see him under the influence of liquor, Mr. Byles? A. I did; yes, yes, sir.

Mr. Strong: That is objected to as leading.

The Court: I do not think that is leading, Senator.

Q. How many times? A. How many times did I see him?

Q. Yes. A. Well, that is rather a hard question, but roughly speaking I would say maybe half a dozen.

Q. Toward the last year or so, when you called upon him, did you ever see him intoxicated? A. I did; yes, sir.

Q. How often did you notice it during that time A. Well, to be somewhat specific, I called on Doctor Freeman, that is, at the office, on June 29th, August 15th, and September 13th of 1922. Those are three dates that I have quite fresh in my mind.

Q. What was his condition on those times, Mr. Byles? A. The one I have specifically in mind, I cannot swear to whether it was June 29th, or August 15th, but at that time he was in his office, and was, in my idea, under the influence of liquor.

Q. To what extent, Mr. Byles? A. He was sitting in a chair in the office, in a rocker, and he pulled a bottle out of his inside pocket and asked me if I would have a drink, and I said, Doctor, I don't drink.

Q. What was his mental condition, Mr. Byles? A. Do you mean at that time?

Q. Yes. A. Well, when Doctor was under the influence of liquor he was impossible. That is, he was, I would say, just absolutely impossible.

Q. Mentally? A. Mentally and physically, almost. Of course, he could walk around, but mentally he was irresponsible. That is the way I considered it.

Q. In your opinion was he capable of carrying on business, business transactions? A. Absolutely no.

Q. You remember particularly this occasion, which was either June 29th, or August 15th? A. Yes, either one of those dates. I cannot say specificially, but I remember it was one of those two dates.

The Court: I have some serious doubt as to the value of testimony of a layman, who simply expressess his opinion.

Mr. Watson: I might say to the court I know the opinion of a layman, of course, is not comparable in weight to that of an expert, but it is admissible, and I am just producing it for whatever it may be worth.

The Court: I was wondering if these witnesses couldn't testify more to facts that led them to those conclusions; the conditions that brought it to their mind, rather than simply the conclusion. I doubt whether there would be much probative force to those.

Q. Mr. Byles, how was his speech at these times when he was under the influence of liquor? A. Well, as a man when he is under influence of liquor, incoherent.

Q. Could he talk intelligently? A. No, I would't call it intelligently.

Q. You say that he was impossible physically, what do you mean by that? A. Well, I mean he could walk. I don't mean that he was to the point where he was necessarily staggering, but he was simply shaky on his feet.

Q. Yes. A. And, of course, I guess there is nobody who don't know what a man under the influence of liquor is, that his brain was absolutely befuddled. We did not consider him responsible, in a busines way, when he was under the influence of liquor.

By the Court:

Q. Do you mean that you refused to do business with him under those conditions? A. I mean

that if Doctor Freeman should have given me an order, when I knew he was under the influence of liquor, I would merely cast it aside as nothing. That is all. We didn't consider him responsible.

Q. How about if Doctor Freeman gave you an order when he was not under the influence of liquor? A. Then we would think it was all right. In fact, that case has happened.

By Mr. Watson:

Q. Just detail some of those cases when he gave you orders that you didn't take, Mr. Byles? A. Well, I have in mind one particular case was on a car of stove pipe. I arrived in the office, and this time—

Mr. Davey: May I ask the witness to fix the time.

A. I don't think I can on this particular case, but I would roughly say it was during the Summer of 1922, at some time. I can't come right down to the date. And he said to Mr. Breen, he said, John, give Mr. Byles an order for pipe. He called me Byles. I saw his condition, and I knew when the Doctor had anything on his mind, that we had to humor him. So I winked to Mr. Breen, and we went outside and apparently made up an order for a car of pipe, and I come in the office and said, Doctor, it is all right, it will be coming along some of these days, and that is the end of it. I merely state that to show you we did not consider him responsible when he was in that condition.

Q. Why didn't you take the order for the car of pipe? A. Because I know he didn't want it.

Q. What do you mean he didn't want it? A. He didn't need it.

Q. How do you know that? A. Because we went

out and looked. Mr. Breen and I had been over the situation just before the Doctor came in, and we knew that he did not need it. But the least line of resistance was to humor the Doctor, just as you would a child, when they are petted.

Q. You mean you knew the requirements of his business, and he didn't need that car of pipe? A. Yes. Had he had a man who was a strange salesman, why, the Doctor wouldn't do that; the Doctor was very careful; of those he knew he would do a thing of that kind. He wouldn't do it with a stranger. Otherwise he was very keen, when he was not under the influence of liquor.

Q. Was there an occasion when he gave you an order for metal lath? A. That is on August 15th. I have that specifically on a report in the office that I looked up yesterday, and I found that was on August 15th, that he called me up the day before and wanted me to come to the office. I arrived there, I couldn't tell you just what time in the day, and he said he sent for me, he wanted to buy a carload of metal lath. Well, a carload of metal lath means about fifteen to twenty thousand square yards. An ordinary house takes about from twelve to fifteen hundred yards, so that in a carload of metal lath there was enough metal lath there to take care of probably ten or twelve houses, and they had to be fair sized at that. So, on the face of it, it was absurd. Nevertheless, as we usually did, I quoted him on the metal lath, and at that time he said that he was going to build a house in At-'antic Highlands.

Q. Did you fill the order? A. Certainly not.

Mr. Watson: Cross examine.

Mr. Brown: No questions.

Cross Examination by Mr. Strong:

Q. I understand that was August 15th, that lath order? A. The metal lath proposition was August 15th; yes, sir.

ARNOLD BOSMAN, a witness produced on behalf of the Caveators, being duly sworn according to law on his oath, saith:

Direct Examiantion by Mr. Watson:

Q. Mr. Bosman, what is your business? A. I am in the wholesale millwork business.

Q. Whereabouts? A. Harrison, New Jersey.

Q. In business for your self? A. Yes, sir.

Q. Where is your home? A. My home is in North Branch, New Jersey.

Q. Did you know Doctor Freeman? A. Yes, sir.

Q. Did you do business with him? A. About fifteen years; yes, sir.

Q. Did you call on him yourself? A. Yes.

Q. How often did you see Doctor Freeman? A. About every two weeks, I think.

Q. During all that time? A. During all that time; yes, sir. Well, sometimes three weeks, and sometimes every week, depending on circumstances.

Q. Did you see him that often during the Summer of 1922? A. No, I didn't. Probably every two or three weeks, I guess. Cut it down a little in 1922.

Q. What were Doctor Freeman's habits as to the use of liquor, or drugs, so far as you know? A. Well, I tell you, in 1922, I refused to do business with Doctor Freeman. I did all my business through John Breen, because I didn't think him

responsible. And as John Breen can testify, I never even asked him for any orders. Before that I did.

Q. What was Doctor's Freeman's condition, Mr. Bosman? A. Well, he was plain drunk half of the time, I guess. That is the way it struck me, anyway.

Q. When you say plain drunk, what do you mean? Just tell us how he acted? A. Well, he acted like a drunken man, talked like a drunken man, acted like a drunken man, or under the influence of something else, which I never knew what else it was, but I always supposed it was the rotten whiskey of to-day.

Q. How was his speech? A. Why, foolish, childish, at times. That is, that is the way it appeared to me, anyway.

Q. How was it physically, was it clear, or thick, or how? A. Well, physically he seemed to be able to get around.

Q. How was his speech physically? A. His speech, oh, it was foolish.

By the Court:

Q. No. Did he articulate? A. Thick.

By Mr. Watson:

Q. How about his physical movements, walking? A. Well, I say he could walk around all right. I never saw him that he was absolutely laid out. He always got around, peddled around somehow.

Q. If he wasn't absolutely laid out, how was he? A. Well, he was always able to walk. I never seen Doctor unable to walk.

Q. Could he walk as well as you could? A. Oh, not quite as well as I could, probably. He got around on his feet all right.

By the Court:

Q. Did he stagger? A. No. I never seen him stagger.

Q. Shuffle? A. Well, yes, shuffle more or less.

By Mr. Watson:

Q. Did you ever see him have liquor last Summer? A. Why, on one occasion last Summer, and another occasion about four weeks before he died, when Doc says, come out to the yard; well, I always went out to the yard to look at something, and he pulled out a bottle of whiskey and offered me a drink, and I refused it each time. Because I don't drink that stuff, or any stuff, for that matter.

Mr. Watson: Cross examine.

Cross Examination by Mr. Davey:

Q. Mr. Bosman, how many times in 1922, did you see Mr. Freeman? A. I should judge about every two weeks, and sometimes probably about three weeks apart.

Q. When was it that you refused to do business with him? A. Why, some time in May. April, or May, or somewheres around there, that he was unable to talk straight, and I made up my mind then, and I told John Breen, I said, now, I said, Doc is slipping, isn't he, he is slipping fast. And John said, yes—no, I am not sure about that.

Mr. Strong: I object to that.

Mr. Davey: Unless it was in the Doctor's presence.

The Court: I do not think it makes much difference whether it was in the Doctor's presence or not. It is just a conversation.

Q. Did you hear of a contract executed along in May, about the middle of May, regarding the business of Manning Freeman & Son? A. I did not, sir.

Q. When you speak of doing busines with Doctor Freeman, you mean doing business with the corporation, don't you? A. With Doctor Freeman, or the corporation, Manning Freeman & Son; yes, sir. Oh, absolutely.

Q. You had no business with Doctor Freeman as an individual? A. Oh, no.

Q. And did you know that after May 15th he had no power to do business in the name of the corporation? A. I didn't know anything about that; no, sir.

Q. No one told you that? A. No, absolutely no one told me that.

Mr. Davey: That is all.

By Mr. Strong:

Q. As I understand it, in 1922, whenever you saw him, you found him drunk, is that it? A. Not all the time. I said half of the time. Approximately half of the time.

Q. What was there, when you found him drunk, that you were not willing to do any business with him? A. I wouldn't do any business with him at all in 1922, because I didn't think he was able to know what he wanted.

Q. What do you say was his condition? Would you say he was stupid? A. He was stupid. I don't know whether he was under the influence of liquor half of the time, or under the influence of something else.

Q. The influence of drugs, do you mean, possibly?

A. It wouldn't surprise me at all. I don't know anything about drugs, but I think that is the whole truth of it; yes, sir.

Q. You think he was under the influence of drugs? A. Absolutely.

Q. Either liquor or drugs, whenever you saw him? A. Not whenever I saw him. I said half of the time.

Q. And for that reason, because half of the time because you saw him under the influence of liquor and drugs, you wouldn't do business with him at all, is that it? A. He wouldn't be responsible. He could tell me ship me one hundred pounds, or a thousand pounds, and I wouldn't ship it, because it don't pay us to do that, you know.

Q. As I understand it, because he was under the influence of liquor and under the influence of drugs half of the time when you saw him, that was the reason you wouldn't deal with him? A. I wouldn't deal with him personally, no.

Q. On that account? A. On that account.

Mr. Strong: That is all.

Cross Examination by Mr. Brown:

Q. Mr. Bosman, you say you have been doing business with Manning Freeman & Son for fifteen years? A. Well, about four years for the firm I used to travel for, and about eleven years for myself; yes, sir.

Q. Manning Freeman & Son have been incorporated as a corporation during that time, have they not? A. Well, I never inquired into that. They always paid their bills promptly.

Q. When was it that you first noticed that Doctor Freeman was addicted to the use of liquor, or other stimulants A. Well, he has been addicted

to the use of liquor, I would say, for a good many years.

Q. As long as you have known him? A. More or less, yes.

Q. And during all that time you have seen the Doctor at least twice a week? A. No, no. About every two weeks. Two or three weeks.

Q. You don't mean that, do you, Mr. Bosman? A. I do, yes.

Q. Why, don't you know that the Doctor was away for periods, because of his condition? A. Well, what I mean, in the Doctor's office. I was in the Doctor's office every two or three weeks. I didn't say I saw Doctor Freeman every two or three weeks.

Q. Well, now, how often did you see Doctor Freeman? A. Oh, I suppose every month, that he would be there. Every second call.

Q. Well, if he was away in an asylum, or in an institution, for his recovery— Well, I wouldn't see him then, of course.

Q. You don't know whether he was away, or not, do you? A. I knew that he was away, yes; I never knew where he was, and I never asked any questions where he was, because I did most of my business with Mr. Breen. Most of it, I said. Not all, but most of it.

Q. Well, the Doctor, the greater part of the time, was irresponsible, was he not? A. For the last year or two I should say yes.

Q. More than two years, hasn't it been? Hasn't it been three or four years? A. No. Three or four years ago the Doctor was a pretty keen buyer. Four years ago he was.

Q. Did you ever see him before he was sent away to an institution? A. Yes. Of course I have.

Q. And he was keen then too, was he? A. At times he was; yes, sir.

Q. What do you mean by keen? A. He knew the prices.

Q. Would John Breen be there? A. He would be there, yes.

Q. What was this keenness, was it intermittent, or was it constant, or how was it? A. Well, what we mean by a keen buyer, when we have got a thing to sell, and the man knows the price, knows the market from all around, from here to the Pacific coast, and the middle west, and everywhere. That is what we mean by a keen buyer.

Q. The Doctor had his delusions right along, didn't he, peculiar? A. He was very peculiar, I think, yes.

Q. And he had delusions? A. He was a very peculiar man, anyway.

The Court: I do not know whether he said he had delusions, did he, Senator? Do you think this man would be qualified to say that he had delusions?

Mr. Brown: I supose not, except he knew that the things he had impressions or convictions about were not based in fact.

Q. Did you know whether or not the Doctor had convictions, express convictions, about matters that were founded without fact? I mean by that, that his delusions were expressed, without having any fact to support them? A. Well, I don't know how to answer that. I didn't get into personal methods with Doctor. Only in a business way.

Q. Now, you say that every time you went to see him, if you were out in the yard, he would take a bottle out? A. Not every time. That happened times, especially this Spring and last Summer, that I remember.

Q. I suppose you were frequently at the plant when you didn't see the Doctor at all? A. Oh, I said yes. About every other time the Doctor was there, and sometimes he would be there every time I called.

Q. How long has the Doctor been without his eyesight, to your knowledge? A. I reckon about a year, hasn't he, when he began to complain that he couldn't see or read any more?

Q. Well, wasn't his eyesight impaired, so that he couldn't read, for several years? A. Well, he could always read, by glasses. The last year, I don't know, about a year, or a year and a half, probably, he couldn't see to read without his glasses, or couldn't see anything.

Q. Isn't it a fact it was the guiding hand of Mr. Breen through which you did business with that company for years? A. Absolutely; yes, sir.

Q. Mr. Breen was the final man to put his stamp of approval on it? A. Well, Doctor would buy, up to about a year ago, you know. But after that he didn't. That is, not with me, anyway.

Q. Well, you always consulted Mr. Breen, laterly, didn't you? A. Absolutely; yes, sir; for the last year.

Q. And even before the last year, didn't you get Mr. Breen's O. K. before— A. As a rule I did; yes, sir.

Q. For how many years has that been done? A. Oh, ten, twelve, fifteen years, probably.

Mr. Brown: That is all.

By Mr. Strong:

Q. About how long ago was it, the last transaction with Mr. Breen? A. The last transaction with Mr. Breen?

Q. Yes. A. Why, I guess three or four weeks ago.

Q. You are still dealing with Mr. Breen ? A. Oh, absolutely, yes.

Q. You were asked, or it was suggested to you by a question of Senator Brown, that for some time past, the last two or three years, I think it was, Doctor Freeman had been irresponsible. By that you mean when was under the influence of drugs or liquor, is that it? A. I didn't say drugs. I thought that. Liquor I do know; yes, sir.

Q. When he was under the influence of drugs or liquor? A. Yes, sir.

By Mr. Brown:

Q. I suppose that this peculiar condition that you found him in, of irresponsibility, wasn't just the same as a drunken man, at time, was it ? A. That is the way it struck me.

Q. It is something other than the— A. I blamed it on the rotten whiskey sometimes, the day's whiskey, or something else. I don't believe it was the whiskey alone.

Q. It was a pecular stupidity produced by something— A. In plain words I think it was dope, and nothing else. If that is what you are after, that is what I think.

Mr. Watson: That is all.

ALFRED S. MARCH, a witness produced on behalf of the Caveators, being duly sworn according to law on his oath, saith:

Direct Examination by Mr. Watson:

Q. Mr. March, you are a counsellor at law of the State of New Jersey? A. I am.

Q. Practicing in New Brunswick? A. I am.

Q. And you have been how long? A. Twenty-three years last March.

Q. Did you know Doctor Charles M. Freeman? A. I did.

Q. Do you remember an occasion when he and Mr. Johnson came to you to transact some business? A. I do.

Q. Do you know when that was? A. It was, in my judgment, over a year ago, I should imagine between a year and two years ago. I can't say with certainty.

Q. You made no record at the time? A. No. I have asked my girl to look up the record, and I can't find any record.

Q. What was the business transaction, what did you do, Mr. March? A. It was in the evening, and I had been at the office, I was about ready to go home, and Mr. David P. Johnson telephoned me and wanted to see me about putting a deal through, and I know I was tired, I didn't encourage him to come over to the office, but he said he wanted to see me, so I waited for him, and Mr. Johnson came in the office, and I think Mr. Freeman came with him, or came a few minutes afterward. Mr. Freeman wanted to sell his business over to Metuchen, his coal business, to Mr. Johnson, and I started to take some memoranda in reference to it, and the terms, in my judgment, were unreasonable; they were foolish terms. I can't remember all the terms. I think they were particularly unreasonable in reference to the time, and how the money for the business was to be paid; and in the conversation with Mr. Freeman I think reference was made to the fact that he could not see; and also he made some reference that some people had said he was crazy, there were two or three lawyer's names mentioned,

I think Mr. Watson's name was mentioned, and I think Judge Kirkpatrick's name was mentioned; and I suggested that he ought to have some other lawyer; and in any event, I don't remember all the particulars, I told him the terms were of such a nature that I didn't want to do the business, and I refused to draw any paper in the matter.

Q. The terms were unreasonable as to whom? A. As to Mr. Freeman.

Q. Can you recall any of the terms, Mr. March? A. I cannot, except the time for payment was deferred to such an extent that it was unreasonable, and that the business could diminish in the meantime so it wouldn't amount to anything. But I think it gave Mr. Johnson pretty nearly the option to pay for it whenever he wanted to. They were ready to put the deal through, but I couldn't put it through on those terms, and I tried to argue it out with Mr. Freeman; and then the fact that he said people had said he was crazy, was another element in my mind.

Q. Was anything said about an effort to put him in the asylum? A. I won't say, but I think he said that one lawyer had said he was crazy; I think it was his own lawyer; as to who was his own lawyer, whether it was you, or Mr. Kirkpatrick, I don't know. I think Mr. Kirkpatrick's name was mentioned. I think I mentioned Howard Reynold's name, I think I suggested that he have Mr. Reynolds represent him in this matter, because I know Mr. Reynolds had done some business for Manning Freeman Company.

Q. Did you consider him competent to transact business at that time? A. Do you mean legally competent?

Q. Yes. A. I cannot say as to whether he was legally competent. He might not have been legally

competent. He might have been very foolish, or he might have been a kind friend to Mr. Johnson, but the terms were of such a nature that I wouldn't put them through, because I was afraid I would be subject to grave criticism, in case he was not of sound mind, or in case because the terms were so ridiculous, and the fact that he couldn't see, from a practical viewpoint, I would be put in the position I was taking advantage of a man who couldn't see, and might be of unsound mind.

Q. As a matter of professional ethics you decided you would have nothing to do with it? A. I decided I would have nothing to do with it. That was the reason.

Cross Examination by Mr. Strong:

Q. When did you say this was, Mr. March? A. I can't say, Senator, with certainty. In my judgment it was at least over a year ago. I should imagine within a year, or two years. Now I may be mistaken.

Q. Within one or two years? A. It may be a year and a half. I can't say with certainty.

Q. How long was he in your office at the time? A. I should imagine about a half hour. From twenty minutes to a half hour, and possibly longer. They weren't there over an hour, anyway.

Q. Had you known him before that time? A. Yes, I had met him.

Q. Often? A. Not often; no, sir.

Mr. Strong: That is all.

Cross Examination by Mr. Brown:

Q. Mr. March, can you assist the court a little bit as to the time? A year ago this time would be in

the Spring of the year. Do you remember whether it was in the Spring, or in the Fall of the year? A. I can't say, Senator. I talked to Mr. Johnson this morning, and he said that he had paid me some money for my time, I think he said he paid me five dollars. I don't remember. And I ought to have a record on my books. I haven't had an opportunity of looking them up. I didn't make any charge card. I thought I hadn't charged him anything. He said that he did pay me five dollars for my time that night. I 'phoned down to the office, while I was in the court room, and the young lady looked over March, April and May, and I think June of 1921, that was two years ago, and she can't find any entry on my books. I may be able to find it later on. I should imagine it was in the warmer part of the year, either in the Spring, or the Fall. I am quite sure it wasn't in the Winter.

Q. You were representing, were you not, Mr. Johnson? A. Well, Mr. Johnson, I had done some business for Mr. Johnson, and he first 'phoned me, and I was representing Mr. Johnson, although Mr. Freeman wanted me, they both wanted me to put the deal through for both of them.

Q. But what I wanted to get at is the fact that Mr. Johnson was not—you were representing him in the first instance, anyway? A. I was representing him in the first instance anyway; he is the one that telephoned me, and I had done some business for him.

Q. You thought the condition was unreasonable, even with Mr. Johnson wanting it, notwithstanding your trust in him, still you wouldn't permit the deal to go through. A. I advised Johnson against it. I told him, if my memory serves me, that it would be very foolish to put it through.

Q. When you heard the utterances about the

Doctor being crazy, did that support your opinion about his condition, from what you saw of him that day? A. Well, it didn't help me put the matter through. I didn't want to do business with people who were crazy.

Q. No, but when you saw his conduct, and saw and learned the unreasonableness of the terms, and after you heard the Doctor say, or whoever it was, that he was considered crazy, I suppose that stimulated your opinion a little further that he was crazy, possibly? A. It stimulated my opinion that he might be crazy, or he might be foolish, that I didn't care to do business with him anyway.

Q. Did he say, at that time, that they were trying to put him in the asylum? A. I can't say for sure. I think he said someone said he was crazy; it might have been Mr. Watson; I don't know.

Q. Did he say anything about just getting out of the asylum? A. No. He didn't to me, no.

Mr. Brown: That is all.

DAVID P. JOHNSON, a witness produced on behalf of the Caveators, being duly sworn according to law on his oath, saith:

Direct Examination by Mr. Watson:

Q. Where do you live, Mr. Johnson? A. Highland Park.

Q. By whom are you employed? A. Stevens Eaton Company.

Q. What is your business? A. Wholesale lumber salesman.

Q. Did you do business with Manning Freeman & Son? A. I did.

Q. How many years? A. Well, I should judge ten years anyway, ten to twelve years.

Q. How long did you know Doctor Freeman? A. Ten years, ten to twelve years.

Q. How often did you call on Manning Freeman during that time? A. Well, I would say on an average of once every three weeks.

Q. How often did you see Doctor Freeman during that time? A. I suppose half of the time. Maybe more.

Q. Do you know anything about his habits as to intoxication, and the use of drugs? A. Well, I saw the Doctor several times intoxicated.

Q. During the Summer of 1922 did you see him in that condition? A. I did.

Q. How many times? A. Well, I couldn't just exactly give the number of times, but on several different times.

Q. What was his condition at such times? A. Well, his mind seemed to be sort of dead, and he seemed to be more or less sort of cranky. Sometimes cranky, he would have different spells; one spell a cranky spell, and then he would have a generous spell.

Q. How was his speech? A. Very thick at those times.

Q. How was his speech as to coherency? Was it intelligent, or otherwise A. Well, I would say it wasn't very intelligent.

Q. How was he physically? A. That I couldn't say. He didn't appear to me—well, he always got around in good shape, he always walked.

Q. Well, did he walk like a normal man? A. I wouldn't say so. At times he seemed to be—I know several times, going around the yard especially, the last year or so, that he would lose his balance in walking around with me. In fact, he come

to my house two or three occasions, and on one occasion particularly, I helped him up on the porch.

Q. When was that? A. I would say seven or eight months ago.

Q. Was it since you lived in your present house? A. No. It was on Raritan Avenue.

Q. Did you at any other time see him when he had to be helped physically? A. Well, a few times that he come to my place, and a few times in his yard. I couldn't say. That was just the last year or so.

Q. How was he in business transactions when he was in this condition? A. Well, I didn't pay much attention to the business end when he was in that condition. I didn't try to sell him.

Q. Why? A. Well, I didn't think that he was in fit shape to do business. Unless Mr. Breen said that they needed the stuff. He would generally ask Mr. Breen and say, John, do I need a car of this, John, buy a car of this. And if Mr. Breen would say they didn't need it, I wouldn't take the order. If Mr. Breen made up the slip, why, I would take it.

Q. Were you present at this interview at Mr. March's office? A. I was.

Q. Tell us about that? When was it, first? A. It was about a week before Mr. Freeman was taken to Trenton.

Q. To where? A. The the asylum at Trenton.

Q. Yes. A. I had been to Elizabeth in the afternoon, and Mr. Freeman had been to my house twice, and he had also been to Plainfield, so he told me, trying to sell his business. I don't know just why Mr. Freeman wanted to sell the business to me, in particular, but he had left word to come to his place, and I went down there, I arrived there, I guess, about maybe six o'clock.

Q. At his house, or office? A. At his house, that is the house he was living in over the garage.

Q. Yes. A. And he went out with me and we looked over the plant, and he made his own prices, which were very good.

Q. What do you mean very good? A. Well, they were ridiculously low. Naturally, in a case of that kind, I thought it would be all right to take an option on his business, which I tried to do. I called up Mr. March and made arrangements to come to New Brunswick, and I think I arrived at New Brunswick about 8.30, with Mr. Freeman. Mr. Freeman started to give some notes to Mr. March in regards to the terms of the option, and I noticed that Mr. March hesitated as to the terms. And finally Mr. March advised me not to go ahead with the option.

Q. Then it was an option that you were drawing, and not a contract? A. It was an option.

Q. Did you go ahead with it? A. No, sir.

Q. What happened after you left Mr. March's office? A. I took Mr. Freeman to Metuchen, and I was going to take him home, and on his way home he insisted that I must call to Mr. Breen's house.

Q. Yes. A. And he wanted me to take him to some other lawyer in some other city to draw the deal, and I said no, I said, I thought as long as Mr. March had advised me, that I had better leave the deal up, that it was good advice, and I drove Mr. Freeman to Mr. Breen's house, and Mr. Freeman wanted Mr. Breen to draw up an option, and I couldn't say, I think Mr. Breen drew a few lines of a sort of an option. Of course, I knew it wasn't any good, but I merely took it to please the Doctor. I took him from Mr. Breen's house to where he was living, and I saw him in the house, and come on home.

Q. What was his condition, Mr. Johnson? A.

Well, he was, I would say he was very feeble that evening.

Q. Mentally, or physically, or both? A. Well, I don't know as I could say so much mentally. Of course, he must have been, to make an agreement of that kind, while he claimed—he told me he wanted to see me get the business. He was making those terms for that reason.

Q. Did Doctor Freeman know you in any way except in a business way? A. No, sir.

Q. Never been out with him socially? A. No, sir; any more than what he called, within the last year or two, to the house, for advice on different things, or trying to get advice, which I didn't give him.

Q. During the Summer of 1922, Mr. Johnson, how often did you see Doctor Freeman? A. Well, I think about—well, not as often, I didn't see the Doctor as often. I called at his business, at his office, as often, but I didn't see the Doctor, I don't suppose, maybe over once in five or six weeks, possibly. At his office. I saw him out at different places.

Q. Did you see him under the influence of liquor? A. I did.

Q. What was his condition of mind when he was under the influence of liquor? A. Well, I would say that he wasn't in fit shape to do any business.

Q. Well, how did he talk, how did he act? A. Well, he talked thick, and sometimes he would want to buy the world, and other times, why, he was like onery, and I didn't want to do anything.

Q. What do you mean he wanted to buy the world? A. Well, he would tell John to give me an order for this, and an order for that, and an order for the other thing, and, of course, John gave me what he felt like getting, what he thought the business needed.

Q. How many times did that happen during the Summer of 1922? A. Well, I couldn't say how many times that happened.

Q. Were you present at my office on May 15th, when an agreement of trust between him and me was executed? A. I was.

Q. Who else was there? A. Mr. Freeman, and Mr. Lord, of our Company, and I think Mr. Mohring was there. I know he was there either May 15th or June 27th.

Q. Did you have anything to do with the bringing about of that meeting, or did Mr. Lord do that? A. Mr. Lord.

Q. Mr. Lord is here? A. Yes, sir.

Q. Were you present at my office again on June 27th? A. I was.

Q. What was Doctor Freeman's condition on May 15th? A. Well, I would say about the same as he had been through that year. I don't think that he was in a condition to do business.

Q. You think he was not? A. I think he was not in condition to do business.

Q. How was his mind, how was his speech? A. Well, he would seem to talk better at that time than some other times, but I wouldn't consider him a fit man to do business.

Q. Do you think he was in his normal condition? A. As normal as he was during the last year or two, yes.

Q. What was his condition on June 27th, when you saw him there again? A. About the same condition as May 15th.

By the Court:

Q. Mr. Johnson, you say that you have been doing business with Doctor Freeman for the last twelve or fifteen years? A. No. Ten or twelve years.

Q. And that during the last two or three years he gave you orders for material, that you disregarded? A. Yes, sir.

Q. Large orders? A. Orders for carload lots.

Q. That you disregarded? A. Yes, sir.

Q. Did you ever receive any complaints from Doctor Freeman because these orders were not filled? A. No, sir.

Q. After Doctor Freeman would give you an order for a carload of goods, and the carload was not delivered, and the order disregarded by you, did Doctor Freeman ever mention it to you after? A. These weren't made up orders. They were orders of this kind, tell Mr. Breen to make up a car of stuff, and if Mr. Breen thought he needed a car, he would make it up. The orders were never made up as orders.

Q. I understand, but so far as Doctor Freeman was concerned they were orders for the delivery of certain goods to him? A. Yes.

Q. Not signed, not actually made up, I understand? A. Well, they weren't made up, no.

Q. What I want to know is, did Doctor Freeman, after giving you those orders, ever complain because he didn't get the goods? A. No, sir.

Q. The next time you called there he didn't indicate that he remembered? A. No, sir.

Q. How long did that condition obtain, over what period? A. I would say for the last two years. Before that, if Mr. Freeman had given me an order, I would have been very glad to have taken his order.

Q. Supposing three or four years ago Doctor Freeman had given you an order which you had not filled, what, if anything, would have been his reaction to that fact? A. Well, I think he left that up largely to Mr. Breen to look after.

Q. No. But supposing Doctor Freeman had given you an order for goods, we will say in 1917,

which you had disregarded, would you have heard from him? A. I imagine I would, because I think Mr. Breen would have called his attention to it, and possibly I would have heard from him, instead of Mr. Breen. But I think Mr.—

Q. I don't think you get my question. What I am trying to get from you is this: In 1917, if Doctor Freeman had given you an order for goods, and you had neglected to fill it, would or would not Doctor Freeman himself have called you to time for not filling the order? A. Yes, he would have.

Q. As a matter of fact, what was the situation in regard to his attitude toward wholesalers in 1916, 1917 and 1918, and around that period, in reference to the filling of orders? A. Well, he told us, during that time he had told me that he was giving us a lot of business because we had filled his orders during the war period, and I think that he spoke of that to other salesmen. He said the Stevens-Eaton Company had filled all his orders, and he felt duty bound to give us a lot of business for that reason.

Q. I suppose you made mistakes in your orders at times, the same as every other house does? A. Well, I imagine we have. Well, I don't remember any mistakes.

Q. Any complaints from Doctor Freeman? A. Yes, I have had in these years.

Q. What was his attitude towards mistakes in orders? A. Well, he would generally call me down pretty severe, when I walked in the office, and he would turn it over to Mr. Breen to settle.

Q. In other words, in prior years he knew what was going on in the business? A. He did.

Q. In reference to your—so far as your connection with it was concerned? A. Yes, sir.

The Court: That is all.

Cross Examination by Mr. Strong:

Q. You were aware of this agreement of trust between Mr. Watson and Doctor Freeman, were you not? A. Yes, sir.

Q. You say you were present? A. Yes, sir.

Q. At that time you didn't consider him in condition to do business? A. The trust was—

Q. Didn't you say that? A. I don't exactly consider him in condition to do business; no, sir.

Q. You didn't at that time consider him in a condition to do business? A. No, sir.

Q. And after that agreement of trust you didn't attempt to do business with Doctor Freeman, did you? A. I done business with Mr. Breen after that.

Q. In other words, the business was no longer conducted by Doctor Freeman? A. No, sir.

Q. It was conducted by Mr. Breen, for Mr. Watson, wasn't that right? A. Yes, sir.

Q. At the time that he offered you this option on his business, he was able to do business, wasn't he? A. Well, he had been doing business.

Q. I ask you now, at the time he offered to let you have his business, was he in condition to do business? A. Well I thought so at the time.

Q. Yes. Why did you think so at the time? A. Well, because the man had been doing business more or less in previous years, and he wanted to sell his business. Really I wasn't looking to buy a business.

Q. No, but you looked to buy it when he offered it to you? A. At a low price; yes, sir.

Q. And there wasn't anything about the lowness of price that made you suspicious that he wasn't mentally right? A. No, not until I arrived at Mr. March's office, and he mentioned the fact that he was in troubles, and mentioned insanity.

Q. He what? A. He mentioned something about insanity, at Mr. March's office that evening. Up until that time I hadn't heard anything of insanity.

Q. And that was the first thing that started any suspicion in your mind about any mental trouble of his, is that right? A. No. I can't just say that. As far as mental trouble, yes, but the man was very peculiar for years.

Q. Do you mean that he used to drink? A. Well, he would drink, and he would play different sort of pranks.

Q. Use drugs? A. I suppose drugs.

Q. He was a friend of your's, wasn't he? A. Only in a business way.

Q. As I understand it, when he was drunk, or under the influence of drugs, then you wouldn't deal with him, but you would have an order O. K'd by Mr. Breen before you would take it, is that right? A. Well, I wouldn't deal with any man that I considered drunk. I don't think it is good business to sell a man when he is drunk.

Q. (Question repeated by stenographer.) A. If Mr. Breen considered that he needed the stock.

Q. You were a creditor of the firm of Manning, Freeman & Son at the time of this agreement with Mr. Watson? A. My company was.

Q. And you represented that company? A. Yes, sir.

Q. How much did Manning Freeman & Son owe you at that time? A. I would say in the neighborhood of five or six thousand dollars.

Q. And at the time when you considered that Doctor Freeman wasn't in condition to do business, you took him to a lawyer to make this agreement, for the benefit of your firm, is that right? A. Well, I advised my firm already—

Q. Just answer that question yes or no.

The Court: I do not think he can answer that that way.

A. I advised my firm, and Mr. Lord and myself took Mr. Freeman to Mr. Watson.

Q. What for? A. I advised my firm, the Stevens-Eaton Company, and the Stevens-Eaton Company sent Mr. Lord and myself out to see and have a talk with Mr. Freeman, and we took Mr. Freeman to Mr. Watson's office, and the agreement was drawn.

Q. And he not in mental condition to execute an agreement? A. Well, I wouldn't—

Q. Didn't you say that? A. Yes.

Mr. Strong: That is all.

Cross Examination by Mr. Brown:

Q. I suppose the reason that you did that was to preserve the estate? A. To preserve the estate, and we figured it was as much Mr. Freeman's benefit as it was our's.

Q. You didn't think the fact the business agreement, or trust agreement, made with Mr. Watson, whether Doctor Freeman was in the legal capacity mentally, or not, had anything to do with the substantial benefit that would flow to the company? A. No.

Q. Your motive, I suppose, in doing that, as I have said before, was to preserve the estate? A. Yes, sir.

Q. Whether he was of sound mind, or unsound mind? A. Yes, sir.

Q. Now, you have also said in your testimony that for a year or two before that he was about in the same condition? A. Well, he always paid his bills before that, or the concern had always met their obligations satisfactorily.

Q. But I mean about the Doctor's personal condition? A. Yes, I would say for two or three years. I wouldn't want to say just how long back.

Q. But at least two years, or at least a year before that? A. Well, I have been calling on Mr. Freeman for ten years, and just how far back I could go on that I wouldn't want to say.

Q. Well, you said on your direct examination that for about a year or two before that. A. Yes.

Q. He was in about the same condition? A. A year or two ago from now, that is, a year or two back.

Q. A year or two back? A. Yes.

Q. Well, how long before the time the agreement was made was he in that condition? A. Well, he wasn't anywheres near as bad as he was before that. I think Mr. Freeman was worse about the time that the agreement was drawn, than at any other time.

Q. Well, he was worse financially, possibly?

Mr. Strong: He did not say that. No.

A. I mean financially.

Q. As far as his own petulant and childish disposition was concerned, and the peculiar disposition you have spoken about, that prevailed for a time before that? A. Yes, sir.

Q. What did you mean when you said on your direct examination that that condition lasted, or was the same a year before that, referring to May 15th, 1922? A. Well, I meant a year or two before now. A year or two previous from now. Not from the agreement.

Q. There is a difference there of a year. Now, can you come any closer to it? A. Well, I mean—well, my first suspicions, that is, of him being crazy—

Q. I will withdraw that question. This may assist you: You testified that he sought your advice about business for over two years, and you refused to give him advice? A. Yes, sir.

Q. Now, why did you refuse to give him advice for over two years? A. Well, I felt that Mr. Breen was taking care of the business. Did I say I refused to give him advice for two years?

Q. Yes? A. That should be one year. It should be since Mr. Watson was appointed Trustee of the business. Because I didn't want to interfere with Mr. Watson.

Q. You didn't want to interfere? A. No, sir.

Q. If he did speak to you during the last two years about the business, you certainly would not interfere, would you, anyway? A. No, sir.

Q. Is it not a fact that Mr. Breen was the guiding hand in that business, and controlled it? A. Yes, sir.

Q. That has been for many years, to your knowledge? A. Well, Mr. Breen has been more in control gradually ever since I have known the business.

Q. And isn't it a fact that the Doctor has been humored and he has been respected, while he was there, by those that were about, and his every whim was obeyed, not because it was reasonable, but the fact that he was the majority owner of the business, or the stock? A. Well, I would not say that every whim was obeyed, because Mr. Breen used his judgmen in regard to buying stock; even if Mr. Breen had told him to order something, Mr. Breen didn't always order it.

Q. Well, as far as business toleration would permit, the Doctor was permitted to enjoy his whims? A. Yes.

Q. You spoke about his jokes and peculiarities, he was permitted to play them? A. Yes, sir.

Q. As a school boy, or child? A. Yes, sir.

Q. They were not the acts of a man who was of mature judgment and sound business mind, were they? A. Well, I couldn't say that.

Q. How long have you known the Doctor to be drinking to excess? A. Well, he has drank more or less ever since I know him.

Q. You said that you would not do business with a man who was intoxicated? A. I would not.

Q. And is that the only rule that prevented you from doing business with Doctor Freeman? A. Well, the last year or so I didn't feel that he was mentally fit to do business.

Q. Well, is it not a fact, Mr. Johnson, that for over three years past that the Doctor's condition was not such as to make an arm to arm bargain, I mean by that, a bargain at arms length? A. Well, I wouldn't want to say three years back.

Q. You know when the armistice was signed, do you? A. Yes, sir.

Q. A lot of people do not. Well, from that period on was the Doctor's condition such that he could carry on business without a man like Breen or someone around to check? A. I don't think his condition has been so he could carry on business, without a check, for a number of years.

Q. For how many years, Mr. Johnson? A. Of course, he may have been able to oversee the business, by having somebody to help him. Well, I couldn't say how long.

Q. How many years has it been that you have declined, or failed to carry out the orders of Doctor Freeman, because of his condition, mental and physical, that you thought was of such a failing degree that you could not do business with him? A. That is, orders given personally by Doctor Freeman?

Q. Yes? A. Since the business was in trust, and when he was intoxicated.

Q. Before the business was in trust, was there not a period that you would not recognize his orders unless they were confirmed or corroborated by Mr. Breen? A. If he appeared to me to be intoxicated, or under the influence of something, I didn't recognize his orders unless they were O. K'd by Mr. Breen.

Q. How long a time did that condition continue? A. Well, I suppose three or four years, possibly.

Q. Now, before that time did you take orders from the Doctor without check or corroboration from Mr. Breen? A. Yes, sir.

Q. So that the progress of the Doctor's impairment of mind and business capacity was going on since you have known him? A. Well, I considered the Doctor, when I first went around to see him, a very peculiar man, but I didn't figure that there was anything the matter mentally.

Q. What year about was it when you thought that it would be proper, as a fair business man, to require the Doctor's orders to be checked and corroborated or confirmed by Mr. Breen? A. Well, I don't know. I couldn't just say the year, about the time.

Q. Well, about? Within a year or so? A. I couldn't go back, I wouldn't want to go back to say how long ago that has been.

Q. Well, how long was it before the trust agreement was signed? A. Well, I couldn't say.

Q. Was it a year at least? A. That is, when he had one of the spells on that I wouldn't consider him?

Q. No. But you testified, as I understand it, from the time the trust agreement was made, thereafter you paid no attention, substantially, to what the Doctor did? A. No, sir.

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Q. But a time previous to that you would listen to his order, or entertain it, but confirm it, or have it checked by Mr. Breen. I want to know what period of time that was. A. For a year or so, anyway.

Mr. Watson: I object to that. The witness distinctly stated it was when the Doctor was intoxicated.

Mr. Brown: I know, he said that too.

The Court: He said it both ways, Mr. Watson.

Mr. Watson: Did he?

The Court: Yes.

Mr. Watson: All right.

Q. When you went to Mr. March's office, you say that was in the month of August, 1922, or '21? A. I couldn't say the time when I went to Mr. March's office. It was about a week before he was taken to Trenton.

Q. Well, now, do you not know that when the Doctor was taken to Trenton he was taken from his home? A. No, I don't know where he was taken from. I know he was taken, or at least, I understood he was taken from Metuchen, but where from I didn't know.

Q. But be that as it may, you know that when he came to your house, and you were at Mr. March's office, that when you returned from those places he took you to a place over a garage? A. He did; yes, sir.

Q. Don't you know as a fact that it was after his return from the hospital that he had changed his place of residence, or abode, to over the garage? A. No. I thought he changed his place of residence over the garage before he was taken to the hospital.

Q. Who was the chauffeur that was driving at that time? A. Well, I think he had Mr. William Breen employed as a chauffeur at that time, but he didn't have any chauffeur the night that I brought him to New Brunswick, because I brought him myself.

Q. Now, you spoke about terms and conditions. Can you tell what there was about the terms and conditions of this option that you were seeking that was unfair to Doctor Freeman? A. I haven't kept a record of the terms, but, as I remember it, Mr. Freeman offered to sell me the business at 75c. on on the dollar, of inventoried stock, and offered to loan me fifty thousand dollars at 5 per cent. for five years, or longer, if I needed it in the business.

Q. May I ask if the indebtedness that was due from your company to Manning Freeman & Son, was that the direction of the indebtedness, or was it the other way about? A. It was indebtedness from Manning Freeman & Son to our company.

Q. So that you were quite solicitous about having your debt protected? A. Yes, sir.

Q. You were quite concerned about the business condition for some time previous to May 15th, were you not? A. Since May 15th?

Q. Before May 15th? A. Well, I used to like to talk over business with Mr. Breen, and if Mr. Freeman was there he used to like to talk sometimes, when he was himself.

By the Court:

Q. I do not think you understand the question. Mr. Brown's question is that you were quite solicitous about the condition of Freeman's business some time prior to May 15th. He means you were worried about how things were going, as I take it.

Mr. Brown: Yes.

A. Well, naturally we try to keep tabs on all the people we sell, more or less. That is my duty.

Q. What he wants to know is, did you not have misgivings concerning the Freeman business prior to May 15th? A. Well, a short time prior, yes.

Q. How long prior to May 15th, about? A. I think we started to look into the credit of the Manning Freeman concern possibly a month or so before that. Maybe a month.

Q. What? A. I think possibly a month we started to look into the credit of Manning Freeman & Son.

By Mr. Brown:

Q. How long before that month was it that anything happened to cause you to investigate the condition? A. Well, the reason for investigating Manning Freeman & Son's condition was that we had some paper I think was either due, or over due, and Mr. Freeman—I had heard that Mr. Freeman had—

Mr. Srong: I object to what he heard.

The Court: Why?

Mr. Strong: Because it is mere hearsay, your Honor.

The Court: It might be hearsay as to the fact that he heard, but it wouldn't be hearsay as to what prompted him to take certain actions.

Mr. Strong: In consequence of something he heard, without saying what it was. He has no business to bring into the—

The Court: I will overrule that objection.

A. I had heard that he had made his brags that he was trying to squander his business.

Q. When did you first hear that, Mr. Johnson? A. Well, I would say possibly about a month before the agreement was drawn. That was one of the reasons that I took it up with my house at that time, as for getting a statement from Manning Freeman & Son concern, getting a statement as to their financial affairs.

Mr. Brown: That is all.

By Mr. Strong:

Q. How long had you known Doctor Freeman?

The Court: He said that three times, Senator.

A. Ten or twelve years.

Q. You say he had sought your advice on numerous occasions? A. Of the last year or so; possibly maybe two years, he has asked me different things. He would come to my house sometimes on a few occasions.

Q. After this agreement was executed, this trust agreement of May 15th, answer carefully now, how often did you see Doctor Freeman, and where? A. Well, I suppose on an average of maybe five weeks, something like that. I couldn't just say how often.

Q. Once in five weeks? A. I think so, possibly. I met Mr. Freeman along the road a good many times, and I met him once or twice in the streets of New Brunswick here. But to see him at his office, I would say possibly—well, maybe not that often at the office. Just a way I would happen to run into him.

Q. You mean you passed him on the streets? A.

Passed him on the streets, and I saw him at the office a few times.

Q. About the number of times? A. Well, I won't say. Maybe once in five weeks I would happen to meet him there.

Q. You know Mr. Breen pretty well? A. Yes, sir.

Q. Quite a friend of his, are you not? A. Well, in a business way, yes.

Q. Have you ever been to Doctor Freeman's house since the agreement of May 15th? A. No, sir.

Q. Did you report to your firm the offer Doctor Freeman had made to sell to you? A. I did; yes, sir.

Q. And did you report that as evidence of his mental incapacity? A. Well, I reported it—I reported several things as to Mr. Freeman's actions to the firm, and out Saturday afternoon talks, different things that may come up—

Q. Just answer that question, please? A. I won't say as insanity. I spoke about the insanity that come up in Mr. March's office.

Q. I suppose you understand that an agreement made by a man who is not mentally capable of making an agreement is absolutely void, don't you? A. Well, I am not a lawyer.

The Court: I do not think the witness is qualified to answer that question. I do not think you have correctly stated the conclusion in that, Senator. I do not understand that is the law.

Q. Did not Doctor Freeman's failing eyesight interfere with his transaction of the business? A. Well, his eyesight was very bad.

Q. And became worse as time went on? A. I would say so, yes.

By Mr. Brown:

Q. Mr. Johnson, you have testified on direct examination about the Doctor's condition as it existed on May 15th, and a time prior thereto, and you testified again, when Senator Strong questioned you, about the same point, about the Doctor's condition on May 15th, and previous thereto. As I have your testimony on direct examination, as I understand it, about this point, is as follows: That the Doctor, for a year or two, or for the last two years, was just as normal as he was on May 15th, is that right? A. Well, at times I have saw the Doctor when I considered him perfectly normal, in that period.

Q. Well, that is the trouble about it, you have testified every way. Now, here is what you testified on direct examination, that on May 15th, 1922, you were present when the trust agreement was made? A. Yes, sir.

Q. You said that he was not in condition to do business, is that right? A. I don't think he was, no.

Q. At that time. And then you were asked how long he was in that condition. You said that he was as normal then as he was the last year or two. And then when you were pressed again you said for the last two years he was in that condition. Is that true? A. Well, this was---

Q. I don't care when it was. From now back two years? That is what you mean by last two years, isn't it? A. Well, there was a time, after he came back from Trenton, the short time there, I don't know, I suppose for maybe a month or six weeks, that Doctor seemed different. He seemed to have the alcohol out of him, and he appeared like a different man, for a short time. Then he became the same.

Q. Why, the Doctor's condition after that was worse than before, wasn't it? A. After he come out of the asylum?

Q. Sure it was? A. I wouldn't consider it so.

Q. What was the change of—his physical change and the business changes, if it wasn't worse after than before? A. Well, this was quite a while after that his business changed.

Q. It wasn't very long afterward. Did he become a physical wreck in a month or two? A. Well, I would say—

Mr. Watson: It is seven months.

Mr. Brown: From what?

Mr. Watson: From October to May.

Mr. Brown: He wasn't out of the hospital until October.

Mr. Watson: It is eight months.

Mr. Brown: Well, it was previous to May that this condition existed.

The Court: But the business changed on May 15th.

A. I would say that when the Doctor came out of the hospital, for a month or six weeks, that he was a different man, from what I saw of him.

Mr. Brown: That is all.

Mr. Watson: That is all.

JAMES LORD, a witness produced on behalf of the Caveators, being duly sworn according to law on his oath, saith:

Direct Examination by Mr. Watson:

Q. Mr. Lord, where do you live? A. I live in New York City, sir.

Q. What is your business? A. In the wholesale lumber business.

Q. What company? A. Stevens-Eaton Company.

Q. What office do you hold? A. My office is secretary of the company.

Q. Did you know Doctor Freenman? A. Yes, sir.

Q. How long did you know him? A. I met Doctor Freeman probably fifteen years ago, and met him several times then, and I don't think that I had seen him in fifteen years, until I saw him about a year ago, sir.

Q. And where and when was that? A. On the 15th of May last year I met Mr. Johnson here in New Brunswick, and we went down to his yard at Metuchen and saw him there. That is the first time I had seen him probably in fifteen years.

Q. Stevens-Eaton Company sold lumber Freeman & Son? A. Yes, sir.

Q. What had been your business experience with Manning Freeman & Son as to credits, and payment of bills? A. Very best in the world, sir, up until a short time before I saw him. For years they discounted their bills; as soon as the bills would arrive they would send us a check for them. Never had any better customers than they were.

Q. What was their condition in the Spring of 1922, financially? A. Well, they were rather embarrassed.

Mr. Davey: I do not know whether this witness knows. He is asking this witness now the condition of Manning Freeman & Son financially. I do not think it is the best evidence.

Q. I will confine it, Mr. Lord, to their dealings

with Stevens-Eaton Company? A. Well, they owed us about six thousand dollars, between five and six thousand dollars, some of it was in notes, and they found themselves embarrassed, they were not able to meet this paper.

Q. So, instead of discounting their bills, they had given you notes? A. Yes, sir; that had come about, probably, I wouldn't say for certain, but I should think possibly a year before that they had gradually gotten so that they had to give notes instead of giving cash.

By Mr. Brown:

Q. A year before May 15th, was it? A. I wouldn't say that, sir; I couldn't tell you exactly, but possibly a year.

Mr. Watson: Mr. Brown, the records of Manning Freeman & Son are available, and we will produce those, and show that exactly.

The Court: It is perfectly proper to ask this witness what happened in connection with the credit of Manning Freeman & Son, so far as Stevens-Eaton Company was concerned.

Mr. Davey: The question I objected to was not that question.

The Court: Well, I understand that the purpose of counsel, in this line of examination, is to bring Mr. Lord down to the 15th of May, and the reasons why Mr. Lord happened to be here on that day, and that is the only effect that the testimony is going to be given by the court. It is only introductory to something that is going to follow.

By Mr. Watson:

Q. Will you please tell the court just what

brought you to Doctor Freeman on May 15th, and just what was done? A. Yes, sir.

Q. Just what part you played in it? A. As I said, they had been slowing up on their payments, and they owed us, previous to May 15th, between five and six thousand dollars, and they found themselves embarrassed temporarily, they couldn't meet that paper, and we had been hearing reports, coming from Mr. Johnson, of the way Mr. Freeman was living and conducting his business, and we got a little bit alarmed, and we asked them for a statement. Mr. Breen, or Mr. Breen's son was the bookkeeper there, he drew up a statement, financial statement of the company, and they were in perfectly good condition, except that they owed quite a little money, and they had a great deal of money standing out on their books, owed to them.

Q. They were lacking working capital? A. I wouldn't say that so much; simply they were lacking somebody to collect their bills. You can't begin a business and let outstanding accounts accumulate, and do a business along, unless you get in come capital. That was the trouble there, they didn't collect their bills. They didn't go after their customers and get the money in. Well, the condition at that time was simply this, that we wanted to get the thing in shape so that we would feel secure; and I think I 'phoned to you and asked to make an appointment; the reason why I 'phoned you was because I knew that you were Doctor Freeman's lawyer, and I came out here and met Mr. Johnson, that was on the 15th of May last, and we came and saw you first, talked to you, told you what was in our minds, and we then went down to Metuchen and got Doctor Freeman and brought him over in the automobile to your office, and we got him to execute a deed of trust, as you know.

Q. At whose suggestion was that A. As I recollect, it was my own, sir; I think that I put it to you and got your legal opinion as to whether it was a proper thing to do, or not.

Q. Well, when Doctor Freeman was there, whose suggestion was it? At the conference between Doctor Freeman, yourself, Mr. Johnson and myself, who suggested it to Doctor Freeman? A. Well, I don't know really whether it was myself, or whether it was you. I think possibly I did. I know I suggested to him and got his consent to it on the way over. Told him what was in our mind, told him we wanted to do that.

Q. On the way over you told him what was in your mind? A. Yes, sir.

Q. Then the document was drawn that day? A. At your office; yes, sir.

Q. You waited while it was drawn? A. Yes, sir.

Q. Doctor Freeman signed it? A. Yes, sir.

Q. And I signed it? A. Yes, sir.

Q. What was Doctor Freeman's metal condition on that day, Mr. Lord? A. Well, what do you mean by his mental condition?

Q. As to his capacity to transact business? A. Well, I really couldn't answer that question intelligently. The Doctor was in— He seemed to me, appeared to me to be like a man who had just come out of a debauch, a drunken debauch. He had very little to say; he didn't talk unless you questioned him, and he just sat in his chair, and he just had that fixed look on his face, and didn't talk unless you spoke to him, and as soon as he answered your question he quit talking. He had very little to say.

Q. Did you notice anything else as to his mentality, mental keenness or acuteness? Can you say whether he was bright, or dull, or keen? A. Why,

he was not at all keen. He was very dull. As I say, he acted to me like a man who had come out of a debauch, and a man usually, under those conditions, is not very keen, or very bright. He just wants to keep still and avoid notice. That is the condition he appeared to me to be in.

Q. Did you consider him mentally capable of transacting business? A. That is another hard question.

Q. Let us get your opinion, Mr. Lord, that is what we want. A. Well, my opinion possibly would be colored by what I had heard of Doctor Freeman, the way he had lived, and his actions for the last several years. And with that coloring, I would not want to make a contract with Doctor Freeman myself. I would not consider that Doctor Freeman was competent to make a contract.

Q. When did you next see him, Mr. Lord? A. I saw him on the 27th of June, the next month, a little over a month afterwards.

Q. What was the occasion of that visit? A. The occasion was that you had telephoned me and asked me to come out, and I asked why, and you said that Doctor Freeman had come to your office, with his lawyer, another lawyer, and made a demand on you that you relinquish this trust that he had given you.

Q. Yes. A. And I said—

Q. You cannot detail the conversation between you and me; that is hearsay. You did come to New Brunswick? You did go to Metuchen, or to New Brunswick? A. I came to New Brunswick; yes, sir.

Q. And you came to see me? A. Yes, sir.

Q. Was Mr. Johnson with you? A. Yes, sir.

Q. What happened as you left my office? A. Well, when I entered your office the first man that

I met was Doctor Freeman, coming out of your room.

Q. You met him coming in? A. No. He was coming out from a conference with you.

Q. Now, tell us what conversation you had with Doctor Freeman and what happened? A. Well, I asked Doctor, I said, Doctor, you are just the man I wanted to see, and just in the place I wanted to see you. Let us go back in and see Mr. Watson. And you were following the Doctor out, and then you said, all of our troubles are over, the Doctor has withdrawn this claim for relinquishing this trust, and everything was lovely. Then we got the Doctor to sit down, and I spoke pretty strongly to Doctor Freeman at that time.

Q. What did you say to him, Mr. Lord? A. Why, I told the Doctor that we had gone through all of this proceeding for his benefit, to conserve his property; that if he had not made this deed of trust, the chances are that his company would have been thrown into the receiver's hands, or into bankruptcy; probably into a receivership; that we had done this thing to work it out and to conserve his property, for his own interests, and he was trying to do something to upset that. And I think I further asked you, and told you we would have to ask you to give us an irrevocable contract to abide by your trust.

Q. You said to me—just tell us what that was, what you asked me to do, in his presence? A. Well, we were relying upon you to take Doctor Freeman's place in this company, to run this company; you had been elected president of the company and we relied on you to protect the interests of that company for one year from the date of the deed of trust.

Q. As I understand it, you wanted to make cer-

tain that someone other than Doctor Freeman would be in charge of the business? A. Absolutely. And I asked you the question, if you would give us your word, right in front of Mr. Johnson. You asked me what I wanted. I said, if you will give me your word that you will stay in this thing until the end of the term, that that will be perfectly satisfactory to us; and you said that you would, unless you had our consent; that you would not relinquish this trust.

Q. Doctor Freeman was present then? A. Yes. I don't think the Doctor was present when I spoke to you. I think the Doctor had gone out, but I am not positive as to that.

Mr. Strong: Then I object to that and ask it be stricken out.

Mr. Watson: My recollection is the contrary, but I may be wrong about it. I would not have asked him, otherwise.

Q. What was his condition of mind on this 27th of June, Mr. Lord? A. Practically the same as the other time, Mr. Watson. I don't think that there was any difference in his condition. I couldn't see any difference.

Mr. Watson: Cross examine.

Cross Examination by Mr. Strong:

Q. Mr. Breen had been in charge of the business of Manning, Freeman & Son for a good many years, had he not? A. Mr. Breen was his foreman, and he was the second in command. I don't think that he was in entire charge of the business. Doctor Freeman was supposed to have been in charge of it, but Mr. Breen was there in charge when he was not there.

Q. Do you think Mr. Breen was not capable of collecting the moneys? A. I wouldn't say that, sir.

Q. Wasn't there a bookkeeper there too? A. Yes, sir.

Q. How many employees were there there? A. I couldn't tell you that, sir.

Q. The difficulty with the firm was that they had such a large amount of accounts outstanding, isn't that right? A. In my opinion that was the trouble with the company.

Q. And hadn't it been for some time, about eighty thousand outstanding accounts, weren't there? A. I think that is the amount, about eighty thousand is my recollection; yes, sir. That included what was good, and what was not so good.

Q. Had it or not, for a long time before that, been the custom, your custom to have every order given by that company O. K'd by Mr. Breen? A. I couldn't answer you that question. Mr. Johnson is salesman, and he would turn the orders in, and we knew that the order was a bonafide order, or otherwise he would not have sent it in to us to fill.

Q. You can not answer that, you say? A. Yes, sir. I can't answer that question.

Q. This agreement that the Doctor executed at a time when you say he wasn't capable of executing an agreement, divested him of the entire business of Manning Freeman & Son? A. Absolutely, sir.

Q. The second time you saw the Doctor and you spoke to him, he seemed to understand everything you said to him, the time you said you saw him? A. Well, I presume that he understood. I couldn't answer that question. You can't tell whether a man understands what you say to him, or not.

Q. You would not continue to talk to him unless he seemed to comprehend? A. I was doing most of the talking, sir, so I don't know whether what I said to him went into his mentality, or not.

Q. What did you say? A. I say that I was doing most of the talking. Now, whether it sunk in or not, I couldn't tell you.

Q. You would not do any talking with a man you thought did not understand you, would you? A. I would make an attempt, sir, yes, if I thought it would do him any good.

Q. You had quite a lengthy talk with him, didn't you? A. I did. Probably five or ten minutes. Ten minutes, I should say.

Q. If he wasn't intelligent within that ten minutes you would probably have known it, wouldn't you? A. Well, I might, and I might not. I might get tired of talking.

Q. Well, but you would not try him out for ten minutes? A. The Doctor was just the same condition as he was before. He acted to me, as I said before, like a man coming out of a drunken debauch. I can't give you any more idea as to his condition than that, sir.

Q. Did you explain to Doctor Freeman this trust arrangement that was consummated? A. Yes, sir. I explained it to him very carefully, and Mr. Watson did the same thing.

Q. Did he understand it? A. He understood it thoroughly. If there was any way of understanding, he understood it; yes, sir.

Q. Well, did you think he understood? A. Yes, sir.

Q. The next time when you talked to him, on June 17th, you are not certain that he did understand? A. Well, I don't know that he did, because he didn't come back at me. But he came back and

signed the document in the first place, so I presume he understood it.

Q. And yet you say that on both occasions he was mentally the same, is that right? A. Well, it is just a question in my mind whether he throughly understood it the first time anyway, because the first time when he signed it, the first time that I was there, when he signed this document, according to the terms of that he had absolutely nothing at all to do with the Manning Freeman Company. He divested all his management and all his interest for the term of one year. Mr. Watson here gave him a bond. I think I asked you for that, did I not, in order to protect the Doctor's interest?

Mr. Watson: You did.

A. For twenty-five thousand dollars.

Q. You don't think he understood what he was doing at the time? A. I don't know that he understood it thoroughly, sir, for this reason, that he was not leaving the business entirely alone, after he had signed that document. I said to him, and Mr. Watson said to him, now, Doctor, this business is entirely out of your hands; your health has not been good, the best thing for you to do is to go away somewhere, take a trip, or stay home. Don't go near the yard. Well, the information that I got afterward that he was coming down to the yard and interfering with the management of the business. And that is one of the things that I talked very strongly to him the second time I saw him.

Q. Told him to stay away? A. Stay away, keep away from the business. You have got nothing at all to do with this business. We are working this business out for your interest, and leave it alone.

Q. When you told him at the time the agreement

was—after the agreement was executed, that he no longer had anything to do with that business, what did he say to that? A. He didn't say anything, sir. He just sat there just mute.

Q. You thought there was nothing wrong whatever about taking away from a man the control of his business, at a time when he was unable to consent to it? A. Why, I thought we were doing the kindest good we could, sir. Conserving his business.

Q. For your benefit? A. No, sir; not for our benefit, no more than his.

Q. No. But wasn't it for your benefit? A. It was for our mutual benefit.

Q. Wasn't it for your benefit? A. Not any more than for his benefit. Really not as much for our's as for his.

Q. Didn't you say that because of the reports you had heard about the concern, and reports you got about their financial standing—

> The Court: Well, Senator, the trust agreement is not under attack at this time. I do not think it is worth while to go into that. Whatever motives anybody had in connection with the trust agreement, at this time, will not have any bearing on my conclusions, and I doubt if it will on any other court's conclusions as to whether or not Doctor Freeman was competent on the 12th of July, which is the issue we are trying here.

Q. Did Mr. Watson also tell him to stay away from the business? A. Yes, sir.

Q. And not interfere? A. Yes, sir.

Mr. Strong: I guess that is all.

Cross Examination by Mr. Brown:

Q. On the 15th day of May you didn't think the Doctor was competent to transact business? A. Well, now, sir, that is rather a hard question. He was signing a document. If you want my own opinion, it is a question in my mind whether he was competent. As a matter of fact, I think I told Mr. Watson that I didn't think that he was competent, that I didn't think that the document was really a legal document, but what I said to him was this, that what we were doing was conserving his interest. If we were doing anything to take any money away from him I should say that we were putting ourselves in a pretty ticklish position, but what we were doing was trying to conserve Doctor Freeman's property, to pay his debts, and to get his concern in a financial condition where he would be easy. But, as to whether he was really competent or not, I don't know. I should say not. I would not have signed a contract with him to sell him any great amount of lumber on that day, unless I knew where the money was coming from quickly.

Q. In other words, you thought that your act was that of a just business man, attempting to conserve the estate of a man whom you thought was not capable of minding his own business? A. I will say that, sir; yes, sir.

Q. And that you took the bull by the horns, as the expression goes, and had the agreement signed, as the only way out of it? A. I will answer that question yes.

By Mr. Davey:

Q. Would you have concerned yourself about the matter at all, unless you had an outstanding debt against the company of some five or six thousand dollars? A. No, sir.

By Mr. Strong:

Q. Were you not aware that the courts would protect Doctor Freeman, and his interests, if appealed to, just as well, and much better than any trust agreement that he could execute, whether he was mentally sound or unsound?

The Court: I do not think that is a fair question.

A. It is very easy to answer it, if you want me to answer it.

Mr. Watson: Let him answer it.

A. I felt this trust agreement would conserve his property better than anything we could do for him. Better than a receivership. A receivership would affect his credit. This did not affect his credit. After he signed that we were perfectly willing to give him any more credit he wanted, and we were willing to wait until such time as the president of the company, Mr. Watson here, was able to force the employees to collect in their accounts, and pay their bills, which they did.

Q. Didn't you know that the court would protect him, without appointing a receiver, if necessary?

The Court: Senator, we cannot go into this trust agreement.

Mr. Strong: Just one more question.

The Court: You have had your one question now. I do not want to go into this trust agreement, because that is collateral to this present issue. I do not care what the motives were that actuated Mr. Lord, or any-

body else, in connection with that trust agreement, nor what Mr. Lord's conclusions were as to what other remedies they might have. If they acted with the very worst motives in the world,—which I do not think they did, as a matter of fact, I think it was quite the contrary,—but if they did act with the very worst motives in the world, in connection with that trust agreement, it does not have any bearing whatever on the execution of this will, and I do not want to get a whole lot of—we have too much collateral matter in the record already.

Mr. Strong: It has a bearing on the man's mentality.

The Court: Not what these people thought about the legal remedies they might have to use at that time; aside from that, this does not have any bearing on his mentality. We have gone into the question about what Mr. Freeman's mental condition was, so far as this witness observed it.

Mr. Strong: It is hardly conceivable that this man would have permitted this agreement to be executed, if the Doctor was not in a condition to execute an agreement.

Mr. Watson: What is inconceivable about that, may I ask?

Mr. Strong: It is. I cannot understand how anybody would take a man's property out of his hands at the time he didn't know what he was doing.

The Court: There was nothing taken out of his hands, as a matter of fact, under this trust agreement. It was a trust agreement made for the benefit, as I understand it, of Doctor Freeman, and Doctor Freeman's es-

tate. It simply was placing the temporary control in the hands of a legal representative of Doctor Freeman. As to whether or not Doctor Freeman was competent to execute it is, of course, a pertinent issue to throw light on whether he was competent to execute a will on the 12th of July, but the motives that actuated Mr. Lord, Mr. Watson, or Mr. Johnson, are not in issue, and whatever other legal methods might have been used to have brought about the same result, is not an issue. If you want to ask about it, you can go to any length to ask this witness about Doctor Freeman's mental condition at the time this agreement was executed, and I will not stop you. But when you go into an examination on his motives, and his judgment as to what was a proper thing for Doctor Freeman to do at that time, I am not going to let you go into it.

Mr. Strong: I must defer to your Honor's views in the matter.

The Court: I think you agree with me too, Senator.

Mr. Strong: That is all.

Mr. Watson: That is all, Mr. Lord.

By Mr. Strong:

Q. Has Mr. Watson ever represented you or your company before? A. No. He never has represented our company.

Q. Never did at any other time before? A. No, sir.

Q. Never corresponded with him at all? A. Not that I know of. I don't think so. I have no recollection of it.

Mr. Watson: I never did.

EDWARD BURROUGHS, a witness produced on behalf of the Caveators, being duly sworn, according to law on his oath, saith:

Direct Examination by Mr. Watson:

Q. Mr. Burroughs, where do you live? A. At Metuchen, New Jersey.

Q. What is your business? A. Contractor and builder.

Q. How long have you lived there? A. Thirty-five years.

Q. Did you know Doctor Freeman? A. For at least thirty years.

Q. Did you know him very well? A. Intimately.

Q. How often did you see him? A. Previous to two or three years ago, every day of my life. The last two or three years, probably two or three times a month.

Q. Do you know anything about his habits as to the use of liquor, or alcohol? A. I have seen him very often under the influence of liquor.

Q. What was his condition of mind when he was under the influence of liquor? A. Very much the same as any other man, unreliable.

Q. Can you tell us anything else about him, Mr. Burroughs? How about his speech? A. Thick, unintelligible.

Q. How about his conversation? A. Maudlin.

Q. What about him physically? A. Generally able to take care of himself. I have seen him, however, when he could not. Had to be helped.

Q. During the last year of his life, during the Summer of 1922, Mr. Burroughs, did you see him? A. I saw him a couple of times a month.

Q. Whereabouts? A. In his office, and on the street, maybe oftener than that. Maybe four times, four or five times a month.

Q. What was his condition during the Summer of 1922, Mr. Burroughs? A. I would go into the office on business with him and find a chair; hello, Charlie, how do you feel. And he would mumble something; maybe he would answer me intelligently, maybe not. Maybe he would look at me and wouldn't know me, complaining of his eyesight.

Q. What was his mental condition? A. He acted to me as though he did not understand what I said to him.

Q. Was he intoxicated? A. Well, under the influence of a narcotic of some sort, yes.

Q. You though he was under the influence of a narcotic? A. Yes.

Q. Dopey? A. Yes.

Q. Did you do business with the Doctor? A. With Manning Freeman & Son.

Q. Did you do any business with him personally? A. Not with him personally.

Q. Why not? A. Well, I never found him doing business. I always fond Mr. Breen doing business there, or some of the office force doing it. So I had no occasion. He did not appear to be attending to the business of the office.

Q. How long back was that? A. For the last five years.

Mr. Watson: Cross examine.

Mr. Strong: No questions.

Cross Examination by Mr. Brown:

Q. For the last five years then, Mr. Burroughs, every time that you saw Mr. Freeman you didn't think it was well to do business with him? A. I will not say that.

Q. What do you say about that? A. I felt that Doctor Freeman had other people to attend to his

business competently, and that he had neglected it, or rather, he had turned it over to them.

Q. Then he was competent to do business until the time he died? A. I think not. For the last two or three years I think he was no competent. I wouldn't have undertaken to do business with him.

Mr. Brown: That is all.
Mr. Strong: That is all.
Mr. Watson: That is all, Mr. Burroughs.

EDWARD KRAMER, a witness produced on behalf of the Caveators, being duly sworn according to law on his oath, saith:

Direct Examination by Mr. Watson:

Q. Mr. Kramer, where do you live? A. Metuchen.

Q. What is your business? A. General store.

Q. How long have you lived there? A. Forty-five years.

Q. Did you know Doctor Freeman? A. Very well.

Q. How long? A. For the last forty-five years.

Q. How often did you see Doctor Freeman? A. Almost every day.

Q. Do you know about his habits as to the use of liquor and drugs? A. He came in the store occasionally; while he had the hotel next to me he used to tie his horse in the front of the store, and went through the store and out of the back door into the saloon, and I stopped that. I saw him a half a dozen times so drunk that I was ashamed of my family to see him go to the store in that condition.

Q. Did you see him drunk very often? A. Yes, sir.

Q. During the last year of his life how often did you see him? A. About two or three times.

Q. Only two or three times? A. Going in to the post office and back. He never came into the store after I stopped him there, except once a year ago he came in there and asked for a loan of forty dollars.

Q. A year ago, do you mean a year ago now? A. No. A year ago in October. That was last October.

Q. It was last October? A. Last October; yes, sir.

Q. What was his condition on that day? A. He was full. Loaded.

Q. How was his mind when he was intoxicated, Mr. Kramer? A. He didn't know what he was talking. I said, Doctor, if you want money, why don't you go over into the bank and draw a check. He said no, can't draw checks.

Q. What was the condition of his mind usually when he was intoxicated? A. He seemed to be tongue-tied. Try to get in conversation with him in the past two years, couldn't get in any conversation with him.

Q. Did you know of his using drugs? A. That I didn't—he looked to me that way when he passed the store, or riding in the automobile under that condition . A man using opium.

Mr. Watson: Cross examine.
Mr. Strong: No questions.

Cross Examination by Mr. Brown:

Q. The reason you could not carry on a conversation with him for two years past was because he

wasn't mentally fit to carry on a conversation? A. That is the way he acted to me, sir.

Mr. Brown: That is all.

By Mr. Brown:

Q. And during the last two years you have seen him two or three times a week? A. Yes, sir.

Mr. Strong: He didn't say that.
Mr. Brown: He has said it now.
Mr. Strong: No. You put it in his mouth. He didn't say that.

Q. How often have you seen him during the last year? A. Two or three times, passing the store.

By the Court:

Q. Mr. Kramer, you did not understand Senator Brown's question, or at least, I do not think you did. During the last two years how often have you seen Doctor Freeman? A. Twice a day, sometimes, going to the post office and back in his automobile, but not to talk to.

Q. You said two or three times; do you mean two or three times, or two or three times a week? A. A week.

The Court: That is what I want to get, to get the record straight.

By Mr. Brown:

Q. How often did you see the Doctor to speak to during the last two years? A. Well, since I stopped him going to the store, he got angry at me, and I didn't loan him the money.

Q. You stopped him going through the store a year ago? A. No. Three years ago. Then I refused to give him the money, and our friendship ceased. He didn't speak to me any more.

Q. You said two years he wasn't fit to carry on a conversation with him. What two years were they? A. Up to last October.

Q. How do you know that, that he wasn't fit? A. I met him at the post office, going down past my store, he had to stop there. Half of the time he stopped his machine there and walked down to the office.

Mr. Brown: That is all.
Mr. Strong: That is all.

IOW R. EDGAR, a witness produced on behalf of the Caveators, being duly sworn according to law on his oath, saith:

Direct Examination by Mr. Watson:

Q. Where do you live, Mr. Edgar? A. Metuchen.

Q. How long have you lived there? A. Since 1858.

Q. Did you know Doctor Freeman? A. I did.

Q. How many years did you know him? A. Oh, since he was a boy, I guess.

Q. Are you related to him? A. No.

Q. I understood you were some distant relation to him. A. No.

Q. How often did you see Doctor Freeman, Mr. Edgar? A. Occasionally. Mostly in his office.

Q. What do you mean by occasionally? A few days a week, a month, or a year, or what? A. When I had to do business at the office.

By the Court:

Q. How often was that? A. When I wanted to order something for myself, or lumber for the church, or something like that. Whatever would take me there.

Q. I do not know how often you wanted to order something for yourself, or for the church. I want you to give me some idea about whether it was once in ten years, or once in a year, or once a month? A. Well, possibly once a month.

By Mr. Watson:

Q. Did you ever see him around the streets in Metuchen also? A. Saw him around the streets frequently.

Q. Meet him in and about Metuchen? A. I was not intimate with Charlie. Just pass the time of day with him.

Q. Do you know anything about his habits as to intoxication? A. I have known for years that he indulged in alcoholic drinks.

Q. Did he get intoxicated? A. Yes.

Q. Did you ever see him that way? A. Yes.

Q. What was his condition of mind when he was that way, Mr. Edgar? A. He was dull, and was not inclined to answer greetings when I passed the time of day with him. He never had much to say.

Q. How was his mind? A. I should say rather stupid.

Q. Did you see him through the last Summer, Summer of 1922? A. I probably have at the office. And, of course, I used to see him quite often in his automobile with his chauffeur, passing my house.

Q. Did you observe anything about his condition

then? A. I couldn't say, when he was in the automobile.

Q. Can you tell definitely whether you saw him to speak to during the Summer of 1922? A. Yes.

Q. Did you see him in an intoxicated condition at that time?

Mr. Strong: That is very leading.

The Court: I suppose it is a little bit leading. Not very much, Senator.

Q. The question is, Mr. Edgar, during last Summer, the Summer of 1922, did you see Doctor Freeman in an intoxicated condition? A. I think so. I believe so.

Mr. Watson: Cross examine.

Cross Examination by Mr. Strong:

Q. You hesitated quite a while before you said I think so. A. Well, when you meet person in a casual way you can't always place when, and so on.

Mr. Strong: That is all.

Cross Examination by Mr. Brown:

Q. Mr. Edgar, did you realize any change in Doctor's mental and physical condition, as time went on? A. As I recollect, the last time I spoke to Doctor Freeman, I think it was in February, this year, and I was rather surprised, because I had heard he was told not to come to the office. So I passed the day with the Doctor, and I asked him how he was, and he looked at me, but he didn't answer anything. He acted stupid.

Q. When did you notice a change in the Doctor's general condition, as to mental acuteness?

Mr. Strong: He has not said anything that he ever did notice any such change, Mr. Brown.

Mr. Brown: Well, I will ask him.

A. I would meet him in the post office during 1923, I would notice, naturally, his condition, apparent condition.

Q. Well, before that time, was there any time during the Doctors' life that you considered him mentally efficient or capable?

Mr. Strong: I object. That is not a fair question.

The Court: He can answer yes on that question.

A. Yes.

Q. Up to what time? A. Why, I would think for the past at least two years I have noticed him, and knowing him from a boy, of course, I always felt badly to see him in that bloated, stupid condition, and knowing his family for so many years; but personally I had very little to say to Doctor, only to pass the time of day.

The Court: The witness has certainly misconstrued the question.

Mr. Brown: Yes. He did not even give the reverse of his proposition, in his answer.

Q. You say that you can tell a time when the Doctor appeared to you to be mentally efficient, mentally capable? A. I understood deficient. I didn't understand that word.

Q. How long was he mentally efficient? A. I couldn't say. Some years back.

Q. From what you saw of the Doctor's looks, his speech, his actions, his conversation, would you

say that he was mentally deficient? A. For the past at least two years.

Mr. Brown: That is all.

By Mr. Strong:

Q. That is while under the influence of drugs or liquors? A. I don't know what it was. Only from hearsay.

Q. Well, he seemed to you to be under the influence of something, is that right? A. He seemed to be stupid. From what effect, I don't know. Probably, I took it, it was drugs and whiskey.

By Mr. Brown:

Q. Well, that condition was permanent, as far as it appeared to you? A. It appeared to me.

Q. For the last two years? A. As I saw him in the post office, and at the office.

Q. Wherever you saw him, for two years? A. Wherever I saw him; yes, sir.

The Court: You use permanent in the sense of constant, continuous?

Mr. Brown: Yes. Whenever he saw him he was stupidly deficient, for two years, at least.

The Court: That is all, Mr. Edgar.

Mr. Watson: That is all, Mr. Edgar.

HARRY F. WIGHT, a witness produced on behalf of the Caveators, being duly sworn according to law on his oath, saith:

Direct Examination by Mr. Watson:

Q. Where do you live, Mr. Wight? A. Metuchen.

Q. What is your business? A. Salesman.

Q. What company? A. Edison Cement Company.

Q. Did you do business with Manning Freeman & Son? A. I have.

Q. Did you know Doctor Freeman? A. Yes, sir.

Q. How long did you know him? A. Since 1914.

Q. Do you know anything about his habits with reference to the use of alcohol or drugs? A. Well, I never saw him take a drink.

Q. You never saw him take a drink? A. No.

Q. Did you ever see him intoxicated? A. Well, I have seen him when I thought he was under the influence of some drug or liquor.

Q. How often, Mr. Wight? A. Oh, perhaps a dozen times.

Q. What was his condition when he was that way? A. Well, he seemed dopey, and at other times when I would meet him he would be very friendly, and he was a great fellow to jolly with you. And other times I would meet him when he was that way, he wouldn't pay any attention to me.

Q. Well, when he was that way, when he was dopey, as you call it, how was his speech? A. Well, he didn't have much to say.

Q. Do you mean that his mind was dull? A. Yes.

Q. You had a business transaction with him with reference to a cement order at one time, did you not? A. He spoke to me one time about six weeks, I think, before he died, about some cement, and I didn't pay much attention to it, and about a month before he died he came up to my house one evening, I was very much surprised to see him there, and said he wanted to buy fifteen thousand barrels of cement. That was quite a lot of cement.

Q. How many carloads would that be? A. About, approximately seventy-five cars.

Q. What did you say to him? A. Well, I just kind of jollied along with him, and told him I would take the matter up. There was never anything done with it, because I knew there wasn't anything to it.

Q. You knew his business could not handle an order of that size, is that right? A. Yes, unless there was some specific work, which I asked him at the time, and he said there wasn't anything.

Q. What was his condition that time? A. Well, he talked over several things, outside of the cement business. Said he was going back into business himself.

Q. Well, was he intoxicated, or dopey, as you call it? A. No, he wasn't intoxiacted that night. He rambled off a little bit, but he came right back again, and stayed a little while.

Q. What do you mean he rambled off? A. Got talking on some other subjects; I don't recall just what they were now. It didn't pertain to what he came to talk, about.

Cross Examination by Mr. Strong:

Q. Did you know that he had an agreement which would terminate this May, by which he would get—and after that he would get the business back himself? A. He told me that he expected to take back the business again some time in May.

Mr. Strong: That is all.

Cross Examination by Mr. Brown:

Q. Since 1914, Mr. Wight, whether the doctor was under the influence of liquor, or opiates, or

not, his condition was different from a normal man, was it not? A. Yes, it was at times.

Q. His actions, when under the influence, were different from that of a man who drinks occasionally? A. Yes, they were.

Q. Did it seem to you as if he was a man that was under the influence of some opiate, or some stimulant, all the time? A. Well, I don't know. I always thought he took dope, the way he acted.

Q. For the past two years, or more, would you say about whether he improved in his mental capacity, or not, as you saw it? A. No, I don't think he did. I could see a change in him since I first came to Metuchen in 1914.

Q. You could see a change? A. Oh, yes, I could.

Q. When was there a decided change for the worse, if there was one? A. Well, I should say in the last couple of years.

Mr. Brown: That is all.

Mr. Watson: That is all, Mr. Wight.

CHARLES C. WEBER, a witness produced on behalf of the Caveators, being duly sworn according to law on his oath, saith:

Direct Examination by Mr. Watson:

Q. Mr. Weber, where do you live? A. Metuchen.

Q. How long have you lived there? A. Twenty-four or twenty-five years.

Q. Do you hold any official position? A. Yes, sir.

Q. What is it? A. Recorder.

Q. Did you know Charles M. Freeman? A. I did.

Q. How long did you know him? A. Since I came to Metuchen.

Q. How often did you see him, Colonel? A. Well, more or less every day, when he was around town.

Q. Do you know anything about his habits as to the use of alcohol or drugs? A. Well, I know that he has been a pretty heavy drinker.

Q. Do you know anything about his use of drugs? A. Not personally. I have heard, sir.

Q. Have you ever seen him intoxicated? A. Yes, sir.

Q. How often? A. Oh, I don't know. I never kept tabs on him.

Q. Well, a few times, frequently, or what? A. Very often.

Q. During the summer of 1922, last summer, did you see him often? A. I saw him, but not to speak to.

Q. Where, and under what circumstances would you see him? A. Well, I met him in the post office, and saw him driving by in his automobile.

Q. How often? A. Every day, when he was in town.

Q. What was his condition? A. Well, he always looked to me as if he was half asleep.

Q. To what did you attribute that? A. Well, to his habit of drinking.

Q. Anything else? A. Perhaps taking dope.

Q. What was his frame of mind, what was his condition of mind when he was under the influence of liquor or drugs, either or both? A. Well, I can't tell anything about that, because I haven't spoken to him for several years; but before that he was nasty, he used very vile language on the least occasion; well, always seemed to me to be under the influence of liquor, or something else.

Q. How was his speech at such times? A. Very thick. The same as any man who has been drinking.

Q. Was it intelligent? A. No.

Q. How was he physically at such times? A. Well, I think his physical condition has been more or less good, until here lately, I have noticed that he has been walking with a cane, when I did see him, and very shaky.

Q. When did you notice this change in him, Colonel? A. Why, in the last two or three years. It seemed to be progressing and getting worse all the time.

Q. Did you notice any change in his mental condition? A. I haven't spoken to him.

Q. You just speak of his appearance to you as you saw him from time to time? A. Yes.

Q. Was he committed to the State Hospital for the Insane at Trenton, on your commitment? A. Twice.

Q. When was the first time, Colonel? A. Well, I don't remember when the first time was, exactly. It was some years ago. Probably three or four years ago.

Q. Did you see him at that time? A. I did.

Q. What was his condition then? A. Very bad.

Q. How was he mentally? A. Very bad.

Q. Well, tell us something about it, Colonel, how he spoke and how he acted? A. Well, he spoke in a very irrational way.

Q. Irrational? A. Yes, very irrational. Didn't seem to be able to connect his words.

Q. Anything else of that kind? A. Seemed to be groping around for something, and then lead off on something else. When he was committed the second time, why, he wouldn't go unless I went with him.

Q. The second time? A. Yes.

Q. Did you go with him? A. I did.

Q. What was his condition at that time? A. Very bad.

Q. Tell us again, Colonel, was it the same as before, as to his mentality? A. It was worse.

Q. It was worse? A. It was worse.

Q. I understood that the first time he went to the hospital he went voluntarily. Am I in error as to that? Did you commit him legally? A. Well, he was examined by Doctor Ellis and by Doctor Lippincott, I think, the first time, but he wasn't committed, because he went voluntarily with Mr. Dinwiddie.

Q. What about the second time? A. The second time he was committed on the statement from Doctor Ramsey and from another doctor who was a specialist, an alienist. I don't know exactly, I don't remember exactly his name now.

Q. You signed the commitment papers? A. I did.

Mr. Watson: Cross examine.

Cross Examination by Mr. Davey:

Q. Mr. Weber, on the second occasion when you say you committed him, when was that? A. That was two years ago, I think.

Q. August 21st, 1921? A. Something like that, yes.

Q. And who made the complaint? A. Mrs. Freeman.

Q. Do you know whether or not the doctor had been on what has been called here a spree, before, at that time? A. Which doctor?

Q. Doctor Freeman? A. Whether he had been on a spree or not?

Q. Yes. A. I don't know.

(Question repeated by stenographer.)

A. Yes, I had seen him myself a couple of days before that.

Q. You say you saw him more or less every day? A. Yes.

Q. Do you mean that you conversed with him more or less every day, in the earlier years? A. No, sir. I distinctly stated that I hadn't spoken to him—

The Court: No. The earlier years.

A. Oh, in the earlier years, oh, yes.

Q. More than just casual conversation? A. Oh, yes, we had many a conversation about different things.

Q. But not every day? A. No, not every day.

Q. And you continued seeing him, but you did not continue speaking to him, is that right? A. That is only since he has been committed the second time.

Q. Isn't it a fact that he wouldn't speak to you because you committed him? A. That is very much of the fact. He was going to get square with me for having committed him.

Q. He resented the fact of being committed, did he not? A. He decidedly did.

Q. He resented the fact that his wife made the complaint on which he was committed, did he not? A. I believe he did.

Q. And resented also your action, although that was official? A. He resented everything.

Q. The two doctors who examined him on that occasion were both from Perth Amboy, were they not? A. They were both alienists.

(Question repeated by stenographer.)

A. Yes.

Q. And who was there on the occasion of the signing of that commitment? A. Mrs. Freeman, Officer Schmeltzer, who accompanied us, and the taxicab driver that took us to the State Hospital.

Mr. Davey: That is all.

Cross Examination by Mr. Brown:

Q. Was there anything brought to your attention, just previous to his commitment, about the doctor's conduct, that assisted your determination? A. Why, yes. Mrs. Freeman had been to see me at the house, at my house, and said to me—

Mr. Davey: I object to what Mrs. Freeman said.

A. Well, that is what he wants to know.

Mr. Strong: He wants to know it, and we don't. It is pure hearsay.

The Court: How is it comeptent, Mr. Brown?

Q. From what Mrs. Freeman told you, what did you say or do? A. What do you mean, Senator?

Q. After Mrs. Freeman came to your house,— when was that, may I ask? A. Why, just one or two days before he was brought down for examination by the doctors.

Q. Did you observe the doctor? Did you go to the house, or observe him? A. To his house?

Q. Yes. A. No, sir.

Q. Was it brought to your attention, in your official capacity, that his conduct about Metuchen was such that it would be safe, or best, to put him away?

Mr. Davey: I object. Because if it was brought to his attention in an official capacity, that means whatever was taken before him, and I think a judge may not, in one issue of this kind, recite evidence taken before him, in a matter of that kind, two years ago.

The Court: I know what you are driving at, Senator.

By the Court:

Q. As the result of information that came to you, did you make any observations of Doctor Freeman's actions? A. I didn't see him.

By Mr. Brown:

Q. Well, were there any complaints made to you of carrying revolvers, or doing any unlawful act?

Mr. Strong: I object to that.

The Court: I think it is incompetent, Senator.

Q. Is this a copy of your record, as to a complaint and trial of the doctor, with others? A. Yes, sir.

Mr. Brown: We offer that in evidence.

Mr. Davey: Objected to as immaterial.

Q. At the time that this complaint was made before you, and hearing had, you saw the doctor then, did you not? A. Oh, yes.

Q. Now, colonel, will you please tell what the doctor's condition was at that time? A. Well, he had been on a spree for two or three weeks.

Mr. Davey: I think that ought to be stricken out. The witness had not seen him for some days before.

A. I beg your pardon. This is away back in 1907. This is not 1921 or 1922. That is away back in 1907.

Mr. Brown: I want to lead down from that time on.

The Court: I misunderstood you. I do not know whether it is competent to examine on that yet.

Mr. Brown: This is a complaint about his condition in 1907, and his commitment.

The Court: That has not been admitted yet, Senator. I thought you were referring to his commitment to the State Hospital by Judge Weber. Any objections to the complaint?

Mr. Strong: It seems to me to be about as informal a document as could be imagined. It is not signed by anybody, nor sworn to by anybody. It is just a memorandum in someone's handwriting.

A. That is a memorandum of mine, in my handwriting.

Mr. Watson: The witness can testify from his memory.

Mr. Strong: He cannot testify to anything incompetent, from his own memory.

Mr. Davey: I would like to have your Honor look at this. This has no reference to any—

The Court: I have not admitted it yet. I have not seen it.

Mr. Brown: The paper is not in such form, if there is technical objection made to it being a record before the magistrate, that it is admissible; but I think the magistrate, having kept the record, he can swear to it now on oath, it would make it admissible, or, if necessary, use it to refresh his memory.

A. That is my own handwriting, copied out of my docket. I only took that as a memorandum to give to Mr. Watson, because Mr. Watson asked me if I knew of any case where he had been brought before me for any derelictions, and I remembered that, and that is away back in 1907, and I copied it from the docket.

Mr. Davey: I think it is immaterial, and too remote.

The Court: I really do not see how this record, or the facts, are particularly relevant to this issue.

Mr. Brown: Here is a man about fifty years of age then, 1907 he must have been almost fifty years of age, and in a town where he had lived all his life, and his people before him.

A. He was a year younger than I am.

Mr. Brown: To get into a position such as is described in that commitment would seem to me to indicate—

The Court: If you think that it has any probative effect, I will let you ask Colonel Weber what it was, but I cannot admit that paper.

Mr. Brown: No. If they insist upon that objection.

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Q. Well, in 1907 you had occasion to observe Doctor Freeman then, did you? A. Yes, sir.

Mr. Strong: I object.

Q. When he came before you as a magistrate? A. Yes, sir.

Q. What was his condition? A. He was pretty beastly drunk, hardly able to stand.

Q. And he was there on a charge? A. He was there on a charge of gambling.

Q. And he was found guilty? A. He was sent up to the grand jury, and that ended the case, as far as I remember. Nothing done. He was shooting craps with a lot of niggers and one white man.

Mr. Davey: That I move to strike out. There is not any proof of that here.

The Court: I will not strike it out. It is all right, Mr. Davey.

Q. Well, did the doctor deny it? A. No, he did not deny it. He said they robbed him of over five hundred dollars.

Q. And they were all there at the time? A. They were shooting craps in McGinnis' shed, the horse shed, in the rear of Main Street there.

Q. You saw the doctor from time to time thereafter, did you not? A. Yes.

Q. Every day, you say? A. Every day when he was in town.

Q. And you say that he was a very heavy drinker? A. He was.

Q. You said that for the last two years, as I understand your examination, he was always under the influence of liquor when you saw him? A. Or dope, something.

Q. Now, previous to the last two years was he

affected by the use of liquor, or dope, as far as you could see? A. That was always since I have known him.

Q. And was the condition a constant condition, or a varying condition, or how was it? A. Well, I can only answer that by saying that every time I saw him he seemed to be either just on a spree, or just getting off of a spree. He was always in the same condition. He was more or less of a dope—always in a dopey condition.

Q. During the last two years you say he was—

A. He was worse than ever. The only time I really noticed a particular improvement in him was in a period anywhere from four to six weeks after he came out from the State Hospital the second time. Because he had been in there quite some time, and he responded to the treatment, that he really looked better than I had ever seen him look for a good many years.

Q. You didn't converse with him after that time? A. I did not converse with him.

Q. You don't know whether he was drinking, or taking dope then, or not, do you? A. Not at that time he wasn't, I don't think, because he was in very fine shape. He had a good, healthy color in his face, and walked steadily, and acted like a different sort of a man, and that lasted for four to six weeks. And all of a sudden he started off.

Q. Well, his condition was worse, when he started off, than it was before he went away, wasn't it? A. Yes.

Q. So that evidently the cure didn't make any permanent improvement? A. It didn't last.

Q. Very transitory, wasn't it? A. Yes.

Q. When he did go to pieces? A. He went fast.

Q. So that evidently the so-called cure must have had some permanent, destructive effect upon his make-up? A. I can't tell you that.

Q. The result was that he had less resisting power after he came out than he did before? A. Evidently.

By Mr. Strong:

Q. You say that evidently was the result of his confinement? A. That is a question I can't answer, Senator.

Q. Do you say as an expert that confining a man in a hospital has a bad effect? A. I am not an expert.

Q. Do you feel you could say whether his collapse was due to the fact that he had been in the hospital? A. No, I couldn't say that.

Q. That is what you did say. A. I didn't say anything of the kind.

Q. You certainly have said practically that. Senator Brown said it for you.

The Court: It might have been construed that way, but I did not understand him to mean that.

A. I didn't mean that.

By Mr. Brown:

Q. It may have been if he received a quantity of liquor and drugs for the four or six weeks that you speak of, that his collapse would not have been so sudden? A. He didn't receive any liquor and drugs while he was in the State Hospital.

Q. No, but I mean after getting out.

Mr. Watson: That is all argumentative.

Mr. Brown: All right. We will have medical testimony to show sometimes the cure is worse than the disease.

SALLIE B. FREEMAN, a witness produced on behalf of the Caveators, being duly sworn according to law on her oath, saith:

Direct Examination by Mr. Watson:

Q. Miss Freeman, where do you reside? A. Brooklyn.

Q. What relation are you to Doctor Freeman? A. His sister.

Q. Older or younger? A. Younger.

Q. You are the youngest of the family? A. Yes.

Q. Your father was Manning Freeman? A. Yes.

Q. And he died when? A. He died in October, 1899.

Q. And he left a will, which is on record in the Surrogate's office here in Middlesex County? A. Yes.

Mr. Watson: The will can be offered if counsel wants it.

Q. Doctor Freeman was the only son, was he not? A. Yes.

Q. And there were four daughters? A. Yes.

Q. And your mother continued to live in Metuchen until the time of her death? A. Yes. No. That was our legal residence, but she spent the last winter of her life in Kingston, New York, and the winter before in Brooklyn, but we kept our home in Metuchen.

Q. When did your mother die, Miss Freeman? A. My mother died in February, 1918.

Q. Under your father's will, Doctor Freeman received the lumber and coal yard, and the inventory, the lumber business, did he not? A. Yes.

Q. And you and your sisters and your mother received your father's other property? A. Yes.

Q. What did that amount to, in dollars and cents, the amount that you received?

Mr. Davey: We object.
The Court: Objection overruled.

A. We didn't realize the residue of the property in actual cash, so I can't answer that question, as to sums of money, but as to income it would—we received between fifteen and sixteen thousand dollars each.

Q. Do you mean the share of each in that residue was between fifteen and sixteen thousand dollars? A. Yes.

Q. While your brother received the entire lumber business? A. Yes.

Q. Who lived with your mother up until the time of her death? A. My two sisters, Nellie and Jane.

Q. In Metuchen, I suppose, when your mother was alive? A. In Metuchen.

Q. What was your mother's condition of health towards the last? A. For practically all the time after my father's death my mother was a semi-invalid, growing more and more of an invalid in the last five or six years of her life.

Q. Was it the condition of her health that took her to Kingston the last two Winters of her life? A. Yes, she thought that she would be better out of Metuchen. The weather there didn't seem to agree with her during the Winter.

Q. Are you employed? A. I teach.

Q. What is your occupation? A. I teach.

Q. In Brooklyn? A. In the Polyprep, C. D. S., Country Day School, in Brooklyn.

Q. It is necessary for you to be employed? A. Yes.

Q. Your three sisters, are they employed, or do they engage in business? A. Since my mother's death two sisters have been employed almost all of the time, and before that time one sister beside myself taught.

Q. How long have you been away from home, Miss Freeman? A. Oh, ever since I left college.

Q. Then you didn't live at Metuchen in your home? A. No. I have been away ever since my father's death.

Q. How often did you see your brother? A. I saw him, not every time I came home, but a great many times, usually when I was home for my Thanksgiving vacation, or my Christmas vacation, I would always see him, I think it is safe to say and, of course, I would see him during the long Summer vacation.

Q. Were you aware of his habits as to the use of liquor and drugs? A. Yes.

Q. Did you know that by personal observation? A. I knew he took liquor, because I smelled it, and for perhaps—well, nearly twenty years I have known he took drugs.

Q. Did you ever see him when he was under the influence of liquor or drugs, either or both? A. Yes.

Q. Very often, Miss Freeman? A. Yes.

Q. What was his condition of mind at such times? A. He was incoherent in his speech, his voice was thick, he seemed to think and speak both very disconnectedly.

Q. How was he physically, Miss Freeman? A. It changed his appearance greatly. He was bloated, his eyes were very bad. He could walk, but not as he walked at other times.

Q. Did he walk normally? A. When under the influence of liquor or drugs he didn't walk normally, no. He could walk, but not normally.

Q. How would you describe his walk? A. As perhaps staggering, perhaps would be correct.

Q. A shuffle, does that describe it? A. During the last few years of his life he shuffled, but earlier in his life, no. I say the last few years of his life, the first time I noticed his shuffling was, I think, when I went to see him in 1921, when he was in the State Hospital.

Q. I direct your attention to the early part of January in the year 1920. Did you see your brother that time? A. Yes.

Q. Where? A. He sent his automobile after me while I was staying with friends in Metuchen, and I saw him first when he came out of the office to get into the automobile to come with him to New Brunswick, and we came to your office.

Q. Had he sent for you? A. My brother sent a telegram to my sister Nellie, since he had not apparently kept my address, I think he had it, I think he had gotten my address at the time of my mother's death and burial, which was the last time I had seen my brother until he sent the telegram in January, 1920, asking that I come to Metuchen with him, that he wished to see me on business. I wrote him that I would be in Metuchen that week, not the day he appointed, a little later, that I was going to be there anyway, and that I would see him then, and that I would telephone him upon my arrival at Metuchen. I telephoned him the night I arrived, at his home; he answered the telephone himself, said he would send the car for me the next morning, which he did; the car stopped at the office, he and Mr. John Breen got in the car, and we came to your office in New Brunswick.

Q. Did he tell you what the business to be transacted was? A. No. Not entirely. He talked very little. He said that I knew the business had been

more or less incorporated, because for years, I don't remember the date, I had been a dummy part of the corporation. He said he wished to re-incorporate the business and put it on a much better footing. I said very little about it. We came on to your office.

Q. What business did he transact there that day, Miss Freeman? A. The business was reincorporated, or perhaps—whether it had been legally incorporated before, or not, but at any rate it was incorporated at that time.

Mr. Watson: It is my intention to have the records here. I have overlooked it. I turned them over to Mr. Hagerty, as Administrator Pendente Lite. It was not really a reincorporation of the company; it was an organization of the company. The records will speak for themselves.

Mr. Brown: The attempt to incorporate originally was not legally effected.

Mr. Watson: The certificate was filed, but there were no records in the office of the company showing the election of any board of directors, or any officers, or any of the other things that go with corporate existence.

Mr. Brown: Anyway, Doctor Freeman had always understood he owned the whole business.

Mr. Watson: That is it.

Mr. Brown: That no certificate was filed, and that this was really the incorporation of the Company.

Mr. Watson: Yes.

Q. What happened there that day, Miss Free-

man, so far as you were concerned, with reference to the organization of the company? A. I listened to the reading of the organization of the company, which still gave Doctor Freeman absolute control of his business in every way. I was a member of the corporation.

Q. Were you elected a director? A. One of the directors.

Q. And that was by his suggestion? A. Oh, entirely. I didn't know anything about it. When he said he was going to reorganize, we were out in the car, I thought probably he was going to reorganize without including me in the corporation. I had no reason to know anything at all about it, but since he had sent for me, I just thought possible, since I had not seen him in that time, he had changed his mind entirely and would perhaps organize the company without my being in it. It was all a surprise to me. But I remained a member of the company, one of the directors, and I think I signed some paper in regard to that. After that Doctor Freeman spoke of the will he had come to draw. You said you had written it in accordance with some notes that he had left with you.

Mr. Brown: May I interrupt at this point? As I understand, the time fixed is 1920.

Mr. Watson: January, 1920.

Q. Go ahead, Miss Freeman? A. You said you had prepared a will in accordance with the notes that he had left. You read it paragraph by paragraph; the matter was discussed by Doctor Freeman and you; there were perhaps one or two small changes made, I am not certain about that, and finally he said that was in accordance with his

wishes. He did not sign the will that day in my presence. At the conclusion of the business Doctor Freeman took me to the station. I was returning to Brooklyn. We had some time to wait for the train and we remained talking in the car until the train came.

Q. What did you talk about, Miss Freeman? A. We discussed some of my personal affairs. We discussed Doctor Freeman's personal and domestic affairs. And we discussed Doctor Freeman's business.

Q. What did he say about his business? What did he tell you of his plans? Do you remember any particular subjects? A. I think I asked Doctor Freeman in a general way how the business was. He said it had been very poor during the war; he seemed very much depressed about everything; and I said, well, everybody was having depressions. I suggested that the business be audited, and asked him if he had had his business audited, and he said no. I asked him why he didn't. He thought it was expense. I said I thought the satisfaction that would come from it would be worth having the business audited once or twice a year; at least once a year, and I urged him to have it audited twice a year. He was rather acquiescent. I said to Mr. Breen, I think that would be a good thing to do, Mr. Breen, and he agreed with me, that he thought it would be a very advisable thing to be done.

Q. What was your brother's mental condition on that day, Miss Freeman? A. My brother seemed very much depressed, but he appeared to be perfectly connected and coherent; his memory was good, as I noticed particularly at the time of the organization of the business, he halted you several times to discuss certain points, and seemed to be in perfect command of the situation, noticeably so

to me, because I hadn't seen my brother for two years, and I noticed everything of that sort.

Q. How long were you with him altogether at that time? A. Our conversation—well, I think he sent the car after me at either 8.30 or 9.00. I took some afternoon train back to Brooklyn.

Q. It was afternoon? A. It was in the afternoon, and our conversation in the car included a little further discussion of his business affairs.

Q. Did you see him again in the Fall of 1920? A. I saw him in September, 1920.

Q. Whereabouts? A. In his office, in his own home, and in his automobile.

Q. What was the occasion of your seeing him at that time? A. When I returned to Brooklyn in September I found awaiting me an urgent letter from Mr. John Breen, saying that my brother had been in very bad—

Mr. Strong: I object to that.

Q. Have you the letter, Miss Freeman, did you keep it? A. No.

Q. You did not keep it? A. No.

Q. What was in the letter?

Mr. Strong: I object to that as mere hearsay. We are not bound by anything Mr. Breen said or wrote.

Mr. Watson: I shall not press it.

Q. As the result of this letter from Mr. Breen what did you do? A. I tried to get Mr. Breen on the telephone, because I was alarmed about my brother's condition, and failing that, took the train the next morning for Metuchen, and went directly to the office, where I found Doctor Freeman in bet-

ter condition than I had seen him since my mother's death. I say that because he was in better condition, he seemed physically better than when I had seen him in January.

Q. Where had he been, Miss Freeman? A. He had been in the State Hospital at Trenton.

Q. Was that the first time? A. To my knowledge.

Q. Well, you know of a second time? A. I know of a second time.

Q. How long were you with him upon this occasion? A. I think I reached the office about quarter of ten and I remained with him until lunch. He insisted that I go with him to lunch at his home After lunch I saw him again, he sent Mr. Breen in the car after me, that I could see about getting a truck, as I wished to move some personal possessions into town. Mr. Breen took me to the truck man, we picked Doctor Freeman up, or rather, we picked Doctor Freeman up first and then went to the truck man, where Doctor Freeman left me. I didn't see him again on that trip.

Q. What did you and he talk about? A. At first my personal affairs, then his personal affairs, particularly his health.

Q. What did you tell him about his health? A. He said he felt fine, and he looked so well, I didn't question it, although I knew he had been in the State Hospital before I left. But he looked very well, he talked very coherently, told me his eyesight bothered him, but apparently he could still read, because he did handle some papers and seemed to be able to read.

Q. What papers did he handle, Miss Freeman? A. At the lunch table he handed me the audit.

Q. Of what? A. Of his business, which I looked at very casually and returned to him.

Q. Did he discuss it at all? A. A little. Said the business was in good shape, and pointed out one or two points in the audit to prove it. That was why I thought his eyesight was sufficiently good.

Q. When did you next communicate with him after that time? A. I think it was that Fall, I read in the paper of some Brooklyn doctor who thought he had made some striking discovery about eye difficulties. I cut the item out, sent it to my brother, urged him if an operation were necessary to have it done, pointed out that this doctor, although I didn't know him, was spoken of as a Brooklyn doctor, so I could,—if he came to Brooklyn for an operation I would be able to see him frequently, and urged him in any event to have it investigated. I knew nothing more about it but the article.

Q. Did he reply to that letter? A. No.

Q. You mailed it? A. I mailed it, and I referred to it, to the letter; he didn't remember getting it. I asked Mr. Breen later if he—

Q. You cannot testify to what conversation you had with Mr. Breen, but at any rate you mailed this letter? A. Yes.

Q. And you afterwards had a conversation with your brother in which he didn't recall receiving it? A. No.

Q. When did you next see him, Miss Freeman? A. I next saw him in September, 1921.

Q. Where was he then? A. At Trenton, in the State Hospital.

Q. How did you happen to go see him? A. In reply to a telegram received while I was in Maine.

Q. Whereabouts in Maine? A. It was at Boothbay Harbor.

Q. Spending your vacation there? A. No. I

had been at Port Clive, had started on my way home, but had stopped at Boothbay with a friend for a short time before coming on back to Brooklyn.

Q. You were staying at Boothbay? A. Yes.

Q. You received a telegram from Mr. Breen? A. Yes.

Q. In response to that telegram what did you do? A. I changed my bookings for the earliest one I could get, which was, I think, the following night; not that night, but the following night. At any rate, within two days, packed, and took the first reservation I could get for New Brunswick.

Q. When you got to New Brunswick what did you do? A. I went at once to your office.

Q. After conferring with me what did you do? A. You told me that Doctor Freeman was in the State Hospital; that Mrs. Freeman had had him committed; that Doctor Freeman had said for me not to come, in reply to a question of yours. I said I thought I ought to go, and you agreed with me.

Q. And did you go? A. It was too late to go that afternoon. I took the morning train for Trenton, early the next morning.

Q. Did you see him? A. Yes.

Q. How long were you with him? A. I think I reached the State Hospital about ten o'clock. It might have been a little before, possibly a trifle after. I remained there until the attendant asked me to leave, as the patients were going to eat.

Q. What was your brother's condition? A. When I was taken into the ward he came toward me, apparently recognizing me at some little distance. He was—he apparently showed the effects of a spree. His face was discolored, his eyes showed it; I think it was the first time I had noticed the shuffle

in his walk. He was at that time partly recovered, apparently, so that he discussed connectedly, and at great length, both his domestic affairs and his personal situation at the State Hospital.

Q. Did you go into detail with him as to those things? A. Yes. As to his condition, at great length.

Q. And you were with him until one or two o'clock? A. Yes, I should think about one.

Q. During all that time did you carry on a conversation with him? A. We talked, except for a few moments when he asked me to read the paper to him, certain things, particularly the political situation, or, I think it was—I don't remember, one international situation that interested him. I don't know what it was. Apart from that we talked continuously.

Q. When did you next hear from him, Miss Freeman? A. I received a letter from him early that Fall, before Thanksgiving, I can't place it any more definitely than that. He asked me in that letter if I would try to locate for him a book, written in French, about the Alhambra, that he thought I could find in the New York public library. He couldn't give me the name, or the author, but he described the book at considerable length, and said he hoped that that would be sufficient, with the help of the librarians, for me to identify it. He asked me if I would be willing to translate it for him, make a really literal translation. I went—

Q. You searched for the book? A. I went to the library.

Q. Were you able to find it? A. Couldn't find it.

Q. Did you tell him so? A. I wrote him and told him with the help of the librarian and all the department, we were still unable to locate the book. It was a book of such unusual size, he could tell

me something of that, that he had hoped through that I could locate it. We couldn't find any book that answered the description. I wrote him so and told him if he could possibly get me any more details about the book, I would try again, and that I would do the best I could to make a translation for him, if it proved possible.

Q. Did he reply? A. No.

Q. When did you communicate with him again? A. I think the next time was about Christmas of that year, I wrote him asking if he would go with me to a concert at Carnegie Hall, told him I would meet him at the Pennsylvania Station on the platform, if his eyes were still troubling him, and he would have no difficulty in making the trip.

Q. Did he accept the invitation? A. No. He replied to the invitation saying that his eyes were bad, and that he thought it was too much of an undertaking.

Q. How was the letter written? A. I am not certain whether it was typewritten, and signed by him, or whether he wrote it. I had a note or two, somewhat scrawled; one note, I think, in his own hand, subsequent to 1921. I am not certain whether that was it, or whether it was simply signed by him.

Q. Miss Freeman, was there ever any unwillingness, or disinclination on your part to see your brother, or be with him? A. Never.

Q. Did he know that you knew of his habits? A. We had never discussed his habits until I saw him in the State Hospital. He knew, of course, that I knew of it. He always tried to say as little to me as possible, I thought, at those times.

Q. Then it was a subject that he concealed from you, insofar as he could? A. Yes.

Mr. Strong: That is directly leading.

Q. Can you tell us, in your own language, Miss Freeman, what was his attitude toward you with reference to his habits? A. Whenever Doctor Freeman was under the influence of liquor he seemed to try to conceal it from me. If he came in the room where I was, he would go through, usually, into some other room, or to his own room. If I happened to call at his house at such times, he talked with me very little, or not at all. I inferred from his actions that he was ashamed to let me see him at such times.

Mr. Watson: Cross examine.

Cross Examination by Mr. Strong:

Q. Didn't you say anything to him about those habits? A. I never spoke to him about it until the visit to the State Hospital, when we discussed it at great length.

Q. How did he take it? A. He listened, discussed—he not only listened, but discussed it with me. I suggested that he have continued treatment. He objected to—he asked me what I would suggest. I knew he had been to one other place, I knew he was at that moment under treatment. He didn't care for either of those suggestions, and I then suggested Johns Hopkins. He said he knew nothing of it, and I said I would write to Johns Hopkins, which I did later, and forwarded all the letters I got on the subject to Doctor Freeman at Metuchen.

Q. How long had he been in the State Hospital when you saw him? A. I can't answer that question definitely. A few days, because there was some delay in the telegram reaching me, because the telegram was first sent to Port Clyde, that was the

address they had at the office, for the summer. I had left there and gone to Boothbay, so that the telegram was somewhat delayed in reaching me, and then there was some delay in my getting a reservation. About Labor Day the reservations from Maine are very difficult to procure, and I took the first one that I could exchange my reservation for, but I think he had been in the State Hospital for several days before I got there.

Q. About how many? A. I can't answer that, Senator Strong.

Q. How long was he in the hospital after you left? A. I am not certain. He asked me to urge Mr. Watson to get him out at once, and I asked him not to come until he had fully recovered from the effects of his drinking. I told him that he still showed it, that I could see it, and I said that I wished for his own sake that he would not be impatient, but would remain until he had fully recovered from the effects.

Q. How long did he remain? A. I think he remained there more than two weeks after I saw him, but I am not certain about the length of time.

Q. When did you next see him? A. I never saw Doctor Freeman alive again.

Q. You filed a caveat against the probate of this will? A. I did.

Q. The business that your father gave by will to Doctor Freeman, Doctor Freeman conducted himself for a good many years, did he not? A. He was the head of the business, owned it outright.

Q. You had, by this reorganization of the business, one share of stock given to you, is that it? A. I believe so.

Q. For the purpose of qualifying as a director? A. I understood it so.

Q. Who, in fact, carried on the business there

for several years past? A. Doctor Freeman himself, so far as I know, carried on the business and directed the business up to the time of his going to the State Hospital.

Q. And who was his principal man in charge? A. Mr. John Breen.

Q. And Mr. John Breen's position in that business was what? A. I understood that his position was that of foreman, although, of course, Mr. Breen was also one of the members of the corporation, or of the organization, if that is the right word, of the business, by which it was then incorporated.

Q. And he is still conducting the business, under the administrator pendente lite, isn't he? A. Under the administrator, I understand so.

Q. He is a very capable man, is he not? A. So far as I know.

Q. The shuffling walk you have noticed in a good many other people, have you not, as age came on? There is nothing uncommon, in people growing old, shuffling when they walk? A. I don't know as I—Doctor Freeman's shuffling walk did not seem to me an indication of age, if I understand the question.

Q. What became of that one share of stock? A. I never had possession of it at all.

Q. Never paid for it? A. Oh, no.

Mr. Strong: That is all.

Cross Examination by Mr. Brown:

Q. Miss Freeman, you say that you knew, for a period of nearly twenty years, that the doctor was drinking and using drugs? A. Yes.

Q. Did the use of drugs and liquor increase or decrease during that time, as time went on? A. I can't answer that question positively. Doctor Free-

man, at least twice to my knowledge, took a cure for his drink and drug habits. After those periods he would seem very much improved, and then he would again become under the influence of the habits, and would drink, and apparently take drugs at intervals; whether the amount increased or not, I couldn't say.

Q. When you saw the doctor in September, 1921, you say he had bloated eyes? A. Yes.

Q. And discolored face? A. Bloated face and discolored eyes.

Q. And a shuffling walk? A. Yes.

Q. You don't attribute any of those symptoms to his age, or you did not at that time? A. No. I didn't.

Q. What did you attribute the symptoms you have mentioned to? A. To drink and drugs.

Q. You say that you had a hard time getting reservations on Labor Day? A. It wasn't Labor Day, but always I return from Maine some time between Labor Day and the middle of the month, as my work requires it. It is always difficult to make reservations at that time.

Q. Having that fact in mind as to your time of returning, and Labor Day, can you say that you left Maine, after your stop over, after Labor Day, or before? A. After Labor Day.

Q. How much after Labor Day? A. That I can't say. It could very easily be obtained, if it is important.

Q. Well, was it a week? A. I can't say, but I went to Wiscasset, where I have to take the train, with a friend, and we both stayed there at the Wiscasset Inn, I think the name of the hotel is, the night before, that I might make sure there was no mistake about the reservation, as reservations are often re-sold at that time of the year, and I wanted no mistake about getting mine.

Q. Well, you left your primary destination after Labor Day, you can't say how soon after? A. I didn't leave my first place I was in in Maine, if you mean my primary place. Do you mean that?

Q. Yes. Where were you Labor Day? A. After Labor Day, yes, I left Boothbay after Labor Day.

Q. How many days you don't know? A. No.

Q. Do you think it was a week after? A. I wouldn't attempt to say; as I say, it can be readily obtained by the registry at Wiscasset.

Q. What time do you think, with those land marks in mind, that you got to the State Hospital? A. I got to the State Hospital the second day after I took the train at Wiscasset.

Q. You stated that you were there about a week before his release? A. I think not. I think I didn't make that statement.

Q. What did you say about his release, how soon you were there? A. I think he was released,—he was not released, I think, until two weeks, at least, and it may have been more. I am sure I didn't say one week.

Q. Two weeks before his release you recommended continued treatment for a time thereafter, didn't you? A. I did.

Q. His condition was such that you thought he required more treatment? A. I did.

Q. Were you disappointed to see him released in two weeks? A. I don't understand that question.

Q. That was about his being released? Were you disappointed in your desire, to hear that he was released within two weeks after you were there? A. No. Why?

Q. You stated all of the assets of the corporation were willed to Doctor Freeman by your father? A. So far as I remember.

Mr. Watson: If I may be permitted to ask one question, to interrupt?

Mr. Brown: I want whatever the fact was, if it is going to help the court.

By Mr. Watson:

Q. Miss Freeman, when you came to New Brunswick you stayed over night at my home, did you not? A. I did.

Q. When did you see your brother? A. The next day.

By Mr. Brown:

Q. Your father, in his will, restricted that your brother should not get the liquid assets of the company, did he not? A. I don't understand.

Q. For instance, he devised and bequeathed the property, the business, excepting the book accounts, or money that was due the company? A. I couldn't answer that question. I didn't understand anything about the business at the time.

Q. He also made a will with the statement, although your brother's name was carried in the business, your father wanted it understood that he wasn't a member, but a salaried man, at a weekly salary? A. It may be. I didn't know it.

Q. You have always recognized Doctor Freeman as being the owner of that business? A. Yes.

Q. Whether incorporated or otherwise? A. Yes.

Q. You never voted your stock? A. Never.

Q. Never had the stock? A. Never.

Q. Who is the other stockholder? A. Mr. Breen.

Q. How many shares did he have? A. I am not certain. I think one, but I am not certain. He had some official title, under the papers.

Q. But the doctor retained control of the shares, did he not? A. Yes.

Q. All of the shares? A. Yes.

Q. Mr. Breen's share was not delivered to him either? A. Of course, I can't answer that.

Q. As far as you know? A. So far as I know. But I know nothing about that, really.

Q. Was the business conducted, after the reorganization in 1920, just the same as it was previous thereto? A. No. After 1920 I received notice of meetings of directors, and as I was never able to be present, I signed a paper, I don't know whether waiver is the correct word, or not. I signed a paper.

Q. Who sent the waiver to you? A. I think it came from Mr. Watson's office, so far as I know.

Q. You didn't have the stock? A. No.

Q. Had no control over the company, so far as you know? A. None.

Q. And they sent a waiver to you, of the meeting, and a notice of the meeting? A. Yes.

Q. You would get the notice and waiver at the same time? A. Well, that I don't remember.

Q. When you saw the doctor in the hospital in September, 1921, he was the then owner of the company? A. Yes.

Q. The sole owner, so far as you were concerned? A. Yes.

Q. And so far as Mr. Breen was concerned, as far as you knew? A. Particularly.

Q. Mr. Breen's control, or interest in the company, was confined to that of foreman? A. So far as I know.

Q. Every time that you saw Doctor Freeman in the last twenty years did he have the smell of liquor on him? A. Oh, no.

Q. When did you notice that he had the smell of liquor? A. If you mean by that, when did I notice that he always had the smell of liquor, never. There were always times, in all my knowledge of my brother, when he was apparently not drinking.

He was a man who apparently did not drink at intervals, so far as I could possibly see or detect anything by his way. Always at intervals his mind appeared absolutely clear; always at intervals he seemed to have a complete knowledge, not only of his own affairs, but Doctor Freeman and I discussed everything under the sun, many times, at great length. We had a great many talks together, all of our lives, until the time of my mother's death.

Q. I suppose those lucid intervals continued until the time he died, so far as you know? A. So far as I know, because unquestionably Doctor Freeman was having a perfectly lucid interval even the last time I saw him in the State Hospital, because while he still showed the effects of having been drinking, I did not then see any evidence that Doctor Freeman was not lucid. His questions concerning his business, his requests that he made to me to convey to Mr. Breen, small details about his business, and his affairs, his discussion of his domestic difficulties, his discussion of his plans for his future, were of those of a man who was not having what I would call a lucid interval, but were those of a perfectly sane man, in spite of the fact that he was in the State Hospital at the time.

Q. I am not directing your attention to declare Doctor Freeman, or interpret that he was insane. A. The word "lucid" was the word I was referring to, and I thought the word "lucid" implied that. I am sorry. I didn't mean to—

Q. Well, then, if that is so, then the fact that the doctor made a will on July 12th last year, or whenever he made it, and gave you but a small—provided for you but a small or nominal bequest or legacy, even though you had been kind to him throughout your life, you think that nevertheless that might have been done in a lucid interval? A. I think it was done, if done by Doctor Freeman,

at a time when he was under the influence of liquor or drugs or both.

Q. Well, when he was lucid in the hospital—

Mr. Strong: There is no evidence to support any such opinion as that.

Mr. Brown: What is the motion now?

Mr. Strong: To strike that out.

The Court: I am sorry I can not grant your motion, Senator. Miss Freeman is entitled to her opinion. She was asked a question on cross-examination, and she expressed her opinion. As to whether or not it is supported by the evidence is for the court to determine.

Mr. Strong: It is immaterial what she thought.

Q. Didn't it appear to you that the fact that he was quasi or semi-lucid in September, and that he might have been lucid on other occasions when you saw him, that his failure to consider your request or advice, or to answer your letters promptly, or at all, or to treat you as a normal brother would treat a sister, didn't that seem to you to show that he had a constant impairment, or bore an unnatural feeling towards you and those whom he should be kind to.

By the Court:

Q. Do you understand the question? A. Yes. My brother and I never quarrelled in our lives. My brother was an arbitrary and selfish man. He had never corresponded with me under any circumstances, even when we were most friendly. If I wrote him, as I did on one or two occasions, asking his direct advice, Doctor Freeman answered

it. I never considered Doctor Freeman's neglect of me, or any other member of his family, as the result of anything but three possible causes, one, I regret to say, a selfishness at all times, whether sober or drunk; the other two causes were drink and drugs.

Q. Miss Freeman, during all of your life, as far as your dealings with your brother, Doctor Freeman, the decedent, were concerned, they were that of a sister who had a natural, constant love and affection for a brother? A. Yes.

Q. And gave him no occasion, or no cause not to treat you as such? A. Always most friendly when I was with him, if he were not drunk.

Mr. Brown: That is all.
Mr. Strong: That is all.
Mr. Watson: That is all.

LETTIE PATTERSON, a witness produced on behalf of the Caveators, being duly sworn according to law on her oath, saith:

Direct Examination by Mr. Watson:

Q. Lettie, where do you live? A. I live in Elizabeth.

Q. Elizabeth, New Jersey? A. Yes, sir.

Q. Did you know Doctor Freeman? A. I did.

Q. You were a servant in his family? A. I certainly was.

Q. How many years? A. Thirty years.

Q. How many? A. Thirty.

Q. After being in his family—you mean you were employed by his mother and father? A. I was employed by his mother and father; yes, sir.

Q. After being employed by his family that long, you were next employed by whom? A. Doctor Frederick Albee.

Q. At Colonia? A. I was.

Q. And you were in Doctor Albee's family how long? A. Lacking two months of eight years.

Q. And then you went where? A. I went from there to the hospital, and from the hospital I came to Doctor Freeman.

Q. Your next place of employment was by Doctor Freeman? A. I was.

Q. Where was Doctor Freeman living then? A. Up over the garage.

Q. At Metuchen? A. Yes, sir.

Q. With whom? A. With Harry Mohring.

Q. Harry Mohring and his wife? A. Yes, sir.

Q. When was that, Lettie? A. Well, I came there this March a year ago.

Q. This March a year ago? A. Yes. He was there when I got there.

Q. Then you stayed there until he died? A. I did.

Q. That was just about one year, wasn't it? A. One year; yes, sir.

Q. Now, during that year, Lettie, did the doctor drink? A. He did.

Q. How much? A. Well, quite a little.

Q. Did he get intoxicated? A. He did.

Q. How often? A. Well, I say once a week he got so he couldn't control himself.

Q. So that he couldn't control himself. How was his mind when he was that way? A. Well, it wasn't clear at all.

Q. How was his speech? A. Very thick.

Q. How did he talk, Lettie? A. Well, he talked just as though he lisped; he couldn't control his speech.

Q. How were his thoughts? A. Well, his thoughts were very scattering.

Q. Did he take drugs, do you know? A. He did.

Q. How do you know he did? A. Because I caught him with them a couple of times.

Q. What did you do then? A. I taken them and burned them up.

Q. Did he let you take them? A. Taken them unbeknown to him.

Q. Do you know Mr. Davey? A. I do.

Q. The lawyer here? A. I do.

Q. Do you remember when he came to see Doctor Freeman last year? A. I remember, but I just don't remember the date.

Q. Do you remember going to Mr. Davey's house in Doctor Freeman's automobile? A. I do.

Q. How many times did you go? A. Twice.

Q. The first time that you went, Lettie, what was Doctor Freeman's condition? A. Well, very bad.

Q. Why was it bad, Lettie? A. Well, he had been drinking that day.

Q. How do you know he had? A. Because I give it to him myself.

Q. What do you mean by very bad, Lettie? A. Well, he wasn't in condition to walk very good, and he couldn't talk very good, because I call that very bad, to my opinion.

Q. Was he intoxicated? A. Well, he didn't know just what he was doing, practically.

Q. What was his condition the second time that you went in the automobile with him, Lettie? A. Practically the same.

Q. Do you know, Lettie, whether he was on a spree at that time? A. No, he wasn't on a spree, but he had been drinking practically all day long that day.

Q. Do you know whether he had taken any drugs

or not? A. He had some drugs a couple of days before that.

Q. How do you know that, Lettie? A. Because I caught them upon him, under his pillow.

Q. What did they look like? A. Well, you know what veronal looks like, don't you?

Q. No. A. They were white powders.

Q. What were they in? A. Just loose under his pillow. He intended taking them, and he forgot them.

Q. You mean you found them in his bed? A. Yes, sir.

Q. Loose? A. Yes, sir. Under his pillow.

Q. Do you know whether he ever drank in bed, after he would go to bed? A. He did.

Q. How do you know that, Lettie? A. Because I give it to him.

Q. How would you give it to him? A. I would put it in a half pint bottle and put it under his pillow.

Q. How much would he take, Lettie? A. Take the whole half pint.

Q. After he went to bed? A. He did.

Q. How often did he do that, Lettie? A. Every night.

Q. Every night that you were with him? A. Every night.

Mr. Watson: Cross examine.

By the Court:

Q. When was that, what period of time, that you gave him that liquor? A. Why, the whole year that I was with him.

Cross Examination by Mr. Davey:

Q. Lettie, on the first night that you say you drove up to my home with the Doctor, you didn't

get out of the car, did you? A. I beg your pardon; yes, sir, I did.

Q. Both nights? A. The first night I got out of the car.

Q. The first night you got out? A. The second night I didn't.

Q. You don't know what nights those were? A. No, sir.

Q. On the first night, when you got out of the car, who were in the car? A. Mr. Harry Mohring and his wife and myself and the two children.

Q. And the Doctor, of course? A. Certainly.

Q. Did you yourself go in the house, you and Mrs. Mohring? A. We did.

Q. Didn't you sit on the porch? A. We sit out on the porch.

Q. And the Doctor came in the house? A. Yes, sir; he did.

Q. Do you remember whether that was the night that Mr. Louis Mohring was there? A. That was the night.

Q. How long had you waited before it happened that I came home? A. Why, I don't know just how long it was, but I know you were already there, but you hadn't dressed.

Q. Quite a little wait? A. Yes.

Q. Then it was another night, later than that, when you came again? A. Yes, sir.

Q. On the second occasion did Mrs. Mohring and the children come also? A. Yes, we did, but we didn't come in.

Q. You didn't get out of the car that time? A. No, sir.

Q. Do you remember who came out to the car and spoke to you? A. I don't remember that. I don't know whether Mrs. Davey came out or not.

Q. You had no concern with the business that

brought the Doctor up there? A. I had not absolutely any.

Q. And you didn't hear any part of it? A. I heard nothing at all.

Q. Did you ever have, after those trips, a conversation with Doctor Freeman about his will? A. I did not.

Q. Didn't he tell you something about what he had done for yourself? A. Couple of weeks before he died he told me he had made provisions for me, but what I didn't ask him.

Q. That is what I meant. How long was that before he died, if you recall? A. I said a couple of weeks.

Q. You remember my speaking to you, don't you, about the Doctor, after the death, on one occasion when I was at the house? A. I heard you say something, but I didn't answer any question at all.

Q. You stayed along with the Mohrings for a little while, didn't you? A. I did.

Q. Do you remember having a talk with me there? A. Yes, I did.

Q. Do you remember my asking you if the Doctor drank there to excess? A. I told you plainly Doctor did drink.

Q. Yes. But didn't you say then to me that he didn't— A. I don't call that excess. I call it drinking.

Q. Didn't you say that he didn't ever drink to hurt himself? A. He drank enough to get drunk.

Q. Beg pardon? A. He drank enough to get drunk.

Q. Answer the question. A. No, I didn't say that at all.

The Court: Where was that conversation?

Mr. Davey: At the apartments over the garage.

Q. You remember seeing me there twice, do you not, before you left? A. I think so. I am not sure.

Q. Do you remember, or not, of the Doctor taking anything in the line of drugs, except veronal? A. That is all I know of.

Q. And on that first night when you were there, did the Doctor sit in the screened part of the porch with the rest of the party until I came home? A. The first night?

Q. Yes. A. I do not know that. I don't remember that at all.

Q. I mean the time when you had to wait for me? A. I don't remember. No, he was down in the garage. Doctor was down in the garage.

Q. I think you are mistaken now about the time. I will withdraw that question. The first time that you came to my house in Belleville, and sat on the porch waiting for me to come, the Doctor sat on the porch at that same time, didn't he? A. Yes, sir, he did.

Q. Do you remember any conversation that took place regarding the disposition of the ashes of his cigar? A. I do.

Q. What incident was that? A. I said, don't put your ashes there, Mrs. Davey won't like it. And I got something to put them in.

Q. There was a receptacle there, wasn't there? A. Yes, but he didn't see it.

Q. On what account? A. Well, because he couldn't see, I suppose.

Q. Because it was painted the same color as the screen? A. Practically. I couldn't say that.

Q. Was he laughing about the color that it was painted? A. Yes, I think he did.

Q. Thought it ought to be painted a different color? A. Yes, sir, I think he said it.

Q. And after it was pointed out to him he did use it? A. He did.

Q. Was Mr. Louis Mohring there on that occasion? A. I couldn't say, because I don't know.

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

Q. Well, was he there the second time when you came, would you say? A. I don't think he was the second time. He was there the first time.

By Mr. Strong:

Q. Just to keep the record right, Miss Patterson, you are a colored lady, are you not? A. I am. My face is colored, but my soul is white.

Q. Whom have you talked with about this case? A. Oh, I have spoken to Mr. Watson once about it.

Q. How many other times? A. I only spoke to Mr. Watson once, I think.

Q. Where? A. The other day.

Q. Where? A. On the street.

Q. Where else? A. Nowhere else, for I haven't seen him nowhere else.

Q. What day was that? A. That was yesterday.

Q. What street? A. I don't know what street it was. Right in front of P. J. Young's.

Q. By Young's? A. Yes, sir.

Q. Just met him there? A. Yes, sir.

Q. Who paid your expenses here today? A. Paid them myself.

Q. Paid them yourself? A. Yes, sir.

Q. What were you promised if you would come here to testify? A. Not anything at all.

Q. Nothing at all. Were you subpoenaed to come here? A. I was, so they say.

Q. What say? A. So they say.

Q. Did you get a paper? A. Yes, sir.

Q. Nothing with the paper? A. No, sir.

Mr. Strong: That is all.

Cross Examination by Mr. Brown:

Q. Miss Patterson, you were with the Doctor before you went to Albee's for how many years? A. For thirty years.

Q. How long have you know the Doctor to use alcohol, or liquor, and veronal? A. Well, to my knowledge I have only known him to use veronal about ten years.

Q. You have seen him use strychnine too, haven't you? A. I have not.

Q. Now, as I understand your periods of occupation, you were with the Freemans, that is the Freeman family for thirty years? A. Yes, sir.

Q. When did you go to work for Doctor Albee? A. Why, two years before the war. I think it was about the time.

Q. Do you remember what year that was? A. No, I do not. Don't remember dates at all.

Q. Then you stayed with Doctor Albee until— A. Doctor Freeman asked me to come and take care of him.

Q. That was in March, 1922? A. I beg your pardon. I guess so.

Q. So that you were not with Doctor Freeman from just before the war until March, 1922? A. That is it; yes, sir.

Q. How often did you see him during that time? A. I saw him once every two or three months.

Q. Would you go to see the Doctor, or he come to see you? A. I would come to see him, and he would come to see me.

Q. Would he have a half pint with him then? A. I couldn't say that.

Q. Well, was he drinking? A. He looks as if he had.

Q. Looks as if he had? A. Yes, sir.

Q. When you would go to see the Doctor, where would you go to see him? A. At his office.

Q. At his office? A. Yes, sir.

Q. Would he have veronal then? A. I couldn't say that, but he looked as if he had something.

Q. Had something? A. Yes, sir.

Q. Every time you saw him he was that way? A. Yes, sir.

Q. When you worked at Doctor Freeman's home, up to the time that you left to go to Doctor Albee's, you have seen whiskey there, haven't you, with him? A. I certainly did.

Q. Was he in the habit then of using the half pint of whiskey every night? A. Not every night while he was married, he didn't. It was afterwards.

Q. After he was married? A. After he came to this place down here, that is the only time.

Q. After he came over where? A. After I came to live at this house where he was living when he died. Before I did not give it to him, but he had it.

Q. When you worked at the home of Mrs. Freeman, you know where that is? A. Yes, sir.

Q. Before you left to go to Doctor Albee's? A. Yes, sir.

Q. You had occasion to take care of Doctor Freeman then, did you not? A. I did.

Q. And he was, as long as you know, using liquors? A. He was.

Q. And using veronal? A. I didn't say that. I beg your pardon. Ten years I said he had been using veronal.

Q. Eight or ten years? A. Ten years.

Q. Would you see the pills around loose? A. I certainly did.

Q. At his home? A. I certainly did.

Q. That is before you went to the Mohring place? A. I certainly did.

Q. I suppose that you would see the pills when the Doctor would be so stupid that he couldn't hide them? A. No. He would tell me to fix them for him, and I fixed them and give them to him.

Q. How many years did you fix pills for the Doctor? A. Ten years.

Q. How many times a day, Lettie? A. Only once, at night, when he was going to bed.

Q. How many would you give him? A. Two.

By the Court:

Q. Is that ten years before you went to Albee's? A. Yes, sir.

By Mr. Brown:

Q. The liquor too you would serve him? A. I didn't serve him liquor then.

Q. How did he get his liquor then? A. Why, he got it himself then.

Q. Did he keep a stock in the house? A. He would bring it home with him.

Q. How often would that happen, Lettie? A. Why, every day.

Q. Do you know how much would he use every day then? A. He would only take a drink then.

Q. One drink? A. One drink, to my knowledge, when he was at home with his wife.

Q. Wasn't he in the habit of taking some to bed with him? A. I didn't do that.

Q. Of course you didn't but didn't you notice that? A. I didn't see that. I couldn't answer that question.

Q. You have seen about the Doctor losing control of himself, you know what that means, don't you? A. I understand exactly.

Q. When was the first time you noticed that the Doctor lost control of himself? A. Two years before he was ever married.

Q. And during the ten years did he lose control of himself? A. Most assuredly.

Q. How often would that happen? A. Oh, once a month, or something like that.

Q. What do you mean, when you say he lost control of himself? A. Why, he can't walk.

Q. Couldn't walk. Was there any other loss of control that he had? A. No, sir; not to my knowledge.

Q. Was he able to control the natural functions? A. He didn't take any.

Q. Didn't take any. I mean, Lettie, would he know when to go to the toilet, or not? A. Most assuredly.

Q. He never lost control that way, that you know of? A. Not to my knowledge.

Q. Isn't it a fact that he would be intoxicated and lose control of his bowels? A. Not to my knowledge, not while I was with him there.

Q. When did it happen? A. Well, since—when I first went down to the garage he did.

Q. He did? A. Yes.

Q. How often would that happen? A. Well, not often.

Q. Well, would it happen once a week? A. No, it did not. Only once in a couple of months.

Q. I suppose that would happen at the table, or anywhere? A. No. Beg your pardon. He was more of a gentleman than that.

Q. Where would it happen, while he was in bed? A. Why, when he would go to his bed.

Q. Would it happen in the bath room? A. Sometimes; very seldom.

Q. In the bath tub? A. No, not in the bath tub.

Mr. Brown: That is all, I guess.

By Mr. Strong:

Q. Is it not a fact that when you gave him whiskey you took half of the whiskey and drank it yourself, and put water with the whiskey you gave him? A. I didn't have to drink none of it.

Q. No, but is it not a fact, I ask you? A. I didn't do that at all.

Q. What? A. I didn't have to do that.

Q. Did you ever put water in his whiskey? A. Most assuredly, he told me to do a thing, I did what was told me.

Q. Did you ever put water in his whiskey? A. I did.

Q. What did you do with the rest of it? A. I put it back in the bottle.

Q. You didn't put any of it in your's? A. I didn't have to.

Q. Did you do it without having to? A. I didn't do that.

Q. Did you ever drink whiskey? A. Most assuredly I have taken whiskey.

Q. When? A. At nights when I go to bed.

Q. Where? A. At my home.

Q. Where? A. At my home, where I live.

Q. Did you take any of Doctor Freeman's home? A. I most assuredly did.

JAMES W. BREEN, a witness produced on behalf of the Caveators, being duly sworn according to law on his oath, saith:

Direct Examination by Mr. Watson:

Q. Your name is James W. Breen? A. Yes, sir.

Q. You live where? A. Metuchen.

Q. You are a son of John W. Breen, Sr.? A. Yes.

Q. Mr. Breen, how long did you work for Manning Freeman? A. About seven years.

Q. How old are you? Twenty-four.

Q. What kind of work did you do? A. Drove a truck.

Q. You are still employed by the company, aren't you? A. No, sir.

Q. When did you stop working for the company? A. May sixth.

Q. Last May? A. Yes, sir.

Q. You haven't worked for the company since? A. Yes. I came back.

Q. Aren't you employed by the company now? A. No, sir.

Q. When did you cease your employment with the company? A. I was out for about two weeks in May, and then I came back when Mr. Watson took over the office.

Q. And then you stayed how long? A. Then I stayed until the last part of June.

Q. Then you quit? A. I quit.

Q. During the time that you were employed by the company did you observe Doctor Freeman's habits as to the use of alcohol or drugs? A. I did.

Q. What were they? A. They were very bad habits.

Q. Did he become intoxicated? A. He did.

Q. How often? A. Very often.

Q. What was his condition of mind when he was intoxicated? A. He was very dopey.

Q. When you left, you say May 6th, 1922, what occasioned your leaving? A. The reason I left was the Doctor accused me of driving nails through tires on the truck.

Q. What was his condition when he accused you

of that? A. He was very dopey. His mind was blank.

Q. What pressure do those truck tires carry? A. Carry one hundred and twenty pounds.

Q. Were they pneumatic tires? A. Yes, sir.

Q. Had you, in fact, Mr. Breen, driven a nail into those tires what would have happened? A. A man would drive a nail in a tire like that it would kill the man.

Q. Would it be as serious as that? A. Well, yes, sir.

Q. Why would it be? A. Because the pressure of that air in there would blow his brains out.

Q. Did his condition grow worse, or better, towards the end of his life, Mr. Breen? A. It grew worse.

Q. Did his periods of intoxication become more frequent? A. Yes, it did, day by day.

Q. Did he ever give you instructions about washing the tires of the trucks? A. Yes. About a week before I left there, quit.

Q. What did he want you to do? A. Wanted me to wash the mud off the tires before I run in, so I wouldn't dirty the floor in his garage.

Q. What was in this garage? A. The present garage is where he keeps his car.

Q. How big a garage? A. It is a good size garage.

Q. What trucks were kept in it? A. Two Mack trucks, and the Essex car, and a Ford racer.

Q. What was the floor made of? A. Concrete.

Q. Was it an ordinary garage, with tools and implements lying around? A. Yes.

Q. Gasoline tank there? A. Yes, sir.

Q. Inside or out? A. Outside.

Q. Oil kept inside? A. Oil kept inside.

Q. What was the condition of the floor generally? A. Well, it was all oil soaked.

Q. Ordinary garage floor? A. Ordinary garage floor.

Q. What time did you go to the garage mornings? A. About seven o'clock.

Q. To get your truck? A. To get my truck. No, I didn't always get it at seven o'clock.

Q. What time were you supposed to get it? A. Supposed to leave at seven.

Q. What time did you usually come? A. Sometimes it would be half-past seven, sometimes it would be eight o'clock. According to when the garage was opened.

Q. Where did Doctor Freeman live at that time? A. Doctor Freeman lived over the garage.

Q. There were living apartments over the garage? A. Yes, sir.

Q. Who lived with him? A. Harry Mohring.

Q. Why couldn't you get the truck until half-past seven or eight o'clock? A. The doors were locked, so we couldn't get in.

Q. Did you have a key? A. No, sir. I had a key for a while, but the locks were changed on the doors.

Q. Who did have the key? A. I don't know whether Mr. Mohring had the key, or Doctor had the key.

Q. Did Doctor know you could not get your truck out on time? A. I told Doctor, but he paid no attention to me.

Q. When you couldn't get in sometimes what did you do? A. I rang the bell.

Q. What did Doctor say to you about it? A. Doctor come down and complained to me because I woke up the baby.

Q. What did he tell you? A. Told me not to do it again.

Q. When was that, Mr. Breen? A. That was in the latter part of June, or April.

Q. Do you remember when he was committed to the hospital at Trenton? A. I do.

Q. First time, or second time? A. Second time.

Q. Do you remember the first time? Were you employed by him when he went there first? A. No, sir.

Q. Were you at his home before he went, before he was committed? A. Not to Trenton.

Q. Were you ever at his home to take care of him? A. I was; yes, sir.

Q. How long were you there? A. I was there about two weeks.

Q. When was it? A. 1919.

Q. Before he went to what institution? A. To Belle Mead.

Q. What was his condition during those two weeks? A. Condition was very serious.

Q. What do you mean by serious? A. He was very dopey, and he didn't know what he was doing.

Q. How was his mind? A. And he was in bed.

Q. How was his mind? A. He had no mind.

Q. Could he talk? A. No, he couldn't talk; he would mumble.

Q. Could he carry on a conversation? A. No, he wasn't fit to carry on a conversation.

Q. How long did you see him there in that condition? A. About two weeks.

Q. Was he in bed all that time? A. Not all the time. He would get up once in a while and roam around the house.

Q. What did he do when he got up? A. One night he got up and he went in the cellar and he brought up a hay knife and put it on his bed, and he got back in bed, and when he got into bed I took the hay knife away from him. He give me orders to put it back again. So I put it on the bed.

By the Court:

Q. What is a hay knife? A. It is a knife, sort of like a saw. It is to cut bales of hay with.

Q. How long is it? A. About that long (indicating), and it has two handles. Measures about three or four feet.

By Mr. Watson:

Q. Sharp? A. Sharp. Just like a saw.

Q. Could he hurt anybody with it? A. Yes, he could hurt.

Q. This knife is used to cut hay, to make a hay mash, isn't it? A. Yes.

Q. Do you ever recall his doing any damage of any kind in the house? A. Yes, I do.

Q. What was that? A. Why, one afternoon, about quarter to six, Doctor was in his room, his door was shut, and I heard him roaming around, so he wanted to get out, and I told him he couldn't, didn't want to get out; so he got into his closet, he picked up a big club, an indian club, and he knocked the panels out of the door with it, and I took the club away from him.

Q. Did you have any trouble getting it away from him? A. Yes, I had a little trouble to take the club away from him.

Q. Did you ever have any trouble with him trying to get out? A. Well, he got out of the window one night, he got on the roof, and I had a little trouble getting him back in.

Q. Did he try to do anything while he was on the roof? A. No, he didn't try to do anything while he was on the roof. He was looking.

Q. He didn't try to jump? A. No.

Q. You went back to work for the company you

say about May 15th last year? A. About May 15th or 16th, somewhere along there.

Q. And you stayed there until when? A. Stayed there until the last part of June.

Q. Were you there every day? A. Yes, sir.

Q. Did you see the Doctor during that time? A. Yes, sir.

Q. What was his condition then? A. His condition was very serious. Dopey, and his mind was really blank.

Q. Was he under the influence of anything? A. Yes, he was under the influence of liquor and dope.

Q. Did you ever see him take dope? A. Yes, sir.

Q. Where and when? A. The two weeks I was with him.

Q. Any other time? A. Yes, other times I seen him take it.

Q. Whereabouts? A. In his garage.

Q. How do you know he was taking dope? What did he do? A. I would see him take this white tablet out and swallow it.

Q. Did he carry it in his pocket? A. I guess he carried it in his pocket. Carried them all over the garage.

Q. What? A. They were put all over the garage, they were hid, and he carried them on his person.

Q. They were hid about the garage? A. Yes, sir.

Q. Did you ever find them there? A. Yes, sir.

Q. Whereabouts in the garage? A. Right in the closet.

Cross Examination by Mr. Strong:

Q. First I understood you that he spent all his time in bed and couldn't talk, and then afterwards you said that he was up and around the house? A. No, I didn't.

Q. And talked to you, is that right? A. No, sir.

Q. Never talked to you? A. He talked to me once in a while.

The Court: What are you referring to, Senator?

Mr. Strong: While he was taking care of him those two weeks?

Q. Who hired you to take care of him? A. Nobody hired me.

Q. You took care of him on your own motion? A. I was just asked to come up and look after him.

Q. Who asked you to come up and look after him? A. Mrs. Freeman.

Q. Did you have any tire trouble, just before you were discharged by him? A. Yes, I had tire trouble. My tires were found flat in the garage, in the morning.

Q. Is it not a fact, the reason the locks were changed on that garage was that you broke in there looking for supplies? A. No, I never broke in his garage.

Q. Is it not a fact that the locks were changed on that garage because you were in there looking for supplies, when you were not expected to be? A. No, I wasn't.

Q. Is it not a fact the locks were changed on that garage to keep you out of it? A. No.

Q. What? A. Yes.

Q. Weren't you discharged because your tires were found flat there? A. No.

Q. When was it you were discharged? A. I was discharged on May 6th.

Q. When? A. I wasn't really discharged.

Q. When was it? May 6th what year? A. 1922.

Q. Didn't you try to put two hundred pounds of

pressure into that tire and cause it to blow out? A. No.

Mr. Watson: I object to the question. He did not say two hundred.

The Court: He is asking him the question.

Q. What pressure did you try to put in there? A. What the tire called for, one hundred and twenty pounds.

Q. That was all? A. That is what it called for.

Q. The key to the garage lock was at the office, wasn't it? A. No, sir.

Q. You saw him taking this truck, and you made no effort to stop him from taking it? A. No, sir.

Cross Examination by Mr. Brown:

Q. Mr. Breen, your periods of employment extended first from what date? A. Away somewheres either 1915 or '16.

Q. To what time? A. Right up until May 6th, 1922.

Q. You were there with him all that time? A. Every day.

Q. You were not employed around the house, were you, during that time from 1915 to 1922? A. I wasn't employed around the house. I was at the garage at different times.

Q. And the occasion that you went to the house was the occasion in 1919 when the Doctor was sent away? A. Yes, sir.

Q. And you were there for how many weeks before he was sent away? A. Two weeks.

Q. When you got there he was in a stupor then? A. Yes, sir.

Q. What was his condition as to control of himself? A. He couldn't control himself.

Q. Do you know what I mean by that? A. Well, to manage himself?

Q. Yes. A. No. He really couldn't.

Q. What about going to the toilet and the like of that? A. Well, I used to have to help him.

Q. Well, would he forget at times? A. Well, no.

Q. What occasion had he to go outside on the roof the night that you mention? A. Why, he was looking for something.

Q. What was he looking for? A. I don't know what he was looking for.

Q. What did he say he was looking for? A. He didn't say.

Q. Did he ask you to help him? A. I had to help bring him in and put him back in bed.

Q. Who was there at that time beside you? A. Why, there was a maid by the name of Maud, that is the only name I knew her by.

Q. Was Ashby there then? A. No, I don't think Ashby was there then.

Q. Didn't you and Ashby go through the house to see if you couldn't find somebody? A. No, sir.

Q. You never did that? A. No, sir.

Q. Was the Doctor dressed when he went out on the roof? A. No, sir.

Q. Nothing on at all? A. He had a kimono on.

Q. During the two weeks that you were there did he get out of bed at all, except to go out on the roof? A. He got out of bed, but I had to help him every time he got out of bed.

Q. Did he go downstairs at all? A. Yes, sir.

Q. In the morning would he go down? A. No.

Q. When would he go down? A. Sometimes in the afternoon he would go down, but he had to be helped down.

Q. Was he dressed, or undressed? A. He was undressed. Just a kimono on him.

Q. Would he go out in the yard that way? A. No, sir; I didn't see him, only on the roof, and downstairs in the house.

Q. This knife that you speak of was about as long as this table is wide, a little over a yard? A. Yes. A little shorter than that.

Mr. Strong: How wide is this table? This table must be five feet wide, isn't it?

A. The knife was not quite as wide as the table.

Q. How many feet would you say it was, in length? A. About four foot.

Q. It was wide enough for two men to work on a bale of hay? A. No, sir.

Q. It wasn't wide enough for that? A. No, sir. It was a one-man knife.

Q. Well, it was used to saw the bales of hay, was it not? A. It was used to cut hay with.

Q. And the use is to cut it in small lengths, possibly an inch or two long? A. It had two handles on it, and work it like this.

Q. Very much like an ice saw? A. Yes.

Q. Only the teeth were longer? A. Yes, the teeth were longer.

Q. And very sharp? A. Sharp.

Q. How did he get the knife? A. The knife was in the cellar.

Q. And he went down for it? A. He went down, and I went with him.

Q. Did he tell you what he wanted to use it for? A. No, sir.

Q. Did he put it under his pillow? A. No.

Q. Where did he put it? A. Put it on the foot of the bed.

Q. What else did you see him do there on that line of conduct you have just mentioned? A. I seen him knock the panels out of the door.

Q. Those were the only two things? A. Yes.

Q. Was he threatening anyone? A. No, I never heard him threaten anyone.

Q. Did he ever threaten you? A. Yes, he was going to throw me out of the house one night.

Q. Why did he want to throw you out? A. Well, he wasn't in his right mind.

Q. From 1915 up to 1922 he was taking drugs and drink all the time? A. Well, I wouldn't say all the time.

Q. Pretty much all the time? A. Well, he might take them for a week, or two weeks, and then he would be off of them for a while, and then he would go back again.

Q. As time went on he got worse? A. Yes.

Q. How much was he taking in 1915, how much drink was he taking? A. Well, he would take—he might take it for a couple of days and go along, and maybe there would be another time he would take another one, and be all right again for three or four weeks.

Q. Did he always have veronal? A. Well, I couldn't say that.

Q. You never saw him unless he had the sign of liquor on him, did you? A. Yes, I have seen him lots of times when he has been all right.

Q. In 1915? A. Yes, in 1915.

Q. Well, 1916 he got worse? A. No, not right then.

Q. 1917? A. No.

Q. 1918? A. No.

Q. 1919? A. No.

Q. For four years he didn't take anything at all? A. Well, I wouldn't say he didn't take it, but he didn't get any worse.

Q. He was taking it right along? A. Yes, sir.

Q. When did he begin to lose his eyesight? A. Well, the only thing I know about when he lost his eyesight, about in the last year and a half, when I heard him complain that he could hardly see.

Q. Last year and a half? A. Yes, sir.

Q. Didn't he begin to lose his eyesight five years ago? A. Not that I know of.

Q. Where did he get all this drink, and all the veronal, who got it for him? A. I couldn't tell you.

Q. Well, how much liquor did you see in his home when you were there the two weeks? A. I never seen any liquor in his home.

Q. What caused him to be stupid and stay in bed for two weeks? A. The drugs.

Q. Nothing but drugs? A. That is all I seen. I wasn't there in the day time.

Q. Well, at night? A. At night.

Q. And the other times that you saw him under the influence of liquor was at the place of business? A. Yes. I seen him there at times.

Q. When did he become a real hard drinker, constant drinker, if he did? A. Well, about the last year and a half.

Q. Why do you make it the last year and a half? A. Because he was worse the last year and a half than he had ever been.

Q. Well, when he went to Belle Mead he was pretty rocky, wasn't he? A. Yes, but that was only for a short period.

Q. Wasn't he rocky when he was sent to Trenton, or didn't you see him? A. Yes, he was, but not as bad as he was in the last year and a half.

Q. There was no improvement as time went on? It was worse from 1915 on? A. No. The time after he came out of the hospital at Trenton Mr.

Freeman was all right for about two or three months.

Q. This year and a half period, isn't it, beginning then? A. He was all right for about three months after he come out of the hospital, and then he began to go off again.

Q. How did you know that he was all right? A. Well, he appeared all right to me. He had his mind, and his memory, and his speech.

Q. You are interested in the lucid interval about the time the will was made, aren't you? A. No, sir.

Q. So that he wasn't in his right mind except during that period? A. That was the only time he appeared to me.

Q. In his right mind? A. That he had what you call his right mind.

Q. So that before that and after that he was off in his mind? A. Well, not as bad as he was the last year and a half.

Q. But in that, before that lucid period, and after it, he wasn't of his right mind? A. Well, at times before that he was in his right mind.

Q. But not anything like he was? A. No, sir.

Q. That is the time that he saw the light of day, is that right? A. Yes, sir.

Mr. Brown: That is all.

By Mr. Strong:

Q. You didn't have anything to do with him after he discharged you, did you? A. No, sir.

Q. The time that he knocked in the panels of the door was when you imprisoned him in his own room, isn't that it? A. I didn't imprison him.

Q. Kept him in his own room, didn't you? A. No, sir.

Q. You would not let him out, would you? A. Certainly I let him out when he wanted to come out.

Q. Didn't you say he was inside and you wouldn't let him out? A. I didn't want to let him come out.

Q. What did you do to keep him in? A. Just shut the door.

Q. You just shut the door. He demanded to come out, is that right? A. Yes, sir.

Q. You wouldn't let him out? A. He could come out if he had opened the door, but he didn't open the door.

Q. You shut it and locked it? A. No, I didn't lock it.

Q. You held it shut? A. No, I didn't hold it shut.

Q. What is the use shutting the door if he could come right out? A. I just shut the door.

Q. You just shut the door? A. Yes, sir.

Q. He called to you to let him out, didn't he? A. No, he didn't call me.

Q. Didn't he tell you he wanted to come out? A. He said he was going to come out, and I told him he couldn't come out, and I shut the door.

Q. You shut the door and told him he couldn't come out? A. Yes, sir.

Q. Room in his own house, wasn't it? A. Yes, sir.

Q. And then he knocked the panels out with a club? A. Yes, sir.

Mr. Strong: That is all.

By Mr. Brown:

Q. Then your father had nothing to do with employing you, or regulating your employment? A. No, sir.

Q. He had no charge there while Doctor Freeman was there? A. He was boss over me.

Q. Boss over you? A. Yes, sir.

Q. Well, who was the owner of the business? A. Manning Freeman & Son.

Q. Wasn't Doctor Freeman the owner? A. He was supposed to be the owner; as far as I know he was the owner.

Q. Had full control there? A. Yes, sir.

Q. As long as you know of? A. Yes, sir.

Q. Down to May, 1922? A. Yes, sir.

Mr. Brown: That is all.

By Mr. Strong:

Q. He was supposed to be the owner, but your father was the one who really ran the business, isn't that right? A. Well, he was manager.

Q. Who hired you to come back on May 16th? A. I was hired through the new men.

Q. Who were the new men? A. The new president.

Q. Who was the new president? A. Mr. Watson.

Q. And your father continued there in control? A. Yes, sir.

Q. And the business after that was run by your father and Mr. Watson, is that right? A. Yes, sir.

Q. And you were working under your father? A. Yes, sir.

Mr. Strong: That is all.

WILLIAM A. BREEN, a witness produced on behalf of the Caveators, being duly sworn according to law on his oath, saith:

Direct Examination by Mr. Watson:

Q. You are a son of John W. Breen, Sr.? A. Yes, sir.

Q. Where do you live, Will? A. Metuchen.

Q. How old are you? A. Thirty-one years old.

Q. Did you work for Doctor Freeman? A. Yes, sir.

Q. How many years did you work for him? A. Worked for Doctor Freeman from 1907 until 1917, and then from the spring of 1919 until 1922 in June.

Q. What kind of work did you do? A. I at first started out in Doctor Freeman's office, and then later on, when he purchased a car, I became his chauffeur.

Q Did you drive the trucks, or drive his personal car. A. His personal car.

Q. Did you ever drive the car at his home that Mrs. Freeman used? A. Yes, sir.

Q. So you were chauffeur both for Doctor Freeman and for Doctor and Mrs. Freeman? A. Yes, sir.

Q. Why did you leave in 1917? A. I went in the United States army in 1917.

Q. In the service? A. Yes, sir.

Q. How long? A. Until May 30th, 1919.

Q. What was Doctor Freeman's feeling toward you at that time? A. He thought there was no better than I was at that time.

Q. Well, was he very friendly to you? A. Yes, sir.

Q. Did he do lots of kindly things for you? A. During my time in the war Doctor Freeman paid me half pay, when I returned and got discharged from the army.

Q. Did you get it all in a lump? A. All in a lump.

Q. How much did it amount to? A. It amounted to between nine and ten hundred dollars.

Q. What were Doctor Freeman's habits as to the use of alcohol and drugs, as you observed them?

A. When I first started with Doctor Freeman I only knew from him having a habit of alcohol. That would occur probably once a year, especially when Mrs. Freeman went away on her trips.

Q. What did he do? A. He would just go on a little drunk, a little tear, a joy ride and so forth.

Q. When he became intoxicated, Will, what was his frame of mind? A. Well, in the earlier days when I worked for him, it was just simply to go around and have a little fun, become intoxicated, and go for a ride, or to the shore, or something similar to that.

Q. And later how did it affect him? A. Well, each year his little jag would be a little more pronounced; in the first part it would only be probably for three days; as the years went on it began to increase.

Q. How did it affect his mind when he was intoxicated, later? A. By later, how late do you mean?

Q. Well, let us say before you went away in 1917? A. In 1917, when I left the doctor, he would go on an occasional spree, but his mind seemed to be all right.

Q. Did you notice any difference in him when you came back in 1919? A. Yes, sir; I did.

Q. How was he then? A. He seemed to be dopey and boozy very often.

Q. You came back in the Spring of 1919, and you were with him until January, you say, of 1922? A. Yes, sir.

Q. A little over two years? A. Yes, sir.

Q. What was his use of alcohol and drugs during those two years? A. When I returned in 1919, I had never known Doctor Freeman touched drugs until that year, and then I had noticed it on him, that he was in a dopey way.

Q. When did you find out—did you ever see him use drugs? A. Yes, sir.

Q. When? A. When he came to live with me.

Q. When did he come to live with you? A. Came to live with me in May of 1921.

Q. In May, 1921? A. Yes, sir; about that time.

Q. That was before he went to the hospital in September, 1921? A. Yes, sir.

Q. You are sure it was before? A. Before he was with me; yes, sir.

Q. Where were you living then? A. In the apartment over the garage.

Q. You were married? A. Yes, sir.

Q. How did he come to go to live with you? A. Well, he seemed to have had a little trouble, being on a spree, and he came up to me one morning and asked me if I had a room there that he could use for a couple of weeks. And I said yes. He stayed over, about, I should judge, four weeks, and then returned home.

Q. Did he come back to you again? A. In the meantime Mrs. Freeman had went away, and on her return trip home Doctor returned to my place.

Q. About when was that, if you remember? A. I don't just clearly remember exactly when it was.

Q. It was before or after he went to the hospital the second time? A. Before.

Q. How long was he with you before he was committed to the hospital? A. I should judge three months.

Q. During that time what was his condition, Will? A. He seemed to get a little worse, as each month went on, during that time.

Q. What was he using? A. He was using a drug known as veronal.

Q. How do you know he was? A. I purchased it for him.

Q. How did he acquire it, or how did he buy it? A. In a bottle. It came in a small bottle.

Q. Did you ever see him take it? A. Yes, sir.

Q. Were you driving him at that time? A. Well, I did some driving in between those two years, but at that time, just then I was not driving, no.

Q. What were you doing? A. I was repairing in his garage, his trucks, and so forth.

Q. Who was driving? A. My brother George was driving at that time.

Q. When he came back from the hospital in October, 1921, did he come back to live with you? A. I brought him back. He came direct to my house.

Q. Came from the hospital to your house? A. Yes, sir.

Q. And when did you leave? A. I left about January 9th, 1922.

Q. Have you worked for him since? A. No, sir.

Q. How often have you seen him since then? A. I have seen him on several occasions on the street.

Q. Do you remember Christmas Day of 1921? A. Yes, sir.

Q. Where did he have his Christmas dinner? A. At Harry Mohring's house.

Q. Who were there? Where did Harry Mohring live then? A. Just across the street.

Q. Who were there? A. Harry Mohring and his wife, Mr. and Mrs. Rohr, Harry Mohring's father and mother, sister and brother, and their husband and wife.

Q. How did Doctor go that day? A. Doctor had promised me, or had said that he was not going. I had told these people I wouldn't go, if Doctor had went that way.

Q. Were you invited, too? A. Yes, sir.

Q. What happened? A. Harry Mohring came across the street and dressed Doctor and took him over.

Q. What do you mean by dressed him? What was Doctor's condition? A. He was in bed.

Q. Anything else about him? A. He was under the influence of liquor from the evening before.

Q. How bad was his condition? A. In the morning, that morning starting out, he was a little shuffly on his feet, his condition wasn't so bad on that morning especially.

Q. Do you remember an occasion when his bed got on fire? A. Yes, sir.

Q. When was that? A. That was around the middle of December of 1921.

Q. What happened? A. Doctor had been on a spree at that time and was laying in his bed, and the condition of the room, and so forth, had become so that my wife had practically refused to clean up after him, and the Doctor had laid there smoking and the mattress was burnt to the extent of a hole about a foot through the quilt, and the sheets and pillowcases were burnt; I was working in the garage below and was called up to put it out. I had to take water to pour on and put it out. And he had also burnt his arm with a large burn.

Q. When was that? A. That was about the middle of December, 1921.

Q. What time of day, I mean? A. Around eleven o'clock in the morning.

Q. How did the bed get on fire, do you know? A. Doctor was apparently smoking in bed.

Q. It was because of this that you and he separated? A. There were reasons of that kind, several different reasons. I had three personally. He tried to become familiar with my wife was one.

Q. I did not mean to go into those things, Mr. Breen, your personal affairs, unless counsel wants to.

Mr. Strong: You gave a good opening to go into it.

Mr. Brown: I think we ought to have all conditions.

Q. Go ahead and tell it, Mr. Breen? A. I was also raising a daughter whom I did not care to have see such things going on. And also the condition in which the house was kept through his carelessness, I did not care to stay.

Mr. Watson: Cross examine.

Cross Examination by Mr. Strong:

Q. For how long a time did he attempt to become familiar with your wife? A. Well, on different occasions he had asked her to have nips with him when he was having his nip.

Q. Harry Mohring succeeded you as chauffeur there, didn't he? A. Yes, sir.

Q. And the Doctor gave you six weeks' notice to quit, in writing, did he not? A. I couldn't just judge it was six weeks. I know I received a notice.

Q. He gave you notice to quit, in writing, didn't he? A. Yes, sir.

Q. Was he boozy or dopey when he gave you that nine or ten hundred dollars? A. No, sir; I wouldn't judge the man was boozy and dopey.

Q. Who would give you nine or ten hundred dollars? His mind was very clear that time? A. I was carried on the books as an employee is why I received half of my pay during my service in the army.

Q. He was the owner of the business, wasn't he? A. Yes, sir.

Q. He gave you that money, you said? A. As a former employee of the company I received it.

Q. And then you purchased drugs for him? A. Yes, sir.

Q. Those drugs, you say, had a bad effect upon him? A. Yes, sir.

Q. Still you purchased them? A. I was employed by him.

Q. Did you purchase them for him? A. I carried out my orders.

Q. You said he began to use drugs when he came to live with you? A. It is the only time I knew of it. I don't know as he began with me.

Q. What is the largest number of Breens at any time working for Doctor Freeman, or for the lumber company? A. I can't just recollect. I was not in connection with the lumber company. I was in the automobile end of it.

Q. Paid by the lumber company, weren't you? A. Paid by Manning Freeman & Son; yes, sir.

Q. Now I ask you, what was the largest number of Breens working at any one time for Doctor Freeman, or for the lumber company? Figure it up, and take your own time. A. I should judge about eight. I am not positive.

Q. When was that? That high water mark was when? A. I should judge about 1920.

Q. What part of 1920? A. I couldn't state exactly.

Q. State as nearly as you can? A. About the middle of 1920.

Q. And were you included in that eight? A. Yes, sir.

Cross Examination by Mr. Brown:

Q. Well, as far as you know, Mr. Breen, the doctor has always been the owner of that business? A. As far as I know; yes, sir.

Q. Even though it is called Manning Freeman & Son, Inc., he was looked upon as the owner of the business? A. Yes, sir.

Q. You all recognized him as the owner and the chief manager, or boss of the business, the same as if he was? A. Yes, sir. We took his orders, received his orders and carried them out.

Q. You say that in 1907 the doctor would get drunk about every month? A. No, sir; I did not say that.

Q. Well, how often? A. I said once a year, to my knowledge.

Q. When would that be? A. When Mrs. Freeman would go away on her trips to Boston.

Q. That would be when, summer time? A. I couldn't state. She took them at different intervals.

Q. Did she only go away once a year? A. To my knowledge.

Q. And she would stay how many weeks? A. About two weeks.

Q. Would he be drunk all that time? A. No, sir; not 1907.

Q. There was no veronal that year? A. Not that I know of.

Q. There might have been without you knowing it? A. I couldn't say.

Q. How about 1908? A. Mrs. Freeman went away in 1908, I believe. Of course, it is very hard for me to remember this years back.

Q. I know, but you have been remembering everything up to this time now. Can't you help me out? How many times in 1908? A. I spoke in my direct examination that Doctor Freeman started off about three times, or three days, first, and would increase a little each year, in these two weeks.

Q. I didn't ask you what you did first; I am asking you now about your opinion of his sprees in 1908? A. Well, I should judge he went about four days on one.

Q. Four days? A. Yes, sir.

Q. Any veronal then? A. Couldn't say.

Q. What about the next year, 1909, how many sprees? A. I couldn't state how many just in 1909.

Q. Well, was it four days, or double that, or what? A. I couldn't say.

Q. Why? How can you remember 1907 three days, and can't remember 1909? A. I said about. I am not positive of the number of times on any occasion.

Q. Well, how many times in 1909? A. I couldn't say.

Q. 1910 you can't say? A. No, sir.

Q. 1911? A. No, sir.

Q. 1912? A. No, sir.

Q. 1913? A. No, sir.

Q. You don't know whether he was drunk or sober? A. I know he had been on sprees, but I couldn't remember the number of days.

Q. Well, in 1919, when you came back, then he was completely saturated? A. No, sir.

Q. What was there in 1919 that caused you to say there was a decided change, that you noticed he was dopey, and very often boozy, that is what you said, wasn't it? A. Yes, sir. On different occasions. Not all the time.

Q. Well, how many occasions? A. I think I was back to Doctor Freeman about three weeks when I noticed him on one.

Q. They were very frequent after that, weren't they? A. Well, they were a little more frequent than before I went away.

Q. Well, you had grown used to the doctor's condition? A. No, not in three weeks I had not; no, sir.

Q. How long did it take you to grow used to it?

A. I had not noticed him in particular for about a year.

Q. You didn't notice it until it became so unbearable that you couldn't stand it any longer, is that so? A. Well, he was not with me to be unbearable at that time.

Q. When did he come to you? A. In about May of 1920.

Q. So while he was with you he became so intoxicated, and so charged with drugs, and so debilitated in mind and body, that it was necessary to send him away? A. I didn't have him sent away.

Q. I know you didn't, but that is the condition, is it not, that is the fact? A. He would go on one of those for about three to four weeks, in which he was saturated, and full of drugs.

Q. What three weeks was it now, in May? A. I can't just remember what three weeks exactly.

Q. When did you begin to buy liquor and veronal for him? A. Never bought liquor.

Q. When did you begin to buy him veronal? A. Why, he would often send me to the drug store to receive some things he had ordered.

Q. Which drug store? A. George H. Hahn, at Metuchen.

Q. When did you begin to buy? A. I never bought. I went and received his orders, which he had placed.

Q. When did you go for his allotment? A. Oh, I have done it on several occasions through 1920.

Q. Not before then? A. No, sir.

Q. He went to the hospital in August? A. I don't remember just what month. I know he went to the hospital.

Mr. Strong: August what year?

Q. Well, in May he went with you, 1920? A. No, sir.

Q. When, 1919? A. No, sir.

Q. Where were you when he was sent to Belle Mead? A. I do not remember the occasion.

Q. You don't remember when he was at Belle Mead? A. No, sir. I was in the army.

Q. In 1919 he went to Belle Mead? A. I was still in the army.

Q. What time were you released from the army? A. May 30th, 1919.

Q. Did you become his personal chauffeur on your return? A. No, sir; not on my return.

Q. You have spoken about the automobiles and the home as that of Doctor Freeman. They are Mrs. Freeman's, are they not. A. Yes, sir.

Q. Paid for by her? A. I couldn't say.

Q. You never saw Mrs. Freeman do anything to Doctor Freeman that wasn't proper, and for his good? A. Not that I could say.

Q. She was always kind to him? A. The only time I saw Mrs. Freeman with Doctor was while they were in the car driving, and at that time I considered it was none of my business what was said. I never paid any attention to it.

Q. Well, about the house, when you were there? A. I was never about the house.

Q. You were not in the house? A. No, sir.

Q. When did you notice the doctor began to smoke in bed? A. When he came to live with me.

Q. That was in May, 1920? A. Yes, sir.

Q. He continued that habit how long? A. He smoked every evening in the bed, as far as I remember. He always smoked when he laid down for his nap.

Q. He would fall asleep with a lighted cigar? A. No. Only this one occasion, that I remember. Two occasions it happened.

Q. When did he begin to take drink when he

went to bed? A. He always had a drink, either before retiring, or on just going to bed.

Q. Did he take a little to bed with him and put it under his pillow? A. He would either have it before he went to bed, or take it in and set it alongside of his bed.

Q. What would he take? A. Take a water glass full of whiskey.

Q. Do you mean the ordinary tumbler that is before you here, that would hold about a half a pint? A. Yes, sir.

Q. He began to do that when, for the first time? A. Well, he always had his little drink during 1920.

Q. Yes. And 1921? A. 1921 returned from the State Hospital, for about two months Doctor Freeman was in A1 shape about my house.

Q. I know that, but up to the time this streak of daylight came, after his return from the hospital, up to that time he was taking it every night, was he? A. I don't understand that question.

Q. Admitting the point about the lucid interval, right after he came from the hospital, of two months, before that time and after that time he always had his pint at night, or half pint? A. Yes, sir.

Q. That is right? A. Yes, sir.

Q. No mistake in your mind about that? A. Not a bit.

Q. How much would he have during the day? A. Well, I wasn't with him most of the day.

Q. Well, when you were with him, how much would he have? A. He would have his drink at home, when he would come home.

Q. How big a drink would he take? A. About quarter of that water glass.

Q. That would be a quarter of a pint? A. I

couldn't say. I don't know what the glass holds.

Q. Well, if the glass holds a half a pint, a half of that would be a quarter of a pint? A. A quarter of a half a pint.

Q. What else would he have during the day? A. He would have a few of his tablets.

Q. How often would he take the tablets during the day? A. I couldn't say. He was clever on those, unless you happened to watch.

Q. How often would you see him in the day taking them? A. I have seen him on at least two or three times a day take tablets.

Q. And then in the evening time he would take them again? A. Well, I surmise he did, because we found them around his bed.

Q. When was it that the Doctor first made improper advances to Mrs. Freeman? A. I do not know.

Mr. Strong: Did he say improper advances? I do not think those are improper advances in the sense of the word.

The Court: You mean Mrs. Breen.

Mr. Brown: Yes.

Mr. Strong: He explained that by saying he wanted her to take a nip with him.

Q. What was the familiarity that you complained about? A. He would grab my wife by her legs, and pat her on the back, and also asked her to have a nip with him.

Q. That would not be a drink? A. Sir?

Q. You understood nip by the vulgar sense of that word, did you not? A. I understood it for a drink.

Q. A drink? A. Yes, sir.

Q. When did he start that sort of conduct? A. That started about the middle of December, 1921.

Q. Not before that? A. No, sir.

Q. The condition of the house that you complained about was caused by the Doctor's condition or conduct? A. Yes, sir.

Q. When did that begin? A. That began in December, 1921.

Q. What was there about the Doctor that was offensive in that condition? A. Well, his room, in the first place, was always covered with cigar butts from one end to the other; his clothes were thrown any place; no matter how often it was rearranged it was turned upside down.

Q. Were there times that he lost control of himself naturally? A. Yes, sir.

Q. How often would that occur? A. It ocurred, if I remember, on three or four occasions.

Q. When did that first come to your attention? A. Why, one morning when I wakened.

Q. In what year, what month? A. In December, 1921.

Q. What was the loss of control? A. Of his bowels, he lost control.

Q. Where was that in the house? A. In the hallway.

Q. How long after that did it occur again? A. Well, as I say, it occurred about three or four times during that month.

Q. Besides the liquor and the dope that you saw the Doctor take, he had opportunity, if he wanted to, to get more, did he not? A. Why, yes.

Q. From 1920 on he had plenty of opportunity to get dope and liquor, other than what you saw? A. Yes, sir.

Q. Did he ever show by his appearance that he was getting any dope or liquor, other than what you brought, or that was consumed in your presence? A. Yes. Many occasions.

Q. You were not responsible then for his condition? A. No, sir.

Q. Either directly or indirectly? A. No, sir.

Q. Was his conduct, as to sobriety, or insobriety, due more through your instrumentality or assistance, or through outside opportunities or assistance? A. That I cannot say.

Q. Well, what do you say about—you have said about his drinking night, noon and even the morning, and taking the veronal for years, as you have mentioned, now, what did his condition indicate to you? A. Why, he has often left the place in the morning and came back at noon with his shuffling and dopey looks on him.

Q. How often would that occur? A. It occurred quite often during 1920, and in the month of December, 1921.

Q. Well, where did he get his condition that caused his removal to the hospital, do you know? A. I do not know, sir.

Q. He was with you at that time? A. At the time he went to the hospital? Which time?

Q. The last time? A. Yes, sir.

Q. You don't know where he got it? A. No, sir.

Q. You didn't give him anything then? A. No, sir.

Q. You were his driver then? A. I was not driving.

Q. Who was driving? A. Brother George.

Q. It wasn't the half pint at night, and the drink or two during the day, and the veronal in the quantities you have mentioned, that caused that condition, was it? A. I should assume it was.

Q. You think that would do it? A. Yes, sir.

Q. It wasn't extraordinary supplies that were given outside of your home? A. I don't know just what quantity he was taking.

Q. You do know he was taking some? A. Yes, sir.

Q. How often would he come intoxicated or dopey to the house, where the stimulant wasn't administered at your home? A. I never administered any stimulant in my home.

Q. Well, where it was taken in the home? A. Came in very often without having the stimulant in my home.

Q. Well, how often would that be? Once a week? A. I have seen him come in three or four times a week in that condition.

Q. During 1920 and 1921? A. Yes, sir.

Mr. Brown: That is all.

By Mr. Strong:

Q. You say you never administered any stimulant to him in your home. Where did you administer it to him? A. Never did administer it to him.

Q. Why didn't you say that then? A. I didn't understand that question.

Q. I will withdraw that. You never gave him any whiskey at any time? A. I have poured it out for him; yes, sir.

Q. When you say you never administered it to him, you mean you never forced it down his throat? A. No, sir.

Q. There has been some confusion on the record as to the year in which he came to live with you. What year was that? A. He came to live with me in the year of 1921.

Q. What month? A. I am not positive of the month.

Q. As near as you can tell? A. I would judge the month of May, but I am not positive.

Q. About three months before he went to the Trenton asylum? A. He stayed about four weeks

with me, and went back home, and then he returned about three months before he went away in 1921.

Q. And you left him in January of 1922, January 6th, did you say? A. I judge it was around the ninth. I am not positive of the date.

Q. January 9th, 1922? A. Yes, sir.

Q. And during that period from May, we will say, 1921, to January of 1922, his habits as to drugs and liquor became worse and worse, is that right? A. No, sir; I did not say that.

Q. Then they didn't become worse? A. I said when he returned from the hospital in 1921, for about two months the man was a perfect gentleman.

Q. With the exception of that interval while he was living with you his habits became worse and worse with respect to the use of liquor and drugs, is that right? A. Yes, sir; with the exception of that end of it.

Q. How old are you? A. Thirty-one, sir.

Q. You were fifteen, back in 1907? A. Yes, sir.

Q. You have a pretty fair recollection of the extent of his indulgence in liquor in 1907, is that right? A. I have a fair.

Q. That half pint of whiskey he used to take nights had plenty of water in it too, didn't it? A. Not that I know of, sir.

Q. Are you ready to swear it didn't? A. I couldn't swear either way. I didn't see the whiskey manufactured.

Q. From the middle of December, 1921, until January 9th, 1922, you say you tolerated that familiarity of treatment by him of Mrs. Breen, your wife? A. I didn't say that, sir.

Q. It is a fact he continued to live there after that course of familiarity had set in? A. I lived there from December, that time, until 1922.

Mr. Strong: That is all.

By Mr. Brown:

Q. About the water, you know very well there wasn't any water served to him in that nightly half pint? A. No, sir.

Q. That is, it wasn't water ? A. There was no water that I know of.

Q. You served it as whiskey? A. I didn't serve it. I poured it out. He took it himself.

Q. He got it from the whiskey bottle? A. Jug; yes, sir.

Q. Where would he get all this whiskey? A. Well, that I couldn't say.

Q. Who would get it, you or he? A. I have been told to stop to get some jugs for him at a certain place, and I did it.

Q. Would you mind letting us in on the secret? Where would you get it? A. Well, I don't know. These were left. I don't know where they came from.

Q. Where were they left? A. At a certain house in Metuchen.

Q. What house? A. House on Hillside Avenue.

Q. Up on the hill? A. No. Just a block off the main street.

Q. On Hillside Avenue? A. Yes, sir.

Q. Did you know the person well? A. I know the person well? A. I know the person that lived in the house.

Q. Who is that? A. I cannot say that this man was responsible for it.

Q. I am not asking that, but who was it? A. His name was Joe Komito.

Q. That is since 1920? A. No, sir.

Q. Where did he get it before that? A. I do not know.

Q. Where did he get it during 1920? A. I couldn't say.

By Mr. Strong:

Q. As I understand it, you know there was no water in that nightly half pint of whiskey because you gave it to him yourself, is that right? A. I couldn't say whether there was water in it or not.

Q. But you gave it to him yourself? A. I poured it out for him.

By Mr. Brown:

Q. What did it smell like? A. It smelled like whiskey.

Q. What was the effect of it, like water, or whiskey? A. Well, like whiskey.

Q. There is no doubt in your mind that it was whiskey, is there? A. Not a bit.

Mr. Brown: That is all.

The Court: That is all.

Mr. Watson: May I offer this record, the minutes of the corporation, of the re-organization, and subsequent proceedings, so that counsel may have it over night. Is there any objection, Senator?

Mr. Strong: I do not think there will be, but I would like to look at it.

Mr. Watson: We will not offer it formally until to-morrow.

Adjourned until to-morrow, Friday, May 4th, 1923, at 11:00 a. m.

May 4th, 1923.

JOHN W. BREEN, JR., a witness produced on behalf of the Caveators, being duly sworn according to law on his oath, saith:

Direct Examination by Mr. Watson:

Q. Where do you live, Mr. Breen? A. Metuchen, New Jersey.

Q. How old are you? A. Thirty-four.

Q. How long have you lived in Metuchen? A. Thirty-four years.

Q. You are the son of John W. Breen, Sr.? A. Yes, sir.

Q. You have been employed by Manning Freeman & Son? A. Yes, sir.

Q. How long? A. Twelve years.

Q. What work do you do? A. Bookkeeper.

Q. Have you done that kind of work all the time that you have been employed there? A. Yes, sir.

Q. In the course of your work for Manning Freeman & Son, how often, on an average, during those twelve years, did you see Doctor Freeman? A. Mostly every day, working day.

Q. Did you know of his habits as to the use of alcohol and drugs? A. Yes, sir.

Q. What were they? A. I have known him to drink, and I have known him to take drugs.

Q. Did he become intoxicated? A. Yes, sir.

Q. In the early part of your employment with the company, the first five years, let us say, how often did he become intoxicated? A. Not over once or twice a year that I know of.

Q. Was he an habitual drinker, aside from that? A. As far as I know he was.

Q. Then later how did his habits become? A. The later years the periods between his sprees were much shorter.

Q. And the last year of his life? A. The last year of his life the sprees were very frequent.

Q. What about the use of drugs? A. I have seen him use drugs only in about the last three years.

Q. Where did you see him? A. In the office.

Q. How did he do it? A. The drugs were taken from a bottle and placed in his mouth.

Q. What did they look like? A .Small white tablet.

Q. Did you ever see him under the influence of drugs? A. I have.

Q. How often? Well, seldom, frequent or often, or what? A. Frequent.

Q. What was his condition, referring to the last year of his life, what was his condition of mind when he was under the influence of liquor or drugs? A. He was stupid, his talk was very thick, and he was shuffly on his feet.

Q. How were his mental processes? A. They were not keen.

Q. Intelligent? A. I would say not.

Q. What was his conversational ability? A. Very poor.

Q. What do you mean by very poor? A. His conversations were not understandable, sometimes, and they were not connected.

Q. Do you remember New Year's Day 1922? A. Yes sir.

Q. When Doctor Freeman was going out to dinner that day? A. Yes, sir.

Q. Where was he going, do you know? A. To the house of George Rohrs.

Q. Where was that? A. In Metuchen, across the street from where he lived.

Q. Doctor Freeman lived in the apartment over the garage on Volkmar Place? A. Yes, sir.

Q. He sent for you that day? A. He called for me; yes, sir.

Q. How did he call for you? A. On the telephone.

Q. Where did you live? A. The next house, about two hundred feet away from where he lived.

Q. Manning Freeman & Son own two buildings there, don't they? A. Yes, sir.

Q. There is a living apartment on the second story of each building? A. Yes, sir.

Q. Doctor Freeman lived in one apartment, and you lived in the other? A. Yes, sir.

Q. And you had an agreement with the company, or with Doctor Freeman, did you not, that you should have that building rent free in part compensation for your services? A. Yes, sir.

Q. By that agreement you could live there as long as you were connected with the company? A. Yes, sir.

Q. This New Year's Day 1922, when you went over there, what was Doctor Freeman's condition? A. His condition was that he was either intoxicated or under the effects of drug.

Q. What did you do? A. I helped dress him, and I put on his collar for him, tied his tie, put on his vest and coat.

Q. Was he able to do it himself? A. No, sir.

Q. Did he send for you on Sunday, April 30th? A. What year?

Q. 1922? A. Yes, sir.

Q. What was his condition on that day? A. He was under the influence of drink or drug, when I got there, and he was in bed.

Q. What did he tell you he wanted to do? A. He wanted me to write the minutes of the directors' meeting.

Q. What do you mean? Was he going to hold a meeting? A. He was going to hold a meeting.

Q. Right then and there? A. Right then and there.

Q. Who were the other directors of the company? A. Who are the other directors?

Q. Yes. A. Miss Freeman and Mr. Breen.

Q. Miss Sallie B. Freeman, and John W. Breen, your father? A. Yes, sir.

Q. Were they there? A. No, sir.

Q. Did he tell you what business he wanted to transact? A. Yes, sir.

Q. Who else was there? A. Just myself.

Q. Anybody else? A. No, sir.

Q. Was Harry Mohring there? A. Not at that time, that I remember.

Q. Did he tell you what business he wanted to transact? A. One part of the business was he wanted to transfer all the shares that he held in the corporation to me. He wanted to state what his salary would be, what Mr. Breen's salary would be, and my own. That is all I can remember.

Q. Did he say why he wanted to transfer his stock to you? A. No, sir.

Q. What did you do? Did you do it? A. No, sir.

Q. You did not do it? A. No, sir.

Q. The next morning did the Doctor come to see you? A. Yes, sir.

Q. What did the Doctor give you? A. He gave me the minutes, written out on a piece of paper, that is, in long hand, and requested I make a copy of them.

Q. Did he tell you who had written them? A. He told me that Harry Mohring had written them.

Q. Have you that lead pencil memorandum? A. No, sir.

Q. Have you searched for it? A. I have.

Q. Can you find it? Have you found it? A. No, sir.

Q. Did you make a copy of it? A. I made a copy on the typewriter.

Q. Why did you do that? A. It was the Doctor's request that I do it.

Q. Did you do it right then and there while he was there? A. That I can't say.

Q. Well, if you didn't do it then and there, how soon after did you do it? A. Very shortly after.

Q. What do you mean by very shortly? A. That same morning.

Q. I hand you a typewritten document, dated May 1st, 1922, and ask you if that is a copy that you made at that time? A. Yes, sir.

Mr. Watson: We offer it in evidence.

By Mr. Strong:

Q. You typewrote that yourself? A. Yes, sir.

Q. From what? A. From a letter that was written in longhand, that is, the minutes were written in longhand, on a piece of paper.

Q. And he said those longhand minutes were in the handwriting of— A. Harry Mohring.

Q. What did you do with those minutes in the longhand writing? A. I kept them for some time. Just now I don't know where they are.

Q. Do you think you could institute a search and find them? A. I think so.

Mr. Brown: We have no objection to the admission of the paper.

Mr. Strong: I make the formal objections that it is not the original, and there is no testimony that Doctor Freeman ever saw it, and I think the original can be produced here.

Mr. Watson: Let us clear this up. There is evidently a misunderstanding.

By Mr. Watson:

Q. Mr. Breen, have you searched for the original, or not? A. I haven't searched in the office.

Q. Where have you searched? A. At home, and in some papers that I had here.

Q. When can you search in the office? A. Any time.

Q. Can you do it when you have finished testifying? A. Yes, sir.

Q. Go over and do it. Very well.

Mr. Watson: We will just have this marked for identification. If he finds it, we may put in the original, and if not, we may introduce this.

The Court: The original will be much better.

(Paper marked C 1 for identification 5/4/23.)

Q. Do you remember an occasion later in May when Lettie Patterson called you to Doctor Freeman's house? A. Yes, sir.

Q. Do you know the date? A. May 21st.

Q. How do you know the date? A. Because previous to that I had been taking Doctor Freeman, Lettie Patterson's money or wages in cash.

Q. The corporation paid her wages, did it? A. Through Doctor; yes, sir. I had been taking it to him in cash, to Doctor, her wages, in cash, and I gave it to him, not to Lettie Patterson, and what recalls the date is this, that from that time on we paid her by check.

Q. That was the first time you paid by check was May 21st? A. No. The following week.

Q. On that day what was his condition? A. His condition was very, very bad.

Q. What was the matter with him? A. He was practically helpless.

Q. What was Lettie Patterson doing? A. When I went in the house she was feeding him.

Q. With what? A. A spoon. She was feeding him a grape fruit.

Q. What caused his condition, in your opinion? A. Drugs or alcohol.

Q. Did you see him on the fifth day of July? A. Yes, sir.

Q. Whereabouts? A. In the office.

Q. Did you have a conversation with him? A. Yes, sir.

Q. What was the conversation? A. He asked me—

Q. How do you know it was the fifth day of July? A. On account of being the day after the Fourth, the conversation was in regards to the Fourth.

Q. What did he say to you? A. He asked me if I had shot anybody the night before.

Q. What did you say? A. I told him no. He wanted to know if I had been shooting at anyone. I told him no, that I was simply celebrating the Fourth of July by shooting a revolver. He was surprised, and thought it was Sunday.

Q. Thought what was Sunday? A. The day before.

Q. He didn't know what day of the week it was? A. He did not.

Q. What was his condition? A. He was in a dopey condition?

Q. From what? A. It looked to me from drugs or alcohol.

Q. What day of the week was it actually, do you know? I suppose the calendar speaks for itself. A. The Fourth of July?

Q. Yes. A. I think it was on a Wednesday.

Q. At any rate, this was the day after the Fourth, and he thought it was Sunday? A. Yes, sir.

Q. Do you remember a letter which Doctor Freeman wrote to Senator Frelinghuysen? A. Yes, sir.

Q. Did you write the letter on the typewriter? A. Yes, sir.

Q. How did you come to do that? A. He wanted it written on the—

Q. I mean, who asked you to? A. Doctor Freeman.

Q. And when was that? A. That was in the last part of June; the day I can't remember.

Q. What did you write it from? A. He dictated the letter to me, and I wrote it out in longhand.

Q. Then what did you do from the longhand copy? A. I made a typewrtiten copy.

Q. Is this the longhand copy that you made? A. Yes, sir.

Mr. Watson: I will ask to read it into the record, after counsel inspects it.

Mr. Brown: We have no objection.

The Court: Any objection, Senator Strong?

Mr. Watson: I am going to question on it, so I want to read it.

"Senator Joseph Frelinghuysen:

My dear Senator:

I have a ne'er-do-well niece who married a German, and who was travelling in Europe at the outbreak of the war. Her husband was drafted in the German army and killed at Mons, I think. She at present is located

at Hamburg. I have sent her twenty thousand marks to bring her, her nurse and two children to this country. I expect them to arrive about July fifth. Will you secure for me the freedom of the port, and if necessary, I will give any reasonable bond that they will not bring any contraband into this country.

sincerely yours,

C. M. Freeman.

P. S.—I cannot see to read. Do not understand German, and most of her letters in German, and I am considerably in the dark as to the details of her proposed return."

(Letter entered in evidence and marked Exhibit C-2, 5/4/23.)

Q. Did Doctor Freeman have a niece that you know of? A. Not that I know of.

Q. Did you know of any correspondence with reference to any niece in Germany, other than this letter? A. No, sir.

Q. Did you ever hear of that person before? A. No, sir.

Q. Did you handle all of Doctor Freeman's money there in the office? A. The firm's money?

Q. The firm's money. A. Not all of it.

Q. Did all of the money of the firm pass through the office? A. Yes, sir.

Q. Did he have any income that you know of, other than that which came from the firm? A. Not that I know of.

Q. Do you know of any sum of money, twenty thousand marks, or any other sum of money being sent to Germany? A. Not that I know of.

Q. What was his condition on the day he dictated that letter? A. He was dopey.

Q. Was he under the influence of anything, in your opinion? A. In my opinion he was, either alcohol or drugs.

The Court: Does the date appear on that?

Q. How do you fix the time? A. He wanted the freedom of the port on July 5th, 1922, and the way I fix the date is long enough ahead of that to have a letter to Senator Frelinghuysen, and an answer back to him.

Q. That is the best you can fix it? A. Yes, sir.

By the Court:

Q. What was that, about two weeks? A. I should say.

Mr. Davey: His original testimony is that it was early in June.

Mr. Brown: I have it the last part of June.

Mr. Watson: I understood him to say the last part of June.

Mr. Davey: I have it here early in June.

The Court: I think it is fixed now some time around the middle of June, either the 15th or 20th of June. I do not suppose he can fix it any closer than that.

Mr. Watson: He has given his best recollection.

By Mr. Watson:

Q. I show you letter dated September 5th, 1922, to the Standard Oil Company, typewritten letter, unsigned. Did you have anything to do with the writing of that letter? A. The original; yes, sir.

Q. What about it? A. The Doctor wrote to the Standard Oil Company, as near as I can remember—

Q. What I mean is this, did you write it at his direction and his dictation? A. Yes, sir.

Q. Did he sign it, do you know, the original? A. That I can't say.

Q. You don't know whether it was mailed or not? A. I do not.

Q. Did you prepare the letter for him? A. Yes, sir.

Q. Is this a carbon copy of the original? A. I think so.

Q. What do you mean you think so? A. I don't know whether I put a carbon in, or copied it after I had written the original.

Q. Is it a copy? A. It is a copy, yes.

Mr. Watson: We offer that.

By Mr. Strong:

Q. Was this copied from any other paper? A. Do you mean when he dictated to me did I—

Q. This is written by you. Did you copy it from anything? A. I always, when he dictated a letter—

Q. No. What did you do in this case, did you copy this from anything? A. From a letter I had written in longhand.

Q. Where is the longhand letter? A. I don't know.

Q. Have you made any search for it? A. No.

Mr. Strong: I make the same objection as to those minutes, until he makes a search for them.

The Court: I do not think this is subject to the same objection as the other. It is

like a stenographer's notes, written by Mr. Breen himself, but the original of the minutes was written by a third party, and the original, of course, would be much better evidence. But here is a carbon copy of a letter, as I understand it, the original of which was taken down by Mr. Breen in longhand and then transcribed.

By the Court:

Q. Was this correctly transcribed from your original memorandum? A. Yes, sir.

Q. And is an exact copy of what you had taken down in longhand in lead pencil? A. As far as I know it is; yes, sir.

Mr. Strong: Now I make the objection that this is not the best evidence.

The Court: I think it is competent.

Mr. Strong: And also that it has not been shown that Doctor Freeman ever saw this, or knew of its contents.

The Court: I will admit it.

"September 5th, 1922.

"Standard Oil Company,
#26 Broadway,
New York City.

Gentlemen:

I read with considerable interest the statement in the papers that you were bothered by the refuse matter in your Tankers. Forty-five years ago when assistant to the Professor of Chemistry in Rutgers College, I was given the same problem to solve. I did, both to the satisfaction of my employee and my-

self. I have never been on a tanker, so am ignorant of the conditions involved, but I would like a chance to see if I could not solve the problem for you. The question of compensation I would leave entirely to you. As I have badly impaired eyesight I would need a pass for two, as I do not travel alone."

(Letter entered in evidence and marked Exhibit C-3, 5/4/23.)

By Mr. Watson:

Q. During the time that you were associated with Doctor Freeman did he engage in chemical work, or research of any kind, that you know of? A. Not as I know of.

Q. Do you remember an incident when he had business dealings with a customer named John Thompson? A. Yes, sir.

Q. What was that transaction? A. During the Summer, I can't recall just what day it was, John Thompson, of Metuchen, was in the office when Doctor came in, and he said hello to Doctor, and Doctor said, who are you. He said, John Thompson. He said, get out. And John Thompson, as I remember, said that he wanted to buy some material. Doctor told him he didn't care whether he did or not, to get out, and stay out.

Q. Did Thompson do it? A. Thompson went out and I called him back.

Q. Had he been a customer of the firm before? A. Yes, sir.

Q. What was Doctor's condition that day? A. He was under the effects of either drug or alcohol.

Q. Was he ugly? A. Very.

Q. Did he get that way too sometimes? A. Very much that way.

Q. When was that, as near as you can recollect? What year was it in? A. 1922.

Q. Can you tell what part of the year? A. I think it was in August. It was in the Summer.

Q. Do you remember an occasion when the Doctor wanted to sell the building in which you lived, in which the apartment had been leased to you? A. Yes, sir.

Q. To whom did he want to sell it? Or was it a conversation with you? A. No. It was a conversation that he had had with someone, and another man told me of it, that he was going to sell it.

Q. Did Doctor ever say anything to you himself about it? A. Only when I spoke to him of it.

Q. Then what did he say? A. I asked him, or, I told him I had heard he was going to sell the building that I was in, and I asked him where would I get off at. He said he would fix that all right by giving me a lease for a period of five years, with free rent, that the lease was to hold good for that period, after he had sold the building, the rent was to be free, and the building was to be sold that way, that the man who bought it was to keep me there free rent for a period of five years.

Q. Did you say anything to him about that? A. No, sir.

Q. Was he aware of the fact that it would be, as a practical proposition, impossible to sell a building with such a lease on it? A. What?

Q. Was he apparently aware of the fact that as a practical proposition it would be impractical to sell a building with such a lease as that?

Mr. Strong: I object. I think that is altogether leading, and it is impossible of a proper answer.

The Court: I think the question is argumentative.

Mr. Watson: I will withdraw it.

Q. Do you know when that conversation was? A. I couldn't recall the time. It was during—I can't just recall when that was.

Q. Do you know what year it was in? Do you know whether it was before or after the trusteeship began? A. Before.

Q. Before that? A. As far as I can remember.

Q. What was his condition on the day of that conversation? A. He was in poor shape, under the effects of alcohol or drugs.

Q. Did the company do a good deal of business with various persons residing in what is known as the Ferrar Colony tract, near Stelton? A. Yes, sir.

Q. Was there standing on the company's books unpaid accounts of people living on that tract, for merchandise bought? A. Yes, sir.

Q. What do those unpaid accounts aggregate, in round figures? A. In the neighborhood of ten thousand dollars.

Q. Were a good many of those writen off this last year? A. Yes, sir.

Q. How did those bills come to be contracted? A. Mostly with Doctor Freeman.

Q. Do these customers of yours, residing on that tract, own their properties? A. Not as I know of.

Q. Was it your information that they did not own them? A. Yes, sir.

Q. What was Doctor Freeman's information on that point? A. The same.

Q. Did you give Doctor Freeman any advice as to those accounts? A. Yes, sir.

Q. What was your advice? A. That he got after them and collect what was already out, and stop selling more material over there.

Q. Did he follow your advice? A. No, sir.

Q. Did he ever do anything personally about the delivery of materials on those orders? A. Yes, sir.

Q. What? A. He went on the truck himself with some of the material.

Q. What did you have to do with the issuing of company checks, anything? A. In what regard?

Q. Well, how were checks signed? A. Previous to May 15th, by Doctor Freeman, or by Mr. Breen.

Q. Either one? A. Either one.

Q. After May 15th how were they signed? A. By Mr. Watson and Mr. Breen.

Q. What did you have to do with it? Did you enter them in the records of the company A. Yes, sir.

Q. So that checks, before being delivered, passed through you? A. The vouchers for the checks.

Q. Now, I show you checks issued by the Company to Doctor Freeman during the month of July, and ask you if you can—11 checks; will you look at those, please, and see if you can identify those as company checks? A. Yes, sir.

Mr. Watson: We will not offer them at this time. I will prove them by Mr. Breen.

Q. You identify all those? A. Yes, sir.

Q. Where were those checks delivered to Doctor Freeman, Mr. Breen? A. In the office.

Q. Did he always come to the office for his checks? A. Mostly every time.

Q. When he didn't come to the office, how did he get them? A. Harry Mohring came for them.

Q. What do you mean by mostly? A. Once in a while Harry Mohring came there.

Q. What do you mean by once in a while? A. Probably once in a month.

Q. Were you present when these checks which I have just shown you were given to Doctor Freeman? A. Yes.

Q. During the month of July, 1922? A. Yes, sir.

Q. What was Doctor Freeman's condition generally during that month? A. Very poor. He was stupid, his talk was thick, and he was shuffly on his feet.

Q. Well, what do you mean by that, that he was on one of his sprees? A. He was under the influence of drug or liquor.

Q. How did that condition obtain as to the rest of the Summer, Mr. Breen? A. I don't know as I seen him any time during the Summer that he wasn't under the effects of some drug or drink.

Q. That was especially noticeable to you? A. Yes, sir.

Mr. Watson: Cross examine.

Cross Examination by Mr. Strong:

Q. Whether he was drugged, or druken, you gave him checks when he came for them, is that right? A. They were given to him; yes, sir.

Q. He knew enough to take them, didn't he? A. Yes, sir.

Q. Who had the power to sign checks? A. Up to May 15th, 1922—

Q. Who had the power to sign them up to that time? A. John Breen, Sr.

Q. Who had the power to sign them after May 15th, 1922? A. John Breen, Sr., and Mr. Watson.

Q. Your father had a power of attorney to sign checks, hadn't he? A. Yes, sir.

Q. Had it for how long? A. Twelve years, to my knowledge.

Q. Are you prepared to say that twelve years before his death the Doctor wasn't intelligent enough to transact business? A. No, sir.

Q. You are not prepared to say that? A. No, sir.

Q. He was a very positive man, wasn't he, when he was himself? A. When I first worked for him; yes, sir.

Q. He was a strong friend? A. Yes, sir.

Q. And a strong enemy, if anybody did him wrong, wasn't he? A. Yes, sir.

Q. He was a good friend of the Breen family, wasn't he? A. Yes, sir.

Q. How many of the Breen family are employed now by the Charles M. Freeman & Son Corporation, or by the Manning Freeman & Son Corporation? A. How many of the Breen family?

Q. Yes. Just give the names. A. My father.

Q. What is his salary? A. Three thousand a year, I think it was.

Q. Is, you mean? A. Is; yes, sir.

Q. And you? A. Fifteen hundred.

Q. Next? A. Sister Helen.

Q. How much? A. Twenty dollars a week.

Q. What is her position? A. As a clerk.

Q. Next? A. Leo Breen.

Q. Your brother? A. Yes, sir.

Q. How much does he draw? A. Twenty-four dollars a week.

Q. For what? A. Truck driver.

Q. Next? A. I think that is all.

Q. Any connections by marriage employed? A. No, sir.

Q. Is your uncle working there? A. Oh, yes.

Q. What is his name? A. James B. Breen.

Q. How much does he get? A. Twenty-five dollars a week.

Q. You spoke of the letter written to Senator Frelinghuysen. When did you say that was? A. In June.

Q. What year? A. 1922.

Q. Did you send it? A. I didn't.

Q. Did he? A. I couldn't tell you that.

Q. Did you remonstrate with him about sending it? A. No, sir.

Q. Did he, at the time, tell you why he sent it? A. No, sir.

Q. Did he afterwards tell you why he sent it? A. No, sir.

Q. Didn't he tell you that he sent it so that he could—he got passes, didn't he, as the result of writing that letter? A. Not as I know of, sir.

Q. Well, you have heard of it, haven't you? A. I have never seen any passes he got.

Q. No, but you heard of it, haven't you? A. No.

Q. Swear you didn't? A. Not as I remember.

Q. Did he afterward tell you that he had gotten passes to go on a German boat, and had gotten some good beer there to drink? A. He has told me about having good beer on board a boat, but I don't know whether it was that time, or not.

Q. You don't know whether it was that time, or not? A. No, sir.

Q. Well, if he arranged that so that he could get passes to go on a German boat to get beer, that was rather intelligent, wasn't it? Is there anything stupid about that? A. I couldn't tell you.

Q. How much did John Thompson owe Manning Freeman & Son at the time the Doctor told him to get out and stay out? A. Nothing that I know of.

Q. When did you say that was? A. It was in the Summer. I couldn't tell the exact date.

Q. How much of a customer of the firm had he been? A. Well, he had been not a big customer; a small customer.

Q. What business was he in? A. Jobbing, repairing.

Q. What property did he own? A. None that I know of.

Q. The Doctor was a very highly educated man, wasn't he? A. As far as I know.

Q. Have you any doubt about it? A. Not in my mind.

Q. What? A. Not to me.

Q. When did you say he wrote that Standard Oil letter? A. I think it was in September .

Q. Of what year? A. 1922.

Q. Did he get any answer to it? A. Not as I know of.

Q. These people that I think you said lived on the Ferrar tract, is that the name of it? A. Ferrar Colony.

Q. Who did own that colony? A. I don't know.

Q. Then how do you know that they didn't own the property themselves? A. I have heard members of the Colony say so.

Q. That is all you know, that you have heard that. Yes. Did your father remonstrate with him too about that? A. Yes, sir.

Q. When was it that he first began to deal with those people? A. I would say it was about 1918 or '19.

Q. What was it that was sold to them? A. Building material, lumber.

Q. What was done with that material, lumber? A. Put into houses.

Q. Any mechanics' liens filed? A. No, sir.

Q. How long was it after he began to sell these Ferrar people that you began to remonstrate with him? What year was it you began to tell him that he shouldn't sell these people? A. I think it was in 1920.

Q. He had been selling them two years. Now, you say that you asked him if he would sell you a certain property? A. No, sir.

Q. If he would rent you a certain property? A. No, sir.

Q. He offered to sell you a certain property? A. No, sir.

Q. He offered to rent you a certain property? A. No, sir.

Q. What was that you said about some lease that you spoke to him about, the property to you? A. This is the house I am living in now.

Q. Who owns it? A. Manning Freeman & Son.

Q. And the title is in whom? A. Manning Freeman & Son.

Q. Not in John W. Breen? A. No, sir.

Q. Are you sure of that? A. It is not.

Q. Was the deed ever made to John W. Breen? A. On the land; yes, sir.

Q. Does the land still stand in the name of John W. Breen? A. The records were to be changed. They don't, as far as I know. The records were to be changed.

Q. Have they been changed? A. I couldn't say.

Q. Do you know the value of the property? A. The one building, or the whole tract?

Q. The whole tract, upwards of twenty-five thousand, isn't it? A. In the neighborhood of eighteen thousand.

Q. Maybe more than that, in the neighborhood of twenty-five thousand, something like that? A. What is that?

Q. It may be a good deal more than eighteen, twenty-five? A. I don't know.

Q. Did he approach you, or you approach him about that property? A. In what regards?

Q. Well, what you have testified here to. Did you go to him first, or he come to you about it? A. He never came—or I never went to him about it.

Q. Well, then he must have come to you about it? A. Yes, sir.

Q. Where did he come to you about it, and how did it happen? A. When he built the house he gave me free rent.

Q. You said he wanted to give you a lease on it, isn't that right? A. I have a lease on it, sir.

Q. Didn't you say he wanted to give you a long lease on it? A. If he sold it.

Q. If he sold it? A. Yes.

Q. Just tell us what he said to you, and what you said to him about it, and how it came about that you had that conversation? A. I had heard that he wanted to sell the building.

Q. Whom had you heard that from? A. A man in Metuchen.

Q. Then what did you do? A. I asked him where I came off at.

Q. Asked whom? A. Doctor.

Q. Yes, you took it up with him, you asked him where you came off at. What did he do? A. He said that he would sell the building with a lease on it to me, and the lease would hold to the new owner, the new owner would have to abide by that lease.

Q. Isn't that so? A. Isn't what so?

Q. That the owner would have to abide by that lease to you? A. Not as I know of.

Q. You don't know that? A. No, sir.

Q. How much did the first witness, Mr. Dinwiddie, owe the firm of Manning Freeman & Son? A. Offhand I can't tell you.

Q. About? A. I can't tell you that.

Q. Roughly speaking? You have got some idea now. A. I wouldn't like to say.

Q. Oh, well, try it; I would like to have you say. A. I can't. I don't remember.

Q. As much as one thousand? A. Yes.

Q. Two thousand? A. I couldn't say if it was above that.

Q. You think it exceeded two thousand? A. I couldn't say.

Mr. Watson: We will stipulate with you Senator, that it is approximately twenty-five hundred dollars, if you want us to.

Mr. Strong: Yes.

Q. How long has he owed that? A. Well, it was a running account. I don't know how far, I can't say how far back it went.

Q. About? A. Oh, about three or four years.

Q. Any of it for borrowed money? A. Not as I know of.

Q. Have you heard it was? A. No, sir.

Q. Running account for what? A. Building material.

Q. What was done with the building material? A. Put into houses.

Q. Put in his house? A. In building up on his place.

Q. In buildings on his place? A. Yes, sir.

Q. Was security afterwards taken for that? A. Yes, sir.

Q. What kind? A. Mortgage.

Q. When? A. Since May 15th. It was after that.

Q. What? A. It was after May 15th, 1922.

Q. Where did you study bookkeeping? A. I didn't study it, sir.

Q. You learned it in the employ of Manning Freeman & Son? A. Yes, sir.

Q. How much is due the firm on book accounts at this time? A. At this time about forty-two thousand dollars.

Q. When was the last meeting of the directors?

Mr. Watson: The record books are here.

Mr. Strong: Well, it is admitted there has been none since May 18th, 1922.

Mr. Watson: Certainly not. There was one two weeks ago. The minute book speaks for itself.

Mr. Strong: Only one, and that two weeks ago?

Mr. Brown: The minute book only shows May 18th, 1922.

Mr. Watson: I know there was a meeting about two weeks ago.

Mr. Strong: Do you claim there was any other meeting since May 18th, 1922, except this?

Mr. Watson: There was no official meeting; a majority of the board met several times each week, although no minutes were kept.

Mr. Strong: What?

Mr. Watson: At the office of Manning Freeman & Son, or at the office of R. E. and A. D. Watson, 41 Paterson Street.

Mr. Strong: Why didn't you keep minutes?

Mr. Watson: Because it wasn't necessary.

Mr. Strong: That is the best answer you can give?

Mr. Watson: That is good enough. The accounts receivable were seventy-eight thousand dollars, and they are now forty-two thousand dollars. That is answer enough.

Q. Lettie's salary was paid out of Doctor's private account, wasn't it? A. It was paid out of

the account of the funds of Manning Freeman & Son, and charged to his account.

Q. It was not paid out of his own private account? A. Out of the funds of Manning Freeman & Son.

Q. Was it paid out of the Doctor's private account? A. It was charged to his private account.

Q. I say, was it paid out of his private bank account? A. No, sir.

Q. And it was charged to his account and paid by Manning Freeman & Son, is that it? A. Yes, sir.

Q. How much of those seventy-eight thousand dollars of accounts receivable was written off as uncollectable?

The Court: What has that to do with the capacity of Doctor Freeman to execute a will on the 12th of July?

Mr. Strong: Mr. Watson seemed to think it had something to do with it.

Mr. Watson: It has nothing to do with it. It has something to do with why the minutes were not written. The books show it themselves.

The Court: There has been a whole lot injected that has not, in my opinion, anything to do with the execution of the will, but, of course, I do not know what counsel has in mind and I have to absorb everything that is offered to me, and digest it afterward. There is a whole lot, the relevancy of which has not appeared to me yet. I want counsel to remember that we are only trying one issue now.

Q. When was that Fourth of July party that you spoke of? A. 1922.

Q. On the Fourth of July you said it was? A. The Fourth of July.

Q. You said you remembered it because the Fourth of July was on what day of the week? A. I think it was on Wednesday.

Q. You think it was on Wednesday? A. I think so.

Q. Didn't you say it was on Wednesday? A. No, sir.

Q. Then if it was on Wednesday what day was it you saw the Doctor? A. The day following.

Q. You said your salary was how much? A. Fifteen hundred dollars a year.

Q. And you live rent free? A. Yes, sir.

Q. Beside that? A. Free light, free water and free heat.

The Court: I cannot see the relevancy of that, Senator.

Mr. Strong: It shows the interest of the witness, for one thing.

The Court: Well, it is already in the record.

Q. Well, your rent is in addition to your fifteen hundred dollars?

The Court: Yes, that already appears.

Mr. Strong: All right.

Q. How many shares does your father own in that business, that stands in his name? A. One share.

Q. One share in Miss Sallie B. Freeman's? A. As I understand it; yes, sir.

The Court: The records will show all that much better than this witness.

Q. Two thousand shares of preferred stock now stands in Mr. Watson's name, that used to stand in Doctor Freeman's name prior to May 15th, 1922?

The Court: I do not think that is relevant here Senator.

Mr. Strong: Any objection to it?

The Court: The court is objecting to it on its own motion.

Mr. Strong: I thought Mr. Watson was objecting.

The Court: No. I am objecting to it. The records will show all that.

Mr. Strong: I can prove it quicker this way than by putting in the record.

The Court: I know, but the record is going to come in anyway, and there is no use having it in three or four times.

Q. Your father holds the note of the corporation?
A. Who to?
Q. Manning Freeman & Son? A. Who to?
Q. Himself.

The Court: How is that relevant?

Mr. Strong: We will shorten it up your Honor. That is all.

Adjourned until 2.00 p. m.

Afternoon Session, 2.00 p. m.

Cross Examination by Mr. Brown:

Q. Mr. Breen, Mr. Watson called your attention, or you testified to the first five years of the Doctor's

life, as you knew him, that his habits were not as excessive in the use of liquor as they are at the present time, or were at the time of his death. I think you said the first five years he had a spree about once a year, is that true? A. Yes, sir.

Q. And then you testified thereafter that since that time he has been habitually drinking, is that so? A. Do you mean steady?

Q. Well, you used the word habitually, and I was wondering what you meant by it? A. What I meant by it? What I meant by it was that he was a steady drinker.

Q. Steady drinker? A. Yes, sir.

Q. And that meant what quantity of liquor? A. That I couldn't say.

Q. He had it night, noon and morning, didn't he? A. I couldn't say that.

Q. Well, was it because of his appearance that you thought he was a steady drinker? A. Yes.

Q. From day to day? A. Yes.

Q. And about the use of drugs, was that part of his inebriety, or want of soberness? A. Not at that time, that I knew of.

Q. When did you first notice the drugs? A. About three years ago.

Q. And was the use then habitual during those three years? A. I couldn't say that about the drugs.

Q. You have testified to a number of incidents regarding the Doctor's habits and conditions during the last year past. I suppose you were referring to the year preceding his death? A. Yes.

Q. What have you to say about the year before that again? Can you remember any incidents at all about his habits and his condition? Were they about the same the year before that as they were the last year? A. I couldn't say that.

Q. You said you saw him every day? A. I saw him every day?

Q. Yes? A. Practically.

Q. Well, how is it that you can remember the incidents of the last year, and can't the year before? A. Because I lived very close to him the last year.

Q. Well, when did you live close to him, that is, the first time? A. I have lived close to him for the last—since he has been on Volkmar Place.

Q. Well, how long has that been? A. I don't know just how long he lived there.

Q. It is over two years, isn't it? A. I don't think so.

Q. Well, it was before he went to the hospital at Trenton? When he came back from Trenton he went to your brother's place, didn't he, at Volkmar Place? A. Yes.

Q. Before he left for Trenton he was living there? A. Not as I remember.

Q. Where was he living? A. I couldn't say. I think he was home.

Q. Well, you are not sure of that? A. I am not positive, no.

Q. Was there anything peculiar in the Doctor's conduct in the month of April, 1922, in requesting you to write the minutes of that meeting that have been offered here and identified? A. Was there anything what?

Q. Peculiar about him asking you to do that, to write the minutes? A. I should think there would be; yes, sir.

Q. That was the way he conducted that business, was it not? A. No, sir.

Q. You never had a meeting before that you didn't write the minutes in that fashion, as he told you? A. That is the only minutes that I wrote, that I know of, that I can remember.

Q. That is the only minutes that were ever had, or only meeting, or attempted meeting? A. I couldn't say that.

Q. As far as you know was it so? A. That is the only time he asked me to write any minutes outside of the office.

Q. Well, isn't it a fact that up to that time the Doctor exercised complete ownership over the place, disregarded any shares that might have been issued? A. Yes, sir.

Q. And he was so recognized, was he not, as the owner of the place? A. Yes, sir.

Q. Where was the share of stock that Miss Freeman had? A. I couldn't say.

Q. And your father's share of stock, where was that? A. He has it, I believe.

Q. When did he get it? A. I couldn't tell you.

Q. He didn't have it up to that time of the Doctor instructing you to write those minutes? A. He did have it.

Q. What? A. He did have it?

Q. He did have it? A. He did have a share of stock.

Q. But there was no meeting, and he didn't vote on it, and the Doctor directed the affairs of the business? A. Whenever there was a meeting, a directors' meeting, a regular directors' meeting, Mr. Breen was present.

Q. Well, you never kept any minutes, did you? A. I had nothing to do with that, sir.

Q. No one else, sir? A. I didn't have anything to do with it.

Q. Well, what I want to get at is, what irregularity was there in the Doctor's conduct in writing those minutes, or requesting you to write them? A. It is the only time outside of the office he ever requested me to write anything of that sort, that I remember.

Q. Well, did you think his conduct was unbecoming because he requested the minutes, in view of the fact that there were never any written before, or was it some other reason that you thought it was peculiar? A. His condition.

Q. His condition at that time? A. Yes, sir.

Q. You said something about some property that was in your father's name? A. Yes, sir.

Q. Can you explain to the court why it was that the title was taken in your father's name, whether it was due to the Doctor's condition, or— A. At his request.

Q. At the Doctor's request. Why did he request such a thing as that? A. I don't know.

Q. There was no reason for it, was there? A. None that I know of.

Q. Where were those properties, on Middlessex Avenue? A. On Volkmar Place.

Q. And there were two of them? A. There are three buildings.

Q. Do you mean to say it was simply because the Doctor asked to have those things put in your father's name, without any reason? A. It was his request that it be done.

Q. Do you know why the Company was incorporated? A. No, sir; I don't know anything about that.

Q. Do you know why it was that the Doctor exercised complete ownership over the company, after it was incorporated? A. Why?

Q. Yes? A. He owned the largest number of shares of stock.

Q. Well, I know, but weren't there any dividends paid? A. No, sir.

Q. Nothing ever said about it? A. Not as I know of; no, sir.

Q. The Doctor drew whatever amount of money he wanted to? A. Yes, sir.

Q. So that he was, to all intents and purposes, the real owner of the business? A. Yes, sir.

Q. When was the first change, if any, about the control in the Doctor, when Mr. Watson was appointed trustee, May 15th? A. I don't quite understand what you mean.

Q. I mean if there was any restriction about his control of the business? A. No, not previous to that.

Q. Not previous to that? A. No, sir.

Q. And I suppose the payments to Lettie arose out of the Doctor's exercising complete ownership over the whole affair? A. Yes, sir.

Q. The property that you refer to, that was the Doctor's property, that was in your father's name? A. I don't quite understand what you mean.

Q. The property that was conveyed to your father? A. Well, you mean before it was put into his name?

Q. No, after it was put into his name it was really the Doctor's property? A. Really, yes.

Q. He paid for it? Your father didn't pay for it? A. No, sir.

Q. Well, now, in view of all that, that the Doctor paid Lettie out of the company, and had full control of it, and you have read the minutes, is your reference to the minutes, the purpose of referring to them, just to show that the Doctor was, in that particular day, drunk, and intoxicated? A. He was on that day, yes.

Mr. Strong: Which day is that, Senator?

Mr. Brown: The day of those minutes he has been referring to.

Q. But there is nothing in the minutes to show his condition? You don't mean by that that there

is anything in the minutes to show his condition? A. Not the minutes I wrote up.

Q. The minutes do provide, however, for turning over the stock to you? A. Yes, sir.

Q. Do you know what his reason was for that? A. No, sir.

Q. He didn't assign any reason? A. No, sir.

Q. The minutes that you now refer to are the minutes that were prepared by Mr. Mohring, is that right? A. That is correct, sir.

Q. Those are the only minutes you know of? A. Those are the only ones I know of.

Q. There was no letter or reply received from Senator Frelinghuysen? A. Not as I know of.

Q. This colony that you speak of as the Ferrar Colony, is that the name of it? A. Yes, sir. Ferrar.

Q. The Doctor was not a frequenter of that section, was he? A. Not as I know of.

Q. What is that, a Communist or Social colony of some kind? A. I understand it is Social.

By the Court:

Q. You mean Socialist? A. Socialist; yes, sir.

By Mr. Brown:

Q. Was the supply of material to that colony over the protest of you and your father? A. After a time; after a time that the bills began to be paid very slowly.

Q. Well, up to May 15th, 1922, when Mr. Watson was appointed trustee, your protest against the Doctor, if he did not wish it to prevail, would not amount to anything, would it? He exercised his own judgment? A. Own judgment; yes, sir.

Q. And you did not dare brook his judgment, did you? A. No.

Q. About the sale of that building, was that one of the buildings owned by your father, or in his name? A. That was in his name.

Q. It was in his name? A. Yes.

Q. And that has been in August, 1922? A. I think that is when it was.

Q. Why was all this shifting around in names, if you had a corporation, and you had the other? Why did the Doctor want that done? Was there anything peculiar about it? A. Not that I know of. Simply a wish of his.

Q. Just a wish? A. That is all.

Q. They were bought from whom, do you remember? Was it a real estate company? A. No.

Q. The National Real Estate Company, what property was that, that was purchased by Manning Freeman & Son, Eighth Avenue and Bartha Avenue? A. None that I know of.

Q. Where is Belleville Tract, or not that, but Raritan Township?

Mr. Watson: Those are properties over here we took deeds for. That was after the trusteeship, I think.

Q. I have those deeds as being marked September 13th, 1921, dated and acknowledged. The Doctor was away at that time, wasn't he? A. What time?

Q. September 13th, 1921? A. I think so.

Q. Do you know anything about those properties? A. I don't understand where they are.

Q. Well, if you don't understand, I do not want to take the court's time. You can just answer.

Mr. Watson: I know the circumstances.

Q. Have you a written lease on the place? A. Yes, sir.

Q. When was it made? A. Over two years ago.

Q. Who owned the property then, your father? A. It was in his name.

Q. And he made the lease to you? A. Also Manning Freeman & Son.

Q. They both made a lease to you? A. Yes.

Q. At the Doctor's request and direction? A. At the Doctor's request. He signed it.

Q. Now, you said later in your examination that there was no time that the Doctor was not under drugs or whiskey. You were referring—

Mr. Strong: He did not say that.

Mr. Brown: If you will permit me to finish the question, Senator.

Q. Didn't you say that there was a period of time that the Doctor was under the influence of drugs and whiskey? A. Did I say what?

Q. Didn't you testify that there was a period of time that the Doctor was always under the influence of whiskey and drugs? A. I don't remember that.

Q. Did you say it was in the Summer of 1922? You were testifying about a period? A. If that was the time. If I said that, that was the time.

Q. Well, did you say it? A. I think so.

Q. You did? A. I think so.

Q. How long did that—when did that condition begin, and when did it end? A. About January, 1922, and I seen him mostly every day from that time on.

Q. Until he died? A. Yes.

Q. The incidents that you have referred to, about the acts of the Doctor, they were no more peculiar than other acts committed in your presence by him a year previous to the time that you testified to, were they? A. The year previous?

Q. Yes.

Q. Yes. A. I don't understand just what you mean.

Q. What is there now about that you don't understand? A. I don't know what do you mean.

Q. Well, now, you have testified to a certain time, a year you confined yourself to, and you have related specific acts of the Doctor that were peculiar in that year, whether from the influence of liquor, or drugs, or what not. Now, I am asking you if he didn't commit acts just as peculiar, and of a like character the year previous? A. At times.

Q. How frequently? A. I couldn't say how frequently.

Q. Well, most every day? A. No, I wouldn't say so.

Q. He was under the influence of liquor or drugs most every day? A. Not most every day, no.

Q. Well, how many times, three times a week? A. I couldn't say.

Q. Well, why do you start at January 1st, 1922, and can't say anything about his condition before that time? A. Because I have seen him every day.

Q. I know, but you saw him every day before that? A. But I seen him around his home.

Q. What home? A. On Volkmar Place.

Q. Yes. Well, you saw him before January 1st, didn't you? A. Yes, I have seen him before that.

Q. Yes. Well, what was his conduct then, while there? A. He has been under—in the year previous?

Q. Yes. A. He had been under the influence of liquor or drugs.

Q. As he was in 1922? A. I wouldn't say as much.

Q. Well, how much difference? A. I couldn't say.

Q. Would you say it was five per cent. difference,

the intensity or constancy? A. I wouldn't say, because I didn't see him as much then.

Q. Well, he lived in the same place, and you had the same opportunity? A. Not the previous year.

Q. What? A. He wasn't there the previous year.

Q. Well, he went there in May, 1921? A. I didn't say that.

Q. That is what your brother testified to. A. Well, I couldn't say.

Q. Well, as long as he was in that place, at Volkmar Place, or in the building there, you lived next door to him? A. Yes, sir.

Q. And worked in the same building where he frequented, and you saw him, did you not? A. Yes, sir.

Q. Each day? A. Mostly.

Q. Then as long as he lived at Volkmar Place, whatever you call it, and as you saw him from day to day, was his condition about the same? A. No, sir. I seen him at times when he was all right.

By Mr. Strong:

Q. That was when, you said? A. There was times that I have seen him when he was all right.

Q. What year was that? A. It was after he had come back from the hospital the last time, I had seen him for about two months he was in good condition.

By Mr. Brown:

Q. But otherwise he was just as excessive in the use of drugs and liquor as he was during 1922? A. I would think so, yes.

Q. For how many years back was he indulgent? A. I couldn't say that.

Q. Well, can you say it was three, five, or six? A. Three years.

Mr. Brown: I have nothing else.

By Mr. Strong:

Q. Can you fix the percentage, in figures, of the increasing of the drug habit upon him the last three years of his life? A. No, I can't.

Q. That real estate that you have referred to, worth eighteen thousand dollars, the title to which was placed in your father's name, that was bought and paid for with the money of Manning Freeman & Son Corporation, was it not? A. Yes, sir.

Q. After the business was turned over to Mr. Watson as trustee, and Doctor Freeman had been warned to keep away from the business and not to interfere, then where was it you used to see him? A. I have seen him in the office.

Q. Not so frequently? A. Quite often.

Q. How often? A. Once or twice a week.

Q. For how long? A. Up until within a few days of his death.

Q. He came for what purpose? A. Sometimes for checks, and sometimes just to sit down in the office.

Q. The times he came for his checks were much more frequent than the times he came to sit down, were they not? A. I wouldn't say that; no, sir.

Q. And you would not say it wasn't so frequent, would you? A. Wouldn't say what?

Q. (Question repeated by stenographer.) A. I don't quite understand what you mean.

Q. I say, the times when he came for his checks were much more frequent than the times when he came to sit down there? A. No, I wouldn't say that.

Q. You wouldn't say that? A. No, sir.

Q. When he sat down there he didn't stay very long, did he? A. Sometimes a few minutes, and sometimes a half an hour.

Q. How often did he come for his checks? A. Once a week.

Q. Those checks were due once a week? A. Yes, sir.

Q. He had sense enough to know when his checks were due, didn't he, and to come for them? A. I don't know, sir.

Q. Then he came without any sense, I suppose? Now, Harry Mohring wrote out in longhand, and the Doctor brought to you minutes for a transaction by which Doctor Freeman was to convey to you practically all the property he possessed in the world, isn't that right? A. No, sir.

Q. Didn't you swear that the business was to be transferred to you? A. I said that in the minutes—

Q. The business was to be transferred to you? A. The stock was to be transferred to me.

Q. 2,998 shares of stock? A. That is right.

Q. All but two shares of the entire capital stock of Manning Freeman & Son, is that right? A. That is right.

Q. Of a possible worth about one hundred thousand dollars and upwards, is that right? A. About that.

Q. And Mohring, the beneficiary under this will, wrote out in his own handwriting and sent to you the minutes of that proposed transaction? A. Not as I know of.

Q. The minutes came to you in Mohring's handwriting, didn't you swear to that? A. No, sir.

Q. Didn't you say it was his handwriting? A. No, sir.

Q. And now you say it was not? A. I didn't say it was.

Q. Do you say now it was not? A. It was not. Not to my knowledge.

Q. You think it was not? A. I don't know.

Q. You don't know? A. No, sir.

Q. And you did not indicate in your previous testimony that that was—

The Court: He said Doctor Freeman told him it was Harry Mohring's handwriting.

A. Yes, that is what Doctor Freeman told me.

Q. What was the date of the lease from Doctor Freeman and the corporation to you? A. I can't tell you the date.

Q. About? A. About two years ago.

Q. Did the Doctor know what he was about when he made that lease to you? A. I think so.

Q. Did the Doctor know what he was about when that deed was made to your father? A. I think so.

Q. Now, give me the terms of that lease to you? A. I was to have free rent, free light, free water, free heat, all repairs free as long as I was in the employ of Manning Freeman & Son.

Q. Have you got all the "frees" in there? A. That is the way it reads. I don't know as there are that many "frees."

Q. None of them have got away? (No answer.)

Q. And you said who signed that? A. Signed by Doctor Freeman as President of Manning Freeman & Son.

Q. Did your father sign it too? A. Yes, sir.

Q. At whose suggestion did your father sign it? A. Doctor Freeman's.

Q. The Doctor knew what he was about then, didn't he? A. I think so.

Q. Have you got it here? A. No, sir.

Q. Do you think you can produce it? A. I can. It is home.

Q. Will you bring it next time you come? A. Yes, sir.

Q. Do you know Mr. Harry Mohring's handwriting? A. No, sir.

Q. Never seen any of it? A. I couldn't recognize it.

Q. Have you ever seen any of it? A. Not as I know of.

Q. What? A. Yes, I have, I have seen his signature, that is all.

Q. Didn't you think that was his handwriting, if Doctor Freeman brought it to you? A. I had no idea whose handwriting it was.

By Mr. Brown:

Q. Did you ever see the certificate of incorporation of this company? A. No, sir.

Q. You don't know whether it is incorporated or not, do you? A. No, sir.

Mr. Brown: That is all.

Re-direct Examination by Mr. Watson:

Q. What did you say your father's salary was? A. Three thousand.

Q. Didn't you know that it was two thousand? A. Two thousand.

Q. Did you make a mistake about that? A. I made a mistake on that.

Q. Do the books show what he drew each week? A. Yes, sir.

Q. Is there any book here that shows what he drew? Does this book that you brought to-day show it?

Mr. Brown: If your Honor please, as far as we are concerned, there is a great deal of testimony about the number of Breens employed, but the salaries are very meagre; the whole six were receiving less than six thousand dollars a year.

Mr. Strong: I would hate to admit that. It is only a chance.

Mr. Watson: It is not brought out by us, but this witness made a mistake, and if there is any controversy about it, I desire to produce the books, which will show that John W. Breen, Sr., received two thousand dollars a year.

Mr. Strong: I think that is accurate.

Mr. Brown: Personally I think John Breen was worth twice that.

JOHN W. BREEN, SR., a witness produced on behalf of the Caveators, being duly sworn according to law on his oath, saith:

Direct Examination by Mr. Watson:

Q. Where do you live? A. Metuchen.

Q. How old a man are you? A. I was fifty-eight the first day of last January.

Q. How long have you been employed by Manning Freeman & Son? A. Nineteen years the sixteenth day of March last.

Q. How long had you known Doctor Freeman before you were employed by the company? A. I had known Doctor Freeman about twenty-eight to thirty years.

Q. Before we get into your particular testimony, Mr. Breen, there has been some reference made to

the salary received by yourself and members of your family, from Manning Freeman & Son. I would like to know if those salaries are the same as they were during the war period? A. The same.

Q. Now the same as they were then? A. Same as they were in the war period.

Q. Did you stay with Manning Freeman & Son during that time, when you could have gotten much larger salaries elsewhere? A. I did. All of us.

Mr. Strong: This is very leading and unfair.

The Court: I will permit the leading.

Q. What was your position with the company? A. I was from secretary and treasurer to coal heaver.

Q. You were secretary and treasurer of the company officially? A. Yes, sir.

Q. Were you also Doctor Freeman's general manager? A. I was. And anything else that was to be done around the yard.

Q. What did you have to do with the banking? A. I attended to, I put up the deposits, taken them to the bank, and also Doctor took them, until the time that you took over charge of the affairs, he generally took them, or I took them.

Q. How were checks drawn? A. Checks were drawn, before Mr. Watson was trustee, by Manning Freeman & Son, signed sometimes by C. M. Freeman, and most of the time J. W. Breen.

Q. Did you have a right to draw checks without counter signature? A. I did.

Q. Until what time? A. Until the time that you took charge of affairs, May 15th, 1922, I think it was.

Q. After that, how were checks signed? A. Signed by Russell E. Watson and John W. Breen.

Q. Your connection with Doctor Freeman was intimate? A. Yes, sir.

Q. How often would you see him? A. Well, I saw him, I might say, unless he was away somewhere, nearly every day for—up until May 1st, or May 15th, 1922; sometimes he was away in some institution, I wouldn't see him, but any time that he was around Metuchen I generally saw him every day.

Q. Tell us what institutions he was in, and when, to your knowledge and recollection? A. The first time, I can't place the first time, the first time I knew Doctor was in an institution was to the Oppenheim Institute in New York, whatever the name is.

Q. About how many years ago is that? A. Well, I really forget. I think it was two years after I went in Doctor's employ; that is as near as I can recollect.

By Mr. Davey:

Q. What year would that be? A. I think I went to work for Doctor Freeman in 1904; that would bring it 1906 or '7. I am not sure of the year. The next one was, I think, Belle Mead.

By Mr. Watson:

Q. Did he go—? A. I am not sure whether Belle Mead or Towne's Hospital was the other one.

Q. Well, we will fix that definitely. I show you a receipt from the Belle Mead Farm Colony & Sanatarium, and ask you if that refreshes your recollection as to the time that he was there? A. It does. I paid the bill.

Q. When was it? A. May 19th—I paid the bill on May 16th, 1919. He was in the early part of

May, in April and May in the Belle Mead institution.

Mr. Watson: I am not going to offer it unless counsel wants it. It is a receipted bill.

Mr. Brown: No use encumbering the record with it.

Mr. Watson: I think not.

Q. Was he at one time in Doctor Towne's Sanatarium in New York City? A. He was.

Q. Is that a sanatarium for the treatment of alcoholic and drug cases? A. Yes, sir.

Q. I show you some correspondence between yourself and Doctor Charles B. Towne, and ask if that refreshes your recollection as to the time that Doctor Freeman was there, the year and the month? A. Yes, sir.

Q. When was it? A. It was in November, 1918.

Mr. Strong: If it is necessary, I want to again enter on the record another objection to Senator Brown's style of cross examining, that is, leading a witness, for the reason that he is just as much opposed to the present will, and just as much interested in overthrowing it, as Mr. Watson, and yet he is alleged to frame his questions here for the witness to answer yes or no, with all sorts of premises embraced in those questions.

The Court: The witness is, in at least a measure, hostile to him. All of them.

Mr. Strong: I do not want to raise the objection all the time.

The Court: Well, you have it on the record, Senator.

Q. When is the next when he was in an institu-

tion? A. The next institution was the State Hospital at Trenton.

Q. How many times was he there? A. Twice.

Q. When was the first time? A. I really don't remember the first occasion when he went there, that is, the date.

Q. What year was it in? A. I think it was in 1919. I am not certain about that, the first time.

Q. When was the second time? A. The second time was 1921, if I remember rightly.

Q. What part of the year? A. He went there in August.

Q. And stayed there until when? A. He went there, I think, August 23rd, and returned on October 3rd, 1921, if my recollection is right.

Q. What were Doctor Freeman's habits with reference to the use of liquor and drugs? A. For what length of time? In what time?

Q. Tell the court as you know about it from the beginning. A. From the time I went to work for him?

Q. Yes. A. Well, since I have known Doctor Freeman, I have known that he drank. When I first went to work for Doctor Freeman I have seen him under the influence of liquor in the morning for—I have known him to be under the influence of liquor at eleven o'clock, and I have known him to be back in the office at half-past two, and come walk in and attend to his business as well as I or anyone else could attend to it at the time. I have known him to do that for years. Up until about, I should say, about 1918, he began—his condition began to change a little on to him, and I noticed, or at least I thought that he was taking something else besides liquor. While he continued to come in, he would often come into the office and he would be in such condition that we might have to help him out to the wagon; he had a wagon at that time,

and we put him one side in the lumber yard, and half-past two or three o'clock he would walk in the office and could attend to his business as well as anyone could; and I have often spoken to him about how he could get over his condition in that quick manner, and he said it was on account of the constitution that he had. I remonstrated with him several times, and one time in particular after, it was about a year and a half, I told him if he didn't stop going on in the condition that he was in, and coming around the place where the customers were, I would have to leave him. He promised me he would, and for some time he did stay straight. Sometimes it would be for two or three months that he wouldn't get in that condition.

Q. In 1918 you say you noticed a change? A. I noticed a change for the worse.

Q. For the worse? A. For the worse; yes, sir.

Q. Now, tell us from that time on? A. From that time on the Doctor seemed as if—I noticed the condition changing; that he wouldn't be as bright, after one of his terms, as he was in former years.

Q. How did his condition come on in that respect, worse or better? A. It seemed to me to get worse.

Q. How long would his sprees last? A. Well, sometimes they would last from three to four weeks.

Q. You have spoken of his going to the hospital in August, 1921. Was he on a spree just before then? A. He was.

Q. How long was that one? A. I think that one was about for four weeks.

Q. Do you remember times when he had to stay home and couldn't come to the office? A. I do.

Q. How many of those occasions do you remember? A. Well, I remember there was probably

seven or eight, maybe ten of them, that he would take to himself.

Q. How long a time would he have to stay home? A. Well, he would sometimes wait until Mrs. Freeman went away in the Summer, or in the Fall, and he would sometimes stay on to them from the time she would go until she would return; stay at home, wouldn't come near the office.

Q. Do you remember any times when he had to be virtually confined to home because of his condition? A. Well, only on hearsay.

Q. Not of your own knowledge? A. Not of my own knowledge that he had to be confined, no.

Q. What was his condition of mind when he was on these sprees? A. Well, he really, his mind was —Well, he had no mind, really, to tell you the truth, when he was on one of those sprees.

Q. How was his speech? A. You couldn't understand what he was talking about, or couldn't tell what he was talking about.

Q. How was he with reference to handling his business? A. Well, he couldn't handle no business when he was in that condition.

Q. What about his conversation? A. You couldn't understand what he was talking about.

Q. During the last year of his life what was his condition, Mr. Breen? A. Well, from what I saw of him, his condition was steadily growing worse all the time.

Q. Did Doctor Freeman have a great deal of confidence in you? A. He did.

Q. Virtually trusted you with everything he had in the world? A. He did.

Q. What was his treatment of you, Mr. Breen? A. No father could be better to his son, or to his family, than Doctor Freeman was to me, within the last two years of his death.

Q. What was your feeling toward him? A. I

worked to the best of my ability for him, not only nights, but Sundays and overtime, and every time that I could, for to further his interests. And my family, my boys with me.

Q. Do you know of any occasions when he urged people coming into the office to do business to get away? A. Well, only the occasion that my son told me, when I come in the office, but I have known him to abuse people that have come there to deal, and told them, to use his own expression, to get the Hell out of the office.

Q. What about the Ferrar Colony accounts, Mr. Breen? A. The Ferrar Colony, they were in about, well, between eight and ten thousand dollars they are in debt to us over there.

Q. Various individuals over there? A. Yes, sir.

Q. How did that indebtedness come about? A. When they first formed the colony there, one of their trustees, at least he claimed he was a trustee, came over to our office and said that they were going to form a settlement there, and wanted to do business with us. They wanted first to repair up the house that was on the place and make it into a school and office. Doctor was there at the time, and I think, if I remember rightly, the man's name was Kelly.

Q. I do not want so much detail. Did he personally have to do with the running of those accounts? A. Well, I remonstrated with him on some of the accounts, after they got running too far.

Q. Did he know what the condition of the titles was there? A. He did.

Q. What was your advice to him with reference to those accounts? A. I told him to stop trusting them and make them pay for the material they were getting there. That I had been over there

every Sunday, trying to collect the bills and couldn't do it.

Q. What did he say? A. He told me to keep on giving it to them, and to keep on—he would go for me if I didn't get the stuff over to them. He wouldn't say nothing out of the way, only, John, you must get that stuff over to the Ferrar Colony, they want it.

Q. Were there accounts where he gave unreasonably long terms of credit?

Mr. Strong: I object. We have to have the facts.

Mr. Watson: I am asking him. How can I direct his attention to it otherwise?

Mr. Strong: Easily enough. In the first place, the question is leading. In the next place it does not appear what a reasonable length of time is so far.

Mr. Watson: Well, it will appear.

The Court: I suppose the facts will be better, Mr. Watson.

Q. What about the Mundy account, Mr. Breen? A. Why, he allowed them to pay five dollars a month on an account that amounted to over seven hundred dollars.

Q. What about the Witty account? A. He not only allowed Witty to have the material there, but wanted to sign up another contract with him for $1,692, until I remonstrated with him so much that he finally gave it up.

Q. What was the matter with the first account? A. He hadn't paid it.

Q. Did he buy a considerable quantity of material at the Philip Weigel, Jr. sale? A. He certainly did.

Q. When was that? A. I don't remember the

year. About five or six years ago. I don't know just the year exactly.

Q. What did he buy there? A. He bought thirty-two hundred and some dollars' worth of worthless stuff, to Manning Freeman & Son.

Q. Where is that stuff now? A. Laying around in the yard, and up in the garage.

Q. Did Manning Freeman & Son pay for it? A. They certainly did.

Q. Do you remember an occasion when he desired to confess judgment? A. I do.

Q. When was that? A. I think it is about five or six years ago. I can't just tell you the exact year.

Q. What did he do? A. He came to a lawyer's office here in New Brunswick, brought me along with him, and told the lawyer that he wanted to confess judgment, that he thought he would go into bankruptcy.

Q. Give you any reason for it? A. Gave no reason for it, that he wanted—it just come into his mind that he wanted to do it.

Q. What advice did you give him? A. Why, that he certainly had no cause; I told him at the time that he spoke to me, I said, Doctor, you haven't got to do that, you have got plenty of money to pay your bills, it will ruin your credit; and the lawyer told him the same words, he said, you have got no business, Doctor, he said, there is no reason why you should confess judgment, you have money enough to pay your bills, take your books and go back home, or words to that effect. I have just forgotten what the exact words were the lawyer used to him.

Q. Were you present at the time when he called Mrs. Wilbur on the 'phone? A. I was.

Q. How long ago is that? A. It is about a little over two years ago.

Q. What was that occasion? A. Have I got to repeat his conversation?

Q. Yes.

Mr. Brown: I suggest, if it is to save the ladies present, that the stenographer and the Judge take it together.

A. I would rather not, with the ladies present.

Mr. Brown: The court and the stenographer can get it.

A. He called up a lady by the name of Mrs. Wilbur on the telephone, called her, her name was Mrs. Charles E. Wilbur, and told her that her son has knocked my daughter up and I am going to have him arrested, and by God I am going to make you and him both suffer for it. Come back from his lunch and called her up on the telephone and explained it to her. Whatever the woman said, I would imagine she was pretty near crazy.

Q. Did he ever have bells, police whistles, put up in the lumber yard? A. He did.

Q. When did he do that? A. That was three years ago, about.

Q. Why did he do it? What did he say about it? A. Well, he said, he wanted to have the bells put up there so if anybody come around the yard at any time, that we could blow the whistle, and all the men present should grab guns and run out in the yard and see who was there.

Q. What was his condition when he said that? A. Why, he didn't know what he was talking about; he didn't know what condition, or so, that he didn't know what he was doing.

Q. Do you mean that he was intoxicated? A. Yes, sir. And whatever else about that time he

was taking, I don't know. I should imagine it was some kind of drugs.

Q. When he was under the influence of liquor and drugs? A. He was under the influence of liquor and drugs at that time.

Q. Well, when he was under the influence of drugs and liquor? A. He was not himself.

Q. Well, did he very often do things of that kind? A. Yes, sir.

Q. As foolish as that? A. And worse than that.

Q. Do you remember when he bought a tractor? A. I do.

Q. When was that? A. That was, I think, three years ago last Winter. Along coming on in the Spring.

Q. Three years ago? A. I think about three years ago. It was in the winter time, about three or four years ago, I won't be certain which.

Q. Tell us how he came to do it? A. Why, he was over in New Brunswick, came over on an errand, a tractor pulled out of Mount's automobile place and was giving a demonstration on the street. The streets were covered with ice at the time, and very bad traveling. The tractor went up, as I understood from him, from Mount's up to Albany Street. He went back to Mount's, ordered the tractor to our place, and inside of three hours from the time he saw it, it was over on our scales.

Q. How much did he pay for it? A. Eight hundred and forty dollars.

Q. What did you do with it? A. Kept it a year and sold it for three hundred and fifty dollars.

Q. Did he have any use for it? A. Never got cent's worth of use out of it.

Q. What was his condition when he did that? A. Well, his condition was so that he wasn't fit to do anything of any kind.

Q. Did you have anything to do with the legal

reorganization of his business in January, 1920? A. I did.

Q. What did you have to do with it? Early in January, 1920, was it, or was it 1919?

Mr. Davey: It shows it was December, 1919.

Q. December 30th, 1919? A. What do you mean, Mr. Watson?

Q. Well, were you elected a director of the company? A. Oh, yes, I was.

Q. Had you been a director of the company before that? A. Yes.

Q. Were there any minutes or records to show it? A. There should be, of the organization of the company, yes.

Q. Well, did you ever see any, or know of any? A. I did at that time.

Q. And you have acted as a director? A. Yes.

Q. Passing on to the time that he was committed to the hospital, in August, 1921, was it? A. '21.

Q. What was his condition just before he was committed to the hospital? A. His condition was very bad.

Q. What did he do? A. Well, just before he was taken away?

Q. Yes. A. Well, from what I saw of him he was in terrible condition from the liquor and drugs. He wasn't so much around the office that I saw so much of him at the time, but what I did see of him he was in very bad shape.

Q. Did he become violent, at any time to your knowledge? A. Well, not with me, or with any of us around there, not around there he didn't. I don't know what he done home.

Q. You heard reports of it elsewhere, did you? A. Yes, sir.

Q. During the last year of his life what was his condition, Mr. Breen? A. Well, from say December, and January 1st, 1922, and there on?

Q. Yes, January 1st, 1922? A. We will say January 1st, 1922, from what I saw of Doctor Freeman his condition was steadily growing worse.

Q. How often did you see him? A. Well, I would see him sometimes three and four times a week. Sometimes not so often.

Q. How often did he have his sprees then? A. Well, I didn't see so much of him, but I think every time I saw him he was under the influence of either liquor or drugs.

Q. What happened to his business? A. Well, he wouldn't have any business if it hadn't been turned over to you at the time, in about three months more.

Q. Do you mean that his business was— A. His business was gone, or going fast.

Q. He had a large surplus, didn't he? A. He did. I mean the entire conditions into it, and the way he handled it.

Q. What caused his business to go bad in that way? A. Well, he got so that he was insulting the people that came around to deal with him, and they wouldn't come in and deal; and he was also drawing far more out of the company than the company could stand at that time.

Q. What about his accounts receivable? A. He had them out, and I was doing the best I could to collect them in, nights and Sundays.

Q. Well, were they too much, or too little, for a business of that size? A. They were too much out.

Q. What was his condition during the Summer of 1922, Mr. Breen? A. Well, from what I saw of him after, say from January 1st, 1922, or so, on, his condition any time that I saw him was—that

he was either under the influence of liquor, or drugs, or both, I don't know which.

Q. Was there any time that he wanted to transfer stock in the company to you? A. When he wanted to transfer them to me?

Q. Yes? A. Yes, sir.

Q. What was that occasion? A. He offered to do it over in your office.

Q. Tell us when it was? A. I think it was in 1921. I won't be certain. I can't remember the dates of those things, there were so many of them.

Q. How long before the trusteeship was it? A. Probably six or eight months, ten months, something like that; I don't remember.

Q. What did he want to do? A. He wanted to turn over all his stock to me.

Q. Did he consult anybody about it? A. Did he consult anybody about it?

Q. Yes. A. He offered to turn it over to me in your office, and I told him I wouldn't have nothing to do with it.

Q. Did I give you any advice with reference to it? A. You told me, you said, John, don't do it.

Q. Was he present when I said it? A. He was.

Q. What did he say? A. He said he wanted me to have it, still insisted on to it. I told him I didn't want his stock. I was satisfied as we were. You advised me not to take it.

Q. How about this property that stood in your name? A. That was the—well, there was two lots of property stood in my name, that belonged to Doctor Freeman.

Q. What was it? A. The property where the two houses, the brown and the green now stands, and the property at Bonhamtown.

Q. How did that come to stand in your name? A. Doctor Freeman insisted on putting it in my name.

Q. Any reason for it, especially? A. Not that I know of.

Q. What did you do about that property, Mr. Breen? A. Do you mean who did I get it from?

Q. Did you ever execute a deed of it? A. I did.

Q. When? A. Why, I don't just remember. Six or eight months, or probably a year ago.

Q. How long after the trusteeship was it, if it was? A. Why, probably two or three months. I don't just remember the exact date.

Q. Did your wife sign the deed? A. She did.

Q. To whom did you convey it? A. Conveyed it to Manning Freeman & Son, Inc.

Q. Did you loan any stock of yours, security of yours, to Doctor Freeman? A. I did.

Q. What was it? A. Twenty shares of United Drug Stock, it was formerly twenty shares of United Cigar Stores.

Q. What use did he make of the stock? A. He used it as collateral in the Peoples National Bank of New Brunswick.

Q. Stood in your name? A. Yes, sir.

Q. Did you endorse it? A. I did.

Q. In blank? A. In blank.

Q. What was that stock worth at its height? A. Under the United Cigar Stores, or the—

Q. Yes. A. Under the United Cigar Stores—

Mr. Strong: At the time he turned it over.

Q. No. What was it worth at its most? After you turned it over? What was it worth when you loaned it to him? A. I don't remember. But shortly after that I know it was worth 170 to 180.

Q. How many shares were there? A. Twenty.

Q. What was it worth at the time of the trusteeship? A. Around, I don't know, around 70 some-

thing, I have forgotten just what. It had dropped down.

Q. It had deteriorated very much? A. It had deteriorated, yes.

Q. Is this the certificate? A. That is the one.

Q. And at the time you loaned him the certificate did Doctor Freeman give you that note attached to it? A. Yes, sir; he did.

Q. Now cancelled? A. Now cancelled.

Q. How did you settle that obligation after the trusteeship? A. Of the note?

Q. Yes. A. Why, I settled it for about five hundred dollars less than what I should have settled it for.

Q. What did you get for it? A. Twenty-five hundred dollars.

Mr. Davey: I object. I ask to have the answer stricken out. I ask to have the question answered.

Mr. Brown: It is answered, I submit, except that part that is irresponsive.

Q. You took twenty-five hundred dollars? A. I did.

Q. And transferred the certificate to the corporation? A. Yes, sir.

Q. Delivered it to the corporation? A. Delivered it to the corporation.

Q. After the trusteeship checks were signed how? A. Russell E. Watson, President, John W. Breen, Secretary.

Q. Did you give Doctor Freeman checks during the month of July, 1922? A. I did.

Q. I show you eleven checks and ask you if those are the checks?

Mr. Brown: May I ask if those are the

same were identified when John Breen Jr., was on the stand?

Mr. Watson: They are.

A. Yes, sir.

Q. Where were those checks delivered to him? A. In our office.

Q. How often during the Summer did Doctor Freeman come to the office? A. Well, nearly every week. As a rule every Monday morning for his check.

Q. Did you see him oftener than that, or between times? A. He would often come in and sit down in the office for two or three hours.

Q. What was his condition during the Summer, Mr. Breen? A. It was so that I had to come to your office and ask him to keep away from the office.

Mr. Watson: May I have these checks marked?

(11 checks marked C 4 for identification, 5/4/23.)

Q. Mr. Breen, when you gave these checks to Doctor Freeman, where would he endorse them? A. Endorsed them in our office very often.

Q. I show you check dated July 12th. A. Yes, sir.

Q. And ask you if you gave that check to him? A. I did.

Q. Whereabouts? A. In our office.

Q. Did you see him endorse it? A. He endorsed it in the office.

Q. How do you know he did? A. Because it was the first time since I have been paying him checks that he came in for a twenty dollar check, and he

sat right there in the office and endorsed it there, and also got into a controversy with me that very day and time.

Q. What was the controversy about? A. He claimed that the Ford coupe was costing him too much to run, and he was going to take it away from me. I was using it for the company's business. The Ford coupe was costing too much money to run it, and he was going to take the coupe away from me, and he got into an argument there, and I came over to your office.

Q. What did he tell you? A. I told him if he took the coupe the business could stay there, that I had no other way of getting around.

Q. And then you say you later came to my office? A. I came to your office and told you if you didn't keep Doctor Freeman away from the office I was going to leave.

Q. What was his condition on that day, Mr. Breen? A. He was in such a condition that I couldn't reason with him, or do anything with him. Well, I would say that he was under the—had been on a debauch all night and was still on it in the morning. That was the way I put it to you.

Q. Well, tell us? A. Under the influence of liquor or drugs, or whatever he was using at the time. Drugs, I imagine. I know it wasn't liquor.

Q. What was the condition of his mind? A. Why, he didn't know what he was talking to me about.

Q. How was his speech? A. You couldn't understand what he was saying. You could about understand what he was saying when he got after me about the coupe, and that was all.

Q. This check dated July 12th, I show you the endorsement, you say you saw him make that endorsement? A. I did.

Q. Do you recall how he wrote when he wrote

it? A. Well, he wasn't in condition to write at the time.

Q. What did you observe about the endorsement, if anything? A. Well, it isn't Doctor Freeman's regular endorsement.

Q. Is the name misspelled? A. The name is misspelled. There is no "C."

Q. I notice one of these checks is dated July 5th. A. Yes, sir.

Q. Do you recall his being there on that occasion? A. He was.

Q. What fastens that in your memory? A. The day he was after the boy about wanting to know what he was doing shooting on Sunday.

Q. After what boy? A. John Breen. My son John.

Q. What was his condition on that day? A. Why, his condition was the same as it was on the 12th. He didn't know what he was talking about.

Q. How long did this spree last that he was on at that time, Mr. Breen? A. Well, from what I could see of him, and when he came in the office, he was going on for, I should say, the month of June, and July, and what I saw of him, in August still.

Mr. Watson: Cross examine.

Cross Examination by Mr. Strong:

Q. You say he came over there on the 12th of July, 1922, and had trouble with you about a Ford coupe? A. Yes.

Q. Is that right? A. That is right.

Q. You were using that coupe, weren't you? A. Yes, sir.

Q. He claimed that you were not using it properly, is that right? A. No, he didn't say that.

Q. What did he say? A. He said it was costing too much to use it.

Q. Cost too much to use it? A. That is it.

Q. In other words, he was finding fault with your use of it, excessive use of it? A. No, not excessive use of it.

Q. Use of it? A. Use of it.

Q. You attached enough importance to that to go over to Mr. Watson's office and complain to him about it? A. I didn't want to be quarrelling with him over it.

Q. Had you been quarrelling with him over it? A. No, but any other time that he came in the office, I had several set toos with him in the office.

Q. You had several set toos with him in the office? A. I did.

Q. You could tell him to keep out, as well as Mr. Watson? A. I never did tell him to keep out, no. I went to Mr. Watson, he was President of the company, and he was over me, and I went to him.

Q. Before Mr. Watson was president of the company you had always gotten along all right with him? A. Oh, no, not before he was president of the company, no, I didn't get along all right with him until January, I think, before Mr. Watson became president.

Q. Then after the business was turned over to Mr. Watson you had numerous set toos with him, didn't you? A. I did. And before it was turned over to Mr. Watson, before May 20th.

Q. And you went over and asked Mr. Watson to keep him away? A. I did.

Q. Did Mr. Watson do it? A. He came back just the same.

Q. Yes, but did Mr. Watson say anything to him, do you know? A. I don't know.

Q. Or write anything to him? A. Mr. Watson undoubtedly told him, when he came to his office I wasn't there.

Q. Did you send him over to Mr. Watson's office? A. I didn't send him nowhere.

Q. You say that he didn't make the name of C. M.—didn't make the letter "C" on this check of July 12th? A. That is not his regular signature.

Q. Isn't that up there such a mark— A. There is an attempt at a "C," yes.

Q. Such as might be made, and not be successful, if he was writing on a rough surface? A. The name is not spelled on the check right, properly, anyway.

Q. Very close to it, isn't it? A. Close enough.

Q. Close enough? A. Maybe. It is not his regular signature.

Q. Is the name spelled right on that check? A. It looks like "Freeman."

Q. What?

Mr. Strong: I offer the check—

Mr. Watson: They are all in.

Mr. Strong: I refer to the check of July 7th, 1922.

Q. Isn't that name spelled the same on that? A. No, it is not.

Q. I show you a check of—

The Court: What is the use, Senator, of all that, because we will get it all in, won't we?

Mr. Strong: I ask this question to show his interest here.

The Court: I do not see how that would show his interest. Isn't it for the court to pass on those sheets, whether the signatures is a correct signature or not?

Q. I will show you a check right now, July 10th, spelled the same as the check of July 12th. How is that spelled? A. Fremar. It is not spelled right at all.

Q. That is not the check of July 12th. A. I know it is not.

The Court: It is July 10th. Senator, you are only making it all the stronger.

Mr. Strong: I do not think so. It only shows different times he would write differently.

The Court: Show me some checks back in 1917 and 1918, and see how he wrote them then.

Mr. Strong: We haven't any possession of those.

The Court: I mean, if you can show me that he wrote that in 1917 and 1918, it would have more probative force.

Q. There is another one Fremar, isn't it? A. Certainly. He was doing it in July, pretty near every check he signed.

Q. That is dated July 19th. A. That is all right.

Q. You are speaking about this particular day of July 12th? A. No. I spoke about that particular day of July 12th because he was in the office with me that day quarrelling with me.

Q. A number of these checks are spelled Fremar, aren't they? A. He didn't know what he was writing, I don't believe.

Q. Wasn't his eyesight very bad? A. He said it was.

Q. Do you doubt it? Don't you know it was? A. No. I couldn't tell whether he could write or read, only from what he told me.

Q. You think his eyesight was good? A. No, I don't think it was good.

Q. Don't you know it was bad? A. Oh, I know he saw things different times that he told me he could see. I don't know how bad it was. I know it was at times probably bad.

Q. Did you know that Doctor Freeman executed a paper writing on the 4th of October, 1921, purporting to be his last will? A. That he done what?

Q. Executed a paper writing on the 4th day of October, 1921, purporting to be his last will? A. No, sir; I did not know.

Q. Have you ever heard of it? A. I have heard of it, yes.

Q. And have you heard that in that paper writing he gave to you two-ninths of his holdings of the preferred stock and two-ninths of his holdings of the common stock of Manning Freeman & Son, Inc. ? A. Never got it directly. I have heard it mentioned that I was mentioned in that will.

Q. Did you believe it? A. Well, from what he told me oftentimes, yes.

Q. And from what you heard from other people, did you believe it? A. Well, I didn't know why I was mentioned into it. I understand I was mentioned in the will.

Q. What time did he tell you that? A. He not only told me, but he told hundreds of others.

Q. What was the latest time he told you that? A. Well, I don't just remember what year it was in, but he would tell salesmen, and everyone else that would come in the office he had taken care of the boys because they had stuck to him in the war.

Q. In that will did he give to John Breen, Jr., one-ninth of his holdings of the preferred stock? A. I don't know what he gave either one of us, only from hearsay.

Q. Did you ever hear that? A. I heard he left us something; I didn't know what it was.

Q. That will was dated the day he came back from the asylum, when you testified his mind was so bright. A. I didn't testify to anything about October.

Q. Didn't you say that after he got back from the asylum he was in good condition? A. I haven't been asked that question, that I know of.

Q. Didn't you say that? A. I don't think so. I haven't been asked the question.

Q. Didn't you say that after he got back from the asylum—

Mr. Watson: I object.

A. No, I did not. I didn't say anything of the kind.

Q. I understood you to say that from the time he got back from the Trenton asylum, until January of 1922, he was in good condition? A. No, sir; you didn't hear me say anything of the kind.

Q. I so understand you to say. Well, I haven't said it.

The Court: I will tell you what he said, Senator, if you want to know. He said from January after he came back from the Trenton Hospital, on, that he got steadily worse. That is what he actually said. I was listening particularly for the other to come. That is how I happen to remember.

Mr. Strong: I think the stenographer's notes will show that there was a period, after he came back from the asylum, that he was in better condition.

Mr. Brown: I was watching for that, and if it had happened, I would surely know it.

Q. That paper writing is still in existence, isn't it, so far as you know? A. Which paper writing?

The Court: Senator, you are not interested in that paper writing, are you?

Mr. Strong: Well, but I want to show this witness is.

The Court: You have done enough to show that.

Mr. Strong: Well, if your Honor deems it so, we will let it go at that.

The Court: If you do not get in Court on the one of July, you are out.

Mr. Strong: Yes, but I take it this man is a very important—

The Court: I mean so far as your client is concerned.

Mr. Strong: He is an important beneficiary under that will. If this will is upset, then that one comes.

The Court: I expect that will be the chronological order.

Mr. Strong: Yes. In other words, to show his interest in overthrowing this one.

The Court: Yes. But I do not think it is necessary to go to any great length on it.

Q. How early in the morning was that he came to your place of business on July 12th, and you had this row with him? A. Probably between eight and nine o'clock, maybe half-past nine. I don't just remember the hour exact.

Q. You went right over to Mr. Watson's A. Oh, no, not right away. I done some work. I had to go probably to New Brunswick to the bank, and I went to Mr Watson's office.

Q. About what time? A. Probably about ten or

half-past ten. I couldn't say what time exact. I didn't go on purpose for it.

Q. You said he insisted on putting his real estate in your name? A. Which real estate?

The Court: I do not think he said that.

A. No, I didn't say that.

Mr. Strong: Yes, he did say that.

A. If I said it once, I will say it again.

Q. That he insisted on putting his real estate in your name? A. I want to know what real estate?

Q. This real estate that you recently made a deed of to Manning Freeman & Son, I think you said? A. Well, the Doctor had some transactions in real estate. I want to know which one they were.

Q. Did he put it in your name? A. Which one?

Q. I have told you.

The Court: The one you recently conveyed.

A. The one on Volkmar Place, or in Bonhamtown?

The Court: The one you recently conveyed to Manning Freeman & Son.

A. Yes, that was Volkmar Place. Yes.

Q. He insisted on putting that in your name? A. He did.

Q. When was that? A. It is four or five years ago I don't just remember the year.

Q. Was he in his right mind then? A. He was. I think his mind was in good condition, as far as I know.

Q. That hadn't begun to deteriorate at that time? A. Well, he was slipping some, but not to the extent he was in the last year and a half.

Q. When did you make a deed back of that property to Manning Freeman & Son? A. Some time in 1922; I don't remember the date.

Q. How did you come to do that? A. When I got—when Doctor Freeman settled up with me.

Q. When Doctor Freeman settled up with you? A. Yes. Or Manning Freeman & Son.

Q. How did that come about? A. He came and demanded those papers there, and I refused to give them to him.

Q. When was that? A. Along I think June 22nd, if I remember rightly, 1922.

Q. June 22nd, 1922? A. I think so.

Q. What papers did he demand? A. Some papers I had of property belonging to him. He didn't demand them, Doctor didn't.

Q. Who did? A. This gentleman right here, Davey is his name.

Q. Then what happened? A. When I got—when Doctor paid, or Manning Freeman & Son, or Doctor Freeman, or the firm, paid me what was owing to me, I turned over the deed of that property to him.

Q. What happened when Mr. Davey demanded that you turn over that property, what did you say to Mr. Davey? A. I told him when Doctor Freeman settled up with me they could have those papers.

Q. How soon after that did Doctor Freeman settle up with you? A. I think it was a couple of months. I don't just remember. I have got the dates when the settlement was made.

Q. Then what did you do? A. Turned the papers over to Manning Freeman & Son.

Q. What did you do about the real estate? A. Turned over everything I had in my name to Manning Freeman & Son.

Q. Was that deed recorded? A. I don't know anything about that. I turned it over to Mr. Watson, and my wife and I signed the deed and turned it over to him.

Q. Is that deed recorded yet? A. I don't know. I had nothing further to do with it.

Mr. Brown: We have had a search made and we cannot find it.

Mr. Watson: I will take the stand and testify about that. I spent nearly the whole lunch hour looking for it.

Q. You don't know whether it is recorded yet? A. I don't know; no, sir.

Q. Who signed that note that you have offered here, or had presented to you here? A. Manning Freeman & Son, C. M. Freeman, President.

Q. Did he sign it individually, or just the corporation? A. Manning, Freeman & Son, Inc., C. M. Freeman, President.

Q. That is by him as president? A. That is right.

Q. That was the signature of the corporation, is that right? A. That is right.

Q. That note is for five thousand dollars, is that right? A. That is right.

Q. And the stock you put up was worth thirty-four hundred dollars? A. It was worth more than that at the time. It was worth over five thousand dollars at one time.

Q. At the time you put it up as collateral? A. I couldn't tell.

Q. You said a few minutes ago that shortly after that note was given the twenty shares of stock were

worth one hundred and seventy dollars a share. A. I think so. Of the United Drug, yes, but I had it, before it was changed, in more valuable stock, but at this time here it run up, during the time it was in the bank as collateral it went up as high as 170 or 180.

Q. Twenty shares of it? A. Twenty shares of it.

Q. Twenty times 170 or 180 is how much? A. $3,600 it would be, if it was 180.

Q. Give it the benefit of 200 then, or make it 180, and $3,600 for a $5,000 note?

The Court: What is the purpose of this?

Mr. Strong: Why, to show that he had a much bigger note than he was entitled to, for one thing.

Q. Who made that deal with you to put up that? A. Doctor Freeman.

Q. Did he know what he was doing at that time? A. He did at the time that I took it. Doctor was in pretty good shape at that time, that is, for doing business, on and off.

Q. Who took the signature off of that note? A. Which note?

Q. This note that was signed by him as President? A. I suppose Mr. Watson, I settled that, he and I settled that matter, and I suppose he tore the signature off, and the note was done away with. I don't know. I didn't do it.

Q. You say he was always a great friend of the Breens, and the Breens of him? A. Yes, sir.

Q. At the time he fired your son Will he threatened to break his jaw? A. No, I don't know as he threatened to break his jaw.

Q. What did he threaten to do? A. After he got up with—after he turned the business over to Mr.

Watson he started cursing the boy up in the garage one night, or one day, and the boy told me he told him if he was a few years younger he would give him a good thumping, that is what he told him.

Q. That was all pleasant too? A. Well, you are not going to stand by and get cussed by everybody, are you?

Q. Your salary was how much? A. Two thousand.

Q. And your commissions on sales how much? A. Nothing.

Q. Did you ever make any commissions of any kind? A. Not a penny.

Q. Did you ever make anything outside of your salary? A. No, not off Doctor Freeman, or not off Manning Freeman & Son.

Q. Or anything connected with the business? A. Well, I had my coal. Not on commission on anything that I sold. I had two thousand dollars salary, my coal, and I think that—

Q. Free coal? A. Free coal.

Q. Free what else? A. The coal, and he paid insurance for me, that he took out in my name.

Q. Free insurance. What else? A. That is all that I know of.

Q. That is all you can think of now, is that it? A. I think that is all I can think of any time. I don't know of anything else.

Q. You think that is all you can think of? A. I don't think of anything else.

Q. You practically ran the business over there, did you not? A. When Doctor wasn't there I had charge of the business.

Q. Yes, and didn't you run it, practically, when the Doctor was there? A. No, I did not. I consulted Doctor Freeman, when he was there.

Q. Who ran it when he was in the asylum? A. I did.

Q. Who collected the outstanding accounts? A. I did. Most of them.

Q. Who is managing the business now? A. Mr. Hagerty and myself.

Q. How much does Mr. Hagerty do in the management of it? A. Well, I don't know just what he has done yet; he hasn't had much chance to do anything.

Q. How often has he been there? A. Twice, I think.

Q. In how long? A. I don't know how long he stayed with me. An hour, or more. I don't just remember.

Q. How long ago was he appointed? A. I don't just remember the day he was appointed. I have forgotten the day he was appointed by the court.

Q. A month or so ago? A. Somewhere shortly after Doctor Freeman's death. I don't just remember the time, the date. I can't keep those dates in my head.

Q. The Doctor was a very positive man, wasn't he? A. Well, when he got his head set you couldn't turn it away very well.

Q. And he was a good friend, you say? A. He was a good friend to me for a number of years.

Q. And if a person did him a wrong he remembered it too, didn't he? A. Yes, sir.

Q. And when that trading with the Ferrar Colony began you made no objection to it first? A. Not at first, no.

Q. Did you make any objection to the Dinwiddie account? A. No.

Q. How much does Mr. Dinwiddie, the first witness I am referring to now, what is his first name? A. William.

Q. How much does he owe the firm? A. Somewhere around two—probably twenty-two hundred dollars. I am not just sure of the amount.

Q. That has been running how long? A. Well, the account has been running, it has been a running account, when Mr. Dinwiddie would pay, and buy more, for probably three or four years, or four or five years.

Q. Did you think that was a good account? A. Mr. Dinwiddie could have had double the amount, if he had said the word. In fact, Doctor wanted to push more on to him.

Q. Did you think it was a good account? A. Yes, I did, or I wouldn't have given it to him.

Q. Did the new management think it was a good account? Didn't they make him give a bond? They made him give a bond and mortgage? A. Yes, when the new management came in they wanted security.

Q. Did Doctor Freeman have trouble with Mr. Dinwiddie over the payment of that money? A. Not that I know of.

Q. Did you ever check any orders that Doctor Freeman would give for the purchase of material for Manning Freeman & Son? A. Did I check them?

Q. O. K. them? A. That Doctor gave?

Q. Yes. A. No, I didn't check Doctor's orders for material.

Q. I mean through the corporation? The corporation's orders by the Doctor? A. For how long?

Q. Well, tell me if at any time, tell me when you began to do that? A. That I began to check his orders?

Q. Yes. A. I didn't check Doctor's orders when he was in condition to do business.

Q. At any time? A. No, I don't think I checked his orders. I would tell him we didn't need stuff,

or something like that, when he would want to buy stuff.

Q. When was the date of this purchase of worthless material that you speak about? A. Why, I don't remember the year. It was when Philip Weigel sold out his hardware business here in New Brunswick. I don't just remember. Five or six years or more ago.

Q. How was it purchased? A. Purchased from Philip Weigel, right down in his store, at wholesale.

Q. It was good hardware, wasn't it? A. For some people, but not for us. It was a worthless lot of stuff, as far as Manning Freeman & Son was concerned.

Q. Do you mean to say that it was not sound material? A. We haven't realized fifty dollars from the thirty-two hundred dollars worth.

Q. I ask you whether it was sound material? A. Of the kind.

Q. What kind was it? A. We have got tire bolts by the thousand. We have got wagon clips by the hundred; we have got wagon spokes by the hundred. We have got stove bolts by the thousands. We have got any manner and size and kinds of bolts. No good to us.

Q. Isn't there always a market for them? A. Never been able to sell one of them yet.

Q. You never could have sold them? A. No, sir; I have tried in a half a dozen places. No later than two weeks ago I tried a man to buy them, and he wouldn't touch them.

Q. Do you mean you could not have re-sold them to dealers? A. No. I have had two look at them, but wouldn't take them.

Q. What was the matter with them? A. Why, they don't need them.

Q. Don't you mean to say that dealers in such materials need them to sell, and they could have bought them at some concession? A. I offered them to a good big hardware concern not over two weeks ago, and he wouldn't touch them.

Q. What concern was that? A. McCormick, in Perth Amboy.

Q. What other ones? A. That is the only one so far that I have offered them to. I have tried other men who have come around there, to sell them to, but I couldn't do it.

Q. Who was the lawyer he went to, you say, to confess judgment? A. I didn't say who he was.

Q. Who was he? There is nothing secret about it. A. It was lawyer Kirkpatrick in New Brunswick.

Q. To whom did he want to confess judgment? A. He didn't say at the time. He just wanted to confess judgment.

Q. For what amount? A. He didn't give any amount at all.

Q. And brought you over there? A. Brought me with him, and didn't tell me what he wanted until he got me into Mr. Kirkpatrick' office.

Q. What year was that, you say? A. I don't remember the year it was. Five or six years ago. I don't remember just what year.

Q. Wasn't that a time of financial stress? A. No, sir. I told him right there.

Q. Well, I mean by corporations generally, wasn't it a bad business depression? A. No. We had no business depression. We had plenty to pay our bills. Plenty of stock on hand at the time.

Q. Now, you said to Mr. Watson that there would be no business if it hadn't been turned over to him. Do you mean to say that nobody else could have carried on your business but Mr.

Watson? A. No, sir; I don't say anything of the kind. I don't think anything of the kind either.

Q. Didn't you say to Mr. Watson, in your direct examination, there would be no business if it had not been turned over to you, did you say that? A. Over to me?

Q. To Mr. Watson? A. Well, I didn't mean Mr. Watson particularly. I meant to anyone. If it hadn't been Mr. Watson, to Mr. Strong the same.

Q. In other words, you had to have somebody to guide you in the conduct of the business? A. No. I wanted someone to take hold and stop Doctor Freeman from going through his business the way he was going.

Q. Couldn't you stop him? A. No, I couldn't.

Q. You remonstrated with him? A. I did.

Q. Had rows with him? A. No, I don't call it a row, not at that time, no. I talked to him and asked him to stop what he was doing.

Q. The rows came after the— A. No, I didn't have any row with Doctor Freeman in my life, until within the last year and a half, or probably a little more than a year and a half. Never. Never did.

Q. Well, the business was turned over to Mr. Watson on May 15th, 1922, wasn't it? A. Yes, sir.

Q. Now, after the business was turned over to Mr. Watson you say you didn't see Doctor Freeman so frequently? A. Well, not as frequent as when he was in the business, no, because he used to be down nearly every day.

Q. Were you always there when he came for his checks? A. He couldn't get them unless I was there, that is, I signed them.

Q. You had a power of attorney I think you said, did you? A. I did; yes, sir.

Q. How many meetings has the corporation had

since the business was transferred to Mr. Watson? A. Well, I don't know as we had what you might call a regular meeting, but I have been to see Mr. Watson probably once or twice a week since that time.

Q. No regular meetings except the one of May 18th, 1922, is that it? A. Well, that is when—

Q. Three days after the trustee agreement? A. Mr. Watson called together the three trustees, and I might have attended there, but—

Q. Where are the minutes? A. I think what minutes we have got is in Mr. Watson's possession. I haven't got them.

Mr. Strong: Have you got them, Mr. Watson?

Mr. Watson: There was a meeting Mr. Hagerty held, Senator Strong, and the minutes are not there. You can ask him about that.

Q. That was the last meeting? A. May 18th, 1922, that is the last meeting, as far as I remember.

Q. Who is President of the company now? A. Thomas H. Hagerty.

Q. What is the value of that real estate that you deed to Manning Freeman & Son by that last deed? A. Do you mean its—

Q. Value? A. The book value, or its present value, or what I considered its value? What we valued it at?

Q. What is its actual value? A. Well, this a question. I know what I would give for it. Probably it would bring more.

Q. What would you give for it? A. I wouldn't give for it what it is held for on the books.

Q. What was that? A. Eighteen thousand dollars.

Q. You wouldn't give that for it? A. Not for my use, no. It might be worth it. I wouldn't give it.

Q. You said it probably would bring more. How much do you think it would bring? A. I don't know indeed. I have got no idea.

Q. What is your guess? A. Well, it might bring —I don't know as it will bring that. It might bring that, and it might bring more. I couldn't tell you.

The Court: Senator, how is that important?

Mr. Strong: All right.

A. I don't know what it will bring.

Q. Do you remember the Doctor coming with Mr. Davey to the place of business of Manning Freeman & Son on the 18th of June? A. No, sir.

Q. Coming to your residence on the 18th of June, 1922? A. I thought it was the 22nd. I won't be sure of the date.

Q. Well, you remember the occurrence? A. I do.

Q. What was the Doctor's condition at that time? A. Sat in the car looking straight ahead of him, and I, well, of course, I didn't see him walk, or anything, but from what I could judge of him I don't think he was any too straight, although I couldn't say just what his condition was, but he sat in the car looking straight ahead. He spoke to me once, that was all. He didn't look—

Q. Just let that go now. You have answered it. A. All right.

Q. If you are anxious to amend it you can get your counsel to help you out. What has been the expense of that trusteeship that began on May 15th, 1922? A. What do you mean, the expense?

Q. What were the expenses of the trustee? Was the trustee ever paid anything for expenses, or fees, or anything of that kind? A. He has been paid some payment for legal services; I don't know whether it was for the trusteeship or not.

Q. How much was that? A. I don't recall to mind just what it was, Mr. Strong. I can't tell you offhand. He collected a great many bills and we paid him for legal work he has done for us, in other words, what he done for Doctor and myself, or through the firm.

Q. Has Mr. Watson ever represented you before he was trustee? A. I had no dealings with Mr. Watson, only through Manning Freeman & Son. He has never done any business for me personally.

Q. You kept accounts in how many banks? A. Four.

Q. What were they? A. The National Bank of New Jersey is one, Peoples National Bank of New Brunswick is one, Perth Amboy Trust Company, and Metuchen National Bank.

Mr. Strong: I do not want to go too much into figures here. I suppose the incorporation certificate of Manning Freeman & Son will be offered in evidence, won't it, Mr. Watson?

Mr. Watson: I have been meaning to offer that minute book right along. I offer the minute book, which contains a certified copy of the certificate of incorporation.

Mr. Brown: That is not the certified copy of the certificate. It is only as recorded in the County Clerk's office.

Mr. Strong: I am willing, if you are, Senator Brown, to have that go in as—

Mr. Brown: No, I am not. My contention is there was no corporation.

The Court: I do not see how the introduction of this minute book will prejudice your case anyway, Senator.

Mr. Brown: No, it does not. I am not objecting to it going in.

The Court: I suppose any contentions you may have in that regard will be subsequent, in another matter. The book will be admitted.

(Book entered in evidence and marked Exhibit C 5, 5/4/23.)

Mr. Davey: If the book is to be admitted it appears that the minutes of the last meeting are not in it. I do not suppose they will appear, unless some reservation be made to put the minutes of a later meeting in, even if it is offered as an exhibit, and yet I think we ought to have those minutes in the book.

The Court: Let them be offered after they are proved. The book will be offered for what it contains at the present time. We do not want anything added to it afterward, except it is done with knowledge.

Q. Did you know that Doctor Freeman discharged your son James in the month of May, 1922? A. No, he didn't discharge him.

Q. Who did? A. Jim went of his own accord, when he accused him of driving nails in a tire.

Q. Whether he went off of his own accord or not, he left his employ, didn't he? A. He did at that time, yes.

Q. And as soon as the trustee agreement was signed you employed him and took him back in your employ? A. I did.

Q. When your son James left the employ of Doctor Freeman, or Manning, Freeman & Son, whichever it may have been, a man named Stork took his place, didn't he? A. He did.

Q. And as soon as the trustee agreement was executed you discharged Stork, didn't you? A. I did. Discharged two of them, Stork and another man that he hired.

Q. Whom did you put in their places? A. I put George and Jim—no, Jim is the only one that went away at the time, and another young fellow he had by the name of Sorgendo.

Q. Whom did you put in their places? A. I put James Breen in his place, back on the truck again.

Q. And who in the other man's place? A. George.

Q. George who? A. George Breen.

Q. George Breen in the other place? A. That is it.

Q. You had one share in this corporation, had you not? A. Yes, sir.

Q. Did you pay for that? A. I did.

Q. How much? A. One dollar.

Q. To make it legal? A. The Doctor told me himself to pay him one dollar so as to make it legal. He certainly did.

Q. He was all right at that time, wasn't he? A. Well, I told you some years ago he was, yes, and when he gave me that he was all right.

Q. Whenever he gave you anything he was all right? A. No, I don't say when he gave me anything he was all right.

Q. Then he gave you things when he wasn't right, at times, and you took them? A. He never gave me anything but I earned it good and hard. If a man gives you anything, you will take it.

Q. No matter whether he is right or not? A. No, I don't say that.

Q. Had you made any plans to go in business by yourself? A. I had.

Q. Business of this sort? A. Yes, sir.

Q. How much are the outstanding accounts now? A. I think somewhere around, we have got them down to around forty thousand dollars, or forty-one, somewhere there. I have just forgotten.

Q. How much has been charged off? A. I don't know the exact amount.

Q. Guess?

Mr. Watson: Thirteen thousand dollars have been charged off.

Q. The corporation of Manning, Freeman & Son was authorized to do a general merchandising business, wasn't it? A. Yes, sir.

Mr. Brown: I object.
Mr. Strong: Why?
Mr. Brown: Unless he knows.
Mr. Strong: Well, he is a director.

Q. You were secretary and treasurer, is that it? A. Yes, sir.

The Court: I suppose the minutes will show that too.

Q. During all the year, 1922, you were secretary and treasurer, and Doctor Freeman was the president, is that right? A. Of the year 1922, no.

Q. I mean up to the time of the trust agreement? A. Up to the time of the change Doctor Freeman was president.

Q. Up to the time of the trust agreement, is that right? A. Yes, sir; Doctor Freeman was president, and I was secretary.

Q. His eyes had been failing for how long? A. Well, he complained of them for the last three or four years. Three years in particular.

Q. And this real estate, I think you said, we referred to here on Volkmar Place, that was bought with the corporation moneys, you say? A. It was.

Q. And the corporation erected buildings on one of the parcels of land at a cost of more than twenty thousand dollars, didn't it? A. No, it didn't. It cost less than twenty thousand.

Q. How much less? A. I think around, buildings and everything, figured around eighteen thousand dollars. It is on the only parcel of ground that he owns there.

Q. Did Doctor Freeman have an audit made of the books, in the months of April and May, 1922? A. I think he had. I have just forgotten the months. But he has had them made the past three or four years, at regular intervals.

Q. At that time confirmation slips were sent out to the different creditors? A. Confirmation slips were sent out, I don't know how often, but I know once, if not more.

Q. Who made the audit? A. Eastern Audit Company, Inc., of New York.

Q. Doctor used to sign, or counter sign checks for you to sign, didn't he? A. No, sir.

Q. Never did? A. No. Doctor made a check out when he was—

Q. Didn't he sign them in blank, I should say, sign checks in blank? A. No, sir; he signed no checks in blank. He filled out a check, signed it, and used it. I filled out a check Manning, Freeman & Son and paid the bills with it. There was no countersigning at all. Not under Doctor.

Q. He never signed checks in blank for the purpose of your filling them up and signing them? A. No, sir.

Q. At no time? A. At no time. I had the authority to pay all bills and sign all checks.

Q. Do you know when the bond was filed under that trusteeship? A. No, sir; I don't.

Q. What was the amount of it? A. I understood it was twenty-five thousand dollars. I am not sure about that, but I understand that is what it was.

Q. About how long ago was it filed? A. I don't know when it was filed.

Q. Has it been filed, do you know? A. I do not know that.

Q. Well, you are a director of the corporation? A. Well, I trusted to Mr. Watson to file the bond.

Q. You are delegating your duties, is that it? A. No, I don't think I neglected my duties at all.

Q. I didn't say neglected them. I said delegating. A. No, sir. I trusted to Mr. Watson for that.

Q. Now, at the time Mr. Davey called upon you and wanted the property deeded back, he asked you to execute deeds, did he not? He asked you to execute deeds back of the property that was standing in your name, is that right? A. No, sir; he didn't do anything of the kind.

Q. What did he ask you? A. He said he wanted some papers that I had in my possession, delivered to Doctor Freeman.

Q. Did he ever ask you to deed the property back? A. Who?

Q. Mr. Davey. A. No, sir; he did not.

Q. Did he ever present—

The Court: Senator, what is the purpose of this? I cannot understand it. I have been trying to find out what is the purpose of this.

Mr. Strong: This purpose comes directly on the credibility of the witness.

The Court: In what way?

Mr. Davey: He testified no request was made to sign a deed for the property.

The Court: What difference does it make whether a request was made, or whether it was not made, to deed the property back? He has testified he has deeded back everything he owned in trust for Manning, Freeman & Son, and that the deed was delivered to Mr. Watson:

Mr. Davey: Not these deeds.

The Court: It does not make any difference what deeds they are. I do not propose to permit you to go into that any further. I am letting you go too far as it is.

Mr. Strong: The question is on the record?

The question is objected to, and the objection is sustained.

A. I do not know anything about these papers.

Q. You never saw them before? A. Not to my knowledge.

Mr. Strong: I would like this marked for Identification.

The Court: The papers are not before the court at all.

Mr. Strong: Can't we mark them for Identification?

The Court: No, sir; you cannot mark them for Identification. They are not before the court in any way.

Mr. Strong: So that I can have the benefit of our offer upon the record.

The Court: There is not any offer connected with those blank deeds.

Mr. Strong: I showed him those deeds.

The Court: Yes, and I objected to your showing them to him, I stopped you at that point. If I am ruling wrong, you have the benefit of it.

Mr. Strong: That is all I want, to get the benefit.

The Court: The papers need not be marked.

Mr. Strong: All right, your Honor. If I am in position of having the benefit, that is all I desire.

Cross Examination by Mr. Brown:

Q. John, did you know of anything that any of Doctor Freeman's sisters, or his wife, ever did to him, to cause him to have any enmity toward them? A. His sisters especially, no, I did not. Mrs. Freeman, to my knowledge, I don't know of anything she could do to him to cause anything. If she done it, I wasn't present at the time.

Q. Mrs. Freeman built the house that she is in, with her own money, and paid for it through the company, full price? A. I paid—mailed the checks, or gave the checks to Lewis & Brown, through the firm.

Q. Yes, but she paid full retail price? A. She may have paid through the Doctor, but she didn't pay it through me.

Q. You know about her paying for everything? A. Well, the only thing I know, Senator, is that I made out the checks from our office, to pay Lewis & Brown, the contractors.

Q. Well, you know she paid for that, and she paid for her upkeep too, don't you? A. Well, I couldn't swear to that, that she done that. I don't know that she did. She might have done it; I am not sure of that; I don't know.

Q. And then with the Misses Freeman, I mean the single ladies, the Doctor's sisters? A. Yes.

Q. They never did anything to him in a business way, or any other way, to gain his enmity? A. The only thing I ever heard Doctor say about his sisters were that—I heard him commenting on Miss Nellie, that he didn't know, she wouldn't stay in one place long enough to know where she was. And his sister Miss Sallie, he said she was staying in her place. The only thing I ever heard him say, they didn't stay long enough in one place, except Miss Sallie, to know where to write.

Q. I want to know if they ever did anything to him? A. Not to my knowledge.

Q. Especially in the year 1922, when this will was made, did they ever do anything? A. Not to my knowledge.

Q. In testifying about the Doctor's peculiarities, or his submerged intellect, you said that there were many other things worse than that, that he did, giving the inference that you were only testifying to the small things. Now, what were the things that were worse? A. Well, what I mean was what I told the Court here. One of those was one of the things. And different other things that a man, a business man wouldn't do.

Q. Isn't it a fact, John, for several years, I will say within the past three years, that the Doctor has been unfit mentally, or any other way, to carry on or do business? A. Not all the time, I wouldn't say, Senator, but the most of the time I would.

Q. Well, within the last two years? A. Within the last two years Doctor hasn't been as well, to carry on business, as he was in former years. No, sir.

Q. He wasn't fit at all, if you weren't there, was he? A. Well, he couldn't do any business, really, he didn't do any business.

Q. Well, if you weren't there, John, for the last five years, he couldn't have carried on business, could he? A. Unless he had someone in my place.

Q. That is what I mean? A. No, sir; he couldn't; impossible; no.

Q. And that was because of his mental incapacity, wasn't it? A. That is what I would say.

Q. Now, you talked about the automobiles, about this tractor? A. Yes.

Q. And about having some dispute about the Ford? A. Yes.

Q. The day after he got out of the asylum, or the day that he drew the will, 1921, in which your name is mentioned, that Senator Strong referred to, he bought an automobile that day, didn't he? A. A day or so after he came out of the hospital.

Q. The very day? A. No, he didn't buy it that day, I don't think he did, because it was late when we got home. I don't think he bought it that day.

Q. He always opposed to anything but the Fords?

The Court: When you say the very day, you mean the very day he got out of the hospital, or the very day he executed the will?

Mr. Brown: He executed the will, as I understand it, or got it.

The Court: I do not know. There was some confusion in my mind, because the testimony of Mr. Breen is that he got out on the 3rd of October, and I recollect the testimony is that the will was dated on the 4th of October. So it must have been the day after.

Q. It was the day the will was drawn? A. I don't know what day the will was drawn, Senator. I wasn't there.

Mr. Davey: The will was drawn on the 4th.

A. He came out on the 3rd, about, we got home, I should judge, around five o'clock in the afternoon. I came from Trenton with him.

Q. You went over to get him? A. We went over to the court, or where the hearing was had, and we brought him back in an automobile with us.

Q. The first thing he did then, when he got back, was to draw a will and buy an automobile? A. Well, he bought an automobile the day after he came, or the day following, I am not sure which, because we only had at that time the one car, the little Ford, and that was in use at the office all the time.

Q. That is all you had before he went away? A. Well, I think he had the use of Mrs. Freeman's car, that he used to use.

Q. Well, he hadn't been with Mrs. Freeman for many months before that? A. I think he had another car that he used, besides the Ford, because I used the Ford a great deal myself.

Q. He had that then, didn't he, that is, he had it before he went away? The equipment he had before he went away, he had it when he returned? A. Yes, I think he had another car.

Q. Didn't the Doctor have a constant—

Mr. Davey: Let him answer.

A. I think he had a car before that. I just can't call to my mind.

Q. Isn't it a fact that the trouble about the Doctor, and automobiles, was that he always thought the Ford was the best and cheapest car to run? A. In the business he thought that, yes. For the business.

Q. The property that you referred to was the Millbrook property, conveyed to you, wasn't it, Millbrook Realty Company? A. That was it. That was one.

Q. The Treen was the other? A. No. Volkmar Place was the other. That is where he was staying at the time of his death.

Q. He conveyed that to you? A. I bought the property from Miss Nellie Freeman.

Q. Is that the only property that was bought with the funds of the company? A. Miss Nellie Freeman, and the Millbrook Realty Company at Bonhamtown, they were the only two, and I bought both of those with the company's funds. Not for my own personal use.

Q. The Pearl Street property, that is your's? A. That is mine. It has nothing to do with the firm of Manning Freeman, or anyone else.

Q. Carman Terrace is your's? A. No, sir. Where is Carman Terrace?

Q. Carman Terrace, no, I don't know anything about it.

Q. Do you remember a man by the name of William E. Thompson conveyed to John Breen Jr.? A. John Breen Jr. bought a lot there himself and paid for it. Manning Freeman & Son had nothing to do with it.

Q. Now, while the Doctor was in the hospital, September 13th, 1921, the National Real Estate Company conveyed to Manning Freeman & Son, did they not, two properties? A. Yes.

Q. Have you got them yet? A. Yes. We hold a mortgage on to them.

Q. The shares of stock that you mention, Miss Nellie Freeman said she never got her share. Where were the shares of stock kept, in the office? A. I don't know anything about Miss Sallie Freeman's share. I got mine.

Q. When did you get it? A. When Doctor issued it to me, the first time he issued it to me, I have kept it ever since, kept it home.

Q. You settled with the Doctor, didn't you, the last— A. No. I settled with him for a note, that was all. Never about no stock. Which stock do you mean, Senator? Company stock, or this drug stock?

Q. You never considered yourself as owner, or having any business in the— A. I consider I owned a share of stock in Manning Freeman & Son corporation.

Q. When did you consider that? A. I considered it ever since I had it.

Q. What did you ever do to manifest that interest you had there? A. Doctor gave me a share of stock in the company, and I paid him a dollar for it.

Q. Didn't you recognize the Doctor being the owner of everything? A. Well, I don't know why he should give me a share of stock, if he is the owner of everything.

Q. Didn't you so recognize it? A. I recognized him as the head of the firm.

Q. As the absolute owner? A. As the owner of Manning Freeman & Son Company; yes, sir; I did.

Q. He could use the money as he wanted to? A. He could.

Q. Buy property, and tell you what to do, and what not to do? A. I always carried out his instructions, when he was sober.

Q. You considered him the owner, although it was in the name of a corporation? A. I considered Doctor Freeman the owner of Manning Freeman & Son, Inc., yes, sir.

Q. John, can you tell what it was, if anything, that turned the Doctor against you so late in life,

after twenty-eight or thirty years of intimacy and faithful service? A. Well, I can't.

Q. Was there anything at all? A. I can't tell what—Doctor never turned against me until he went away from our place and went up to live at Volkmar Place.

Q. The little controversies that you had with the Doctor, as referred to by Senator Strong, that is the door trouble, and the automobile dispute, and that note dispute, you had troubles years before that? A. No, sir; I did not.

Q. Well, didn't you have business disputes with him at all? A. Well, I would dispute with him in the office. Doctor would want to do thus and so, and I would say, Doctor, don't do that, it isn't good for the business, or something, and he would think it over, and say, you are right, John. We never had no dispute, no words, over anything at all. For seventeen and one-half years Doctor Freeman never spoke an unkind word to me.

Q. It has been within the last three or four years, John, he turned? A. It has been with the last year or two, going on two years that Doctor Freeman has shown his dislike toward me and mine.

Q. Hasn't there been a complete change about the Doctor's mentality, that is, an aversion for those who have befriended him all through life, and hasn't that occurred within the last three years? A. It has occurred within the last, I would say the last two years, or last year and three-quarters, or two years. More so than any other time.

Q. And as far as the Freeman sisters are concerned, and the other natural objects of his bounty, without any apparent reason, so far as you know? A. So far as I know.

Q. And you know the Doctor's business pretty

well? A. Well, if anyone knows it, or if anyone knows it better than me, I would like to know who they are.

Q. Can you tell, John, or explain to the Court, what the condition of Doctor Freeman was when he came out of the hospital? That question has not been asked. A. I will tell you the truth, as near as I can.

Mr. Strong: That is what you are there for.

A. Well, that is what I intend to tell, Senator. I visited Doctor Freeman in the hospital, I think four times, five times, while he was there. In fact, I was the only one, outside of Mr. Watson, that I know of, and probably his sister, that thought anything worth the while to look after Doctor Freeman.

Mr. Brown: I move that be stricken out, about the worth while.

Mr. Strong: I object to that being stricken out.

A. I went to visit him anyway.

The Court: We will let it go that way.

A. And when I first went there Doctor was in rather poor shape. The third week he was there, or the week before that he came home, or a week and a half before he came home, he wanted me to ask the Doctor to release him, Doctor Cotton, and I asked him to stay there for a couple of weeks more. I said, Doctor, you are improving wonderfully, do stay and get yourself in shape for to come back, and he said he would; and he stayed, I think, two

weeks longer; and from the day he returned until, I think, about the first of December, Doctor came back to the office the next morning and stayed there probably an hour or so, and then went on with his other business, went to New Brunswick, used to go to the bank for me every morning, and for, I would say for October, November, up until about December 3rd or 4th, or probably December 1st, Doctor was in good shape, and a man I considered I could do business with, and I could do it with him, and I have talked to him and reasoned with him, and he done business more, and helped in the office, and sold as we went on. First thing when he came back from the hospital he wanted to look over his business and see what we had done in that time, and so forth.

Q. First thing he did when he came back was to buy an automobile, and then he drew a will, and then he went out and got a quart of whiskey, didn't he? A. Not to my knowledge he didn't; no, sir; I don't think Doctor Freeman touched a drop of Whiskey for a month after he came from the hospital.

Q. You won't swear that he didn't? A. I won't swear that he didn't, but to my knowledge I say he didn't.

Q. The Doctor's disposition, or activities, or inactivities, were such that you couldn't tell when he was drunk or sober? A. Yes, I could tell. I could tell when he took the first drink. Every time Doctor returned from the hospital, the first time he stayed for about a year in elegant shape, when he came back from Oppenheim's. When he came back from Belle Mead Doctor was in good shape for three or four months, but as the years come on, the terms got shorter.

Q. Now, John, you know every institution he es-

caped from, including Belle Mead? A. No, he didn't escape from Belle Mead.

Q. How did he get out? A. He was let out.

Q. Who let him out? A. The Doctor. He didn't escape from Belle Mead.

Q. Did he escape from Towne's? A. Yes, he escaped from Towne's.

Q. And wasn't the criticism that he had gotten out before he was cured? Wasn't that the criticism of the authorities?

Mr. Strong: I object. What has that to do with the case?

A. I don't know whether he was cured or not. He got away from the Towne Hospital.

Q. Didn't you get him out from Trenton before he was cured?

Mr. Strong: That is purely hearsay.

A. No, I did not. I didn't get him out of Trenton.

Mr. Brown: That is all. I did want to go through the bookkeeping that Senator Strong referred to, generally, and would suggest that so much as may be material, of the paper writings of this concern, that counsel have the liberty to inspect them, or have them produced, and I would ask particularly that the stock transfer books, and the stock books, be produced.

Mr. Watson: Those are in Mr. Hagerty's possession, Mr. Brown. I have no doubt he will show them to you. So far as the records of the office go, they are under the control of Mr. Hagerty, but I am quite sure if you want to stop there John Breen will show

you the whole thing, unless Mr. Hagerty instructs him not to, which is extremely unlikely.

Mr. Brown: I will ask Mr. Hagerty to produce them in court.

Mr. Watson: You will save so much time if you, or your representative will go to the office there and take out what you want.

Mr. Brown: I have already tried that, and I was confronted with the proposition that the company is one thing, and this will case is another thing.

Mr. Watson: When was that?

Mr. Brown: That was only to-day.

The Court: I will say this: I will advise Mr. Hagerty to permit you, counsel for the proponents and, of course, counsel for the other Caveators, to make such examination of the books and papers of the Manning Freeman & Son Company as you desire to make.

Mr. Brown: Or our representatives.

The Court: Or your representatives. And failing that, I will order all those books and papers impounded in court, and you will have an opportunity to examine them here.

Mr. Strong: Do the paper writings that are referred to, the technical term, do they include the alleged wills that various counsel are carrying around in their pockets? Each counsel has a will.

The Court: I hardly think they are papers belonging to the corporation.

Mr. Strong: I wanted to know if it was limited to the corporation?

The Court: Yes.

Mr. Brown: There ought to be some ar-

rangement made, it seems to me, to get a copy of those narcotic licenses that are hung on the wall.

The Court: Can photographs be taken of those?

Mr. Watson: I have one. They are all alike, except for the years. Let us offer them in evidence. Mr. Breen was able to get one off.

The Court: Take a photograph of the wall, that is the way to produce it.

By Mr. Watson:

Q. Mr. Breen, is this one of those narcotic licenses? A. Yes, sir; that is the last one.

Q. Are they all alike, except for the year? A. They are all alike, except for the year.

Q. What years do they cover? A. I think 1922, '21, I think he has got three, if I remember right. They are pasted up on the wall. Either two or three.

Q. Was there one for 1923? A. That is the last one, right there.

Mr. Brown: Well, we will have permission to take the photograph?

Mr. Watson: Yes. We offer this one.

(License entered in evidence and marked Exhibit C 6, 5/4/23.)

By Mr. Strong:

Q. Mr. Breen, you say he began to go from bad to worse early in December, 1921? In December he began to go bad again? A. Well, about that time he began to get worse, grow worse, as he got older.

Q. On the 30th of December, 1921, you voted for him to be president of Manning Freeman & Son, didn't you? A. I think it was.

Q. You used to use that Ford for your own private purposes? A. I used it, most of the time it was used on Doctor Freeman's business. There was times when I used it on my own. I certainly had that privilege.

By the Court:

Q. Mr. Breen, you had been with the Doctor for nineteen years. What was the volume of business transacted by Manning Freeman & Son, when you first went there? A. Oh, I couldn't tell you offhand, Judge.

Q. Oh, about? A. We have had four men.

Q. What did it amount to in dollars and cents? A. I just couldn't say.

Q. Fifty or sixty thousand dollars, or seventy-five? A. Probably fifty, sixty or seventy. There somewhere around seventy.

Q. What was it in 1922? A. I think the book will show.

Mr. Davey: We have got that in the form of an audit. We have an audit that will show that exactly.

Adojurned to Monday, June 11th, 1923, at 10.00 A. M.

June 11, 1923.

RUSSELL E. WATSON, a witness produced on behalf of the Caveators, being duly sworn according to law on his oath, saith:

I am a counsellor at law of the State of New Jersey, admitted in 1909, practicing in the City of

New Brunswick. I knew Doctor Freeman for four or five years before his death; I was attorney for himself and his company for, I don't know just how long, that long, I guess, four or five years. I saw him once or twice or three times a week for the ten or eleven months prior to his death, up to February 9th. So far as I recall I don't think I saw him between February 9th and the day that he died, although I am not absolutely certain about that. Because of my connection with the case as counsel, so far as the direct testimony goes,—I do not mean to shut out any cross examination, as broad as counsel might want to make it,—but so far as the direct testimony goes, I desired to refer to only three things; two of them are comparatively unimportant, one is very important, and I feel myself under a duty to refer to that one important thing. I saw Doctor Freeman on the morning of July 13th last, 1922, between nine and ten o'clock in the morning, at my office. The preceding night, July 12th, I spent at the office of Manning Freeman & Son, engaged in my work as president of the corporation, I was there about seven-thirty, or so, until ten o'clock at night, and one of the things I did that evening was to confer with Mr. William Dinwiddie with reference to the settlement of an account which he owed the company, in the amount of approximately thirty-five hundred dollars. I fix these dates by entries in my ledger, which I have here, and by a copy of a letter which I wrote to Mr. Dinwiddie on the day of July 13th, after conferring with Doctor Freeman, a copy of which is in my file, here in court. I conferred, or wanted to confer with Doctor Freeman with reference to the settlement of this Dinwiddie account, because I knew that he and Mr. Dinwiddie had been friends of long standing, and there were cer-

tain personal features about this account. Mr. Dinwiddie was unable to pay it at once, and it had to be some time arrangement, which I desired to see secured in some way. Doctor Freeman came in, and his mental condition was such that it was impossible for me to confer intelligently with him. He was under the influence of liquor or drugs, either or both; I knew him well and had seen him in that condition many, many times; his mind was sluggish, he was incapable of coherent conversation, his enunciation was poor, thick, not that he could make himself understood; his eyes had that peculiar, glassy, stared appearance that they had when he was under the influence of liquor or drugs, and he walked poorly. I found it was impossible to make any progress with him, because of his condition, and I let it pass, turned the conversation to other things which had no bearing upon the business, and by and by got rid of him. That is the important thing that I want to testify to. The unimportant things are these: The company had a negotiation, in the Fall of 1922, with reference to the Lehigh Valley lease of the coal trestle; the company leased the coal trestle, and the land on which it stood.

By the Court:

Q. The Manning Freeman Company? A. Yes, sir. In the Fall of 1922 there came word from the Company that we would have to buy that trestle. It meant an investment of eight thousand dollars. It would be our trestle, on leased land. I conferred with Mr. Van Duzer, the official of the Lehigh Valley Railroad Company who had it in charge, who, by the way, had been a few years ago an intimate friend of mine, and still is a warm

New Jersey State Library

friend; he and I were in the same class in college and were intimate in college; I conferred with Mr. Van Duzer about it, relative to it, and made an appointment with Mr. Van Duzer, for Doctor Freeman and I to call upon him, which we did. That I think was—I can give the exact date, I think it was in November some time, the latter part of November. I asked Mr. Van Duzer whether it would be possible for the company to build the trestle itself, whether we could save some money in that way, and Mr. Van Duzer said the company had no objection to our building it, provided it met with their specifications, but he said that building trestles was the company's business, and it was not our business, and he thought it would cost us money, rather than save us money, because the company was doing this on an actual cost proposition, the railroad company, and I agreed with him and let it pass. Later, however, Doctor Freeman one morning wanted me to go in on that matter of the cost of constructing that trestle, and he wanted me to take the list and get quotations of the cost of the material. So I did. I wrote Stevens-Eaton Company, I remember that, and possibly one or two other companies, I am not certain about that, however; I recall distinctly receiving the list, and quotations from Stevens-Eaton Company, in which I was not interested personally, because I regarded it as an infeasible thing from a business standpoint. Doctor Freeman never again spoke to me about that; never asked me whether I had gotten the list; it apparently passed from his mind entirely. He manifested no further interest in it, and never called it to my attention, nor I to his. When we conferred with Mr. Van Duzer, Mr. Van Duzer said that the leases would be ready about January first. I was interested in that, because

the company had to raise some money, about four thousand dollars. The leases didn't come January first, nothing happened from the railroad, and I didn't say anything, on the principle that we would not disturb a sleeping dog, nor did Doctor Freeman ever mention that; never asked me whether the leases had come, whether they had been executed, or hadn't been executed, or why. The only other thing I want to mention is the property that stood in John Breen's name. It was a legal title, an equitable title, was the company's. Mr. Breen never, in conversation with Doctor Freeman, put it—Mr. Breen never denied that the property was the company's, and that it was paid for with company money; he told me that himself; why Doctor Freeman had it in Mr. Breen's name, I didn't know, and never could find out. There appeared to be no good reason why it should be. When I became trustee one of the things that I started doing was to have this title transferred to the company's name; but, however, the company owed Mr. Breen some money; the company had borrowed some money on collateral belonging to Mr. Breen, and unfortunately, while that loan was in force, the collateral had gone to a point where it was worth more, much more than it was then, and the question presented itself whether Mr. Breen ought to be—it wasn't fair just to turn the collateral back to him, whether he should have the high point, or it wasn't fair he should have the low point, or whether he should have some intervening point, and things turned so that Mr. Breen did not want to return this title to the property until that question was settled, which I thought was fair enough. Howsoever, before it was settled, I drew a deed for Mr. and Mrs. Breen to sign, which Mr. Breen executed one evening when I was at the company's

office working there. After this matter of the note was adjusted, and Mr. Breen was paid, or I don't think he was paid, but the adjustment was made, however, satisfactorily; one night when I was there again I went to Mr. Breen's house and Mrs. Breen executed and acknowledged that deed. I thought that the deed was recorded, and did not know that it was unrecorded until the last hearing we had here, I think it was the last day of the last hearing, when it developed that that deed was not on record. What has become of it I do not know; I have searched my office everywhere. I don't attend to the recording of papers myself. Whether I omitted to give it to someone to record, or whether I gave it to someone to record who omitted to do it, I don't know, but I want to clear the record on that point for Mr. Breen's benefit. Whatever dereliction there is in that regard is mine, and not his. That is all.

By the Court:

Q. On the 13th of July, when Doctor Freeman called, you say that his conversation was incoherent. Were his answers to your questions responsive? A. No, they were not. In fact, if your Honor please, he manifested no interest in this.

Q. As I understand you, he practically declined to discuss the proposition? A. He didn't discuss it. I told him what Mr. Dinwiddie's proposal was, and what I thought we ought to do, and what I thought the wisest thing was to do. I can give the details of the conversation; it was this: Mr. Dinwiddie owed the company about thirty-five hundred dollars, and I think approximately one thousand dollars of that was in the shape of a note, which the company had discounted. The other

twenty-five hundred dollars was on open account. Mr. Dinwiddie was unable to pay the account. He had told me, and I had learned from other sources, that he had financial reverses. He didn't even own the property they lived in, it was in Mrs. Dinwiddie's name, and had been for a long while, several years. Mr. Dinwiddie was able and was perfectly willing to make monthly payments on the account, but I thought the account ought to be secured, if it could be, so I suggested to Mr. Dinwiddie that Mrs. Dinwiddie transfer that property to his name, that he give the company notes, upon which monthly payments should be made, that those notes be secured by a mortgage on that property, because there was only a twenty-five hundred dollar mortgage on it, and the property would then be well worth that claim, and our company, we could protect ourselves. Then if he wanted to retransfer the property to Mrs. Dinwinddie, that was his business. As a matter of fact, that is what was done. How much he could pay, I asked him to pay one thousand dollars a year, and he said he wasn't sure that he could do that, and he was disinclined to have the payments more than fifty dollars a month. He said he would pay more, if he could, but he wanted to fix the payments at some sum that he could surely pay, because a clause of the agreement was upon failure to pay any installment when due, the entire amount should become due and payable. I told that to Doctor Freeman, told him of those terms, and he made no suggestions, or manifested no interest in it, he just had nothing to say. There was no response whatever as to the value of the Dinwiddie property, or elements of that kind.

Cross Examination by Mr. Davey:

Q. Mr. Watson, there were a number, were there not, of settlements of accounts of somewhat similar character, I do not mean the details similar, but settlement of accounts of various sorts negotiated by you in behalf of the company? A. Yes, sir.

Q. Acting either as trustee or as attorney? A. Yes, sir.

Q. And you did, did you not, send to Doctor Freeman written papers for him to sign consenting to such settlements? A. I don't recall any.

Q. I show you a paper in connection with the Breen settlement; that refers to the settlement of the very stock matter, with Mr. Breen, which you have testified, doesn't it? A. I don't regard the Breen matter as an account, as the Dinwiddie account. I recall the Breen matter; yes, sir. I wouldn't settle that unless Doctor Freeman knew the terms and approved of them, in so far as he could, exactly the same way I would in committing the company to an eight thousand dollar obligation, such as was involved in the Lehigh Valley lease, unless Doctor Freeman were present.

Q. You did, in fact, send this paper to Doctor Freeman? A. Yes, sir.

Q. On or about the day of its date, August 7th? A. I have no doubt.

Mr. Davey: I would like to have it marked for identification.

(Paper marked P 1 for Identification, 6/11/23.)

Q. You say that Doctor Freeman talked to you about the possibility of the company saving money by constructing the trestle? A. That is true.

Q. And after he had asked you to get quotations, he didn't speak further to you about it? A. No, sir.

Q. Did you know from him, or any other source, that he consulted with me about it? A. No, sir.

Q. The negotiation regarding the lease and trestle began earlier in the summer, did it not? A. No, sir.

Q. When would you fix the beginning point? A. I can tell you exactly; I should say it was about September or October that this expert went down to the plant to inspect it, and had a conversation with Mr. Breen. The first word from the Lehigh Valley Railroad Company that required action at all was dated November 6th, 1922. I have the entire correspondence here, with Mr. Van Duzer, if you are interested in it. No, I beg your pardon. I can improve on that a little. October 19th, 1922.

Q. You did consult with Doctor Freeman about that negotiation? A. Certainly, sir.

Q. Do you recall, on the taking of testimony in New York on Thursday, of Mr. Van Duzer, that he read into the record a letter purporting to come from you, I think the date was November 29th? A. I have that letter here.

Q. Was that letter written after a consultation with Doctor Freeman? A. Yes, sir.

Q. Was the subject matter two subjects, the question of the kind of timber, and the character of bolts to be used, were they raised by Doctor Freeman in conversation with you? A. Yes, sir; and I think it was at that same time that he suggested that I get quotations on the cost of that timber.

Q. Who handed the specifications to Doctor Freeman, if you know? A. I think that I gave him a copy of it, but I am uncertain as to that.

Q. They were prepared by the railroad company? A. I have the original here.

Q. They were prepared, were they not, by the railroad company? A. Yes, sir. This is the original, and my recollection is that the stenographer in my office made copies of them, that he had one—well, I am not sure.

Q. And he did agree to that arrangement of paying eight thousand dollars, four thousand down and four thousand spread over a period of years? A. That was in Mr. Van Duzer's office.

Q. And the execution of the lease for the land? A. Yes, sir.

Q. Or renewal, rather? A. No. It was to be a new lease.

Q. Now, with reference to the deeds for the Breen property, or the property that stood in Mr. Breen's name, Mr. Watson, do you recall an occasion of Mr. Breen telephoning to you from his home, in the latter part, I think, of June, 1922, regarding that matter? A. I think that was on the 22nd day of June.

Q. Did he tell you at that time that I had presented deeds to him for his execution? A. He did.

Q. Didn't he tell you at that time that he didn't want to execute them until his stock loan was in some wise adjusted? A. That is true.

Q. Do you know now what became of the deed that you had executed? A. Mr. Davey, another thought has come to my mind this morning, because I spent another hour searching for those deeds this morning before I came here; sometimes when I am out at night that way, I have a desk at home, it is Mrs. Watson's desk, but I have a drawer in it, sometimes I do work at home; now, it may be that having that paper executed at Metuchen, when I came home that night I put it in that drawer in the desk. That is the only possible place I can still think of to look.

Q. You would not be human, you would not be a

lawyer if you did not mislay something sometime, but has any effort been made to replace it by another, or since the last hearing? A. Not since the last hearing. I thought nothing of that sort ought to be done until this explanation was made in court. Mr. Breen is here, and perfectly willing to do it, as I understand it.

Q. You testified, I think, that you have been an attorney, representing Doctor Freeman, and also his corporation, for some three or four, or four or five years? A. Yes, sir.

Q. Do you recall the first matter in which you had occasion to represent either him or his corporation? A. No, sir.

Q. Do you recall when you first had occasion to prepare a will for Doctor Freeman? A. Yes, sir.

Q. When was it? A. I can't tell you the date. I recall the occasion.

Q. Approximately? A. I recall the occasion.

Q. Was it before October 4th, 1921? A. Yes, sir.

Q. How long before, in round terms? A. One or two years.

Q. And do you recall the provisions of that will? A. Very well, sir. No, I will withdraw that. I draw a good many documents. I think I do, sir.

Q. Have you it here? A. No.

Q. Is it in your possession? A. I am uncertain as to that. I am certain I have a copy of it.

Q. Will you produce either it, or the copy? A. I will produce it. I will object to its being admitted.

Q. That we will fight out when we get it here. Did you prepare, Mr. Watson, a separation agreement for execution, between Doctor and Mrs. Freeman? A. Yes, sir.

Q. And was that prepared during the period of Doctor's confinement in Trenton? A. No, sir.

Q. When was it prepared? A. Oh, I beg your pardon. I prepared two such agreements.

Q. Well, was one of them prepared during the period of his confinement? A. Yes, sir.

Q. And was it executed on or about the last day of that confinement? A. I won't say on or about the last day; it was very close to the time of his being released. I am not sure whether it was before he left, or immediately after, or the next day.

Q. Had it been signed by Mrs. Freeman before the last hearing in the habeas corpus proceedings? A. Had it been signed by Mrs. Freeman?

Q. Yes. A. I think not.

Q. Didn't you in fact carry it to Trenton and have it signed by the Doctor on the morning of the last hearing? A. I am uncertain. Of course, there is no question, Mr. Davey, but what that agreement was made and entered into before his release, because there were negotiations between Doctor Freeman and Mrs. Freeman.

Q. Wasn't it in effect one of the stipulations on her behalf in the matter that that agreement should be executed? A. Well, there was no stipulation, it wasn't a stipulation on her behalf. She refused to stipulate anything.

Q. In his behalf, I meant to say? A. It wasn't a stipulation, Mr. Davey. He did that, he made that agreement, but if you mean it was a stipulation upon which she did anything, that is not so.

Q. I do not mean formal stipulation, I mean, wasn't it a part of the arrangement that that agreement should be executed? A. Do you mean a part of the arrangement by which he was released on habeas corpus?

Q. Oh, no; his release was by decree of the Court of Chancery. A. Surely.

Q. I mean the arrangement between the parties,

between Mr. and Mrs. Freeman? A. It was an arrangement between the parties, entered into before he was released.

Q. Suggested by him? A. I wouldn't say that, whether he suggested it or not.

Q. You were his attorney? A. Yes.

Q. Who represented her? A. Mr. Brown.

Q Who prepared the agreement? A. I did.

Q. I think that is sufficient then. A. Yes. I meant to add, whether it was physically signed before or after his release, my recollection is uncertain.

Q. On the day after his release the will was signed, one will? A. Yes, sir.

Q. By whom were you retained to procure his release, Mr. Watson? A. By Doctor Freeman.

Q. Where? A. At Trenton. He sent for me.

Q. At whose suggestion or request did you go to Trenton? A. He sent word to me by Mr. Breen that he wanted to see me. He wrote me a letter in which he told me that I could be captain of the ship. I have the letter.

Q. You did some letter writing then yourself, didn't you? A. Yes, sir.

Q. To whom did you write? A. You will have to be more specific than that.

Q. Did you write to Doctor Cotton? A. I don't remember it.

Q. Perhaps I can refresh your recollection. A. Yes. That is right. I don't recall that letter, Mr. Davey. It is quite probable that I wrote it, something of that sort, because I remember that conversation with Doctor Cotton, and I remember what passed between us.

Q. I can't, in the nature of things, show you the original, but do you question writing a letter of which this purports to be a copy? A. Oh, no. I remember having—the conversation referred to, I

remember perfectly well, I remember the details of it. I don't recall writing that letter.

Mr. Davey: May I offer this,—and this is to you as attorney, and not as witness,—may I offer this for the moment, in lieu of the original, to be produced later, when Doctor Funkhauser attends as a witness. The original is in the file.

A. I have no doubt of it, Mr. Davey. It is still my present state of mind.

(Copy of letter, dated September 8th, 1921, marked P 2 for Identification, 6/11/23.)

Q. You say that now you are of the same opinion as to his mentality? A. Oh, yes. Of course, that calls for an explanation, which I will make a little later.

Q. Mr. Watson, who prepared the contract between yourself and Doctor Freeman, which was executed on the 15th of May? A. I did, in the presence of Messrs. Lord and Johnson.

Q. Has that been offered in evidence, do you recall? A. I don't think it has.

Q. Did you, Mr. Watson, some time later furnish to Doctor Freeman a bond which was called for? A. Yes, sir.

Q. Who prepared the bond, if you know? A. I think I sent a form to the surety company, which they made some corrections in. I think I prepared the first draft, and the final draft was prepared by the surety company.

Q. Is this that agreement? A. Yes. That is a duplicate original.

Mr. Davey: I offer it in evidence.

(Agreement entered in evidence and marked Exhibit P 3, 6/11/23.)

Q. Do you recall, Mr. Watson, an interview between Doctor Freeman, yourself and myself, on or about June 22nd, 1922, at your office? A. Perfectly well; yes, sir.

Q. Do you recall the statement made in Doctor's behalf, by myself, that he desired to terminate that trust agreement? A. Yes, sir.

Q. Do you recall the exhibition to you of a written consent to its termination, signed already by him, which I now show you? A. I don't recall that, but I know that I was asked to sign such a paper.

Q. And you declined to sign such a paper? A. Yes, sir.

Mr. Davey: May I have that marked for Identification?

(Paper marked P 4 for Identification, 6/11/23.)

A. I recall this notice or demand, or whatever you call it.

Q. During the course of that interview was there served upon you a notice of recession, or cancellation of that trust agreement? A. Oral or verbal?

Q. Written? A. Is this the paper that you have? That is what you call it?

Q. Yes. A. Yes, sir.

Q. Of which that one in your hand is a copy? A. Yes. I recall distinctly: "Take further notice in case of your failure or refusal to comply with the foregoing demand I shall without further notice take such action against you as I may be advised." I remember that clause especially.

Mr. Davey: I offer that in evidence.

(Notice entered in evidence and marked Exhibit P 5, 6/11/23.)

The Court: Of course, I suppose it is improper for you to offer evidence at this time.

Mr. Davey: I think that is true. I thought of it at the moment. I will consider them marked for identification, and we will offer them at the beginning of our case.

Q. It was on that day, was it not, Mr. Watson, June 22nd, that you tendered to Doctor Freeman the bond called for by the agreement of May 15th? A. Yes, sir.

Q. Do you recognize that paper? A. Yes, sir.

Q. Was it written on or about the day it bears date? A. I think so.

Q. And was it shown to Doctor Freeman and myself in your office on the 22nd of June, 1922? A. Yes, sir.

Mr. Davey: I will ask to have it marked.

(Letter dated June 16th, 1922, marked P 6 for Identification, 6/11/23.)

Q. Is that the bond, Mr. Watson? A. Yes, sir.

Q. Did you prepare all of it excepting the first two pages? A. Prepare all but the first two pages?

Q. Yes. A. The first page is the bond itself.

Q. That, I take it, you did not prepare? A. I prepared a preliminary draft.

Q. Of that? A. Yes. But I think the surety company made some changes in it, and I think this is their document.

Q. You signed it, however? A. Oh, yes. The second page is—

Q. The justification, is that it? A. The justifica-

tion. Then follows a copy of the agreement of trust, a compared copy, and also apparently another copy of the justification, isn't it? Yes. I don't know why that is there. No necessity for it, apparently.

Q. When, in fact, was this bond delivered to Doctor Freeman? A. June 22nd.

Q. At what time? A. I don't recall that. I think it was in the afternoon.

Q. Did Doctor Freeman leave your office with me that afternoon in possession of this bond? A. No. I think he refused to take it.

Q. And where was it delivered to him? A. Oh, I remember now.

Q. Please state? A. You and Doctor Freeman came to my office and served this notice upon me, that I relinquish this trust—demand that I relinquish the trust, which I refused to do, and one of the grounds upon which the demand was made was that this bond had not been delivered; this was on the 22nd of June; as a matter of fact, the bond was then in my stenographer's basket, with this letter dated June 16th, forwarding it. Now, whether a week-end had intervened, or I had been away, or been in court, or what had happened that it hadn't been sent between June 16th and June 22nd, I don't know, but I tendered the bond, and you refused to accept it. Doctor Freeman didn't, he didn't say anything; you did all the talking. You refused to accept it, and you walked out, leaving it there. Then Doctor Freeman came in later, the following week, I think it was, within a few days, and said he wanted it, and he took it.

Q. Didn't you, in fact, take it down to Metuchen that night, or the next day? A. No.

Q. Didn't you have an interview with the Doctor about it? A. No. That night or the next day?

Q. Yes. Within a day or so. Within the next three days to be safe? A. Might as well be exact about it.

Q. Please. A. I did not see him on the 23rd, or on the 24th, or on the 26th. I saw him on the 27th, at my office.

Q. Did you see him again that day after he left your office, on the 22nd? A. No, sir. Not to the best of my recollection, Mr. Davey.

Q. Will you look again at the bond, Mr. Watson, please? Do you know how it happens that no copy of the trust agreement is appended to it, although recited on its face? A. Well, I don't know, Mr. Davey. The wrong documents are annexed to this bond, that is evident. The annexed documents have nothing to do with it. Of course, you understand that Doctor Freeman had a copy of the original, had a duplicate original trust agreement.

Q. I beg pardon. A. At that time Doctor Freeman had in his possession a duplicate original of the trust agreement.

Q. Oh, I am very well aware of that fact. A. But a copy of the trust agreement is recited and not annexed, and a document bearing Miss Harkins' comparison mark, which shows it is compared, which ought not to be there, is annexed. I think Miss Harkins annexed the wrong paper.

(Bond marked P 7 for Identification, 6/11/23.)

Q. When the agreement of May 15th was executed, Mr. Watson, where were the physical certificates of the corporate stock? A. For a long time, Mr. Davey, I had the physical possession of those certificates of stock, Doctor Freeman's certificates. I had his minute book and his stock certificate

book. Now, whether they were then in my office, or whether they had been returned and were at the Metuchen office, I couldn't say.

Q. Just which ones did you have? A. I had this stock certificate book, which Mr. Hagerty now has. The only one that I ever knew of.

Q. Did it contain the certificates for Doctor's shares, those issued in his name? A. They had been torn—they had been detached.

Q. Were they with the book, or in your possession? A. Possibly so. I am not certain.

Q. Was the certificate in the name of Miss Freeman in your possession? A. Miss Sallie B. Freeman?

Q. Only one Miss Freeman who had one, Miss Sallie. A. I think so.

Q. Was the certification in the name of Mr. Breen in your possession? A. No, sir.

The Court: Mr. Davey, I do not want to shut you off, but it does not seem to me that this line of examination has anything to do with the mental capacity of Doctor Freeman.

Mr. Davey: I think it has everything to do, if his own attorney deals with him and secures agreements with him.

The Court: You have gotten all that in, but why the details of all these arrangements, or these negotiations?

Mr. Davey: The questions as to Mr. Breen's and Miss Freeman's certificates were perhaps extraneous. I apologize if I went over the line. I do not think the question with reference to Doctor Freeman was.

The Court: I understand the purpose of your examination is to show that Doctor

Freeman was, during the period covered by this examination, transacting business with his attorney, isn't it?

Mr. Davey: My idea is this: That if his attorney did not consider him competent, through all this period, he would not have been dealing as he did deal, and I think I have a right to go fully into the details, particularly as Doctor Freeman's attorney is now attorney for one of the contestants.

The Court: I do not question your right to go into the details, but I question the feasibility of taking all the time to go into the details. It sufficiently appears now that business was transacted, and the details of it, it does not seem to me, are necessary.

Mr. Davey: If your Honor will bear with me, I hope I will try to limit myself as closely as possible. I will drop that subject matter. I had finished what I had noted to inquire about it.

The Court: We cannot make this proceeding preparatory for any other proceeding.

Mr. Davey: I am not laying any other preparation for any other proceeding. I am leading up to the interview, which I conceive to be of some importance, of June 22nd, only a month from the time I was inquiring about, and I was going to fill in the gap of what took place between the execution of the agreement, and what took place between the interview of June 22nd.

The Court: Make it as brief as you can, Mr. Davey.

Q. Will you state, Mr. Watson, if you recall,

what, as trustee, you did in fact do between May 15th, the date of execution, and June 22nd, the date of our interview? A. Do you mean everything that I did?

Q. No, not the detail. Had you had any conferences during that period with Doctor Freeman? A. I conferred with Doctor Freeman on May 16th, and on that same day I personally loaned him seventy-five dollars. I conferred with him on the 19th. I conferred with him on the 24th. I conferred with him on the 31st of May. I conferred with him on June 3rd, and on June 9th.

Q. On matters relating to the corporate business? A. Mr. Davey, I never did a thing of any importance, without telling Doctor Freeman about it and explaining it to him. Throughout my trusteeship I had a regular Monday morning appointment with him at nine o'clock.

Q. You are taking up more time than I, Mr. Watson. Won't you please limit your answers to responsive ones? A. All right, sir. I conferred with him; yes, sir.

Q. About the business of the corporation? A. Yes, sir.

Q. Do you recall a statement made, Mr. Watson, at the interview of the 22nd of June, between yourself, Doctor Freeman and myself, that if the agreement were summarily cancelled by him, receivership proceedings would probably be instituted against the corporation? A. That is a part of what I said.

Q. Do you recall stating that also Mrs. Freeman would demand payment of the fifty dollars a week, which had not then been paid? A. No, sir.

Q. Do you recall making the statement, in words or in substance, that a guardian would undoubtedly be applied for for him? A. I said that, not to Doctor Freeman, Mr. Davey, I said that to you.

Q. In his presence? A. Yes, and he was then in such a condition that he was not himself; he was under the influence of liquor, or alcohol, or drugs, either or both, at that particular time. And I told you that I considered that in my opinion you were yourself committing an unprofessional act, and that if he continued in this way it would undoubtedly result in Mrs. Freeman taking action against him, and he would again find himself confined in an institution.

Q. And against which there would be no possible defense? A. What?

Q. Against which proceedings there would be no possible defense? A. If he were proceeded against as an habitual drunkard, no. That is what I said, and I said to you, not to him.

Q. And that was what you thought then? A. Exactly.

Q. Let me clear this now: You mean to say now that you considered on the 22nd of June, at that interview, that Doctor was incompetent to conduct business? A. He was incompetent to execute any legal document.

Q. All right. A. And the conversation was not between him and me; it was between you and me, right from the shoulder.

Q. It was. I directed the Doctor not to say anything during that interview. You got excited enough for both of them. A. Your directions were an act of supererogation.

Q. Did the Doctor know when a bill was rendered to him, Mr. Watson, for the drawing of the will of October 4th, 1921? A. Did he know when a bill was rendered? I don't know. It was sent through the mail.

Q. Did he know when it was paid? A. Certainly did.

Q. When was it paid? A. I can't tell you without reference to my records.

Q. Won't you please look at your accounts and see? A. I haven't that account here.

Q. Wasn't it in fact paid along two or three weeks or so after you became trustee? A. Oh, no.

Q. Are you sure of that? A. Let me see: That will was drawn in October, 1921. I was appointed trustee in May, 1922. The bill, which was for services in connection with his release from the hospital, as well as drawing the will, was one thousand dollars, and my recollection is that the bill was not paid not all at once, but in two or three payments. Now, maybe that was paid afterward.

Q. Do you say that there was not a check given specifically, fifty dollars, for the drawing of that will on October 4th, some two or three weeks after you became trustee? A. That is right. June 20th.

Q. Specifically for the drawing of the will? A. Yes, sir.

Q. Do you recall, Mr. Watson, that there was talk at that interview of the 22nd, regarding the taking of Chancery proceedings? A. Yes, sir. You said if I didn't relinquish this trusteeship you would bring a suit in Chancery to compel me to.

Q. Do you recall, when you made the statement about a receiver being appointed, that I told you it was the first prayer in my bill? A. Yes, I remember you said that. Of course, it never became such.

Cross Examination by Mr. Brown:

Q. Mr. Watson, notwithstanding the extensive dealings that you had with Doctor Freeman concerning this trusteeship, is it not a fact that the very purpose of the trusteeship was to save the Doctor from his own mental improvidence?

Mr. Davey: I object to that.

A. Absolutely, Mr. Brown.

Mr. Davey: I object to that. The purpose of the trusteeship I think should be drawn by the court from the papers, and not testified by the attorney.

The Court: That might be the legal purpose of it, but the motive which prompted the execution of the instrument—

Mr. Davey: Then I think it should be what was said, and not the witness' conclusion of it.

The Court: We have a peculiar relationship here of attorney and client, where the attorney is advising the client. I think Mr. Brown's question is perfectly proper and I will permit it.

A. Mr. Brown, that not only was the motive, but that is what was said, and said in Doctor Freeman's presence.

Q. So that notwithstanding the signing of all those papers, and the transfers of stock, and agreements that have been gone into and heretofore referred to in the testimony, you considered the whole thing as sort of a matter of form, more than of legal substance? A. Absolutely.

Q. What you wanted to do was to control the Doctor's business so that it would not be dissipated by himself? A. Yes, sir.

Q. And you considered that his mental incapacity was such that it was the only way to save him? A. Yes, sir.

Q. I suppose you had in mind too that it was either that way, or else go to a court, either Chancery or by petition of him being an habitual

drunkard, or incompetent, and from the three or four different remedies you selected this one as being the quickest and cheapest? A. Exactly. This was regarded as a voluntary receivership.

Q. So that you didn't look upon this matter as being what you would call a legal binding transaction between you and the Doctor?

Mr. Davey: I object to that.

A. No, sir. Do you mean legally binding?

Mr. Davey: One moment. I object to it first, because it is vague and indefinite. I do not know whether the question relates to the agreement of May 15th, or whether it relates to the entire transaction of the trusteeship. If it relates to the agreement, surely it cannot be characterized as illegal by the man who prepared it, and had it executed and acknowledged.

Mr. Brown: I think possibly there is something in that objection. If your Honor will permit me, I will withdraw the question in its present form to meet the objection of counsel, and possibly be better understood by the witness.

Q. Notwithstanding the execution of all the papers that have been referred to here, even though they were prepared in legal form, acknowledged, and what not, is it not a fact that due to the Doctor's mental condition, and his habits, that you nevertheless thought that those papers that were executed might be defective, because of the Doctor's mental incapacity? A. Surely. What I thought was this, Mr. Brown: I wouldn't have had the Doctor at that time execute any such document

as a will, for instance, but I personally took the risk of having him execute anything which I thought would conserve his own interests, but even in so doing, thoughout the trusteeship, I constantly safeguarded myself by having the matters come to the knowledge or attention of others. Now, for the knowledge or attention of other. Now, for instance, this very trust agreement, before going into it, it was talked over by me with all of Doctor Freeman's sisters; I went to Brooklyn especially to confer with them, had a family conference to tell them what I thought of this situation, how it was developing, what they thought of this, if this trusteeship should eventuate, how they would feel about it. Another instance, when we settled Mr. Breen's account with the company, I had Mr. Higgins, the auditor, a man in whom Doctor Freeman had confidence, I had Mr. Higgins to confer with reference to that; asked his judgment. His judgment coincided with mine. Then I would go ahead and do whatever I determined was for Doctor Freeman's best interests, regardless of his legal capacity.

Q. So that you were willing to take the risk of what might happen to you legally, for the benefit of Doctor Freeman's estate? A. My conscience was clear, and I knew I was taking no risk.

Q. Well, what I mean by risk, that is the risk of being criticised, or what not? A. Oh, yes. If Mr. Davey wanted to sue me, I thought I could defend myself.

Q. I do not know whether you have testified to the dealings with the Lehigh Valley Railroad Company, in detail? A. Not in detail.

Q. Just generally? A. Yes.

Q. You have referred, have you, to all the visits you had with the Doctor up to the time of the ex-

ecution of this instrument? A. No. I referred, in my direct examination, only to one, and that was the morning of July 13th. Mr. Davey has touched upon some others. My personal position is that I thought Doctor Freeman's general habits have been established by other witnesses.

Q. Well, aside from that, when did you see the Doctor before July 12th? When I say when did you see him before, I mean immediately before? A. Before when?

Q. July 12th? A. July 13th. I didn't see him on the 12th. I saw him on the 5th.

Q. Have you testified as to his condition on that day? A. No.

Q. Would you mind telling the court, if you will, please, just the circumstances of you seeing the Doctor, and what his condition was? A. Mr. Brown, it is difficult for me to testify as to his particular condition on particular days. It was better and worse. I remember July 13th because of the particular business that was under way, and which affected a friend of Doctor Freeman's. Otherwise I would be unable to recall that, with that degree of particularity. But, throughout the Spring, beginning some time early in May, during the greater part of the Summer, Doctor Freeman was on a protracted spree, and he was always more or less under the influence of drugs, or liquor, or both, on each occasion that I saw him.

Mr. Brown: I guess that is all.

By Mr. Davey:

Q. Then as I understand it, in May, when he signed this trust agreement, you did not consider him competent to do legal business? A. That is why the agreement was executed.

Q. You took title to his entire stock, under an agreement made at a time when you did not consider him competent? A. Yes, sir.

Q. And you held that, despite his express wish, on the 18th of June, throughout until after his death? A. Yes. He was no more competent to ask me to relinquish it, than he was to ask me to take it. That was your word, and not his.

Q. Notwithstanding you had written, and still believed that he was not of unsound mind? A. Yes, sir.

Q. And notwithstanding your position, you did take the precaution to put an anchor out to windward, and have him sign and consent to such agreements and settlements as you negotiated? A. The Breen one only.

Q. Only? A. Only one I recall.

Q. Didn't you send him other consents to sign to other settlements? A. I constantly advised him of various things, but I don't think he consented to any. I don't recall any.

Q. I didn't say he signed them, but didn't you send them? A. I advised the man of everything of importance that I did.

Q. Now, will you please answer the question. Didn't you send him other papers to sign, each one specifically consenting to some settlement that you had negotiated? A. I don't recall any other paper that I asked him to sign.

Q. Do you mean to say you didn't send them to him? A. No, I don't say that. I say I don't recall any.

Q. You consulted, you say, before the execution of the May 15th agreement, with his sisters in Brooklyn? A. I did.

Q. Did you represent his sisters then? A. I did not. I have never been under any retainer from them, and I have never rendered them a bill.

Q. When did you first represent his sisters, or any of them? A. After Doctor Freeman's death.

Q. How soon after? A. Immediately. Two or three days. The day of the funeral, I think. That is right, the day of the funeral. I might say that my conferences with the sisters, prior to this given trip to see them, was not strictly professional; it was more personal than professional. I made a charge for the service against no one, and rendered a bill to no one for it.

Q. Mr. Watson, you testified, as I understood it, in your direct examination, that you got the Doctor to consent to everything practically that you did as Trustee? A. No, sir.

Q. Didn't you? A. No, I didn't say that. I notified him of everything that I did.

Q. Well, did he object?

The Court: I think what Mr. Watson said was that he consulted with him.

Mr. Davey: I am in error then.

Q. Did he make objection to anything that you had consulted him about? A. Oh, yes, many times.

Q. Did you change your action, in view of those objections, in any one instance? A. Not unless I thought it was wise. The ordinary things that he objected to, no, because they were foolish, in possibly my opinion, that he wanted done.

Q. Like having the trestle constructed? A. No, not that, he didn't want that done.

Q. Like what, then? A. Well, for instance, like wanting me to put an eighteen thousand dollar mortgage on the property. Like wanting me to—coming in and raising the roof, almost, because there wasn't hay in the barn with which to feed the mules, when hay was on the way, ordered, delayed in transportation. Insignificant little things like

that. Because we didn't stock up with a great supply of soft coal, when the coal was running poor. As a matter of fact, we kept pretty close to the wind on coal. We still have some soft coal we can't sell. If we had followed his directions we would have had carloads of it we couldn't sell. Things like that. Those are the things he wanted me to do, that I didn't do. Wanted me to reduce salaries at a time when it was impossible to get skilled help. Things like that I wouldn't do. They were bad for the business.

By Mr. Brown:

Q. Mention has been made about Miss Freeman that you went to consult with at this time; she wasn't in possession of the share of stock then, was she? A. She didn't physically have the share, no.

Q. Where was that share? A. I had it. I think so. I had it part of the time. I had his shares too.

Mr. Brown: That is all.

A. Now, I want to speak of this letter to Doctor Cotton: Doctor Freeman was committed to the Hospital for the Insane at Trenton, as a lunatic. In my opinion he was not a lunatic, and was not of unsound mind, within the meaning of the statute, and I still think so. He was an habitual drunkard, and had he been proceeded against under the habitual drunkard statute, he could not have been released by habeas corpus, or otherwise, until the doctors thought he was cured, at least temporarily, and that was what I wrote to Doctor Cotton, that was what I said to Doctor Cotton, and that was what I said many times to Doctor Freeman himself.

Q. That is simply an expression of your opinion? A. That is all. But I don't want this letter misconstrued. I think he was incapable of managing himself and his estate, because of his habitual drunkenness. I just want to say with reference to this tender of a bond: The letter sending the bond was not dictated until June 16th, although the agreement was entered into May 15th. The reason for that was this: I made application to the National Surety Company for a bond. The whole transaction was somewhat unusual, which required some correspondence back and forth, which was not direct, it went through the agent, James A. O'Connell, thereby taking some more time than it would have. Then they agreed to write the bond, but they wanted me to deposit with them the shares of stock, endorsed in blank. You see, under the agreement of trust, I held the shares of stock. I was averse to doing that. It was simply a matter of personal feeling. I was not going to run off with the shares, I could not sell them to anybody, and I thought the Surety Company ought to have that much confidence in me as not to ask me to deposit shares with them, and we had some correspondence back and forth with reference to that, and I was going to have the bond written by another company, but finally I didn't; what is the difference; I sent the shares to them and they held them until Mr. Hagerty was appointed, and that is the reason there was delay in issuing the bond.

Q. Did that include the Sallie Freeman share? A. No. Just the shares I had, 998 of common, I think, and 2,000 shares of preferred. Those shares were physically with the Surety Company during the time the Surety Company was on my bond.

Q. Miss Freeman has testified that she has never had the custody of that share. Where has it been

all the time? You say that you had it part of the time? A. I had an envelope, with Doctor Freeman's shares in, in the safe, and I think Miss Freeman's share was there too.

Q. What became of that, do you know, her share?

Dr. Davey: She said she never owned it.

Q. I mean, what became of that share? It seems to have been lost in the shuffle. A. I don't know, Senator. She was a dummy director, you know.

Q. You don't know where the physical share is? A. Maybe I still have it.

By Mr. Davey:

Q. Mr. Watson, is that the reason you assign for the delay in the delivery of the bond, at the conference of June 18th? A. June 22nd?

Q. June 22nd; I beg your pardon. A. I am explaining why a month went by before this bond was ready for delivery.

Q. I ask you a question: Is the statement you made as to why, the reason you then assigned for the delay? A. The reason I assigned?

Q. Yes? A. I don't know that I gave you any reason.

Q. Don't you remember giving a reason for the delay, at that interview? A. No, I don't remember giving any reason.

Q. Do you say you did, or did not? A. I say that I did not.

Q. You say that you did not? A. Yes.

Q. Did you not state to Doctor Freeman, and me, in your office, that the reason for the delay was that you had been attempting to procure a lower rate than the company wanted to charge, and that you had succeeded in reducing the cost materially? A. Maybe I did say that, and that is the fact.

Q. Then your statement a minute ago was an error? A. Possibly so. Now that you refresh my recollection, I remember that the first amount of the premium was much higher than we finally paid.

Q. And after they got the stock they reduced the rate of premium, is that right? A. I don't know that that had anything to do with it, but we got a lower rate.

Q. I am asking for facts, not reasons. Is that a fact? A. No. The rate was reduced before they got the stock.

Q. In consideration of the fact that the stock would be deposited with them? A. No, I don't think that was a consideration of it.

Q. The fact is that it was deposited with them? A. It was deposited; yes, sir.

Mr. Davey: That is all.

Mr. Brown: That is all we have.

Are you the only witness this morning, Mr. Watson?

Mr. Watson: Yes, that is all I have.

Mr. Brown: We have at least four witnesses who could be placed upon the stand and testify to the Doctor's general condition, up to the time that he was taken to the hospital at Trenton; one would be Mrs. Freeman, who has not seen him from the day he was released, or went to the hospital, to the time that he died. And I think it would be useless to take the court's time up with further testimony of witnesses, previous to his confinement in the State Hospital. You see, there has been such a great amount of corroborative testimony in the case, that unless it goes to the point on or about July 12th, when the last will was made, or a month or so before that, or just previous to his death, I do not see that it would help the court. We have the chauffeur who was about the house and drove Doctor

Freeman after he went to the hospital; that is, Doctor Freeman took up his new abode and, of course, the chauffeur who was theretofore working for the Doctor did not follow him to his new place. And then we have two other witnesses who can testify as to his habits, and what not, in his old residence, that is, his old residence as distinguished from his place when he moved over to Mr. Breen's, after coming from the hospital. So that under all the circumstances, I do not think it would help my case, and I do not think it would enlighten the court a bit, and I am going to refrain from burdening the record with those witnesses. The only other thing I would like to have entered in the case is the stock book marked in evidence, which is a very small item of evidence, that is, it is three or four sheets, stock book, and transfer book, and the minute book. The minute book I think has already been referred to; I am not so sure that it is in. If you have no objection, Mr. Watson, I will make the offer of them now.

Mr. Watson: Mr. Hagerty has them.

Mr. Brown: Yes. That is, the last stock transfer book, and the minute book, I think.

The Court: Is there any objection to the records of the corporation going in?

Mr. Davey: Not as records, but it seems to me that Mr. Brown is now guilty of trying another issue than the one before this court. I cannot conceive the pertinence of the stock transfer book, nor the stock book, in this proceeding. I think I apprehend Mr. Brown's purpose, but I do not think that it is pertinent here.

Mr. Brown: If Mr. Davey does not want them in, I will not insist upon them. I am not trying any other case. I am trying to shorten the court's work, if I can.

Mr. Davey: I think we will save time, perhaps, to let them go in, rather than object, although I do not think they really are competent nor pertinent to this issue.

The Court: I cannot foresee what use is going to be made of them.

Mr. Davey: I think Mr. Brown might simplify the case by stating what his idea was.

Mr. Brown: Here is what I had in mind: In the previous hearings of this case there was considerable reference made to the minute book. I know, in fact, that there were minutes produced, and the originals were used in the examination and cross examination of Mr. Breen, and I thought, in order to be on the safe side, we would have the minutes themselves go in. That is one.

Mr. Davey: I will not object.

Mr. Brown: Reference to the stock was of a like nature, and there has been reference here this morning, and in order to have no dispute about the dates, or what not, I ask to have them go in.

Mr. Brown: The only other offer I make is the offer of the license that was on the office wall. I think Mr. Watson offered a copy.

Mr. Watson: We had an original. It is here.

Mr. Brown: Then there is testimony as to a license being issued for a date previous to that.

Mr. Watson: That has been offered.

Mr. Brown: Now, may we stipulate what the other licenses are?

Mr. Watson: 1920, 1921 and 1922. There was none for the current year.

Mr. Brown: Of a similar character, that is, in design and printing.

Mr. Davey: I have no objection.

Mr. Brown: That is all we have.

The Court: I suppose you are going to have medical testimony of some character.

Mr. Brown: Yes. I thought that was understood.

Mr. Watson: I thought there would be a special day set for that. We haven't the record yet, which we will need for that work.

Mr. Davey: I think they ought to conclude their testimony, of all sorts, before we are compelled to go on with our side of the case.

Mr. Brown: I thought at the last time you were here it was clearly understood that the medical testimony would take a day, and you would have your experts here, and we would have ours, and you would submit the transcript of the record to them, frame your question for them, and we would do likewise. I thought we agreed upon that. I may be mistaken.

Mr. Davey: I understood when the fact testimony was done, there would be a day appointed for the doctors.

Mr. Strong: Then I misunderstood.

The Court: That was the agreement that was made in the Judge's chambers.

Mr. Strong: If that is so, I have no objection.

Mr. Davey: When we were in New York, on the taking of depositions on Thursday last, we asked Mr. Brown about the necessity of our getting ready, and we were advised we had better have witnesses on the morning of the second day, Tuesday, and we are not prepared. Now, we can have witnesses here, if your Honor will take the noon adjournment now, we will have witnesses in court this afternoon and go ahead.

Adjourned until 1:30 P. M.

Afternoon Session.

PROPONENTS' REBUTTAL TESTIMONY.

Mr. Davey: We have some formal papers to offer. We offer in evidence the entire record in the Court of Chancery, on the habeas corpus proceedings, for the release of Doctor Freeman from the State asylum, consisting of a petition, an order for a writ, a writ of habeas corpus, the return of the writ, and the testimony taken on that return, transcript of the testimony, and the decree of the Chancellor. The decree we had here at the other hearing; at the moment we are not able to put our hands on it. We will offer a certified copy of the decree, and if it be not found, we will have to offer another copy. Your Honor thought it was not competent to admit as evidence at that time, and it was in the court room. Here we have it.

Mr. Brown: I have not had any chance to see those papers.

The Court: I did not understand that there was any transcript of testimony there.

Mr. Davey: We have the transcript of the testimony, certified, on which the decree was based.

Mr. Brown: How is that going to bind the parties in this case?

The Court: I do not see how it is at all, Mr. Brown.

Mr. Brown: Then the only thing that is left is the decree, the culmination of all that was done before the court. If that is admissible, or whether it is or not, it is the only issue. Not as to all the pleadings.

The Court: I understand Mr. Davey is offering the whole record in the Court of Chancery. I suppose if any part of it is received, the whole record, outside of the testimony that was taken in the

Court of Chancery, is proper. You may note your objection on the record.

Mr. Brown: Yes, I want to note the same objections that I did to the decree heretofore. I think that pertains to the entire proceeding.

The Court: I will permit them to be received as evidence. As to the effect they may have, I do not know yet. I will permit you to offer them.

Mr. Davey: Your Honor excludes from that the testimony?

The Court: I understood you did not press that anyway.

Mr. Brown: Will your Honor allow an exception to that ruling?

The Court: Yes, certainly.

Mr. Brown: I believe your Honor is right, possibly, about the right—

Mr. Davey: We will not press the offer of the testimony, since there seems to be some question about it.

Mr. Strong: At this time. We may offer it later.

Mr. Brown: What is it you are offering?

Mr. Davey: The proceeding in the Court of Chancery, aside from the testimony. The petition for a writ, order for a writ, the writ of habeas corpus, the return, and the decree.

Mr. Brown: Are they all certified?

Mr. Davey: Yes.

Mr. Watson: In that proceeding Doctor Freeman was confined, involuntarily committed to the State Hospital, under the statute, as a person of unsound mind. He was discharged on habeas corpus. To test his sanity under that statute is entirely different from the test which the court has to make here, as to the testamentary capacity of Doctor Freeman on a certain day and date, and I

think the one is not evidential of the other. A person might well be the subject of commitment to a hospital under that statute, be confined there, and yet during that time have testamentary capacity.

The Court: I am inclined to agree with you, Mr. Watson, but I think for the purpose of permitting these papers to come in, I am going to let them come in as exhibits. As to what evidential value they may have, or what effect they may have upon the determination of the case, will depend entirely upon what my subsequent investigation discloses as to how far they are evidential.

Mr. Davey: Your Honor I think will not find any case in which a will has been made by a person who has, before the making of the will, been decreed to be insane. I have searched until I think I am fair in saying you will not find a decision that way. You will, however, find plenty of cases reported, where the contrary is true, and where it has been held that an adjudication furnishes presumptive evidence, which presumption continues, unless overthrown by testimony.

Mr. Watson: That is not the issue here.

Mr. Brown: Nor the construction of this statute under which this man was imprisoned, and the same statute upon his release. Whether or not an adjudication as to a man's sanity, or insanity, is the same sort of an adjudication which would spell his capacity to make a will, or not.

The Court: Under the reasons advanced by Mr. Davey for the offer of these papers, I might say that the presumption always has been that a person is sane, until it has been overcome by evidence.

Mr. Davey: Your Honor will not overlook the fact we go further than that in this case, because the decree finds that the decedent was sane on that date, and orders his discharge as a sane person.

The Court: It is all right. I will be glad to have counsel submit anything they want to have me consider, in writing.

Mr. Brown: I suppose your Honor will insist upon briefs anyway.

The Court: I will not insist upon it, but I will appreciate it, if counsel will do so.

Mr. Davey: Will that be marked as one exhibit?

The Court: Yes.

(Chancery papers entered in evidence and marked Exhibit P-8, 6/11/23.)

Mr. Davey: I now offer in evidence the paper marked P-1 for Identification, during the examination of Mr. Watson. It is the consent sent to Doctor Freeman for his signature.

Mr. Brown: I do not want to be captious in my objections, but let me make this objection to the line of introduction that is now being attempted: Mr. Watson has stated on the stand, while those business transactions took place, that nevertheless he has explained that they were done for the purpose of preserving Doctor Freeman's property, and with the full knowledge also that Mr. Watson did not think, at the time that he was carrying on those business transactions, that the Doctor was mentally fit to carry on his business. If that is so, I do not see how those are evidential.

Mr. Strong: Certainly we are not bound by what Mr. Watson testifies to. That will speak for itself.

The Court: I think your objection goes more, Mr. Brown, to the evidential strength of the paper, rather than the question of whether it is proper to be admitted.

Mr. Brown: That may be so. I suppose they are evidence, to an effect, but it seems to me that Mr. Watson explaining the thing as he has, that there is nothing left of it.

The Court: I do not want to indicate my own views on the subject at this time, but I will permit the papers to come in for what they are worth.

Mr. Brown: Your Honor overrules the objection?

The Court: Yes.

Mr. Brown: I ask an exception to each of the exhibits that are introduced.

The Court: You may have that.

(Paper heretofore marked P-1 for Identification, entered in evidence and marked Exhibit P-1, 6/11/.)

Mr. Davey: I offer in evidence a copy of the letter from Mr. Watson to Doctor Cotton, marked P-2 for Identification during the examination of Mr. Watson.

(Letter heretofore marked P-2 for Identification, entered in evidence and marked Exhibit P-2, 6/11/23.)

Mr. Davey: I offer in evidence the agreement of the 15th of May, between Mr. Watson and Doctor Freeman, identified by Mr. Watson during his examination, and marked P 3 for identification.

(Agreement heretofore marked P 3 for Identification, entered in evidence and marked Exhibit P 3, 6/11/23.)

Mr. Davey: I offer in evidence paper marked P 4 for Identification, the consent to the cancellation of the agreement of May 15th, executed by Doctor Freeman, but not by Mr. Watson.

(Paper heretofore marked P 4 for Identification, entered in evidence and marked Exhibit P 4, 6/11/23.)

Mr. Davey: I offer in evidence paper marked P 5 for identification, being the notice served on Mr. Watson during the interview of June 22nd.

The Court: What is the purpose of the offer of that, Mr. Davey?

Mr. Davey: It was identified by Mr. Watson during his cross examination.

The Court: I understand, but what is the purpose of offering it in the will contest?

Mr. Davey: It was served on Mr. Watson, in Doctor Freeman's presence. It is a paper signed by Doctor Freeman, handed to Mr. Watson in Doctor Freeman's presence, and it certainly, I think, is evidence for what it may be worth, of an interview had at that time, and of his views at that time. We have had conversations testified to, and all kinds of papers signed by him. This is one of the papers signed by him, preceding the date of the making of the will.

Mr. Brown: This paper is not signed by Doctor Freeman.

Mr. Davey: That is a copy. It was identified by Mr. Watson.

The Court: I will let it come in. I cannot see that it has any bearing on the case, but I will let it come in.

(Paper heretofore marked P 5 for Identification, entered in evidence and marked Exhibit P 5, 6/11/23.)

Mr. Davey: I offer in evidence paper marked P 6 for Identification, being the letter from Mr. Watson to Doctor Freeman, under date of June 16th, 1922.

(Letter heretofore marked P 6 for Identification, entered in evidence and marked Exhibit P 6, 6/11/23.)

Mr. Davey: I offer in evidence paper marked P 7 for Identification, being the bond delivered to Doctor Freeman by Mr. Watson, executed by him, and the National Surety Company.

(Bond heretofore marked P 7 for Identification, entered in evidence and marked Exhibit P 7, 6/11/23.)

WILLIAM H. K. DAVEY, recalled:

Direct Examination by Mr. Strong:

Q. Mr. Davey, you prepared a draft of a bill in Chancery, for the purpose of setting aside the trusteeship, and which draft I think you have in your possession here? A. Yes, I have.

Q. May I have it a moment. To turn over and re-deliver to the complainant, the shares of the stock of the corporation of Manning Freeman & Son, which were held by Mr. Watson at that time? A. That was the purpose of it.

Q. And also praying that Mr. John W. Breen—

Mr. Brown: I object to this. If we are going to have this in evidence, we ought to have it offered. I thought the first question was to identify the paper.

Mr. Strong: I want to identify the paper by showing its purpose a little more fully, and it is for the purpose of showing—

The Court: Senator, how is it material, or relevant, after you have identified it? How is something that Mr. Davey prepared, as an attorney, or any evidential value whatever?

Mr. Strong: It is of evidential value, because I will show by Mr. Davey that the facts recited in this bill were obtained from Doctor Freeman himself.

Mr. Watson: Show the facts.

The Court: I do not think your bill is any evidence of anything.

Mr. Strong: The bill shows, in concrete form, what the facts were, and then I prove by Mr. Davey that he obtained those facts—

The Court: At best it would be simply a written memorandum for the purpose of refreshing his memory. Let him testify as to the facts, without reference to the bill, unless it is impossible for him to do it.

Mr. Brown: We are in rebuttal, now, as I understand it.

The Court: Yes.

Mr. Brown: I suppose that means, in this particular issue, that the proponents of this will are really putting in their affirmative evidence as to the facts as to the Doctor's sanity, or capacity to make a will, and if that is so, it seems to me that the conversations with the Doctor, and all the other things that an attempt might be made to prove, that they should be gone into very fully, as if it were the affirmative of the issue that the proponents were taking.

The Court: I think that is right.

Mr. Brown: While it is rebuttal, I do not think he is relieved from testifying at length just what happened, and for that reason I say, Senator Strong, that Mr. Davey ought to rely upon his memory, if he has any, about his dealings with the Doctor.

The Court: I do not think I ought to let you use that bill.

Mr. Strong: Ought not to let me use it?

The Court: Either you or the witness. Of course, I cannot stop you from using it. I can in the way you were using it.

Q. Mr. Davey, were you retained by Doctor Charles M. Freeman to prepare a bill in Chancery for him? A. I was retained by Doctor Freeman, and when I say I was retained, I was engaged, I

was not paid any retainer by Doctor Freeman, to act for him in the entire matter of the ownership of corporation stock of Manning Freeman & Son.

Q. And when was that, as nearly as you can state now? A. That was on June 18th.

Q. June 18th, or 17th, or are you certain about it? A. It was on Sunday. I think it fell on June 18th.

Q. From whom did you obtain the facts from which that bill yas prepared? A. In the first instance from Doctor Freeman. Afterwards many of them were verified from other sources.

Q. What was the object of that bill? A. The object was to regain possession of his stock, which was then in possession of Mr. Watson, under an agreement dated May 15th, 1922.

Q. And for what, if any other purposes, as nearly as you can state? A. There was a question of the title to certain lands, which really belonged to the corporation, but stood in the name of John W. Breen, and one of the objects was to have that turned over to the corporation. There was also a matter of a loan obtained from one of the New Brunswick banks, in which case Mr. Breen had advanced some stocks which were used as collateral.

Q. What did Doctor Freeman state to you with respect to the condition of his business? A. He told me—

Mr. Brown: Would you mind please stating the time and place?

Mr. Watson: June 18th, he said it was.

A. He told me on the 18th, Sunday, in his home at the garage in Metuchen on Volkmar Place, and the whole subject matter was gone over again during the entire day of June 22nd. I spent the entire

day with him, from early in the morning until five or six o'clock at night. The bill then was partly prepared.

Q. Do you recall what he stated to you with respect to the condition of the business? A. Yes, I do. He stated that the business had a net worth of something like somewhat over one hundred thousand dollars, aside from the real estate which stood in Mr. Breen's name, and which, if I recall right, he fixed at being worth something in excess of twenty-five thousand dollars. He stated that it had some seventy-five or eighty thousand dollars of outstanding accounts, and, practically speaking, no money in the bank.

Q. Yes. A. That it had borrowed from one of the banks this loan, on which Mr. Breen's personal stock was used as security, and he didn't know whether there was enough cash to cover the loan, or not, in the bank, on deposit. That there were goods ordered that there wasn't enough money on hand to pay for, and he didn't know whether it would come in in time to pay for the goods.

Q. What did he say, if anything, with respect to the part he was permitted to have in the management of the business? A. He showed me a copy of this agreement with Mr. Watson, gave me a copy of it, which has been produced here and offered in evidence, and stated that since the execution of that paper he hadn't had anything to say; one man that he had employed had been discharged, immediately upon the execution of that paper; that he had been told to stay away from the office, and that he didn't know, after the date of that paper, exactly into what condition the business had gotten.

Q. What did he say that his official position had been with the corporation? A. He had been president, and he owned all of the capital stock,

although two shares were outstanding, one in the name of Mr. Breen, and one in the name of his sister, Sallie Freeman. He gave me the exact number of shares, three thousand, and approximately the date of the incorporation, which I have forgotten.

Q. And what, if anything, did he state with respect to Mr. Russell E. Watson? A. He stated that Mr. Watson was vice president of the corporation, having elected himself, or been elected under the terms of that agreement of the 15th of May.

Q. What was Mr. Watson's position, in fact? A. It now appears by the minutes offered in evidence in this trial that he was president.

Mr. Brown: I object, as not being material, and it does not raise an issue here.

Mr. Watson: Let it go. It shows the Doctor did not know what he was talking about.

Mr. Strong: The paper here in evidence states that Doctor Freeman is to continue to draw his salary as president, and you would be elected a director and officer, and he supposed vice president.

Mr. Brown: On the further ground it does not appear this man has any knowledge as to Mr. Watson's position.

Q. How did he say that he had come to transfer his shares of stock to Mr. Watson? A. Under the terms of that agreement he had turned them over, and the agreement, he said, was made at the instance of some of his creditors, who had sold the goods that the corporation would not be able to pay for on delivery.

Q. By whose advice had he turned over the shares to Mr. Watson? A. Mr. Watson's advice at

the time. He said Mr. Watson prepared the agreement.

Q. I think you stated that he had been told to—that Mr. Breen had told him to keep away? A. He told me he had been told to stay away from the office.

Q. Did he say by whom? A. I think not.

Q. What, if anything, did he say with respect to a bond that was to have been given? A. That the bond had not been given.

Q. What bond was that? A. That was the bond called for by the agreement, a bond for twenty-five thousand dollars for faithful performance and redelivery.

Q. And he stated that he believed that the said Russell E. Watson—

Mr. Brown: I object to this as being very leading, as being entirely unnecessary. This witness has not manifested at all a failing of memory. Counsel has proceeded to pick out from the bill here and there, to which I did not object, but now I do, because it is going to the extreme of leading the witness, and almost suggesting the matter to be testified to. I submit that this witness should tell all the conversation, and go through with it without being prompted at all.

Q. What, if anything, did he say with respect to Mr. Watson being director, or vice president? A. He understood that Mr. Watson had been elected, or caused himself to be elected a director and officer; vice president, he said.

Q. What, if anything, did he say with respect to any attempt to cancel that agreement? A. He wanted me to procure the cancellation of that

agreement, and we came together, on the 22nd of June, to Mr. Watson's office. Doctor Freeman had signed, at his home that morning, a consent to the cancellation of that agreement of May 15th. That was presented to Mr. Watson, in Doctor Freeman's presence, with the request to sign it, and he declined to sign it.

Q. From whom did you obtain the facts recited in that cancellation? A. The fact was stated by Mr. Watson. Mr. Watson declined to sign the cancellation, at my request.

Q. Is the cancellation here? A. The notice is on my table there, either with you, or on the table. That has been offered in evidence.

Q. From whom did you obtain the information which you embodied in this notice of cancellation? A. From Doctor Freeman.

Q. What took place at that interview with Mr. Watson, and Doctor Freeman and yourself? A. After we were admitted to Mr. Watson's office, and he came in, I handed him the card, and I told him that Doctor had desired to have the agreement of the 15th of May cancelled, and I had prepared a consent, which the Doctor had signed, and which thereupon I exhibited to Mr. Watson and asked him if he were willing to sign it. Mr. Watson said he was not willing to sign it. We had, I suppose, a conversation that lasted perhaps ten or fifteen minutes. Mr. Watson became very much excited, seemingly very angry; he said that if we insisted upon cancelling the agreement, or took proceedings to that end, Mrs. Freeman would come down on the Doctor for the fifty dollars a week, under a separation agreement, which up to that time he had not paid her, and got her to waive, or consent to defer. He said furthermore—

By Mr. Brown:

Q. Do you mean defer the payments? A. Yes.

By Mr. Strong:

Q. Proceed. A. He said, if we insisted, it would mean that there would be proceedings brought for the appointment of a guardian for Doctor Freeman, against which he didn't think there could be any successful defense interposed. And he said also that the creditors would demand the appointment of a receiver for the corporation. I said, in answer to that, that he need not worry, if we filed a bill, that would be the first prayer in our bill.

Q. What would be the first prayer? A. For a receivership.

Q. And that was the first prayer? A. Well, I think prayer for subpoena was first, as a matter of practice, and that was the next. Before that interview closed I served on Mr. Watson the formal notice of recession of that contract, copy of which has been offered in evidence.

Q. Did Doctor Freeman follow up that notice of recession by filing the bill in Chancery? A. No. He called me up, I think it was the following day, I can't say positively whether it was the following day, or the second day afterward, and said that Mr. Watson had come down and seen him, and had insisted upon his accepting the bond, and he thought that perhaps the quickest and best way out was to accept the bond, and let the year expire. I advised him perhaps it was quickest, and certainly it would be the cheapest, and it was decided not to file the bill, but he had accepted the bond and determined to allow the year of the trusteeship to expire, without taking any proceedings.

Q. I think Mr. John W. Breen stated that you did not present any deed, or deeds, to him for signature. A. As I recall it, he did state that I did not, but, in fact, on that same afternoon, I don't know whether it was before we went to Mr. Watson's of-

fice, or immediately after, we went to the clerk's office, and I got the description of the Bonhamtown land.

Q. Who went to the clerk's office? A. I did. I found the deed and got the description. I had already a deed for the other piece, or a copy of the deed for the other piece, and I drew, or filled the description in, in the form of deed which I have here, and we went to Mr. Breen's house that evening, these two deeds were presented to Mr. Breen, with the request that he and his wife execute them. He declined to do it; he went into the house, and came out and said he had telephoned to Mr. Watson, and he declined to sign any deed for the property, until the loan matter was cleared up.

The Court: It is asked that this examination might be suspended, so as to call two witnesses who have come in to court since they started.

Mr. Brown: There is no objection on my part.

(Witness withdrawn.)

ADOLPH HANAUER, a witness produced on behalf of the Proponents, in rebuttal, being duly sworn according to law on his oath, saith:

Direct Examination by Mr. Strong:

Q. Mr. Hanauer, where do you live? A. 88 Livingston Avenue.

Q. What is your occupation? A. I am the owner of the Imperial Tea Company on Church Street.

Q. And have been for how long? A. For twenty-two years.

Q. Did you know Doctor Charles H. Freeman in his lifetime? A. I did.

Q. For how long did you know him, probably? A. Well, I should judge about eighteen, seventeen or eighteen years.

Q. Did you see much of him in the year 1922? A. I did in 1922, yes.

Q. How did that come about? A. Why, he purchased goods in my store, he was in there about three or four times a week. He used to come about eight or nine o'clock in the morning, when he purchased.

Q. What have you to say with respect to his business ability in his dealings with you? A. Well, when he was perfectly sober, I think he was rational. When he was intoxicated, he was not.

Q. Did you ever have any negotiation with him with respect to investing in the business he conducted? A. Well, during last year, 1922, he come occasionally to the store, and he told me that he was disgusted with business, that he wasn't able to run it, and he was looking for a good partner that was able to help and assist him in business. He spoke to me several times regarding it, and I told him that I would invest money with him, to be a partner to him, if it was agreeable, and I would put in the regular business hours, and that would help him get in a way, and it would help the business at the same time. I asked him how much money it would take to purchase a half interest. Of course, he didn't know; he told me Mr. Watson had charge of the business, he was president of the business, I guess, president of the company, at the time, and that there couldn't anything be done until about May, 1923. That is after his death. That is 1923. And then we could get together regarding the price in purchasing a half interest in that business.

Q. What reason did he state, if any, why he needed help in carrying on his business? A. Why, he claims he was nervous, and he didn't feel quite right, and he knew he wasn't able to run the business, to continue the business as he did.

Q. What, if anything, with respect to his eyesight?

Mr. Watson: I object to leading. This witness is an intelligent man, one of the most intelligent in the City of New Brunswick. It is not necessary to lead him at all. He knows what was said. He knows what reasons were given, and he is perfectly able to tell us, without your assistance.

The Court: Objection sustained.

Q. How frequently did you see him during 1922, do you think? A. Well, I should judge two or three times a week.

Q. What was the condition of his eyesight, as far as you could judge? A. Beg your pardon?

(Question repeated by stenographer.) A. Why, he couldn't see very good. I know that, because when he come in he walked very slowly, and he didn't see you until he got almost up to you.

Q. Do you remember his hiring a young man named Harry Mohring? A. Why, I guess that is the young man—are you referring to the young man that was his chauffeur?

Q. Yes. A. Well, he used to come in with him. He was with him half of the—most of the times.

Q. What if any change did you notice in the doctor's physical condition after he employed Mr. Mohring? A. Well, I couldn't see any change; I didn't notice anything; I didn't take any particular notice.

Q. How was the doctor in his business dealings

with you, in driving a bargain, in making his purchases? A. Well, when I thought the doctor was intoxicated, or anything that he looked to me like he was intoxicated, I couldn't swear that he was intoxicated, but he looked to me, I wouldn't do any business, or have any business talk with him whatsoever. But when he was that I thought he was rational, that he was sober, he was a very intelligent man to do business with.

Cross-Examination by Mr. Watson:

Q. How did he pay for goods, Mr. Hanauer? A. Why, he paid every three or four months, whenever he could get a check off you.

Q. Off me? A. Yes. He claimed that he had to get the money from you.

Q. Had to get the money from me? A. Yes.

Q. He said he could only pay every three or four months, on that account, is that what he said? A Well, I thought he was O. K., and I give him terms.

Q. I know that, but that is what he said? A. That was the reason he stated.

Q. Did he pay cash, or by check? A. He did, by cash.

Q. Did you ever see him— A. The first part of 1922 he paid cash, and then he paid every week, and then he got to pay every month, and then three or four months, and the last four or five months before he died, the bill is still in the hands of Mr. Hagerty, I have a bill for one hundred and thirty or one hundred and forty dollars against him.

Q. I mean this, Mr. Hanauer, did you ever see him come in and buy goods, and just hand the money to the clerk to count out for himself the amount of the purchase? A. Well, I didn't take any particular notice to that.

Q. If you didn't see it yourself, if it didn't happen to you yourself, do you know whether it happened to any of your clerks, or not, that he would do that? A. Maybe it did, but I say, I haven't taken any particular notice to that. I know he couldn't see very good, and he handed the bill to me, when I waited on him and, of course, I took the change out and give him the change, and I always try to give everybody correct change.

Q. I know you did that, Mr. Hanauer? A. I didn't take any notice whatsoever with the clerks, because I wasn't interested in them.

Q. I didn't mean to reflect in any way upon you or your clerks, either one, Mr. Hanauer. I meant to say that that was his practice in buying things, that he would just hand out some money and let the clerk make the change, and give it back to him, and put it in his pocket? A. Yes.

Q. Isn't that so? A. I guess you are right there, Mr. Watson.

Q. Now, you said he told you that I was president of the company? A. He told me that you were president, you had charge of the company.

Q. Yes. He knew that plainly, didn't he? When it came to figuring the amount it would take to go into this business, he didn't know just the exact figure, did he? A. No, he hadn't any idea whatsoever, and I didn't press him so much because he didn't.

Q. Had no idea how much money it would take to go in? A. No. He stated how much shares he had at the time, but I cannot correctly remember how much it is.

Q. But he couldn't tell you how much money it would involve to buy the business? A. No.

Mr. Watson: That is all.

Cross Examination by Mr. Brown:

Q. How long has Doctor Freeman been dealing with you during his lifetime? A. Beg your pardon.

Q. How long did Doctor Freeman deal with you, during his lifetime? A. Well, the last few—during 1922 he come in very often. He himself, years ago, bought of me at times, and then his sisters were customers of mine years ago, until they moved away.

Q. In the last two or three years has he been a customer of yours? A. Yes, he has.

Q. Would he call to see you once a week, or once a month, or how often? A. Well, when he did call, sometimes two or three or four times a week, and then perhaps only once or twice a week.

Q. What did you sell, merchandise? A. Sell merchandise.

Q. All kinds of merchandise? A. Coffee, tea, butter, and groceries.

Q. Every time he came to your place was he attended with someone? A. Beg your pardon?

Q. Was there someone attending him when he came to your place each time? A. Positively, always someone waited on him.

Q. Not that somebody waited on him. But did someone come with him? A. His chauffeur come with him at times, and sometimes he come alone.

Q. When was the last time he came alone? A. I should judge a few weeks before he died.

Q. How many weeks before he died? A. I can't exactly remember that.

Q. Was it five weeks? A. I cannot tell; I wouldn't swear to that either; I haven't taken any notice to that.

Q. When you say a few weeks, does it mean more than a month? A. Maybe two weeks, maybe three weeks.

Q. Two or three weeks before he died he came into your place without anybody with him? A. Without anybody with him.

Q. Drove up in an automobile, I suppose? A. No. The chauffeur drove up with him, but he walked into my place to purchase goods.

Q. And did purchase them? A. He purchased them.

Q. Without anybody assisting him? A. Without anybody assisting him.

Q. Walked around and selected the goods and groceries? A. He did, and walked out.

Q. And walked out? A. Yes.

Q. How long before that was it that he came unattended into your place? A. He come several times unattended into my place.

Q. Just before he died? A. Just before he died.

Q. Well, when did he have the difficulty about getting into your place, without somebody coming with him? A. He come at times alone, and at times his chauffeur come with him. I didn't see any difficulties whatsoever; that is, I mean to say, he always knew where the store was, and he knew how to come in and out.

Q. Well, you said— A. The chauffeur drove right up to the store and he walked in and purchased his goods, and walked out.

Q. Well, the chauffeur went with him sometimes inside, didn't he? A. He did.

Q. Why would the chauffeur go in with him? A. Well, maybe to carry his packages.

Q. Well, was that the reason, or did you see that he was assisting the Doctor, and assisting him in making his purchases? A. Well, he may have assisted him at times, and he may not. I don't take any notice to those things. I wasn't interested in that.

Q. Well, when the Doctor came into your place, each time you did business with him, did you not? A. He certainly did.

Q. He never came there that you didn't do business with him? A. Most every—every time he come into my place of business he come in for business.

Q. So that whether he was drunk or sober, sane or insane, when he came to your place you did business with him? A. I did.

Q. And the reason you did business with him was because you knew, in your mind, that you were not going to cheat, or do anything wrong to the Doctor, isn't that right? A. Well, I guess so. I have the reputation for that.

Q. That is what I say, I am not reflecting upon that one bit. You did not consider the Doctor's incapacity to do business with you, as much as your own interest in doing business with him, did you? A. I don't think I did.

Q. So that every time you did business with the Doctor, whether he was fit or unfit to do business, you took care that he was treated properly? A. I always took care of him.

Q. And the fact that you did business with him was no indication of whether he was drunk or sober, sane or insane? A. Didn't make any difference to me.

Mr. Brown: That is all.

Re-direct Examination by Mr. Strong:

Q. Do you mean to say you would have sold him goods if he was insane? A. Well, if he was insane he wouldn't have come in to buy goods.

Mr. Strong: That is all.

Re-cross Examination by Mr. Brown:

Q. You mean the only people who come to your store are sane people, and not insane? A. I couldn't very well answer that question.

Q. You don't know when a man is insane, do you? A. Well, I guess I ought to.

Q. Well, now, what is an insane person? A. I didn't know whether this was a school, or not, Mr. Brown.

Q. Tell me your idea of it? Do you mean a man who goes around, you can't control him, that he wants to strike everyone, and he is dangerous? A. Why, I at no time thought that he was ever insane. If he was insane I wouldn't do business with him.

Q. You testified both ways, and I am asking you now what you mean by a man being insane? A. He is crazy.

Q. What do you mean by that? A. He isn't in his proper mind.

Q. What do you mean by that? A. I don't like to answer questions of that kind, your Honor.

Mr. Strong: I object. I do not think the man is an alienist.

Mr. Brown: He has expressed an opinion.

The Court: What Mr. Brown is asking him is what his idea of an insane man is.

Mr. Strong: He has an answer that the man is not in his proper mind.

Mr. Brown: I would like to know why he calls the man insane, or not insane.

The Court: What he is asking for is the witness' idea as to whether a person has to be violent and dangerous to be insane, or whether he may be insane, and still be harmless and wander around.

A. In my opinion a man don't have to be violent to be insane.

Q. You have testified that you did business with the Doctor whether he was sane or insane. And then again you said that you would not do business with him unless he was sane. How do you explain both of those answers? A. Well, I answered your question at the time.

Q. What? A. I answered your question. I thought that you meant that sane or insane, whether he was drunk or sober. I maybe made a mistake in answering that.

Q. Did or did you not make a mistake? A. I maybe made a mistake. I thought you meant drunk or sober.

Q. I didn't say drunk or sober, did I? I didn't mention the words drunk or sober, did I?

Mr. Strong: That is what he tells you he thought.

Mr. Brown: Just a moment. Let the witness answer.

A. I don't know what you mean, Mr. Brown. I am not here to be cross examined. I refuse to answer any questions of that kind.

The Court: You cannot refuse to answer proper questions. The court will take care of that.

A. I told you I misunderstood that, and I have answered it properly. I don't know what he means by asking a question a half a dozen times, the same thing. I didn't come here to be cross examined.

Q. You didn't come here to do what? A. I was subpoenaed and I came up. That is all.

Q. You refuse to be cross examined? A. I refuse

to be asked questions of that kind too often. I have answered it already.

Q. What kind do you want to be asked? A. (No answer.)

Q. When Doctor Freeman came to your place at some times he had the appearance of being drunk, although he was not drunk, did he not? A. Well, I guess you could pretty near tell when he was drunk, and when he wasn't drunk, because you could smell the liquor on him when he was drunk. When he wasn't drunk you couldn't smell the liquor on him.

Q. Did you ever see him under the influence of opiates or drugs? A. I can't answer that question, Mr. Brown, because I don't know what—I only know when a man is intoxicated, but I don't know how he acts taking opium or drugs.

Q. How do you know whether the Doctor would be intoxicated from whiskey or some other cause? A. Well, you could smell whiskey.

Q. And you couldn't smell the other? A. I don't know.

Q. Did he ever come into your place manifesting or showing an intoxicated condition, or delirious condition, without having the smell of liquor on him? A. Why, every time he come in and showed intoxicated condition he smelled—

Q. Will you please answer the question? (Question repeated by stenographer.) A. He at no time come in in a delirious condition in my store. He come in intoxicated. When he come in intoxicated I generally had another clerk to wait on him, I didn't wait on him myself, one of the clerks waited on him, and I didn't bother with him, and I kept away from him, and he was waited on, he either had his goods charged, or he paid for them, and he went his way.

Q. You started to answer, in one of the questions, that he was either intoxicated, or looked as if he was intoxicated. What did you mean by when he looked as if he was intoxicated, what did you mean by that? A. Did I answer that he looked as if he was intoxicated?

Q. Yes. If he was intoxicated, or if he looked like he was intoxicated. A. Well, if he looked like he was intoxicated, I thought in my mind he was intoxicated.

Q. I think that you and I ought to understand each other. Did the Doctor ever come into your place looking as if he were intoxicated, without the smell of liquor on him? A. I have got to think for a minute, Mr. Brown.

Q. Yes, I know you have a hard time. A. Because most times that he was intoxicated, that I saw him, he smelled from liquor.

Q. Let us get an answer to this question, if you will, please? (Question repeated by stenographer.) A. Without the smell of liquor on him? A. I guess he did.

Q. Yes. Who dealt with him on those occasions, you or your clerks? A. Most times the clerks. When I saw that I thought that he wasn't in fit condition, I mostly had the clerks to wait on him. I didn't wait on him myself.

Q. Why didn't you, as the manager of that store, deal with one of your customers when he was in an incapacitated condition, rather than submit his dealing with one of your clerks? A. Because when I think that a man is in an intoxicated condition, and being a friend of mine, he may take too much of my time, and I didn't want to bother with him, or get into any arguments, or anything, with any man.

Q. So you chose the time that you wanted to deal

with the Doctor, was when he was fairly fit to deal with? A. When he come in smiling.

Q. But if he wasn't in that condition, you turned him over to the clerks? A. I did.

Q. You didn't care what they did with him? A. I have competent clerks there.

Q. You relied upon them? A. I did.

Q. You said that the Doctor came in at times without the smell of liquor, but still looking as if he were intoxicated? Do you know what caused that condition? A. I do not.

Q. Did he ever tell you what caused it? A. Never asked him. That is going into private affairs, if you should ask questions of that kind.

Q. What did you say? A. I say that would go into his private affairs to ask him questions. It wasn't for me to ask him.

Q. Didn't you ever notice that the Doctor was acting peculiarly, or looked peculiary, as if he were using something other than liquor? A. Well, I thought it was the liquor. I knew he looked peculiar, but I thought it was the liquor that done it.

Q. Didn't you think, on occasions when he didn't have the smell of liquor, that he must have been using something else? A. No, I never thought. I tell you why, Mr. Brown, I am a very busy man, and I have so much to attend to that I go from one thing into another, and I don't have time to think.

Q. So that when the Doctor came to your place to transact business you didn't spend very much time with him at all, to notice anything hardly, did you? A. Why, when I thought he was perfectly sober, and I wanted to talk business with him, then I invited him into my office, and we talked together.

Q. You were never in the lumber business, were you? A. No.

Q. You were going to go into the lumber business? A. Yes.

Q. You were going to show him how to run the business? A. No. He told me that he had a very competent man, a party by the name of Mr. Breen.

Q. I thought you just testified that he was discouraged, and he wanted to get a competent man? A. Well, I know, but he thought he had—

Q. Didn't you say that? A. Let me answer my question.

Q. Answer mine. Just one minute.

Mr. Strong: Give the witness a chance.

A. Your Honor, what I understood, and what I said was, in his place, but he said he had a foreman there that has been there for years, he could learn me the ins and outs of the business.

Mr. Brown: Now, I wish that he would answer the question.

(Question repeated by stenographer.)

A. Yes, as a partner in business.

The Court: I think that is what he said.

A. That is what I said from the start, Mr. Brown.

Q. Why didn't you say to him, or did he say to you that he had a competent man? A. He told me that he had a good foreman, that has been running his business for many years, a man by the name of Breen; I don't know whether it is Breen; I don't want to swear to the name.

Q. You just said it. A. Breen, and he knows the ins and outs of the business, and he could learn it to me.

Q. He could learn it to you? A. And himself with it.

Q. So you were going to go in the business and be taught by Breen? A. And Mr. Freeman.

Q. And by that way help Doctor Freeman, is that right? A. Yes. Well, there is other people that knows the lumber business, if a man invests his money, they could learn it to him.

Q. You were going to give all your time, all your business hours to it? A. I was, yes.

Q. What was there so attractive about this business with Doctor Freeman, that you were going to give up your own business and go down with him, a business that you knew nothing about? A. Well, I thought I could make a success of the lumber business. I just felt like changing, that is all.

Q. Down in Metuchen, is that right? A. Yes.

Q. Did you think that the Doctor was in such a state of mind that you saw a good bargain? A. I never take advantage of anybody, Mr. Brown.

Q. You never made any other attempt to change your occupation in all those years, did you? A. I did, but I am not here on trial for that.

Q. But whether you made the attempt or not, you didn't change it, is that right? A. I didn't, no.

Mr. Brown: That is all.

Re-direct Examination by Mr. Strong:

Q. Did the condition of your health have anything to do with the thought of changing the nature of your business? A. No. But I have been working very hard at the tea and coffee business, and in my line of business for a good many years, and profits have become so small, because you are up against all the manipulations, all the corporations, like the A. & P. T. Company, and you have got to

cut prices, and you work very hard, and you don't accumulate very much money, and that is the reason I thought a change in the lumber business would be good.

Q. State whether or not the Doctor might have had liquor on his breath when he came in your place of business, without your actually smelling it? You say sometimes you didn't smell liquor on his breath? A. Yes.

Q. And state whether or not he could have had it on his breath without your smelling it? A. He could without me smelling it. I am not a Doctor.

Mr. Strong: That is all.

RICHARD E. PAPERLEIN, a witness produced on behalf of the proponents, in rebuttal, being duly sworn according to law on his oath, saith:

Direct Examination by Mr. Strong:

Q. Did you know Doctor Charles M. Freeman in his lifetime, Mr. Paperlein? A. Yes, sir.

Q. Probably for how long? A. Why, he has been doing business with me about this last five years.

Q. What is your business? A. I am manager of the National Beef Company.

Q. Your place of business is located where? A. 355 George Street.

Q. In this city? A. New Brunswick, yes.

Q. How often did you see him during the last five years, about how frequently? A. Why, most of the time about twice or three times a week.

Q. In the year 1922 about how often would you see him? A. Why, he generally came in on Monday morning, and through the middle of the week, and always came in Saturday morning.

Q. What have you to say with respect to his business ability at these times when he used to come in your place? A. Why, he just simply came in and told me what kind of meat he wanted, and I always had to cut it myself for him, and I cut it for him; and Friday, sometimes he gave me the order to put it up Friday, and he came Saturday morning and got it.

Q. What sort of a man was the Doctor? A. Why, most of the time he was real—he always acted the part of a gentleman when he came in the store, and I always waited on him, and that is all the business I ever done with him. Never had nothing else, no other business with him.

Q. Did he give you his orders intelligently, what he wanted? A. Without a doubt; yes, sir.

Q. What would you say of him, as far as joking was concerned? A. Oh, he would spring a joke once in a while, while I was getting the meat for him, or something like that, or if I didn't have the order ready, why, he would—

Q. Did you see him as usual in the months of June and July, 1922? A. Why, I am pretty sure, I think I did; now, I wouldn't swear to anything like that, because I—

Q. I think you said all through 1922 you saw him? A. He pretty near came in regularly every week, as far as I remember, he pretty near was there every week twice, on the average of three times a week.

Q. Did he say anything to you about his being confined anywhere? A. Not as I know.

Q. Did you ever cash checks for him? A. When he came in Mondays he always paid me with a check, and paid his bill Mondays.

Q. Seemed to know what he owed, did he? A. Most of the time he did, almost up to the penny.

Q. Up to the penny? A. Most of the time. Of

course, sometimes the meat maybe weighed a half a pound or so of what he ordered, then that was a difference.

Cross Examination by Mr. Watson:

Q. He always acted the part of a gentleman when you saw him? A. Always did; yes, sir.

Q. You never saw anything wrong about him? A. Not as I know.

Q. Never saw anything out of the way about him in any way at all? A. Not when he came in my place of business.

Q. Always perfectly normal? A. I don't know what you mean by perfectly normal.

Q. Well, you said he always acted the part of a gentleman? A. Well, he always acted the part of a gentleman, when he came in there, always did.

Q. Well, wasn't he always perfectly normal? A. Why, yes, that way, yes, he was.

Q. Always perfectly normal and you saw him two or three time a week for four or five years? A. I have on the average of four or five years he has been trading with me; yes, sir.

Q. Never got liquor from you, did he? A. No, he has not. I only have meat there.

Cross Examination by Mr. Brown:

Q. When you say that he was a gentleman, you mean that he wasn't throwing any cleavers around, or things of that kind? A. Well, you don't have to do anything like that.

Q. You talked about jokes; would he joke every time he came in? A. Not all the time.

Q. As long as you knew him he was joking, wasn't he? A. Why, I don't know what you mean, as long as I know him he was joking. He came in

there like any other man, and spring a joke once in a while, or tell a story, or something like that, while I was getting his meat.

Q. He never took things very seriously, did he? A. He would take it very serious if I was to charge him a penny more than I told him the price.

Q. If you charged him any more than you would tell him? A. If I was to charge him a cent more than the regular price he would soon jump on me.

Q. You never did that? A. No, but if it weighed an ounce more, he wanted to know all about what it weighed.

Q. You never charged him more than you told him it would be? A. If he was to order a piece of meat, and it came to six pounds, and it was an ounce over, and I count a cent or two more, he wanted to know all about it, how much it was. That is how serious he was.

Q. Where was the scale? A. Always in front of every customer that comes in.

Q. And he could see that, couldn't he? A. Yes, sir.

Q. Always could see it? A. He couldn't see the order, because most of the time he gave me the orders and I cut it for him.

Q. Could he see the scale, or couldn't he see it? A. Sure, the scale hang right in front of him.

Q. There was nothing the matter with his eyesight? A. Not that I know. I know he was near sighted, yes, I know that, positive fact.

Q. He could see, couldn't he? A. He must have, because he came in my store.

Q. And he always came in sober? A. Well, he has come in there so that I thought he did have a couple of drinks in him, yes.

Q. A couple. But he knew what he was doing all the time? A. He always did; yes, sir.

Q. You never saw him under the influence of drugs? A. Well, that I don't know anything about.

Q. Well, if he was, would you know it? A. No.

Q. Did he ever act peculiarly when he came in there? A. He did not.

Q. Always looked sane, and just as sane as you are now on the stand? A. Why, not if he had a few drinks in him, perhaps he didn't act that way.

Q. Would he act sane, subject to two drinks, as an ordinary man would, subject to two drinks? A. Lots of the time he would be telling a joke, or something like that, when he had a drink in him like that.

Q. So that even then he was all right? A. Always all right, because he had to be all right, otherwise he wouldn't have been served.

Q. Never, in all the time you dealt with the Doctor, was he unfit to do business with? A. Not while he came in my place; no, sir.

Q. Did he always come in your place alone, or was he attended by someone? A. Why, he came in and done his buying, sometimes his chauffeur come along with him, but when he came in he done his buying, and then the chauffeur come in and took the package out. Sometime the chauffeur came in with him, and he would carry the package out with him.

Q. He wouldn't have any trouble going in or out? A. He never did in my place.

Q. He could walk from the machine into your place? A. He walked in, any time I seen him in my place, when he walked up to my block, I waited on him, and he was always able to do anything.

Q. He would go in and pick out the meat? A. No, he didn't have to pick it out. He just told me what he wanted.

Q. Why wouldn't he pick it out? A. Because he relied on me to pick it out.

Q. What else did he rely upon you for? A. That is all. That is all the business I ever done with him.

Q. So that every time that he came in to do business with you, or things he had business to do with you, I mean by that, when he came in to transact business, the things he had to do with you, he relied upon you? A. When he came in and bought any goods off me, he relied on me. Nobody else could wait on him but me.

Q. He relied upon you for the waiting? A. Yes, sir.

Q. He relied upon you for selecting the meat? A. Yes, sir.

Q. He relied upon you for the price? A. Yes, sir.

Q. And he relied upon you for the delivery? A. We don't deliver. He always took it along.

Q. You held it over until the next day? A. Why, if he gave me the order Friday, yes. If he gave me the order during the week, I held it from Saturday morning until he called for it.

Q. Who was he there buying this meat for, do you know? A. Why, that is for his own use, I guess. That is all I know.

Q. Do you know now? A. I do not know. He bought it for his own purposes, I guess.

Q. He bought more than enough meat to keep one person, didn't he? A. One person? He bought more than to keep one person? The way I understand, he bought it for his whole family.

Q. Who was his family? A. I don't know.

Q. You don't know? A. No.

Q. Would he buy large quantities of meat, or small? A. No, he didn't buy much meat. Just bought a small roast on Saturday, or a steak in the middle of the week, that is all he bought off me.

Q. Enough for four or five people? A. Well, no; average steaks, weigh about pound and a half to two pounds at the most.

Q. Did his chauffeur ever come and get the material, or ever order the material? A. Always the Doctor ordered his goods.

Mr. Brown: That is all.

Mr. Strong: That is all.

WILLIAM H. K. DAVEY resumed:

Direct Examination (continued) by Mr. Strong:

Q. Did you see Doctor Freeman on the 22nd of June, 1922? A. That was on the 22nd of June. I was with him the entire day, from between nine and ten in the morning until, I think, nearly six o'clock at night.

Q. What was his condition on that day? A. Why, he was as sober as I was. I had dinner with him at the garage, and the family.

Mr. Brown: I object to the statement that he was as sober as I was, as not stating a fact.

Q. State whether or not he was sober on that day? A. He appeared to me to be absolutely sober. Just before we had dinner we had a drink, one small glass of whiskey, of which I partook with him, and then we sat down to dinner. With that exception, to my knowledge he had nothing whatever to drink from morning until night. After going to Mr. Breen's house, we went back to the living quarters over the garage, and I got in my

car there, after considerable talk, and drove home, but it was then, I think, some time after six o'clock.

Q. Did the whiskey have any effect on him, or his business capacity at all? A. His mind was perfectly clear, his speech was clear. At Mr. Watson's office he didn't say much of anything, because I had cautioned him to let me do the talking for him. Mr. Watson and I were doing all the talking. I think Doctor didn't say anything, or very little. At Mr. Breen's we sat in the car, and Mr. Breen stood beside the car. Mr. Harry Mohring drove. There was no thickness of speech, there was no impediment of speech. He talked clearly, rationally, all day long, about a business that was somewhat complicated. With the single exception of his belief that he was still president of the company, I haven't yet detected one material variation from the fact, in what he told me.

Q. On that date you said you were with him from what hour to what hour? A. Early in the morning, I think about nine o'clock, until, I should say, between five and six. Very nearly six.

Mr. Strong: Cross examine.

Cross Examination by Mr. Watson:

Q. During these events of June 18th and June 22nd, Mr. Davey, were you in touch with Mr. Higgins? A. I was in touch with Mr. Higgins just about that time, but on what day I can't tell.

Q. Mr. Higgins, he is the Eastern Audit Company, isn't he? A. He is an officer, or one of the officers of the Eastern Audit Company, yes.

Q. He is the principal officer, isn't he? A. I don't know that, sir.

Q. At any rate, Mr. Higgins had charge of the auditing of the books of Manning, Freeman & Son, didn't he? A. He did.

Q. And Mr. Higgins was in a position to give you all the facts, of course, that appeared in this bill of complaint which you have referred to? A. Mr. Higgins was able to verify them for me.

Q. And the fact is that you were in touch with Mr. Higgins? A. I was in touch with Mr. Higgins just about that time, but whether it was before the 22nd, or afterward, I can't tell.

Q. You were drafting papers of various kinds during this time, bills of complaint in Chancery actions, and deeds, and wills, and such? A. Everything that I thought proper, yes. An affidavit, in addition to what you have mentioned.

Q. Beg pardon? A. I drew an affidavit also, in addition to what you have mentioned.

Q. Yes, an affidavit, and a notice to quit the trusteeship, and all these various papers? A. Yes, sir. All prepared to go ahead.

Q. And some of them Doctor Freeman signed? A. Yes.

Q. And by signing these papers he had to depend upon you as to which was which, didn't he? As to what he was signing? A. Why, he could, I think he could tell what he was signing. As a matter of fact, I read the papers to him.

Q. That is just what I am after. That he had to depend upon you as to which of these papers he was signing, and which he was not signing, and what the contents of what he signed was? A. I would lay a paper before him and tell him what it was, and read it to him, and I thought he could see without I read it.

Q. You thought he could? A. Yes.

Q. You thought that he could read ordinary typewriting? A. I don't know whether he could have read it entirely alone or not, but I think he was fully able to determine its correct reading.

Q. That is an expression of your opinion? A. It certainly is.

Q. Well, if he couldn't read it himself, without your reading it aloud, how did your reading it aloud improve his eyesight? A. It wouldn't improve his eyesight, but he could follow my reading, I think, without any trouble.

Q. Follow your reading? A. I think so.

Q. That is the method that was pursued with all these various papers that were being drafted by you and signed by him during this period of three or four weeks? A. I think he signed three papers, yes, that was true.

Q. And you drew three or four or five or six other papers which were not signed? A. The time hadn't come to sign them yet. They were not signed.

Q. You say on this date, June 22nd, you had a drink with the Doctor? A. I did, just before we ate dinner at noon time.

Q. Drink of whiskey? A. Yes. Apple whiskey.

Q. Did you do that with him very often? A. Why, we usually had a drink when we met, yes.

Q. Usually had a drink? A. Yes. Quite a usual thing.

Q. How many? A. One. He treated me when I was at his home, and I treated him when he was at my home.

Q. Always stopped just at the one? A. Why, he never asked for any more, and I don't now recall any occasion on which we had more than one.

Q. Did you always give him a drink when he went to your home? A. Not always. Usually.

Q. Usually you did? A. Yes.

Q. Any special reason why you wouldn't, on any particular occasion? A. No special reason on earth. I asked him, as I would any other friend

who came, if he cared to have a drink, and if he did, we would have it, and if he said no, we wouldn't.

Q. Didn't you think that was a remarkable thing, Mr. Davey, having a drink when transacting professional business, taking drinks with a man of Doctor Freeman's known weaknesses? A. Not at all.

Q. Weren't his weaknesses known to you? A. Doctor Freeman told me that he had drunk more than was good for him, and he was cutting it down.

Q. That is all you knew about it, is what Doctor Freeman told you? A. Why, yes, that is all I knew about it.

Q. Would it surprise you to know, Mr. Davey, that during the years I represented Doctor Freeman, I never had a drink with him?

Mr. Strong: What has that to do with this case?

A. I am sure I don't know whether you did or not, Mr. Watson. Your conferences were different from mine. Yours were in your office. Mine were either in his home, or in my home.

Q. You think it was perfectly professional, or ethical, for you, as an attorney, to drink whiskey with a man of Doctor Freeman's weaknesses? A. I didn't know of any weakness. There was no reason that I knew of, or know of now, why I shouldn't take a drink with Doctor Freeman, or offer him one in my home, as I did.

Q. You say at the present time you know of no reason why Doctor Freeman's attorney shouldn't have taken a drink with him? A. Why, yes. If a man was tapering off on drinking, or would drink more like a drinking gentleman, take a small drink and let it go at that, I know of no reason why he shouldn't do it.

Q. I am asking you what you knew of his habits at that time? A. Only what he told me.

Q. I am asking you now, from what you have heard in this court room, are you still of the same opinion? A. Why, yes, I am of the same opinion. I don't think a man who has drunk to excess can stop, and stay stopped, and live.

Cross-Examination by Mr. Brown:

Q. Mr. Davey, on this first day that you went down to see Doctor Freeman, June 18th, that was your first occasion of seeing him, was it not? A. That was.

Q. You knew nothing about his estate when you went down there? A. Not until after I had talked with him.

Q. And when you got there you found that the doctor was without any estate, except that it was under the control of Mr. Watson? A. Yes. I didn't know quite all the details. Within the next three days I ascertained those facts.

Q. And at no time did you ask him for a retainer? A. No. He told me in the beginning that he couldn't pay me until he got his property back.

Q. So that you took a chance on the retainer? A. Surely.

Q. When you were talking to Mr. Watson about the cancellation of the agreement, did Mr. Watson tell you why he would not cancel it? A. Well, he said—I don't think he said why he would not cancel it, in that sense. He made some statements of what would happen if we insisted upon having it cancelled, or took proceedings to have it cancelled.

Q. Well, you asked for the cancellation of the agreement? A. Yes.

Q. And you, as an attorney representing Doctor

Freeman, who was endeavoring to substitute another attorney, with such a vital question in issue as the agreement, did you go away without knowing whether or not there was any reason for not cancelling it? A. Mr. Watson made certain statements, but he didn't assign them as his reason for declining, Mr. Brown.

Q. Why didn't you ask for the reason he had declined? A. I had anticipated his refusal, and had prepared the notice for cancellation.

Q. So he just refused, as far as you know, and you took that as being sufficient? A. He just refused. He made some comment that I wasn't considering the interest of my client, but only the thought that I was to—

Q. What did Mr. Watson say to you, or you to him, about your not being able to interpose a good defense to a bill, if it was filed? A. Doctor Freeman laughed at it, and so did I.

Q. What did Mr. Watson say about it? A. He said no successful defense could be interposed, and I don't think he said another word about it.

Q. You didn't inquire why Mr. Watson was of that opinion? A. No.

Q. You say that you spent the entire day, and the following day, talking about those business transactions? A. No. I spent most of Sunday with him, and went down again Wednesday night, and again on Thursday, the 22nd, if my days are right.

Q. What did you do on Sunday, the 18th? A. On Sunday we did nothing but talk, and the memorandum of his instructions for the will was drawn

Q. So you said nothing about this other work? A. Oh, yes, we talked about it, but I said I didn't do anything.

Q. You got there at nine o'clock, you say? A. On the 22nd, yes.

Q. The 18th, I am talking about? A. The 18th was Sunday. We didn't go down as early as that, I think. I don't know just what hour. It was in the morning. I don't think it was nine o'clock.

Q. What time was it? A. I should say ten, or half-past; maybe later.

Q. And you talked about what, and for how long? A. We talked for a long time about his business affairs, and the will that he wanted drawn.

Q. How long did you talk? A. Well, practically all day, until we left in the evening.

Q. How long did you talk in the morning? A. In the morning I should say for an hour and a half or two hours, before dinner.

Q. You talked about nothing but the will? A. We talked about the business.

Q. You were examined, or cross-examined before in this case, were you not? A. Yes, I was, at length.

Q. And didn't you say that all you did in the morning was talk for two hours about his will? A. No, I didn't say so.

Q. What did you say? A. I said I talked to him for about an hour and a half or two hours, as I recall it.

Q. Where did you talk to him? A. We were sitting in his car in the garage.

Q. You didn't talk to him at the dinner table? A. Certainly we talked about general matters of conversation at the dinner table. There were several of us present there.

Q. You didn't mention, in your previous examination or cross-examination, about the papers, which might be called the Watson papers, being talked about on the 18th? A. Those papers didn't exist on the 18th.

Q. I know they did not, but the subject matter relating to them? A. I think you will find in my testimony something relating to them.

Q. I can't find it. A. Then I wasn't asked about it.

Q. You testified on direct examination, didn't you? A. Yes, I think you will find in my testimony something about that interview with Mr. Watson. I am not sure about it.

Q. Didn't you say what you did, you got down there in the morning, and that you and the doctor talked about two hours? A. Which morning?

Q. I am only talking about the 18th? A. Yes, We did talk about two hours before we went upstairs to dinner.

Q. Then you went up to dinner, and then you had some general conversation? A. Yes.

Q. Then you sat around the dining room and he gave you the instructions about the memorandum of the will? A. That is true.

Q. And the next thing you testified to was that you made an appointment that you should come down the succeeding Wednesday? A. That is true.

Q. Is that all the business you did there that day, on the 18th? A. I think that comprises all the business that was done on the 18th, yes.

Q. There is nothing in that testimony that you refer to as having transpired between you and the doctor, that you have testified to today, is there? A. I don't understand that question, Mr. Brown.

Q. There is nothing in that testimony that I have read, if that is all your testimony, wherein you and the doctor conversed about the business transactions, other than I have referred to? A. Somewhere in my testimony I certainly said that in that conversation he told me about his business. There isn't any doubt about that.

Q. By the way, you saw the doctor at least twenty times, didn't you? A. I should say so.

Q. More than that? A. I don't think it was

more. I doubt if it was as much as twenty times. I saw him a number of times.

Q. Every time you saw him you drank and smoked together? A. Not every time.

Q. Did he ever refuse a drink? A. Yes.

Q. When was that? A. I don't recall which occasion.

Q. One occasion, you remember that? A. I remember one when I asked him if he would drink, and he didn't care for any. I remember another when he took a very, very little bit; that was the last time I ever saw him.

Mr. Brown: May I ask this question, out of examination?

Q. When you were drawing the will which is now being offered for probate, either at that time or previous thereto, what was said or done about any previous wills that were made? A. Nothing at that time, but prior to that, when I was drawing the first will, or when I received the instructions for the first will, there was a question of recovering the will which he had earlier made, and which was in Mr. Watson's possession, and we went down to Mr. Watson's house after it and didn't find him at home.

Q. What else did he do to further the cancellation of that will? A. I told him it wasn't necessary to do anything further about getting possession of it, we would draw a new one.

Q. Did he say anything to Mr. Watson about it when you did see him? A. No, I didn't say anything to Mr. Watson about it.

Q. Why didn't you? A. Well, he desired not to.

Q. Who desired not to? A. Doctor Freeman.

Q. Why? A. He didn't want Mr. Watson to know the extent to which he was consulting me.

For that reason he asked me not to come down more than I did the first two times. After that he came to my house. He didn't want my car to be stopped in front of the door, so that the people from the office could see it there. He said it would attract no attention if he came out of town and came to my home.

Q. So that everything you were doing with the doctor you were doing in a surreptitious manner? A. Not at all surreptitious. He didn't want Mr. Watson to know it.

Q. What would you call that then? A. Pardon.

Q. If you were doing it so that Mr. Watson and others wouldn't know it, wasn't that doing it in a way that you would not attract attention? A. He didn't want it to be subject to discussion.

Q. Well, even at that, he didn't want Mr. Breen to know it, or anybody in the neighborhood, did he? A. He preferred not, he said.

Q. So that you acted according to his instructions to do all this matter so that nobody would know what was going on, if you could help it, that is true? A. I acted according to his instructions. I didn't go over there after that, down there in my car.

Q. His instructions were to do it in a manner that would not attract attention? A. I don't think you quite understand, Mr. Brown. After he called on Mr. Watson, Doctor Freeman accepted the bond, and decided not to go ahead with the Chancery proceeding, and then he preferred not to have any discussion, because of his consultation with me.

Q. I didn't ask you a word about the bond. I asked you, anything done regarding the preparation of the will, you did that up at your house? A. No, I did that in my office.

Q. Well, then, in your office. But the will you had executed in your house? A. The second one was executed at my home, yes.

Q. And the first one too? A. At his home.

Q. You say that when you came to town he requested you to leave your car somewhere else? A. No, I didn't say so.

Q. What then? A. I said that after he had accepted the bond from Mr. Watson, he said that it would be wise for me not to come down, but that he would come to my house, when he wanted to see me.

Q. The whole thing had been completed then, all the arrangements, had they not, the will had been made? A. No. The will now offered for probate had not then been made.

Q. Had not been made? A. No.

Q. And you didn't want Mr. Watson to know, or he didn't want Mr. Watson to know that you were going to draw another will?

Mr. Strong: Well, now, which? You say first "you," and then "he."

Mr. Brown: Either one.

Q. You or the doctor did not want Mr. Watson to know that you, as his attorney, was going to draw another will? A. Quite the contrary. We went to Mr. Watson's house to get the old will, and didn't find him home, and thereupon a new will was drawn. The only reason Mr. Watson didn't know at that time was because he happened to be away.

Q. I know, but the next time you saw him, and many times thereafter, you never said anything to him about it? A. I never saw Mr. Watson except that one occasion, I believe, about this matter.

Q. Why didn't you say something to him then about it? A. I didn't think it was necessary. That wasn't what we were calling on him about.

Q. Is that your answer, you didn't think it was

necessary? A. I didn't think it was. The will had then been executed, when we called on Watson. Not the one offered for probate, but the first one I drew.

Q. What was the date of the first one? A. I think it was dated the 21st.

Q. Of June? A. Yes.

Q. So that all the preparation of the will, that is, the memorandum that you prepared, and the first will that you prepared, and the negotiations to divest Mr. Watson of his supervision over this property, was all talked about, and an attempt made to have the will drawn and the papers perfected within a week or two? A. I went down on Sunday and had a talk with him. On Monday, I think it was, I prepared the will and some of these papers. On Wednesday we went down and the will was executed. On Thursday I spent the entire day with Doctor Freeman, and went to Mr. Watson's office, and called on Mr. Breen. And on Friday I was preparing the other papers in the proposed Chancery suit. And I am not sure whether it was Friday or Saturday that I got word that Doctor Freeman had accepted the bond. That came over the telephone.

Q. So that you thought it would be well to let the bond take its course, and let things ride, until Mr. Watson's term had expired? A. I thought that no Chancery proceeding of that kind could be settled before the 15th of the May then following, and I so told Doctor Freeman.

Q. You were willing to let it go until the agreement had expired? A. He thought it would be wiser.

Q. Didn't you think so? A. I was in his hands. I was acting for him; not in any adverse sense. I thought it would be quicker, and told him so.

Q. Can you assign any other reason than you have stated, knowing that Mr. Watson was in control of this business, knowing that he had a will that was different from what the Doctor wanted, and knowing there would be dispute, possibly, between you and Mr. Watson, or those who were contending for the property, why it was that you didn't insist upon the surrender of the document belonging to Doctor Freeman, the will? A. Of the will?

Q. Yes. A. The other ones took its place. It was of later date.

Q. Is that the only answer you can make? A. That is the answer that I do make to it.

Q. Well, then, if that is so, in the will that you drew why didn't you make some mention of it? A. Do you mean a phrase hereby revoking any and former wills?

Q. I don't care, refer to it by date or dates, or any expression at all? A. I don't think I apprehend your question.

Q. What is there about it that you can't apprehend? A. Will you ask your question again, please?

(Question repeated by stenographer.)

A. I can't answer that any otherwise than I have answered it.

Q. You didn't demand the return of the will that Mr. Watson had, and you knew he had it? A. Because when we went there Mr. Watson was away.

Q. I didn't mean at that time. I mean at the time you did see Mr. Watson? A. Then the will had been signed.

Q. Yes. Why didn't you, in the will that you prepared, make some reference to the previous

will? A. If I didn't; I don't know; I haven't the will now before me, and I don't recall.

Q. You don't recall what? A. I don't recall whether there be a general reference to other wills or not.

Q. You knew there was a will existing at the time you drew the will? A. Doctor Freeman told me that he had made an earlier will, yes.

Q. And you knew it was necessary to get the surrender of the will, or to provide some means to indicate its cancellation, did you not? A. No, I do not.

Q. Can you tell the Court why it was that you made no reference to Mr. Watson about the old will, or made no reference in the will that you made to the first will, that is, the Watson will? A. I haven't the will before me, and I am not prepared to say offhand that there was no reference made to other wills. I didn't make any demand of Mr. Watson because when we went to see him, he wasn't home, and we didn't see him again until after the will had been executed.

Q. Mr. Davey, I don't want to know of anything that you asked of Mr. Watson when he wasn't home, and when you didn't see him. All I want to do is to have you answer, when you did see him, why you didn't ask him? A. Then the will was executed.

Q. And that is your reason? A. That was the reason for it.

Q. Didn't you testify a while ago that the Doctor didn't want him to know about it? A. That was afterwards. I am telling you what Doctor Freeman told me, and that was told me afterwards. Not before.

Q. Then when you were drawing up that will wasn't there anything said about the Watson will? A. That I can't answer now.

Q. Why can't you? A. I don't remember whether there was or not.

Q. So that when you drew the will for Doctor Freeman, you didn't know whether there had been a previous will made by him, or not? A. I told you he said he had made a previous will, but I don't know whether there was a specific revocation in words in the will that I prepared or not now. I can't tell you that.

Q. I am not asking you that. I am asking you if you knew there was a will in existence when you drew the will? A. I told you several times Doctor Freeman told me, on the first occasion, and before I drew the will, that he had another will in Mr. Watson's possession.

Q. So that you know that? A. Yes.

Q. You knew that it was important to have that previous will revoked?

Mr. Strong: I object.

A. It was important to have it revoked, but it was revoked by the newer will, the later will.

Q. You are speaking as to the legal effect, are you not? A. Precisely.

Q. I want to know as to the fact, what you put in writing, or what you said, or did, to anyone outside of Doctor Freeman, that would show to the world that he had revoked the previous will made by him? A. By making a new one, executing a new one.

Q. You didn't think it of sufficient importance in the new will to make any reference to the will that Mr. Watson had? A. I haven't the will before me, and to save my life I can't say now whether there is a specific revocation clause in it or not.

Q. Can you say, without having the will before you, whether you thought it of sufficient importance

or not? A. I don't think it was at all important whether the words hereby revoking all other and former wills were in there or not, no.

Q. Nor the will now held by Mr. Watson, or drawn by him? A. I don't think that is important.

Q. You didn't think it was important, even though Doctor Freeman's property was then being held by a Trustee on the ground that the Doctor was not fit to conduct his business? A. It wasn't held on that ground.

Q. What ground was it held on? A. Held under that agreement of May 15th.

Q. Well, you knew what the purpose of the agreement was, didn't you? A. I read the agreement.

Q. What Mr. Watson told you? A. Mr. Watson didn't tell me.

Q. He didn't? A. At that time I had never seen him.

Q. Well, when he did tell you? A. When he did tell me he told me what the effect would be of attempting to cancel it, but he didn't say a word about the grounds, except that it had been insisted upon by the creditors.

Q. My dear sir, this will of July 12th was drawn after you saw Mr. Watson. A. That will of July 12th was drawn after I saw Mr. Watson.

Q. So that you drew that will with full notice that there was a will in existence, and that Doctor Freeman's property was being held by his attorney, adversely to the Doctor? A. Why, no, I never dreamed of its being adverse to the Doctor. In its terms—

Q. No, but I mean the fact that Mr. Watson would not surrender it? A. Mr. Watson declined to surrender it on the 22nd of June.

Q. And knowing all that, you still made a will,

and made no reference to any other wills? A. That I am not prepared to say, unless you let me look at it. I didn't refresh my memory to see whether that clause is in there or not.

Q. Without seeing the will, even knowing that to be the fact, that I have related, that the property was being held by Mr. Watson, and knowing that there was a new will, did you think it was important, or not important, under the circumstances, to place in the will a clause of revocation? A. I don't think it made one atom of difference whether it was in there or not, therefore it wouldn't be important.

Q. Therefore you wouldn't put it in? A. Therefore I think it wouldn't be important.

Q. So that you did nothing else, other than you have testified to, to assure your client, Doctor Freeman, and Mr. Mohring, or either one of them, that the previous will was destroyed? A. The will of the 21st was destroyed when the will of July 12th was executed.

Q. When I say destroyed, I mean the Watson will? A. I did nothing to assure them, or either one of them, that the Watson will was destroyed, except so far as it was in legal effect destroyed by the execution of a later will.

Q. If Doctor Freeman had accepted this bond, and you had closed all your negotiations with Mr. Watson, what purpose on earth was there for you and Doctor Freeman to act in a stealthy manner, so that no one would see you come?

Mr. Strong: I object.

A. Doctor Freeman thought that it would avoid friction if he came to my house, rather than my coming down to his house.

Q. What friction was there to avoid, if you were permitting Mr. Watson to have control of the prop-

erty, and not interfering in any way, and not filling any bill in Chancery? A. I didn't ask him, or cross examine him as to what friction he anticipated, or expected avoiding.

Q. Didn't you, as an attorney, have sense enough to know why the Doctor should be chasing up to your house, when there was no apparent reason for it? A. Why, the Doctor came to my house by his own choice.

Q. I know he came possibly by his own choice, but what was there in the case that required him to go in a hidden way, you might say, to your house, and keep you away from Metuchen? What had you done that you shouldn't be seen in Metuchen at that time? A. There wasn't anything, Mr. Brown, yet developed, but it was anticipated by Doctor Freeman that there would something develop, and he thought it would save friction with Mr. Watson, and possibly with Mr. Breen, if he came to my house and consulted me as he did, rather than for me to come down there where they would know about it.

Q. Doctor Freeman at that time was keeping away from the business, had nothing to do with the business, you had all your business transactions closed, and you also had made up your mind not to file the bill in the Court of Chancery. A. Now, which time are you relating to?

Q. I mean after all those things were done? A. Yes.

Q. What was there then that should keep you away from Metuchen and coming to see Doctor Freeman? A. There was no earthly impropriety in my going to Metuchen, but it was decided by Doctor Freeman that it would be wiser for him to come to me, and he did come to me to consult me about the lease of the property, about the reconstruction

of the trestle, about the expense involved, about the showing of the various reports of the auditor as they came to him, and he came to me and consulted me a number of times about those things, and he preferred not to have Mr. Watson know it.

Q. So there was no reason why he should act as he did act? A. None had developed, but he anticipated that something might.

By the Court:

Q. What did he anticipate would develop? A. Friction over Mr. Watson's charges, compensation, provided for by the agreement.

By Mr. Brown:

Q. Why should that keep you out of Metuchen? A. It didn't keep me out of Metuchen. He came to me, and avoided the necessity of my coming to Metuchen.

Q. Why did you and Doctor Freeman, if you were acting in good faith, both of you, transact all of your business as you have mentioned here, and then after it was all done, he request you to keep out of Metuchen, or for him to see you in Belleville? A. The only time that I came to Metuchen was at his request. Those were those three times, 16th, 21st and 22nd, and after that he came to my house only once, by appointment. The other times the first I would know of his intention to call was when he would get there. Once when the will was made was by appointment.

Q. What did the Doctor say to you about keeping out of Metuchen? When did he first say it, and what did he say? A. In the telephone conversation in which he told me of having accepted the bond from Mr. Watson. I asked him when I would see

him again, and he said he would come up in a few days, and when he came up he told me he thought it was wiser for him to come there than for me to come down, and that is the only time the subject was ever talked of between us.

Q. Why did he say he thought it was wiser? A. Said he thought it would avoid friction.

Q. Did you ask him what friction? A. What he said was they would soon know my car, if they didn't already, and if they saw it over there they would be talking about nothing else except about what I was down there for, meaning the Breens.

Q. Well, the Breens had nothing to do with it, did they? A. Well, the Breens had something to do with the business, yes.

Q. I know, but the talking about your car, there wasn't anything that didn't— A. It didn't embarrass me a bit, but he thought it would save talk and save trouble.

Q. It wasn't the shadow of the past performances on the part of any of the parties concerned that kept you out of Metuchen, was it? A. Not in the least degree.

Q. Did you ever go back from that time up to the time of Doctor Freeman's death, back to Metuchen? A. I passed through Metuchen a good many times. I don't think I ever stopped at the garage.

Mr. Brown: That is all.

By Mr. Watson:

Q. Mr. Davey, on that day, June 22nd, when you came in my office to see me, when I refused to surrender this trusteeship, you knew then that I had in my possession a will executed by Doctor Freeman? A. He had told me so.

Q. And the day before another will had been executed, drawn by you? A. Precisely.

Q. You must have anticipated then the possibility of those two wills, at some future time, becoming contending wills, didn't you? A. Well, I wouldn't say that I did, Mr. Watson.

Q. Oh, well, you are a capable attorney, of very broad experience. A. Thank you.

Q. You certainly anticipated what is happening to-day, didn't you? A. I can't say that I anticipated it.

Q. Well, did it enter your thoughts at all, as a possibility, no matter how remote? A. I told Doctor Freeman—

Q. Answer the question, Mr. Davey. I don't care what you told Doctor Freeman. Did it enter your thoughts as a possibility, however remote? A. Well, I didn't lay awake nights thinking about it. I can't say whether it ever entered my thoughts or not.

Q. You can't say? A. I don't now recall on any occasion which I deliberately thought it out.

Q. Are you the master of your thoughts, or are you not? I want to know whether it entered your thoughts or not, and you know, and I want to know? A. I don't now recall any occasion when it entered my thoughts.

Q. It never occurred to you, even as a remote possibility, so far as you can now recall, that these two wills might become contending wills, did it? A. I don't think we ever discussed it—

Q. Mr. Davey, I am not asking you what you discussed. I am asking you what you thought? A. Very well, just a moment, Mr. Watson, and I will make my thought clear. The only time that I recall that we ever discussed it, or that I ever gave it any particular thought, was the time when

Doctor Freeman came regarding the change to be made in the will I had prepared for him, and then that question was referred to in the most general way, that he didn't want his sisters to have it to say that he had forgotten they were alive. That, of course, referred to a possible contest.

Q. Prior to that time, when you executed this first will of June 21st, and when you were up at my office on June 22nd, up to that time it had not entered your thoughts as the remotest possibility, that that will, and the will in my possession, might become contending documents? A. I hadn't given that any thought.

Q. You had not given it any thought, it had not entered your thoughts. Now, on that day, Mr. Davey, it would have been quite a simple matter for you to say to me, along with the other things that you said, Mr. Watson, Doctor Freeman wants that will, he has drawn another, and it is his property? A. It would have been just as simple.

Q. But you didnt' do it? A. The new will had then been executed.

Q. You did not then do that, did you? A. No, I did not.

Q. You didn't mention the will which I had, nor did you mention the new will which you had drawn? A. Neither one was mentioned.

Q. And then thereafter all the future business was carried on at your home in Belleville? A. All the future conferences between me and Doctor Freeman were carried on at my home.

Q. And you stayed away from Metuchen? A. Yes. In the sense that you mean away from his house.

Q. He went to great pains that neither I, nor anyone else interested in him, should know that this new will had been executed? A. I shouldn't say great pains, no.

Q. Don't you call that great pains? A. I don't. He said he was out driving every night, and it was no more trouble to come up to my house, than it was to go to somewhere else.

Q. Did he come to your house because it was no trouble, or because he didn't want friction? A. He didn't want friction, Mr. Watson. There was friction enough the day you and I were together, and he didn't want any repetition of it.

Q. Why do you say that he came there because it was no more trouble? A. I told you all the time he thought it was no more trouble.

Q. You haven't told me all the time. You told me he went there because it was no more trouble for him. A. That is it.

Q. Which is right? A. Both are right. It was no trouble to him, and it would avoid friction. He thought we had friction enough the day you and I were together.

Q. So that now you have two reasons instead of one. I suppose if we protract this examination we will have several reasons more for this skulking? A. There is nothing but the truth, as far as I am able to tell it, Mr. Watson.

Mr. Strong: All this examination here has been wasted; there is a perfectly simple explanation by the witness, about fifty times, of why the doctor came to the residence of the witness, and there is a very good reason why he should not have told Mr. Watson that will had been executed. It would have been a breach of professional confidence. Mr. Watson would not have told anybody else, under the circumstances. We have been loading up the record with questions that have been asked over and over again. I did not object, because we have nothing we wanted to conceal.

Q. Mr. Davey, your failure to mention this new will to me, your failure to ask for the surrender of the old will, which had been revoked by the new one, and your failure to come thereafter to Doctor Freeman, all resulting in myself and others interested in Doctor Freeman not knowing of his association with you, all just happened to fit in admirably with the plans of your client, Mr. Mohring, isn't that so? A. My client, at that time Mr. Mohring was never my client, and never had been.

Q. Of your present client Mohring, it has just worked out beautifully, has it not? A. Well, I should say so, Mr. Watson, by a great deal.

Q. And this was all Doctor Freeman's machinations, with which you had not the slightest thing to do?

Mr. Strong: I object. That is an unfair and improper question. There are no machinations in it anywhere, and there is no proof of any machinations anywhere.

Mr. Brown: I think you are both calling each other names.

Mr. Watson: That is all.

By Mr. Brown:

Q. You testified on cross-examination, to me, Mr. Davey, that the friction that you thought the doctor wanted to avoid in fact which he said he wanted to avoid, was with the Breens. Now you have answered Mr. Watson that the friction that you wanted to avoid was with Mr. Watson. Is that so? A. I don't think that I said the friction was with Mr. Breen. I said the Breens would know of my car being there, and there would be talk by the Breens.

Q. I asked you what the friction was, and that

is what you said it was, didn't you? A. No. I don't recall that I did.

Q. Didn't I ask you what the friction was, and didn't you say that your car would come there and the Breens would talk about it? A. Yes, I did say so.

Q. Then you have stated now that it is friction with Mr. Watson? A. Friction with Mr. Watson, yes.

Q. So that you didn't want to let Mr. Watson know about the will? A. Didn't want the Breens to have Mr. Wtason told that I was continually coming down there.

Q. But you didn't want Mr. Watson to know that you had made a will, because of the friction it would create? A. No, I had no desire about that at all, one way or the other, but Doctor Freeman thought that there had been friction enough.

Q. What friction would there be between Doctor Freeman and Mr. Watson, and you, if you came to Metuchen? A. There was friction enough between Mr. Watson and me the day we were there, and our interview was far from pleasant. He became very angry, and it was with some difficulty that I restrained a quick temper.

Q. That was in Mr. Watson's office? A. Yes.

Q. But you didn't get so scared of Middlesex County that you couldn't come into it after that time, did you? A. I never did.

Q. But you kept out, nevertheless, except to pass through? A. Out of Metuchen?

Q. Yes. Anywhere? A. I passed through Metuchen many times since. I never, during Doctor Freeman's lifetime, I think, visited him there again.

Q. Did Mr. Watson scare you so badly that you couldn't come down here again? A. There was no further occasion for me to consult with Mr. Watson. That hadn't arrived yet.

Q. But you were afraid of further friction with Mr. Watson, were you? A. I wasn't at all afraid of it. Doctor Freeman thought it was wiser to avoid.

Q. With Mr. Watson? A. Yes.

Q. How would your coming to Metuchen create any friction with Mr. Watson? A. I am sorry, but you will have to address that to Doctor Freeman somehow or other. I can't answer that.

Q. Didn't you ask him?

The Court: I think we have gone far enough into that.

Mr. Brown: I will desist.

Re-direct Examination by Mr. Strong:

Q. Mr. Davey, as I understood your testimony, you first received your knowledge of the facts from Doctor Freeman, and anything that you received—any information you received from Mr. Higgins was merely by way of confirmation, is that so? A. Absolutely so.

Q. I think Senator Brown, in one of his questions, limited Doctor Freeman's property to such as had been transferred to Mr. Watson. There was also property that Mr. Breen held, was there not, real estate? A. I think indirectly Mr. Watson held, virtually speaking, the entire capital stock of Manning T. Freeman & Company. The real estate held by Mr. Breen belonged to it.

Q. Belonged to Manning Freeman & Son? A. Belonged to Manning Freeman & Son, and not to Doctor Freeman personally.

By Mr. Brown:

Q. That is your opinion about it, is it? A. Well, that is what he said, and that is what Mr. Breen testified to here, and it is what Mr. Breen said that night, and it is what Mr. Watson said, as I understood it.

Q. That is your opinion about it, nevertheless? A. What is my opinion?

Q. That is your opinion now you are expressing, as to whom that property belongs? A. It is what Mr. Freeman told me; it is what Mr. Breen told me; it is what Mr. Breen has now testified to on this witness stand, and it is now my opinion.

Q. Why didn't you answer the last first, and save us the beautiful eulogy that you have just given? A. I think I answered the last question.

Mr. Brown: That is all.

The Court: That is all, Mr. Davey.

Mr. Strong: We have no other witnesses at this time; if your Honor will permit us until tomorrow.

Mr. Davey: Before coming down last Friday I had telephoned to the Eastern Audit Company, and Mr. Higgins, whom we expect to call for a witness, was away in Maryland. At the noon recess I called them again, and he will not be home until Thursday. We have witnesses we can go on with tomorrow. Whether or not they will occupy the full day, I can't say. But we cannot complete our case tomorrow, on account of Mr. Higgins' absence.

The Court: You can finish up Mr. Higgins' testimony on Friday of this week, can you not?

Mr. Davey: He is expected back on Thursday, and his office advises me he has an appointment for Friday, which he can and will cancel, if it be sure that he will testify.

The Court: I can hear it on Friday, at two o'clock in the afternoon.

Adjourned until tomorrow, Tuesday, June 12th, 1923, at 10.00 a. m.

MIDDLESEX COUNTY ORPHANS' COURT.

In the Matter

of

A paper writing purporting to be the last will and testament of CHARLES M. FREEMAN, dec'd.

Transcript of stenographer's notes of evidence in the above entitled cause, taken before WILLIAM HAUSER, Esq., a Master in Chancery of New Jersey, at his office, 29 Broadway, New York City, on the seventh day of June, A. D. 1923, at 3.00 p. m.

APPEARANCES:

THEODORE STRONG, Esq., WILLIAM H. K. DAVEY, Esq., Counsel for the Proponents.

RUSSELL E. WATSON, Esq., Counsel for the Caveators, Sallie B. Freeman, et als.

THOMAS BROWN, Esq., Counsel for the Caveator, Mary E. Wilkins Freeman.

The Master has designated Mr. George D. Ziegler as stenographer, for the purpose of taking the testimony in this cause, pursuant to this stipulation:

It is stipulated and agreed between counsel for the respective parties that the witnesses be sworn by the Master, their depositions taken stenographically, and the signatures to their depositions waived.

RALPH D. VAN DUZER, a witness produced on behalf of the Proponents, in Rebuttal, being duly sworn according to law on his oath, saith:

Direct Examination by Mr. Strong:

Q. What is your address? A. 143 Liberty Street, New York City.

Q. By whom are you employed, Mr. Van Duzer? A. Lehigh Valley Railroad Company.

Q. And have been for how long? A. Fifteen years.

Q. What position? A. General land and tax agent.

Q. Did you come here today under subpoena? A. I did.

Q. Did you know Doctor Charles M. Freeman in his lifetime? A. I did.

Q. And for how long a time, probably? A. Approximately ten years.

Q. Did you know him well, or how well did you know him? A. Well, probably met him four or five times during that ten year period.

Q. During the summer or fall of 1922, was there any business negotiation between him, or the Freeman corporation, and the Lehigh Valley Railroad? A. There was.

Q. About what subject matter? A. About the condition of the coal trestle at Metuchen, which was owned by the Lehigh Valley Railroad Company, and leased to Manning Freeman & Son.

Q. Who conducted that negotiation on behalf of the Lehigh Valley Railroad Company? A. The preliminary negotiation was conducted by my representative, Mr. A. H. Weston, district land and tax agent, who had jurisdiction over land and tax matters in the State of New Jersey.

Q. Were you personally called into the matter at

any time? A. Yes. Mr. Watson had a preliminary talk, as I understand it, with Mr. Breen, whom he found in charge of the coal yard at Metuchen, and he told Mr. Breen—

Mr. Brown: I suppose that cannot go on the record, what he told Mr. Breen. The other party is not here.

Q. In consequence of what was said to Mr. Breen, what did you do? A. Mr. Breen and Mr. Watson came to my office in New York, some time between October 5th and November 4th, 1922.

Q. Are you sure it was Mr. Breen, or was it Doctor Freeman? A. Mr. Breen.

Q. Did you see Doctor Freeman in respect to the matter at any time? A. Yes. Doctor Freeman called at my office on Wednesday, November 29th, 1922, at 2.00 p. m. I fix the date because there was an appointment which was made by Mr. Watson, for the meeting.

Q. Did anyone come with Doctor Freeman? A. A tall, slender young man, that Doctor Freeman introduced to me by name, which I did not get; he said he was his attendant.

Q. Was Mr. Watson there? A. Mr. Watson was there.

Q. Have you the date of the letter making that appointment? A. November 24th, 1922.

Q. What was discussed at that interview? A. Mr. Watson opened the interview by stating to me that he would like to have me tell Doctor Freeman exactly what I had told Mr. Watson and Mr. Breen in a previous conference.

Q. Did you do that? A. I did.

Q. What, if anything, was said by Doctor Freeman with respect to it? A. Doctor Freeman had very little to say at that conference with respect

to the conditions. Mr. Watson suggesed that there were two leases at Metuchen, one covered the lumber yard and the other covered the coal trestle. Our negotiations had been for the rebuilding of the coal trestle, granting a ten year lease for the coal trestle only. Mr. Watson explained—I don't remember whether he said in talking with Doctor Freeman, or whether that was his own conclusion, that it was felt advisable to ask us to combine the two leases in one, making them both for a ten year period, because if a dispossess was served under a portion of their business, that it would necessarily cripple the whole.

Q. Well, was Doctor Freeman under the influence of liquor or drugs at that interview? A. I did not think so, at the time of that interview.

Q. What led you to think so? A. Doctor Freeman's condition, I would say, was one of a high strung, nervous man; he smoked cigarettes incessantly, but he did not appear to be under the influence of either liquor or drug, in my judgment.

Q. State whether or not he discussed the subjects of that interview intelligently? A. What little the doctor had to say I thought was in an intelligent way.

Q. Were the specifications for the trestle the subject of discussion at that interview? A. The subject of the specifications for the trestle was raised subsequent to that time. Mr. Watson wrote me, under date of December 11th, that Doctor Freeman is of the opinion that certain changes ought to be made in the specifications for the repairing of the coal trestle. Also desires certain information with reference to it. He says that yellow pine should be long leaf yellow pine. The specifications do not define the kind of yellow pine. Will you please advise me whether long leaf yellow pine is contemplated. Doctor Freeman also says

that the bolts and dog splices should be seven-eighths inch instead of three-quarter inch, and that all bolts, spikes, nails, nuts, washers, should be galvanized. Will you please advise me whether these changes in the specifications could be made, and what would be the difference in the cost.

Q. What reply did you make to that? A. I replied, on December 12th, addressing Mr. Watson: I have your's of the 11th with regards to the Metuchen coal trestel. Our people tell me that it is proposed to use long leaf yellow pine. As to the bolts and dog splices, I have taken this matter up with our engineers, and they tell me that three-quarter inch material is all that is necessary, but if Doctor Freeman prefers us to use seven-eighths, it will only increase the cost slightly. As to the use of galvanized bolts, spikes, nails, nuts and washers, our engineers tell me that it is unnecessary, as the life of non-galvanized hardware is two or three times the life of the timbers. They can use galvanized hardware, but it will increase the cost about fifty per cent.

Q. That is, increase the cost of the hardware about fifty per cent.? A. Of the hardware.

Q. Did you have any further correspondence, or have any further interviews with Doctor Freeman with respect to the matter? A. That is the last interview that I recall with Doctor Freeman.

Q. You only had one interview with him, do you mean? A. That is all that I can clearly fix in my mind.

Q. Was there anything said at the interview with respect to the foundations, as to what the timbers should rest on? A. Yes, I think there was. I think—I can't say who brought up the subject, but I think that there was a question raised as to the advisability of using concrete caps, instead of timber caps.

Q. And what was determined with respect to that? A. There was no determination. It was not raised by Mr. Watson, the question was not raised by Mr. Watson in his letter of December 11th, and I therefore assumed that that portion of the objection had been waived.

Q. What was finally done with respect to the base for the timbers? A. Nothing has been done yet. Contracts were prepared and submitted for execution.

Q. Can you state whether or not Doctor Freeman raised that question of the concrete caps or bases on account of the dampness of the land? A. I don't recall who raised the question. I remember, now that you remind me, that it was discussed.

Q. Was anything said with respect to the size of the timbers? A. No, sir; not to my knowledge. I don't recall it.

Q. State whether or not he appeared to understand the provisions of the specifications, and the matter under discussion at that interview? A. The specifications were not gone into in detail at that conference. They were gone into in detail—they were forwarded to Mr. Watson, who handed them to him, that day, and he went over them and wrote me on December 11th.

Q. As you have read? A. As I have read.

Mr. Strong: That is all. Cross examine.

Cross Examination by Mr. Brown:

Q. You said, in the first part of your examination, Mr. Van Duzer, that Doctor Freeman had very little to say, and you further testified to a conversation, or communications, about the different items of the specification? A. Yes.

Q. Now, as I understand it, all the interviews that you had with Doctor Freeman about this time, was the one on November 29th? A. That was the only one that I recall.

Q. And the Doctor came to your office, attended by a tall, slender man? A. That is correct.

Q. And Mr. Watson was with him? A. By appointment.

Q. The communication, or the reference you have made to the specifications, as to the long leaf pine, and the cement caps, and the other items that you have referred to, those references grew out of correspondence with Mr. Watson, did they not? A. There was no reference in Mr. Watson's letter to the concrete caps; only to the long leaf yellow pine and the galvanized hardware. There was a discussion in my office with regard to the caps, but I don't remember who raised the point.

Q. You found Doctor Freeman a high strung man. You formed the judgment on this one occasion, or from previous observations that you made of the Doctor? A. My remarks with regard to his highly nervous condition, were with respect to that interview. I had known him for years. I thought he was sober on this occasion.

Q. Were you surprised? A. I don't know that I should express any opinion of that kind. He hadn't been sober on other occasions that I had conferred with him in the past.

Q. On this particular day he couldn't go about without the attendance, or the assistance of someone with him to guide him, could he? A. He explained to me that he was losing his eyesight.

Q. There was nothing that took place that day that would cause the Doctor to become high strung? A. Absolutely nothing.

Q. And his nervous temperament was a constant one, as far as you could see? A. It was.

Q. Without any cause for his being high strung? A. That is correct.

Q. Now, you said that Doctor said very little that day. What did he say, if anything? A. The conversation opened by Mr. Watson asking me to tell the Doctor exactly the conditions under which the trestle could be repaired, re-conditioned, and the possession of Manning, Freeman & Son continued. As I recall it, the Doctor asked me if that was our best terms, and I said yes, it having previously been agreed to, or that is, thoroughly discussed with Mr. Watson.

Q. I suppose Mr. Watson was there in the capacity of an attorney? A. He came to me as president of the Manning, Freeman & Company, is the way I knew him.

Q. That conversation and negotiations were preliminary with Mr. Watson, were they not? A. They were.

Q. Didn't it seem to you as if Mr. Freeman was brought up there simply to give him the opportunity, if he wanted to, to object, or say anything he wanted? A. To really consummate the arrangement. Simply to sanction what Mr. Watson had done.

Q. If Mr. Watson was the president of the corporation, what had the Doctor to do with it? A. I understood that the Doctor was interested financially. That was my understanding of the matter.

Q. Didn't it look to you as a matter of courtesy on the part of Mr. Watson, and those who were endeavoring to conduct this business, to let the Doctor be present, if there was anything to be done, that is, to provide an opportunity for him?

Mr. Strong: I object. What difference does it make how it looked?

Mr. Brown: I suppose it is not very material, but I will connect it with the very next question.

The Master: The objection will be noted.

(Question repeated by stenographer.) A. I should say so.

Q. And the conduct of the parties, I mean the conversation that took place that day, including that of Doctor Freeman, carried out that impression you had about the courtesy being extended to the Doctor to be present? A. I should say so.

Cross Examination by Mr. Watson:

Q. The fact is, Mr. Van Duzer, is it not, that when I conferred with you I told you that before committing the company I desired to have Doctor Freeman present and confer with you himself? A. You did.

Q. In order that there might not be any possible objection on his part to what I thought the company ought to do? A. You did.

Q. And when he came on that day he came with his attendant, before I arrived? A. That is right.

Q. He didn't come with me, or I with him? A. Well, as I recall it, he came with his attendant, and sent in word that he was there, and I sent out word that when you arrived I would see you all at one time.

Q. This correspondence we had subsequently, about long leaf pine, and the kind of hardware that should be used, you and I had that exchange of letters, and that ended it, didn't it? A. That was right.

Q. Never heard another word about it, did you? A. Nothing more.

Q. At our conversation when Doctor Freeman was present, you said you thought it would be about the first of the year before the railroad was ready to put this through, did you not? That was in November, the latter part of November? A. That would be about the length of time it would have taken us to have acted.

Q. I think that is what you said. The fact is that you became deeply immersed in some very important matters, and the contracts were not presented to the company for execution until after Doctor Freeman's death, were they? A. The contracts were not presented until March 26th, 1923, when I forwarded them to Mr. Thomas H. Hagerty.

Q. On the day we were there, Doctor Freeman, in fact, took little or no part in the discussion, and didn't manifest a great deal of interest in it, did he? A. I don't think that he did.

Mr. Watson: That is all.

Re-direct Examination by Mr. Strong:

Q. I understood you to say that he asked you if those were the best terms the company could make, didn't he? A. He did.

Q. And he seemed to understand thoroughly what those terms were, didn't he? A. Well, it isn't uncommon for anybody, in a business transaction, to say, is that the best you will do.

Q. I know, but he did? A. He did, yes.

Q. And that was after listening to what was going on there, was it not? A. That is right. I explained it to him in detail.

Q. And he apparently understood everything you said, did he not? A. He did, in my judgment.

Q. And seemed entirely sane and competent, did

he not? A. He did, or I wouldn't have transacted the business with him.

Q. He came into the room with some young man whom he introduced to you? A. As his attendant, as I recall it.

Q. Or chauffeur, or did he state what? A. I think he said my attendant.

Q. And stated to you that his eyesight was failing him, is that it? A. That was the explanation he gave me for having the attendant.

Re-cross Examination by Mr. Brown:

Q. Well, knowing Doctor Freeman as you did before that, and seeing him in the helpless state that you did, that was, with an attendant—

Mr. Strong: I object, because he has not testified—

Q. (Continued) —would you, as a representative of a railroad company, negotiate any contract with him without a legal representative, such as a lawyer?

Mr. Strong: Objected to as stating an unproved fact, that he was in a helpless condition. There is no evidence whatever that he was in a helpless condition, but quite the contrary.

The Master: The objection will be noted.

A. The explanation that he gave me for the attendant was because of trouble with his eyes. I didn't understand there was any mental condition. If I had, I would not have transacted business with him without an attorney.

Q. Well, Mr. Van Duzer, considering the ques-

tion put to you again, would you that day, without an attorney, have signed a contract with Doctor Freeman, representing Manning, Freeman & Son?

Mr. Strong: Objected to. There was no right for him at that time to execute such a contract on behalf of Manning, Freeman & Son. I understand at that time he was not an official of the company.

Q. Well, aside from the official part of it, I mean the condition that he was in there, and his eyesight impaired, and an attendant, and high strung condition you saw him in, would you have negotiated, if he had authority to sign the contract, would you have signed a contract with him?

Mr. Strong: Objected to on the ground it is immaterial and irrelevant. There might be numerous reasons why he would not put the contract through, besides mental incapacity.

The Master: The objection will be noted.

A. I would not have signed a contract with Doctor Freeman that day, unless there had been someone in his confidence to have read the agreement and explained it to him, he having told me his eyesight was failing him. I naturally would not ask him to sign on the dotted line, without having the contract explained by someone in his confidence.

Q. His high strung condition that day too would lead you to be more cautious than you would in a case where a man was in normal condition? A. No. I don't think so. I thought that his high strung, nervous condition was due to—I assigned

it to hearsay remarks that had come to me as to the usual condition of Doctor Freeman. I had known him for a number of years, and I had seen him in conditions that were not exactly—

Q. Well, what would you say caused his high strung condition, what did you think caused his high strung condition as you saw it that day? A. All I know is hearsay, and I don't think it is proper for me to say.

Q. Well, what was it that you based your opinion on?

Mr. Strong: I object to that. That is entirely immaterial and irrelevant.

The Master: The objection will be noted.

A. I had seen Doctor Freeman in bad condition on one or two other occasions, due to the excessive use of liquor. I had heard that he was a drug addict. I had nothing to base that on. It was hearsay.

Q. Did he act to you as if he was a man who was used or accustomed to the use of drugs? A. I hardly think I am competent to pass judgment on that.

Q. What did you attribute his high strung condition to then as you saw it? A. It was a nervous condition, in my judgment. He smoked cigarettes incessantly, and his hand rather trembled, I thought, as I recall it.

Q. Did he have the symptoms of a man who is ailing from the excessive use of drugs or intoxicants? A. I don't feel competent to answer that question. I am not a physician.

Q. You see, you have already declared him sane, that is, you have expressed the opinion that he was sane that day, and I thought maybe, seeing what you did, you could express an opinion as to what caused his high strung temperament or condition?

Mr. Strong: Those are two entirely different things.

Q. You are not an alienist, and nevertheless you have expressed the opinion that he was sane. A. I expressed this opinion, that I considered him to be in sufficiently good condition to permit me to do business with him.

Mr. Brown: That is all.
Mr. Strong: That is all.

June 12, 1923.

FREDERICK GOWEN, a witness produced on behalf of the Proponents, in Rebuttal, being duly sworn according to law on his oath, saith:

Direct Examination by Mr. Strong:

Q. You are deputy sheriff of the County of Middlesex? A. Under sheriff.

Q. And have been for how long? A. The past two and one-half years.

Q. Do you recall Doctor Freeman calling upon you on one occasion with respect to his appointment as special deputy? A. Yes.

Q. What was his appearance at that time? A. Why, he came into the office with the—

By the Court:

Q. When was that? A. Some time in June, June 12th last year, 1922.

By Mr. Brown:

Q. June 12th? A. Yes. He came into the office

with his chauffeur at the time. He couldn't see very good, and outside of that he was all right. His appearance otherwise.

By Mr. Strong:

Q. Couldn't see very well, but outside of that he was all right? A. All right.

Q. I show you a paper dated June 12th, 1922, and ask you what that is? A. That is a deputization for a special deputy sheriff, made by Elmer E. Wyckoff, and signed by the party who is to be made a special deputy, and witnessed by me.

Q. Making Doctor Freeman a special deputy sheriff? A. Yes, sir.

Q. And at the foot there is an affidavit signed by whom? A. By Doctor Freeman himself.

Q. Signed in your presence, was it? A. Yes, sir.

Q. State whether or not he received any assistance in signing that affidavit? A. No, none at all.

Q. The affidavit was read over to him by you? A. Always is.

Q. I show you a card dated June 12th, 1922, and ask you what that is? A. That is the authorization for a special deputy, which goes with it, issued by the sheriff to Doctor Freeman.

Q. Signed by whom? A. Elmer E. Wyckoff, sheriff.

Q. You are familiar with his signature? A. Yes, sir.

Q. This deputization is signed by him also? A. Yes, sir.

Mr. Strong: We offer these. Any objections?

The Court: They will be admitted.

(Paper entered in evidence and marked Exhibit P9, 6/12/23.)

(Card entered in evidence and marked Exhibit P10, 6/12/23.)

Cross Examination by Mr. Watson:

Q. How many times had you seen Doctor Freeman before? A. Hadn't seen him before in my life.

Q. Was the sheriff there? A. No, he wasn't.

Q. Was the card signed that morning? A. Yes, sir.

Q. Was the sheriff there then, or did you sign it? A. Yes, he was there to sign the card. He wasn't there at the time when Doctor Freeman came in.

Q. Did the sheriff meet Doctor Freeman? A. No. The sheriff didn't meet Doctor Freeman. Mayor Wilson from Metuchen had seen the sheriff at some time and asked him about having Doctor appointed, and the sheriff notified me that Doctor Freeman would be in, and had the papers there for him when he came in at noon time. The sheriff wasn't there at the time.

Q. Tell us everything that Doctor Freeman said? A. Why, I don't think that he said very much at all, except that he was Doctor Freeman; the first that I knew who he was.

Q. Yes. A. And that he had come over to be appointed a special deputy sheriff, with some agreement they had with the sheriff, which the sheriff had with Mayor Wilson, and I sent him in at that time. There was nothing else said.

Q. What else did he say? A. Nothing that I can remember that he said.

Q. Have you told us everything that he said that you can recall? A. Yes.

Q. You had previously received your instructions from the sheriff to make this appointment? A. Yes.

Q. Did you, Mr. Gowen, know anything about Doctor Freeman's reputation in Metuchen where he lived? A. No, I did not.

Q. Did you know anything about his habits? A. I did not.

Q. Did you know that he was a drug addict? A. No, sir.

Q. Did you know that he frequently became intoxicated? A. I did not, no.

Q. Did you know that he had recently, within a year, been released from the hospital for the Insane at Trenton? A. I did not.

Q. If you had known those things would you have made him a deputy sheriff? A. Absolutely not.

Q. Do you know whether or not the sheriff himself knew it? A. I don't think he did.

Q. If you had known all those things would you have felt it your duty to report it to the sheriff? A. I sure would.

Q. And to have held up the appointment meanwhile? A. Absolutely.

Q. How do you know that he couldn't see? A. When he came in the office he came in with the assistance of the man who was with him. I don't just remember who it was.

Q. In what way was he assisted? A. Well, the man had him by the arm until he came to our gate there, and he walked in.

Q. Had to be guided by the arm? A. Yes, sir.

Q. Did Doctor Freeman give any reason for being appointed a deputy sheriff? A. The only reason that he stated to me was that he was out a good deal at nights, and he wanted to have the card, in case of any trouble.

Q. Did you think that a man who had to be assisted, and couldn't see, was a fit subject to be appointed a deputy sheriff? A. Well, I simply followed the instructions of the sheriff. The sheriff said to issue the card to him, and I followed it out.

Q. You were obeying orders? A. Yes, sir.

Q. Isn't it a fact, Mr. Gowen, that after this appointment was made, objections were made to it by residents of Metuchen, objections were forwarded to your office? A. They may have been, but not to me personally. They may have been to the sheriff.

Q. Do you know of any such objections being made? A. I do not, no.

Cross Examination by Mr. Brown:

Q. You are acquainted with the duties of a deputy sheriff, are you not? A. Yes.

Q. A deputy sheriff very often, in fact most all the times performs the arduous duties of the sheriff's office? A. Not necessarily, no.

Q. He apprehends the prisoners, when necessary? A. We have our constables do that.

Q. The deputy sheriffs do not do that? A. Very seldom. Occasionally they might serve a paper, in case of an emergency.

Q. What are the deputy sheriff's duties in Middlesex County, as you realize them? Before that, did you ever read the statute as to his duties? A. I think I have read it over, yes.

Q. What are his duties? A. He may serve any paper that the sheriff may authorize him to serve, or do any act that the sheriff may authorize him to do.

Q. What does that mean? A. Well, he may make a service of any paper, or he may go after a prisoner.

Q. He may take a prisoner down to State prison from here? A. Yes, he could authorize him to do that.

Q. He has some very solemn duties to perform, does he not, at times? A. Well, sometimes, but

very few of them are done, except by regular constables or wardens. Very seldom any of the deputy sheriffs have any hard duty. It is more of an honorary job, in my way of thinking, because a good many of them get these cards.

Q. The Doctor wanted the license, or the appointment, because he was going out at night? A. That is the only thing he said to me. I don't know just what Mayor Wilson might have told the sheriff. He was the one that told him, I think he was.

Q. Why would he want to be appointed a deputy because he wanted to go out at night? A. On account of being a Doctor. I, of course, didn't know anything about the man from A to Z. I never saw him before in my life, except that he was a medical doctor.

Q. Did he carry a revolver? A. I think he said he had a permit to carry a revolver. I wouldn't say for sure.

Q. Didn't it seem very significant to you that a man of Doctor Freeman's physical ailments, such as you saw, loss of eyesight, and the like, should be appointed as a deputy sheriff, when there are plenty of able bodied men in the county? A. We make a good many deputy sheriffs, and it has been the practice for a good many years to make deputy sheriffs. I suppose there are about three hundred of them in the county.

Q. So that the appointment of a deputy sheriff does not signify the man's capacity to act as deputy sheriff? A. Not in some instances.

Q. Nor does it signify that he is mentally strong, or normal? A. Well, of course we always watch the applications very carefully.

Q. You watched this one carefully? A. I didn't watch this one. I was authorized to give the ap-

pointment when he came in. I simply followed instructions.

Q. As you saw him he was attended by someone when he came in the office? A. He was at the time he came in, yes.

Q. What did you think was the significance of giving an appointment to a man who was almost blind, and getting too old, that is, with an attendant? A. Well, I don't know. That was up to the sheriff himself. I presumed that Mayor Wilson, the same as perhaps you might suggest somebody, the appointment would be made. If you recommended a certain party, why, the chances are that we would make him a deputy sheriff.

Q. Coming back to the proposition originally stated, the appointment is a matter of political recommendation? A. That is about all it is.

Q. And not to a man's fitness? A. No.

Mr. Brown: That is all.

FRANCES STELLO, a witness produced on behalf of the proponents, in rebuttal, being duly sworn according to law on his oath, saith:

Direct Examinations by Mr. Strong:

Q. Mrs. Stello, you are the wife of—what is your husband's name? A. James Stello.

Q. What business is he in? A. A contractor.

Q. You live in Metuchen? A. Yes.

Q. On what street? A. Middlesex avenue.

Q. Did you know Doctor Charles M. Freeman in his lifetime? A. Yes, I used to see him every once in a while.

Q. For how long a time did you know him? A. Why, since he moved up there to the new house.

Q. Since he moved up there to what house? A. I don't know the street of that house, but that is right next to us.

Q. That is where the garage is, what they call the garage? A. Yes.

Q. Since he went to live in the garage you have known him? A. Yes.

Q. How far from the garage do you live? A. Oh, there isn't so far. We are neighbors there.

Q. Neighbors? A. Yes.

Q. Were Doctor Freeman and your husband good friends? A. Why, sure they good friends.

Q. Did you ever see Doctor Freeman at your house? A. Oh, he used to come over once in a while.

Q. What would he do when he came over? A. Oh, he asked a few questions, how is business, how are we getting along, and so on.

Q. Did your husband and he ever talk about business? A. I think so, sure, they been talking business.

Q. Did he use to come over sometimes when your husband wasn't there? A. Yes, when my husband wasn't there he used to come over. He never find my husband home, but he used to speak with me anyhow.

Q. What would he speak with you about? A. Oh, he ask of my husband business, how he was getting along, whether he has many jobs, if he gets any money, all that questions.

Q. How did he seem at those times? A. What is it?

Q. How did he appear at those times? How did Doctor Freeman seem? A. Why, he looks to me serious.

Q. State whether or not he seemed to be like any other man? A. Yes. Just like somebody else.

The Court: Did you fix the time of this, Senator?

Q. This was in 1922? A. I don't remember.

Q. Last year? A. Yes.

Q. State whether or not that was the way he seemed during last summer? A. Yes, during last summer.

Q. How often would he be at your place, probably? A. Oh, every two months sometimes, I don't know. Only once in a while he used to come over, when he have no place to go, so he stay there.

Q. About how often, should you think? A. Oh, he was there about four or five times altogether since he lived there.

Q. You said, I think, that he spoke to you about your husband's business? A. Yes.

Q. Did he, or not, seem to remember matters that he had talked to you—

Mr. Watson: I object to the leading.

A. Sure, he remember everything.

The Court: There is no jury here.

Mr. Watson: Let us have the witness testify.

Q. State whether or not your husband and Doctor Freeman had business dealings? A. Business dealings? No.

Q. Did your husband ever do any work for Doctor Freeman? A. Oh, yes.

Q. What sort of work? A. A foundation, concrete foundation, in the new house there.

Q. During the last year did you at any time notice any change in Doctor Freeman's condition? A. I don't think so. I always saw him one way.

Q. What was that? A. He was spoke nice, you know, just like somebody else. I didn't see no difference in him.

Q. Did he seem to get better, or worse, at any time? A. Why, I don't know that. Looks to me all the time good, but I don't know he get better and worse.

Q. How had he been before, in previous years how had he been? A. Well, I don't know before that.

Q. I mean in his looks?

The Court: She said she didn't know him before that.

A. Well, in the last he looked nice.

Q. He looked nice? A. Yes.

Q. State whether or not he looked any better than he had before? A. Yes, he look much better.

The Court: She said she didn't know him before that, Senator. I do not know whether she is telling the truth, or not, but she said she didn't know him before he moved up there.

A. I don't know him before he move up there, but in the last he looked nice.

Q. In what way did he look nice?

The Court: How could she compare it, if she didn't know him until he moved up there?

A. He looks nice and clean dress or suit, you know, and nice clean shoes.

Q. Nice clean shoes and nice clean dress? A. Yes.

Q. Had he always had nice clean shoes and nice clean dress before that? A. I don't know him before that. The last time I see him dressed fine, but I don't know before how he used going dressed.

Cross Examination by Mr. Watson:

Q. How old are you? A. Twenty-three.

Q. How old is your husband? A. Thirty-four.

Q. Is he an Italian? A. Yes.

Q. Is he an American citizen? A. No.

Q. How long has he lived in this country? A. About twenty-three years.

Q. What kind of contract work does he do? A. Mason.

Q. Does he build buildings? A. Yes.

Q. Or does he just do sidewalks, and things of that kind? A. He do both of them. He do sidewalk, and build buildings.

Q. How many men does he employ? A. I don't know. Depend the work he has got.

Q. How many men does he have working for him? A. Now he has about twenty or more.

Q. How many? A. About twenty.

Q. How near Doctor Freeman's house do you live? A. Well, we are close there. We are neighbors.

Q. Did he live across the street? A. No, not across the street. There is only one house between us.

Q. One house between? A. Yes.

Q. So you live right near? A. Near.

Q. Didn't you see Doctor Freeman almost every day? A. No, not every day. He used to go out in the car, but I didn't see him every day.

Q. How often did he come to your house? A. Oh, every once in a while, when he have no place to go, he used to stay there a few minutes, and go back.

The Court: Four or five times during the time he lived there.

Q. Only four or five times? A. That is all.

Q. What did he do when he came there? A. Oh, he just asked me how my husband get along, if he has any jobs, or they will pay him.

Q. Yes. A. Or things like that.

Q. What else did he do? A. Nothing else.

Q. How long would he stay? A. Oh, sometimes five minutes, sometimes ten minutes, and go away right away.

Q. Come and pay you a little visit? A. Yes. Only come to visit.

Q. Your husband made a barrel of wine for the doctor once, didn't he? A. Oh, no. Nothing doing.

Q. What do you mean nothing doing? A. No wine for him. My husband don't know how to make wine.

Q. Your husband don't know how to make wine? A. No.

Q. And he is an Italian? A. Yes, he is.

Q. Whenever you saw the doctor he always looked nice? A. Yes, he looks nice to me.

Q. Every time that you saw him? A. Every time that I saw him.

Q. You never saw him when he didn't look nice? A. No.

Q. Did you ever see him when he was drunk? A. No, never come up that way.

Q. Never did? A. No.

Q. He always walked along all right? A. All the time walks along.

Q. Never had any trouble that you saw? A. No. He can't see very good, but he used to walk all right.

Q. Couldn't see good, but he could always walk all right? A. Sure.

Q. And he always talked all right? A. He always talked to me all right.

Q. And he always looked nice? A. Yes.

Q. Where is your husband today? A. Today?

Q. Yes. A. He is out in Metuchen.

Q. He is not here? A. No. He has got the men working there.

Q. Said he couldn't come, didn't he? A. Well, he have not much to say, because when the doctor used to come over the house, so I was there, he used to speak to me, not to him, he never saw him.

Q. You were always there, and your husband never was? A. Yes.

Q. That is why your husband wouldn't come as a witness? A. Yes .

Cross Examination by Mr. Brown:

Q. I suppose the doctor, when he came up to your home, was all dressed up, wasn't he? A. Yes.

Q. And he looked good to you, didn't he? A. He looked good to me, sure.

Q. What time of the day would he come there? A. Oh, sometimes in the evening, sometimes in the afternoon.

Q. He usually came there when your husband was away, I suppose? A. Yes.

Q. And he would ask you how you were making out? A. Sure.

Q. And then he would talk five or ten minutes? A. Yes, and go away.

Q. And go away? A. Yes.

Q. What night would he usually come, or afternoon, what day of the week? A. Oh, he don't have no day. Once in a while, how he used to feel like, he used to stay up there.

Q. Would he call up before he came? A. Oh, no.

Q. But he seemed to come to your house all dressed up? A. Yes, all dressed up.

Q. He was very much fat, I suppose? A. In the last he got fat.

Q. How many months was it that you knew the doctor to call at your house? A. Why, he come, the last time was two days before he died.

Q. And he looked very good then? A. Very good to me.

Q. Did you see him when he died? A. No. I never was up to his house.

Q. But two days before he died he looked as good as ever you saw him? A. Yes.

Q. He came up to your house that night? A. He came up to my house.

Q. All dressed up? A. All dressed up.

Q. What did he talk about, two days before he died? A. He asked me again if my husband collected some money he knows they owed him, and he asked me if he has any work; and then he had to get some city jobs, he said not to try to get city jobs, he said, they are too big to handle. So he asked me a few questions and go away.

Q. Why didn't he do business with your husband, and not with you? A. Oh, well, he wasn't—what is the difference he ask me anyhow?

Q. No, I don't see any difference. Why would he come when your husband wasn't there? You had nothing to do with business, did you? A. My husband is no home in the night, and only eat supper and is go out right away. You know that business contractor is always go around.

Q. But the doctor would talk business to you, and not to your husband? A. Why, of course, he knows I know just the same, so he ask me that.

Q. How long had you known the doctor, that is, to call at your house? You haven't told us yet. A year? A. About a year and a half.

Q. In a year and a half you saw him five times? A. That is all.

Q. And the last time was two days before his death? A. Yes.

Q. And he looked better then than ever he did? A. Yes.

Mr. Brown: That is all.

Re-direct Examination by Mr. Strong:

Q. During this time that he looked better than he ever did, who was his chauffeur? A. Who was his chauffeur?

Q. Who was doctor's chauffeur? A. Was Harry Mohring.

Q. How often did doctor come to see your husband? How often would he and your husband see each other? A. Oh, every once in a while. I tell you five times altogether.

Q. Did your husband ever go over to see him? A. Why, when he have nothing to do he used to go up to the garage, but I don't know if he would see him, or not.

Q. He used to go over to the garage? A. Yes.

By Mr. Brown:

Q. You are very friendly with the Mohrings, are you not? A. Friendly?

Q. Yes. A. No. Why?

Q. Well, you are friends with the Mohrings, they are neighbors of yours? A. Well, all the neighbors is friends.

Q. And you call upon the Mohrings, and they call at your house? A. Well, they never come up to my house, I never go up to their house.

Q. You don't go either way? A. No.

Q. Did you talk to anybody about this case? A. No.

Q. Didn't say anything to anyone before you came here? A. No.

Q. Didn't speak to Mr. Mohring about this case? A. Why, I think Mr. Mohring knows.

Q Knows what? A. This case is going on.

Q I know, but did he speak to you about coming here as a witness? A. Well, he says, if you wants to come, if you have anything to say; I said, just what I know I could say, that is all.

Q. You were to testify to the doctor's condition, weren't you? A. Sure.

Q. You told him that you would testify the doctor was in good condition? A. Was in good condition.

Q. Looked good to you? A. Looked good to me, as far as I know it.

Mr. Brown: That is all.
Mr. Strong: That is all.

RALPH NOE, a witness produced on behalf of the Proponents, in Rebuttal, being duly sworn according to law on his oath, saith:

Direct Examination by Mr. Strong:

Q. Where do you live, Mr. Noe? A. Metuchen, 87 Highland Avenue.

Q. And you have lived there for how long? A. About five years at that address.

Q. What is your position? A. I am assistant manager and teller of the Metuchen National Bank.

Q. And have been for how long? A. Well, I have been assistant manager for about a year and

a half. I have been connected with the Metuchen National Bank for about sixteen and one-half years.

Q. Did you know Doctor Charles M. Freeman? A. I did.

Q. Did he open an account with your bank last year? A. He did.

Q. About when was that? A. On May 31st, 1922.

Q. It was a personal account that he opened there? A. A personal account.

Q. About how often did you see him at the bank after he opened this account? A. Why, I imagine I came in contact with him about possibly four or five times during the length of the account, to the time of his death.

Q. What seemed to be his condition? A. Why, his condition seemed to be normal during my business dealings with him.

Q. What have you to say as to his eyesight? A. His eyesight was very poor.

Mr. Strong: Cross-examine.

Cross Examination by Mr. Watson:

Q. How long have you been connected with the Metuchen bank, Mr. Noe? A. About sixteen and one-half years.

Q. Prior to May, 1922, Manning Freeman & Son carried no account at the Metuchen National Bank, did they? A. Manning Freeman & Son?

Q. Yes. A. Yes, they did.

Q. How long before May, 1922? A. Why, I think they have carried an account ever since I have been there. I wouldn't say for certain.

Q. During the sixteen and one-half years, Manning Freeman & Son carried an account at your bank? A. I think so.

Q. Prior to May, 1922? A. Not sixteen and one-half years prior to that, but during my business connections with them.

Q. Say the five years prior to that? A. Yes, I believe that.

Q. Isn't it a fact, Mr. Noe, when I was appointed Doctor Freeman's trustee, and became president of Manning Freeman & Son, an account was opened at your bank, and that prior to that time Doctor Freeman had refused to do business with you? A. No. We have an account with him prior to that time.

Q. How active was it? A. Well, it wasn't especially an active account.

Q. The Freeman name was on your books? A. The Freeman name had been on the books before.

Q. But the account wasn't active? A. Not especially active.

Q. The company didn't do their banking at your bank? A. Well, not all of it, I don't suppose.

Q. Didn't they do 99% of it in Perth Amboy and New Brunswick? A. Well, I wouldn't say the exact percentage, but they did a great part of it, I think, in New Brunswick and Perth Amboy.

Q. In spite of the fact that you know, as a banker, that it is wise for any corporation to bank in the town in which it does business? A. Yes.

Q. You say on May 31st he came there and opened this account? A. Personal account.

Q. You saw him on that day? A. I did.

Q. You saw him four or five times after that? A. Yes, about that.

Q. Have you a transcript of the account? A. I have. I have the original, and I would like to have this copy back, when you are finished, or you can take a copy of it, to complete our records.

Q. Did you have overdrafts on the account? A. Well, I couldn't say, without looking at that sheet.

That sheet will show, where it says "O. D.," if there are any marked that way, in the middle column. It will show an "O. D.," the machine will, automatically, if there be any. I couldn't say, without looking at the account.

Q. How long had you known Doctor Freeman? A. Why, ever since I can remember. I suppose about twenty-five years I have known the doctor.

Q. In the last four or five years how often did you see him? A. Well, I would see him more or less driving by, or sitting in the car as he drove by. I didn't come in contact with him very often.

Q. Just saw him in an automobile? A. I would see him, yes.

Q. Did you ever see him on the street? A. Yes, I would see him on the street once in a while.

Q. Ever see him around Metuchen? A. Around the main street.

Q. Various places in and around Metuchen? A. Well, for instance, the barber shop, or somewhere like that, as I was passing by.

Q. Did you know that he was a drug addict? A. Well, I didn't know. I couldn't say about that, of course.

Q. Did you know that he drank alcoholic liquor to excess, and that he was an habitual drunkard? A. I had never seen him take either.

Q. What? A. I had never seen him take either. I had heard several rumors—

Mr. Strong: I object to what was heard.

Mr. Watson: I want to find out what this witness knew.

Mr. Strong: His own knowledge.

Q. Had you ever seen him under the influence of either? A. I have seen him staggering. I don't know which, of course, it might be.

Q. You have seen him staggering? A. I have seen him staggering.

Q. During these four or five times that you saw him during the summer, how did his condition compare with these times when you saw him on the street around Metuchen? A. Well, I would say they were imporved. Of course, it was just—I didn't have a chance to talk with the man, or anything like that. It was just seeing him, and he seemed to be perfectly comfortable and clean, and his appearance was well. That is about the extent of my notice.

Q. You said you didn't have a chance to talk to him. That is what I was just about to ask you, what conversation did you have with him these four or five times? A. Well, he would come in the bank, and I would receive his deposits most of the time, I think. I do most of the work at the window. He might step in and say, well, this is a fine morning, isn't it, or, I see copper stock is up, or something. He used to be very fond of following the market very closely. And that would be about the extent of our conversation. There might be some other little pass word.

Q. Do you remember a single other thing that you ever said to him, or he to you? A. Well, of course, there have been several things, but to just recall, I never charged my mind with them. They were not of much importance. Just a casual conversation might come up.

Q. Did he always come into the bank alone? A. No. Sometimes he was alone, and sometimes Mr. Mohring was with him.

Q. How often would Mr. Mohring come with him, and how often did he come alone? A. Well, when I waited on him, I suppose Mr. Mohring might have been with him a couple of times, and he might have been alone a couple of times.

Q. You think about half the times he came, he came alone, and about the other half he came with Mohring? A. Of course, I never paid much attention. I have always been busy at the window, and as the people would step up I never had much chance to follow and see who was with each one.

Q. Did you ever see him sign his name? A. Oh, yes.

Q. Did he always sign his name, these times that he came? A. Not always, no. Sometimes his deposit slips would be made out, and he would come in with the book and deposit slip, and push the whole thing in, and if he wanted a check cashed he has cashed a check, maybe go over and write his name on a check, or endorsement; or his own personal check.

Q. Sign his name without any assistance? A. Yes, I have seen him do that.

Q. Nobody to show him where to sign it or anything of that kind? A. No.

Q. Able to see to sign his name without any help? A. Well, he would have some trouble, but he would do it. Sometimes he has asked me, am I above the line, or on the line?

Q. Then he did have to have some assistance? A. Once in a while. But I believe it was entirely due, when he did, to his eyesight.

Q. During the period covered by these four or five visits to the bank, when you saw him when he was always all right, during that period did you ever see him on the streets of Metuchen when he wasn't all right? A. I don't think I did in that length of time, because most of the time he was in the automobile, when I would see him, or sitting down, and I never talked with him. I would just say, how do you do, or something like that, as he passed.

Q. How long a period of time was covered by

these four or five visits that you recall? A. Well, that is during the length of time that he has had his personal account there.

Q. What? A. Since May 31st, 1922, during the period that he had that account.

Q. You saw him on May 31st. Now, when did you next see him? A. Well, I really couldn't say.

Q. Well, I want your best recollection of it, Mr. Noe? A. Going back a year, I will have to think a little.

Q. Surely. A. Well, it is a hard question to answer truthfully, because I might have seen him the next day in the car, or I might have seen him on the street.

Q. In the bank on business? A. Why, I really couldn't say. It might have been some months later. It might have been the next few days, when he came in to cash a check, you see. It is a very hard question to answer, with so many people, and you are facing them right along every day, and not charging your mind with making any record of it.

Q. How much was the initial deposit that he made May 31st? A. I think it was fifty dollars, as I recall.

Q. Look at the statement. What does it show? A. Fifty dollars.

Q. Then when did he make another deposit? A. On November 27th, 1922, he deposited $475.

Q. So that between May 31st and the latter part of November, his total banking business consisted of depositing and withdrawing fifty dollars. A. That was the next deposit between May 31st and November 27th.

Q. So that the probability is that these times you recall seeing him were subsequent to November? A. Very likely.

Mr. Watson: That is all.

Cross Examination by Mr. Brown:

Q. Where do you live in Metuchen? A. 87 Highland Avenue.

Q. Do you know Mr. Mohring? A. Yes, I know Mr. Mohring.

Q How do you happen to know him? A. Well, I have known him, I guess, ever since he has been there. He came in the bank on business, and I have known him personally, outside of the bank, for about—well—when the war was on I first knew Mr. Mohring.

Q. How did you come to know him personally? A. Well, through contact in the bank, as I recall. That was my first meeting with Mr. Mohring, as I recall it. I wouldn't say for sure.

Q. Do you belong to the same lodges? A. We do.

Q. You see him from time to time? A. I do.

Q. Talked about this case? A. I have referred to it, yes, we have talked about it.

Q. How many times have you spoken to Mohring about the case? A. Why, I suppose twice. Twice, I think to be exact.

Q. You have expressed the opinion that you thought the doctor was normal? A. I did. That is, when I came in contact with him, I would say. Just on my personal observations. I wouldn't go any further than that.

Q. You said you were willing to get on the stand and testify to that, didn't you? A. I don't know whether I told him that or not. I don't remember telling him that.

Q. You said the doctor was normal? A. So far as my personal observations were concerned.

Q. You know what a normal man is, do you not? A. Yes. When I came come in contact with him.

Q. Would you say that a man like Doctor Freeman, who had lived in Metuchen as long as you

knew, and lived as he did, was a normal man? A. Not always, no.

Q. He was never normal, was he? A. Well, I wouldn't say that either.

Q. And you know very well, do you not, that Doctor Freeman, because of his habits, has been mentally incompetent for some time even to manage his own business? A. I know there has been a change in his business; yes, sir.

Q. You know that he wasn't so sound in mind that it was safe to leave his business with him? A. That is as the powers seem to think.

Q. Well, you have got that personal conviction about it, have you not?

Mr. Strong: I object.

The Court: Why?

Mr. Strong: It does not make any difference about his personal conviction. What he has testified to is as he knew the man when he saw him.

The Court: This is cross examination.

Mr. Strong: Yes, but he said the man was normal when he saw him, so far as he could tell.

The Court: Yes, but that might be only half of what he knows.

Q. That is your conviction about it, that he was not fit to even conduct his own business? A. Well, I don't think he was, no.

Q. Now, Mr. Noe, wasn't a matter of depositing money in your bank, and paying it out to the Doctor, almost the same as,—as far as the relation was concerned,—as if you were dealing with a child, you would do what you could to help the Doctor when he came there? A. Yes.

Q. And were courteous to him? A. I try to be courteous to everybody.

Q. You didn't see anything wrong in dealing with the Doctor when he came with his little deposit? A. That is right, perfectly.

Q. But to say that he was a normal man in the usual acceptation of that word, you don't want to be understood that way, do you? A. Just as—only as I specified, in my personal contacts he has always been normal.

Q. Well, he didn't come into the bank on a stretcher, and he didn't come in with a gun on his shoulder? A. No. He conducted his business, when he was in the bank, that is, as far as my personal business connections were, all right.

Q. Why did Mohring come with him, do you know? A. Well, I couldn't say. He was with him most of the time. He was his chauffeur, I believe, and took him around in his car.

Q. Most every time he came to the bank Mohring would come with him? A. Well, he wasn't always in the bank with him. He might have been outside. He might have brought him down in the car. I couldn't say, of course.

By Mr. Watson:

Q. Who are your superior officers in the bank? A. John M. Connor is first assistant cashier, and A. C. Litterest is cashier.

Q. When Doctor Freeman came into the bank did he come under their observation? A. At times, probably. I couldn't say, really. Of course, I handle most of the window work, and it naturally fell on me to wait on him.

Mr. Watson: That is all.

By Mr. Brown:

Q. Do you remember who prepared the vouchers, or the checks that were drawn on the Doctor's bank account? A. Filled them in, and so forth?

Q. Yes. A. Why, I don't know, of course. His signature was always by himself. He had no attorney.

Q. I didn't ask anything about the signature. I mean the making up of the check? A. I couldn't say, unless I saw the checks. They were written out, some of them, by other people, and were filled in before they came there, and signed by him.

Q. All the Doctor did was to sign on the dotted line? A. That may have been, in the majority of the cases.

Q. In fact, all the cases, as long as he has been banking with you? A. I couldn't say, without seeing them. May have been.

Re-direct Examination by Mr. Strong:

Q. And may not have been? Some of them may have been written by himself? A. Well, I wouldn't say, unless I saw the checks.

Q. On what did you base the opinion you just expressed that Doctor Freeman was not fit to conduct his own business? A. Well, of course, if he were in the condition if he were drinking a lot, for instance, or drugs, or anything like that, I don't think any man should be running a business, or controlling it.

Q. In other words, was it not based on what you have heard? A. A great deal, yes.

Q. You say that when you saw him he was normal? A. When I saw him, yes, most of the time. Of course, I had seen him a few times, sometimes, when he was not normal.

Q. When he was not normal you mean what? A. Well, his condition was—he was staggering.

Q. You base your opinion that he was not able to conduct his own business on the fact that you saw him staggering at times, and on what you heard, is that not so? A. Well, to a certain extent, yes.

Q. But, as I understand it, you had a number of dealings with him in the bank, after he opened that account there, and at those times he was normal, isn't that right? A. When I waited on him at the window he appeared to be normal. Of course, I am no judge of such things.

Q. The business that he had was very extensive business, was it not, his own personal business, or Manning, Freeman & Son, was extensive, was it not? A. The business I had—

Q. No. I am speaking now of Manning, Freeman & Son, they did a big business there, did they not? A. They have a very nice business, well, the last few years.

Q. And his eyesight was not good either, was it? A. No, his eyesight was not good.

Q. State whether or not that would be likely to affect his ability to conduct a business of the size of Manning, Freeman & Son? A. Well, his physical condition, of course, I don't—I wouldn't say, from my own personal opinion, would warrant it, that is all.

Q. What say? A. His physical condition wasn't such as a good business man should have to run his business properly.

Q. He made this deposit of $50 on May 31st, 1922, and did he draw any of that out? A. He drew nine dollars.

Q. When? A. And forty dollars on the same day.

Q. Made the deposit and drew forty-nine dollars out the same day? A. Two checks.

Q. Then when did he withdraw any more? A. Well, on November 27th, twenty-five dollars.

Q. Of 1922? A. Of the same year.

Q. Meanwhile did he ever come in to cash checks in your bank? A. Between November 27th and May 31st?

Q. Yes. Not his own checks, but other checks? A. Why, I couldn't say. I haven't the records here with me. It may have been, and may not, of course. Then, of course, I don't do all the work at the window. It may happen with some of the others. But as the account stands, they were the transactions in his personal account.

Q. When and how did he draw out the four hundred and some dollars? A. $475? November 27th was $25. That was the same day of the deposit. November 28th $10; December 1st $88.10; same day $306.25; December 4th $22; December 11th $10; then there was another deposit of $20, that was January 19th; then the next draft was January 30th $5; February 10th $2; February 16th $2; February 16th $7; February 21st $10; February 23rd $4; February 23rd $2; March 2nd $1; March 7th the final deposit $22; and there was also a check drawn against it of $5, or drawn against the account.

Q. The last entry there is? A. March 7th, he made a deposit of $22.

Q. He deposited $22 on March 7th? A. And a draft of $5. The balance was $18.65.

Q. Do you know the date of his death, of your own knowledge, Mr. Noe? A. Why, I think it was that same day.

Q. March 7th? A. Because I remember of having some transaction with him, and a few hours

later hearing of his death. So I imagine it was that same day, March 7th.

Mr. Strong: That is all.

By Mr. Watson:

Q. Mr. Noe, if you had a personal business transaction, that it was necessary for you to entrust to someone else, would you have entrusted it to Doctor Freeman?

Mr. Strong: I object.

The Court: Objection sustained.

Mr. Strong: That is not cross examination. This man says he was perfectly normal.

The Court: He has qualified that sufficiently. He said he does not think he was fit to do his own business. That is the present testimony.

Mr. Watson: All right.

By Mr. Brown:

Q. Mr. Noe, those entries on the blank that you have been reading from, or that sheet, they do not indicate at all the visits of the Doctor to the bank? A. No. You could not tell by that.

Q. It might be that someone else did it? A. Yes.

Q. Or drew on his account? A. Yes, it is possible.

Q. And the checks might have come in for collection from many sources? A. From out of town.

Q. And then the deposits that were made may have been made by someone else? A. That is perfectly possible.

Q. So that between the attendants in the bank, the many attendants waiting on the customers, and the fact that there might have been visits by other than Doctor Freeman, the chances are that you had very little opportunity of seeing the Doctor? A. Yes, I had very little opportunity.

By Mr. Strong:

Q. Nevertheless, I understood you to say that on several occasions, to your own personal knowledge, he made visits? A. Yes.

Q. And also cashed checks? A. He transacted, as I said before, business there himself sometimes, and sometimes, of course, others would do it.

Mr. Strong: That is all.
Mr. Brown: That is all.

HARRY STORK, a witness produced on behalf of the Proponents, in Rebuttal, being duly sworn according to law on his oath, saith:

Direct Examination by Mr. Strong:

Q. Where do you live, Mr. Stork? A. Oak Tree.

Q. What is your occupation? A. Auto mechanic.

Q. How long have you lived there? A. About four years.

Q. Where are you employed? A. Employed no place at present.

Q. Were you ever employed at the Raritan Arsenal? A. I was.

Q. For how long? A. About twenty-two months.

Q. When? A. Between August, 1919, and June, 1921.

Q. Are you a constable of Raritan Township? A. I am.

Q. Did you know Doctor Freeman? A. I did.

Q. When did you first meet him, as nearly as you can state? A. Why, about a year previous to his death.

Q. How did you happen to meet him? A. I was introduced to him.

Q. After that how often did you see him, probably? A. Why, I seen him almost every day. Sometimes I would see him about three times a week, but most times I seen him almost every day.

Q. How did that come about? A. Why, he gave me permission to use his garage for repairing cars. That is, I was doing piece work, and he gave me permission to use the garage, and that is how I came in contact with him daily.

Q. In that way you became acquainted with him, you say? A. Yes, sir.

Q. Have you ever been at his house? A. Oh, yes.

Q. How often would you be at his house? A. Why, he invited me up to dinner scores of times, invited me to stay week-ends at his house, went out with him on lots of occasions.

Q. Were you ever hired by the Doctor as a chauffeur? A. I was.

Q. For what concern? A. Manning, Freeman & Son.

Q. What sort of a chauffeur were you, what sort of vehicles did you drive? A. Why, I was supposed to drive the five ton Mack truck he had.

Q. How long did you work for the corporation? A. About three days.

Q. How did you happen to leave its employ? A. Why, I was discharged, for no reason whatever, by one Mr. Breen, who had charge of the concern at the time.

Q. Mr. Who? A. Mr. Breen.

Q. Mr. John W. Breen? A. I think that was his name.

Q. Do you recall the date you were discharged? A. Why, I think it was some time in May, around the middle of May.

Q. Was it after Mr. Watson was in charge? A. I think it was.

Q. State whether or not you were hired before Mr. Watson was in charge? A. That I can't say.

Q. Is there any way you can fix the date of your hiring and discharge? A. It was some time in May. The exact date I can't tell. I think it was about the middle of May.

Q. Who was put in your place? A. Why, I think Mr. Breen's son.

Q. What is his name? A. I don't know his first name.

Q. Did you see the Doctor after that? A. After I was discharged?

Q. Yes. A. I did.

Q. Ever do any work for him? A. I did.

Q. Now, I think you said you saw him quite frequently? A. I did.

Q. What sort of a man did he seem to be? A. In what way?

Q. Physically and mentally? A. Why, his eyesight seemed to be slightly impaired, and he seemed to indulge in liquor, quite heavy at times.

Q. When he was not under the influence of liquor, what have you to say as to the sort of man he was? A. Why, outside of his eyesight being slightly impaired, he seemed to be a man, a man sane in every respect.

Q. What have you to say as to his memory, if anything? A. He seemed to have a fairly good memory.

Q. Did he ever discuss his business affairs with you? A. Why, he did at times, but it didn't amount to very much, what he said.

Q. Did he ever talk with you about Mr. Breen? A. Yes, he did.

Q. What did he say with respect to him? John W. Breen, was that? A. Yes. Well, in fact, when he spoke, he spoke of all of them.

Q. What did he say with respect to them? A. Why, he said when he got his business back on May 15th, 1923, he was going to fire the whole lot of them.

Q. What if any reason did he give for that? A. Why, he claimed that he had them employed down there almost all their life, and he treated them fair and square, but recently he found out they did not treat him fair and square.

Q. Did he say anything about whether he was allowed to be at his office or not? A. No, he did not.

Q. What if anything did he say with respect to hiring yourself when he got his business back? A. He promised me a position.

Q. Did he ever speak of his wife? A. He did on several occasions.

Q. What did he say with respect to her? A. Why, he said the only thing he had against her was that she had him confined in the Insane Asylum at Trenton. That was the only thing he said he really had against her.

Q. Did he speak at any time of his having been put out of his office by anyone? A. Not to my recollection.

Q. Do you know Harry Mohring? A. I do.

Q. How long have you known him, about? A. About between three and one-half and four years.

Q. Where and how did you become acquainted with him? A. Why, we worked together down at

Raritan Arsenal, side by side, for about twenty-two months.

Q. Were you in the army at the time? A. No, sir. I was a civilian employee.

Q. Was he in the army at any time? A. No. He was a civilian employee.

Q. Had either you or he been in the army at any time? A. Yes, he had.

Q. Your civilian employment was that of auto mechanic, was that it? A. Yes, that was auto mechanic.

Q. What have you to say as to the doctor's ability to walk? A. I never seen him have any trouble walking. He seemed to be able to get in and out of the car unassisted. He seemed to come down to the garage from upstairs unassisted, and talk to me. Stay down there sometimes for a couple of hours at a time, and talk to me, and go up again.

Q. What about his ability to read? A. On several occasions I came up to his room, and he would have a newspaper in front of him, and he seemed to be reading it. Whether he was reading it or not, I do not know, but he seemed to be reading it, and he would turn a page over now and then; but I have seen him on Sundays, he had no trouble at all reading the funny section, or the gravature section of the newspaper, and he would comment on the different pictures in there.

Q. You saw these things during the year 1922, last year? A. I did.

Q. Including the summer of 1922? A. I did.

Q. Have you any interest whatever in this controversy at all? A. I have not.

Q. Did the doctor ever say anything to you with respect to Harry Mohring? A. Why, yes. He said that since he came to live with Harry Mohring it seemed to be a new life to him, that he has felt

better, never felt better in his life; and he seemed to be having a great lot of fun since he came to live with Harry Mohring.

Q. With whom had he lived before Mohring came there? A. I think he lived with one of the Breens. I am not sure.

Q. What did he say, if anything, with respect to what sort of a time he had with the Breens? A. Do you mean while he was living with them?

Q. Yes. A. No, he never said anything about it to me.

Cross Examination by Mr. Watson:

Q. How old are you? A. Twenty-three.

Q. Married? A. Single.

Q. How long have you been unemployed? A. Why, I have been doing piece work myself for the last year.

Q. What do you mean by doing piece work? A. Getting jobs myself, and doing them myself in my garage.

Q. Odd jobs? A. Yes.

Q. What are you doing? A. Auto repairing.

Q. Where do you do them? A. In my barn.

Q. At Oak Tree? A. At Oak Tree.

Q. You said you left the Raritan Arsenal when? A. I think it was 1921, in August.

Q. August, 1921? A. Yes.

Q. What did you do between August, 1921, and May, 1922? A. Did quite a little farming on my place.

Q. Do you own the place? A. I do not. My mother.

Q. Whom do you live with, your parents? A. I do.

Q. When you worked at Raritan Arsenal you

and Mohring were buddies, really, weren't you? A. Yes, we were.

Q. You were chums? A. Yes.

Q. He was your closest friend? A. I won't say that.

Q. Who was closer? A. They were all alike to me.

Q. All alike? A. Yes.

Q. Mohring was no different from anybody else? A. Not at that time.

Q. Same as fifty or one hundred other people? A. Oh, no. There was only about fifteen of us in the shop there, and we were all just the same to one another.

Q. What did you mean a minute ago when you said that you and Mohring were buddies? A. We were all chummy.

Q. You were just the same with him as you were with the other fourteen? A. At that time.

Q. Who introduced you to Doctor Freeman? A. Mr. Mohring.

Q. Where? A. I think it happened in the garage, in Doctor Freeman's garage.

Q. What was the occasion of his introducing you to Doctor Freeman? A. Why, I happened to come down there to see Harry, and he introduced me to the Doctor.

Q. Doctor Freeman was there? A. He was.

Q. How long was that before you left the Arsenal? A. That was after I left the Arsenal.

Q. How did you come to leave the Arsenal? A. I was laid off the first time, and the second time I quit to work for Doctor Freeman.

Q. Do you mean that was in May, 1922? A. Yes.

Q. You just told me you quit in August, 1921. A. I know. I worked there twice.

Q. After leaving there in August you went back and stayed there until May? A. I went back in February and worked until May.

Q. Harry Mohring introduced you to Doctor Freeman, and Doctor Freeman gave you the use of his garage to do your repairing in, do your odd jobs in, didn't he? A. He did.

Q. How much did you pay him for it? A. He wouldn't accept anything.

Q. He wouldn't accept anything? A. No.

Q. You tried to get him to accept something, you wanted to pay him? A. I did.

Q. You offered it to him? A. I did.

Q. But he refused to accept it? A. I did. Right.

Q. You saw him several times a week? A. Almost every day that I had a job down there.

Q. And you had dinner with him scores of times? Didn't you say something about you had dinner with him scores of times? A. I did.

Q. In Harry Mohring's rooms, you and Harry and the doctor? A. In Doctor Freeman's rooms.

Q. Harry Mohring was there and you were there and you had dinner scores of times? A. I did.

Q. You spent week-ends with him? A. Once in a while.

Q. And you went off on trips with him? A. Right.

Q. When you were having dinner with him these scores of times, and spending week-ends, and going off on trips, was he ever intoxicated? A. He was under the influence of liquor several times.

Q. Ever see him under the influence of anything else? A. I did not.

Q. Did you see him drink? A. I did.

Q. Ever give you a drink? A. He did.

Q. And you took drinks with him? A. I did.

Q. In fact, you had a mighty good time out of these dinners and week-ends and trips, didn't you? A. I did.

Q. You were a young boy twenty-one or twenty-

two years old; who paid the expenses of these trips? A. Why, I paid them several times. In fact, I paid my way wherever we went.

Q. Wherever you went you always paid your own way? A. I did.

Q. And sometimes you paid his way? A. I did.

Q. And I suppose you bought the liquor sometimes? A. I did.

Q. And bought liquor for him? A. That is, a drink. If you call that liquor. That is, not by the bottle. I have bought him a drink.

Q. Bought him a drink of liquor? A. Yes.

Q. Intoxicating liquor? A. Yes.

Q. That is what I meant. Was that why he wouldn't take any pay for the garage, because you bought liquor for him? A. Oh, no, he didn't look at it that way.

Q. Didn't look at it that way? A. No.

Q. That was just a friendly act? A. That is all.

Q. You knew that Doctor Freeman's business was under the management of a trustee, didn't you? A. Why, yes, when he told me so.

Q. And you knew, didn't you, that there was some question about his ability to run a business? A. Why, the only thing I thought was wrong with him was his eyesight, in regards to running his business.

Q. I am not asking you what you knew. I am asking you if you didn't know that there was some question about his ability? A. No, I did not.

Q. Didn't know that? A. No.

Q. You knew that he was an habitual drunkard, didn't you? A. I knew he indulged in liquor, but I couldn't say he was an habitual drunkard.

Q. You knew that he often got drunk? A. Oh, yes.

Q. How often did he get drunk? A. That I can't

say. On and off, maybe he wouldn't be drunk for three weeks, at a time.

Q. Sometimes he would be drunk for three weeks at a time? A. I never saw him drunk three weeks at a time.

Q. Never saw him drunk for several days at a time? A. No.

Q. You knew he was a man who would be a lot better off if he wasn't drunk at all, didn't you? A. No, I did not.

Q. You thought his drinking helped him? A. Why, he told me he drank all his life.

Q. Tell you how much he drank? A. No.

Q. Didn't he ever tell you that he took a water glass full of whiskey every night when he went to bed? A. No.

Q. You didn't think he drank hardly any? A. It didn't hurt him all his life, why should it hurt him now?

Q. Helped him, in fact? He was better off with it, is that right? A. He seemed to be.

Q. Where did you take these trips with him? Tell us some of the places you went? A. Why, we took several trips in to New York.

Q. What did you do there? A. Just for the ride more than anything else.

Q. Just rode to New York and back? Did you stop anywhere? A. Yes.

Q. Where did you stop? A. Why, on one occasion we stopped on the steamship Bayern.

Q. Have anything to drink? A. Yes.

Q. Was Harry along? A. Yes.

Q. These dinners that you have been to, and trips where you and the doctor had a drink together, was Harry along with you sometimes? A. Why, most of the time.

Q. Most of the time? A. Yes.

Q. Did Harry drink with you too? A. He drank very little.

Q. Well, sometimes he drank with you? A. Yes.

Q. You and the doctor with him? A. Yes.

Q. You said his memory was fairly good. Just tell us what he ever said to you that indicated a good memory. A. Why, he used to tell me of happenings twenty-five years ago, down in Washington, D. C. Good times he used to have, and all this and that in his life.

Q. Talked to you of the good times he used to have? A. Yes, sir; in his younger days.

Q. When was it that he promised you a position after the Breens were fired? Was that on one of these trips when you were having a good time? A. No. He promised me the position the day I was discharged by Mr. Breen.

Q. You had worked there three days? A. Yes, sir.

Q. And he told you that when he got rid of the Breens he was going to give you a job again? A. He did.

Q. That was about May 16th, wasn't it? A. I won't swear as to the day. It was some time in May.

Q. Did he ever tell you about wanting Mr. Hanauer to come into his business, and have Mr. Breen teach it to Mr. Hanauer? A. No, he did not.

Q. Never told you anything like that. You never saw Doctor Freeman have any trouble to walk? A. I did not.

Q. When he was drunk he walked along right straight? A. Oh, no.

Q. Just like a sober man? A. If he had too much in he had to be assisted.

Q. Then why did you tell us you never saw him have any trouble to walk? A. Well, leaving the liquor out of it, he never did have any trouble.

Q. You made the statement that you never saw him have any trouble to walk. Is that true, or not? A. Then I take it back.

Q. You take it back. It was wrong. He could read the newspapers all right. A. Why, he seemed to. That is, the large print. He would have a newspaper in front of him. Whether he was reading it, I don't know, but he turned the page now and then.

Q. You said that his eyesight was slightly impaired. So is mine. What did you mean by slightly impaired? A. Why, he couldn't see very good.

Q. It was not badly impaired? A. It may have been. I don't know to what extent.

Q. When you said slightly you meant that, didn't you? A. Yes.

Q. You understand English? A. Yes.

Q. When you said slightly impaired, that is just exactly what you meant, didn't you? A. Yes.

Q. Did you know at any time during last Summer that he went to Dominie Bogart's every day to have the newspapers read to him? A. I did.

Q. He told you that? A. Yes.

Q. And yet you say that he could read the newspapers? A. I didn't say he could read them. I said I imagine he was reading them.

Q. Did he talk to you about what was in the newspaper, when he read it? A. Why, the only time he ever commented on it to me was when he read the funny sheet, or gravature section, where he could see the large pictures.

Q. Do you call looking at large pictures reading a newspaper? A. No, but there is little print under the pictures.

Q. Did he read that too? A. I think he did.

Q. Because he could tell you what the pictures were about? A. Yes.

Q. So that is why you thought he could read a newspaper? A. I did.

Q. That is why you thought his eyesight was only slightly impaired? A. Yes.

Q. Doctor Freeman told you that he never enjoyed life until he went to live with Mohring? A. No, he didn't say that at all.

Q. Well, living with Mohring was a new life for him, that is what he told you? A. Yes.

Q. And said he was having a great deal of fun? A. Yes.

Q. Going around together with you two young fellows, drinking liquor, and you buying liquor for him, that is what he called having a great lot of fun? A. I don't know whether that is the way he looked at it.

Mr. Watson: That is all.

Cross Examination by Mr. Brown:

Q. When you went to work in the Raritan Arsenal you were about eighteen or nineteen years of age? A. Yes, something like that.

Q. You didn't go there as a mechanic? A. I did.

Q. You learned your trade? A. I did.

Q. You still can't get work? A. I still—

Q. You can't get work at your trade? A. I can, certainly.

Q. You were farming, and you were up in the garage at Harry Mohring's, and you were over at the Arsenal? A. Yes, sir.

Q. Doctor Freeman was about sixty-five years of age, wasn't he, or over sixty? A. I imagine he was over sixty. He never told me his age.

Q. Where else was he going to New York besides to the steamship? A. I don't remember of any other place, outside of driving through Central

Park, and one occasion we went down to Sea Girt on Governor's Day.

Q. The places that you went were places of amusement, were they not? A. Yes.

Q. How often did you go to Chinatown? A. Never.

Q. Never went there at all? A. No, sir.

Q. You would go to the road houses? A. No, sir.

Q. Didn't you think that it was peculiar that Doctor Freeman would endeavor to obtain, or seek the society of a young man like you? A. No. It never occurred to me.

Q. Never occurred at all? A. No.

Q. You were eligible to go in the army, weren't you? A. Not at the time.

Q. What is that? A. Yes, I think I was.

Q. You think you were? A. I am not sure.

Q. You are not sure? A. On dates.

Q. What do you mean by dates? A. I registered in the draft, but I just couldn't even tell you the month I registered.

Q. You got a job when you registered in the Arsenal, didn't you? A. I did.

Q. And that exempted you from military duty? A. The war was over at that time.

Q. The war was over in 1919? A. Certainly.

Q. Weren't you eligible before then, while the war was going on? A. Yes.

Q. Why didn't you go into the army? A. I had to help support my mother, for one reason, and I was just about the military age.

Q. How many are there in your family? A. Just my step-father, my mother and myself.

Q. So you had a step-father, and you had a mother, and you were their support? A. No, I wasn't the sole support. I helped support.

Q. But you got away with it on that ground, that she was dependent? A. Oh, no, I didn't claim exemption.

Q. Didn't you? A. No.

Q. They wouldn't take you? A. They didn't call for me.

Q. You haven't a kindly feeling towards the Breens, have you? A. The only one I hold an unkind feeling towards is Mr. Breen right here.

Q. Mr. John Breen? A. John Breen, if that is his name.

Q. You felt pretty sore, when you worked three days and you were discharged? A. I did.

Q. You feel sore yet, don't you? A. Yes, sure.

Q. You are going to do all you can to help Harry Mohring, aren't you? A. No.

Q. What? A. Why should I?

Q. Why, you want to see this will probated, don't you? A. I do.

Q. Now, you have spoken about the Doctor mentioning his enmity for Mr. Breen, and his enmity for his wife, Mrs. Freeman, and you said nothing about his enmity for his sisters. Did you ever hear him say anything about them? A. Why, on one occasion he said all but one took no interest in him. Three of them never came to see him at all, in fact for years, and only one here recently came to see him while he was confined to Trenton, I believe. And I think he mentioned about one coming up to see him around Christmas time.

Q. Didn't you think, in all those trips that you had with the Doctor, that it was a very peculiar thing for a man of his age to be consorting with young men like you, and going out at night, and taking up with strangers, you and Mr. Mohring, and talking about his nearest friends, and those who were dear to him? A. No.

Q. Didn't strike you as unnatural at all? A. No. I regarded Doctor Freeman as a friend of mine, and he regarded me as a friend of his.

Q. I suppose you would speak about the topics of the day, and big subjects of the times? A. Everything in general.

Q. But be that as it may, he sought your society, and wanted you at dinner, and wanted you to go out with him, that is right, isn't it? A. He seemed to be lonesome.

Q. How often would you go out, in a week, with him? A. Why, sometimes I wouldn't go out for a whole week, and I may go out two or three times a week with him, and every morning he used to go to New Brunswick to do some shopping, and in case I had to get some parts, or something for a car I was fixing, I would take a trip over with him.

Q. You would have a drink while you were over here? A. Once in a while.

Q. The Doctor treated you just the same as a boyhood companion, didn't he? A. He did.

Q. I suppose he would joke right along? A. He would.

Q. Filled with jokes, wasn't he? A. Yes. He was very comical.

Q. When you would come in Harry's house you would have great fun? A. In what way?

Q. Well, what way do you say? A. Well, just talking. That is about all.

Q. Well, now, you meant more than that when you said— A. Have a little drink now and then.

Q. What? A. Drink if he had it.

Q. You know what the word great means, do you not? A. Oh, yes.

Q. You testified that when he got to Harry's you had a great lot of fun, since he came to live with Harry Mohring? A. Yes.

Q. What was the nature of that great fun that you had? A. Why, jollying, and going out together and having a drink now and then. That is what he considered a lot of fun.

Q. How many drinks would you have in a day? A. Sometimes I wouldn't have any.

Q. Well, when you did have them? A. That all depends upon how Doctor felt. If he felt like giving me one, he would. If he didn't, he wouldn't.

Q. Where did he have it? A. He seemed to have a little on hand at times. At times he didn't have any.

Q. In the house? A. Yes, in the house.

Q. This great fun that you speak of, what was it, music and dancing and drinking, or what? A. No, he didn't dance.

Q. He didn't dance? A. No. As I said before, jollying each other, and if he had a drink, a drink, and listening to the radio, and going out together, and all this and that. That is what he considered a lot of fun.

Q. You went out particularly in the night time? A. Oh, no. Mostly in the day time.

Q. In the day time? A. Yes, most of the times.

Q. Who was paying for all this? Who was paying Mohring's wages, who was paying for the automobile, who was paying for the gasoline, who was paying you for your day's trip? A. Nobody was paying me for my day's trip.

Q. So that you were just simply idling around with an old man at high noon, during the day time? A. Oh, no, I wasn't just idling around. I worked down there, and he used to come down and talk to me, if you call that idling around.

Q. Well, you said you would go out in the day time. A. As I said before, these little trips to New Brunswick, to get a part, in case I needed one.

Q. I know— A. And I needed them quite often.

Q. You needed parts quite often? A. Yes, sure.

Q. Where would you go on Sunday? A. Why, on several occasions I have been down there on Sunday, but some days I spent at home.

Q. You didn't go to church? A. No.

Q. I suppose you would get a little jag on once in a while, wouldn't you, when you would go out with the Doctor? A. I have at times.

Q. I suppose even the Doctor was pretty well under the weather too? A. Well, he was feeling good, but I wouldn't say he was unconscious, or anything.

Q. Wasn't unconscious? A. He would be feeling pretty good.

Q. So you think that under all those circumstances, that is, the Doctor out with you, a young man from twenty to twenty-three years of age, all through the day, drinking now and then, up in his chauffeur's house drinking, you a stranger to him, palling around with him, a difference of nearly forty years in your ages, and his keeping away from his sisters, his wife, and Mr. Breen and others who had been in business with him for years, you thought that was a sign of a normal, sane man, did you?

Mr. Strong: I object. He has not said anything of the sort, or anything that would justify that question.

Q. Well, is that so? Do you want that—

Mr. Strong: I object.

The Court: What part of it is not justified by the witness' testimony?

Mr. Strong: Because it is supposed to be a recital of facts.

The Court: I am asking you what part of the facts?

Mr. Strong: Keeping him away from his family, for one thing.

The Court: I do not think the question says that this witness was keeping him from his family.

Mr. Strong: That is what it says.

(Question repeated by stenographer.)

The Court: What is there objectionable about that?

Mr. Strong: I thought he said your keeping him away from his sisters. I misunderstood that. Then the question is improper in this, that it says all during the day he was with him and drinking. There was nothing of the kind, for he says sometimes he would not drink with him for a week, and sometimes he would not see him, I think he said, for a week, and sometimes he would see him two or three times a week. The question is no proper conclusion from anything the witness has said. And he is not a stranger to the Doctor.

The Court: I will permit the question.

Q. What have you to say about that? A. Why, to begin with, we didn't drink all day, as you said.

Q. No, I didn't say that. I said once in a while.

Mr. Strong: No, you didn't say that.

Q. Never mind what counsel has said to you, or said here. A. Counsel didn't say anything to me, Mr. Brown.

Q. All right, you answer that question. A. Why, we didn't drink all day, and he had perfect

good reasons for staying away from his wife, and the Breens, and I don't know the reason about the sisters, but he claimed they never took any interest in him, outside of one.

Q. Now, will you answer the question? A. I am trying to, to the best of my ability.

By the Court:

Q. The question is, did you think that the actions as recited in that question, and which you have testified to, were the actions of a perfectly sane and normal man? A. Why, certainly.

By Mr. Brown:

Q. You are not a college graduate, are you? A. No.

Q. Do you know of any man who is as old as Doctor Freeman, above your age in life, who is a professional man, who has a business of the magnitude that Doctor Freeman had, who had the renowned family connections he has, who has been consorting or palling around with a boy such as you, who never saw a college?

Mr. Strong: I object. It is directly immaterial whether he knows such a person or not. What has that to do with this case?

The Court: I will sustain this objection.

Mr. Brown: Except to show the very unnatural connection. I think it goes to the doctor's—

The Court: I think that pretty sufficiently appears, senator.

Q. You and Mr. Mohring have talked about this case, haven't you? A. Yes.

Q. You have talked about it time and again in the house, haven't you? A. Yes. Since he has been mentioned in it.

Q. You knew about the will being made before it was probated, didn't you? A. Who, me?

Q. Yes. A. Absolutely not.

Q. Doctor didn't say anything about the will? A. Never did. Never mentioned the will as long as I knew him

Q. You never thought the doctor was fit to conduct his business, did you? A. Outside of his eyesight I thought he was.

Q. The doctor's capacities have been so sufficient, in your opinion, for him to carry on that lumber business? A. When he was sober, yes.

Q. When he was sober? A. Yes.

Q. And that was very seldom, was it not? A. I won't say that.

Q. Well, isn't it a fact that the doctor was a constant, continual drinker? A. He drank at times. I have seen him refuse a drink, for several weeks. One time in particular, last summer—

Q. Well, now, how many weeks was he offered a drink—

Mr. Davey: I think the witness ought to be allowed to finish that answer.

Mr. Strong: One time in particular last summer, he said, and then he was shut off.

Q. Go on. A. I think it was during the middle of the summer, he refused to drink there for several weeks at one time. And I found out he was going to some place in Amboy, where he was getting good beer, and he offered the remark that as long as he could get good beer he would lay off the liquor.

Q. How many times did you see him refuse a

drink in a week, or in the period that you have spoken of?

Mr. Strong: Do you mean for a week?
Mr. Brown: Yes.

A. The exact amount of times I can't say.

Q. Well, as nearly as you can say in one week, or that period you have spoken of? Ten times? A. I knew he wasn't buying any—

Q. No. You said he refused to take a drink. A. Yes.

Q. How often in that period did he refuse, in that one week? A Well, just the amount of times I can't say. Several times, I will say.

Q. Well, would you say a half a dozen times? A. No, I won't say a half a dozen times.

Q. Who offered the drinks to him that he refused? A. Different people.

Q. Who are the different people? A. Friends of his.

Q. Who are the friends? A. I do not know.

Q. How do you know they were friends? A. They seemed to be talking to him there, carrying on the conversation. I imagine they were friends.

Q. Where? A. In his car, or on the lawn, or wherever it happened to be.

Q. Who would have liquor only in his car, or on the lawn to offer to him? A. Why, there is lots of people carry a flask.

Q. The doctor didn't carry a flask? A. Oh, no. I mean people offering him a drink.

Q. Where, in Metuchen? A. Why, certainly.

Q. Everybody was offering him a drink, weren't they? A. Oh, no, not everybody.

Q. Well, how many people offered him in that week drinks that he refused? A. Different people, I just don't know the exact number. There were several that I remember.

Q. Did he ever refuse a drink from you? A. He did.

Q. Where did you get the drink? A. It was given to me.

Q. Given? A. Yes.

Q. Where did you have it, up in the garage? A. No. What little was there I carried in the car.

Q. In whose car? A. My car. At least, my mother's car.

Q. Did he ever refuse a drink from Mohring? A. I do not know.

Q. Where did the doctor carry the liquor, or keep his liquor? A. Why, he kept a bottle in the car, at times.

Q. How big was the bottle? A. Sometimes it was a half pint. Sometimes a pint, but never over a pint. I never seen a bottle larger than a pint.

Q. Where did he keep it in the house? A. I do not know. The colored cook used to take it away from him, no more he brought it in, and she used to dilute it down with water, and drink the good whiskey herself.

Q. She would drink the good whiskey? A. Yes.

Q. Who would bring it in? A. She would.

Q. Who got the liquor for him, where did it come from? A. He got it himself, wherever he got it.

Q. When you went to New York to the steamship, you went there for liquor, didn't you? A. Not exactly liquor. I had a friend on the boat I wanted to see in particular.

Q. Didn't you get a supply then on that steamer? A. No. We got some good beer. That was all we got.

Q. Did you get some to take home with you? A. No, you can't take it home. There is custom men there to search you, no more than you get off.

Q. How do you know that? A. Why, I have been on there several times. I know.

Q. The doctor had liquor in the house, and he had it in the car, and he had it when he went out, didn't he? A. Oh, no. When he came home, if he had a bottle, he took it upstairs, as I told you, and the colored lady took it away from him. She went right through him, no more than he come in, and took it away.

Q. Every time he came in she would take the liquor away from him? A. Most times I seen him come in she would take it.

Q. So that when you were out with him he would get liquor, and when he came back with the liquor she would take it away from him? A. She would, yes.

Q. Where would you get the liquor? A. As I told you, I don't know where he got it. I wasn't with him when he bought it in bulk, half pint, or pint, if you call it bulk.

Q. So the time he was temperate he would come to Perth Amboy and get good beer? A. Yes.

By Mr. Watson:

Q. You said, in speaking about the Breens, he told you that they worked for him loyally and faithfully and had always been fair and square, he thought, but recently he found out that they were not fair and square? A. That is right.

Q. That was after Mohring went to live with Doctor Freeman? A. Right.

Q. He never mentioned to you about this will, did he? A. He never mentioned the will as long as I knew him.

Q. Talked to you quite confidentially about a good many things? A. He did.

Q. Spoke confidentially about his family relations? A. Outside of little remarks he passed he never spoke.

Q. Well, wouldn't you consider that confidential, when he tells you about his relations with his wife, and his sisters? A. Why, I inquired about his family, and he just said, why, they don't seem to be taking any interest in me, and why should I take an interest in them.

Q. Then he did speak to you about his family connections? A. Just a casual remark.

Q. He did speak to you about his family relations? A. Yes, certainly.

Q. Spoke to you about his relations with the Breens? A. He did.

Q. Spoke to you about his business? A. He did.

Q. How much he thought of Mohring? A He did.

Q. But he never mentioned this will? A. He never mentioned the will to me as long as I knew him.

Re-direct Examination by Mr. Strong:

Q. What have you to say with respect to the doctor's eyesight when he was out driving on the roads? A. Why, he didn't seem to have any trouble seeing large objects. He would comment on different bungalows, or something like that, going by. Odd bungalows, or a nice looking building, or something.

Q. State whether or not he ever recognized people when he passed. A. Why, I have seen him wave to people from the car.

Q. What, if anything, was his recollection with respect to the roads he was travelling? A. Beg your pardon?

Q. What, if anything, was his recollection with respect to the roads you travelled? Did he seem to know where he was? A. Oh, yes, he seemed to be able to find a place, if he was just taken down

there once, he could find a place most alone the next time.

Q. What have you to say as to his physical condition during the time that Mr. Mohring was employed as his chauffeur? How did he seem to be? A. Why, he told me he was feeling better and better. The time he—he said that since he was with the Mohrings he seemed to be improving. He said before he went there he was almost another wreck, as he put it.

Q. You spoke of a radio. Where was this radio? A. In his dining room.

Q. To whom did it belong? A. That I don't know. I never questioned about it.

Q. Are you interested yourself in radios? A. To a certain extent. I have one of my own.

Q. Who operated this radio? A. Mr. Mohring seemed to operate it most of the times

Q. Did or did not Doctor Freeman exhibit much interest in the radio? A. Yes, he was very much interested in the radio.

Q. I didn't understand your reply exactly. Did you say that you could, or could not get work at the present time? A. I could. Why, certainly.

Q. What is the reason you are not working just at this time? A. Why, I am busy with my constable's duties right at present. They have taken up my time for the last month.

Re-cross Examination by Mr. Brown:

Q. What court do you work out of as constable? A. Piscataway.

Q. What Piscataway court is there? A. Why, there is a recorder's court, and there is a justice of the peace, in fact, two justices of the peace.

Q. How many other constables are there? A. In the whole township?

Q. Yes. A. Two.

Q. You prefer the constable work to following your trade as an automobile mechanic? A. Oh, no.

Q. Well, you are doing it nevertheless? A. Oh, yes, I have been called upon to do it.

Q. You have played crap with the doctor too, haven't you? A. Absolutely not.

Q. Not? A. Absolutely not.

Q. You can play, can't you? A. I certainly can.

Q. You have not shaken dice with the doctor at all? A. Why, I never seen him shake dice. I don't know whether the doctor knew how to play dice.

Q. You say that the doctor would drive to places, and if he was there once he would be able to get there again? A. Yes.

Q. What place was it that you had in mind? A. Why, at one time during last summer, the middle of last summer, in regards to this place where you get beer in Amboy, Harry Mohring happened to be busy, I think he was called out of town for something, and I happened to have my car there, and it was a hot afternoon, and he asked me to drive him down, and I asked him if he knew where he was going, and he said yes, and he found the place to a T.

Q. He told you the street, didn't he? A. He didn't name the street, but he showed me it when I got there, and it happened to be the place.

Q. How did he tell you to drive there? A. Why, he directed me.

Q. Directed you all the way there? A. He did.

Q. And he was waving to the people as he was going along? A. Oh, no.

Q. Where did you ever see him waving at people? A. In Metuchen.

Q. Out with you? A. Well, if I happened to be in the car.

Q. If you happened to be in the car he would wave at people, is that right? A But it doesn't say—

Q. I suppose he was proud of having you with him?

Mr. Strong: Let him answer. You did not let him answer.

A. He doesn't wave to people because I happen to be in the car, if that is the way you put your question.

Q. Why would he wave to the people? A. I just happened to notice him wave. A casual wave to somebody on the sidewalk.

Q. When you got down to this particular place I suppose you drove up and went in and had a few, didn't you? A. I certainly did.

Q. You never missed a chance, did you? A. Oh, no.

Mr. Brown: That is all.
Mr .Strong: That is all.

HARRY MOHRING, a witness produced on behalf of the Proponents, in Rebuttal, being duly sworn according to law on his oath, saith:

Direct Examination by Mr. Strong:

Q. How old are you? A. Twenty-seven years old.

Q. Where were you born? A. Plainfield, New Jersey.

Q. How long did you live there? A. About four, or four and one-half years.

Q. Where did you go from there? A. Jersey City.

Q. And you lived there for how long, as nearly as you can tell? A. About nine years.

Q. Where have you lived since then? A. From there I went to Bayonne, New Jersey.

Q. How long did you live in Bayonne? A. Until 1919.

Q. Are you married? A. I am.

Q. How long have you been married? A. Six years.

Q. Any children? A. Two.

Q. How old? A. One five, and one about one and one-half.

Q. You knew Doctor Freeman? A. Since 1917.

Q. You were employed by him? A. I was.

Q. How did you happen to come into his employ? A. Why, he came to my house, which he did very frequently.

Q. Where did you live? A. Across the way from where he was living with Mr. William Breen.

Q. Well, he came to your house? A. Came to my house, which he frequently did, and after talking quite a while with me on radio, and different subjects, he asked if I had a pencil and a piece of paper, and I said I had. Well, he said, I want to dictate a rough sketch of a letter. I got the paper and pencil and he dictated the letter, in which it turned out to be my resignation to the Arsenal.

Q. You were employed at the Arsenal? A. I was.

Q. How long had you been employed at the Arsenal? A. I just don't remember. Approximately fourteen or fifteen months. Maybe longer.

Q. Where had you been before that? A. In Bayonne, New Jersey, working.

Q. Were you in the army at any time? A. I was, six years and nine months.

Q. When did you enter the army? A. 1913.

Q. Did you ever see duty anywhere? A. I did, down on the Mexican border, and over in France.

Q. When did you go to France? A. I just don't remember the exact dates.

Q. Where did you see duty in France? A. Meuse-Argonne, Chateau Thierry, and then I was on the defensive sector of Alsace Lorraine.

Q. How long were you in France, about? A. Between twenty and twenty-two months.

Q. You came home when? A. 1919.

Q. When you came home you went where? A. I was living in Metuchen, but I was working in Bayonne.

Q. What were you working at in Bayonne? A. Repair work.

Q. Of what sort? A. Electrical and gas engines.

Q. You are a chauffeur now, is that it? A. No, sir.

Q. What is your present occupation? A. Just at present I am not working.

Q. You were a chauffeur for Doctor Freeman? A. No, sir.

Q. What is that? A. No, sir.

Q. You were not a chauffeur? A. No, sir. I was the automobile mechanic for Manning Freeman & Son, Incorporated.

Q. I never heard you called anything else. A. That is a misunderstanding. I drove Doctor Freeman when there was no repair work.

Q. When was it you entered Doctor Freeman's employ? A. January, 1922.

Q. And how did that come about? You started to tell us that, about writing your resignation? A. He dictated a memorandum for me to write out my resignation to the Arsenal, and I asked him

what he meant by it. He told me that he had been down to the Arsenal and saw the commanding officer, had looked at my records and found them very favorable, and having known me and known about me, inquired about me, he wanted me to work for him. I asked him, before I accept the position, I want to know what work I had to do, how much I was going to receive, and everything else. So he told me he would pay me the same salary that I was receiving at the Arsenal.

Q. What was that? A. That was twenty-four dollars a week, averaged; so I accepted the position, inasmuch as it was much closer to my home, I was only living across the street; working for the Government is a very uncertain position, because every year, when the appropriation runs out, everybody is laid off, possibly one or two is kept on; it is a very uncertain position. So I accepted with Doctor Freeman as automobile mechanic.

Q. How long did you work for him? A. From January, 1922—do you mean for Doctor Freeman, or for the firm? I never worked for Doctor Freeman. I worked for the firm.

Q. Do you mean for Manning Freeman & Son? A. I mean for Manning Freeman & Son.

Q. How long did you work for Manning Freeman & Son? A. From January, 1922, up until a couple of weeks ago, I think it was, three or four weeks ago.

Q. You worked for the firm until three or four weeks ago? A. Yes. Under their employ.

Q. How did you happen to leave it three or four weeks ago? A. At my request to Mr. Hagerty.

Q. Your request? A. At my request to Mr. Hagerty.

Q. What were your duties while employed by Manning Freeman & Son? A. To do all the repair

work on the automobiles that was necessary, which I did for three or four months, and then Doctor Freeman's chauffeur asked to be put in the garage, so he could learn the mechanical end of it, and I exchanged work, did repair work, and then drove Doctor Freeman around. And then later on this other man was sent down to the office to drive a truck, and I did both driving and repair work, until Mr. Watson got control, and then they figured they would rather give the work out to somebody else, the repair work, and after that no more repair work came up to the garage; it went out to a public garage.

Q. Went out to a public garage, what garage was that public garage? A. Why, one owned by Smith, and then later on one owned by a nephew of Mr. Breen's.

Q. So that after this work went out to a public garage. your duties were limited to what? A. To driving and repairing the car that Doctor Freeman rode around in. There was no more work came to the garage from the office.

Q. What kind of a car, what make of car did you drive for Doctor Freeman? A. An Essex sedan.

Q. For how long a period did you drive it? A. In months, or miles?

Q. In miles? A. In miles, over one hundred thousand miles. The car went altogether, I believe, one hundred and forty thousand some odd thousand miles, but I didn't drive it all the way.

Q. What have you to say of Doctor Freeman's condition when you first went there to work for him, his habits with respect to the use of liquor and any other? A. Well, I have seen Doctor Freeman drink, and when I first went with him he used to drink pretty heavy, and before I went with him,

but as far as any other, whatever you mean by that, I never seen him take any other. And as far as his condition, why, his clothes were shabby, his room, I have been up in the house, before I went with him, and the room he had was in a very unfit condition, and a few other things. It wasn't a bit home like. Well, I can hardly explain it.

Q. With respect to the other, perhaps my question was indefinite, because I did not know whether something else he took was properly called a drug, or not; what, if anything, did he take in the way of— A. Why, he took a sleeping tablet, but I inquired from a druggist, and he claimed it was not a drug.

Mr. Brown: I move that be stricken out.

A. All right. That is my mistake. The only thing that I have known Doctor Freeman to take was a sleeping powder, which he took before retiring, when I first went with him, which is called veronal.

Q. Did that require any prescription to obtain? A. No, sir.

Q. That was obtainable by anybody who wanted to buy it? A. So long as you had the money.

Q. What was his habit, when you first went there, with respect to the use of veronal? A. When I first went there? Why, he used to take veronal at night before he went to sleep.

Q. Did his use of liquor increase, or decrease, or remain the same, during your stay there? A. Why, it decreased considerably.

Q. How did that come about? A. Why, by a little encouragement and talking to, when I first went with Doctor Freeman, I tried to dissuade him from keeping any liquor on hand, and that if he needed any, to go out to get it. In that way I

figured he soon would lose a desire, and he got so, after signing his agreement with Mr. Watson, and found out the agreement was going against his wishes, he made up his mind to taper off on his drinking, so May 15th, 1923, when he resumed the business again, he could prove to his relatives and his old-time friends that he didn't drink any more. That was his one ambition.

Q. What have you to say with respect to the use of veronal by him? A. Why, for the first two or three months that I was with him, he took the veronal, and then he tapered from two tablets down to about a half a tablet, and towards the last three months I don't believe he took any. I didn't see him take any, didn't see him buy any, and he claimed he didn't take any.

Q. Now, so far as you know, did he use any other drugs at all? A. No, sir. Never even mentioned using it. He mentioned that years ago he used to —I don't know how many years ago, but he mentioned he had used strychnine for his eyes but that was before I knew him.

Q. What was the condition of his eyesight? A. Varying. Some days he could see—

Q. Just a moment. Now, state whether or not the Doctor was addicted to the use of any drugs? A. Not to my knowledge.

Q. How often did you see him? A. Every day.

Q. How was the Doctor's eyesight? A. Why, it was varying. Some days his eyesight would be exceptionally good; then again his sight would sort of dim down, but it was never so that he couldn't see objects and get around himself, or anything else. When his eyes came to their bright points, he could pick a newspaper up, read the headlines and second lines, that I know, for he has read them to me. He looked at the pictorials in the Sunday

newspapers, and at times we used to play cards, both pinochle and penny ante.

Q. What you have just said was all true of the year 1922? A. While Doctor Freeman was living with me.

Q. Did you drive him about much? A. Yes, sir.

Q. What have you to say with respect to his memory of places? A. Why, he never traveled through the State of New Jersey, by automobile, that is, only except during the year or so until I went out running with Doctor Freeman. So, therefore, the State was practically new to me, and Doctor Freeman wanted to go a certain place, and he would tell me just what roads to take, where to make a turn; and before we would get to a certain place he would say, you will have to go over a bridge now, or look out, there is a hill ahead, over roads that I had never been before.

Q. Did he ever say anything to you with respect to the Breen family, or any of them? A. Numerous times.

Q. What, and when? A. Well, I can't recall the exact words. Sometimes they were very abusive, and other times it was just telling about good work that had been done, but it was shortly after he came back from Trenton, before I was employed by him, that he first made the first crack to me, was that because Mrs. Freeman had him committed to the insane asylum, everybody thought he was crazy and they could do him, and by personal observation and private investigation he had, he found that his most trusted friends were doing him. Now, what he meant by that I don't know, but that is practically the words that he used to me.

Q. Did he say anything about the number of them that were being employed? A. He did. He had me figure up one time about how much a year they were approximately getting, that is, the family.

Q. Have you any recollection about how much it figured up? A. It run up into the thousands.

Q. Did he at any time speak of what he intended to do with them, or with respect to them? A. Yes, sir.

Q. What? A. Before he signed, or turned the business into Mr. Watson's control, he started to eliminate some of the family, but as soon as Mr. Watson got back in control again he fired the other man that Doctor had employed, and re-hired the Breens that Doctor Freeman had fired.

Q. Who did that? A. Why, Mr. Watson. And Doctor always stated that as soon as he resumed control of the business again, he would eliminate all of the Breens; that possibly, he didn't say he would fire, or he would keep, but he said, possibly I will keep old John.

Q. Did he ever say anything with respect to whether he was allowed any voice in managing his own business? A. Why, a few things came up like that.

Q. What? A. Why, one time he came from the office, I was not in the office at the time, but when he came out of the office and came up to the house, he said, my goodness, he said, I can't even sit in my own office, they told me to get out and stay out. And another time he received an authorization through Mr. Watson to transact a certain piece of business, and then Mr. Watson went and claimed he did not do that transaction, and there were two people present when Mr. Watson agreed to it. That is what got Doctor Freeman sore.

Q. What would be the effect of this veronal, or whatever he took? A. I am not a medical man, and I cannot state.

Q. What is that? A. I cannot state, because I am not a medical man.

Q. After he took it, what, if anything, did you notice? A. I never seen any effect, outside of he claimed it made him sleep better.

Q. He claimed it made him sleep better? A. He claimed it did. I couldn't state, however.

Q. Did he ever say anything to you with respect to his life with Breen, before you came to live there, what sort of a time he had? A. Why, he did, and he didn't. He passed some remarks, and some that he didn't, and some that I seen how he lived. He didn't have to tell me.

Q. What did you see about it? A. Why, I have been up into the house. Doctor Freeman may lay down in his room and fall asleep, a meal would get ready, and instead of calling him to tell him that his supper, dinner, or breakfast might be ready, they would let him sleep. When he did wake up and came out and asked if the meal was ready yet, they would tell him, oh, you slept through the meal, go on back to bed. I was present and heard that.

Q. You are speaking now of the family, or living with Mr. Breen? A. Yes, sir. I don't know anything about his life with Mrs. Freeman.

Q .What I refer to was his life with Mr. Breen? A. Yes.

Q. What sort of a glass did the doctor drink his liquor out of? A. A small whiskey glass; I guess small. I am not very familiar with them. I have the glass.

Q. I show you a whiskey glass and ask you if that is the one that he used to use? A. Yes, sir; for there was only two glasses in the house like it. Anything outside of big water glasses. The only two small glasses in the house.

Q. There has been some testimony, I think, that he used to drink a water glass full of whiskey. A. He might have, but I never seen it.

Q. What glass have you seen him drink out of,

that glass I just showed you? A. He generally took this glass, and he would fill it almost full, and then pour it into a water glass, and put water in it.

Mr. Strong: I would like to have this glass marked in some way for identification.

Mr. Watson: I think we can agree that it is an ounce and a half glass. It is less than two.

Mr. Strong: I do not know whether it is an ounce and a half. I should doubt it very much.

The Court: It is a small whiskey glass.

Mr. Strong: Unusually small whiskey glass.

Mr. Brown: It is just two inches high. It is an inch and three-quarters high, and it is an inch and a half in diameter on top, and on the bottom it is about three-quarters of an inch.

Q. State whether or not it is a very thick glass?

Mr. Brown: I would not say that. I think it is a very thin glass.

Q. There was a colored woman named Lettie Patterson, wasn't it, there? A. There was.

Q. Did she, or not, ever furnish the doctor with liquor? A. I don't know whether she furnished it or not, but whenever he got any she used to take charge of it.

Q. What would she do with it? A. Why, he used to give it to her, whenever he got it, that is, if he got it in bulk, a bottle or so, he would give it to Lettie Patterson and tell her to take care of it, and if he wanted a drink he would tell her, and then she would bring and pour a small amount in the glass.

Q. What would she do with that small amount? A. Give it to Doctor Freeman, and he would take that glass and pour it into a water glass, and then put water in the top of it. Dilute it.

Q. Did Lettie ever take any herself, do you know? A. I can't say how much she took, but she used to take it in her coffee every morning.

Q. As to Lettie, while we are on that, state whether or not, since this litigation was begun, Lettie received any money payment from any of the Freeman family? A. She did.

Mr. Watson: I object to that. Unless this witness was present.

Q. How do you know that? A. For I cashed the check; I signed the check, under authorization from Lettie Patterson, because she cannot write, and she had went down to the Metuchen National Bank and made a notation down there that I was to sign all her checks, and I signed the check and cashed it for her, for ten dollars.

Q. Do you recollect whose check it was? A. Sallie Freeman.

Q. Was there any radio apparatus in the doctor's establishment? A. There was.

Q. And when? A. Ever since I have lived there.

Q. Who operated it? A. I did.

Q. Was the doctor fond of that? A. Very much so. I build radio sets on a side issue, in my spare time, and I was working on an improvement in radio, and Doctor Freeman was very much interested in it, and had me explain all the fundamental principles of wireless, and it surprised me very much, a week or so later, by coming right back at me, things a little mistake I made, and telling me about it.

Q. Who supplied that radio? A. I built it and installed it myself.

Q. There was some testimony in the case with respect to a letter that Doctor Freeman sent to Senator Frelinghuysen, to obtain entrance to some German ships. A. There was.

Q. Do you know what his purpose was? A. I do.

Q. What was that? A. He was to go aboard some of the German vessels, for he had heard, through some party or other, that there was very good German beer to be obtained on these boats.

Q. Did Senator Frelinghuysen respond to his letter? A. He did.

Q. What did he do? A. He sent him an authorization so he could get passes to go aboard the boats.

Q. Did he get the passes? A. He did. Here is one of the blank ones that was left, on board the Bayern.

Q. This is one of the passes that he obtained through Senator Frelinghuysen's intervention? A. Yes, sir.

Q. And which was not used, is that it? A. That is one of them that was not used. You have to fill the date, and your name on there, and then it is good.

Mr. Strong: We offer this.

Q. Did he go on any of the German boats? A. He did.

Q. Do you know whether he got any beer on board of them? A. He did. Three glasses.

Q. On each occasion? A. No. He was only on the boat this one occasion. He was on the boat two occasions, but he only got beer one occasion, that is the only time he drank when he was on the boat.

Q. Why didn't he get beer the other occasion? A. Why, it was so hot, and the beer was warm, so he didn't take any.

(Pass entered in evidence and marked Exhibit P 11, 6/12/23.)

Q. Now, when you first went to Doctor Freeman's, about how much whiskey did he drink during a day, as nearly as you can tell? A. Why, I can't tell exactly. It varied. I have seen him have a pint bottle in the morning when I first went over there, and in the afternoon the pint bottle was empty. Whether he drank it all or not, I don't know.

Q. What evidence did you see, if any, of a reduction of the amount of whiskey later on? A. Why, his condition. He wouldn't drink. He would start and drink water, and that is something, before I went to work for him, he had made a remark that water would never pass his lips, and I remarked on it, and then he showed me that instead of getting a pint of whiskey, he would only get maybe a half a pint, and then he cut that down, and only once in a great while would he have a small bottle on hand.

Q. He did then, as I understand you, very largely cut down the amount of liquor that he consumed? A. Oh, yes.

Q. There was some testimony in the case, I think, as to his having fallen asleep on one occasion, and lighted a bed sheet with a cigarette he had. A. That happened before I was there, but I seen the burned mark.

Q. How much of a mark was it? A. Why, the sheet had a little hole burned in it, well, it was a big hole, about five or six inches in diameter, and the top ticking on the mattress was burnt through, but the mattress was not burnt, the inner lining of the mattress was not burnt.

Q. Do you know whether Mr. Watson forgot, in his testimony the other day, about ever drinking

with Doctor Freeman, or not, any whiskey? A. I think he must have.

Q. Why? A. Because he drank with Doctor Freeman, for I poured the drink out that Mr. Watson drank, out of one of these glasses.

Q. Can you tell about when that was? A. I just do not remember the occasion, but Mr. Watson came up to see Doctor Freeman, they were sitting in the dining room. I had the radio going, Mr. Watson commented on it, and so did Doctor Freeman, and I poured out a drink of kummel for both Doctor Freeman and Mr. Watson, and Mr. Watson remarked that it was very good stuff, that he was a connoisseur of liquor, I don't know just exactly what he did say, but it was something like that.

Q. Kummel, was it? A. Kummel.

Q. That is a whiskey, is it? A. Why, it isn't a whiskey, but it is an alcoholic beverage.

Q. Did anybody ever read to the Doctor? A. They did.

Q. Who was that? A. Why, Reverend Bogart. Doctor used to like to go up to his house every day, or possibly three or four times a week, sometimes he wouldn't miss a day, and he would have Dominie Bogart read to him the editorials out of the Tribune and the Times. He did it more to change his routine of staying around the house, or just riding in the car, and at the same time he said it helped the poor old guy out, because he was too old to preach any more.

Q. Who used the word "guy"? A. Doctor Freeman, in reference to Reverend Bogart.

Q. Did the Doctor seem interested in what was read to him? A. He did. At times he didn't like to go there, because Reverend Bogart, he was afraid to ventilate his house, as Doctor Freeman put it, and it was very stuffy inside, and in the winter time

it was very cold. Doctor Freeman used to have to sit with his coat on, but he didn't like to hurt Reverend Bogart's feelings by refusing to come up there.

Q. Did he ever ask you to watch newspapers for him, or any of the family? A. Why, in the evening, sitting up in the house, if I see something of special interest I would just read it out loud, the same as I do right now, where everybody in the house can read.

Q. State whether or not he seemed interested? A. Very much so.

Q. Did the Doctor ever say anything to you with respect to his family? A. He did.

Q. What? A. Why, at times, he kept asking all the time whether I have ever seen Mrs. Freeman out, and what she looked like, and if she was getting to look any older, and who was with her, and everything else. And then again he would tell me that the only thing he had against Mrs. Freeman was her sending him to Trenton for the insane. He said that he had got drunk and disorderly, as possibly he did at the house, he wouldn't care if she had him confined in jail for six months, but committing him to the insane asylum was more than he could stand.

Q. What if anything did he say with respect to his sisters? A. Why, that they very seldom took—they didn't take an interest in him, and the only one that came to see him while he was in Trenton was his sister Sallie. I believe that was the one. But then she wasn't so very fond of him at that, because she never wrote to him. The other sisters sent him a card around Christmas time, or a holiday, or something like that, but they never came out to see him, excepting this, while I was with him, excepting twice, when I went in and got one of the sisters. That is my mistake. The other time one of the other sisters came by train.

Q. You went in and got them once? A. I got one sister one time. Doctor Freeman had a touch of the grippe, and I thought being he was sick in bed he might be glad to see some of his relatives. That was before I found out his attitude towards his relatives.

Q. During all this time that you worked for—or you were at Doctor Freeman's, what seemed to be the condition of his mind? A. Why, very brilliant. He was a highly educated man, he could talk on any subject, and he would remember, if you said something to-day, in possibly two or three weeks later you would change that statement, he could tell you almost word for word what you had said. And at times we had quite a lot of arguments in connection with different subjects, especially on electrical work. We started to talk on the elements of electricity, he would argue for the old school way of putting it, and I would argue for the new school, and the result is we would have some very interesting sessions.

Q. What have you to say of his physical condition while you were there? A. Why, it was improving very much.

Q. What did you notice about it? A. Why, when I first went with Doctor Freeman he told me that he hadn't walked one thousand yards in three or four years, or maybe more; that he always was riding. Well, last election day, general election, Doctor Freeman walked down town from the garage, he walked down town three times. He went over to New Brunswick on the bus, all by himself, did the shopping, and carried the bundles home, for I was on the election board.

Q. What was the Doctor's idea, if you know, in having himself appointed deputy sheriff? A. I do not know. He was talking to some of the Borough

officials, I do not know what conversation he had with them, for I did not hear it. But after he got through talking with them he told me that he was going to try to be appointed a special deputy sheriff. It would help him, he said, being we were riding the roads a whole lot, and there was quite a lot of accidents, and such things. My personal idea was—can I say my personal idea?

The Court: No, you may not.

A. That is all.

Q. On the occasion when Mr. Davey first came to Doctor Freeman's residence in Metuchen, what was the Doctor's condition on that date? A. Why, he had been out, and he walked down to the lumber yard himself that day and looked around, because it was a short time before that that somebody had stole some lumber and coal from the yard, and he took a walk around to the yard himself.

Q. State whether or not his mind was perfectly clear on that occasion? A. As clear as it has been right along.

Q. Do you recall the next time that Mr. Davey came there, I think in the evening, or he was there in the evening? A. I remember when he came in the evening, but I don't know whether it was the next time, or what. I just don't remember.

Q. What was the Doctor's condition on that day? A. The same as it has always been.

Q. Well, by that you mean what? A. Why, he has been just as good condition as he has ever been in, that I have seen him.

Q. Do you remember the occasion, the next day, I think it was, when you and Mr. Davey went to Mr. Watson's office? A. I remember that very well.

Q. What was the Doctor's condition at that time? A. Why, his condition was very good, but

he was so very angry that Mr. Davey cautioned him not to say a word.

Q. You three were together practically all that day, weren't you? A. We was.

Q. Was there any change in his condition at all during that day? A. No, sir.

Q. I think you drove the Doctor to Mr. Davey's home? A. I did.

Q. On several occasions? A. I did.

Q. What was the Doctor's mental condition on those occasions? A. Very good. On the way up we talked of a good many subjects.

Q. Was it as good as on these other occasions you have mentioned? A. It certainly was.

Q. Did you see any change in his condition at all, while he was at Mr. Davey's house? A. No, sir; outside of a more satisfied look on his face.

Q. Do you know anything about the acceptance of that bond from Mr. Watson? A. I do.

Q. What were the circumstances, if you can state? A. That was the day that Mr. Watson had the drink with Doctor Freeman.

Q. What if anything was said? A. Why, nothing, only Mr. Watson tried to explain why, and as Doctor Freeman took it, and from what I understood, it was a very plausible explanation of why the bond had not been ready before, so Doctor Freeman accepted the bond, and later on I have learned under Mr. Davey's authorization.

Q. Was the Doctor interested in the construction of a trestle for Manning Freeman & Son? A. Very much so.

Q. Do you know whether he kept informed as to the details of that? A. He did, and when he received the specifications, a copy of the specifications from Mr. Watson, he went down and climbed on top of the trestle himself and inspected it, and

he had me read the specifications over to him, and as I read them off he inspected each part of the trestle, and he made me make a little notation where the railroad company had made a mistake, and should have put a new rail in, where they didn't call for it.

Q. State whether or not he conferred with Mr. Watson during the period of the trusteeship? A. He did. He had an agreement with Mr. Watson, an appointment with Mr. Watson for every Monday morning, so Mr. Watson could explain to him all the happenings of the business, but through work Mr. Watson had he couldn't always keep his appointments, and that got Doctor Freeman peeved, and later on he stopped coming to Mr. Watson, because he had Mr. Davey keep him informed of the different happenings, Mr. Davey and Mr. Higgins.

Q. Do you know how he came to employ Mr. Davey? A. Why, I heard after he had met Mr. Davey—

Q. Never mind, if you heard it. Did you have any knowledge, before this will was executed, that you were to be a beneficiary under it? A. No, sir.

Q. Did he ever say anything about what he was going to do for you in his will at all? A. He never said anything—he mentioned that he was going to change his old will, but he never mentioned who for.

Adjourned until 2:00 p. m.

Afternoon Session, 2:00 p. m.

Q. Mr. Mohring, did you ever at any time, either directly or indirectly, attempt to have Doctor Freeman make his will, or any provision of it in your favor, or in favor of anyone else? A. No, sir.

Mr. Strong: Cross examine.

Cross Examination by Mr. Brown:

Q. Mr. Mohring, you say that you were hired by the company as the repair man? A. Yes, sir.

Q. How many automobiles did the company have? A. Two trucks, and at that time three light automobiles.

Q. And they kept you busy repairing? A. Not always.

Q. How many miles do you think you drove the car of Doctor Freemen? A. Unless the speed ometer slipped and jumped a few miles, or so, why, the way I figured it out was around one hundred thousand miles.

Q. In how many months, fourteen months? A. In the fourteen months I have been driving for him.

Q. Then you must have been driving a great deal? A. Last Summer we did.

Q. That would average two hundred miles a day? A. During the month of June and July we would average on some days one hundred and fifty to two hundred miles, and some days a little more.

Q. One hundred thousand miles in fourteen months, that would be about two hundred miles a day. During the time that the Doctor stayed with you he was very ill, wasn't he? A. No, sir.

Q. At no time? A. He was sick or ill about one week, that is, altogether about one week.

Q. Wasn't he confined to his bed at times for long periods? A. No, sir.

Q. He would get up every day, would he? A. Excepting the time that he was down with the touch of the grippe.

Q. You drove the Doctor everywhere he went, did you not? A. Nearly. Not altogether.

Q. Who did the driving? A. I did the driving, but once in a while when I was away, or had a day

off, or something, one of the others from the office came up and drove him.

Q. Senator Strong asked you how you came to get Mr. Davey. How did you come to get him? A. I did not get him.

Q. Who got him? A. I have learned since that my father recommended and brought Mr. Davey down.

Q. How did your father know about him? A. About what?

Q. About getting a lawyer for Doctor Freeman? A. I only know what I have heard since, that Doctor Freeman requested him to.

Q. Well, you were very close to the Doctor, were you not? A. In certain things.

Q. Anything pertaining to the will you were not close to him? A. Not that, or some parts of business either.

Q. Well, particularly the will, he didn't mention a thing about it? A. He certainly didn't.

Q. Didn't he tell you how kind you were to him, and how he appreciated your work? A. The only time he ever mentioned anything about appreciation was that every time when he was driving with me he felt perfectly confident and safe in the car.

Q. Would he say that? A. That is the only time he ever mentioned anything like that.

Q. He did speak to you about a will, nevertheless, did he not? A. He did.

Q. When was that? A. Why, along about the time that he made the agreement with Mr. Watson, he said that he had made a will, and that the ones mentioned in it didn't prove trustworthy to him, and he was going to see that they were not remembered in it.

Q. Now, while they were preparing the memorandum for the will that was made, or spoken about

at your house, you knew about that, didn't you? A. I knew they were preparing some sort of a business arrangement, some business paper, but I was not present and did not know what the contents, or what it was about.

Q. Why was it that you didn't know what was going on? A. I didn't follow Doctor Freeman around every step he took.

Q. Well, it was at your house? A. But all my spare time, when Doctor Freeman did not want me, I was busy downstairs, working on radio.

Q. Well, on a Sunday would you work on radio? A. I certainly did. Nearly every Sunday. Evenings too, when I was off.

Q. You knew why you were going to Mr. Davey's place, didn't you? A. Only on business.

Q. You never heard anybody make any expression about a will being made? A. No, sir; I did not.

Q. So that when you learned that the Doctor had died and left the major part of his property to you, you were very much surprised, were you not? A. I certainly was.

Q. You did not expect such generosity as that, did you? A. Didn't even expect to be mentioned.

Q. You had been paid your salary right along? A. Up until the time Doctor died.

Q. And the Doctor also paid for his board at your house? A. He did.

Q. And he paid for everything that he got at your house? A. I don't understand what you mean.

Q. Well, anything that he got there, that was of money worth, he paid for it?

Mr. Strong: That is a pretty general question.

A. I can't answer that without knowing what you do mean.

Q. You didn't give him anything for nothing, did you? A. Certainly.

Q. What did you give him? A. Anything that I had Doctor Freeman was welcome to, the same as any other of my friends.

Q. What is that? A. I say, anything that I have any of my friends are welcome to.

Q. You didn't treat the Doctor any more free about things that you had, than you did your other friends? A. Yes, I thought a whole lot of Doctor Freeman. He used to call me son, and I thought just as much of Doctor Freeman as I did of my own father.

Q. You say that the Doctor was improving in health from the time that he came to your place? A. He was.

Q. And your mere suggestion to him that he should cut down his drinking resulted in him changing his drinks from whiskey to water? A. I didn't say he changed them from whiskey to water.

Q. What did he change them to? A. He cut down the quantity, and diluted the whiskey with water.

Q. He had whiskey every day when he first came to your house, did he not? A. He did.

Q. How many times a day? A. That I do not know.

Q. Well, as far as you do know? A. I can't honestly answer that, because he might have taken some while I was downstairs, or out of the room.

Q. You mentioned about one occasion where there was a pint of whiskey gone in a half a day. A. Yes, sir.

Q. Would the Doctor drink in his room, or out in the main part of the building? A. Sometimes

he would take a drink in the kitchen or dining room. Other times in his room.

Q. You never saw him intoxicated? A. I have.

Q. Where? A. At the house.

Q. How often? A. Why, four or five times.

Q. In fourteen months? A. Yes, sir.

Q. Who purchased the liquor for him? A. I do not know.

Q. How would he get it? A. I can give you an explanation that Doctor Freeman gave me, if that will do.

Q. Well, what is it you know about it? A. I inquired one day where he got it, and he said from Iselin, and he laughed, and he said, what do you mean, and he said, well, it just comes in the garage. However, he got it, somebody brought it and left it for him, and he kept his business to himself, of where he got it.

Q. How much would he get at a time? A. Sometimes a pint bottle, sometimes there would be a larger bottle.

Q. Get as much as five gallons at a time? A. No, sir. At one time, before I was with him, he had a five gallon bottle that came there, and at his direction I emptied the bottle in the sink.

Q. Emptied what bottle? A. This five gallon bottle. Doctor Freeman thought it wasn't liquor, it was something else, and he was afraid to touch it.

Q. But he did keep drinking daily all the time until he died? A. A certain portion of it.

Q. Who put him to bed at night? A. He put himself to bed.

Q. Where was this colored lady? A. She was the cook, and she helped clean the house, keep the house clean.

Q. Well, she would put the Doctor to bed at night, would she not? A. No, sir. He put himself to bed.

Q. Would she be there? A. Once in a while, at times, she was away, she went to visit her friends in a day.

Q. Usually, she put him to bed at night, and gave him a drink? A. She did not put him to bed. He put himself to bed.

Q. Did he have liquor around the bedroom? A. Once in a while, that is, up to, I guess, the first three months I was with him, he used to take some in a glass, and set the glass on a chair by his bed, and during the night some time, I don't know whether he drank it all at once, or just sipped it during the night, but he did that for the first three or four months that I was with him.

Q. That would be every night? A. For the first three or four months.

Q. What kind of a glass was that? A. That was a glass, oh, I can't explain it; it wasn't even half the size of that water glass. There was a funny taper to it.

Q. So that he would lie down and go to sleep, and he would have by his bedside a glass of rum, whiskey, is that right? A. Yes, sir.

Q. And he would take the veronal before he went to sleep? A. Sometimes.

Q. And when you would see him next after that the veronal was gone and the whiskey was gone? A. Well, I didn't search in his room to see whether it was gone or not.

Q. Where would the Doctor drive to each day for the two hundred miles? A. We drove all over the State of New Jersey, all through the Orange reservation, over through the mountains, all around the State. Sometimes we went to New York, or all along Long Island. Sometimes we would go down to Philadelphia for a ride.

Q. Did you see the Doctor's ring before he died? A. What ring was that?

Q. The ring that he wore? A. The ring that he wore?

Q. Yes. The diamond ring? A. Diamond ring?

Q. Yes. A. I never seen a diamond ring with the Doctor.

Q. What kind of a ring did you see? A. A jade ring.

Q. Where is that? A. I do not know. It was on his finger at the time of the funeral.

Q. Did you see his watch? A. I have seen it.

Q. When did you last see it? A. I cannot place that time exactly.

Q. Why can't you? A. Because I have no definite recollection of the date.

Q. Can't you tell within a day or two? A. No. It was some time last Summer. Possibly in the early part of the Summer.

Q. How long before he died was it that you last saw the watch? A. Months.

Q. What became of the watch? A. He took the watch, and I believe another ring that he had, and he passed the remark that he was going to dispose of them.

Q. Yes. A. Well, the watch I know, and I am pretty sure the ring went the same way; he went into Chinatown.

Q. Who went into Chinatown? A. Doctor Freeman and myself.

Q. When was that? A. I cannot remember the exact occasion. We had been into Chinatown three or four occasions.

Q. What would you go to Chinatown for? A. Chop suey. Doctor Freeman had some Chinese friend of his that he had known for years ago, twenty or thirty years ago he knew him, and went in to see this Chinee.

Q. And you had chop suey with him? A. Yes, sir.

Q. Did he have anything to drink? A. No, sir; not there.

Q. Did you hit the pipe? A. Who, me?

Q. No, but the Doctor? A. No, sir; not that I seen, and I was alongside of him all the time.

Q. Didn't you have the Doctor's watch on your person at the funeral? A. No, sir.

Q. You were with the Doctor all the time, now tell what he did with the watch and the ring? A. As I stated before, he took these two articles, and he passed the remark that he was going to dispose of them. We went into Chinatown, he saw this Chinee, he talked with him, and after that I have never seen the watch, nor I haven't seen the ring. He disposed of both.

Q. Where? A. As I believed, in Chinatown.

Q. Did you give them to those people? A. I cannot answer that question.

Q. The ring that you speak of was a diamond ring, was it not? A. No, sir.

Q. Your father is a watch maker, is he not? A. He is.

Q. You say that Lettie Patterson gave you charge of her account too in the bank? A. She did.

Q. How long had you been exercising dominion over her account? A. Why, she needed some money, and her money was in the Rahway bank, she had the money transferred to the Metuchen bank, and drew it out from there, and I handled the account for her, and she paid her bills with it.

Q. There was no reason why Lettie Patterson should testify about the Doctor's condition that would be against your interest in this case? A. No, sir; none that I know.

Q. You and she were friendly? A. Very much so, until the day she left.

Q. She was friendly with you, and you with

her? A. Yes, sir. She has called up my house since.

Q. This check that you speak about cashing, how big was that? A. Ten dollars.

Q. Lettie knew that she was the beneficiary under this contested will to the extent of a thousand dollars, did she not? A. I don't know whether she knew it or not.

Q. Didn't you and she and the rest of you talk about this will? A. The only talk that I made was that I expressed my surprise over the way the will went.

Q. Well, she was in the house when the will was offered for probate? A. She was.

Q. Living with you, is that right? A. She was.

Q. Now, do you mean to say that you didn't talk about the terms of that will? A. No, sir.

Q. Didn't talk about the Doctor's condition at the time he made the will? A. I can't even tell you the contents of the will right now.

Q. You can't? A. No, sir.

Q. It didn't interest you very much, did it? A. It did, but I never seen it, and never had it read to me.

Q. And you never heard about it? A. There was all kinds of rumors going around, and I don't know what to believe.

Q. Well, didn't your lawyer tell you about it, and didn't you hear in this case about it? A. All my lawyer told me was that I was mentioned as the chief beneficiary and executor of the will. What was left I do not know.

Q. For over one hundred thousand dollars almost in value you knew you were going to be benefited if this will was probated? A. Only from rumors.

Q. Well, you knew that? A. Only from rumors.

Q. When Lettie, or Miss Patterson testified in

court here, she was living with you then, was she not? A. She was. I take that back. Not when she testified she was not.

Q. This ten dollars that you speak of, what was that sent to Lettie Patterson for? A. A letter accompanied it, which I read to Miss Patterson, and I just forget the wording of it, but it was that Mr. Breen will give you ten dollars from me to use, and Mr. Breen, that is young John Breen, he brought the letter up with this check in it, and handed it to Lettie Patterson in person, and when he went out she handed it to me and asked me to read it to her.

Q. There was nothing secret about it? A. Absolutely not.

Q. There was no promise or reward of any kind? A. Not that I seen.

Q. Wasn't the ten dollars in it to pay her fare to see Miss Freeman in New York? A. It didn't say so.

Q. As the result of getting the ten dollars she went in there, didn't she? A. Not on that ten dollars, because she didn't cash the check until she came back.

Q. Who paid her fare in? A. She had the money.

Q. Where did she get it? A. From her pay that she had received.

Q. One purpose of her going in there was because Miss Freeman couldn't come out? A. I don't know why she went in.

Q. Do you mean to say that after this contest had arisen, and Lettie Patterson left your household, one of the witnesses, that you didn't make it your business to find out why she went to New York? A. Why, after she went in New York, she came back and she was staying at my place until three days before she came in court and testified,

and then she said she was leaving to stay with her niece for a few days in Rahway.

Q. For the first three months then the Doctor had his whiskey at night and his whiskey in the morning? A. Yes, sir.

Q. And as he drove around through the day I suppose he would get a drink now and then? A. Once in a while.

Q. And he would have drink in the automobile? A. Not always.

Q. Well, most of the time he carried a bottle? A. No, not most of the time. Once in a while he had it in the automobile.

Q. That kept up until he died? A. No, sir.

Q. You knew that the Doctor had been confined to several institutions, for the cure of his habits? A. I heard about it. I didn't know it.

Q. And you knew it was next to impossible to change his way, and had been before you met him? A. Well, he changed it.

Q. And he did so just by one little suggestion from you? A. Oh, no, not by my suggestion.

Q. You say that the Doctor improved before he died? A. He did.

Q. When did he take the sudden turn from bad to worse? A. I don't understand you.

Mr. Strong: Do you mean from bad to worse? He said he improved.

Q. Well, from the good condition, to his death, when did that change occur?

Mr. Strong: Just what kind of a change?

Mr. Brown: Change in his physical condition.

Mr. Strong: First you said improved, and then you say, when did he change from bad to worse.

Mr. Brown: I will withdraw the question and put it this way:

Q. You testified that the Doctor's condition improved? A. I did.

Q. Up to the time of his death? A. Yes, sir.

Q. Well, wasn't there any change from his improved condition to the time of his death? A. No, sir; he looked perfectly healthy and everything else until within fifteen minutes of the time he died.

Q. When was it he died, in the night time, or day time? A. Day time.

Q. Were you there when he died? A. No, sir.

Q. Who was there? A. That I can't say, not being present, but I know my wife was present, Miss Patterson, and I couldn't tell you if anybody else was present or not, for I was not there.

Q. Now, you say that in addition to the whiskey that he drank in the automobile, and the whiskey he drank during the day, and in the morning and in the night, that sometimes he would get it in bulk, is that right? A. I did.

Q. How often would that occur? A. Once in a great while.

Q. Well, what do you mean by that? A. There was no regularity about it at all.

Q. The bulk whiskey would come in and he would give it to Lettie? A. He would give it to Lettie Patterson, and she would take it and put it in her room.

Q. You didn't have control of the whiskey at all? A. No, sir.

Q. You drank, didn't you? A. Very seldom.

Q. You drank with the Doctor? A. No, sir. Once in a great while I would take a little drink, but I am not a drinker.

Q. You would pour the whiskey out for the Doctor, didnt' you? A. Very seldom.

Q. Why would you pour it out for him? A. Well, like the time somebody may come up to the house, and there would be a little bit in the bottle, and Doctor would say, pour out a drink for the gentleman, why, I might do it for him.

Q. When you made your several trips to Belleville, didn't you know what the Doctor was doing up there at that time? A. I did not. Doctor Freeman told me that he was working on this agreement of his, and the deeds to the property.

Q. Who told Mr. Davey that he ought to keep away? A. I didn't know that until I heard Mr. Davey say so.

Q. Can you tell now why your father got Mr. Davey for the Doctor? A. I cannot.

Q. You mentioned something about the deputy appointment, that the Doctor wanted that because he was out late at night, is that so? A. Yes, sir.

Q. Why was he out late at night? A. I can't answer that unless I give my personal belief, and I can't give that.

Q. Why did he need an appointment because he was out late at night? A. I can't answer that. I can give you my own belief of it, but I can't answer the question, for I don't know.

Q. What was he doing out late at night, do you know? A. Sometimes he would start out about five o'clock to take a ride up through the reservation, for an evening's ride, and it would be pretty late coming back.

Q. Is that what you mean by being out late at night? A. Yes, sir. We were never out much later than half-past ten at the most. Once in a great while it exceeded that time.

Q. You say that when Mr. Davey came down the Doctor was very clear in his mind? A. He was.

Q. And every time Mr. Davey saw him he was clear in his mind? A. To my knowledge.

Q. And the day that he went to Mr. Watson's office he became very angry and remainded angry all day? A. He was pretty angry.

Q. Were you with the Doctor the day he made his will, on the 12th day of July, 1922? A. I was not with him when he made the will, but I was up in the place, in the same house, for I drove the car that he rode in.

Q. You say that the Doctor walked out unassisted on a trestle? A. He did.

Q. And examined the trestle. How high was the trestle? A. I should judge about forty or forty-five feet high.

Q. There is just a narrow walk, isn't there, along the trestle, on top of it? A. No, sir. It is very irregular. In some places the sheathing is all off, and you have got to watch your step; other places the walking was fair; and at the time he went up there was a coal car on the trestle, and he had to work his way around that coal car.

Q. Gave him how much room, about a foot or so? A. I should judge about two and one-half or three feet, on a slant.

Q. On a slant? A. A slight pitch.

Q. Pitched from the— A. Pitched from the car off, a slight pitch.

Q. That is where the coal would strike and run off, is it? A. No. That is the sheathing.

Q. Wood or metal sheathing? A. Wood.

Q. The Doctor walked along the trestle for how far? A. The full length of it. And he walked from the steps leading to the trestle from the ground, to go up to the front end, and he walked up the steps, all down the length of the trestle clean to the point of the switch, the switch point.

Q. I suppose you mean by that the ladder that leads up? A. It is a stairway.

Q. It is a stairway leading up? A. It is a stairway leading up.

Q. And he did that all unassisted? A. He did.

Q. That was shortly before his death? A. That was around the first of the year, some time around the latter part of January, or February, I should judge.

Q. Did he crawl out, or walk out over the trestle to examine the tops of the timbers and the cross pieces? A. You can't very well.

Q. What did he do in the way of examination that you speak of? A. Cross timbers under the rails, the rails themselves.

Q. Yes. A. And the runners.

Q. Yes. A. Sheathing, switch points.

Q. The Doctor walked on those cross pieces? A. Well, there is plenty of room for walking on them.

Q. That very day that the Doctor walked out on that trestle he had the specifications with him, didn't he? A. He did.

Q. He couldn't read them, could he? A. I don't know.

Q. Why didn't you read them for him? A. I did.

Q. Wasn't that because he couldn't read them? A. That I cannot state.

Q. How did you come to read them then? A. Because he said, you read them while I look over the things, and as I read off each item he inspected it.

Q. Did you go up on the trestle with him? A. I was up on the trestle. I went up from the other end and walked down and met him on there.

Q. So that in mid-winter, the Doctor up on the trestle, was the place you had selected to read the specifications? A. That is where the specifications called for to look it over, was on the trestle.

Q. You didn't say to the Doctor that it was dan-

gerous for him to go up there? A. He knew the trestle. That was the first time that I was ever on the trestle.

Q. You had all you could do to walk on there, didn't you? A. No, sir. There was plenty of footing.

Q. So that as far as you are concerned you did nothing for the Doctor by way of inducement, or by promise, or in any other way, that he should leave to you his property after his death? A. None that I know of.

Mr. Strong: Did you hear the question? I think repeat the question.

(Question repeated by stenographer.)

Mr. Strong: I misunderstood the question.

Q. When you were accompanying the Doctor on those trips to Chinatown, and seeing all this liquor that you have mentioned, and learning that his business had been taken over by Mr. Watson, why didn't you communicate with his sisters as to all that was going on? A. I didn't have to. Mr. Watson had already communicated with them.

Q. Why didn't you speak to some of Doctor Freeman's friends around Metuchen, as to what was going on? A. Doctor Freeman asked me, in fact he told me what business he happened to mention to me, I was to keep to myself, and not go throwing it around the town.

Q. Didn't it seem singular to you, that after living in Metuchen all his life, that Doctor Freeman should select the strangers, that is you, who knew him but a short while? And a strange lawyer, strange witnesses, and have the work done out of

town? Didn't that seem to you a singular condition? A. No, sir.

Q. Doctor Freeman was a man who knew his own mind, you say? A. He did.

Q. And he was a fearless man? A. He was.

Q. And, notwithstanding that, he didn't want anybody about Metuchen to know what he was doing? A. He did not.

Q. What became of the share of stock that was written, or made out to Miss Freeman? A. That I don't know.

Q. You never saw it? A. Never saw any of the stock.

Q. Never had it in your possession? A. Never did.

Q. You didn't put Doctor Freeman away at night? A. No, sir; he put himself away.

Q. You didn't insist in dressing him, or undressing him? A. Once in a great while I laced his shoes for him, or maybe tied his tie, when he was in a hurry, or something like that, he would say, here, quick tie this up, while he was putting on his vest and buttoning that up, I might tie his shoe.

Q. So that all you did was to drive the automobile and take care of your business? A. And entertain Doctor Freeman.

Q. What do you mean by entertain him? A. In the evenings. We would play cards, I would stay home nights where otherwise, if he hadn't been with me, I might have went out. I would stay home and we would play cards, and talked about different subjects.

Q. You would talk about everything but his business? A. We talked quite a lot about his business, pertaining to the management, and the trust agreement.

Q. He didn't say anything about the will in all those conversations? A. He never mentioned mak-

ing a will in my favor before, never heard a word from him.

Q. So that there were two wills made after he came to live with you, and still you didn't know about it? A. No, sir; I did not.

Q. Mr. Davey, or no one said anything to you about it? A. No one said a word to me.

Mr. Brown: That is all.

Cross Examination by Mr. Watson:

Q. Mr. Mohring, didn't it arouse your curiosity, these trips that you made to Mr. Davey's house in Belleville, especially the occasion on July 12th, when your father was there, as to what the business was? A. No, sir; I never butted into Doctor Freeman's business unless he asked me to come in.

Q. Doctor Freeman went into Mr. Davey's house, and Mr. Davey was there, and Mrs. Davey was there, and your father and Mr. Mohring was there, but your curiosity wasn't excited the slightest as to what their business was? A. No, sir; we were all sitting on the front porch, and they just stepped inside, and I didn't even know what they went in for.

Q. Nobody asked, or made the slightest inquiry? A. No, sir; I didn't butt into Doctor Freeman's business.

Q. In the fourteen months that you were employed there, you saw Doctor Freeman intoxicated only four or five times? A. To the best of my knowledge that is all I have seen him.

Q. And except for those four or five times he was always in possession of a brilliant mind, and completely in possession of all his faculties? A. He had his own mind, even at the times I seen him intoxicated.

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Q. Even then he had his own mind. When he left home you were nearly always with him, weren't you? A. Nearly.

Q. Travelled one hundred thousand miles with him? A. Possibly.

Q. And except for these four or five occasions when he was intoxicated, throughout your travels with him, he was always normal and in complete possession of his faculties? A. He was perfectly normal in his memory, speech, and such things.

Q. That is right. In travelling these one hundred thousand miles with him, through Middlesex County, and the State of New Jersey, particularly in this neighborhood, however, while you were with him, in this normal frame of mind, you met a great many people who knew him, didn't you? A. I did.

Q. So that besides yourself there are a great many persons who saw him with you during your travels of one hundred thousand miles, when, with four or five exceptions, he was in complete possession of his faculties, and normal mentally? A. I have met them many a time.

Q. That is right, is it? A. Yes.

Q. You testified as to the time when I gave Doctor Freeman his bond, in connection with my having had a drink of liquor with Doctor Freeman; when you were first questioned about that drink of liquor you said there was an occasion when you were serving a drink of kummel that Doctor Freeman and I had, but you didn't know just when it was, and afterward, when you were questioned about the delivery of this bond, you said that was the time when the drink was served. Why didn't you say that at first? A. I was asked what date it was, and I do not remember the date.

Q. Well, when was this bond delivered? A. That I cannot state.

Q. How long after the interview of June 22nd at my office, when Mr. Davey was there? A. It wasn't very long. Possibly a week, maybe more, maybe less.

Q. And whereabouts was it? A. It was in the dining room, over the garage, on Volkmar Place.

Q. What time of the day was it? A. That I do not remember.

Q. Don't you know whether it was the morning, or afternoon, or when? A. It was during the day, but as far as time, I do not remember.

Q. During the day, morning or afternoon? A. During the day.

Q. And I went over to Doctor Freeman's home to deliver the bond to him, and that was the occasion that this kummel was served? A. As near as my knowledge.

Q. Well, now, why as near as your knowledge? You ought to know, and testify to it. A. On this day that you had the glass of kummel with Doctor Freeman, you came up to see him in the dining room, and handed him some papers, which I believe was the bond.

Q. Do you know it was the bond? A. Doctor Freeman said you gave him the bond, after you left.

Q. Why do you say now you believe it was the bond, if you don't know whether it was or not? A. I did not open the paper you handed him and read it.

Q. I just handed a paper to him? A. You just handed a paper to him.

Q. You were there? A. I wasn't in the room all the time you were talking to him. I was only in part of the time.

Q. Well, were you there at all? A. I was.

Q. What were we talking about? A. Different

subjects, some of them business, and then you and Doctor Freeman were commenting on the radio.

Q. Mr. Mohring, did you ever have any Chinese whiskey there, Chinese rice whiskey? A. There was some there.

Q. In a bottle about the shape of a creme de menthe bottle, covered with wicker? A. Never had a wicker covered bottle in there that I remember.

Q. What kind of a bottle did the Chinese rice whiskey come in? A. Some sort of a stone affair.

Q. Was it? Where did you get it? A. Doctor Freeman got it.

Q. Don't you know where he got it? A. He got it from some Chinee friend.

Q. One of your trips to Chinatown? A. That I can't tell.

Q. Do you remember Doctor Freeman being sick, so that he couldn't go out for a few days, around the Holidays, early in January of this year? A. He was sick with grippe for one or two days.

Q. And he was in a few days? A. He was.

Q. Do you remember my coming over to see him at that time, on Sunday evening, the evening of January 7th, to be exact, Sunday night? A. I don't remember it.

Q. Do you remember my coming to see him while he was sick? A. Not around that time of the year I don't.

Q. When else was he sick? A. I don't remember you coming there to see him at that time.

Q. Do you remember my coming to see him when he was sick? A. I don't know whether he was sick, or not, at the time you came to see him. I don't remember.

Q. You seem to have a good memory for all these other things. Why are you failing on this particular thing? A. I am trying to think.

Q. Isn't the reason your memory is failing you, because the event which you have spoken of as occurring at the time the bond was delivered, occurred when I came to see him when he was sick, on the night of January 7th? Isn't that the reason your memory is failing you? A. No, sir.

Re-direct Examination by Mr. Strong:

Q. Mr. Mohring, were you aware that Mr. Brown, in his cross examination, said to you, and he kept on drinking daily every day until he died? A. And I said not the same way.

Q. And you answered yes to it? A. To that question?

Q. Yes. Did you understand he asked you that question? A. I don't think I did.

Q. Is it a fact that he kept on drinking daily every day until he died? A. He did, but not in great proportions. He had a little drink once in a while, but he didn't drink daily and daily, as Mr. Brown emphasized.

Q. That is what I am asking you. You said for a time he would go a week, or two or three weeks at a time, without drinking any. A. He hadn't cut out drinking altogether, but he was not drinking in excess.

Q. I understood you to say that sometimes, on one occasion for about three weeks, he didn't drink anything? A. No, I didn't say that. I don't remember saying that.

Q. I understood you to say that there were times when for some interval he didn't drink anything.

Mr. Brown: No. He said that he cut it down.

Mr. Strong: Then I misunderstood the tes-

timony, and I want to get at it, to find what is right.

Q. Did he drink every day? A. No. When I first went with him he did drink every day, and he drank fairly heavy, and then he tapered his drinking down, until towards the last he was only taking possibly a drink or two drinks a day. Some days he didn't take it, and other days he did.

Q. That is the idea, some days he didn't take it, and other days he did? A. But I didn't keep account of when he didn't drink it.

Q. No, of course not. That response to Senator Brown's question, that he kept on drinking daily every day until he died, was yes. I wanted to see whether you understood it exactly? A. I may not have understood his question the way he put it.

Q. At the time you went up to Mr. Davey's, on July 12th last, you stayed on the outside of the house, on the stoop, is that right? A. I don't know whether it was July 12th, or one of the other times, but one of the times—a couple of the times that I was up with Doctor Freeman, we sat on the front porch, and Doctor Freeman went inside and talked business with Mr. Davey.

Q. You were not in with him at the time when they talked business? A. No, sir.

Q. You remained out on the porch, as I understand? A. A couple of times I remained in the car; others I remained on the porch; and then again I was in the parlor while they were in the dining room.

Q. You can't remember the particular dates? A. I cannot.

Q. The occasion when your wife and Lettie and the children went along, where did you remain that time? A. On the front porch.

Mr. Strong: That is all.

Re-cross Examination by Mr. Brown:

Q. Well, you very often went up there, you went up there twice with Lettie, did you not? A. We did.

Q. You didn't go on the porch each time? A. A couple of times I stayed in the car.

Q. You stayed— A. At one time Lettie stayed in the car, and I stayed in the car, and Doctor walked in himself.

Q. And there was a time that you went up there with Lettie, and all the other occupants went in on the porch, and you stayed out in the car? A. No, not the time they were all on the porch; I was with them.

Q. Wasn't there another time that Lettie and those who went along went inside, and you stayed out in the car? A. No. Whenever a crowd went up there, we all went up to the house together. I didn't stay in the car when there was a crowd.

Q. Well, when did you stay outside? A. The time that Lettie was there, and my wife was there, I remember well, because I dropped some cigar ashes on the floor, and Lettie said, look out, you are burning something. I remember that.

Q. When did you stay out in the car? A. Other times we came up. We have been up to see Mr. Davey many a time, and Doctor Freeman alone, Doctor Freeman and myself, and Doctor Freeman would get out of the car, walk in to see Mr. Davey, and inside of a few minutes he would come out again, and I waited for him.

Q. So that you never stayed in the car while the others went in? A. Not when there was a crowd there. I was on the porch, or in the parlor.

Mr. Brown: That is all.

Mr. Strong: That is all.

By the Court:

Q. Mr. Mohring, you testified that you used to stay home nights and entertain Doctor Freeman? A. I did.

Q. Play cards with him? A. Play cards with him.

Q. Talk with him? A. Talk on different subjects, explain radio.

Q. Talk business with him? A. We did.

Q. And did you state that Doctor Freeman and you used to discuss the management of the business? A. Only in regards to when Mr. Watson had taken control, and Doctor Freeman had some trouble with him, he started then to explain the different things, and was talking about how the business should be run, and as soon as he got it back, the changes he was going to make in his business, when he resumed control.

Q. What did he say, and what did you say in those discussions? What did you say, for instance, about Mr. Watson? A. Nothing. What I told Doctor Freeman one time, I didn't think in the position,—that he should never have put an attorney in the position that he put Mr. Watson in. That is the only time I ever mentioned anything about Mr. Watson.

Q. What did you mean by that? What position had he put Mr. Watson in? A. I don't like to cause anybody any hard feelings on me, but what my idea was, my belief at that time was that an attorney was asking too much for the services. But then Doctor Freeman explained why that he had an attorney in that position at that time.

Q. What was said by you, or what was said by Doctor Freeman about the Breens? A. Why, for years he had a good many of the family in his employ.

Q. I want you to tell me what was said by him, and what was said by you? A. Doctor Freeman claimed that in some way or other he had information, where he got it I don't know, that the Breens were not treating him fairly and squarely, in the management of the business.

Q. In what way? A. Not only in the management, but in the working of the business.

Q. In what way? A. They were laying down on the job; loafing. The trucks were not getting out on time; he would go riding around in the car, he would find the trucks and the cars, whenever the fire whistle blew, all the machines, and nearly all the men but Mr. Breen himself would leave for the fire, and Doctor Freeman resented that. He said, while they are working, they should work, they shouldn't be running off to the fire.

Q. What did you say about the Breens? A. I agreed with him on that, whether they were on the fire company or not, if they were working, they shouldn't leave the truck lay in the middle of the street and run to a fire, but take the truck with them.

Q. What else did you say to him about the Breens? A. Nothing. I upheld Mr. Breen in every argument that ever came up, that is, Mr. Breen Senior.

Q. What did you say to him about the way his family treated him? A. I didn't say nothing, for I didn't know.

Q. Well, he spoke to you about it? A. He did.

Q. What did you reply? A. I just gave him some casual answer, I didn't see—I don't remember just the words he used, I would give him some casual answer to pass it off, because I did not want to be involved in family affairs.

Q. When you went to see one of his sisters, you

say you did that on your own initiative? A. Yes, sir.

Q. Which sister was it? A. I believe it was Miss Jennie Freeman.

Q. Where did she live? A. I think it was Nutley that we went to.

Q. Who went with you? A. My wife.

Q. When was that? A. I cannot remember that, just when it was. It was some time, I believe, in the early part of the Summer.

Q. Of 1922? A. Of 1922. But I am not positive about just the exact time.

Q. What happened, after you got there? A. Doctor Freeman, he had been laying in bed, and he had a heavy cold, or something or other, and I thought perhaps by his sister coming down to see him, when he was ill, I don't know, he would like it, or so, and I knew well enough if I was sick I would like to have my sister come to see me, but after Miss Freeman left Doctor Freeman told me at that time never again—

Q. She came to see him? A. I brought her down in the car, she came down, and Doctor Freeman resented it.

Q. How long did she stay? A. I just forget how long she stayed. Possibly an hour, or two hours, or a little longer. I am not positive whether she had dinner with us, or not.

Q. How did Doctor Freeman treat her while she was there? A. Cordial, but he wasn't—well, he was very cordial to his other sisters too, that I have seen, just hello, and good-bye, and maybe an answer now and then to a question.

Q. That is what you call being cordial? A. He hardly spoke, unless a question was asked him.

Q. That is what you mean by cordial? A. Yes, sir.

Q. Do you know what the meaning of the word cordial is? A. I may not.

Q. What do you think it means? A. Well, the way I framed it I meant it to mean sort of slightly cool, but he didn't show the appreciation that a man would show for a relative; just like a slight friend, or an acquaintance. More like an acquaintance.

Q. How long had you been married at the time Doctor Freeman came to live with you? A. Four years.

Q. Had two children? A. The baby was born the day Doctor Freeman—I started to work for the firm.

Q. Is that when Doctor Freeman came to live with you? A. No, sir.

Q. How long was it after that, that he came to live with you? A. Possibly two weeks.

Q. Your wife was in the house at that time? A. No, sir; my wife was in the hospital.

Q. How long after Doctor Freeman came to live with you was it that your wife came back? A. The day my wife came back from the hospital Doctor Freeman came to live with us, and he employed Lettie Patterson to help with the house work. He did that because he thought it would be too hard on my wife to take care of the house herself.

Q. You testified that you stayed home for the purpose of entertaining Doctor Freeman. That is true, isn't it? A. A good many evenings.

Q. Was it your habit and custom to go out every night? A. Not every night, but I put off a good many important things I would like to have done, just to stay home with Doctor Freeman.

Q. How many? A. I never have counted the exact number.

Q. Three or four nights a week? A. Possibly two.

Maybe more. Some weeks more, some weeks less.

Q. You did that just for the sake of staying home and entertaining Doctor Freeman? A. I did. I didn't want to leave him to set home altogether alone, and leave my wife entertain him. I stayed home and played cards.

Q. Your wife was pretty well occupied in taking care of the children, I suppose? A. She was.

Q. And you stayed home to play cards with him? A. I did.

Q. During those evenings of entertainment I don't suppose you played cards all the time? A. Oh, no.

Q. You talked about various things? A. Various things. Different things. Sometimes comments on different articles that came up in the newspaper, and on books. Doctor Freeman was well educated, and he knew all the great plays, and if there was an opera on, on the radio, he would explain the whole opera while they were playing it, he would explain the whole opera from one end to the other.

Q. Why did you do that, Mr. Mohring? Why did you give up your pleasure, and your time, and enjoyment which you might have had by going out in the evening and attending to your own entertainment, for the sake of amusing Doctor Freeman? A. Because from the first time I met Doctor Freeman I liked him very much. Later on—

Q. What was there particularly about Doctor Freeman that attracted you? A. Why, he was a very jokingly kind; he could take a joke, and give a joke.

Q. It was that characteristic of Doctor Freeman that particularly attracted you to him? A. As far as that, yes, that is what first attracted me to him.

Q. What was it about you, so far as you know,

that attracted Doctor Freeman to you? A. I don't know.

Q. What did you discuss besides these things that you have mentioned to me, these nights when you stayed home? A. Well, we would talk about different things that came up in the newspaper, or maybe there was a question came up, some case appeared in the newspaper that he had read to him in the morning, and he would ask me to look it up and read it to him at night. Follow up a different case, or mention this and that in different events that happened. New inventions.

Q. I think you said that Doctor Freeman was a very well educated man? A. He was.

Q. And he spoke about, did you say astronomy? A. No. Different plays and operas.

Q. You discussed them with Doctor Freeman? A. No. An opera was played, if a section of an opera was played on the radio, Doctor Freeman would remember and he would explain the whole play.

Q. Do you recall any opera that was played over the radio, that you and Doctor Freeman spoke about? A. I think one was Aida, or something like that.

Q. Any other? A. There were three or four, but I cannot remember them.

Q. Did you have any knowledge of those subjects yourself? A. Not of the operas. I heard them on victrola records.

Q. How about plays, you spoke about plays too? Did you have any special knowledge? A. Very few. A few plays that I have seen, Doctor Freeman had never seen, because he went to the higher class—he followed the operas and musicals, more than he did plays.

Q. Did he speak about literature? A. Not very much, except explaining that in his day he was a great reader.

Q. Had he ever read anything that you had read, I mean, had you and he ever read the same books? A. On electricity, you might say we had, elements of electricity, and such.

Q. In your direct examination you spoke about Doctor Freeman being an exponent of the old school of electricity, or the elements of electricity, and you of the new school. What did you mean by that? A. Why, in the elements of electricity.

Q. What are the elements of electricity? A. If you keep on it would take—there is a whole lot. I mean the fundamental principles of electricity, and such.

Q. What are they? A. It would take up about two books. It depends on the part you want to know.

Q. What were you and he discussing about the elements of electricity? A. Why, he would want to know about this, and that, and the laws of electricity; the laws of electricity are practically the same, there is a few little changes in the Ohm's law, and he started arguing with me that there wasn't, until I proved different. One day he was going to take me over and introduce me to Professor Van Dyke, who was his old instructor of electricity in Rutgers College, and he said we could have a very good session of arguing out on electricity with Professor Van Dyke, but we never did get over to see him.

Q. Now, Mr. Mohring, what was your motive in sacrificing your time to entertain Doctor Freeman? What did you hope to gain by it? A. Nothing. But I had the pleasure of an evening with him, and at the same time my wife wasn't left alone.

Q. Where was the pleasure in this for you? What was your pleasure? A. I like to play cards, and I am what you might call practically a fanatic on

radio; when we start talking on that I could go right ahead, and he was very interested, and if you talk to him on a subject, or if he happened to have it read to him, or find out some place, something new, he could explain everything he heard about radio. Well, it might be something new that came out that I didn't hear. Well, we would start on talking about it, and I would try to find out just what it was.

Q. That is, you stayed home and entertained Doctor Freeman during the entire fourteen months that he lived with you? A. Well, no. Sometimes he went to bed early and I didn't entertain him. He might go to bed early.

Q. Every time that he wanted it, every time that he was going to be up, you entertained him? A. I did.

Q. Did you ever get tired of it? A. No, sir. Doctor Freeman was a very enjoyable man to sit to listen to. You could listen to him by the hour, talking about his travels, and about the different experiences he has had, and such.

Q. All the time you were doing it you didn't expect to get anything out of it, except the passing entertainment there was in associating with a man of Doctor Freeman's attainments? A. I didn't expect to hold the same position I was holding. I was looking for something in radio. I expected to study up, and I am studying on radio now, a certified radio electrician.

Q. You did not expect to get that, or any betterment in your position, through anything that Doctor Freeman was going to do for you? A. He couldn't give me study, and that is how I expected to better myself. I am taking the course up now.

Q. How did Doctor Freeman find out that Mr. Breen's boys were not on the job? How did he get that information? A. Why, that I cannot answer

altogether. Sometimes he had seen it. We had been out, or he had been walking, often he would come up, I was in the house, there is the truck laying down such and such a place. Or he would come up and say, there is a little truck been laying down in front of the restaurant all the time I have been in for a shave. He used to go into the barber shop, and waiting for the car, he used to sit there an hour, or an hour and a half, and sometimes I would wait for him; or other times I would go back, and when he got finished he would call me. And he seen the little truck standing in front of the lunch room down town, and the men in the lunch room wasting away their time.

Q. What was Doctor Freeman's habit of speech? Was he profane, or not? A. Why, if you get him angry he was fairly profane, a little profane.

Q. Was his anger easily aroused? A. No, sir. Slow to rise, but hard to cool.

Q. Very bitter when he was mad, wasn't he? A. He certainly was.

The Court: I think that is all.

By Mr. Strong:

Q. What was it Doctor Freeman said to you after his sister left that afternoon? A. Why, he told me, he said that he resented bringing his sister, or any of his relatives down, that he didn't care —if they wanted to come and see him of their own free will, they could come and see him, but he didn't care whether they came or not.

Q. Was the radio ever put in operation these evenings when you were with the Doctor? A. Oh, yes.

By Mr. Watson:

Q. Wasn't it Lettie who sent for Miss Jennie

Freeman that day? A. Lettie gave me the address of where Miss Freeman lived.

Q. And Doctor Freeman was under the influence of liquor and drugs? A. He was not, not to my knowledge, he wasn't.

Mr. Watson: That is all.

By Mr. Brown:

Q. You have answered the court's question about your solicitude of Doctor's entertainment during the night time for fourteen months. In the day time you were out about your business, weren't you? A. I was.

Q. Either repairing cars, or driving the Doctor? A. Sometimes. Well, when Doctor Freeman was up to Reverend Bogart's to be read to for the hour, I would go back to the garage, and that hour was mine, unless there was something to do, repairing to do.

Q. So that as far as you and the Doctor were concerned you were actually employed by him about sixteen or eighteen hours a day? A. Sometimes more, and sometimes less.

Q. You drove on an average of two hundred and fifty miles a day, and then stayed with him at night?

Mr. Strong: He did not say that.

Mr. Brown: Well, he said one hundred thousand miles in fourteen months, and you can figure it out, what it is.

A. I said it was the way we clocked the speedometer, unless the speedometer had slipped, it registered over one hundred thousand miles. I don't know how many miles we did travel.

Q. Well, you gave that as being the mileage that you traveled, didn't you? A. That is what the speedometer read. The speedometer might have slipped. If it slipped, it might have went one way or the other.

Q. You were a mechanic, and you had all day to repair the car, one automobile? A. And the trucks.

Q. Well, if it slipped you would know it, wouldn't you? A. Not always. I didn't always clock the mileage when I left in the day.

Q. Do you say the speedometer was wrong, or not? A. I cannot answer that. An automobile mechanic cannot answer that question, without testing the speedometer.

Q. Would you say you averaged one hundred and fifty miles a day? A. Some days I did.

Q. What was the average that you drove during that fourteen months? A. I cannot answer. Some days I didn't drive over twenty miles.

Q. You did all that for twenty-four dollars a week? A. I did. And my rent.

Q. And you did not expect to get anything else, did you? A. No, sir. I was getting free rent.

Q. When did you expect to give some time to your own family? A. Why, a lot of times when Doctor Freeman was out, times my family was along. That was compensation.

Q. I know, but when did you expect to give your own family attention, aside from the Doctor, when were they to get the privacy that was their's, as a duty from you as a father, to your children, and to your wife? A. I seen them every day, sometimes when Doctor Freeman stayed home evenings, the children were there, and my wife was right there. When I sat with Doctor Freeman we didn't have everybody else leave the room. Everybody was present.

Q. You say that you didn't leave Doctor Freeman at all in the fourteen months, you were with him every day? A. No, sir. I did leave him.

Q. You said that veronal could be obtained by anyone? A. Yes, sir.

Q. You know that you could not buy it in New York without a prescription, don't you? A. I know in the State of New Jersey you can.

Q. Yes, but you know too, in New York you could not? A. I never tried. Never bought any of it in New York. Never heard of it.

Q. How do you know you could buy it in the State of New Jersey? A. When I first went to work for Doctor Freeman he asked me to go down and buy him some.

Q. Where? A. He gave me fifteen cents, and I went down to a drug store and got three veronal tablets.

Q. Did the Doctor take the veronal before he would go to bed? A. I don't know when he took them. He took them in the room with him, and he said he took them to go to sleep. When he took them I don't know.

Q. When did you have this entertainment in the evening? A. After supper.

Q. Always at your house? A. Sometimes we would go across the street to my mother-in-law's.

Q. You saw this young man that was on the stand this morning, didn't you? A. I did.

Q. Didn't you and the Doctor and that young man go out at night on drinking bouts? A. Not on drinking bouts. We went out, but not on drinking bouts.

Q. You would never have a drink when you would go out, did you? A. Sometimes I didn't. Sometimes I may take one drink. When I am working, or driving a car, I don't drink.

Q. They drank while you were driving? A. Sometimes they did.

Q. And they stopped at drinking places? A. Once in a while.

Q. Wasn't that the source of the enjoyment? A. Not always. We would go up to the Orange reservation; I don't know of any place up there; it is all State property.

Q. Where would you get it then? A. Places up there that Doctor Freeman knew, I may stop and have one drink and get it and come on.

Q. You would get it in New Brunswick, or any town you went to, you knew all the places? A. I don't know all the places.

Q. Well, the Doctor did? A. I can't answer what he knew.

Q. Where did they get the drink they had every time they went out? A. It would be different places. Sometimes he would stop here in New Brunswick, and then again maybe he would be riding down to the shore, maybe stop at some little place he happened to know, and go in, and sometimes he might get it, and sometimes he wouldn't.

By Mr. Strong:

Q. As I understand it, the only way you had of determining how many miles you drove the automobile was by what the speedometer registered? A. By what the speedometer said.

Mr. Strong: That is all.
The Court: That is all.

ELIZABETH MOHRING, a witness produced on behalf of the Proponents, in rebuttal, being duly sworn according to law on her oath, saith:

Direct Examination by Mr. Strong:

Q. You are the wife of Harry Mohring, who just preceded you on the stand? A. I am.

Q. As I understand it, at the time that your husband went to live at Doctor Freeman's garage, or at the garage, you were in the hospital, were you not? A. I was.

Q. Expecting a child. And how long after your husband went to work there did you join him, about? A. My husband resigned from the Arsenal, as far as I can remember, on the 21st of January, and my baby was born the 22nd, and I think I came out of the hospital around the 5th or 6th of February, and I stayed at my mother's house one night, and the next morning I went into my other place, and my husband had been working for the Doctor in the meantime.

Q. Where did you live before your marriage, Mrs. Mohring? A. In Metuchen.

Q. And your maiden name was? A. Matheny.

Q. Your first name? A. Elizabeth.

Q. About how long have you known Doctor Freeman? A. Well, I have known Doctor Freeman, oh, about fifteen or sixteen years, I guess. Ever since I can remember back, I have known who he was.

Q. Known him by sight, or to speak to him? A. Oh, I have known him by sight, and I have known him to speak to when I used to go in the office, that was all, the coal office.

Q. Where were you living in June, 1921, when Doctor Freeman came to live at the garage? A. I was living across the street with my mother.

Q. Did you see him frequently after he came

there to live at the garage? A. Yes, I used to see him quite often.

Q. Do you remember a time that the Doctor was in the Trenton Hospital? A. I didn't know where he was at the time.

Q. Do you remember the time he was away? A. Oh, I know he was away.

Q. Do you remember of an effort being made to get him out of there? A. Yes, I do. He was staying with Mr. and Mrs. William Breen, and we missed him for three or four days, and mother asked if he were sick, asked Mrs. Breen, and she said no, he had gone away for his health. Then we asked her off and on if they had heard from the Doctor, and how he was. We didn't know, the way she spoke, gave us the impression that he was at the shore, and we happened to be in the house one day when the telephone rang, and she called her husband to come up and answer, that it was Doctor calling from Trenton for him, and he didn't want to come to answer the 'phone. So then, I said to her, why, I thought Doctor was at the shore. She said no, Mrs. Freeman sent him to Trenton. And later she came and asked us if we would testify as to Doctor's sanity, whether we thought he was sane, or insane, because, as she said, pop's lawyer, Mr. Watson, is getting Doctor out of Trenton.

Q. What did you say to that? A. I told her that I would testify at any time to Doctor's sanity, for he was certainly sane.

Q. And in your opinion was he? A. Absolutely.

Q. After he got out of the asylum did you see much of him then? A. Why, I think after he came out of the asylum he went back to Mrs. Freeman's for a while, while she was on her vacation, and then he came back, I think that is the way it was. I know, anyway he came out, and afterwards he came back to Breen's to live.

Q. Did you see much of him then? A. Yes, I saw a good deal of him.

Q. Where did you see him? A. Well, he used to come out, sit on the lawn, and used to come over to the house once in a while. And before he went to Trenton he used to come out and sit on the lawn a good deal. We used to go over to the house and we talked to him in the house.

Q. During all the time in the Summer of 1922, in fact, during all of the time that you saw him, did you ever see any evidence of insanity about him at all? A. Absolutely none, as far as my knowledge goes.

Q. Did you see anything different about him from anyone else? A. No, sir.

Q. Did you see that sheet it has been stated was burned while he was lying on the couch? A. Yes, sir. I have it yet.

Q. That happened before you went to live at the garage? A. Yes, sir.

Q. What sort of a hole was burned in it? A. Hole about that size (indicating), and the top ticking of the mattress was burned, and the cotton inside of the mattress, just the top of it was scorched, but there was no hole through the mattress. And the quilt that was supposed to be burned, Doctor used right up until the time he died. That had just several small places in it.

Q. There has been standing here on this desk in front of you, ever since your husband testified, a little whiskey glass he referred to in his testimony. State where that came from? A. Why, it came, I don't know, out of the house, I don't know where it came from.

Q. Who used it? A. Why, I have seen Doctor use one like that.

Q. What were the Doctor's habits with respect

to drink when you first went there to live, you and your husband went there to live with him? A. Well, when we first went there, he had something there, I don't know, I never tasted it, but he told Harry to throw it away.

Q. Harry is your husband? A. Yes. He said it tasted like poison to him. And then he used to take a little in a tumbler, have this glass full and put it in a water glass, and fill the glass up with water and take it to bed with him. And then he got so he said, I am not going to take any more, I am going to take a bottle of water, and he took a bottle of water every night in his bedroom, and drank the water instead of the whiskey.

Q. State whether or not he drank less and less whiskey during the time that you and your husband lived there? A. Yes, he did.

Q. Do you know which he preferred, whiskey, or beer? A. Well, he used to say, if he were chilled through, he liked a small drink of whiskey, but then he would always dilute that. But through warm weather he much preferred beer, if he could get it. He didn't care about whiskey, because it made him sick.

Q. Did he say anything about making any effort to stop drinking, and if so, what? A. He told me that some day he was cutting down—that is just what he said, I am cutting down on my booze, and I hope, when I take my business back, I won't drink at all, and I am going to prove to my old friends, and to the world, that I can be a good business man and manage my business again.

Q. Now, as to his physical condition, did that improve, or get worse? A. Why, he improved greatly.

Q. That is during the— A. During the time we were there. He improved so much so that none of his old clothes would fit him.

Q. Grew more stout, was that it? A. Yes, sir.

Q. Who did the work about the garage, the house work? A. The house work? Well, Lettie took care of Doctor's room, and the bath room, and her room, and then she used to help me sometimes in the kitchen, but I always used to take care of my own rooms. And also did all the cooking.

Q. Who looked after matters when Lettie was not there? A. I did.

Q. How was the Doctor's eyesight while you and your husband were there? A. Well, sometimes, it was very good, and other times again it would be rather poor.

Q. What if any effort have you seen him make to read? A. Why, I have seen him pick up a magazine and read off the headlines, and read off the date of the magazine, what month it was. I have seen him pick up the newspapers, as soon as they were brought in the house, and read off the first and second headlines of the newspapers.

Q. Was he interested in pictorial papers at all? A. Yes, he used to look them over, and sometimes he could make out what it was, he would tell us all about it, and describe the picture to us.

Q. Those pictorial papers have printing sometimes under the picture? A. Underneath. The large print he could make out, but sometimes the small print he would ask us what it was about.

Q. Do you remember on July 12th, 1922, a number of you, I think your husband driving, and Lettie I guess was with you, and some others, going to Mr. Davey's place? A. Since then I found out it was the 12th of July, but that was the first time I had ever been up to Mr. Davey's. That is how I remembered it.

Q. What was the Doctor's condition that day? A. Very good.

Q. What did he drink that day, if you remember, what kind of drink, if anything? A. I don't think he had anything except ice tea.

Q. You didn't see any evidence of anything except ice tea? A. No, sir; because I remember he spoke of the heat.

Q. Did he say anything about getting an early start? A. Yes, he did. He said we would have supper early, so we could get an early start, because he was going up to Belleville to see Mr. Davey, and I had never been up there.

Q. When you got up to Belleville to see Mr. Davey, what did you do? A. Well, Lettie, and Harry, and Doctor, and the two children and myself went up on the porch, and Mrs. Davey said, Mr. Davey has just come in from a fishing trip, so you will have to wait until he gets dressed. We all sat on the front porch and talked, and then when Mr. Davey came down, I met Mr. Davey, and Doctor and Mr. Davey went in the house, and the rest of us stayed outside. And then he called, I believe, Dad Mohring in, Mr. Mohring, and then after that he called Mrs. Davey in, and they only remained in the house a few minutes, and they all came out on the porch, and we talked a few minutes, and then came home.

Q. Did he ever say anything to you about having made a will? A. No, sir.

Q. When did you first know about any will having been made? A. After Doctor was buried.

Q. And from whom did you hear that? A. From Mr. Davey.

Q. Did he ever discuss the Breens with you? A. Very seldom.

Q. What, if anything, did he say with respect to them? A. All he said was that the younger boys were very impudent to him, and that he thought he had too many of the Breens working for him.

Q. Did he say anything about what he expected to do when he got his business back on May 15th, 1923? A. I don't remember of him saying anything to me about it.

Q. With respect to the Breens? You don't recall it? A. I don't recall that.

Q. What did he say about his being allowed to have any voice in the business, after that agreement of May 15th? Did he say anything about his being allowed in the office, or not? A. He told me that they had told him to go home and stay there, they didn't want him in the office; he had been put out of his own office, and he felt very badly over it.

Q. Did he ever say anything with respect to his wife? A. He used to ask me if I had seen Mrs. Freeman down town, how she looked, if she looked as young, or if she looked older, if she was well. He always spoke of her in the highest terms of respect, except for the one thing, that she had sent him to Trenton, or she had been instrumental in sending him to Trenton.

Q. That is, to the asylum? A. To the asylum.

Q. Did he ever say anything to you respecting his sisters? A. He said they didn't come to see him very often.

Q. What would you say as to the Doctor's memory? A. He had a wonderful memory.

Q. In what way did he show that? A. Well, anything he heard, anything he had read to him, he could repeat to you, or tell you any time you spoke to him about it; and if we were out, he could tell you, there is a church here with a wonderful monument in the yard, I want you to see it, I want you to stop and read the inscription; or, there is a beautiful arch on this bridge, or different things like that, that he had a good memory.

Mr. Strong: Cross examine.

Cross Examination by Mr. Brown:

Q. Mrs. Mohring, you say that the Doctor improved from time to time, that is, after he came to your place? A. Yes, sir.

Q. And his improvement became such that he grew stout? A. Yes, sir.

Q. And then suddenly, in the height and perfection of his improvement, he died? A. Yes, sir.

Mr. Strong: Did she say that?
Mr. Brown: She says it now.

A. He was getting along all right, and he was perfectly healthy—

Q. You have answered that he did, when he was very well improved, he died, is that right? A. He died very suddenly.

Q. The Doctor had a wonderful memory, didn't he? A. He did.

Q. He remembered his wife, right after he came out of the asylum, in his will, to the tune of fifty dollars a month, you knew that? A. I don't know anything about it.

Q. Or one hundred dollars a month? A. I don't know anything about that.

Q. You didn't know about that? A. No, sir; that was his personal affairs.

Q. Who gave him the lemonade, and the hot and cold tea, you? A. Ice tea?

Q. Ice tea. A. Well, we had it—we used to have it during the hot weather all the time.

Q. When did you begin to feed the Doctor with ice tea? A. Well, either Lettie or I would make ice tea. He would say to us—

Q. I did not ask you what he said to you. I am asking you when? A. Through the warm weather.

Q. So that the night before this ride up to Mr.

Davey's, why, you had ice tea that night? A. Yes, sir; I guess we did.

Q. I suppose you knew you were going on a long journey, and you had to have ice tea, didn't you? No, sir.

Q. Just happened that you had it? A. We had it all the time during the warm weather.

Q. You didn't know what you were going up there for, did you? A. No, sir.

Q. You brought Lettie along? A. We mostly always took Lettie with us when we went out.

Q. And your husband went along? A. He drove.

Q. And your father-in-law went along? A. No, my father-in-law didn't go with us.

Q. Well, he was there when you got there? A. He was there.

Q. And you were there? A. I was there.

Q. And Mr. Davey was there? A. Yes, sir.

Q. And that was the night that you gave the Doctor the ice tea, was it? A. We had it all the time in warm weather. Not particularly that night.

Q. So you took him up there, after giving him ice tea, and you made this will, or had it made? A. I don't know anything about the will.

Q. And you waited until the lawyer came from his fishing trip, didn't you? A. He was already at home. We waited until he dressed, and came downstairs.

Q. All waited? A. Yes, sir.

Q. What did you think you were waiting there for all that time? A. I don't know. It was Doctor's business.

Q. And you didn't inquire about that long wait, talking about all this vast estate, out there on the porch, and waiting with the children and Lettie and all of you, nobody said a word? A. No, sir.

Q. And you didn't know what it was all about? A. No, sir.

Q. And you didn't know anything about the will until he had died? A. No, sir.

Q. Then you learned it for the first time? A. Yes, sir.

Q. You had known the Doctor for sixteen years, you say? A. Not intimately.

Q. Well, when did you know him intimately? A. In about June, around June, 1921, I guess.

Q. That is before he came to live with you? A. Yes, sir.

Q. You used to call down to the office? A. Used to go down to the office once in a while and order coal.

Q. And you would stop in and speak to the Doctor? A. I would just say how do you do.

Q. They didn't have any coal in the office? A. No, but we used to go there to order it, and pay the bill.

Q. You knew as long as you had been around Metuchen, that the Doctor was a hard drinker, didn't you? A. I didn't know anything about his personal habits.

Q. You didn't know that the Doctor, when you saw him at the office, was under the influence of drugs? A. He didn't appear to me to be under the influence of anything. I didn't know it.

Q. You didn't know that the Doctor would go about on the lawn in the day time, in front of women folks, with his pajamas on, and with them open, you never knew that, did you? A. No, sir; never knew it.

Q. You didn't know the Doctor would go out on the porch in the night time, chasing imaginary images around on the porch, you didn't know that, did you?

Mr. Strong: Must there not be some limit

to this? Where is there any evidence of that? How can that possibly be considered?

Mr. Brown: Because she had known the Doctor for sixteen years, and she considered him sane all the time.

Q. You didn't know the Doctor took veronal, did you?

Mr. Strong: I object to that.

The Court: Objection overruled. There was evidence substantially supporting Mr. Brown's question, in the direct case.

Q. You didn't know the Doctor took veronal daily? A. No.

Q. You didn't know that? You didn't know that the Doctor would drink in the morning, and drink through the day, and drink in the night, and had been doing it for years? A. I knew he had been doing it previous to the time we were there, but I didn't know how long.

Q. You didn't know that? A. No.

Q. You didn't know that the Doctor was confined several times in institutions, in order to cure him of his habits? A. I knew he was confined once in Trenton.

Q. You didn't know anything about it before that? A. No, sir.

Q. And never heard anybody say anything about it? A. No, sir.

Q. You didn't know the Doctor would go down in the barber shop and take out his hand full of money, and bet recklessly? A. No, sir; I didn't know what he did.

Q. Didn't know that? A. No, sir.

Q. So what you saw of the Doctor in your sixteen years as a Metuchenite was that the Doctor was a

sane man? A. When I passed him on the street.

Q. You didn't know that the Doctor submitted his business to a trustee because of his incapacity, did you? A. No, I didn't.

Q. You didn't know of that? A. No, sir.

Q. You didn't know that the Doctor would go to sleep with rum at his bedside, and at one time caused the bed clothing to burn, which almost resulted, or might have resulted in destroying his life, you didn't know that, did you? A. I knew that he had a little fire in bed, because Mrs. William Breen said so.

Q. You don't know that the Doctor, from time to time, even while living with you, had become so sick because of his so-called habits, that he lost control of his bowels, and would leave a mess around the house, did you? A. I never knew that, in my experience with the Doctor. And I have cleaned his room many a time.

Q. What is that? A. I have cleaned Doctor's room many a time, and I never found anything like that.

Q. You always found him a perfect gentleman? A. Yes, sir.

Q. And he told you that he was going to prove to the world, after forty or fifty years of drinking, he was going to prove to the world that he would now resort to ice tea and lemonade, and get back to his business?

Mr. Strong: That is not what she said at all. I object to that question.

The Court: Objection sustained.

Q. Well, he told you then that after all those years, or whatever he had done in the past, that now he was going to reform and show his friends and the world? A. Yes, sir.

Q. That he, Doctor Freeman, could control the business? A. Yes, sir.

Q. Did you know that he applied for a permit to be a deputy sheriff of the county? A. I didn't know at the time. I heard it some time afterward.

Q. Did you know that he carried a narcotic permit right at his desk? A. He had what?

Mr. Davey: I object. That narcotic permit is a physician's permit to prescribe, and not the kind of a permit of a drug addict that my friend is trying to imply by his question.

Mr. Brown: Prescribe for whom?

Mr. Davey: Prescribe for anybody. A physician's certificate. Permission to prescribe drugs. I object to the question.

The Court: Do you accept Mr. Davey's amendment?

Mr. Brown: Yes, I will accept the objection.

Mr. Strong: That permit, I think, was offered here, that was produced.

The Court: Yes, it has been proved.

Mr. Brown: We will admit that that was the Doctor's headquarters, where that was up, as required by law.

Mr. Davey: We have admitted that some time ago.

Q. Don't you think the reason the Doctor had a wonderful memory was because he left his wife one dollar, and his sisters two hundred dollars apiece, and Harry Mohring all the rest of the property? A. Just what do you mean, Mr. Brown?

Q. Just what I said.

Mr. Strong: I object to the question as an unfair one.

Mr. Brown: I think it is material.

The Court: How is it unfair, Senator Strong?

Mr. Strong: Well, because there is not the slightest basis for thinking that she would have any such conception.

The Court: That is the question that he is asking her. She can say no. The objection is overruled.

A. Would you mind repeating your question, Mr. Brown?

Q. (Question repeated by stenographer.) A. I didn't know anything about the will.

Q. You never learned about it? A. No, sir.

Q. You didn't know a thing about it until today, did you? A. I didn't know about it until after he died, and I didn't know what to think of it then. I was greatly surprised at the time.

Q. You were not interested at all? A. Oh, afterwards I was interested, certainly.

Q. Well, wasn't that the reason that you thought he had a wonderful memory afterward? A. No, sir.

Q. You thought that before then? A. Yes, sir. Things had gone on before that.

Q. You went to school in Metuchen, didn't you? A. Yes, sir.

Q. You have been there since your girlhood days, up to the present time? A. Yes, sir.

Q. And you never knew that Doctor Freeman wasn't of such a mind that he could not take care of his business? A. I always thought he was a perfect gentleman.

Q. You always thought he was sane and sober and brilliant? A. Yes, sir.

Q. And never saw him otherwise in sixteen years? A. No, sir.

By Mr. Watson:

Q. Do you understand that last question, you never saw him otherwise? A. I don't think I have. Not to my knowledge.

Mr. Watson: No questions.

By the Court:

Q. Mrs. Mohring, you went to the hospital the day before Doctor Freeman came to live in your house, is that right? A. No. I didn't know Doctor Freeman was going to live with us when I went to the hospital.

Q. When did you learn Doctor Freeman was going to live with you? A. When I was in the hospital.

Q. While you were in the hospital? A. Yes, sir.

Q. What did you think of that arrangement? A. Well, I thought it was very good indeed.

Q. Thought it was a very good arrangement? A. Yes, sir; because my husband would be right there for his work too.

Q. You knew that Doctor Freeman had been in the insane asylum? A. I knew that he had. I had heard it.

Q. You say you never knew, however, that he drank? A. Didn't know before that. I knew that he drank quite heavily around that time.

Q. Around what time? A. Well, just around the time that we went in there, and a little before that.

Q. Still you thought that it was a perfectly proper arrangement for you to take into your house this man who had been in the insane asylum, who was a heavy drinker, when you had a child about three

years old, and another one about two weeks old? A. I felt sorry for the poor man, because of the way he had been neglected by the Breens.

Q. Your husband was not going to profit any by taking this man in, was he? A. Except for his pay, and for the free rent.

Q. How was his pay any better? A. It wasn't any better, but he was right near his work, right there with him.

Q. His pay was just the same, wasn't it? A. Yes, sir.

Q. So he didn't profit any in that way? A. Except that I had the free rent.

Q. You also had another mouth to feed, and another man to take care of in the house? A. That wasn't bad. That wasn't much.

Q. You were willing to put up with whatever annoyance there might be from having a man who was addicted to the use of drink to a greater or less extent, heavily, I think you said, and a man who had been incarcerated in the insane asylum, for free rent, is that true? A. Well, I felt sorry for the man, because he was partly blind too.

Q. Why should you feel sorry for him? A. Because my grandmother was blind, and it came home to me.

Q. You didn't have any connection with Doctor Freeman, did you? A. Absolutely not.

Q. You knew him very casually, didn't you? A. I had known him casually up until that time.

Q. And very casually? A. Until he came out of the asylum, and then we used to go over there, and he used to come to our house, and we used to talk, and we used to play cards, and talk with him, and that was all.

Q. You never hoped to get anything more from him than that free rent? A. Absolutely not.

Q. Not a thing? A. Not a thing.

Q. Did you and your husband ever discuss whether Doctor Freeman might make some other provision for your husband? A. No, sir.

Q. Never did? A. No, sir. We were perfectly satisfied as we were. We had no cause to.

Q. You never asked your husband what he was going to get out of it? A. No, sir.

Q. You didn't know anything about this will having been made? A. No, sir.

Q. Why did you think that your father-in-law, Louis Mohring, met you at Mr. Davey's house? A. Why, I didn't pay any particular attention to it.

Q. Do you mean to tell me, and do you expect me to believe, that you didn't ask anybody, or you didn't say to anybody, why was father Mohring there to-night? A. The only explanation I knew was that Doctor Freeman was dissatisfied with his attorney, Mr. Watson, and was consulting Mr. Davey, and that was the only reason.

Q. Why did he need Mr. Louis Mohring there? A. I didn't know.

Q. It didn't occur to you that it was strange that Mr. Louis Mohring was there? A. The only reason I can give for that was, because he knew him, that Mr. Mohring knew Mr. Davey.

Q. I know, but Mr. Freeman knew Mr. Davey before the 12th of July? A. I don't know. I wasn't in Metuchen at that time. I was away.

Q. Where were you? A. I was in West Virginia.

Q. All during July? A. I was in West Virginia all through June.

Q. And July? A. And I came home the first week in July.

Q. You were over at Belleville on the night of July 12th? A. I had been home just about a week when we went up there. If a week.

Q. You were not home when Mr. Mohring was down at the garage with Mr. Davey? A. No, sir.

Q. You knew about that, however, didn't you? A. No, sir; I didn't know about it then.

Q. You didn't know about it? A. No, sir.

Q. When did you first hear about Mr. Davey, in connection with Doctor Freeman? A. I don't just exactly remember, but I think it was around the day that he said he was going up there.

Q. Did you ask who Mr. Davey was? A. I said I had heard of Mr. Davey before, I knew who Mr. Davey was, but I had never met him.

Q. You didn't know at that time Mr. Davey had been in Metuchen? A. I heard it then, but I didn't know it previous to that.

Q. It did not arouse your curiosity at all that Mr. Louis Mohring was there? A. No, it didn't. Not in the least.

Q. Not a particle? A. No, sir.

Q. Didn't you wonder what Mr. Louis Mohring and Mrs. Davey were called in to consultation for? A. No, sir; I didn't.

Q. Didn't you ask? A. No, sir. That was their business.

Q. Why not? A. That was Doctor's personal business.

Q. I know, but why didn't you ask your husband why they went in there? A. Well, he was out on the porch, and I didn't know whether he knew or not.

Q. Didn't you make any comment about it? A. No, sir.

Q. No comment between you? A. Absolutely none.

Q. You didn't turn around to your husband and say, what are they going in for? A. No, sir.

Q. He said nothing to you about it? A. No, sir.

Q. Who told you about the provisions of the will? A. Why, I think I heard Mr. Davey speak of it, after Doctor was buried.

Q. You are not sure about that? A. Mr. Davey is the first one that I know who spoke of the will.

Q. You are sure about that, are you? A. Yes, sir.

Q. Positive? A. Absolutely.

Q. Why did you say to me that you thought you heard Mr. Davey speaking about it? A. Well, I am sure it was Mr. Davey now, because I know no one else knew anything about it, thinking back now.

Q. This was a rather important event in your life, wasn't it? A. You mean Doctor doing that?

Q. No. Learning about the fact that you had been, or your husband had been left one hundred thousand dollars? A. I could hardly believe it.

Q. Very important event then, wasn't it? A. Yes, sir.

Q. You never had it happen to you before? A. No, sir.

Q. You never expect to have it happen to you again, do you? A. Absolutely not.

Q. Then why can't you remember everything that took place at that time? A. What time do you mean?

Q. When Mr. Davey told you about the will? A. Well, there were quite a few people present, and I was busy with the children, and I was in and out from one room to the other.

Q. You didn't pay any attention to what Mr. Davey was saying? A. Well, I heard what he said, and I didn't hear the particulars, but I know he said something about the Misses Freeman, and Mrs. Freeman, and Harry was left principal beneficiary and executor.

Q. What did you say? A. I said, what, will you

repeat that, Mr. Davey. And Mr. Davey repeated it.

Q. What else? A. And I said, well, I can't believe that.

Q. What else? A. Well, I don't just remember what else, but I know I said, I can't believe that.

Q. You didn't ask how much it was? A. No, I didn't.

Q. Or did you know already how much the estate amounted to? A. No, I didn't.

Q. When did you first find out how much it amounted to? A. When it came out in the newspapers.

Q. What did your husband say when he first heard it? A. What, he said, the same thing as I did. Well, he said, that is certainly news to me.

Q. That is all he said? A. Yes, sir. I think we were both so stunned by Doctor's death that we didn't know what else to think of.

Q. Did you ever hear the Doctor swear? A. Oh, not much; no more than I have heard other men swear; not as much as some of them.

Q. But he did swear on occasions? A. Oh, occasionally, if something provoked him very, very much.

Q. What do you mean by provoked him very, very much? Wasn't it a fact that Doctor Freeman swore quite easily? A. Well, not in the presence of ladies.

Re-direct Examination by Mr. Strong:

Q. I think Mr. Brown said something, in one of his questions, about your sitting out on the porch there at Mr. Davey's house, and talking about Doctor Freeman's estate. Was there anything said by either you, or your husband, or anyone there,

about Doctor Freeman's estate? A. No, sir; not a word. We are speaking of the children most of the time.

Q. You spoke of Doctor Freeman having been neglected by the Breens. What did you mean by that? A. Why, about his personal self, they didn't care whether his clothes ever were sent to the laundry, after they were told to move, and his room, and his food.

Q. What was the condition of his room when you came there? A. Very, very bad.

Q. In what respects? A. Well, it was awfully dirty.

By the Court:

Q. Wasn't Doctor Freeman able to send his own clothes to the laundry? A. Yes, he did. He used to send a great many of his things to the laundry.

Q. Wasn't he capable of looking after his own personal appearance? A. Yes, he did sometimes.

Q. Then why do you say that the Breens were neglectful of him, because his clothes were not sent to the laundry, and he looked seedy? A. Well, they wouldn't tell him; lots of times a man might keep right on wearing his clothes, and not pay any attention to them; and the bed linen, a great many men, —my own husband does it, until I get after him sometimes.

Q. I do not think any normal man does. A. I consider my husband normal.

Q. If he does that, I do not. A. Especially wearing clothes.

Re-cross Examination by Mr. Brown:

Q. Now, Mrs. Mohring, the court has spoken to you about your curiosity, or interest in what hap-

pened at Davey's. Do you mean to tell me that you, as a woman, making that unusual journey, under the unusual circumstances that have been related, had no curiosity at all about why you were up there? A. All I knew was that Doctor Freeman was dissatisfied with Mr. Watson, and was consulting another attorney, and that is what I thought it was about, so I didn't ask. It wasn't any of my affair. That was their business affair.

Q. And when you took the Doctor into your home, or when he was taken in, you knew that he had left a home, that he had been with his wife for years, did you not? You knew that he had been put out of Breens, put out, not neglected, but actually put out, because he was familiar with Breen's wife? A. He was not put out of Breens' because he was familiar with Breen's wife.

Q. How do you know? A. Because I saw the letter that Doctor Freeman had dictated discharging Bill Breen because of his wife's vulgarity, and of Bill being lazy on the job.

Q. You didn't know that the Doctor was trying to reach for Mrs. Breen now and then, and that it became so unbearable that Mr. Breen told him he would have to leave? A. Not to my knowledge.

Q. You heard about it, though, to your knowledge, didn't you? A. I heard about it being repeated here on the witness stand, but Doctor Freeman was always a perfect gentleman to me, and to every other lady that he met.

Q. How do you know what ladies he met? A. Because he has met my mother, he has met my mother-in-law, and he has met numbers of other ladies in my home, and he was always a perfect gentleman.

Q. You don't know who he met in Chinatown, do you? A. No, I don't.

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Q. You think that is the rendezvous for a sane man, sixty-five years of age, don't you? A. I don't know anything about that.

By Mr. Watson:

Q. How did you come to see the letter by which Will Breen was discharged? A. Mrs. Breen brought it to my house and showed it to my mother and I.

Q. Was that before or after you went? A. If I am not mistaken that was some time in December.

Q. Before you went? A. Yes, sir.

Q. You were in touch with the situation, weren't you? A. Yes, sir.

By Mr. Brown:

Q. You had curiosity enough to be in touch with the situation about the Breen house, and what went on there, but you didn't have curiosity enough to know why you went to Belleville? A. Well, Mrs. Breen came over and told us about it.

Q. You are endowed with a woman's curiosity, are you not? A. No more than anybody else.

Q. No less either? A. Sometimes.

Q. When you go to Belleville then you are less? A. No. I felt sorry for Mrs. Breen, because she took her meals with us all the time she was moving.

Mr. Strong: That is as far as we can go today. It is four o'clock now.

Mr. Davey: We expect to call two more witnesses.

Mr. Strong: Not today. We have not been able to produce them today.

The Court: They are witnesses who are not in court today?

Mr. Strong: All the witnesses we could get into court today, we have called.

The Court: You do not expect to call anybody who is now in court?

Mr. Strong: No.

Mr. Davey: We expect to call Mr. Higgins and Mr. Noak of New York. May I say to your Honor my only information about ability to get Mr. Higgins comes from his secretary at his office, over the telephone. They told me if I would let them know today, Mr. Higgins would cancel his appointment, and be here on Friday. If there is any change from that, I will notify everybody immediately.

Mr. Brown: I think we ought to close the case on Friday, if we can.

Mr. Strong: We certainly will, if we can.

The Court: How about your medical testimony?

Mr. Brown: I will ask your Honor to set a day for that. It depends upon the stenographer's ability to get the testimony out.

The Court: Are you going to have any sur-rebuttal?

Mr. Watson: Just on two or three new points raised in the testimony today. It will be very brief. Just denying specific allegations made here today.

The Court: Finish it right there?

Mr. Watson: Yes. For instance, Miss Sallie Freeman, about the ten dollar check, and Miss Jennie Freeman, about the time she went there. Just minor things.

Adjourned until Friday June 15th, 1923, at 2:00 p. m.

WILLIAM HIGGINS, a witness produced on behalf of the Proponents, in rebuttal, being duly sworn according to law on his oath, saith:

Direct Examination by Mr. Strong:

Q. What is your business, Mr. Higgins? A. Public accountant.

Q. And you have been for how long? A. Twenty years.

Q. With what company are you associated? A. Eastern Audit Company, 41 Union Square, New York.

Q. And what office do you hold with that company? A. Secretary and treasurer.

Q. Did you know Doctor Freeman in his lifetime? A. I did.

Q. And for how long, about? A. About, I suppose, ten or fifteen years.

Q. Did you ever do any work on the books of Manning Freeman & Son Corporation? A. I did.

Q. Can you tell about when you began that service? A. I think it was in the Summer of '18, or '19, I am not certain. At that time I put a system in there, and I think it was '18. I am not certain.

Q. Who engaged your firm to do that? A. Doctor Freeman.

Q. And when was the last audit made of the books of the corporation? A. February 28th, 1923.

Q. Did you see Doctor Freeman ever with respect to those audits that you made from time to time? A. Yes, sir.

Q. And where did you see him? A. I saw him sometimes at the office, and sometimes at the garage, where the Mohrings lived.

Q. At the garage, you say? A. Yes, sir.

Q. Were you ever entertained at his residence,

or at the garage, by him? A. On one or two occasions I had lunch there with them.

Q. Did you ever drink with them? A. No, sir.

Q. You are not a drinking man at all, are you? A. No, sir.

The Court: When is this, Senator?

Q. About when was it, as nearly as you can state, when you were entertained at the garage? A. Some time during 1922.

Q. Can you state whether it was the Srping, or Summer, or Fall? A. I think very likely in the Summer.

Q. What have you to say as to the Doctor's education? A. He was a very highly educated man.

Q. And as to the use of liquor? A. I know he drank.

Q. On how many occasions have you, do you suppose, seen the Doctor? Have you any idea how many times you used to see him and have interviews with him? A. Well, in the last three or four years probably every three or four months, and later, in the last year, probably every two months.

Q. How often have you seen him under the influence of liquor? A. Two or three occasions.

Q. What have you to say as to his use of drugs? A. I heard that he did, but I don't know anything about it.

Q. You don't know anything about it, never saw him under the influence of drugs? A. Not to my knowledge.

Mr. Strong: I move, of course, what he said about what he heard be stricken out, as merely hearsay.

The Court: The other side can move that, but I do not suppose you can, Senator.

Mr. Strong: I am not particular. It does not amount to very much. But it is not responsive.

Mr. Watson: I will move it, if you want me to, as no evidence of it.

Mr. Strong: I do not know as I care much about it.

Mr. Watson: All right.

Q. Now, Mr. Higgins, did he ever speak to you with respect to the Breen family, John W. Breen, and his sons? A. Oh, yes.

Q. And what did he say with reference to them? A. When?

Q. After the execution of the trust agreement with Mr. Watson? A. Well, he felt that they were robbing him in his business—

The Court: That is not responsive. What did the Doctor say, that is what we want.

Q. What did he say? A. He stated that he thought that they were.

Q. Did he ever speak to you with reference to his wife? A. He did.

Q. To what effect? A. After the time that she had him confined he was bitter toward her, and expressed himself as being so.

Q. What if anything did he say with respect to his intentions toward the Breens, when the trust agreement should have terminated? A. He stated that he was going to discharge them all and take the business over himself.

Q. Do you know whether or not he left his wife's home and took up his residence at the garage, with Will Breen and his wife? A. I think so.

By the Court:

Q. You don't know anything about that, Mr.

Higgins, do you, further than that he was there? A. Well, that is all, but I believe he did.

By Mr. Strong:

Q. Now, so far as you observed, did the Doctor drink more, or less, in 1922, than in 1921, or earlier?

Mr. Watson: I object to that question. This witness says he does not know anything about it; he knows that he drank enough so that he saw him under the influence of liquor only two or three times. How can he be a judge?

Mr. Strong: I will withdraw the question.

Mr. Watson: Let us not have the conclusion. Let him tell us how much he drank, and when.

Mr. Strong: I will withdraw it at this time.

Q. Did he ever speak to you with respect to Mr. W. H. K. Davey, the lawyer? A. On one occasion.

Q. To what effect? A. That he had engaged Mr. Davey to try to set aside a trust agreement he had made with Mr. Watson.

Q. Did he ever say anything to you with respect to a will? A. Yes.

Q. What? A. Said that he had made one.

Q. What, with respect to it, as well as you can recollect? A. I beg pardon?

Q. What did he say with respect to it, so nearly as you can tell, or recollect? A. I recollect that he said that he had left something to Lettie Patterson, and something to Harry Mohring. May I proceed further?

Q. Yes.

Mr. Watson: I object to the answer on

the ground that it is a post testamentary declaration and is inadmissible.

Mr. Strong: A man cannot tell how he left his property?

Mr. Watson: You will find under all the cases that post testamentary declarations are inadmissible as to the contents of a will, as to what the testator has done. There are a whole line of cases, and a very recent one by Vice Chancellor Backes.

The Court: It is not permissible to introduce testimony of the testator's intention, to support the will. However, I will let it go in. There is no jury. I will permit the question to be answered.

Mr. Watson: If it is necessary for us to take an exception, may we have one?

The Court: Oh, yes. I do not think it is necessary. I may strike it out later, anyway.

Mr. Watson: Very well.

Q. State whether or not there was any friction between Mr. Freeman, and Mr. Russell E. Watson, the attorney? A. The only friction I know of was the time that Mr. Davey came into the case.

Q. State whether or not Doctor Freeman ever said anything about being put out of his own office, or of the company's office? A. He had told me that he had been ordered out.

Q. Did he say by whom? A. I think he said Mr. Breen.

Q. How did he seem to feel about that? A. I think it hurt his feelings.

Q. Did he ever speak to you about his treatment by the Mohrings, Harry Mohring and his wife? A. I don't think he ever mentioned it.

Q. Did he ever speak about the radio apparatus? A. Yes.

Q. To what effect? A. Simply, that he had been enjoying it.

Q. That was apparatus set up in the dining room of the garage? A. Yes, sir.

Q. What did you observe of Harry Mohring's treatment of him, and Harry Mohring's wife's treatment of him? How did they seem to treat him?

The Court: I do not think that is a proper question.

Mr. Strong: I will withdraw it, on your Honor's suggestion.

The Court: It may be permissible for him to testify to certain acts, but not how it seemed to him they treated him.

Q. Well, how did they treat him? A. All right, as far as I could see.

Q. Did you know Doctor Freeman's handwriting? A. Well, his handwriting changed, I think, in the last few years.

Q. Well, was there a time when you knew it? A. I think I would know it.

Q. What have you to say of his eyesight in 1922? A. It was not very good.

Q. What have you to say as to his ability to walk, without assistance, in 1922? A. I never saw the time that he wasn't able to walk without assistance.

Q. Just look this paper over carefully, please read it, and then look at the signature on the side. I am showing you now Exhibit 1 for identification, April 6th, 1923, and tell me in whose handwriting that is?

Mr. Watson: I object. This witness has not qualified as a handwriting expert at all. He says that his handwriting had changed in the last few years, and at one time he would have known it.

Mr. Strong: He thinks he would have known it now, he said.

The Court: His answer was that he thinks he would know it now. I suppose it does not require a handwriting expert to testify whether or not he knows the handwriting.

A. In my judgment, it is his handwriting.

Q. And in your judgment, is that his signature there at the side? A. Yes, sir.

Q. Did Doctor Freeman ever speak to you with respect to the railroad lease, and the trestle? A. Told me that the railroad had—

The Court: When? That is no good, "ever speak about it."

Mr. Strong: I will ask him when in the next question.

(Question repeated by stenographer.) A. Yes.

Q. As nearly as you can tell, about when? A. I should say about three or four months before he died.

Q. What did he say with respect to it? A. That the railroad had notified him that he must build a trestle.

Q. What did he say in his opinion should be done, if anything? A. I don't think he said. It was understood that it would have to be done.

Q. How long before his death did you last see him? A. About ten days or two weeks.

Q. And what seemed to be his condition at that time? A. About the same as usual.

Q. State whether or not on these occasions when you saw Doctor Freeman, he was, in your opinion, sane or insane? A. Sane.

Q. State whether or not in your opinion Doctor Freeman, on the occasions when you saw him, was capable of recollecting of what his property consisted, and who, either in consequence of ties of blood or friendship, should be the objects of his bounty, and had a mind sufficiently sound to enable him to know and understand what disposition he wanted made of his property after his death?

Mr. Watson: I object to that question. As I heard it, I do not think the time was fixed.

The Court: I think the further objection is that this man is not qualified to answer that question. He is not here as an expert in mental capacity. He is simply as a lay witness.

Mr. Strong: He does not have to be an expert, in these cases.

The Court: I do not understand that he has to be an expert to express his opinion whether the man was sane or insane, but I understand he is not qualified to express an opinion whether his mentality was sufficient to perform that function or not. I may be wrong in that, but that is my present idea.

Mr. Strong: Your Honor overrules it?

The Court: Yes.

Q. Would you say, or not, that in the summer of 1922 he understood what property he owned?

Mr. Brown: I object to that, unless it is shown that this man has had such conversation and transaction with the Doctor, as to the extent of his property, and if so, he ought

to state what they were, and let the court conclude whether or not he knew of the conception he had of his holdings.

Mr. Strong: I will put that question.

The Court: It seems to me all this is calling for the witness' conclusion, Senator.

Mr. Strong: I will withdraw it.

The Court: I know there is a great deal of latitude allowed in these cases, but I do not think it goes quite that far.

Mr. Strong: Your Honor overrules the question, as I understand it? I think it would be competent. Of course, I want to naturally save myself—

The Court: I am not entirely clear on it myself, but at present it appears to me to be incompetent.

Mr. Brown: May I cite the position in this wise: An expert on mental conditions can testify, when there is a statement of facts placed before him, of conditions that are continuous, or what not. He expresses his opinion from the foundation, or basis that is given to him, and he is qualified to do that, in the law. A lay witness gets on the stand and he is asked to qualify, not only what he knows at certain times he has seen the Doctor do, but also to testify whether, from those observations, he can say the Doctor was sane at some other time that he did not see him. Now, what is that worth? I think that is clearly objectionable, for the reasons I have stated.

Mr. Watson: The objection I made to the preceding question was that the time was not fixed. I thought that this witness, unless he could fix a time near the time of the

execution of the will, when he saw him, that he would be disqualified for that reason. I am quite frank to say I think the questions being propounded by Senator Strong are objectionable. I also know, as a matter of fact, that the answers have very little evidential weight one way or the other, and so far as our side of the case is concerned, rather than have any—if there is any uncertainty about it, I would rather have the question admitted.

Mr. Strong: He admits the legality of the question.

Mr. Watson: Senator, you know how much weight opinion testimony gets, and so do I, and I never care how much there is against me.

The Court: I will permit the witness to answer the question.

Mr. Brown: Even an expert, you have to show that he has the personal knowledge, and if not, present to him a statement of fact.

Mr. Watson: I do think this witness has not shown any such acquaintance with Doctor Freeman, or any intimacy at all. His meetings with him were very infrequent, just five or six times a year. I do not think he has shown enough facts upon which to base an opinion.

Mr. Brown: That is the big question.

The Court: Let it come in, and I will strike it out later, if it is incompetent. I will permit the question, and I will permit you to ask the other question that I overruled, and if they are afterward incompetent, I will strike them out.

Q. State whether or not in your opinion Doctor Freeman was, on the occasions when you have testified to, and during the Summer of 1922, capable of recollecting of what his property consisted, and who, either in consequence of ties of blood or friendship, should be the objects of his bounty, and had a mind sufficiently sound to enable him to know and understand what disposition he wanted made of his property after his death? A. With the exception of the two occasions, or two or three occasions when he was under the influence of liquor I would say that he was capable.

Q. Did you make an audit of Manning Freeman & Son as of July 1st, 1922? Do you recall that?

A. I don't. Not that particular date.

Mr. Strong: I would like to take that up again, when Mr. Davey, who is out of the room now, returns.

Mr. Watson: Lead him and let him tell whatever he wants to tell about audits. I know all about the audits. They are here. Go ahead. We will not object to leading questions on those subjects.

Mr. Strong: You can cross examine.

Cross Examination by Mr. Watson:

Q. Mr. Higgins, do you recall the time when the trust agreement was made on May 15th, 1922? A. I do.

Q. You were in touch with that situation, through me, were you not? A. After it was made, yes.

Q. Do you recall being at my home with Doctor Freeman on a Sunday or two preceding that time?

A. I do.

Q. Do you remember that Doctor Freeman tele-

phoned you, or telegraphed you, and wanted to see you urgently, and you went to his house on this Sunday morning, and then you and he came to my home? A. I do.

Q. What was it about, Mr. Higgins? A. I don't recollect.

Q. You are quite a busy man, aren't you? A. I would say so.

Q. And you were then, and Doctor Freeman knew that, he knew that you were a busy man, didn't he? A. He did.

Q. You and I have seen enough of each other for you to know that I am fairly busy. And Doctor Freeman at this time got you out on Sunday, your own day of recreation, and did the same thing to me, on business that was so urgent he made it a subject of telephonic communication, and when we all got together there wasn't anything of any importance after all, was there, we had a nice little social hour together, didn't we? A. It seems to me that something resulted from it, Mr. Watson. As I recollect, we were to make some examination of the books, in regard to the collections of the accounts, and send out verification slips to the—or rather advices to the various accounts receivable, and to check them up, and I was to report back to him. I think that was before—

Q. Don't you recall that that work was in fact done after the trusteeship began? A. No, I think it was started before, and turned over to you after the trustee trust agreement was signed.

Q. You didn't make any audit at that time, the first of May? A. It wasn't an audit. It was for the purpose of verifying the accounts receivable.

Q. Well, was there anything so unusual about that work that it could not have been done on Monday, Tuesday, Wednesday, Thursday or Friday? A. No, sir.

Q. It was no new condition, was it? A. I don't recollect any.

Q. Been existing a long while, hadn't it? A. Yes, sir.

Q. A week after that the trusteeship began, didn't it? A. I believe so.

Q. And in carrying on the trusteeship you and I were in conference frequently? A. Yes, sir.

Q. You did all the auditing of the books, didn't you? A. I did.

Q. I relied upon you for that? A. I believe you did.

Q. Well, you know I did. And when some matters of peculiar difficulty arose, matters of policy, I asked you for your judgment, what your advice was, several times?

Mr. Davey: I object to that as immaterial.

Mr. Watson: I am leading up to something.

Mr. Davey: I do not see that it has any bearing; it is not in the presence of Doctor Freeman.

Mr. Watson: It is purely introductory.

The Court: Proceed.

Q. Isn't that so? A. I think more or less, yes.

Q. When we were having these conferences with reference to the carrying on of the business, did you not say to me that the principal thing that that business required was to be protected from Doctor Freeman? A. Not in just those words.

Q. In what words did you say it? A. I told you I believed that it was a good thing for the business, because I felt that the Doctor was very lax in his methods.

Q. To such an extent that you didn't think he

was competent to run the business, did you? A. I won't say that he wasn't competent. I would say that he was a poor business man.

Q. Well, as a matter of fact, the business had lost seven or eight thousand dollars the preceding year, hadn't it? A. I don't recollect what the exact figures were.

Q. Yes. And at the time the trustee was appointed the company was unable to pay its bills in cash, isn't that so? A. I don't remember that. I know it had some thirty thousand odd dollars outstanding in notes payable.

Q. I mean as current bills, not notes, I mean as its merchandise bills? A. I won't say so.

Q. You don't know about that. Then it was in our discussion of these things that you told me that you thought it was a good thing that Doctor Freeman was relieved from the management of the business? A. What answer do you want? I didn't say a good thing. I said it was good for the business.

Q. With that qualification we accept the answer. It was good for the business. Now, Mr. Higgins, when was it that Doctor Freeman told you that he thought the Breens were robbing him? When did he first make that statement? A. I think it was on or about the time that he made that trust agreement. Possibly a little before.

Q. At the time I became trustee I conferred with you at some length with reference to the honesty and reliability of John Breen and John Breen, Junior? A. I think you did.

Q. I explained to you that I was under bond, and John Breen was not, and I would have to rely upon him to a considerable extent, and I asked you for your opinion as to the honesty and reliability of John Breen, didn't I? A. Yes.

Q. You had been in touch with the business for five years nearly, auditing it? A. Yes.

Q. You told me you thought they were entirely reliable, didn't you? A. I did.

Q. Now, in your judgment and opinion then, this belief of Doctor Freeman's that the Breens were robbing him was an hallucination? A. I don't know what you call it, but I don't think it was true.

Q. It was not founded on fact? A. He thought it was.

Q. It was either an hallucination or a delusion? I do not know the difference between the two words myself. A. I am not going to define it.

Mr. Brown: For the purpose of this case I suppose you call it a delusion.

Q. It was an hallucination then, wasn't it, Mr. Higgins?

Mr. Strong: I object. The witness cannot—he has given his opinion as to the fact.

The Court: You made him an expert, Senator, I think.

Mr. Strong: There is nothing he can add to that. It proceeds upon the assumption that the Breens were not robbing him, and all he knows is that he thinks they were not robbing him. He does not know as a fact, and I think we can show he does not know anything about the fact that they were loafing on the job. He would not see them loafing on the job.

The Court: Are you going to impeach him?

Mr. Strong: No, I will not impeach him. It will be no impeachment at all. I can

show that he was not in possession of the facts that Doctor Freeman was.

The Court: I will permit the question.

Q. Will you answer the question, Mr. Higgins? A. I don't know.

Q. You feel yourself quite competent to express an opinion as to his testamentary capacity, do you? A. As far as any layman could, yes.

Q. But, you have no opinion as to whether, when he made that statement, he was laboring under an hallucination, or not? A. No. I don't know what information he got that led him to believe that.

Q. Did he ever tell you? A. No.

Q. Did you ask him? A. No.

Q. When did you first come in touch with Mr. Davey? A. I really don't know.

Q. How frequently were you in touch with Mr. Davey? A. I think I have seen Mr. Davey about twice in my life. Possibly three times.

Q. In what connection were you in touch with Mr. Davey? A. At the time, I believe, that he took up the matter of the trust agreement, he came to see me, talked to me about it, and so forth.

Q. Were you ever in touch with Mr. Davey, or in conference with Mr. Davey with reference to the financial status of the company, its responsibility, or assets, or things of that sort? A. I don't think so.

Q. Not to your recollection? A. No.

Q. Did you ever give Mr. Davey any detailed information along those lines? A. No.

Q. You don't recall ever doing so? A. I don't recall it.

Q. You were speaking of the time that Doctor Freeman talked to you about the trestle; that was in the company office, was it not? A. No, sir. He spoke to me about that in the garage, one after-

noon. That is the place where he lived with Mohring.

Q. Do you remember having a conversation about the trestle, in the office, at a time when John Breen, Senior, was present? A. I don't recollect it.

Q. And Doctor Freeman said that he was going to have a suit about the trestle, and it was going to go to the Supreme Court? A. I don't recollect it. It may be so.

Q. Do you deny that you were present at such a conversation? A. I do not.

Q. As I understand your testimony, Mr. Higgins, in the last year of Doctor Freeman's life you saw him only every other month? A. That is right.

Q. And you saw him intoxicated two or three times?

Mr. Strong: That covered his whole time. That is what he said.

Q. Which is right? A. Well, I don't remember seeing him drunk two or three times during that year.

Q. When was it you saw him intoxicated? A. I think it was prior to that.

Q. And during the last year you never saw him intoxicated at all? A. I don't think so.

Q. How long were you with him, when you saw him? A. I think possibly that day that he was up at your house, he may have been a little bit off.

Q. You think he was intoxicated that day? A. Well, I don't see—he wasn't staggering.

Q. No, he wasn't staggering, but, Mr. Higgins, don't you remember perfectly well that on that day when he dragged you over to my house, that Sunday morning, that he was not himself? A. No, I don't think he was.

Q. By any manner of means? A. I don't think he was.

Q. Now, aside from that, did you see him under the influence of liquor at any time during the last year? A. I don't recall whether it was before or after, but I think it was before 1922, or early in 1922.

Q. What time of the day was it your habit to see Doctor Freeman? A. About noon.

Q. Ever see him in the morning, or at night? A. Only when he used to come over to the office.

Q. How long ago? That wasn't during the last year of his life? A. No, he didn't come over much to the office during the last year. Maybe the early part of the year he may have.

Q. What was the occasion of your visit to him? A. To read the reports to him mostly.

Q. Go over the audits with him? A. Yes.

Q. Did he ever tell you that you didn't know how to make an audit? A. No.

Q. Never told you that? A. No.

Q. He told me you didn't.

Mr. Strong: Is that proper? That is altogether out of the way, and improper.

A. Did you believe him?

Q. No, I didn't believe him.

Mr. Strong: That is a shame. That has no business in this case, and I hope any such remarks as that are not on the record. Your Honor cannot have any doubt about—

The Court: I cannot stop—

Mr. Strong: You can stop him from testifying.

The Court: I cannot anticipate when counsel upon either side is going to make a remark.

Mr. Strong: I want that out of the record.

The Court: I will strike it out, if you want it stricken out. You know he was sworn, and he is under oath.

Mr. Strong: He is not on the stand now.

Q. Do you recall the time when a question arose as to whether Mohring's salary should be charged to the company as an operating expense? A. I do.

Q. And you asked Doctor Freeman what Mohring's services were, and he told you it was Mohring's business to drive the president? Do you remember that time? A. I do.

Q. That was in the office, was it not? A. I don't know just where it was.

Q. Wasn't that the occasion when he said that he was going to have a suit about the trestle that would go to the Supreme Court? A. I really can't recollect that, Mr. Watson.

Q. Wasn't he in an intoxicated condition on that day? A. What day?

Q. The day that he said it was Mohring's business to drive the president? A. I don't think so.

Q. What conclusion did you come to about Mohring's salary, how it should be charged? A. Well, from the time that he made the trust agreement, that it should not be charged against the corporation, and we so fixed it, I believe.

Q. That was your advice, was it not? A. Yes, sir.

Q. That does not bring this other conversation back to your mind? A. Do you mean about the trestle?

Q. Yes. A. No, it does not.

Mr. Watson: That is all.

Cross Examination by Mr. Brown:

Q. Mr. Higgins, during the last three or four years you say that you have seen the Doctor every three or four months? A. About that, yes.

Q. And then you further testified in the last year every two months? A. That is right.

Q. I suppose that your observations of the Doctor were incident to your work with the Company, is that right? A. Not entirely.

Q. Well, then co-incident? A. Yes.

Q. You called down to the company's office to perform some work, or there was work at your office, and you would have to do with Mr. Breen and the others who furnished the information? A. Yes.

Q. The actual management of the business, as you saw it, was in the hands of Breen, and others than the Doctor? A. More particularly so in the last year.

Q. And before that time the Doctor was sort of an appendage there, was he not? A. Beg pardon?

Q. He was sort of an appendage around the office? It would have gotten along just as well if he was away, or better, possibly, the business?

Mr. Davey: That, it seems to me, calls for a layman's opinion also.

Q. From what you saw?

The Court: I will admit it. He has gone quite a good ways.

(Question repeated by stenographer.) A. It may have been so.

Q. There is no doubt in your mind about it, is there? A. Yes, there is a doubt. I don't know

what he might have done, or what might have taken place, if he wasn't there.

Q. You never knew that the Doctor was drinking large quantities of liquor daily and nightly, did you? A. No.

Q. You never knew that he, for years, had been using drugs and veronal? A. No. I had heard so. That is all.

Q. You didn't know that he was placed in three or four institutions, and it didn't cure his habits? A. No. I didn't know that.

Q. Didn't you know that he would get in drug or intoxicant sprees for several weeks at a time, and not move from his bed, and threatened to shoot people? A. No, I never heard that.

Q. You didn't know that he would walk out in his pajamas on the lawn, and around where lady folks could see him? A. No.

Q. You didn't know that a man of his age was visiting Chinatown? A. I did not.

Q. You didn't know that he was writing to the United States Senator, for the purpose of searching vessels that came into the country, or visiting vessels that came into the country? A. I did not.

Q. You didn't know that he was chasing objects around the room that he thought were there to do him harm? A. I did not.

Q. Well, if you knew all that, would you say the Doctor was sane? A. Hardly.

Q. And then the periods of sanity that you speak about, or about which you expressed an opinion, are the times that you saw him? A. Absolutely. I couldn't say for any other time, for I didn't see him.

Q. And they, of course, were again compared by the number of times that you thought he was under the influence of liquor? A. I beg pardon.

Q. And that number was again diminished by the times that you saw that he was under the influence of liquor? A. Yes. Two or three occasions.

Mr. Brown: That is all.

Re-direct Examination by Mr. Strong:

Q. Pick out of these pamphlets I show you the latest, please, Mr. Higgins? A. This is the latest.

Q. What is that? A. That is a report of Manning Freeman & Son for the two months ended February 28th, 1923.

Q. That is what they call an audit, is it? A. Yes, sir.

Q. I intended to show you this one, dated July, what is that? A. July 31st.

Q. 19— A. 1922.

Q. Covering the year concluded on July 31st, 1922? A. No. Covering three months ended July 31st.

Q. Covering three months ended July 31st, 1922? A. Yes.

Q. What is that, an audit made by you? A. Yes, sir.

Q. Of the business of Manning Freeman & Son? A. Yes, sir.

Q. Did you have any conferences with Doctor Freeman with respect to the business set forth in that audit during that period covered by it, during that three months? A. I don't recollect any particular conversation I may have had with him, but I probably read it to him.

Q. Did you read it to him after it was completed? A. I believe I did.

Q. Does that audit show a profit or a deficit during that period?

The Court: What is the purpose of that, Senator?

Mr. Strong: It has been stated here that Doctor Freeman conducted the business at a loss, and we will show that Mr. Watson conducted the business at a loss of three thousand dollars.

The Court: Two months and a half of his period.

Mr. Strong: No. It is part of that period.

The Court: Two months and a half of his period.

Mr. Strong: Yes.

The Court: The offer is overruled.

Mr. Strong: We offer to show that Mr. Watson, as trustee, conducted the business of Manning Freeman & Son at a loss of three thousand dollars, or upwards.

The Court: That offer is overruled.

Q. You discussed the audit of July 31st with the Doctor, you say?

The Court: He says he does not remember any discussion.

Mr. Strong: He said he didn't know whether he discussed it before the audit was completed.

The Court: No. He said he does not remember any discussion that he had with him.

Q. In your business as auditor would you have any means of observing the business habits of the truck drivers, and other employees of Manning Freeman & Son, when they were away from the office and premises?

Mr. Watson: I object to the question on the ground it is immaterial.

The Court: Objection sustained. This man was only down there very casually, Senator. What is the use going into such things?

Mr. Strong: The reason for that is this: That they base an hallucination in one case upon the fact that this witness thought that the Breens were not robbing him.

The Court: I have ruled on the question, Senator. If you want an exception, you may have it.

Mr. Strong: I do not understand that exceptions are necessary.

The Court: No, I do not think so.

Mr. Strong: But if it is, I certainly would like it.

Mr. Strong: That is all.

Mr. Brown: That is all.

HUGO NOACK, a witness produced on behalf of the Proponents, in rebuttal, being duly sworn according to law on his oath, saith:

Direct Examination by Mr. Davey:

Q. Mr. Noack, where do you live? A. I live 1740 Second Avenue, New York City.

Q. And what is your business? A. Patrolman.

Q. In the New York City police force? A. New York City police department.

Q. What is your assignment? A. Motorcycle duty, 33rd precinct.

Q. Did you know Doctor Freeman during his lifetime? A. Yes.

Q. And when did you first meet him? A. Oh, about one year, or thirteen months ago.

Q. And where? A. At Harry Mohring's home.

Q. That is over the garage in Metuchen? A. Yes.

Q. Who introduced you to Mohring and Doctor Freeman, if you know? A. My cousin, Harry Stork.

Q. How frequently after that did you see Doctor Freeman? A. Why, almost every day off I had, which is once a week.

Q. Once a week? A. Yes, sir.

Q. Where did you usually see him? A. At his home over the garage.

Q. Were you entertained there by him at meals? A. I was.

Q. On more than one occasion? A. Yes, sir.

Q. Did you ever see the Doctor drink during your visits to him there? A. Yes.

Q. How frequently? A. Oh, occasionally.

Q. Did you ever see him drunk, or what you would call drunk, or intoxicated? A. I did not.

Q. What would you say as to Doctor Freeman's education? A. I thought he was a very well educated man.

Mr. Brown: Is this man qualified to testify to that?

Q. Were some of the visits which you mentioned to the reporter there, during the month of July, 1922, last July? A. I did not understand.

Q. I say, were some of your visits made during the month of July, 1922? A. They were.

Q. Having reference again to the Doctor's characteristics, what would you say as to his memory? A. I thought it was fair.

Q. Did you ever hear him discuss places which you had visited? A. He has.

Q. Did you see in the dining room, in the living quarters there, a radio apparatus? A. I did.

Q. Did you see it in use? A. Yes, I have.

Q. Did the Doctor say anything to you about that? A. He did.

Q. Tell what he said? A. He was very, very pleased with it.

Q. Did he say who built it? A. He did.

Q. Who did he say built it? A. Harry Mohring.

Q. During the Fall of 1922 did you have occasion to take a trip any place with Doctor Freeman? A. I did.

Q. Where was that? A. We visited a German boat, the Wurtemburg, I believe, at Pier 96, 47th Street and North River.

Q. Had he passes? A. No, he did not.

Q. You managed the trip? A. I did.

Q. Do you know what month that was in? A. I believe it was in October; latter part of September, or October, I believe.

Q. Did you observe, on your visits there, how the Doctor was treated by the Mohrings, Harry Mohring and his wife? A. I did.

Q. State what you can in regard to that? A. Why, Mrs. Mohring and Mr. Mohring treated the Doctor with every courtesy, as far as I could see.

Q. In your service as a police officer have you known what are commonly known as drug addicts? A. I have.

Q. Did you observe any symptoms of drug addiction about Doctor Freeman? A. I have not.

Q. Did he have to you the appearance of a man who would be called a drug addict? A. He did not.

Cross Examination by Mr. Brown:

Q. You are a motorcycle policeman in New York City, aren't you? A. I am.

Q. You are not a college man, are you? A. I am not.

Q. The Doctor used to spend some time with you and have a good time with you, is that right? A. He has only visited me twice.

Q. In New York? A. In New York City.

Q. Why did he visit you in New York? A. Why, he come up to my home.

Q. Are you married? A. No, I am not.

Q. So you are a single man, and he visited you at your home? A. He did.

Q. Why would he go visit you? A. Why, I have known him for about a year.

Q. Yes. A. Took a liking to me, and I to him. He was very good company, as far as I could see.

Q. You never gave him a ride on a motorcycle, did you? A. I did not.

Q. What did you have to offer the Doctor, that he should like you? A. Why, nothing that I know of.

Q. What do you know about drugs? A. About drugs?

Q. That is what I said. A. Why, I am able to tell a drug addict if I see one.

Q. Well, you must have your experience, or you couldn't tell? A. I have.

Q. What was it? A. I have seen numerous drug fiends brought into the station house where I have been working.

Q. I thought you were on a motorcycle. A. I am only on a motorcycle eleven months.

Q. And the other month what are you doing then? A. I done patrol duty in the 26th precinct.

Q. Well, if you wanted to get drugs you would know where to get them, wouldn't you? A. Why, I could not.

Q. You are a New York policeman? A. I am.

Q. Who else would be at Mohring's house beside you and Mr. Mohring, the chauffeur? A. Mr. Mohring and Mrs. Mohring.

Q. Who is this other young man that was there? A. My cousin, Harry Stork.

Q. That is the man who is the mechanic, and works as a farmer sometimes? A. Yes.

Q. So this is the company that Doctor Freeman, the educated man, delighted to be in, is that right? A. That is the company he was in.

Q. And you thought that was a sign of great intellect? A. Why, I don't see where that would be a sign of intellect at all.

Q. Have you any other acquaintance, or do you know of any man of any prominence at all, who associates below his peers in intellect or social standing, unless there is something wrong with him?

Mr. Strong: I object.

The Court: I will sustain the objection. I do not think it is relevant.

Mr. Brown: The reason is because this witness has stated the Doctor was an educated man.

A. Well, I do know one, Hamilton Fish. When I was in the army at Garrison, in New York, he used to come down to see us every day. He is a great big millionaire, and I can prove that.

Q. He came down on patriotic duty? A. Oh, I don't know. Perhaps.

Q. Did you go out and drink with him, and go home to his place and have dinner with him? A. Well, I have, yes. At Garrison, New York.

Q. Hamilton Fish? A. Yes.

Q. As a soldier, or as a private— A. As a non-commissioned officer in the army.

Q. With your uniform on? A. Yes.

By the Court:

Q. During the war? A. During the war.

By Mr. Brown:

Q. The Doctor discussed with you places that he has visited, and that you visited? A. Yes, he has.

Q. Did you ever see a gold watch the Doctor had, and a nice diamond ring? A. Why, I do not remember the diamond ring.

Q. What ring do you remember? A. I really couldn't say.

Q. You didn't see that? A. He had several rings, but I never paid no attention.

Q. You didn't pay any attention? A. No.

Q. What relation are you to Mohring? A. None whatsoever.

Q. What places did you visit that the Doctor visited? A. In New York?

Q. Yes. A. None.

Q. Well, you discussed with him? A. He spoke about old times in New York, thirty or forty years ago.

Q. Yes. A. Before I was born.

Q. You thought that manifested a good memory? A. Well, it helped my knowledge of the history of New York in the olden days.

Q. Did he ever speak to you about Chinatown? A. Why, in the old days he did, before greater New York became what it is to-day.

Q. He could tell you just what Chinatown was in those days? A. Yes, he did.

Q. I suppose he told you that it is not what it was in former times? A. No, he didn't say that.

Q. Did you ever take him down there to show him something new? A. No, I never did.

Q. Did he ever ask you to go? A. No.

Q. When Mr. Mohring and the Doctor went over there, where were you? Did you ever go with them? A. When Mr. Mohring?

Q. Yes. A. And the Doctor come to see me?

Q. No. Down in Chinatown? A. I have never been to Chinatown with the Doctor.

Q. You know where it is, of course? A. Oh, yes.

Q. You say that the Doctor was treated with every courtesy. He was treated with the same courtesy as every other man of his age, was he not? A. He was.

Q. So that as far as the courtesy went, the Mohrings didn't do anything more than they should do? A. Well, they made a home for him there, as far as I could see.

Q. And he was paying for it? A. Well, he seemed to enjoy it.

Q. He enjoyed the radio? A. Yes.

Q. Did he enjoy the rum? A. I couldn't say.

Q. He didn't tell you that? A. He did not.

Q. After he would drink it he didn't manifest any dislike to it, did he? A. Why, I never saw the Doctor take more than two drinks.

Q. Altogether, or at one time? A. Why, during the one day that I would stay at their home.

Q. You are a drinking man too? A. I am not.

Q. You don't touch it? A. Occasionally. One or two drinks.

Q. Who was drinking with the Doctor? A. Why, Harry Stork, Harry Mohring and I, we would take a little appetizer before supper, or dinner.

Q. Did you skip any of the appetizer at your

meals? A. Why, not every time that we were there did we have liquor.

Q. Then when you would go out for the little trips in the automobile? A. Why, I only took two trips with the Doctor.

Q. You had drink then, didn't you? A. Why, we stopped off and had one or two glasses of beer.

Mr. Brown: That is all.

Cross Examination by Mr. Watson:

Q. How old are you? A. I am twenty-six years old.

Q. How long have you been on the New York police force? A. Three years.

Q. You are single? A. I am.

Q. When did you first meet Mohring? A. Oh, about a year, or thirteen months ago.

Q. How long before you met Doctor Freeman? A. I met Harry Mohring at the same time that I met Doctor Freeman.

Q. How long have you lived in New York? A. All my life.

Q. Stork introduced you to Freeman and to Mohring? A. He did.

Q. And after that you went out there one day a week? A. Why, occasionally I would skip a week or two, during the winter months.

Q. But during the Summer months you were out there every week? A. Yes, I was.

Q. What did you do when you were out there? A. Why, I would come out with my car and we would go riding. Repair my car. Just spend the day, sort of country for me.

Q. You spent the whole day with Doctor Freeman? A. Partly. Part of the time I would spend with Doctor Freeman, and part with my aunt at Oak Tree.

Q. How much of the time did you spend with Doctor Freeman? A. Oh, we would divide the time. Sometimes I would sleep down at Harry Mohring's place. Other times I would sleep at my aunt's.

Q. Did you spend the day in Doctor Freeman's apartments there at the garage? A. Yes, I did.

Q. What did you do to pass the time away? A. Why, we used to play cards occasionally, pinochle.

Q. With whom? A. With the Doctor, Harry Mohring, Harry Stork and myself.

Q. Was Stork always there when you were there? A. He was.

Q. When was this boat trip? A. I believe it was in October, or the latter part of September.

Q. The Doctor got pretty well intoxicated that day? A. He did not.

Q. Came home absolutely sober? A. He did.

Q. How long were you away on the trip, how many hours? A. Why, we only visited a German boat to get some good beer.

Q. Did you get it? A. Yes, we did.

Q. Just had beer? A. That is all.

Q. And the Doctor came home perfectly sober? A. He did.

Q. In fact, you never saw him drunk, did you? A. I never did.

Q. Never saw him under the influence of liquor? A. I never did.

Q. And you saw him one day nearly every week? A. I did.

Q. And you knew nothing of his excessive use of alcohol? A. I did not.

Q. You never knew that he took drugs? A. I did not.

Q. And never saw the slightest evidence of it? A. I never did.

By Mr. Brown:

Q. Do you mean to say that you would visit the Doctor, Winter and Summer, once a week? A. Why, as I said before, during the Winter months I would skip a day or two, I mean, that is, my regular day off every week, I would come out every two or three weeks.

Q. Both Winter and Summer, in season and out of season? A. Yes.

Q. You would leave the glaring lights of Broadway to come down and receive entertainment at Metuchen? A. Yes.

Q. Twenty-six year old, good looking policeman in New York City, is that right? A. Yes.

Q. The only reason you came down is for what, for the ozone? A. To get away from the city.

Mr. Brown: That is all.

Re-direct Examination by Mr. Davey:

Q. You had visited Metuchen, had you not, before you met Doctor Freeman? A. I had.

Q. You said you slept sometimes at your aunt's, and sometimes at the Doctor's place? A. I did.

Q. Do you recognize that glass? A. No, I do not.

Q. Wasn't it a glass like that that you took your appetizers at Freeman's house?

The Court: He said he did not recognize it.

Mr. Davey: Now I am asking him if it wasn't a glass similar to this that they took their appetizers at Doctor Freeman's home.

The Court: What is the purpose of it?

Mr. Davey: I do not know. My friends

have tried to magnify the use of liquor by the Doctor, and I have a right to show what size drink he took, if I can.

The Court: Objection sustained. He said he only saw him take one or two drinks.

Mr. Davey: I understand that.

Q. Have you any interest, Mr. Noack, in this case? A. I have none whatsoever.

Mr. Davey: That is all.

Mr. Strong: That is all.

The Court: You are through, with the exception of the medical testimony?

Mr. Strong: Yes, sir.

The Court: All through. The proponents rest, with the exception of the medical testimony.

Mr. Watson: We have two witnesses in rebuttal, on minor matters, which will take just a few minutes.

Mr. Davey: There has been no motion on the record; there is a deposition taken by the stenographer here, before Mr. Hauser in New York; I do not know whether it needs a formal offer of that deposition, to be considered with our other evidence, but I think some mention of it ought to appear here, so that it can be bound up in the record, as if taken here.

The Court: It will be considered as a part of the record.

Mr. Strong: We also offer this draft of instructions, which was prepared. In fact, any document which has been marked for identification by us, we will now formally offer.

(Memorandum entered in evidence and marked Exhibit P-12, 6/15/23.)

Mr. Strong: There was a record in Chancery that was offered, and it cannot be found just at this time.

The Court: That has been found, and marked.

CAVEATORS SUR-REBUTTAL TESTIMONY.

JENNIE P. FREEMAN, a witness produced on behalf of the Caveators, in sur-rebuttal, being duly sworn according to law on her oath, saith:

Direct Examination by Mr. Watson:

Q. You are a sister of the late Doctor Freeman? A. I am.

Q. It is you to whom Harry Mohring referred in his testimony, that he went to Nutley after you once in the automobile? A. It is.

Q. You reside at Nutley? A. Yes.

Q. Do you remember that occasion? A. Distinctly.

Q. When was it? A. It was before the 7th of June, but I think it was the latter part of May.

Q. What year? A. 1922.

Q. Did Harry Mohring bring you a note at the time? A. He did.

Q. Is this it? A. It is.

Mr. Watson: We offer it.

The Court: This is an exhibit that is offered here. You had an opportunity to examine it, and Mr. Davey had an opportunity to examine it. Why consult Mr. Mohring about it?

Mr. Strong: I certainly see no objection to that. It is common enough.

The Court: Do you object to the exhibit?

Mr. Strong: I do not know that I object. I wish to know what it is about.

The Court: It will be admitted then.

Mr. Strong: I would like a moment to consider it, that is all.

The Court: You have had about five now.

Mr. Strong: I simply wanted to know what it was about, and whether it was genuine, for one thing. Suppose it wasn't his signature, I wouldn't care to admit it. I asked him if it is his signature, and I understand it is, so I have no objection.

The Court: It is admitted.

(Paper entered in evidence and marked Exhibit D 1, 6/15/23.)

Q. Miss Freeman, did you go with Mohring to Doctor Freeman's house? A. I did.

Q. What was Doctor Freeman's condition? A. My brother was on the porch. He was really—talked too thick for me to talk to him anything about this. He couldn't walk by himself. Harry walked on one side of him, and Lettie on the other, and took him to the dining room; when he sat down he insisted upon my staying to dinner. I sat down at the table with him. He ate little, and he talked little. When the dinner was near the close my brother said, I want my whiskey, I want my whiskey, I want my whiskey. And that was all he said. They took him from the table, one on either side, Harry Mohring and Lettie Patterson, took him to his room. I infer Lettie helped him to bed.

Q. Never mind what you infer, Miss Freeman. Just tell us just what you saw? A. Later I went

to his room to say good-bye to him. From there I told Harry to take me to your office, and I told you, I couldn't state what I said at your office, because—

Q. You went from his house to see me? A. To your house, I should say. Not office. It was in the evening.

Q. The conversation between you and me is not admissible, Miss Freeman. We just want to know what you saw while you were there, and you have told us that? A. Yes, sir.

Q. Was Mrs. Mohring present that day? A. She was.

Mr. Brown: I just have a question, may I ask it at this time, before the cross examination?

By Mr. Brown:

Q. Miss Freeman, did you see what quantity of whiskey was administered to the Doctor that day? A. I did not.

Q. Was it given in your presence? A. It was not.

Q. Was the Doctor taken from the table for the purpose of giving him the whiskey? A. He wished to go to his room; I do not know.

Mr. Davey: How would she know that? I object.

The Court: Objection sustained.

Q. However, when he called for the whiskey he was taken to his room? A. Lettie said, I will give it to you. He was not in condition for me to talk to.

Q. Well, when she took him from the room, or

he was being taken, the expression was made that she would give it to him? A. Yes, she told him she would give it to him.

Q. By the way, the Doctor was not displeased with your visit in any way that day, was he?

Mr. Davey: I object.

A. I have no reason to infer that he was.

Q. Did he say anything—

Mr. Strong: I object.

The Court: Are you making an objection?

Mr. Strong: Yes. How does she know whether he was displeased with the visit, or not?

The Court: Objection overruled.

A. That I could not answer. I do not think he was, but I do not know. My brother never would use any such expression in my presence.

Q. From the conversation that you had with him, or did you have any? A. I had very little conversation, aside I told him things that I thought would interest him, since I found he was not in condition to talk about this so-called frame up.

Q. So the reason you didn't converse was because he wasn't fit to converse? A. He was unfit, in my estimation, to talk about anything.

Q. Do you mean by unfit, physically unfit? A. He was unable to walk at all without assistance.

Q. How did that affect his speech? A. His speech was thick.

Q. Manifesting or indicating what, to your way of looking at it? A. I do not know. I supposed either drugs or liquor. I do not recall whether I smelled liquor on him, but his speech was very thick.

Mr. Brown: That is all.

Mr. Strong: That is all.

Mr. Strong: Now I move that testimony be stricken out, on the ground it rebuts nothing.

Mr. Watson: Harry Mohring said that he went after Miss Freeman, and Lettie Patterson did not send him, and he testifies that Doctor Freeman was in good condition that day. It rebuts Mrs. Mohring's testimony that she never saw Doctor Freeman intoxicated.

The Court: I think I will permit it to stand, Senator.

SALLIE B. FREEMAN, recalled:

Direct Examination by Mr. Watson:

Q. Miss Freeman, testimony has been given relative to the check in the amount of ten dollars, that you sent to Lettie Patterson. Did you do so? A. I have looked in my check book. On March 14th I drew a check, payable to John Breen, which I marked in the check book for Lettie. I wrote a note to Mr. Breen asking that he see that the money be given to Lettie Patterson.

Q. Had you seen Lettie Patterson at your brother's funeral? A. Yes.

Q. How long had you known Lettie Patterson? A. I don't remember when Lettie first came to work for us. I was a little girl. She worked for us many years.

Q. You have known her nearly all your life? A. Nearly all my life.

Q. As a servant in your household? A. As a servant in my household.

Q. Why did you send her this ten dollars?

Mr. Davey: I object. The reason cannot enter into any rebuttal. The testimony confirms that of the witness Mohring, that he cashed a check. It cannot be rebuttal to testify why she sent the check.

The Court: Why not?

Mr. Davey: She confirms the fact. That is all the testimony went to. Whether or not she had sent Lettie Patterson money was the only question.

The Court: Objection overruled. Proceed.

Q. Why did you send it, Miss Freeman? A. The two days that I saw Lettie when I was in Metuchen we discussed her health, and I realized, when we left after the funeral, that we had said nothing to Lettie about her wages, whether she had money, whether she had any plans for a position, for work; and she had said that she had to see a Doctor frequently; still I knew Lettie had an operation when she lived with us, she told me she might have to have another. I sent the check to Mr. Breen, asking it be given to Lettie to use.

Q. Why did you send it to Mr. Breen? A. Well, Mr. Breen had worked for my brother for twenty years. Harry Mohring—there were but two people I could possibly send it to directly to Metuchen, that I knew of, who would have access to Lettie, Mr. Breen's son lived near there, and the office was near, and I knew he would get it to her. Harry Mohring had worked for him for fourteen months. And by comparison with the two, I obviously selected Mr. Breen as the person in whose judgment

and integrity I had perfect confidence, to send the ten dollars for Lettie's use.

Q. At that time had you conferred with Lettie Patterson with reference to this case? A. Oh, not at all.

Q. In any way whatsoever? A. In no way whatever.

Q. Did you afterwards? A. Yes, I did later.

Mr. Watson: Cross examine.

Cross Examination by Mr. Davey:

Q. Did you speak to Mr. Breen about this at all? A. Pardon me?

Q. Did you speak to Mr. Breen about it at all? A. Did I speak to Mr. Breen about the check?

Q. Yes. A. No.

Q. Did you know that Lettie Patterson had $707.11 on deposit with the Manning Freeman corporation? A. No. I knew that my brother, years ago, invested some money for Lettie, and paid her interest on it, but I did not know the amount at all.

Q. Did you send it to her because you thought she was in need of money? A. I thought she might be in need of ready cash.

Q. And left it to Mr. Breen's discretion whether or not to send, or to give to her? A. Oh, no, not at all. The note directly said—

Q. Did you ask Mr. Breen whether she was in need of any money? A. Oh, no.

Q. Did she tell you, when she saw you, that she had over seven hundred dollars on deposit with the Manning Freeman corporation? A. Oh, no. We did not discuss her money at all.

Q. Was it in that letter accompanying that check that you indicated a desire to have Lettie come and live with you? A. No. I never have.

Q. Or your sisters? A. No.

Q. How long after the delivery, or sending of that check was it that you conferred with her about this case? A. I saw Lettie once afterward, some time in April. Lettie telephoned my sister that she wanted to see me, that she had something very important to tell me, and I said, well, I was very busy, and that if she had anything of importance, really important, she had better see Mr. Watson; but she told my sister that she had heard that if I would dispose of Mr. Watson in the case, and leave the matter to Mr. Davey, that it would all be all right. And I said, well, I didn't want to consider that.

Q. What reason was there that you could not have mailed your check and letter direct to Lettie? A. Well, Lettie can neither read nor write. Someone would have to attend to the financial end of it for her.

Q. Did you intend that Mr. Breen should send the letter and check together to Lettie? A. Oh, I didn't think about how it would get to her. I knew it would get to her in some form. I rather thought Mr. Breen would cash the check and give her the money.

Q. You heard the testimony given here that that was not what was done? A. Yes.

Q. That would have been the exact result accomplished if you had mailed it directly to her, wouldn't it? A. Probably.

Mr. Davey: That is all.

Mr. Watson: That is all.

The Court: Both sides rest.

Mr. Watson: Except for medical testimony.

Mr. Davey: Your Honor will understand, in connection with the term medical testi-

mony, that our doctors are not confined strictly to expert medical testimony. I do not want to in any sense withhold anything from the Court. There will be included in this testimony certainly of Doctor Ellis, and probably the other, some questions of pure fact.

The Court: I understand that.

Mr. Davey: Well, that is all right.

The Court: Note on the record that both sides rest, except for medical testimony.

(Adjourned to a date to be fixed.)

September 10, 1923.

Mr. Brown: Will your Honor indicate just about the procedure that should be followed, I mean, the order of the witnesses being called. I understand that the proponents have witnesses here in court. When your Honor last heard the case the proponents were then producing their witnesses. I wonder if the continuation of that line of examination should be carried out by the proponents still calling their witnesses, and then for us to come in in rebuttal with our doctors, or whether they want us to proceed with our side.

Mr. Davey: The understanding was distinctly on record that they would proceed first with their expert line of testimony, and then we should answer them. The medical and the fact testimony was to be segregated.

The Court: I suppose that the orderly course would be for the Caveators to produce their testimony, and then the proponents to rebut that. Taking the medical testimony in the way we are taking

it is rather out of the ordinary, because under ordinary circumstances the proponents would simply have produced their testimony as to the execution of the will, and then the caveators would have produced all their testimony, which would have included, of course, the medical testimony. I think you should proceed with your medical testimony, and then the proponents will rebut it.

Mr. Watson: Before that testimony begins I would like to ask counsel if there is any objection to stipulating as to the age of Doctor Freeman. Strangely enough the record is almost barren of that. The best we have is Mr. Dinwiddie's testimony that he was sixty-five years old. I know that is the fact.

Mr. Davey: I have no objection to stipulating his age, whatever the fact was.

Mr. Strong: I do not think it was sixty-five. I do not think it was much, if any, over sixty, at the time.

Mr. Watson: Then let the record stand as it is. We have not got a very good record, but it is good enough for us.

The Court: As I remember the testimony on that point Miss Nellie Freeman was asked that question, and she did not know how old her brother was.

Mr. Davey: Suppose we find out from one of the sisters, or somebody, what the fact actually is, and stipulate it. We will stipulate whatever the fact be.

The Court: All right.

Mr. Watson: They are not here yet. We expect them in.

Mr. Brown: The testimony shows that Miss Nellie Freeman said that she didn't know, she could not venture any guess about it. Somebody testi-

fied, however, that the Doctor was graduated from Rutgers College in the 80's.

The Court: Yes. I remember that.

Mr. Brown: And that there were so many children in the family, and he was of a certain alternate age. Then there was testimony from Dinwiddie about knowing him so long. If I am not mistaken, John Breen testified that the Doctor was between sixty-four and sixty-five.

The Court: Are you ready?

Mr. Brown: We have the hospital record that he was born in 1859. That is his own admission on that record. That can be taken.

Mr. Watson: That is sixty four. I am sure that is about right.

The Court: I know that is about right myself.

HENRY A. COTTON, a witness produced on behalf of the Caveators, being duly sworn according to law on his oath, saith:

Direct Examination by Mr. Brown:

Q. Doctor, what is your calling or profession at the present time? A. Physician, and medical director of the State Hospital at Trenton.

Q. Have you specialized in your profession, in any particular branch of it? A. I have. Mental diseases, for twenty-three years.

Q. What has been the course of your education, or your experience? A. In insane hospital work since 1899.

Mr. Davey: Is this to establish the Doctor's competency as an expert?

Mr. Brown: Yes.

Mr. Davey: We will concede it.

Mr. Brown: As an expert on mental diseases.

Mr. Davey: We will concede it.

Q. You are at present holding what official capacity? A. Medical director of the State Hospital at Trenton.

Q. And for the number of years you have just mentioned? A. Yes. Well, I have been there for sixteen years.

Q. Did you know Doctor Freeman, the testator? A. I did.

Q. When did you first meet the Doctor? A. I met him first in 1920.

Q. Where? A. State Hospital at Trenton.

Q. Did you have occasion, or an opportunity of observing the Doctor at that time? A. I did. If I remember right, I think I was called in to advise what be done with him, and suggested his coming to the State Hospital. I think Mr. Dinwiddie, if I remember right, was very much interested, and took the matter up with me, and decided to send him there, which was August 5th, 1920.

Q. And when did you see him personally and observe his conduct? A. I saw him at the hospital from that time on.

Q. For how long? A. He was there the first time from August 2nd until August 25th, 1920. Then he escaped from the hospital.

Q. During the time he was there did you see the Doctor? A. I saw him frequently, yes.

Q. How often, would you say? A. Well, I had him—I was especially interested in him and saw him every day, I should think.

Q. You knew that he was a doctor of medicine? A. Yes, I knew.

Q. How did you know that? A. I don't know

how I knew, whether he told me. It was a matter of record that he was a physician. That is, he was a physician who was not practicing, however.

Q. When you saw him in 1920, during the period of your observation of him, or while he was under surveillance, will you tell what you noticed and what you found? A. At the time he came in he came in as a voluntary patient, very nervous, confused, restless; he was willing to remain, however, for a while, as a patient. He had very bad eyesight at that time, he could hardly see anything, which he complained about. Reflexes were very sluggish. The pupils were very stiff; the right one reacted to accommodation, but practically no reaction to light. The vision was markedly impaired. The blood vessels were somewhat sclerotic, hardened. Enlarged liver. That was his physical condition. Very shaky. And he admitted mentally, that he was restless, confused, been smoking to excess, and using alcoholic drinks for a number of years. He admitted having delirium tremens. He seemed to be somewhat indifferent, lost interest in his work, and home affairs. He also had hallucinations of his sight and hearing.

Q. What were the hallucinations? A. Well, he saw things about the place, and heard people in the house. These disappeared in the hospital. He had some delusions, that were not fixed, however, but in regard to various people. His memory was very defective. He could not give any remote or recent events.

Q. Have you any record of the delusions, the nature of them, or the persons to whom they were directed? A. False hearing. He heard voices and carried on conversation with many people who were living and dead. He admitted also seeing things. The delusions were indefinite. No ideas of jealousy at that time. He said that morning that

he was examined that moving pictures and automobile and races were in the building. He claimed that the people in the ward disturbed his sleep, although he was in a quiet section.

Q. When you say building, what do you mean, the institution? A. Yes. In the ward, at that time. He was holding mock operations, and last night tried to make believe that a patient had died on the operating table, and they were going to hold a funeral exercise. His memory was defective, and some fabrication. He could not tell what had happened. He had no knowledge of medicine, which showed that he had lost all his—he was very much deteriorated, in other words. He could hardly write. Very poor. He realized his condition. He stated he had been a dipsomaniac all his life; he made a record of himself.

Q. Dipsomaniac? A. Yes, use of alcoholics. He was considerably deteriorated mentally. No plans for the future. And then after that he was given parole and he ran away. He was admitted to the Dix Building when he came in; that is, we have a hospital building, we kept him in that. We use the top floor for the male patients, although it was the woman's building; and under special treatment. He didn't improve very much that time, because he only stayed there a period of twenty-six days.

Q. Now, Doctor, from the symptoms that you have referred to, and the history of this case, and from your examination of the patient at that time, what was his condition then mentally? A. Well, I should say he was very much deteriorated from the excessive use of alcohol and drugs. He had paranoid ideas, and hallucinations of hearing, and some of sight, and this condition continued. He had very marked lack of judgment, which showed a dementia, a mental deterioration, called an alcoholic deterioration.

Q. When was the next occasion that you saw Doctor Freeman, if you did? A. Then he came in a year later, August, 23rd, 1921, and according to our record at that time there had been very little change in him during the time at home.

Q. May I ask if you saw the Doctor at that time? A. I saw him at that time, yes.

Q. How long did he stay there? A. He stayed there then from a little over—not quite two months He went out in October. October 3rd, 1921. His condition was much the same. He had been drinking to excess, and taking a large amount of veronal. At that time he seemed to be more deteriorated than at the time of his first admission, showing a progressive disease. His blood pressure was very high.

Q. That was just a year after? A. A year after. 165. Almost blind at that time. Mentally he was worse. He had very marked delusions about his wife, claiming that his wife was intimate with the chauffeur, but no hallucinations at the time he was in the hospital. He sent for his lawyer and wanted to start a suit against me for one hundred thousand dollars. And a similar amount against his wife.

Q. Did he give you his age at that time, or on any of those occasions? A. No. His age put down in the record at the first time, that he was born 1859.

Q. Where was that information obtained, do you know? A. From him, or his wife. I don't know if his wife was there. He signed a voluntary paper and that must have been the age he gave himself.

Q. What other symptoms, if any, did you notice in the condition of Doctor Freeman on the last occasion? A. Well, the last occasion he was, I should say, in worse mental condition, although not quite as bad physically. I mean he wasn't quite as

shaky, but there was a very marked progression of his mental symptoms. This time there were very marked paranoid ideas against his wife. He had a great deal of infection. He had a lot of bad teeth, which were removed, and at that time I considered that he had gone on from bad to worse mentally, shown by the fact that he had these very pronounced delusions about his wife, which were fairly well fixed at that time.

Q. Did you know Doctor Freeman at all outside of the institution? A. No. I heard from him indirectly, through friends, how he was coming on. His wife called me up several times. And I think one time, whether after his first admission or before, she called up, and Doctor Funkhauser—

Mr. Davey: I object to what she said.

Q. You cannot state what somebody said over the wire.

The Court: He has not said anything objectionable yet. If he does, I will strike it out. Go ahead, Doctor.

A. She requested someone to come to see him, from the hospital.

Mr. Strong: We object to that. We cannot be bound by what Mrs. Freeman said.

The Court: I do not suppose it is of any particular value one way or the other. It certainly does not hurt you any, because it does not prove anything yet. It is only leading up to something else. I cannot cut out everything.

Q. Doctor, what is your opinion as to the mental capacity of Doctor Freeman to make a will, Doctor Freeman having died on the 7th day of March 1923,

the will executed by him, which is offered here for probate, being signed, I think, on the 12th day of July, 1922, the will made by Doctor Freeman on date last mentioned, which is offered here for probate, disposes of his property in this wise, generally: First, he orders his debts to be paid as soon as convenient after his death, and that his body be cremated, and ashes distributed according to the instructions he had given the executor named in the will, and that he bequeathed to a friend named Harry Mohring, now in his employ, the sum of Ten thousand Dollars, Harry Mohring being a chauffeur who was in his employ at the time of his death about six months.

Mr. Davey: May I ask whether to object as we go along, or hold them until the end?

The Court: Hold them until the end.

Mr. Brown: About the employment, and little things like that, there is no dispute about that point.

The Court: I do not anticipate they will make any question about that anyway.

Mr. Davey: It is not in accordance with Mohring's testimony. He testified distinctly he was not a chauffeur, although he did drive, that he was employed in another capacity.

Mr. Watson: We are not bound by Mohring's testimony. If there is any testimony to support the question, it is proper.

Q. And he gave to his sisters, according to the terms of his will, there being four of them, each the sum of two hundred dollars; and he gave to his wife the sum of one dollar; and the rest, residue and remainder of his property he willed to Harry Mohring, the person I have referred to.

The Court: With the exception of one thousand dollars to Lettie Patterson.

Q. Lettie Patterson, a colored servant who was in his employ for many years, and was in the employ of his father's family before. The Doctor was about the age of between sixty-four and sixty-five years.

Mr. Strong: He was at that time?

Mr. Brown: Yes.

Mr. Davey: The hospital record will now show he was sixty-one, which I think the fact was.

A. In 1920 that was.

Mr. Davey: In 1920 he was fifty-nine, by the hospital record, made in his own presence.

The Court: In 1922, when the will was made, he was between sixty-three and sixty-four.

Mr. Davey: That would make him sixty-one. This was in August of 1920.

The Court: 1859 from 1922 is sixty-three.

Mr. Davey: I understood Doctor Cotton to say he was fifty-nine years old.

A. No. I said born 1859.

Mr. Davey: I beg your pardon. This is my mistake.

Q. And in due course, as far as the testimony shows, that he was a college graduate, and he graduated during the season in life that is usual for men to graduate from colleges; that shortly

thereafter, or about that time, he undertook the study of medicine and obtained his degree; he never practiced his profession, so far as the testimony shows, but he went in the lumber and coal business, or coal and wood business at Metuchen, New Jersey, a municipality containing about thirty-five hundred inhabitants.

Mr. Davey: No testimony of that in this record.

Mr. Brown: The court can take judicial notice of that.

Q. The lumber business was a business that was owned by his father during his lifetime, and was willed to Doctor Freeman; the business for the past nineteen years was immediately managed by a foreman hired by Doctor Freeman; Doctor Freeman, during his college days and as far as can be ascertained, during his life, was a user of intoxicating liquors, first moderately, and for the past nineteen years daily; in 1907, or thereabouts, he married Mary Wilkins, a writer of note of the United States, and he lived with his wife at Metuchen, New Jersey; the home in which they lived was the home of Mrs. Freeman, she having bought and paid for it; the Doctor would visit his office almost daily, that is, the business; he would come to work intoxicated at eleven o'clock in the morning, and he would sober towards evening time; in that time, that is to say, nineteen or twenty years ago, he was then using veronal and drugs; the use of drugs and alcohol at that time produced the usual effects that they would on an ordinary person who used drugs and alcohol as I have stated; as time went on Doctor would go on sprees, beginning with the year 1907 the sprees were yearly, or

semi-annually; when I say sprees I mean become so intoxicated that he could not get about, and he would lie in bed, or places where he could get liquor, but nevertheless not moving about; during his periods of intoxication, beginning with twenty years past, or nineteen, he had the usual symptoms of an intoxicated man, that is, an unsteady gait, speech thickened, was very vituperative in his language, especially towards his life long friends, and his wife; the periods of intoxication during the last five years became so excessive that he would have a spree of two and three weeks at a time, and they would occur three or four times a year, besides the daily drinking and use of drugs and the like; that beginning with the year 1915 Doctor Freeman began the use or practice of taking strychnine for the purpose, as he claimed, of offsettting the effects of veronal and liquor; the use of veronal, liquor and strychnine, when referred to by the friends of Doctor Freeman during his periods sobriety, the Doctor would exult over the use of them saying that he was immune from the effects of alcohol drugs; the doctor all his life was a visitor of a place in New York known as Chinatown; as far as we can obtain from the testimony his visits were annual; he had a liking, evidently, for rendezvous of that kind, and had in his keeping and prized many Chinese souvenirs; he had a valuable ring that contained a Chinese symbol, and wore it all his life, up to a short period before his death; he had Chinese symbols of war, and other trophies, or souvenirs, such as smoking and opium outfits; the doctor's eyesight was poor, or impaired; in the year 1917, about five years before his death, it became so impaired that he was unable to read; for the last year or two before his death his eyesight was so impaired that he could not discern or read

the usual headlines on the daily papers, and finally his eyesight became so poor that he could not read at all, at times; the doctor's gait became what is described as shuffling, having a hard time to move about; in the last year of his life his eyesight was so bad, and his gait, or locomotion, if it may be so termed, was so impaired, that he had to be directed and assisted; for a year previous to his death his colored servant, who had lived with him the greater part of that time, gave him a half a pint of whiskey nightly, which he drank after going to bed; she would also fix every night two pills of veronal for him before he went to bed; during the day the doctor would drink in the morning, in the afternoon, and frequently at meals; if he went out in his automobile, during the past year or two, he usually took with him whiskey, all of which was for his own use; the doctor, because of his excessive use of intoxicants, veronal and drugs, was voluntarily confined in a cure institution for those excesses in the year 1906 or 1907, known as the Oppenheim Institute, and in 1908 was again submitted to treatment in an institution known as the Towne Institution, and in 1919 the Belle Mead Institution in the State of New Jersey; he was voluntarily confined in the State Hospital at Trenton, of which you are director, first in the year 1920, and remained for a period of about twenty, or twenty-six days; his condition while in the latter institution was as you have testified; he was finally committed, in the month of August, 1921, in the same institution, and released in October of the same year, his condition being during that time as you have testified; previous to his latter incarceration or confinement the doctor had been on a spree for about a month, was confined to his bed most of that time, and drank and used drugs almost incessantly during that period; he had strong hallucinations about

his wife, one of which was that she, a woman of about his age, far past middle life, was consorting, or her conduct was of that sort, with a white chauffeur who was then in their employ; at that time he attempted to inflict serious bodily harm on his wife, and threatened to do so, using a large hay knife for that purpose, and breaking down a door in the house; he would cry aloud that there were forms or demons in the room, the forms taking that of naked women in some cases, and that he wanted them driven from the room, when in fact there was nothing of the kind in the house; his hallucinations about forms and the like went to the extent of the doctor walking abroad, outside of his house, in the daylight, with nothing but his pajamas on, and his person at times exposed; at one time he went out on the roof of a two story house, or the roof of a porch on a two story house, after, as he claimed, persons or objects that were intent, as he claimed, upon doing him harm; the doctor was at one time arrested within I think it is ten years before his death, for playing crap—

Mr. Strong: That was, as I recollect it, much prior to that period.

Mr. Brown: My recollection is that it was within five, but I put it ten so as to be safe.

Mr. Strong: I thought it was when he was a young man. Perhaps I am confused.

Mr. Brown: That is in the testimony of Mr. Weber.

Q. Those persons with whom he was playing were not in his station in life, the doctor being at that time, and the time of his death, a man of considerable prominence in the community in which he lived, an educated man, as I have stated, and

worth at least the sum of one hundred thousand dollars; during the last six months of his life, or year of his life, he had as his companions young men under the age of thirty years, and would go driving in his automobile with them, to road houses and the like, places where drink and amusement could be obtained; during the latter year of his life he had no social connections with life-long friends, and was embittered against his wife, and did not care to see his sisters, who were always friendly with him; shortly before his death, that is to say, within the last two years of his life, he made bets on what is known as the world series baseball contest, which were described by those who were present as being made without thought, and being very foolish; he would make a bet with a person, at times, of a few dollars, which bet was placed upon the quantity or amount of money that he would suddenly pull from his pocket, it appearing that the doctor did not know the amount he did have in his hand at the time, and very often it was far greater than the amount that was made in the bet; at one time, shortly before the doctor's confinement the last time in the State Hospital at Trenton, he arranged for alarms to be placed about his premises, and shotguns, to keep fancied persons away from the home that was occupied by the doctor and his wife; he bought a tractor for his business, for which he had no use whatsoever, at a cost of over one thousand dollars; during the war period, or shortly thereafter, he purchased for the business a large quantity of hardware that could not be used in the business in which he was engaged, or sold; since the war, on one occasion a business man called upon him to pay a check of seventy dollars, and he took the check and tore it up, without any reason; he ordered a large quantity of cement, in fact, twenty times more than the

needs of his business; he permitted credit to the extent of ten thousand dollars to be extended to a social colony, which was considered by business men who knew of the financial standing of that colony, to be a worthless and unwarranted extension of credit; he would permit the sale of large quantities of material on unreasonable extended periods of credit, for instance, the sum of one thousand dollars, to be paid at the rate of five dollars a month; shortly before making his last will he was willing, and attempted to place his business in bankruptcy, when the business was solvent; he consulted a lawyer of repute, of many years standing at the bar in the County of Middlesex, and his condition and conception of business transactions was such that the lawyer refused to do business with him; he attempted to sell his business, and the terms proposed were so prejudicial to his own interest that the person who was willing to buy the business refused to consummate the deal; the doctor, during the last year or two of his life, called up a woman named Wilmert, whose husband was formerly in business in the Borough of Metuchen, and without any seeming justification, or warrant, informed her, by telephone, that her son was guilty of having intercourse, or making pregnant, Doctor Freeman's daughter, when, in fact, Doctor Freeman never had a child; the doctor's intoxicated condition and mental incapacity grew so impaired, from the excessive use of alcohol, that he would lose control of his bowels, and the natural functions of his body; at one time he went to sleep with a lighted cigar or cigarette, in the month of December, 1921, as a result of which the bed upon which he was lying became ignited, and his life was in jeopardy because of the fire that was started; immediately upon his release from the State Hospital after his second confinement, in

October, 1921, upon being released, he immediately made a will, which was at variance to the will that is now being offered for probate, and which did not include any bequest whatsoever to Harry Mohring; Harry Mohring, the object of the doctor's bounty in his last will, was no relative of Doctor Freeman's, and knew him but a short period of time; the doctor, after his release the second time, the same day purchased an automobile, that was far more valuable than any automobile the doctor ever had, and in the face of the fact that the doctor was then the user, or had been the user of what is known as Ford automobiles, of a much cheaper price and grade; the doctor was very vituperative in his language about his wife; when passing along the street, in the latter years of the doctor's life, particularly in the last year of his life, he manifested a lack of knowledge of those who were about him, particularly men in the community in which he lived, and who were friendly with him for years; a business acquaintance, who had known the doctor for forty-five years, which person had no intimate business relations with Doctor Freeman, would call at this man's place of business, in the latter years of his life, although he did not follow that practice theretofore, about three times a week, and practically all those times he was under the influence of liquor and hardly able to walk; that latterly he attempted to borrow money, in the sum of forty-five dollars, when there was no need for it; his visits finally became so obnoxious that this business acquaintance told the doctor that he didn't care to hold intercourse with him any further, and that his condition became so that he could not carry on a conversation; the doctor had extraordinary ideas about politics, and would write to Presidents, or a President, and State Senators; the subject of his inquiry and his writings related to

a subject matter that was not of immediate concern, or which would give a reason for any citizen to write in the manner that he did, or about the subject that he wrote; for instance, he wrote to a United States Senator desiring to have access to ships that would come to the United States port, the port of New York, in the United States, for the purpose of seeing relatives, when, in fact, there were no relatives present; the doctor, when meeting friends on the street, some of forty-five and fifty years standing, that is the friendship, would not even greet them, and would seem stupid; he would go to the barber shop about three times a week, and on those occasions he was intoxicated, or under the influence of drugs; the doctor, in less than a year before his death, discontinued and broke off all social relations with all of his friends of years standing, men who had been in his employ for nineteen and twenty years became subjects of his vituperation and objection; he at that time consorted, or became friends with strangers, young men, one of whom was Harry Mohring; he went to live with Harry Mohring, and while living with Harry Mohring drank to the extent and excess that I have stated; he was, on July 12th, 1922, while following the practice of using alcohol and drugs, as served by his servant, and in the quantities and at the times that have been otherwise mentioned, without any communication with any friend, or without the advice of lawyers who had transacted his business for years, or without advice of acquaintances of life standing, almost blind, very shuffly in gait, he was taken by Mohring to a strange lawyer, outside of the City of Newark, at a place called Belleville, and made the will that I have mentioned, and which has been offered here for probate; at the time of his death, the 'ring

which the doctor had worn all his life, and his watch, which he had worn for very many years, nothwithstanding his debauches and constant drinking and his unconscious moments while in states of coma produced by drinking, were lost and unaccounted for, the last time that they were seen being while with Harry Mohring on a visit to Chinatown in the City of New York.

Mr. Watson: I thought, instead of our asking a separate question, which would largely be repetition, when Mr. Brown is through, that I will add a few things I have in mind.

Mr. Brown: Then I will conclude the question by asking the Doctor what is his opinion about the doctor's condition.

Mr. Davey: May we take up the objections to Mr. Brown's question now?

Mr. Watson: Wait until I ask a few things.

By Mr. Watson:

Q. Doctor, we desire to add to this question which has been propounded, the following facts: That two drinks at a time made Doctor Freeman intoxicated; that he caused an employee to wash the truck tires before taking lumber trucks into an ordinary garage, having an ordinary garage floor of cement, and oil, so that the floors would not get dirty; that he kept the garage door locked in the morning so that the trucks could not go out for business at seven o'clock, as usual, in order that Mohring's baby, living upstairs, should not be awakened; that the last two or three years of his life he was almost constantly intoxicated, except

at times that he was in the institution over which you preside, and for a short period of a month or two thereafter; that during all of 1920, 1921 and 1922, excepting the times that he was in your institution, and for a short time after each period, he took a half pint of liquor at night time, upon going to bed, which he consumed during the night, in addition to the other use of intoxicating liquors and drugs as well, which has been propounded in the question, and having in mind this sequence of dates covering about eight months from December, 1921, through August, 1922, the eight months just before and subsequent to the making of the will; in November or December, that he offered to sell lumber at approximately half its cost; that in December, 1921, was the date when the bed was set on fire, which is already in the question; that at Christmas, 1921, he was intoxicated so that he could not dress himself; January 1st, 1922, he was so intoxicated that he could not dress himself; in March, 1922, Lettie Patterson, his colored servant, had to cut his food and prepare it for him at the table; that April 30th, 1922, he was so drunk that he was unable to get out of his bed, and attempted to hold a directors' meeting, at which time he wanted to turn over, without consideration, all his stock in the company to John Breen, Jr., an employee; on May 15th, 1922, he was intoxicated, that being the date of the making of a certain trust agreement; that those with whom he did business would not have transacted the business had they not thought it was for his own good; on May 21st he was so intoxicated as to be helpless, and Lettie Patterson had to feed him; that on the last Sunday in June he could not walk, his speech was thick and muddled, so as to be almost impossible to understand him; that he was mentally incapable

of carrying on business; on July 5th he was in a similarly intoxicated condition, the testimony being that when he got in this condition he lost his ability to walk, talk and think; having in mind that the will was executed in the evening of July 12th; that on the morning of July 12th he was intoxicated and in this condition just described; that on the evening of July 12th, when he went to execute this will, he was not in condition to walk very good, he could not talk very good, his condition was very bad, he was so intoxicated that he did not know just what he was doing, practically; that on the morning of July 13th he was in the same condition, incapable of transacting business; that at an unnamed date during the summer of 1922 he ordered a carload of pipe, for which he had no use; that on August 15th he ordered a carload of metal lath, for which he had no use; that in August he put out of his office a customer, Thompson, who came to purchase material; that in December he gave specific instructions as to the specifications that he wanted for a certain trestle to be built in his yard, and that after these orders to which I have just referred, giving the specifications for this trestle, he never thought of it again, never followed it up, never inquired why the orders were not delivered, or why the specifications did not come; that he attempted to sell a property which he had given rent free to a tenant, thinking that it could be sold, even though it was subject to a rent free clause; that he offered to turn over his stock, without consideration, to John Breen, Sr.; that at an unnamed date he attempted to take in a partner in his business, and in talking to him he did not know the amount of investment that would be required, Mr. Hanauer; and that during the fourteen

months that he lived with Mr. Mohring, he travelled in his automobile over one hundred thousand miles.

Mr. Watson: Those are the facts we desire to add.

By Mr. Brown:

Q. And the further fact that on the 18th day of June, while eating at the table, he had difficulty in gauging the contents of the spoon that he was using at dinner; what is your opinion, Doctor, of the mental capacity of Doctor Freeman to make a will on the 12th day of July, 1922, the date upon which the will offered for probate was executed, or alleged to have been executed?

Mr. Watson: May we ask the question to include the testimony given by himself, based upon his personal observation.

Mr. Brown: I have referred to that in the question.

Mr. Davey: Now, if your Honor please, I object to so much of the question as stated in words, or in substance, that the lumber business owned by Doctor Freeman was managed for nineteen years by a foreman daily. I think there is no question of Mr. Breen's employment, but the testimony all is that during almost the entire period of nineteen years, Doctor Freeman personally managed that business.

The Court: That portion of the question was, "was immediately managed."

Mr. Davey: I do not think so. I think it was "immediately managed by Doctor Freeman."

The Court: There comes a discussion as to just what is meant by "immediate".

Mr. Davey: That pre-supposes the direction of the affairs, and I do not think that is in accordance with the testimony.

The Court: I suppose the testimony would show that the details of the management of the business were largely entrusted to Mr. Breen.

Mr. Davey: Mr. Breen was foreman. I do not think there is any testimony that he was in any wise concerned with the management of the business, other than the necessary—

The Court: You refer to the details of the business, do you not, Mr. Brown?

Mr. rBown: I do. That is what I meant by immediately, and I did not want to encumber the record. I got out the fact that the Doctor was there.

The Court: It has appeared in the testimony that the Doctor himself was actually in attendance in looking after the business.

Mr. Brown: Yes. That appears in the question.

The Court: But the details, or what may be called the minutia of attending to the business, was largely, of course, handled by Mr. Breen.

Mr. Davey: Mr. Breen was foreman, of course, and he did what was required by a foreman, but I do not think that takes in the management of the business.

The Court: Let the question appear in that form, and I think that will be satisfactory to Mr. Brown.

Mr. Brown: Yes. That is accepted.

Mr. Davey: Now I object to the statement in the question that he lived, up until the time stated, with his wife, at Metuchen, in a house that she bought and paid for. Neither fact is proved. The fact as proved is that he had left his wife in May or June of 1921, and went to live with Will Breen, and that he never, from that day on, lived with his wife.

Mr. Brown: We accept that, and ask that the question be corrected accordingly.

Mr. Davey: I do not recall any testimony that the wife bought and paid for the property. I think it is immaterial anyhow, and should be stricken out.

Mr. Brown: Mr. Breen testified to the fact—

Mr. Davey: There was some testimony, I know, that he said something about that he combined the checks and didn't know whether she paid.

The Court: As a matter of fact it was Mrs. Freeman's house. I do not recall whether it appeared in the testimony, or not, but, as a matter of fact, that is true.

Mr. Davey: I do not think it is material.

The Court: It may not be material. I will allow it to stay in.

Mr. Davey: I object to the question as propounded, in the statement that he came into the office intoxicated at eleven o'clock, and came back, or became sober towards evening, for two reasons, first, it followed immediately a statement that for about nineteen years he went daily to his office, and the implication is that this was a matter of daily occurrence. It is not in accordance

with the testimony, in any case. Mr. Breen testified that occasionally he came in, and if the word "occasionally" be inserted, to make a fair statement of the testimony, I have no objection.

Mr. Brown: I have related the testimony of John Breen as it appears on the record, because I have read it. If your Honor wants the testimony re-read, I will do it.

The Court: I did not gather from the question, Mr. Davey, that it was intended to imply that he came in every day intoxicated.

Mr. Davey: If it be understood that it be not a matter of habit, but a matter of occasional occurrence, I have no objection.

The Court: It was not every day, Senator.

Mr. Davey: I remember the testimony very well. He said he had known him to come in eight or nine o'clock in the morning, and go away intoxicated, so that he could not do anything, and come back two or three o'clock in the afternoon, quite sober.

Mr. Brown: He said, I have known him to do that for years, that is, to come in at eleven intoxicated.

The Court: As I recall the testimony, and I think as you recall the testimony, it was not that he came in every day intoxicated.

(Testimony read by Mr. Brown.)

The Court: I think we may all concede Mr. Breen did not mean that he came in in that condition every day.

Mr. Brown: I translated the testimony.

The Court: We know that Mr. Breen did not intend us to understand that he came in every day in that condition. I will permit the question to be amended to say that he

came in at eleven o'clock in the morning in an intoxicated condition to business, upon several occasions.

Mr. Watson: More than that. We have the exact testimony in the record, and the witness has heard it. Let it go at that.

The Court: All right.

Mr. Davey: I object to the statement in the question that for nineteen years back he had been in the habit of taking veronal and drugs. There is no testimony in the record whatever, except the testimony of Mr. Dinwiddie, and of myself, of Doctor's statement that in earlier years he had experimented with various drugs, there is no testimony of any drug in use by him except veronal. Whenever that drug is named,—I know my friends' questions have related to mysterious drugs, I know witnesses have testified that he was under the influence of liquor, or drugs, or both, but whenever that drug is named, it is veronal, and there is no other drug named in this record, as a matter of any habit, excepting veronal, and I object to coupling veronal and drugs.

Mr. Watson: On that point this is the testimony as I have it: Lettie Patterson testified that for nineteen years he used veronal.

Mr. Davey: Yes.

Mr. Watson: Mr. Dinwiddie testified that later he used strychnine, and gave as a reason for it that it counterbalanced the veronal, and he fixed the time of the beginning of the use of strychnine at about half way through the period of his acquaintance, which would be 1915.

Mr. Davey: There is not a word from then on, in the whole book of testimony, as to any other use of strychnine.

Mr. Watson: Veronal for nineteen years, and strychnine from 1915 on.

Mr. Davey: There is no testimony that he used strychnine as a matter of habit. There is no testimony anywhere in the record that he used strychnine, except that he said to Mr. Dinwiddie that he could and had done it. That was at a time nineteen years before.

The Court: There was also testimony that he used opium at some time.

Mr. Davey: Mr. Dinwiddie said I testified that he had told us that in his younger days he had experimented with hasheesh and opium and morphine, and everything else, but Mr. Dinwiddie specifically said there was no question of any habit as to anything but veronal.

Mr. Brown: The use of the word "drugs" in the question was prompted because of all of the witnesses referring to the word "drug." When I say all, I mean those who did testify along that line, and it seems to me that most everyone who did testify—

The Court: I think the question is fair, I think it is fair to leave it that way, because that is the testimony, and Doctor Cotton is asked to answer a hypothetical question. The court has its own right to determine what the court's impression was as to what were actually the drugs that were used, that is, from the testimony. There was no testimony as I recall it, of any specific drug, I mean, there was no witness who testified to any specific drug other than veronal.

Mr. Watson: Yes, there is. Based upon statements made by Doctor Freeman, on page 247.

The Court: Do you mean strychnine?

Mr. Watson: Strychnine. This is it. It was Mr. Davey's own examination.

The Court: There is no testimony before the court yet,—I suppose counsel will supply it some time,—as to the effect of these various drugs. My idea is that strychnine is not a habit forming drug anyway. Strychnine is a stimulant that acts upon the heart.

Mr. Brown: Yes. The effect of the use of those drugs,—we wanted to get the main question in the witness' mind while it is propounded, and then the next question would be, what was the effect.

Mr. Davey: All the way through he has used the expression liquor or drugs, a thousand times in this record.

The Court: I will permit the question to remain the way it is.

Mr. Davey: Prays exception to that.

The Court: I do not know whether I will or not, because I think that is discretionary with the court.

Mr. Davey: I do not suppose it amounts to anything.

I object to the statement in the question that in 1913 he began the practice of taking strychnine to counterbalance veronal.

Mr. Brown: 1915 was the question.

The Court: I will permit that to remain in the question. I do not think strychnine is going to hurt you any, but I do not know.

Mr. Davey: I object to the question in the statement made of an occasion when his freinds would speak of the use of veronal,

liquor and strychnine, he would exult, and claim that he was immune from the effects of alcohol and drugs.

The Court: There is testimony to support that, that he said to Mr. Dinwiddie that he had been able to counterbalance the effect.

Mr. Davey: The testimony is that his statement was that he had a wonderful constitution.

The Court: Yes. That he had been able to counterbalance the use of these drugs one against the other, balance them up, so that he was immune to the use of either.

Mr. Brown: I translated that to mean, when a man spoke in those terms, he was exulting in his own prowess to withstand the effects of those.

Mr. Davey: I do not recall Mr. Dinwiddie said anything about anything to warrant the use of the word "immune."

Mr. Brown: It is right in the testimony, as I understand it.

The Court: I think he did use an expression similar to that. I will permit that.

Mr. Davey: I object to the statement in the question that all his life Doctor Freeman had visited Chinatown, probably about annually, evidencing a liking for that kind of resort. I submit that there is no testimony of which that is any fair statement. There has been some testimony of one or two occasional visits to Chinatown; but that for years he had had a habit annually of visiting Chinatown, may be innocuous enough, but I do not think it is fair, in view of the testimony.

Mr. Brown: In that regard the testimony

showed that Doctor Freeman, early in life,—I mean by early in life, after his college days, at least, and particularly at the time of his marriage, and from that time on, did visit Chinatown, and that he got those trophies there that were mentioned. It appears he bought the sword and the opium outfits.

The Court: I do not recall that at all. My mind is a blank on that.

Mr. Watson: There is testimony in the case that he went to Chinatown, but I do not recall his buying trinkets.

Mr. Brown: I thought one of the witnesses was asked where he got those things, and he replied, in Chinatown.

Mr. Davey: My friend is confusing information that is not in this record.

Mr. Brown: May I have the question changed, as propounded, so that it will show that instead of the annual visits to Chinatown, and the purchasing of the trophies and the souvenirs that I have referred to, that the Doctor frequently visited Chinatown?

The Court: Yes. That will be agreeable to you, I take it.

Mr. Davey: I want to add to that his possession of a valuable ring with a Chinese symbol. There is testimony, I believe, that he had a jade ring, but it is the first time I ever heard jade called a Chinese symbol, and I object to that.

The Court: I think that is innocuous anyway.

Mr. Brown: Jade is the Chinese stone.

The Court: I do not think that makes

any difference anyway. He had a ring, and that is the testimony.

Mr. Davey: I object to the statement in the testimony that he was unable to read for five years, that his eyesight was so poor finally he could not read at all at times.

The Court: That is true, isn't it?

Mr. Davey: No. The testimony is that in the last years he did read.

The Court: Yes, but at times he could not, that is the testimony, and other times his eyesight was such that he could read large print.

Mr. Brown: Yes. Headlines.

Mr. Davey: It does not agree with my recollection of the testimony.

The Court: That is my recollection, that at times he was unable to read at all, and other times he could read, even during the last year.

Mr. Davey: I object to the statement in the question that during the last year his locomotion became so impaired that he had to be assisted.

The Court: I suppose you will be agreeable to an amendment there that he was assisted.

Mr. Davey: There is testimony in the record that on some occasions he was assisted. There is much testimony in the record that on very many other occasions he was not. And I do not think that is a fair statement of the testimony, or any part of it.

The Court: I think that part of the question should be amended to read that he was assisted.

Mr. Davey: At times.

The Court: Make it at times, if you want to, yes.

Mr. Brown: I move that the question be amended to that extent, particularly when he was getting in and out of his automobile, or going up and down stairs.

Mr. Davey: Yes. I object to the statement in the question that for the last year he took a half a pint of whiskey nightly, every night, and that the servant would fix him two pills of veronal. The testimony of Mrs. Patterson was that she had found veronal tablets under his pillow in his bed. There was some testimony that she did at times, or sometimes, fix a half pint tumbler of whiskey for him, but that he did it nightly I do not think is a fair statement of the testimony.

Mr. Brown: I would like to have that testimony remain. Miss Patterson's testimony is very short, I mean short in comparison with some of the other testimony that was given by other witnesses, and it begins at page 482, and in my notes here I have the substance of the testimony.

The Court: Let the question read this way: To show that for a period of a year, or a year and a half prior to his death, that he nightly consumed a half a pint of liquor. I think that will meet the facts testified to by Mr. Breen, and by Lettie Patterson.

Mr. Davey: It was not that I was questioning. It was the fixing of the veronal pills.

The Court: And that during that period he took veronal.

Mr. Davey: That is not the testimony,

as Mr. Brown read it. It was that during the year, a couple of times she found it. I want to get away from the question of daily habit of taking veronal, because I think there is no testimony to support it, and that is my objection.

The Court: All right.

Mr. Brown: She said she would fix up pills for him every night before going to bed. Page 498.

Mr. Davey: It is on page 496 you will find what you want, Mr. Brown. On 496 was the phrase "he would tell me to fix them for him, and I would fix them and give them to him." But there is nothing there, except only once at night, when he would go to bed. There is nothing to indicate that it was a matter of daily habit, or nightly habit.

The Court: That would be a fair inference from the testimony. I do not know just what the actual facts were. That is a fair inference from the testimony.

Mr. Davey: I object to so much of the question as states that he drank for a year preceding his death during the day, and drank in the morning, and through the day, and at meals, and usually took whiskey with him in the automobile for his own use.

The Court: I think that is borne out by the testimony.

Mr. Watson: Stork's testimony.

Mr. Davey: There is slight testimony that he occasionally had a bottle, from young Stork's testimony. I think it specifically says not every evening, or something to that effect.

Mr. Brown: Breen testified to him taking it in the automobile.

Mr. Davey: Not during the last year.

Mr. Brown: Mohring and Stork did, and Breen before that. We will amend the question that he kept it at times in the automobile, instead of daily, or every time he went out.

Mr. Davey: Instead of usually, as the question was propounded.

Mr. Brown: Change the question from "usually," to "at times."

Mr. Davey: I object to the statement in the question of his intent to inflict harm on his wife, using a hay knife, and he broke down a door in the house. First, the assumption would be that he broke down the door for that purpose. The two incidents were quite separated. The question regarding the breaking of the door was when he was attempted to be kept in his room at the house, on a different occasion from the hay knife incident. And the hay knife incident had no relation whatever to his wife. It was in connection with young Breen, I think it was, who testified to it.

Mr. Brown: We will accept that amendment to the question, and have it read to meet the objection of Mr. Davey. It is a fact that there were two separate occasions, and one was a revolver, I think, and the other a knife. The knife was used at the time that the Doctor attempted to escape or get away from the room in which he was then. He broke out a panel of the door with the knife, and attempted to get out.

Mr. Davey: Went down cellar and got the knife, but there was no connection with his wife on that occasion. If I remember

the testimony right, she was not then at home.

I do not recall any testimony, and I object to the statement in the question as to his visions of forms, or hallucinations of forms of women in the room. I have not read that testimony for some considerable time.

The Court: I do not myself recall any hallucinations.

Mr. Davey: It appears in the hospital record, I know, but I have no recollection of a word of that in the case.

The Court: I do not recollect any testimony about naked women myself.

Mr. Watson: The hypothetical question in that particular can be based upon Doctor Cotton's testimony.

The Court: All right, if it is limited to Doctor Cotton's testimony.

Mr. Brown: Therefore the question will read, hallucinations, instead of the specific hallucinations that I have referred to.

Mr. Davey: I object to the statement in the question that he did not care to see his sisters, who were always friendly. The testimony of the sisters is that they did not visit him, one for considerably over a year before his death, one for about a year, and one from the last Sunday in June preceding his death in March following. The other sister has not testified. But there is no testimony to warrant the statement, as I recall it, that he did not care to see his sisters. There is testimony on one occasion that he told Mohring, after the visit of his sister, that he should not have gone after her, and he didn't want to see her, but that was at least one

individual, and not four, and does not support the implication of the question.

Mr. Watson: Miss Sallie and Miss Nellie Freeman both testified that he was ashamed of his habits, and didn't want them to know of him, and that their visits to him were unwelcome, for that reason.

The Court: I will permit that to remain.

Mr. Davey: If they are going to recite the testimony, that is quite different. The testimony was that he resented their criticism of his habits; that he told one of them his way of living would not suit her, but that is not this phraseology. This phraseology is that he did not care to see his sisters, who were always friendly.

The Court: I think that is a fair inference from the testimony.

Mr. Brown: The sisters testified to the friendly relations.

Mr. Davey: Now I object to the question as propounded, as to the placing of fire alarms, shortly before his death, to keep fancied persons away from the home occupied by him and his wife. The fact is that the fire alarms, the burglar alarms, were to be placed at the lumber yard.

Mr. Brown: All right. I will correct that.

The Court: The question may be so corrected to read the yard, instead of the home.

Mr. Davey: I object to the statement in the question that he extended credit of ten thousand dollars to a social colony, thought by business men to be unworthy of credit, or words to that effect. There is no testimony to show what or who the Ferrar colony was.

There is testimony that he extended credit of about ten thousand dollars to members of the Ferrar colony, but there is none to warrant Mr. Brown's assumption that reasonable business men would refuse to extend that credit, or that other business men did not extend it, or anything regarding the estimate in which the Ferrar colony was held by business men.

Mr. Watson: The testimony was, and the question can be amended accordingly, that ten thousand dollars of credit was extended to members of the Ferrar colony, a Socialist colony near Stelton, over the objection of his associates in the business.

Mr. Davey: Over the objection of his foreman, Mr. Breen.

Mr. Watson: And that the ten thousand dollars has been largely lost.

Mr. Brown: It clearly appeared to me, from reading the testimony, as I remember it, that the Ferrar colony was a social colony, and that this was a venture that would not have been undertaken by a business man.

Mr. Davey: The individuals did not own the land.

Mr. Brown: He invested ten thousand dollars in a colony where they did not own the land.

Mr. Davey: I object to the statement in the question that he extended credit to a customer of one thousand dollars, upon unreasonable terms of payment of five dollars a month. I have no recollection of any such testimony at all.

Mr. Watson: Mr. Theodore Mundy and Mr. Breen testified to it.

The Court: You think that would be unreasonable, don't you?

Mr. Davey: I think that would be unreasonable, I quite agree with that, but I do not recall any testimony that warranted it.

I object to the statement in the question that he attempted to place his business in bankruptcy, while it was solvent. There is no such testimony. There is testimony that he wanted to confess judgment. I do not object to the characterization of the attorney he went to.

The Court: That characterization did not refer to the attorney that he consulted about confessing judgment. That was another attorney was referred to.

Mr. Davey: That was not in accordance with the fact; to confess judgment, and bankruptcy are quite separate proceedings.

Mr. Brown: We will accept the amendment.

The Court: The fact is that the proposition that he submitted to the attorney was a desire to confess judgment to some person, whose name does not appear in the testimony.

Mr. Davey: I think it ought to appear that it was not done. My friend may have indicated that in the question.

The Court: It was not done anyway.

Mr. Davey: As I recall the testimony with reference to the Wilbur incident, the testimony was not with reference to Doctor Freeman's daughter, but to a daughter of the witness.

The Court: That the daughter of the witness had gotten into trouble by the son of Doctor Freeman, that was the question.

Mr. Brown: I may have my sex mixed. I am willing to have that transformation made.

Mr. Davey: My friend's argument was that Doctor Freeman had no daughter, and if it did not relate to Doctor Freeman's own daughter, it loses that part of it.

I object to the statement in the question that immediately after his release from the asylum on October 3rd he made a will at variance with the will offered for probate, in that it contained no bequest to Mohring. There is no testimony whatever in this record as to the contents of the will which he executed in Mr. Watson's office on October 4th. Mr. Brown may know the fact, but we do not.

Mr. Brown: I thought it was offered in evidence. If it was not, then I will withdraw that.

The Court: Wasn't it testified here as to what provisions were made in that will?

Mr. Watson: No, sir.

Mr. Brown: The will was lodged with the Surrogate.

Mr. Davey: The bare fact that the will was executed is the limit of the testimony in this case.

The Court: Then that portion of the testimony will be stricken out.

Mr. Davey: I object to the question so far as it states that Mr. Mohring, the beneficiary under the will now offered for probate, was no relative, and had known the Doctor but a short time. The fact is that he had known the Doctor considerably over a year; if that is what Mr. Brown means by a short time,

I have no objection to the fact, but I do not remember that it was an acquaintance of only a few weeks.

Mr. Brown: That is what I mean.

Mr. Davey: I object to the statement in the question that he bought, I think it was, on the day of his release from the asylum, a far more valuable automobile than the Fords he had been accustomed to. The fact is that he bought an Essex sedan car, and there has been testimony as to its price, I believe, that was paid for it. I never heard it charged against a man's mentality that he bought an Essex, when he had been heretofore using a Ford, if he could get the money to pay for it.

The Court: That may be an argument.

Mr. Brown: The fact is that the man did two things that he never did before in his life, on the same day, after coming from the Trenton asylum.

Mr. Davey: I object to the statement in the question that he used vituperative langauge as to his wife, on the street, during the last year of his life, and lacked knowledge of men with whom he had been friendly for years. The testimony in that regard is that he refused to speak at all to Judge Weber, who signed the commitment papers for Doctor Freeman's admission to the hospital, and I think Judge Weber said he never did speak to him again. There is no testimony in the record that he ever used a vituperative word with reference to his wife, while he was on the street.

Mr. Brown: No. It was not so intended, but it was otherwise.

Mr. Davey: Mr. Dinwiddie's testimony is that he became vituperative when he became intoxicated, and I would have no objection to that statement. That had gone in the question earlier, and I have not objected to it. But this paragraph I have down, that he used vituperative language to his wife on the street.

Mr. Brown: I think Mr. Davey is correct about that. It was intended to mean not on the street, but the street incident related to not only Judge Weber, but Mr. Edgar.

Mr. Watson: There were several who testified that he did not speak to them on the street; Burroughs and Kramer.

Mr. Davey: I object to the statement in the question that he attempted to borrow money, forty-five dollars, when he had no need for it. There is not any question in my mind, from the record, that the sum total of the testimony and evidence in this case shows that he did have need for it. Whether it was proper need or not is the question. The fact I have not any objection to, but the characterization that he had no need for it, or use for it, I object to.

The Court: I think I will permit that to stand. Or that he had no real need for it. Is that acceptable to you?

Mr. Brown: Yes.

Mr. Davey: I object to the statement in the question regarding the letter to Senator Frelinghuysen, unless it be connected with the explanation that also appears in the testimony as to its purpose and effect. It is true that he wrote to Senator Frelinghuysen about a relative, purely fictitious, in Europe,

but the purpose of that, and the result of it, is in the testimony, and I think in fairness should be included, that he wanted access to the German steamers, and did, in fact, get passes to the German steamers, and he visited them, for the purpose of getting some real German beer, at the time when that was not procurable in this country.

Mr. Brown: That is the fact, and we accept that as an amendment to the question.

Mr. Davey: I object to the statement in the question that he would not greet his friends on the street. This apparently is a reiteration of the other one. If it refers to others than Weber I have no objection.

I object to the statement that less than a year before his death he broke off all social relations. I do not recall any testimony as to earlier social relations, or later ones, except so far as Dinwiddie's testimony is concerned, and if that be the meaning of it, it should be limited to the witness who testified to it.

The Court: I think Dinwiddie's testimony was that he broke off social relations with other persons besides Dinwiddie.

Mr. Davey: I have no personal recollection of it. If there be, I stand corrected.

The Court: Anyway the fact from all the testimony appears that during the last year or so of his life, that the Doctor's social activities were confined merely to Mohring and his friends.

Mr. Davey: I think that is the fact, that his intercourse was largely with those, but I do not recall any testimony—

The Court: That prior to that time the

testimony is that he had been socially active with Mr. and Mrs. Dinwiddie, and with the Breens.

Mr. Davey: I do not recall any testimony of social intercourse with the Breens.

The Court: The same social intercourse that he had with the Mohrings afterward, or the same character of social intercourse. I think that is a fair inference from the testimony. Possibly not from any particular witness, but from the testimony of all the witnesses in the case, showing just what this man's life had been during the last four or five years of his life.

Mr. Davey: I object to the statement that in the month of January, 1922, he went to live with Mohring. The fact is exactly the reverse. He had been living in that apartment for months before Mohring came there, and he had Mohring come live with him.

Mr. Brown: We will accept that amendment as a part of our question.

Mr. Davey: I object to the inquiry in the question as to July 12th, the day of the execution of the will, without communication with any friends, or the advice of lawyers who had served him for years, he was taken by Mohring to a strange attorney in another town, and made a will, unless it be connected with the testimony as to the surrounding circumstances. It should appear that the instructions for a will had been given in his own handwriting, and the will executed; that he had before that date given and directed a change to be made in his will, which had been drafted in accordance with

those instructions, and that he came to execute it on the 12th, separating one single incident from a chain in testimony, for the purpose of a hypothetical question may be, and is sometimes decidedly unfair, and I think that the question should fairly recite the testimony, utterly uncontradicted in that regard, if it is to go in at all.

Mr. Watson: The testimony is very much contradicted by the testimony of three or four witnesses, that on July 12th he was intoxicated.

Mr. Davey: There is not any question here as to his condition. The question is to the former communication with friends and other attorneys.

The Court: The objection that counsel makes I think should, in all fairness, be included in the question. The circumstances concerning the making of the will, as I recall them from the testimony, are these: That some time in June, the father of the chief beneficiary introduced Doctor Freeman to Mr. Davey.

Mr. Watson: June 18th.

The Court: June 18th, 1922; and at that time Mr. Davey received from Doctor Freeman instructions for the preparation of a will; the will was executed on the 20th of June.

Mr. Davey: 21st of June.

The Court: 21st of June. That there is in evidence here a paper, apparently written in Doctor Freeman's hand, in which instructions were given to Mr. Davey. That some time prior to the 12th of July, to be exact, July 5th, Mr. Davey was given instructions

by Doctor Freeman for the preparation of a new will, which will was executed at Mr. Davey's house on the 12th of July, in the evening.

Mr. Davey: In accordance with an appointment made before.

The Court: Yes, you can put that in. That Doctor Freeman did not consult with any of his friends, or with any attorney, in reference to the making of either of those wills, except with Mr. Davey.

Mr. Brown: Yes. We will accept that amendment.

Mr. Davey: I object to the statement in the question that his ring and watch were lost and unaccounted for; that the last time they were seen was when he was with Mohring in Chinatown. I have no recollection of any testimony that either the ring or watch was lost or unaccounted for. Mr. Brown did ask some questions regarding it, but I do not think that is either the fact, or a fair assumption from the testimony.

The Court: I think it is a fair inference to be drawn from the testimony. My recollection is that Mr. Harry Mohring was asked those questions, and said he didn't know where the ring and the watch was. He is the man it would be natural to assume would have knowledge of where they are at this time.

Mr. Davey: Now do I understand that the appendage to the question as propounded by Mr. Watson comes in as part of the whole question?

The Court: Yes, sir.

Mr. Davey: I had made a note to object

to the omission of the fact of Doctor's abstinence from drink, as testified, after his release from the hospital, but that Mr. Watson did include.

The Court: Yes, that is included.

Mr. Davey: I think that is all I have noted.

Mr. Strong: I wish to make the additional objection that the question is improper for the reason that it contains numerous other statements which have not been testified to, statements of facts which have not been testified to.

The Court: I cannot listen to an objection, unless it is made specific.

Mr. Strong: I think so.

The Court: You will have to point out to me what the facts are, included in the question, which have not been testified to. I mean, what portions of the testimony relate to alleged facts which have not been testified to.

Mr. Strong: It is incumbent upon them to frame a hypothetical question according to the facts.

The Court: Absolutely, and it is incumbent upon you, if you are making an objection, to point out to me what you are objecting to.

Mr. Brown: And so counsel can amend it, so that the court can rule on it. Not to point it out in the upper court.

The Court: You may answer the question.

Mr. Strong: In response to your Honor's view of the matter, it should be stated in this hypothetical question, how many young men, and whom he made acquaintance with.

That is a very broad statement, that he gave up his own friends and made friends with young men who went with him to road houses. I think we ought to know how many of those young men went, and what relationship they stood to him.

Mr. Brown: One was a young policeman from the City of New York, who would come out to Metuchen for his vacations, when he had his week off, a man under the age of thirty years, and unmarried. Another was a Mr. Stork, who was also unmarried, as I remember the testimony, and under the age of thirty. And Harry Mohring, who was a married man, and under the age of thirty years. Those are the three men.

Mr. Strong: How many times was the policeman out there?

Mr. Brown: Every week or so.

Mr. Strong: Whose friend was he, young Mohring's?

Mr. Brown: He was introduced to young Mohring, but he came out to the Doctor's place. He had no relation with Mohring. His friend was Stork, as I understand it.

Mr. Watson: Stork's cousin.

Mr. Strong: How many times?

Mr. Brown: Every time he came out they took a ride.

Mr. Strong: How often was that?

Mr. Brown: Every week.

Mr. Strong: I object as not according to the fact.

The Court: It is substantially according to the fact, Senator. It may not have been every week. It might have been every two weeks, it might have been every month. The

question is not as to the frequency, but as to the fact.

Mr. Strong: I object to the statement in the hypothetical question that Doctor Freeman was intoxicated—

The Court: Don't you think it is out of order for you to object?

Mr. Strong: Your Honor invited me to make the objections.

The Court: It is hard enough for the court to meet one counsel, but when it has to meet two on a side it is difficult. I will hear any objections that you have, if you really insist upon them.

Mr. Strong: I object to the statement that he was intoxicated every day. That the use of drugs and alcohol produced their ordinary effects. That is very misleading, and contains no statement of the quantity of drugs and alcohol.

The Court: What is the object to the statement that he was intoxicated every day?

Mr. Strong: It has not been testified to.

The Court: You mean you think he was not intoxicated every day?

Mr. Strong: No. And the testimony does not bear that out. And there is no testimony that he used drugs. There is testimony that he used veronal.

The Court: There is a lot of testimony that he used drugs, without disclosing what they were.

Mr. Strong: No, I think not. At any rate, I make that objection. And I object to the statement that he continually had the same symptoms. I object to the statement that three or four times a year he went on

sprees lasting two or three weeks. And I object to the statement that his gait was at all times shuffling. And I object to the statement that in latter years, on the street, he manifested no knowledge of those about him. I object to the statement when a business acquaintance called him up, he was always under the influence of liquor. I object to the statement that he borrowed money without need of it. I object to the statement that his condition became so bad that he could not carry on a conversation. I object to the statement that he entertained extraordinary ideas about politics. I object to the statement that when he would go to the barber shop he was always under the influence of liquor or drugs. I object to the statement that for about two years before his death, I think that was the period of time, he broke off all social relations with his old friends.

Mr. Brown: Page 308 is the testimony of the barber (reading testimony).

Mr. Strong: I object to the statement that his mental capacity became so impaired that he lost control of his bowels.

The Court: That is in the testimony, I am positive of that.

Mr. Brown: Lettie Patterson testified it happened in the bath tub, and in the room.

The Court: No. She said it never happened in the bath tub, but it happened in the room.

Mr. Strong: I object to the statement that he was in the same condition on July 12th and on July 13th. I object to the statement that he put a customer out of his office.

I object to the statement that he was incapable of transacting business on July 13th. I object to the statement that he ordered lumber or a trestle, and never thought of the matter again. I object to the statement that he took, or attempted to take a partner, without knowing the extent of his business.

The Court: That was not the question.

Mr. Strong: That is the way I understood it.

The Court: No. Without being able to tell the extent of the investment required.

Mr. Strong: I object to that statement.

The Court: That is the testimony of Hanauer.

Mr. Strong: And I renew my objection to the question as generally formed.

Mr. Brown: Most of the objections made by Senator Strong have been met by the corrections heretofore made by Mr. Davey. Those that have not been so corrected, the objections of Senator Strong, to my mind, do not correctly state the testimony. I think that in many of the remaining objections he has stated his objection not just in line with the testimony in the case. I believe the Senator has not made his notes accurately. The one about the barber, I have already referred to the testimony. The one about calling people up intoxicated, I do not remember anything like that in the testimony. As to the witness being evicted, or put out from the office, and the dates, that was taken care of by Mr. Watson, and I think if it is necessary to make reference to the paging, he can do it.

Mr. Watson: If your Honor wants it, I have it right here.

The Court: It seems to me the question, as it is now before the court, and before the witness, with the various amendments and corrections, is a fair assumption of the testimony, fair to both sides.

Mr. Davey: May I correct an omission of mine? I find Mr. Watson, shortly after he began to amend the question, used the expression he was constantly intoxicated. I do think that is objectionable.

The Court: Make it frequently.

Mr. Watson: Just a minute. Page 232. During the last two or three years almost constantly intoxicated, and that is the very language of Mr. Dinwiddie on page 232.

Mr. Davey: Mr. Dinwiddie did not see him after the last Sunday in June of 1921, except in the most casual way.

The Court: Yes, but I am not taking the testimony of Mr. Dinwiddie alone. "Almost constantly," is fair.

Mr. Dinwiddie: I have not that; if I am in error in making my notes.

The Court: Put the word "almost" in there.

Now you may answer the question.

A. From my own knowledge of Doctor Freeman's condition while at the hospital, and subsequently, and from the testimony in the case, I would say that he was not mentally capable of making a will on July 12th, 1922.

By Mr. Brown:

Q. Now, Doctor, will you please state to the court, from the testimony that you have heard as

to the use of veronal and liquor, what the effect is upon the mind and body of a person who uses liquor and veronal to such an excessive degree, and also the effect of the use of strychnine, under the conditions mentioned, when you refer to the person, or the effect upon a person, having in mind Doctor Freeman, at his age, and the other testimony as to his environment and his conduct.

Mr. Davey: I must object to that question; if the question be what was the effect on Doctor Freeman, that is a question of fact. If the question be what was the effect on a man of Doctor Freeman's age, propounded to an expert, that is a different question. He asks him first what would be the effect on a man, and then, having in mind Doctor Freeman and his characteristics, and I am impelled to believe that he is asking now a vague fact again, what was the effect on Doctor Freeman. If that be the question, I have no objection to it.

Mr. Brown: We will confine it to Doctor Freeman.

A. I think the effect was evident, at the time of his confinement, the two times he was confined in Trenton, was to produce a very profound physical disturbance, as well as mental deterioration. The alcohol alone would do that. The alcohol, complicated by veronal, would be worse. Veronal is a sedative, a depressant, and constant use of it would necessarily, in conjunction with the alcohol, produce the mental symptoms which he showed. It could do it without the veronal, I mean, the alcohol alone would be sufficient to produce the mental condition that he was in at the time I saw him,

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and the progressive mental condition which lasted, from the testimony, until his death, with the constant use of alcohol. The strychnine would have an effect of—a toxic effect, if used continuously, an accumulated effect.

Q. Well, can you explain more fully, and enlarge, Doctor, the progressive deterioration, or the different steps of the deterioration that would occur from the use of those drugs, upon the Doctor, and when I say drugs I mean veronal particularly, and intoxicating liquors, just how they affected him?

Mr. Davey: This is a scientific question, but does it relate to Doctor Freeman?

Mr. Brown: Doctor Freeman.

Mr. Davey: I object to it, because the witness has no knowledge, apparently. He saw him in Trenton, and as I understand it, did not see him again.

The Court: He saw him twice in Trenton.

Mr. Davey: Yes. On those occasions, that is one thing, but he is asking now as to July 12th.

The Court: I am not able to say, from the record, whether or not Doctor Cotton can answer that question. He is the best judge of that. If from his observation he is able to answer the question, I will permit him to do it.

A. From my observation of his physical and mental condition at the time that I saw him, the two times contrasted showed him in very much worse condition in 1921 than in 1920; at that time he had all the symptoms of a chronic alcoholic deterioration, the second time going further than it

was before, with delusions of infidelity on the part of his wife, with hallucinations, and with the history of continual drinking, almost continual drinking following that period. I can very definitely state what his mental condition would be, from my experience with other cases, that it was a chronic alcoholic deterioration, with lack of judgment, with periods of hallucinations, with delusions of persecution at the time he was in the hospital and which continued, as evidenced from the testimony in the case, and that this was complicated by his drug habits, which, taken in connection with the alcohol, would certainly make him a great deal worse. That the effect of veronal is stupefying; it is more or less of a sedative, a depressant, and continually taking it would reduce a patient to more or less of a confused state, if he took it all the time.

Mr. Brown: That is all.

Adjourned until 2:15 p. m.

Afternoon Session, 2:15 p. m.

Cross Examination by Mr. Davey:

Q. How old are you, Doctor Cotton? A. I am forty-seven.

Q. And have been at the head of the New Jersey State Hospital for how long? A. Sixteen years this Fall. November 15th, 1907, I went there.

Q. Have you there a record of the hospital of Doctor Freeman's condition when he first came to the hospital, on that first occasion? A. I have.

Q. Have you the record when he came the second time? A. I have.

Q. Read the record of the second occasion? A. Do you want the synopsis of it, or what?

Q. Well, is it very long? A. There is a page here.

Q. I think you had better read it all. A. Psychosis, male. Patient in the hospital from August 2nd to August 25th, for the treatment of chronic alcoholism, veronal and other drugs.

Q. That is the first time, is it not? A. This is the second time, 1921. He left that time without permission. His behavior since then, according to information obtained from his wife, has been about the same. Drinks to excess and uses veronal or barbital as much as before. For a time his physical as well as mental state had improved. Lately he has gone down even further in mental deterioration. Physically he has also declined and is in poor condition. Lost weight. Blood pressure 165. Almost blind. Blood was negative. He showed delusions, which do not seem to be fixed, mostly on the behavior of his wife against whom he has marked paranoid ideas. No hallucinations are elicited this time. He sent for his secretary and lawyer to start suit against Dr. Cotton for $100,000, and a similar amount against his wife for illegal committment. Diagnosis, chronic alcoholism with deterioration. Fifteen years duration. Alcohol. Prognosis unfavorable. Do you want the opinion of the staff given at that time?

Q. I do not suppose the opinions will be important. Let me see for a minute. How much of that statement was upon your own observation, and how much based upon statements made to you? A. Well, by conversations with him, personal conversations with him at that time, and Mr. Watson came up to see him, and we went into his case very carefully, about the question of his coming out, or staying in.

Q. Mr. Watson told you he was sane, did he not? A. No, Mr. Watson never told me he was sane. He kept asking me my opinion as to what was best to be done for him.

Q. Didn't Mr. Watson write you that he was sane? A. I don't think he wrote any such letter, that he was sane. It certainly was not my opinion that he was sane.

Q. What is a paranoid condition? A. Delutional state. Ideas of persecution. Ideas of infidelity and so forth.

Q. Did Mr. Watson, on or about September 8th 1921, send you this letter: "Dr. Henry A. Cotton, New Jersey State Hospital, Trenton, N. J. Dear Doctor Cotton: I represent Doctor Charles M. Freeman, of Metuchen, New Jersey, who was recently committed to the State Hospital at Trenton and is now confined there. I have known Doctor Freeman for several years, during which time I have had occasion to meet him frequently, both in personal and professional way, and as the result of that intercourse I am certain that he is not of unsound mind. I would like an opportunity to confer with you with reference to his case. Could you see me either Monday or Tuesday of next week at your office, and if so, at what hour. Thanking you for your courtesy, and with kind personal regards, Yours very truly, Russell E. Watson." Did you receive that letter? A. I did.

Q. Were you mistaken then? A. I said I received a letter, but you said he wasn't insane.

Q. Stating that in his opinion he wasn't insane, that is what this letter states. A. It says of unsound mind.

Q. Did Mr. Watson come to see you? A. He did.

Q. Was Doctor Freeman discharged as sane? A. He was allowed to stay in there. Mr. Watson took my advice, to treat him and get him in condition,

that he needed treatment, that he was insane. That was September. I don't think he was discharged until October.

Q. He wasn't discharged until October? A. October 3rd. That was three or four weeks later.

Q. Did he respond to treatment during that interval? A. Well, he was better, to the extent that he didn't have his alcohol, and he was quiet here.

Q. Did he have veronal? A. He may have had some sleeping medicine. I just don't remember that. He may not have had veronal.

Q. Was he in other respects better? A. No. He was a little improved, yes, but he wasn't well, by any means.

Q. Yes, but wasn't he very much improved physically and mentally? A. I don't think he was very much. I think he was a little improved, naturally, being in the hospital under treatment he would be a little better.

Q. How often did you see him during the time that he was confined there? A. I can't say.

Q. About? A. I can't say about. He was in the Dix Building, and I was in that building nearly every day.

Q. Did you see him every day? A. I can't say whether I saw him every day or not. Let me see that record, and I will see what his condition was when he went out. I say he had improved a little, naturally, being under treatment in the hospital, but I didn't consider him well at the time.

Q. How many times will you swear that you saw him from the time he was committed there until the time he was discharged? A. I can't tell you how many. Might have been twice a day, some days, and I might not see him for two or three days.

Q. And it might not have been for a week? A. And it might not have been for a week. I don't know.

Q. Did you see him the day he was discharged? A. I did not.

Q. How long before he was discharged had you last seen him? A. I don't remember that at all.

Q. What doctor had Doctor Freeman more immediately under his supervision and inspection and observation? A. Doctor Funkhouser, and I think Doctor Rostow examined him.

Q. Would you have confidence in their opinions? A. Well, I would not have much in Doctor Rostow's opinion, as he was a man who was a drug fiend himself, and came to the hospital for treatment, and we employed him just as a matter of courtesy.

Q. Is he there now? A. He is not. He was never appointed on the staff. It was just a matter of giving him something to do while he was there.

Q. You had confidence enough in him to send him down before the Vice Chancellor to testify? A. He was subpoenaed to go there, in my absence. I was away at that time when that happened.

Q. Where were you at that time? A. I couldn't tell you now.

Q. And you were away for how long? A. I don't remember that. I know I didn't appear in the case.

Q. Did you know of his being subpoenaed, before he went there? A. I don't remember that.

Q. If you did, you didn't make any objection to his going there? A. I don't know. I think it was done in my absence, the whole thing.

Q. You are not certain about it, you will not swear to it? A. If I had known the action was coming off, in all probability I would have been there. I am telling you the best of my recollection and belief.

Q. Will you swear that you didn't know that Doctor Rostow was subpoenaed to go there? A. I say I don't remember.

Q. You don't remember? A. No, I don't remember.

Q. That is as far as you are willing to go now? A. That is as far as I am willing to go. It is two years or over ago.

Q. At the time that Doctor Freeman was discharged from the hospital did he possess testamentary capacity? A. I have testified not since I knew him that I considered he had testamentary capacity; since I saw him in 1920, at no time did I consider he had testamentary capacity.

Q. You limit your testimony to the times you saw him, is that right? A. No. And the subsequent history.

Q. As given to you by others? A. And the testimony before the court.

Q. The testimony as you heard it to-day? A. The testimony, yes.

Q. Had you ever heard that hypothetical question before you came here to-day? A. Never have heard it; never have known anything about it.

Q. You have confidence in Doctor Funkhouser, haven't you? A. He is my first assistant.

Q. Have you confidence in him? A. I certainly have, yes.

Q. He is a good man, isn't he? A. He is a good man, yes.

Mr. Brown: I object to that. Comparing the ability of witnesses.

The Court: I think it is very improper, and I think you do too, Senator.

Mr. Strong: No, I don't, your Honor. Really I think it is proper to find out.

Q. How could a man who was in the condition that you saw Doctor Freeman in at the hospital

have lucid intervals? A. He could have lucid intervals, yes.

Mr. Strong: That is all.

A. If he kept away from alcohol for six months or a year.

Q. What is testamentary capacity? A. Ability to make a will.

Q. What does that consist of? A. Knowledge of—a normal knowledge of a man's estate, and the beneficiaries, the normal beneficiaries.

Q. And what else? A. That is the principal thing, the value of his property, and who he wants to leave it to, those who normally would be left an estate.

Q. Where did you learn that? A. I don't know as I have ever studied it, any more than my own opinion.

Q. Did you ever testify in court before, Doctor, as an expert in insanity cases? A. Very little. Once in a while I do. Not very much in late years.

Q. More so formerly? A. Yes, I used to testify a great deal.

Q. Why not so much in late years? A. Because I haven't got time.

Q. You had time to come here to-day? A. Yes. As this was a hospital patient, I couldn't do anything else.

Q. You always respond in cases of a hospital patient? A. I do.

Q. And now never in other cases? A. No, I didn't say it. I said less the last few years than formerly.

Mr. Brown: Senator, the Doctor was subpoenaed in this case.

A. Yes, I was subpoenaed in this case.

Q. You are always subpoenaed practically, aren't you? A. Yes. Of course, I have to come when I am subpoenaed, naturally.

Q. You wanted to come to-day, is that it? A. Immaterial to me.

Q. What compensation do you expect to receive for testifying here? A. I haven't talked it over. I haven't mentioned any compensation.

Q. You expect to receive compensation? A. I expect to receive compensation for my time, yes.

Q. For nothing else? A. That is all I expect to receive compensation for.

Q. What do you think your time is worth? A. That is my affair.

Mr. Brown: I object.

The Court: Objection sustained.

Q. You do not care to state? A. That is my affair entirely.

Q. I show you a paper writing marked "Exhibit 1 for Identification, Freeman will matter, April 6th, 1923, E. E. D. A.," and ask you to look over that drafting, and if there is anything you do not understand, I will tell you what it is. A. I would say it is the writing of an insane man.

Q. It is the writing of an insane man? A. Yes.

Q. You understand the writing, do you? A. Do I understand it? Yes. Like lots of letters we get of similar things from insane patients. If I didn't know anything about it, there is a thousand, and there is no dollar mark there. Words are left out. There is no dollar mark after the one, or the thousand. There are lots of elisions. It is similar to papers we see all the time.

Q. You know Doctor Freeman's eyesight was very bad, don't you? A. I do.

Q. You said he could hardly see, didn't you? A. At times.

Q. Do you mean to swear that any imperfections in that paper could not have been due to that blindness, partial, or nearly so? A. Sure. That was part of his brain trouble.

Q. Yes, but wasn't it a part of his physical trouble too? A. A part of his nerve trouble. The optic nerve was affected.

Q. Yes, but independent of any lack of testamentary capacity, a man nearly blind could write a letter like that, could he not? A. Well, I don't know what a man nearly blind could do. I am not a blind expert.

Q. You say you are an insanity expert? A. I have given you my opinion.

Q. Read that, if you can, and see whether there is anything insane about it. Well, I should think the fact he left one dollar to his wife would indicate insanity to my mind. Knowing his delusions as I do, it corresponds exactly with his mental condition.

Q. Suppose his wife had committed him to the asylum, would that naturally awaken a resentment in him? A. He had the resentment before he came to the asylum.

Q. How do you know that? A. Because he told me himself that his wife was living with the chauffeur in the house. That was a delusion. He came there himself voluntarily before, and he had no objection to coming to the hospital. He had no objection to it.

Q. If a sane man was committed to an asylum by his wife, do you think it would naturally awaken any resentment in him towards his wife? A. A sane man would. He wouldn't be kept there in the first place. A sane man wouldn't come to the asylum.

Q. Never does? A. Never does.

Q. A sane man has never been committed? A. No. He wouldn't be kept there fifteen minutes if he was sane.

Q. That is, if you understood his case? A. Yes. Not only me, but a staff. We have eleven physicians there to pass on him.

Q. If an insane man was committed to the asylum? A. Yes.

Q. And was discharged, do you think he might afterwards entertain any resentment towards his wife? A. Not any more than he had before. If he was sane before he had these delusions about his wife.

Q. If an alcoholic was confined to the asylum, and afterwards recovered his mental equilibrium, was confined by his wife, do you think after his discharge he might entertain any feeling towards his wife? A. Not if he was well he wouldn't. While he is insane he has that resentment, but if he gets well, he appreciates the fact of his being sent there to get well. I have never seen a case that gets well had a resentment against anyone.

Q. Supposing after his discharge from the asylum he never referred to the charges of infidelity, but did repeatedly refer resentfully to the fact that his wife had committed him to the asylum, what would you say as to that? A. That showed he wasn't well. Showed he was mentally unbalanced, because he knew he was an alcoholic, he knew his plans, he had been to institutions time and again voluntarily, he knew he needed treatment. He was perfectly well aware of it.

Q. If he went to institutions voluntarily, wasn't that evidence of sanity? A. Not at all.

Q. Was it not? A. No. He wanted to get rid of the alcohol habit, and then he got so bad he didn't have the interest, and he had to be sent there; that is the difference.

Q. Didn't it require good judgment for a man to know that he ought to go to an asylum? A. Well, he had better judgment in 1919 than he had in 1920, and 1920 than he had in 1921, a good deal better. He had gotten much worse in the meantime.

Q. You never saw him after he was discharged from the asylum, you said? A. No. I had his wife telephone me about him.

Q. I didn't ask you that. You know that is not competent. You have testified enough to know that. A. Well, I hadn't seen him, no.

Q. That is what my question was, you hadn't seen him, had you? A. No.

Q. If it were proved that for two or three months after his release from the State Hospital on October 3rd, 1921, Doctor Freeman did not drink at all, and became quite like his old self, normal in appearance, able to attend to his business, with the sole exception of his impaired eyesight, would that indicate to you that his condition, as you observed it at the hospital, improved? A. If he got entirely well, of course, that would be a different matter.

(Question repeated by stenographer.)

Mr. Brown: That is the testimony of one witness. As I understand it, there was other testimony that the Doctor did drink.

Mr. Strong: I have a right to ask this.

The Court: This is a hypothetical question he is asking Doctor Cotton. I think it is proper.

A. If a man didn't drink, and got perfectly well, it would show that he improved since he left the hospital.

Q. Why don't you answer my question? I didn't ask you whether he was entirely well.

(Question reepated by stenographer.)

A. Yes, I would say his condition had improved, provided, I say, that he was perfectly normal for two months.

Q. If it appeared that in May, 1922, he executed, at the insistence of a creditor of his corporation, a trust conveyance of his stock, and very shortly thereafter sought to have the same cancelled, and if it appeared that that trust was made to his attorney, Mr. Watson, and that Doctor Freeman engaged an attorney from outside Middlesex County to procure the cancellation of such trust, would that lead you to believe that he possessed reasoning power, and some mental ability? A. He certainly possessed some mental ability.

Mr. Brown: I do not want to be arising all the time to object to this line of examination, but here is an example of a question that does not contain all the facts. There should have been stated in that question the fact that Mr. Watson, who carried on that transaction, did that for the Doctor's good, although he didn't think it was a binding agreement. That is as I understand the testimony.

Mr. Strong: That is their testimony.

Mr. Brown: Now you are stating a fact. You are eschewing part of it, and taking part of it.

Mr. Davey: That is based upon Mr. Watson's testimony.

The Court: As I understand the purpose of that question, it is not concerned with whether or not the actions were good or bad, or whether or not the action taken was for the best interest of Doctor Freeman, but it is Doctor Freeman's own action in signing the agreement, and then going and getting

an attorney from outside of the county of Middlesex in order to have the thing set aside. That is what I understand the question to be directed to.

Mr. Brown: I thought it was a narration of just what happened.

Mr. Strong: There is no reflection on anybody there. It states a fact. It is not intended as a reflection.

Q. What is your answer? A. I think I answered it, didn't I?

Q. What? A. I think I answered it.

Q. I say, what was the answer?

(Question reepated by stenographer.)

Q. Which requires the more mental ability, to contract, or to make a will? A. To do what?

Q. To contract, to make a contract, or a will? A. I think making a will is a much more difficult proposition, or test of a man's ability, than making a contract in business, or so forth, because—

Q. If it appeared that Doctor Freeman, on June 18th, 1922, wrote out instructions for a will to be prepared by his new attorney, and executed such will after it had been so prepared, on June 21st, and it appeared that his written instructions were legible and coherent, and that he in that will left to his wife only one dollar a year, because of his resentment of her action in procuring his committment to the hospital, it being the fact that she did sign the application for his committment, would you consider that an act of natural resentment, or a delusion? A. I think his will is the result of his delusions.

Q. Just answer that question. A. I answered your question.

Q. No, you haven't. (Question repeated by stenographer.) A. Consider it an act of delusion.

Q. What is a delusion? A. A delusion is a false idea that cannot be corrected by experience or belief.

Q. Is a mistake of fact always a delusion? A. Well, a delusion is something that cannot be corrected. It is a falsified belief that cannot be corrected by fact or experience.

Q. Is an illogical conclusion necessarily a delusion? A. Not necessarily.

Q. Is an unreasonable conclusion necessarily a delusion? A. Not necessarily.

Q. Would you say from your observation that he was able to execute a valid will on October 4th, 1921, after his—

Mr. Watson: I object to the question at any time. It is not an issue in this case. The Court will go far afield if you are going to try two cases at once. That is an entirely new issue, which has no direct bearing on this whatsoever.

Mr. Davey: It is a day after his release from the asylum.

The Court: I can only hear one counsel on a side.

Mr. Strong: It asks if he possessed testamentary capacity the day after his discharge from the hospital.

The Court: I think it is competent.

Q. Would you say from your observation that he was able to execute a valid will on October 4th, 1922, the day after his release from the hospital? A. In the first place, he wasn't released from the hospital. 1922 was that?

Q. 1921, I should say. A. I don't think he was

capable of making a valid will at any time. I have testified to that effect.

Q. You say you didn't see him the day he was discharged from the hospital? A. No.

Q. And you hadn't seen him for you don't know how long before he was discharged from the hospital? A. I don't know definitely, no.

Q. Would you consider it natural for him to resent the action of Judge Weber in committing him to the asylum? A. I certainly would. If he was normal, he wouldn't resent it.

Q. If he was normal he wouldn't resent it? A. No.

Q. In your opinion a normal man, no matter how unreasonable he might be, nor resentful he might be, would never, if he was sane, resent having been committed to a hospital while insane? A. No, I didn't say that. Oh, while insane? We have fourteen hundred people—

Q. Just wait a minute. A. I will answer that for you. Fourteen hundred people have been discharged, who were insane, in the last five years, and there is not one of them has any resentment.

Q. That is not a response to my question.

The Court: I think it is.

A. I am telling you my experience, that a person who is insane, and becomes normal, has no resentment for being committed to a hospital.

Q. You swear that it would be impossible? A. I haven't seen it. If a man has resentment, he is not normal; that is proof positive that he is not normal.

Q. In your opinion would it be impossible for a normal man, after his discharge from the hospital, to have reached the conclusion that he was mistakenly incarcerated there, and that he was sane at the time that he was committed?

Mr. Brown: I do not know if the court understands that question, or the witness. I know I can't get it. When I say get it, I mean understand it.

Mr. Strong: I guess His Honor understands it all right.

(Question repeated by stenographer.)

A. That would not be the action of a normal man if it did not correspond with the facts.

Mr. Strong: I ask that the witness be stopped, and answer that question.

The Court: I think he is answering it, Senator.

Mr. Strong: Why not answer it yes or no?

A. I can't answer a question like that yes or no.

Mr. Watson: I object on the ground the court has indicated its conclusion that the answer is proper. Why waste time of the court and counsel?

The Court: I will let the question be repeated again, in order that there may be no question about it.

(Question repeated by stenographer.)

A. No, it would not be possible.

Q. I believe you testified that on October 4th, 1921—

The Court: Yes, he testified to that.

Mr. Strong: He came out flat-footed on that, did he?

Q. If it appear that in September, 1922, he appeared in better physical condition than on the

date of his release from the State Hospital, and showed no indication of any further mental impairment, and that in November or December, 1922, he consulted with the attorney for the corporation with the Lehigh Valley authorities regarding an important business matter, appearing at the time of such consultation nervous, highstrung, smoked cigarettes incessantly, but did not oppear to the men with whom he was in consultation under the influence of either liquor or drugs, said what he did say intelligently, and appeared to be entirely sane and competent, and that soon thereafter, having received the specifications for the construction or reconstruction of a railway trestle, he went to the trestle, had the specifications read, and personally examined the structure, and then wrote, or caused to be written a letter to the railroad authorities, raising questions regarding the advisability of specifying a certain grade of yellow pine lumber, and whether galvanized hardware would not be better than plain, which was specified, and whether the bolts were large enough, and also considered the question of whether money would not be saved by building it himself, instead of having it done by the railroad people, would that not indicate to you that he was competent to make a valid will?

Mr. Watson: I object to the question on the ground that it omits two essential facts from the testimony: First, that at the conversation with the railroad authorities referred to, it was testified that Doctor Freeman manifested little interest in the conversation and proceeding; I can refer Your Honor to the page, if you want it. And second, an essential fact, that having inspected the trestle, and written this letter, that he

never manifested enough interest in it to follow it to a conclusion, to find out whether a reply to the letter was received, or to make any decision in the matter whatever. That is the testimony.

The Court: I think the objections that counsel raises are good objections, because my recollection is that those were essential parts of that particular transaction.

Mr. Strong: I ask the question, Your Honor.

Mr. Davey: I wrote the question. May I be heard? The question specifically says "what little he said, he said intelligently"; the very words of the witness, because I looked it up at the time.

The Court: If you are willing to take Mr. Watson's additions to the question, and incorporate them as part of the question, the question may be answered.

Mr. Strong: I prefer to put the question as it is, Your Honor.

The Court: I think the other should be a part of it. I will not permit you to ask the question unless you include in it the other, because that was part of the testimony concerning that transaction. My recollection is very clear on that.

Mr. Strong: I will put it this way first, and if Your Honor overrules it, I will put it the other way.

The Court: Yes, I overrule it in that form.

Mr. Davey: Exception.

Mr. Strong: I will put it the other way, with the amendment as suggested by Your Honor.

Q. Would that not indicate to you that he was competent to make a valid will? A. It would not.

Q. Why not? A. Because of the circumstances outlined in the question.

Q. What circumstances in this question indicate to you a lack of testamentary capacity? A. Well, lack of judgment, lack of interest in the thing that was supposed to be a transaction in which he was interested.

Q. What was the lack of judgment? A. Showing little interest in the matter, and never following it up to see if the matter was attended to, or anything else, or any other interest in the matter.

Q. How do you know he didn't follow it up? A. I only know from the testimony in the question.

Q. You mean from what Mr. Watson asked? A. No.

Q. Your only reason for saying that is that he showed little interest and didn't follow it up, is that it? A. I say that is the evidence in the case.

Q. Suppose it appeared that they advised him that money would not be saved by what he suggested, and those men were specialists in that construction, then would you expect him to follow it up, if he was a reasonable man? A. Perhaps he would not, and perhaps he would. I don't know.

Q. The only things that you find indicating a lack of testamentary capacity in that state of facts that I have suggested in my question, is that he displayed little interest and didn't follow it up, is that it? A. Yes, he evidently forgot all about it.

Q. If the reason he didn't follow it up was because he was advised by the railroad people that there would be no advantage in following his suggestions, then that feature of the irrationality is eliminated, isn't it? So we have only left the feature that he displayed little interest in it, is that right? A. Yes.

Q. And you still say that would not indicate to you that he was competent to make a valid will? A. No.

Q. The fact that he evidenced little interest in it? A. I say the question you asked me twice, does that indicate his ability to make a valid will, I say no, it does not indicate ability to make a valid will.

Q. I will read this question to you now in this way: If it appear that in September, 1922, he appeared in better physical condition than on the date of his release from the State Hospital, and showed no indication of any further mental impairment, and that in November or December, 1922, he consulted with the attorney for the corporation with the Lehigh Valley Railroad authorities regarding an important business matter, appearing at the time of such consultation nervous, highstrung, smoked cigarettes incessantly, but did not appear to the men with whom he was in consultation under the influence of either liquor or drugs, said what he did say intelligently, and appeared to be entirely sane and competent, and that soon thereafter, having received the specifications for the construction or reconstruction of a railway trestle, he went to the trestle, had the specifications read, and personally examined the structure, and then wrote, or caused to be written, a letter to the railroad authorities, raising questions regarding the advisability of specifying a certain grade of yellow pine lumber, and whether galvanized hardware would not be better than the plain, which was specified, and whether the bolts were large enough, and also considered the question of whether money would not be saved by building it himself, instead of having it done by the railroad people, but displayed little interest at the time of conferring with the railroad officials, would not that indicate to you that he was competent to make a valid will?

Mr. Watson: He still omits, and in the last half dozen questions, Mr. Strong has omitted one of the elements of the objection previously made, which rests upon the testimony I gave, and which is the only testimony in the case, that after that letter was written, that request for specifications, Doctor Freeman never manifested any further interest, did not know whether they came, what the cost would be, or anything about them, and he omits that, and does it again.

Mr. Strong: I omit that purposely now, because that is eliminated by the fact that the railroad officials wrote him that his suggestions would not be valuable.

Mr. Watson: There is no evidence in the case that wrote to him to that effect.

Mr. Strong: Mr. Davey thinks he has something further.

Mr. Davey: May I ask Your Honor to call upon counsel to point out any testimony of Mr. Van Duzer that Mr. Freeman displayed little interest. It says he said very little, but I didn't find anything about displaying little interest.

The Court: I do not understand counsel to say that he displayed little interest. It was simply that he displayed little interest to follow it to a conclusion.

Mr. Davey: The witness evidently so, because he made that one of his points, that he displayed little interest, and I cannot find it.

Mr. Watson: "Q. On the day we were there Doctor Freeman, in fact, took little or no part in the discussion and manifested little interest in it, did he? A. I don't think that he did." Page 833.

Mr. Strong: That is something quite different again.

Q. Now, I will repeat that question down to practically the end, where I began to say he took little interest, strike that out and say, at the time of conferring with the railroad officials, Doctor Freeman, in fact, took little or no part in the discussion, and didn't manifest a great deal of interest in it, would that not indicate to you that he was competent to make a valid will?

Mr. Watson: We object unless that—

The Court: I will permit that question.

A. That does not indicate testamentary capacity, no.

Q. The reason then that you think he hadn't testamentary capacity was because he in fact took little or no part in the discussion and didn't manifest a great deal of interest in it, that is your reason? A. Yes, that shows that it wasn't the normal attitude of a man, in something he was interested in.

Q. That is your reason for saying— A. That he wasn't normal at that time.

Q. That he wasn't normal at that time, and in your opinion he didn't possess testamentary capacity, is that right? A. I say yes, because he was not in normal mental condition, as shown by that incident.

Q. That incident you refer to is the fact that he took little or no part in the discussion, and didn't manifest a great deal of interest in it, is that right? A. Yes, and didn't follow up the matter, or find out.

Q. Just answer that yes or no.

The Court: The Doctor cannot answer it

yes or no. He can answer it the way he wants to.

Mr. Strong: All right.

Mr. Brown: I object for the further reason all those questions do not contain the facts as they occurred.

The Court: Senator, I do not think it makes very much difference whether they do or not, because these questions are all hypothetical, and if counsel does not get in all the facts that are necessary, and the court thinks about it afterward, it is not going to have very much bearing on the court's decision in the matter. A hypothetical question which does not take in the facts, certainly does not amount to anything.

Mr. Brown: I contend that the Doctor was not considered competent at that time. The witness on cross examination so stated, that he would not have transacted business with him unless his attorney was present; that he found him in a highly nervous state, and he thought it was the usual condition of the Doctor, with his eyes, and his nervous condition.

The Court: Doctor Cotton has at least four or five times testified that it does not impress him that the circumstances, as arising out of that transaction, indicated that he had testamentary capacity. Why take up any more time with it?

Mr. Brown: "I would not sign a contract with Doctor Freeman that day unless there had been someone in his confidence to have read the agreement and explained it to him."

The Court: All of which is a question for the court to determine, on the facts.

Mr. Davey: Page 834—

The Court: Doctor Cotton is simply asked to answer a question. I do not think it makes very much difference whether you object to it, or whether you do not.

Mr. Watson: We shall not object.

Mr. Strong: Has he answered the question?

The Court: Yes, he has, twice or three times.

Q. If it appear that he in fact mentioned all his relatives in his will, and made a bequest to each, would you say that he appreciated who were the natural objects of his bounty? A. In a delusional way, yes, he appreciated who were the natural objects of his bounty, but because of his delusions he did not appreciate what they deserved.

Q. Did I ask you that?

The Court: Do you want the rest of it stricken out?

Mr. Davey: Yes.

Mr. Strong: Yes. I want an answer, yes or no to my question.

The Court: All right. The rest of it will be stricken out. Proceed. It is all stricken out except the word "yes."

Q. If it appeared that he explained fully to his attorney the condition of his corporation, the number of its shares of capital stock, the total of its outstanding book accounts, the value of its property, the fact of the trust executed by him of the shares of stock, the fact of its need of ready funds, the facts regarding its bank loans, his whole estate being the shares of stock of that corporation, would you say he knew of what his estate consisted? A. I would say he knew of what his estate consisted, yes.

Q. If he afterward told an accountant who periodically audited the books of his corporation what he had done in his will, and told his servant that he had provided for her, as he had in fact, would you say that he understood what he had done? A. Yes.

Q. If Mr. Watson, his attorney, considered him not a lunatic, not of unsound mind, but an habitual drunkard, and on that ground incompetent to attend to his business, would that accord with your estimate of his condition when you saw him? A. That he was of unsound mind, yes.

Q. Just answer this question, please.

(Question repeated by stenographer.)

A. Partially, yes.

Q. How did he respond to treatment at the hospital up to October 3rd, 1921? A. October 3rd, 1921?

Q. Yes. A. He improved somewhat as the effect of re-treatment and restriction from alcohol. I say as the effect of re-treatment, and cutting off his alcohol, he improved somewhat.

Q. In what way did he show that improvement? A. He was less nervous. I don't think his delusions were any less. I never knew that he changed his ideas regarding his wife, and the relations with the chauffeur.

Q. Will you swear that he didn't? A. He didn't tell me that he didn't, and I talked with him.

Q. All right, go on. That is as much as you can say? A. Yes.

Q. You swear that was the extent of his improvement? A. I say he had improved somewhat.

Q. That was all the improvement that he made there? A. Yes.

Q. Just read that memorandum which you have here. A. I have read it.

Q. Read it out loud, please?

Mr. Watson: I object to that.
The Court: Objection sustained.

Q. I call your attention to this language in this memorandum: I, Charles M. Freeman, of the Borough of Metuchen, County of Middlesex, State of N. J., being sound mind so declare this to be my last will and testament, revoking all wills made by me, especially of in the possession of Russell E. Watson, of Paterson Avenue, New Brunswick, N. J., is there anything indicates insanity in that revocation? A. No.

Q. Does it not indicate testamentary intelligence, that there was a will already in Mr. Watson's hands? A. Not necessarily.

Q. Might it not? A. It might.

Q. To be more accurate, I see it begins: "In the name of God, Amen," and if he constructed that will himself, that would indicate that he had some—

The Court: That is argumentative, Senator.

Mr. Strong: You have to argue with one of these gentlemen on cross examination.

The Court: Oh, no, you haven't. As soon as you do, you are in trouble.

Q. "First I desire that my funeral expenses and just debts be paid." If he constructed that memorandum himself, and wrote it out himself, did that indicate testamentary capacity? A. That sentence alone?

Q. Yes? A. That would indicate testamentary capacity, that sentence alone; it is a normal sentence, that part.

Q. That is normal, and indicates testamentary capacity? A. To that extent, yes.

Q. "2. I leave and bequeath unreservedly to Harry Mohring the sum of ten thousand dollars. Also the use of the apartment over the garage on Volkmar Place, Metuchen, N. J." If he had ten thousand dollars, and Harry Mohring was a friend of his, and was already occupying that apartment over the garage on Volkmar Place, Metuchen, N. J., did that indicate testamentary capacity? A. That does not indicate testamentary capacity.

Q. Why? A. Because the very nature of the bequest.

Q. What? A. As stated in your question.

Q. What? A. That does not indicate testamentary capacity.

Q. What is the nature of the bequest that indicates lack of it? A. Taken in connection with the rest of the will.

Q. Taken in connection with the rest of the will? A. Yes.

Q. Then we will proceed, and take that up later. "2. I leave and bequeath"—it should be—"I leave and bequeath to Lettie Patterson—

Mr. Watson: That number is repeated.

Mr. Strong: A man very nearly blind could make that mistake.

The Court: That is all argumentative.

Q. "I leave and bequeath to Lettie Patterson, an old and faithful servant, the sum of one thousand dollars." If she were an old servant, and a faithful one, according to his estimate, and he possessed that one thousand dollars, did that indicate testamentary capacity? A. That would indicate testamentary capacity. Nothing abnormal about that.

Q. "4. I leave to Mary E. Wilkins Freeman, if she should survive me, the sum of one dollar a

year." Mary E. Wilkins Freeman being his wife, and he possessing one dollar a year, and in fact, one hundred thousand dollars, or a very large estate, would that indicate to you that he possessed testamentary capacity? A. It would not. It would indicate the direct opposite.

Q. Why? A. He did not have testamentary capacity.

Q. Why? A. The very nature of the bequest.

Q. Why? A. Leaving the natural beneficiary one dollar a year, out of one hundred thousand.

Q. Your idea is that a man has no right to leave by will his property to whom he pleases, is that it?

Mr. Brown: I object to that. That is not the answer.

The Court: Objection sustained.

Q. Your idea is that that would be unjust and unfair, is that right? A. That is right. And insane.

Q. What is that? A. Evidence of insanity, of his delusions.

Q. The fact that he made an unjust and unfair will? A. And deprived the natural beneficiary of her legal rights.

Q. That that bequest was unfair and unjust is conclusive evidence to you that he was insane, is that right? A. Yes.

Q. You don't know anything about the domestic life of Doctor Freeman and Mrs. Freeman, except what she told you, is that so? A. What he told me, and what she told me. I knew pretty well what the situation was.

Q. That is, from what you heard? A. From what he told me, and what she told me.

Q. From that you concluded that he was entirely wrong, and she was entirely right? A. From that

I concluded that he was insane, and the subject of delusions regarding his wife.

(Question repeated by stenographer). Did you? A. I answered I concluded that he was subject to delusions, and his statements were not facts.

Mr. Strong: I ask the witness to answer the question.

The Court: He has answered it, Senator.

Mr. Strong: Well, I think not. As I understand it, exceptions are not necessary.

The Court: No, they are not necessary at all.

Mr. Strong: If they were, I wish to be understood as availing myself of one. With all due respect, I mean that.

Q. "5. The balance of my estate I leave to Harry Mohring to be disposed of as he sees fit." Does that not indicate testamentary capacity to you? A. It does not.

Q. Why? A. Exactly the reverse.

Q. What? A. It indicates exactly the reverse, and lack of testamentary capacity.

Q. Why? A. The very nature of the statement.

Q. Because it was unjust? A. Because it showed lack of judgment, to leave the balance of an estate of one hundred thousand dollars, ninety thousand dollars, to be distributed, or to be taken care of the way Mohring liked, or whatever the sentence reads. In whatever way he likes, is it?

Q. Are not wills of sane people frequently made that way? A. Well, I don't know about wills of sane people. They don't come into controversy very often.

Q. You are not prepared to swear a sane man couldn't make a provision like that in his will? A. Not taken with the other factors in the will.

Q. Your idea is that it is unjust, is that it? A. Well, it is evidence of insanity, whether it is unjust or not.

Q. How is it evidence of insanity? A. Lack of judgment, and lack of testamentary capacity.

Q. Why? A. As I stated, because no sane man would leave a man who was comparatively a stranger the balance of one hundred thousand dollars to do what he liked with it.

Q. Suppose he wasn't comparatively a stranger? A. Well, the evidence is that he had only known him less than a year, I believe.

Q. Are not executors appointed to do that very thing, dispose of property as they see fit? A. Yes, responsible executors, always.

Q. And you say Mr. Mohring is not responsible? A. Well, I shouldn't put him in the class of the Guaranty Trust Company, or the National Bank of New Brunswick, or any other places that might have been executors.

Q. Are not individuals frequently named as executors? A. They are.

Q. To do that very thing?

Mr. Watson: I object to the question on the ground that it calls for an expert knowledge of law, not of mental diseases, and the Doctor is not an expert. And on the further ground it is not based upon fact. I have never seen it.

Mr. Brown: I object, that all those questions do not contain all the facts.

Mr. Strong: I have a right to show certain men do habitually make provisions like that.

The Court: Senator, I have had some experience, and I have never known of a case

where a provision of this kind was made in the will of a sane person.

Mr. Strong: Your Honor has not?

The Court: No, sir; and I do not think you have either.

Mr. Strong: I think I certainly have, your Honor.

The Court: Where a disposition is made to a comparative stranger, of a large sum of money, to do as he pleases with?

Mr. Strong: Certainly, where he is made—

The Court: In the nature of a trust?

Mr. Strong: He is practically made a residuary legatee. Wills are frequently drawn that way.

The Court: He is made the residuary legatee absolutely under that provision. But that is not the question you are directing to Doctor Cotton.

Mr. Strong: I certainly think wills are frequently drawn as expressing the utmost confidence in people—

The Court: If you were preparing that will for yourself, would you leave ninety thousand dollars to a stranger to do as he saw fit with, unless you intended to leave it to him absolutely?

Mr. Strong: I think that is one way of leaving it to him absolutely. In view of the next section too it seems to me that is exactly right, your Honor.

The Court: The way you are asking the question of Doctor Cotton, you are implying that it was left to an executor, or to a trustee.

Mr. Strong: When he said he didn't think that was a sane disposition—

The Court: You do not contend that this was left in trust to Harry Mohring, do you, the residuary of this estate was left in trust?

Mr. Strong: What I mean is an executor, merely an individual, is often vested with the same discretion. He does not give any bond. Everything is practically left to his discretion.

The Court: Is it your contention that this devise is a trust?

Mr. Strong: I do not say that it is any trust. It is practically a gift of the residuary estate, in connection with the clause following.

The Court: Is it a gift in trust, or a gift absolute?

Mr. Strong: I should say it was practically left to him as a gift absolute, to do as he pleases with. That is practically what a lawyer does when he states in a will that he draws for a man that the property goes to the wife, for instance, that she may use the principal, if she chooses, if the interest is not sufficient, and shall not be called upon to account.

The Court: Yes, but the remainder is usually disposed of, isn't it?

Mr. Strong: In the next section he disposes of the remainder.

The Court: To whom?

Mr. Strong: "5. The balance of my estate I leave to Harry Mohring, to be disposed of as he sees fit."

The Court: That is the one we are discussing.

Mr. Strong: "6. If any of the above legatees dies without issue, their bequests here-

tofore made will revert to my estate." What were the bequests? Ten thousand to Harry Mohring, one thousand to Lettie Patterson, and one dollar to Mary Wilkins Freeman.

The Court: That fact that ten thousand dollars was left absolutely to Harry Mohring, coupled with the peculiar language of the fifth paragraph of the will, might convey the idea that it was left in trust.

Mr. Strong: To be disposed of as he sees fit. That is the balance of the estate.

The Court: Yes, that is after they pay the debts and after they pay Lettie Patterson one thousand dollars, and pay Harry Mohring ten thousand dollars, then the balance of the estate is to be disposed of by Harry Mohring, as the trustee of Doctor Freeman, is that the idea?

Mr. Strong: Not at all. To be disposed of as he sees fit. That is, he can do as he pleases with it. Doctor Freeman was not a lawyer, your Honor will recollect.

Mr. Brown: Why the division of the estate, the ten thousand first, and the remainder after?

Mr. Strong: That was natural enough, I suppose. He could do that. Why not? Of course, he wasn't a lawyer.

The Court: What is your explanation, if you have any explanation, of the fact that the will was prepared that way?

Mr. Strong: How is that?

The Court: What is your explanation of the fact that the will was prepared in that rather unusual way?

Mr. Strong: I think he had the idea of giving him what was left. He had the idea

of a residuary bequest in his mind. That is simply saying, take the rest and do as you please.

The Court: Why did he make the bequest of ten thousand dollars to him beforehand?

Mr. Strong: That is often done in wills like that.

The Court: I am asking for the reason for it, if you know any, or if you have any.

Mr. Strong: Yes.

The Court: Why is it necessary to say, I leave Theodore Strong ten thousand dollars, and in the next bequest say, I leave him everything else?

Mr. Strong: It wasn't absolutely necessary.

The Court: Why was it done that way?

Mr. Strong: I suppose very likely he thought he was following precedents of wills that he had seen some time, or following language that he had heard some time. He wasn't a lawyer. You or I wouldn't do it. But it practically gave expression to his wishes, as shown in subsequent wills.

Q. You think that that provision number 5 is conclusive proof that Doctor Freeman was insane, if he made it? A. I certainly do.

Q. "6. If any of the above legatees dies without issue, their bequests heretofore made shall revert to my estate." Does that not indicate testamentary capacity? A. It indicates very marked confusion, because the estate had already gone to Harry Mohring, so that if the ten thousand dollars that had been given to him could not revert to his estate, when he was already handling the estate, it showed very marked confusion, I should say, as to what he had done before in the preceding paragraph.

Q. It went to Harry Mohring, and then if Harry Mohring died it could not have gone to Harry Mohring's heirs? A. His estate, but Harry Mohring had charge of his estate.

Q. Suppose Harry Mohring died with some of the estate in his possession, wouldn't it have gone to Harry Mohring's heirs? A. Certainly it would. He gave it to him to do—

Q. He says, if any of the above legatees dies without issue their bequests heretofore made shall revert to my estate; then it would not go to Harry Mohring's heirs? A. It said nothing in the bequest to Harry Mohring about the interest. The principal, he was given ten thousand dollars whether he died or lived. It is confusing with the first paragraph, or the former paragraph of the will, unnecessarily confusing.

Q. Supposing Harry Mohring died without having disposed of that ten thousand dollars, and there was nothing in the will with respect to it, wouldn't that ten thousand go to Harry Mohring's heirs? A. Certainly it would.

Mr. Watson: I object. That calls for expert knowledge. If Senator Strong is right, this is a life estate, and not a bequest outright.

Mr. Strong: He is testifying as a legal expert. He is arguing with me, showing how the will is unreasonable.

The Court: Proceed.

Q. Section 6—

The Court: It would have gone just the same way under Section 6, so do not get that confusion in the case. The only time Section

6 applies is if any of the legatees dies prior to Doctor Freeman.

Mr. Strong: If any of the above legatees dies without issue (reading).

Q. You think that provision was conclusive evidence of insanity? A. Of testamentary incapacity.

Q. I read a portion of paper writing purporting to be the last will and testament of Charles M. Freeman, bearing date July 12th, 1922: "In the name of God, Amen"; is there anything about that that indicates testamentary incapacity? A. No.

Q. "I, Charles M. Freeman, of the Borough of Metuchen, County of Middlesex and State of New Jersey, being of sound and disposing mind, memory and understanding, do hereby make, publish and declare this my last will and testament, in the manner and form following, that is to say"; is there anything about that that indicates testamentary incapacity? A. No. That is the legal verbiage of the lawyer.

Q. "1. I do order and direct that all my just debts and funeral expenses be paid by my executor hereinafter named as soon as conveniently can be done after my death"; is there anything indicating lack of testamentary capacity in that? A. No. That is another legal sentence of the lawyer.

Q. Why do you say legal sentence? A. It does not correspond with the memorandum that he drew originally. That is why I say it.

Q. Is a will no good that does not correspond with an original memorandum?

The Court: Strike it out.

Mr. Strong: That is a fair question.

The Court: Oh, no, it is not.

Q. Suppose there was another will, the testimony

showed that there was another will drawn in accordance with that memorandum which was destroyed, and that then this will was made and took its place, then that objection of your's would fall, wouldn't it?

The Court: He has no objection. Objection sustained. Strike the question out.

Q. "I do order and direct that all my just debts and funeral expenses be paid by my executor hereinafter named as soon as conveniently can be done after my death"; there is nothing wrong about that? A. No.

Q. "I desire and direct that my body be cremated and request that my executor hereinafter named dispose of my ashes according to instructions given him verbally." Assuming that he had given his executor instructions to dispose of his ashes in that manner, does that indicate insanity? A. No.

Q. "3. I give and bequeath to my friend Harry Mohring, now in my employ in Metuchen, the sum of ten thousand dollars." If Mohring was his friend, and he had that much money, does that indicate insanity? A. No.

Q. "4. I give and bequeath to Lettie Patterson, an old and faithful servant, the sum of one thousand dollars." If she was an old servant, and he considered her faithful, and was faithful to him at that time, and he possessed the sum of one thousand dollars, was there anything in that bequest indicating insanity? A. No.

Q. "5. I give and bequeath to my sisters, Nellie Bloomfield Freeman, Jane Parker Freeman, Augusta Stockton Freeman and Sallie Bostwick Freeman each the sum of two hundred dollars." If that did not appear in the first will, if there was no men-

tion of those sisters in a previous will, and it did appear, as it does in this will, does that not indicate knowledge of the natural objects of his bounty, and testamentary capacity? A. That by itself does not indicate there was not testamentary capacity. It indicates testamentary capacity.

Q. It indicates testamentary capacity? A. Yes.

Q. Surely. And it indicates that he was aware of the natural objects of his bounty, doesn't it? A. Yes.

Q. "6. I give and bequeath to my wife, Mary E. Wilkins Freeman, now living separate and apart from me, the sum of one dollar." If she was living separate and apart from him, and he possessed the one dollar, does that not indicate testamentary capacity? A. That indicates a lack of testamentary capacity, that clause.

Q. Why? A. Because she was the natural beneficiary of his bounty, and because of his delusional condition she was cut off with one dollar a year.

Q. Suppose she had large means of her own? A. That would not make any difference.

Q. It would not make any difference? A. No.

Q. Not if she was a billionaire? A. Would not make a particle of difference, taken in connection with the whole will.

Q. It would make no difference that Mohring was poor, and Mohring was faithful, and that he was living with Mohring, and Mohring taking care of him, and that he was living apart from his wife, and under unfriendly conditions? A. Of his own making.

Q. What right have you to say of his own making? What do you know about what were their relations, apart from what little you may have heard from him and her? Do you know all about their family relationships? A. I know from his

statements, and her statements, as a physician who treated the patient.

Q. That is all you know, from what they told you? A. Yes.

Q. You swear now that there may never have been any other reasons for their being estranged? A. I know only the reasons they told me.

Q. You can't swear that there were not other reasons? A. No. There may have been one hundred reasons they didn't tell me.

Q. You think that was unjust and, therefore, indicated insanity? A. I think it was evidence of lack of testamentary capacity.

Q. Lack of testamentary capacity? A. Yes.

Q. It indicated, did it not, that he knew who was the natural object of his bounty? A. Yes.

Q. "7. In case any of the above named beneficiaries shall not survive me, the bequest to such as shall not be living at the time of my death shall be null and void, and the amount and amounts thereof shall form part of my residuary estate." Is there anything in that indicating lack of testamentary capacity? A. I don't think so. That is usual legal verbiage.

Q. What? A. Usual legal verbiage.

Q. That is all it is, verbiage, is it? A. I mean it is a legal method of disposing of it.

Q. Don't amount to anything? A. It amounts to a great deal.

Q. It indicates testamentary capacity, doesn't it? A. Yes. It is in legal form, drawn by the lawyer.

Q. Yes, and has some legal effect too, hasn't it? A. Yes.

Q. "8. It is my will, and I order and direct that all of the foregoing bequests shall be paid to the respective beneficiaries living at the time of my death, free of inheritance of other taxes, either

under the laws of New Jersey or of any other states, and that all such taxes, by whatever name called, be paid out of the funds of my estate." Is there anything in that indicates lack of testamentary capacity? A. No. That is also legal form.

Q. Why do you say legal form? A. Well, I say it is normal legal form for a will. Lawyer's form.

Q. And it has legal effect too, hasn't it? A. Yes.

Q. If a lawyer draws a will, he will have everything pretty much in legal form, won't he? A. Surely.

Q. And may express the intention of the testator at the same time? A. Sure.

Q. That indicates a knowledge of his property too, doesn't it, what it consisted of? A. I don't think that in itself indicates a knowledge. He does not enumerate his estate.

Q. It goes to indicate his knowledge of it, it shall be paid to the respective beneficiaries living at the time of my death, free of inheritance or other taxes, either under the laws of New Jersey, or any other state? A. He might not have any estate, and yet make that provision in his will.

Q. Why do you argue with me about this? A. I am only trying to answer your question. That itself is not of any significance.

Q. "And that all such taxes, by whatever name called, be paid out of the funds of my estate." Does not that indicate what he wanted done with his estate? A. Surely.

Q. And indicates his estate was of a taxable nature? A. It does not indicate the amount of his estate, I said.

Q. I have not asked you whether it did or not. "9. All the rest, residue and remainder of my estate, wheresoever situated, and of whatsoever it shall consist, I give, devise and bequeath to my friend

Harry Mohring, to have and to hold the same for him and heirs forever. This bequest is made in appreciation of a loyalty and devotion I have appreciated, which I have failed to receive from those nearer by ties of blood, marriage and business." Is there anything in that indicating a lack of testamentary capacity? A. Yes. It is absolutely a statement contrary to the facts, and evidence of insanity and lack of testamentary capacity.

Q. How do you know? A. Because it is evident.

Q. Did he tell you that Harry Mohring didn't take care of him and wasn't his friend? A. No.

Q. Supposing Harry Mohring was his friend? A. Supposing he was, yes.

Q. Supposing he was more of a friend and had treated him better than his wife and family? A. That is not the fact, though.

Q. How do you know it is not? A. Well, that is my opinion.

Q. Your opinion has nothing to do with this case. A. You are asking my opinion, based on the facts.

Q. Now, I ask you if the facts were as stated here, that this bequest was made in appreciation of the loyalty and devotion, which he had appreciated, and which he had failed to receive from those nearer by ties of blood, marriage and business, and ask you if that correctly states the fact, whether that wasn't evidence of testamentary capacity? A. It does not state the facts.

Q. I ask you if it did? A. If it stated the facts it would be a normal statement.

Q. "10. I hereby nominate, constitute and appoint the above named Harry Mohring sole executor of this, my last will and testament, with full power and authority to sell and convey any and all real estate of which I may die seized, within or without the State of New Jersey, and I hereby order and

direct that no bond be required of my said executor, either in the State of New Jersey, or elsewhere." Does that indicate testamentary capacity? A. It certainly does.

Q. That will, as I have read it to you, is simple, isn't it? A. Very.

Q. And it is easy to understand? A. Very.

Q. And it is easy to conceive, construct? A. Well, that is a question, how easy it is. I couldn't answer that.

Q. If it is simple and easy to understand, isn't it naturally easy to construct? A. Yes. It does not correspond with the will he wrote, if you mean that.

Q. What? A. It does not correspond with the memorandum he wrote. I mean, whether he wrote that.

Q. Assuming, which is the fact, that another previous will to this was prepared from that memorandum, and destroyed at the time this present will I am reading to you was prepared, that objection, of course, would fall to the ground? A. I couldn't answer that, because I don't know.

Q. You can't answer that? A. No.

Q. Is there anything about this will difficult to conceive? A. Anything about this will?

Q. Yes? A. Not difficult for a lawyer, no.

Q. Anything difficult about it for a sane person to conceive? A. If a person was in the habit of writing wills, he might write it. I don't think I could write it, without help.

Q. Is there anything difficult about that will for the testator to conceive? A. I think there was a good deal to conceive.

Q. How can it be simple and easy to understand? A. It is easy enough after it is written to understand, I say, but it is a different matter to conceive it.

Q. What is difficult to conceive? A. Well, the legal verbiage, to a man who is not a lawyer. As I say, I personally could not write a will of that character without help from a lawyer.

Q. I didn't mean difficult to write out. I meant difficult to conceive a will making that disposition of the property. A. Yes, I say I think it is difficult to assume he would write that as it is, because I personally could not do it.

Q. Why couldn't you do it? A. Because I haven't got the legal knowledge, the legal vocabulary.

Q. Couldn't you give instructions to your lawyer? A. Yes.

Q. Is the scheme of the will difficult to conceive, not the language, but the scheme of it? A. No. The scheme is all right.

Q. It does not require any great mental ability to understand it, does it? A. No, not after it is written.

Q. State whether in your opinion that will was prepared in accordance with the instructions of Charles M. Freeman, and executed by him, it indicates testamentary capacity? A. It does not.

Q. For what reasons? A. Because it is the will of an insane man.

Q. What? A. The provisions of the will show it is the will of an abnormal mind, based on the prejudices and delusions regarding his wife and family.

Q. What is there abnormal about it? A. Leaving his money to a perfect stranger, and neglecting the natural beneficiaries of his will.

Q. You say Mohring was a perfect stranger? A. I say comparatively. Less than a year.

Q. And he says he was a friend? A. Yes.

Q. A man cannot contract a close friendship within a year? A. I say the way the money is left

in my mind indicates evidence of an insane mind, and a lack of testamentary capacity.

Q. The way in which the money is left is what indicates to your mind the absence of testamentary capacity? A. Yes. The natural beneficiaries of the will are left out, because of delusions regarding these people.

Q. He was discharged as sane, wasn't he, by the court? A. Legally he was discharged by the court.

Q. The court made a mistake, is that your opinion? A. I wouldn't want to criticize the court, but very frequently cases come up before the court and are discharged, that we consider should not be discharged.

Q. What is the ordinary effect of drugs and alcohol? A. Well, it depends on the individual, and the length of time they are used, and how often they are used, and the type of the drugs.

Q. Does it make any difference whether a man wss a man of strong constitution and positive turn of mind? A. Doesn't make much difference about his turn of mind. If he was of strong constitution he could resist it more than somebody with a weak constitution.

Q. Men can recover from the effects of alcohol taken to excess? A. Yes.

Q. Men can recover from the effect of drugs taken to excess? A. Yes.

Q. Can a man execute a will, under the influence of alcohol, a valid will? A. Not a valid will, no.

Q. Can a man execute a valid will while under the influence of drugs? A. I should think not.

Q. Can a man execute a valid will while under the influence of veronal? A. I should think not.

Q. Is veronal a habit forming drug? A. Sometimes. Rarely, but in some instances.

Q. Rarely, isn't it? A. It is in instances.

Q. Very rarely? A. Not very rarely. I said rarely.

Q. What percentage? A. Well, I don't know. It isn't as common as morphia, or morphine, or opium, but it occurs.

Q. Isn't it a very rare thing for the taking of veronal to become habit forming? A. It can happen, but it is rare.

Q. Is it an opiate? A. No, it is not an opiate. It is a coal tar preparation.

Q. Prescribed by physicians? A. Yes. It is a depressant, sedative.

Q. Can a person of unsound mind make a valid will? A. No.

Q. Could your conclusion as to Doctor Freeman's insanity, or lack of mental capacity, be shaken by any proof whatever of lucid intervals? A. No.

Q. He could have lucid intervals? A. Yes, he might have lucid intervals.

Q. What would you say of the testamentary capacity of a man nearly blind, who could prepare and write out himself that memorandum I showed you first? A. I stated that that memorandum was evidence of an unsound mind, and lack of testamentary capacity.

Q. Based on the handwriting, you say? A. I said based on the instrument, on the whole thing.

Q. The fact that he was nearly blind would not affect the matter at all? A. No. It would have no effect on the provisions of the will.

Q. Would it effect your judgment at all, the fact that he was nearly blind? A. No. It would only confirm the judgment.

Q. Confirm the judgment? A. Yes.

Q. In other words, you don't think the nature of that handwriting could be affected at all by his almost total blindness? A. No, I didn't say that.

I said his total blindness would necessarily confirm the diagnosis of alcoholic optic neuritis.

Q. I ask you if the almost total blindness of Doctor Freeman could have in any manner affected the nature of the writing on that memorandum, and the spacing of it? A. Yes.

Mr. Brown: That question has been answered before.

Q. Persons of unsound mind have lucid intervals, they may have testamentary capacity, may they not? A. Persons of unsound mind might recover and have lucid intervals.

Q. And in those lucid intervals possess testamentary capacity? A. Yes.

Q. Do you think, if it was the fact that Doctor Freeman and his wife did not get on well together at all, for reasons other than they have stated to you, that that might have not caused resentment in his mind toward her? A. I just don't understand that question.

Q. (Question repeated by stenographer.) That that might have caused resentment in his mind toward her? A. If there were other reasons than stated before?

Q. If there were other reasons, might that have caused resentment in his mind toward her? A. There might have been, if there were other reasons.

Q. There might have been? A. There might have been.

Q. Did you know they had not lived together for six months before he went to the asylum? A. I knew that he had left their house, or her house.

Q. And lived separate from her for six months previous to going to the asylum? A. Yes.

Q. If while he was in the asylum, his sister came —one of his sisters came to see him for the first

time in years, and instead of helping him to get out of the asylum, advised him to stay there, and his other sisters didn't come near him while he was in the asylum, and had not attempted to see him for years, although all of them were within easy reach and possibility of seeing him, might that have caused resentment toward those sisters?

Mr. Watson: I object to that question. That is not sustained by any testimony in this case whatever. The uncontradicted testimony in the case is to the contrary.

The Court: If I understand the question correctly, I think it is sustained by testimony, Mr. Watson.

Mr. Watson: I do not recall any. What testimony?

The Court: I think the testimony of the sisters themselves; they testified they had not seen Doctor Freeman.

Mr. Watson: Yes, but he leaves out the important part, that it was not any unwillingness on their part they hadn't seen him. It was because of unwillingness on his part that they should not come. It was exactly what they all testified to. Because of his habits he felt a feeling of shame and didn't care to have them with him. That clearly appears in the testimony.

The Court: I will permit the question. I do not see what effect it is going to have on anything anyway, as to whether or not that would have made him feel resentful. If I do not find it as a fact, of course, the question does not amount to anything.

Q. I will say months or years, instead of years.

A. I don't think it has any bearing on his testamentary capacity.

Q. (Question repeated by stenographer.)

By the Court:

Q. The question is whether or not he would have felt resentment towards them? A. I don't know.

By Mr. Strong:

Q. Wouldn't it have been natural for him to have felt such resentment? A. I don't know.

Q. Couldn't a sane person have felt such resentment? A. Possibly.

The Court: In my opinion all of this is of very little value.

Mr. Strong: That is discouraging.

The Court: It may be discouraging, but why take up the time of the court and everybody else here with a lot of examination which can have but very little probative force, in my opinion. Of course, I recognize that I may not be the final arbiter of this case, but I do not think that this line of testimony which you are bringing out now is going to help any court that may review this case, in determining whether or not I was correct in whatever my conclusion may be.

Mr. Strong: I mean to defer respectfully to your Honor's opinion wherever I think I can do so; but where I think perhaps the question can be of value at some later stage of the proceedings, I do not have to abandon it, if your Honor will permit me to proceed. It will not be very much longer. That is all.

Re-direct Examination by Mr. Brown:

Q. Doctor, it appears in this case, according to the testimony, that Harry Mohring, the chief beneficiary, or principal beneficiary, began to work, or went to work for Doctor Freeman in the month of January, 1922, and the extent of his friendship was that he worked for the Doctor, that he was paid fully for his services, including a house free, and that the extent or duration of time of the friendship was from January until June 18th.

Mr. Davey: I submit that is not true. The testimony is that he was acquainted with him long before January.

Mr. Brown: Yes, but not living with him, or in connection with him.

The Court: I think he had known him casually some time before January, 1922.

Mr. Brown: Yes, sir.

Q. The note that has been referred to here as the basis of the will, that is, the pencil memorandum, that was written on June 18th, so that the extent of the friendship was from January until June 18th, of the year that I have mentioned.

Mr. Strong: That is not the extent of it. He knew him when he worked at the arsenal, long before.

Mr. Brown: Only a casual knowledge.

The Court: That is part of the question, that he had known him casually prior to January, 1922.

Mr. Davey: He says the extent of the friendship. If he says employment, I have no objection to it.

The Court: My impression is that it is

a meaning for the court to determine on the testimony, as to what the facts actually are anyway. My impression is that prior to January, 1922, the testimony is that he had only met Mr. Mohring two or three times, or a few times, socially, in connection with a visit at the Breens' house. He lived across the street.

Mr. Davey: That Christmas dinner that Mr. Brown referred to in his hypothetical question, when he said the Doctor was not able to dress himself, was at the Mohring's. I think that the word friendship is not an accurate statement.

Mr. Brown: That is what counsel has been using. What I want to convey to the witness is the duration of their intimacy, and the fact that there has been no evidence to prove any special acts of kindness, and what I mean by special is extraordinary, that would be compensated by ninety thousand dollars, or nine-tenths of a legacy of one hundred thousand dollars. That is, there was no saving the man from drowning, there was not any extraordinary human effort put forth, or jeopardy exercised by Mr. Mohring, that would naturally result in a compensation or an award of this kind. I think I am well within the testimony in saying it was a casual acquaintance before January, and that then the Doctor lived with Mr. Mohring while he was employed and being paid from January until June 18th. I am asking him if, in view of that fact, and the fact of the distribution of his estate to a life-long servant who was in the family, only getting one thousand dollars, and sisters, against whom there was not any substantial

enmity at all, getting two hundred dollars each, and the wife one hundred dollars, if that would in any degree fortify his opinion that the Doctor, at the time he did execute this will, was of unsound mind.

Mr. Strong: I object. There was complaint of neglect by the sisters. And furthermore, it was testified to that Doctor Freeman's condition improved a great deal under Harry Mohring's care, and that the use of drugs and alcohol were decreased. A man certainly might feel a friendship based on so important an improvement as that.

The Court: He might at the same time feel an enmity toward others who had tried to prevent him from committing those excesses.

Mr. Strong: A man may even be unreasonable in his enmities, and not lacking testamentary capacity.

The Court: Yes.

Mr. Strong: But he had better incorporate in that question the facts.

The Court: It is impossible to incorporate all the facts. I will allow the question.

Mr. Strong: He had better incorporate those facts, when he proposes to limit the acquaintance the way he has.

The Court: I will permit the question.

Mr. Strong: I make the objection that it does not properly state the facts. And it does not state all the facts.

A. It does corroborate my opinion that he lacked testamentary capacity.

Q. Senator Strong propounded a question to you insisting upon a yes or no answer, and it was finally

put in that form, in regard to a person being incarcerated in the State institution, and being discharged, or released, and thereafter exercising or manifesting enmity or resentment, whether it was possible for a man who had regained his sanity, or became normal, to resent the fact that he might have been put in there without cause, and you began to explain, and then the Senator insisted upon a yes or no answer, and I think you answered that as he wished, or a negative or affirmative answer, and now I want to know your explanation for the answer that you gave? A. I say a person who has been insane, gone to an institution and becomes well, never shows any resentment towards those who put him in the institution, either the judge, the doctors who committed him, or his family who applied for his confinement, if they are normal.

Q. What do you base that on? A. I base that on fourteen hundred cases that have been discharged in the last five years. And without exception, I might say, take one group of five hundred cases that I know personally, only five out of the five hundred had any feelings about being in the hospital, and those cases were not altogether well. So that if a man becomes normal he develops what we call insight, he realizes that he was a fit subject for treatment, and he is very thankful for the fact that he had been treated and had been sent to a hospital to be treated.

Mr. Brown: That is all.

Re-cross Examination by Mr. Strong:

Q. Are you prepared to swear that it would be impossible for a person committed to an asylum when of unsound mind, after his discharge and in possession of his sound mind, and while in his sound

mind, to cherish any resentment against the person who had committed him to the asylum, even though that person might have had him committed to a private sanitarium, or had him treated at his home and avoid the ignominy and disgrace, or depreciation of reputation incident to commitment to an asylum for the insane, do you swear that is impossible now? A. Do I swear it is impossible? I say it does not agree with the facts as I have observed them, and the fact that he came there voluntarily himself one year before, on my recommendation.

Q. Suppose that it were a fact that under Harry Mohring's care, while Doctor Freeman lived with him, and while his wife and sisters failed to take care of him, Doctor Freeman's condition improved, would that not be a legitimate basis for friendship? A. Do you mean to the extent of leaving him one hundred thousand dollars, do you mean to that extent?

Q. To any extent? A. No, I don't think it would be sufficient, because he was paid for his trouble at the time he looked after him.

Q. If he was totally restored physically and mentally, wouldn't you think that was worth one hundred thousand? A. If he was totally restored, yes, and living to-day as the result of it, it might be.

Q. In other words, it would depend on the extent of the restoration, is that right? A. No, I wouldn't say altogether that. I say if he had made a perfect recovery, and was normal in every way, he might want to give him a great deal.

Q. Suppose he considered that he had made a perfect recovery, was normal in every way, can a sane man ever be mistaken about his condition? A. A sane man can't, no.

Q. What? A. A sane man isn't mistaken about his condition, but an insane man is.

Q. A sane man can never be mistaken as to his

physical condition? A. Oh, he could be mistaken as to his physical condition, but I thought you were referring to his mental condition, his alcoholism.

Q. A sane man can never be mistaken as to his mental condition? A. I mean a sane man would not think he was insane, no, but an insane man thinks he is sane, if that is what you mean.

Q. But if his condition was greatly improved, physically and mentally, or physically or mentally, or both, and he realized it, wouldn't that be a very sound reason, with a sane man, for great friendship between them? A. He might have great friendship, yes, as the result of it.

Q. Now, then, if there was a great friendship between them, and there was no affection, or friendship either, between the man and his wife, or the man and his sisters, would it not be natural for the testator to leave his property to his friends, and ignore the wife and sisters totally, or to a great extent? A. I don't think that would be normal.

Q. You don't think so? A. No.

Q. Your conclusion then is that any will that leaves the bulk of the estate away from a man's natural beneficiaries, by blood or marriage, is the product of an unsound mind, is that it? A. No, I didn't say that. I haven't said that, or inferred that.

Q. Well, give us an instance where a man of sound mind would ignore the natural objects of his bounty, by blood or marriage? A. I am not an expert on wills. I don't know as I can give you the legal side of it at all.

Q. You don't have to be an expert on wills to testify as to that. A. I don't know of any wills.

Q. You say under the circumstances there I have stated to you that it does not necessarily follow that the man was sane, and I want you to give me an instance, under that last question I have asked?

Mr. Brown: I object to that.

Mr. Watson: I object on the further ground it is not sur-rebuttal, and besides that, we have been through it three or four times.

The Court: Objection sustained.

Mr. Strong: That is all.

Mr. Brown: That is all.

ALFRED L. ELLIS, a witness produced on behalf of the Caveators, being duly sworn according to law on his oath, saith:

Direct Examination by Mr. Brown:

Q. You are a practicing physician in the State of New Jersey? A. I am.

Q. How long have you practiced your profession? A. In Metuchen?

Q. Yes? A. Nineteen years.

Q. You have known Doctor Freeman how long? A. Nineteen years.

Q. Were you Doctor Freeman's physician? A. I was one of them. I had seen him professionally.

Q. How often did you see Doctor Freeman during the nineteen years? A. Professionally?

Q. Yes, and otherwise? A. Why, I saw him considerably socially, up to about ten years ago, and professionally probably five or six different times.

Q. Did you visit the home of Doctor Freeman? A. I did.

Q. Up to what time? A. About ten years ago I think was the last time.

Q. Did you hear from Doctor Freeman, as to the relation between him and his wife, that is, their family relation whether it was friendly, or otherwise?

Mr. Davey: When?

Q. During the ten years, and since that time? A. As far as I know of, it has always been friendly.

Q. When did you last learn about that? A. When did I what?

Q. When did you last know about that? A. I have never known anything to the contrary, except when the separation came.

Q. Do you know what the Doctor's condition was about the last two years of his life, his mental condition, I mean, as well as physical? A. I saw him just before he went to Trenton for the first time. I was going away on vacation the next day. I was called to the house by his chauffeur, who said he was in very bad condition, and I took up a policeman with me.

Q. Why did you take a policeman? A. He was making a good deal of trouble.

Q. In what way? A. He was threatening the household, and had delusions and hallucinations.

Q. What were the delusions? A. He had an idea that the servants were misbehaving throughout the house, and that the house was being a disreputable house, and he objected to it.

Q. What was the result of the visit, and what happened to the Doctor? A. I advised at that time that he go to Trenton and take a rest and get straightened out.

Q. Straightened out from what? A. It looked to me like a case of delirium tremens at that time, or getting over it.

Q. Was the Doctor an habitual user of intoxicants? A. More or less, yes.

Q. And when did you next see him? A. Professionally?

Q. Yes, or otherwise? A. I saw him after he came out of the hospital the last time, and that was the last time I saw him.

Q. What? A. The last time he came from the hospital that Fall I saw him on the street two or three times.

Q. When did you last administer to him? A. Last December.

Q. What was his condition then? A. That time he had a severe case of grippe, running a high temperature, and was pretty sick.

Q. How often would you see Doctor Freeman a week, for instance, the last two years of his life? A. Oh, I sometimes wouldn't see him for a month. I didn't see him very often.

Q. Do you know what was the cause of him being sent away the last time to Trenton? A. No, I do not.

Q. You didn't sign the certificate? A. No. I think I was in the service at that time. I am not sure.

Q. Service of the United States Army? A. Yes, sir.

Q. Doctor, from what you saw of Doctor Freeman during the last two years of his life, is it your opinion that he was mentally fit to make and execute a will on the 12th day of July, 1922, or during any period of that two years? A. I would like to answer that in this way: After hearing the question that was put this morning, and the information that has come out afterward, which I didn't know about, shall I answer it qualifiedly?

Q. I will include, after hearing the hypothetical question propounded today to Doctor Cotton, and the history of this case, what is your opinion about it? A. I should say he was not able to make a will.

Q. Was there any foundation for a delusion possessed by Doctor Freeman during his lifetime, as far as you know that his wife was on intimate terms, or her conduct was unbecoming, with a chauffeur? A. Not as I observed.

Mr. Strong: One minute, I object to that.
Mr. Davey: He said no.
Mr. Brown: That is all.

Cross Examination by Mr. Davey:

Q. Doctor, do you recall my visit to your home and office shortly after Doctor Freeman's death? A. Yes, I do.

Q. Early in June of 1923? A. Yes.

Q. Or early in April, I should say, 1923? A. Yes.

Q. Do you recall on that occasion I asked you what you thought as to Doctor Freeman's mental capacity to execute a will as of July 12th, 1922? A. I think you said something about it, yes.

Q. Do you recall that you then told me you considered that he was competent to make a will on that date? A. I don't think I said that, because I was very guarded in what I did say to you and Mr. Mohring. I told you I was open-minded, that I had not made up my mind fully on the questions, because I was not acquainted with all the facts.

Q. And do you now say, Doctor, that you did not tell me and Mr. Mohring, on that occasion, that you considered that the Doctor was competent to make a will on July 12th? A. I don't remember saying that.

Q. That does not quite reach the point of my question, Doctor. I will have to get an answer directly. Do you deny that you did say it? In substance or in fact? A. I don't deny it. I don't remember saying it.

Q. You were the attending physician, were you not, Doctor, at the time of Doctor Freeman's death? A. Yes, sir.

Q. How often did you say you had seen him during the year 1922? A. I saw him for about a week some time in the last part of December.

Q. Was that the only time you had seen him during 1922? A. Oh, I had seen him on the street off and on before that. That is, professionally, I saw him.

Q. Other than professional calls, how often did you see him during 1922? A. Why, not very often.

Q. Once a month? A. Possibly once a month. Possibly twice. Possibly once in two months.

Q. Did you have a conversation with him on those occasions? A. Very little.

Q. Do you mean that you saw him to speak to? A. I would say how do you do to him, or something like that. He didn't recognize anybody, and if he was right by me I would say, hello Charlie, or something like that.

Q. As you passed on the street? A. Yes.

Q. Were you in his house, or he in your house during that year? A. No.

Q. So that the interviews, or times that you saw him, were of the most casual sort? A. Yes.

Q. His failure to recognize you, did you attribute that to his eyesight? A. At times, yes. At other times, no.

Q. Where did you see him most frequently, in his car, or walking? A. Well, I saw him walking, standing around talking; going in the barber shop.

Q. Did you also see him riding around in a car? A. Yes.

Q. Did you say, Doctor, that so far as you know, he and his wife were always friendly? A. Until the break came, where they left.

Q. When was that? A. I think that time, I am very sure she was home at the time I saw him the first time.

Q. That was in 1920, before he went to the asylum? A. That was when he went voluntarily.

Q. That was his first visit to Trenton? A. I am not sure about it, but I think they lived together up to that time.

Q. And then separated? A. I think this trouble began between them after that time.

Q. Do you know where he lived after the separation? A. He lived in numerous places.

Q. I beg pardon? A. He lived with John Breen, Jr., at one time.

Q. You mean Will Breen, don't you? A. He lived at John Breen's house, he lived with Will Breen, and he lived with John Breen, Jr. He lived with three Breens, as far as I know.

Q. You fix the time of separation, Doctor, as somewhere soon after his release from Trenton the first time? A. Somewhere around that time.

Q. You know, don't you, that he never lived with his wife after that? A. I am not positive. I have a recollection they got back together again for a short time.

Q. Don't you recall that was through her absence from the home on a vacation, and he simply lived in the house during her absence, and returned to his quarters when she returned? A. I don't know the facts. I can't say yes or no.

Q. Doctor, at that interview that I had with you at your office on or about April of this year, do you recall stating that you had refused, on more than one occasion, to commit Doctor Freeman to the asylum? A. I never made any such statement.

Q. Did you know of any other occasion when his wife had sought to have him committed? A. His wife had talked about it numerous times, that she thought something ought to be done, that she was getting afraid of him, and she thought she ought to be protected.

Q. Talking about Mrs. Freeman? A. Yes.

Q. On more than one occasion? A. Yes. She mentioned it a number of times.

Q. You did not commit him on those occasions? A. No.

Q. Did you advise against it? A. No.

Q. You were her family physician, were you not? A. I was not.

Q. How did she come to consult you then? A. Well, we are very friendly, my wife was very friendly, she used to call me up on the telephone; more friendly advice than professional.

Q. Did you ever hear, Doctor, that he resented his wife's action in having him confined, or in signing the application for his commitment? A. I heard so, yes.

Q. Do you believe it?

Mr. Brown: I object to the question, unless it is shown that the Doctor has some knowledge upon which to base his belief, other than what someone else told him.

The Court: Objection sustained.

Q. What was Doctor Freeman's characteristic as to people whom he fancied or felt had injured him in any wise, mentally?

Mr. Brown: I object to that as not being material. That does not prove anything.

Mr. Davey: The question goes to his type of mentality. This witness testified to facts, as well as an expert, and I think it is fair cross examination.

The Court: I will not permit the question, if you insist upon pressing the objection.

Mr. Brown: I do not think there is any probative force to it, and I object for that reason.

The Court: Objection sustained.

Mr. Davey: In order that I may make the

record clear, and get away from possible objections to the question itself, I will ask one other.

Q. Was the Doctor a man of strong likes and dislikes, Doctor? A. Yes, I think he was.

Q. And a man who remembered an injury? A. Yes.

Q. You said, as I have a note of your testimony, that when you were consulted on the occasion, or about the occasion of his first visit to Trenton, you advised him to go to the hospital and straighten out? A. Yes.

Q. What was his trouble? A. Why, he had delusions, hallucinations, and destructive and noisy.

Q. I mean, what was the cause of his trouble, drink? A. Yes.

Q. Was he at the breach of delirium tremens, in your judgment? A. Yes.

Q. And it was from drink that you advised him to straighten out? A. Yes.

Q. Had you any knowledge, Doctor, of his use of drugs? A. Yes.

Q. What drug? A. Veronal.

Q. Any other? A. That is all.

Q. Veronal is not a narcotic drug, is it? A. No.

Q. Not in the class of habit-forming drugs, is it? A. Not considered so as a rule.

Q. Sold openly in New Jersey without prescription? A. Yes.

Q. And not the subject of a narcotic allowance, is it? A. No.

Q. Or an allotment? A. No.

Q. Did Doctor Freeman present any of the characteristic symptoms of a confirmed drug addict? A. It is very hard to differentiate between a certain stage of alcoholism, and a condition of drowsiness caused by a drug, and without a complete examination it would be very hard to tell.

Q. Drug addicts usually have a pallid, odd looking countenance, haven't they, Doctor? A. Certain kinds of drugs.

Q. Doctor Freeman's characteristic was rather florid, was it not? A. Yes.

Q. You say you saw him last after he came from the hospital the last time? A. No. I saw him at his death the last.

Q. I beg your pardon. I mean, you saw him after he came from the hospital the last time, that would be in October of 1921? A. I treated him for grippe in December following that.

Q. I thought you treated him for grippe in December of 1922? A. Yes.

Q. I have a memorandum that you saw him after the last time he came from the hospital, that was in October of 1921? A. Yes.

Q. How long after, Doctor? A. After he came?

Q. How long after his discharge was it that you saw him? A. Oh, I imagine a week or two.

Q. What was his appearance then? A. I thought he looked well. I thought he looked improved.

Q. There is testimony in the case that for two or three months after that he abstained entirely from drink and became quite his normal self in appearance. Does that accord with your recollection? A. Yes.

Q. Did you have, so far as you know, any other than the one conversation with him during that two or three months' period? A. Not any conversation to amount to anything, no.

Q. Where was that, if you know? A. That was down in front of the United Cigar Store, if I remember it.

Q. In Metuchen? A. Yes.

Q. Did he then appear to have been drinking at all? A. No, at that time he didn't.

Mr. Watson: Will you fix the time of this?

Mr. Davey: Shortly after his discharge, about a week after October 4th, is the testimony as to the time.

Q. Do you know the time of day, Doctor? A. Around noon time.

Q. How did he strike you then mentally? I mean as to his mentality, not yours. A. Why, that was the first time I knew about his eyes. I spoke to him about it, and he answered very intelligently on it. I didn't see anything unusual about him at that time.

Q. Speech clear? A. Yes.

Q. Did you see him walk? A. Yes.

Q. Walk freely? A. Well, I noticed he walked, at the time I remember it struck me as sort of a spastic gait, didn't bend his knees.

Q. Did his eyesight have anything to do with that characteristic of his walk? A. I don't think so.

Q. You have testified, Doctor, on the hypothetical question propounded here, that in your opinion, on the 12th of July he did not have testamentary capacity? A. Yes.

Q. And on what particular item of the hypothetical question most largely does your opinion rest? A. There are so many things that struck me there, in connection with things that I knew, that it gave me an entirely different picture.

Q. Do you mean things you knew as to him in early days, or things that you knew about that time? A. A great many things I didn't know, that came out in the hypothetical question, which would necessarily change my point of view.

Q. You say taken in connection with things that you knew? A. With what I knew, yes.

Q. Do you mean things referring to older days, or things referring to a period around July, 1921, or '22? A. Well, the entire period, the entire time.

Q. Doctor, if it were proved that for two or three months after his release from the State Hospital, on October 3rd, 1921, he didn't drink at all, and became quite like his old self, normal in appearance and able to attend to his business, with the sole exception of his impairment of eyesight, would that indicate to you that at that period his mental capacity was such that he could have executed a valid will? A. No, I don't think so.

Q. Do you apprehend the question? A. Yes.

Q. Do you think then that he never was able at any time to execute a valid will? A. I don't think he was, at that time that you mention.

Q. This is in October, 1921? A. Yes.

Q. My question pre-supposes that he became quite his normal self, and able, with the sole exception of his eyesight, to attend to his business as a normal man, now, with that hypothesis, would you say that he was then able to execute a valid will? A. I don't think that hypothesis is right.

Q. Well, I understand that, Doctor, but I can't change that hypothesis, which is based upon other testimony. You are here now as an expert. A. Will you repeat it again?

Q. (Question repeated by stenographer) A. That leaves out all of the hypothetical question that was asked.

Mr. Brown: Yes. It leaves out everything.

A. Then I should say yes.

Q. You said, Doctor, that you could not believe that hypothesis to be correct, is that right? A. Yes.

Q. On what do you base that belief? A. On your first two statements of that.

Q. On what? A. On your first two statements, supposing that he had—there was nothing the matter with him except his eyesight.

Q. The testimony here has been testimony of a very considerable number of witnesses, including John Breen, and John Breen, Jr., that for two or three months after his release from the hospital, in October of 1921, Doctor Freeman did not drink at all, and became quite his normal self; do you doubt that testimony from any information which you have?

Mr. Brown: I object to the question as calling upon this witness to express an opinion about the testimony given, or alleged to have been given by another witness.

Mr. Davey: He has expressed an opinion, and I want to sound it.

Mr. Brown: I do not think he can characterize the testimony of another witness.

The Court: I will sustain the objection.

Q. Have you any opinion, Doctor, of your own, from observation or conversation with Doctor Freeman, as to his condition during the two or three months following October 3rd, 1921, excepting the one interview to which you have testified? A. No, I haven't.

Q. And have you any information from others as to his condition during two or three months immediately following his release from the Trenton asylum, or hospital? A. No.

Q. Have you any information, Doctor, personally, or from others, as to the condition of Doctor

Freeman on July 12th, 1922? A. That is before he went to the hospital?

Q. No. That is afterward, the following July, in July preceding his death. A. Well, I thought he was out in October preceding his death.

Q. I beg pardon. A. Didn't he come out in October?

Q. Came out in October, a year and a half preceding his death; he came out of the hospital in October, 1921, and he died March 7th, 1923. A. Yes.

Q. Now, my question relates to July of 1922, right in the middle of that period. A. Before he came out of the hospital?

Q. No, afterward. A. He came out of the hospital in October. Oh, the preceding year?

Q. He came out in October of 1921. A. What about his physical condition at that time?

Q. I ask if you had any information as to his condition in July of 1922? A. I don't remember.

Q. You hold office, don't you, in connection with the State asylum, in some way, Doctor Ellis? A. Not now.

Q. You were at one time? A. In 1917 was my last year.

Q. As trustee? A. On the board of managers, yes.

Q. Doctor Ellis, you know the elements that go to make up testamentary capacity, do you not? A. Yes.

Q. If it appeared that Doctor Freeman in his will had mentioned and left something to each and everyone of his natural heirs, that would indicate to you that he knew who they were, and appreciated his natural obligations, would it not? A. Yes.

Q. And if, in addition, he left to a servant a substantial bequest, telling her afterwards of the fact,

that would indicate that he was alive to his obligations, would it not? A. Yes.

Q. And his telling her afterward, that he recalled what he had done? A. Yes.

Q. If it appeared that very shortly prior to the execution of his will, he explained fully to his attorney the condition of his corporation, the number of its shares of capital stock, the total of its outstanding book accounts, the value of its property, the facts as to the trust executed by him of its shares of stock, the fact of its need of ready funds, the facts regarding its bank loans, his whole estate being the shares of stock of that corporation, would you say that he did or did not apprehend of what his estate consisted? A. I should think he did.

Q. And if he afterwards, some months subsequent to the execution of his will, told an accountant who periodically audited the books of his corporation, what he had done in his will, would that indicate to your mind that he appreciated what he had in fact done?

Mr. Watson: I object to that upon the ground it is not based upon the testimony. Mr. Higgins gave no such testimony.

Mr. Davey: Mr. Higgins' words were that he had left something to Lettie and Harry.

Mr. Watson: He might have left something to Lettie and Harry, one thousand dollars apiece, and still—

Mr. Davey: I will change it.

Q. If he afterward told an accountant who periodically audited the books of his corporation, that he had left something to those two, who were, in fact, the principal beneficiaries of his will, would

that indicate to your mind that he appreciated what he had in fact done? A. Not in itself.

Q. Well, taken in connection with the fact of the will itself. If the two that he mentioned to the witness Higgins were in fact the two principal beneficiaries of his will, would not that indicate that he understood what he had done? A. He might have remembered what he had done, yes.

Q. That is what I mean. Now, if, Doctor, he had drawn a will and executed it on the 21st of June of 1922, in which his sisters were not mentioned, and then on July 5th, he gave instructions to his attorney to include them, giving his attorney their names in full, each, with a direction that a bequest of two hundred dollars be given to each, so that they might not be able to say that he had forgotten that they were living, would that indicate to you an appreciation of family ties, and memory of facts sufficient to imply testamentary capacity in the man who gave them?

Mr. Brown: I object to the question, because it is a fruit of counsel's mind, in that it refers to enumerating the sisters and giving them two hundred dollars, so that they could not, nor anyone else, say that he had forgotten them.

Mr. Davey: That is the testimony.

Mr. Brown: Who said that?

Mr. Davey: The testimony is to the effect that was his instruction, and that was the reason for it. It is in my testimony, and you will find it. You cross examined me at great length.

Mr. Brown: That is absolutely new to me, as far as my memory goes.

Mr. Watson: Mr. Davey testified to that.

Mr. Brown: All right, if that is so, I will withdraw the objection.

(Question repeated by stenographer.) A. It would be a remembrance of family ties. As to the question of the other, it would have to be qualified. I don't see how I could answer that yes or no.

Q. Do you consider, Doctor, that resentment against his wife for her part in having him confined in the hospital was natural? A. No, I do not.

Q. Not to a man of his characteristics? A. No.

Q. Do you consider that he should have come home and thanked her for having him committed? A. I don't know that that would have been necessary.

Q. Don't you think that most men would resent such action on behalf of their wives? A. It would depend entirely upon conditions. Every case would be a case to itself. I could only judge this case, and in this case I should say that it was not.

Q. You don't think most men would resent that? A. I don't think in this case there was any reason to resent it.

Q. I think that is not responsive, but I will let it go. Did you know, in fact, that he resented the action of Judge Weber in having him sign the commitment? A. I didn't know that; no, sir.

Q. Did you know that in fact he never again willingly spoke to Judge Weber because of that action? A. No.

Q. Do you consider that natural, or abnormal? A. I consider that abnormal.

Q. Do you think, Doctor Ellis, that there was anything the matter with Doctor Freeman, from what you did observe of him, except his habit of excessive drink? A. Yes.

Q. What? A. I believe he had ideas.

Q. What? A. I believe he had delusions.

Q. Those grew out of his habit of drink, didn't they? A. Yes. And mental deterioration.

Q. What observation of your's gave rise to the idea that he had mental deterioration? A. On account of the delusion against his wife.

Q. And how did you acquire knowledge of it? A. Knowing the personal relations of the two for many years up to the separation.

Q. And from whom? A. Personal observation.

Q. From her, or him? A. Personal observation of both.

Q. You could not observe a delusion? A. The delusion, no. I don't know as I get your question.

Q. I ask what knowledge you had of his delusion? A. On account of the change in his attitude toward his wife.

Q. Did he tell you of it? A. It was very evident.

Q. When? A. When he left her and went to live with the Breens.

Q. What did he say? A. What did he say?

Q. Yes. A. To me about it? He didn't say anything.

Q. Then he didn't tell you about it? A. His wife told me about it.

Q. His wife told you about it? A. Yes.

Q. And that is all the knowledge you have? A. Well, knowledge, and what you hear, hearsay knowledge.

Q. What did his wife tell you? A. Well, she was very anxious to come and live at our house at one time. She wanted to live in my house.

Q. That didn't throw any light on his delusion. A. Because she was afraid that he was going to attack her, or hurt her.

Q. She entertained a fear of him? A. Yes.

Q. That was no delusion, was it? A. A delusion on his part.

Q. What delusion on his part? A. That she was unfaithful to him.

Q. That you have only from her?

The Court: What do you mean, that you have only from her?

Q. I mean, knowledge of that came only from hearsay?

Mr. Watson: No. It is a hypothetical question.

The Court: He saw Doctor Freeman, as I understand it.

Mr. Davey: No. He says not. His sole knowledge came from her, and I am now trying to find out, what she said.

Mr. Brown: He said the knowledge about him going over to Breens at that time came from her.

Mr. Davey: He said his knowledge of their relations, and he knew personally that wasn't the fact. I am trying to find out what information reached him as to any delusion of fact.

Mr. Strong: It is right on the record there, the last two or three questions.

Q. That is right, isn't it? A. I am taking it in conjunction with the hypothetical question that was asked me.

Q. If you will direct your attention for a moment to my question, please. What information have you as to any delusion entertained by Doctor Freeman regarding his wife, any from him at all?

A. Well, on the night in question, when I was up there, before he went to the hospital, he was accusing his wife then of being in conjunction with the servants at that time.

Q. To you? A. Yes.

Q. Any other statement at any time? A. That was the only time.

Q. When was it that she expressed physical fear of him? A. Oh, from that time on, at various times.

Q. But after that you said they separated? A. I believe they did.

Q. So that after that there was no occasion, was there, of physical fear, or fear of physical injury? A. I don't know whether she feared after that or not.

Q. Doctor Ellis, if it appeared that in September of 1922, that is before you visited him and treated him for grippe in December, Doctor Freeman appeared in better physical condition than on the date of his release from the State Hospital, and showed no indication of any further mental impairment, and that in November or December of 1922 he consulted with the attorney for the corporation with the Lehigh Valley Railroad authorities regarding an important business matter, appearing at the time of such consultation nervous, high-strung, smoking cigarettes incessantly, but did not appear to the men with whom he was in consultation under the influence of either liquor or drugs, said what he did say intelligently, and appeared to be entirely sane and competent to those men with whom he was consulting, and that soon thereafter, having received the specifications for the construction or reconstruction of the railway trestle, he went to the trestle, had the specifications read, and personally examined the structure, and then wrote, or caused to be written a letter to

the railroad authorities raising questions regarding the advisability of specifying a certain grade of yellow pine lumber, and whether galvanized hardware wouldn't be better than plain, which was specified, and whether the bolts and so forth were large enough, and also considered the question of whether money could not be saved by building it himself, or through his own corporation, instead of having it done by the railroad people; that he was assured by the railroad people that money could not be thus saved, for the reason that their men were experts in that particular construction, and thereupon he did nothing further as to that phase of it; that he received an answer from the railroad people that galvanized bolts and hardware might be better and could be used at a somewhat increased cost; that he received word from the railroad people that long leaf yellow pine, which he preferred, had in fact been intended to be used, would that not indicate to you that he was competent to weigh and measure matters of business, and consider the importance of one in connection with the other elements of such a structure?

Mr. Watson: I make the same objection I made before, that there should be incorporated in that question that at the conference he said little, and did not manifest a great deal of interest in it, and that he never followed up the contract to find out why it was not signed, or what happened to it.

Mr. Davey: I will incorporate that he seemed to one of the men not to have exhibited great interest in the discussion at the railroad office.

Mr. Watson: The testimony of the only witness who testified about it.

Mr. Brown: And also that he would not transact business unless Mr. Watson was present. That he was relying upon Mr. Watson's presence at that time.

The Court: Incorporate those changes in the question.

Mr. Davey: Oh, yes.

Q. That also at that conference in the railroad company's office the question of the advisability of using cement caps, where the timbers rested on the ground, on account of the damp character of the ground, was under discussion, raised by someone, no one knows whom.

Mr. Brown: And that the Doctor at that time was in a highly nervous state.

A. I should think that his not following it up, his general attitude, and everything, would show a mental deterioration.

Q. Don't you think that the assurance of the railroad that their men, being expert, could build it cheaper than his could, would satisfactorily explain not following up the question of price? A. I don't think that would enter into it.

Q. Is that the only reason that you think it is not the action of a normal man? A. Why, the whole picture of it put together, yes.

Q. What is that answer? A. I say the whole picture, as it presents itself to me, I should say it would be abnormal.

Q. Just what strikes you as being abnormal in that picture? A. The past history, his nervousness.

Q. There is no history in that question. A. The lack of attention to the details of it, and his going to all that trouble and then dropping the matter, for it was an important thing for him to have, evidently.

Q. Doctor, consider, if you will please, in connection with that question, that the reconstruction of the trestle was forced upon him by the conditions of the trestle then extant, which belonged to the railroad company, and which his corporation rented, and the railroad had declined to renew the lease unless the provision was made therein for the reconstruction of the trestle, and that out of those desires for the reconstruction of the trestle and the renewal of the lease, involving eight thousand dollars for the trestle alone, and the yearly rental for the use of the land, was the motive which caused the interview to which I have alluded, would that in any wise change your opinion? A. No. If it was as important as all that, I think it showed all the more abnormality in his not going ahead with it.

Q. It resulted, in a specification being drawn and a contract being executed, although not completed at the time of the Doctor's death, accepted in principal at that interview, however, for the reconstruction of the trestle, and the spreading out of payments over a period of years, to the extent of, I think, four thousand dollars to be provided by the corporation in cash, and four thousand dollars to be spread over a period of years, with provision for the refund in case of the cancellation of the lease, and so forth, that was the termination, although the Doctor didn't live to see the entire matter carried out, the only thing that he didn't follow up in connection with it was the question of construction by his own company; and not by the railroad company.

Mr. Watson: I certainly object to that. The testimony in the case was that he didn't follow it up at all. He didn't know whether a contract was signed, or not, or why not.

The Court: Yes, that is the testimony. I will sustain the objection.

Q. You saw him, you say, Doctor Ellis, shortly after October 1922, after his release the last time from Trenton asylum and talked to him. Did you know that he had executed a will, in Mr. Watson's office, witnessed by two Metuchen men, Hartman was one and the automobile man there the other, on the fourth of October, the day after his release? A. A. I didn't know it, no.

Q. Would you consider that at that time he was mentally competent to execute a valid will? A. I don't think he was.

Q. And you base your opinion upon statements of history as contained in the hypothetical question, as I understand it? A. Yes.

Mr. Brown: And his own personal knowledge.

Mr. Davey: I think that is all.

Re-direct Examination by Mr. Brown:

Q. Doctor Ellis, Mr. Davey asked you if you didn't think it was a mark of mental capacity for Doctor Freeman to remember his sisters in the last will, by expressing a bequest of two hundred dollars to each, and stating the reason for it, and on the other hand not remembering the will of a few days or weeks before that, June 21st of the same year, he made a will wherein he didn't include his sisters and did not refer to them; does it not appear to you that the fact that Doctor Freeman in June never mentioned his sisters, or never referred to them, and that he forthwith made a new will within a short time afterward, showed an irrational mind? A. Considering the will itself I would say yes.

Q. There was no reason that you knew of about Doctor Freeman, why he should forget the names of his sisters in June and remember them in July, was there?

Mr. Davey: There is no testimony that he forgot the names of the sisters in June and remembered them in July. I object to that.

Mr. Brown: The question was that he did remember them in July, and wrote them all out, and gave their first names, but he didn't do it in June.

Mr. Davey: He didn't do it in June, but there is no evidence that he did not know them, or did not remember them.

The Court: The question is whether Doctor Ellis knew of any reason why he should not have remembered them in June.

Mr. Brown: Yes.

A. No.

Mr. Brown: That is all.

Adjourned until tomorrow, Tuesday, September 11th, 1923, at 10:00 a. m.

September 11, 1923.

WILLIAM E. RAMSAY, a witness produced on behalf of the Caveators, being duly sworn according to law on his oath, saith:

Direct Examination by Mr. Brown:

Q. Doctor, you are a practicing physician in the City of Perth Amboy? A. I am.

Q. And you have been practicing your profession how long? A. About thirty-five years.

Q. And you knew Doctor Freeman during his lifetime? A. I did.

Q. In your practice, Doctor, have you specialized in any particular branch of the profession?

Mr. Davey: We will concede the Doctor's qualifications.

Mr. Brown: As an alienist?

Mr. Davey: As an expert.

The Court: Doctor Ramsay's qualifications as an alienist are admitted.

Q. Now, will you please tell your acquaintanceship with Doctor Freeman? A. My first acquaintance with Doctor Freeman started immediately after my graduation in medicine. Doctor Freeman graduated from the same school that I did, a few years before.

Q. Can you tell what year that was, about, Doctor? A. Doctor Freeman graduated in '84, and I graduated in '88.

Q. That is the medical school? A. Yes, the medical department of Columbia University. And as the result of an acquaintance formed at that time, we were very friendly in our early days. On his visits to Perth Amboy we frequently met at the hotel down there, and I learned to know and was very fond of Doctor Freeman, and learned to know him very favorably and very well at that time.

Q. Well, now, then that acquaintanceship continued how long? A. I may say that we had frequent meetings during our life, up until within the last fifteen years. Then we gradually drifted apart.

Q. What were Doctor Freeman's habits in regard to the use of liquor in his early life? A. He was

always of a convivial type. He was quite—he drank to excess, I think, during all my acquaintance with him.

Q. And in the latter years that you knew him, did that habit decrease or increase? A. I did not see so much of him in the last ten or fifteen years. There was no estrangement, but Doctor Freeman's change of character was so marked that we were not as agreeable as we were before.

Q. When you say change of character, what do you mean? A. He grew more distant, and he was not—well, I think that was true with all his friends. He was more distant. He was not of the same calibre that he was before.

Q. And you noticed that when, Doctor? A. Coming on gradually during this last fifteen years.

Q. Do you know what was the cause of that change of character, or disposition? A. I attributed it to his excessive use of alcohol.

Q. You knew he was using it to excess? A. Yes.

Q. Were you acquainted with Doctor Freeman's eyesight during his lifetime, and you knew about its impairment? A. Not so well as until the time of my examination for his commitment.

Q. When did you examine Doctor Freeman? A. I examined him for the last commitment to the State Hospital.

Q. And where did you see him? A. In Metuchen.

Q. That was in August, 1921? A. I believe it was, yes.

Q. What condition did you find him in at that time? A. He was rather depressed, his responses were slow, he was indifferent to his condition, his surroundings, his eyesight was very poor, he had quite a distinct tremor, and I don't think he showed full proper conception of his surroundings, or his condition.

Q. Was he intoxicated when you saw him?

Mr. Strong: That is very leading.

Q. Well, what was his condition in that connection, when you saw him, as to sobriety? A. I would not say there was any acute intoxication. There was the chronic condition from which I figure he was suffering.

Q. How deep seated was the condition that you found? A. I would say that he was right in an advanced stage of chronic alcoholism.

Q. You signed his commitment, did you not, Doctor? A. I did.

Q. Was he a fit subject for incarceration? A. He was.

Q. Was the condition permanent or temporary? A. Permanent.

Q. You heard the hypothetical question recited to Doctor Cotton, did you not? A. I heard the question from the point in the question where it was stated that he was a graduate physician. The parts of the question up until that point I did not hear. I just came in court at that time, but I heard the question from that time on.

Q. Considering the question from the point of stating Doctor Freeman's early training as a physician, and his college connection, considering all of the question from that point down, what have you to say about Doctor Freeman's mental capacity to make a will on the 12th day of July, 1922? A. I do not think he was capable.

Q. What indicated, if anything—or what did the loss, or impairment of eyesight indicate to you, Doctor? A. His loss of eyesight was due to an optic atrophy, atrophy of the optic nerve, which was the result of alcoholism, in his case, in my opinion.

Q. What is the relation between the impairment of eyesight, and the brain cells, if any? A. The

change in the optic nerve, in that condition, is simply an external manifestation of what is going on in the central nervous system, or in the brain.

Q. So that to your mind the impairment of the eyesight would be an indicator or barometer of the condition of his brain? A. One of the symptoms, one of the indications, yes.

Q. Is there any doubt in your mind but that impairment of Doctor Freeman's eyesight was caused by the excessive use of alcohol? A. No question at all.

Q. So that if his eyesight became so poor that he could not read, except large headlines, and at times could not read at all, that was an indication of a brain that was very much impaired?

Mr. Davey: That is objected to as leading.

The Court: I think it is.

Q. From your observation and knowledge of Doctor Freeman, and from the evidence in this case, as indicated by the hypothetical question, how long, in your opinion, has Doctor Freeman been mentally incapacitated to transact business, or execute a will? A. That condition came on by sort of an insensible gradation.

Mr. Davey: One moment. I think that is objectionable. I do not think it is material. The man testifies that he has not seen him with any frequency, with one exception, since—

The Court: He is testifying here as an expert.

Mr. Davey: If it be addressed to him as an expert that is one thing.

Mr. Brown: It certainly is.

The Court: I will permit it.

A. That condition would come on so gradually that it would be a very difficult matter to draw a distinct line. As Mausley very nicely puts it in his work, he says, there is a dividing line, but there is no border stone; so that this condition has been coming on gradually, without any distinctive point that you could say that there was a total incapacity.

Q. What is the result of the excessive use of alcohol and veronal, such as indicated in this case by Doctor Freeman? A. The excessive use of alcohol would result in a nervous condition, or sort of an irritable condition on the passing off of the immediate alcoholic stimulation. And the veronal would be taken as a sedative to overcome that irritable condition, a sort of a counter-balance, as it were. The continued use of veronal would have a deteriorating effect, or a degenerating effect upon the nerve cells. Either over-use of stimulants, or over-use of depressants, has a destructive action on the nervous system.

Q. What is the result upon the brain cells, if any, or brain nerves? A. With excessive use of alcohol you develop a marked change in the structure. The first action of alcohol is a functional disturbance. The continued use of it produces a structural disturbance.

Q. Is that disturbance irreparable afterward? A. The structural change is to a very limited degree repairable. The functional condition is relieved with the withdrawal of alcohol, the functional disturbance may be remedied, but the remedy in the nerve cell, up to the extent of its destruction by the processes of inflammatory or other processes that go on in the brain cell, that is not repairable after a certain degree.

Q. What would be the condition, or progress of permanency of destruction in Doctor Freeman's case, for instance? A. In the early stages his

functional condition would be relieved with the withdrawal of his alcohol. But after a number of years of excessive use of alcohol, the cell changes and nerve fibre changes would be such that there would be an irreparable damage done to the brain. In other words, a chronic alcoholism means just what it says, it is a chronic condition that does not improve.

Q. So that if his brain, either cells or fibre, was impaired by the excessive use of alcohol, a period of sobriety would not produce any repair or restoration? A. Only to the extent that the functional condition could be improved. The structural condition would not change.

Mr. Brown: I do not think I have anything else.

By Mr. Watson:

Q. Do you know of Doctor Freeman's education, and degrees which he received? A. I do.

Q. What were they, Doctor? A. In 1880 he had a Bachelor's Degree from Rutgers, and later an M. S. Degree, and then he got his medical degree from Columbia.

Q. In what year? A. In 1884.

Q. He was a Phi Beta Kappa man of Rutgers, was he not? A. I really do not know his society, I couldn't say.

Q. Didn't you observe that he wore a Phi Beta Kappa pin? A. I know he had a pin, but what it was I don't recall.

Q. What have you to say of his mental and cultural attainments in his younger days? A. In his younger days he was a very interesting, intelligent, educated, cultured gentleman.

Q. How did his condition compare, in those respects, in later years, with the earlier years?

Mr. Davey: I object to that, because this is not a medical question, or an expert question. This is a question of fact, and the witness has testified that he didn't have acquaintance with him in the latter years.

The Court: Objection overruled. I will let the Doctor answer that.

A. His character changed. He grew very verbose, if I may put it, and was very argumentative, without real reason. His mental ability did not show any improvement; on the contrary I think there was a marked degeneration or deterioration of his mental ability.

Q. And you think that his withdrawal from his old friends was the result of that change in his mind and character? A. I do.

Q. You testified, Doctor, as to the coordination between the atrophy of the optic nerve, and his nervous and mental condition. To put that in layman's language, do you mean by that that the condition of the optic nerve, his eyesight was a sort of barometer by which we may judge his general mental condition?

Mr. Strong: I object. That is very leading.

The Court: Oh, no, it is not. That is clarifying the situation, Senator.

Mr. Strong: I think it is very leading, and I object.

A. I think that his optic atrophy was, as I have said before, an external manifestation of the change that was going on in the brain tissue itself.

Mr. Watson: That is all, Doctor.

Cross Examination by Mr. Strong:

Q. In your opinion was he capable of making a will on October 4th, 1921? A. He was not.

Q. Before that examination at Recorder Weber's office that you have spoken of, how long had it been since you saw him? A. About a period of months, I should say five or six months.

Q. At whose request did you make that examination? A. At the request of Mrs. Freeman and Judge Weber.

Q. Where was that made? A. The examination was made at the judge's office, at the judge's headquarters in Metuchen.

Q. Who else were present at that time? A. Oh, quite a few.

Q. About how many? A. I should say four or five people.

Q. Do you remember who they were? A. I knew Doctor Shull, who was with me, my assistant, and Judge Weber, they were the only two I could call by name. There were some others there whose faces were familiar, but I couldn't tell who they were.

Q. How long did the examination take? A. Oh, I should say a half an hour.

Q. And how was the Doctor brought there? A. I was invited to come to Metuchen to make this examination. I had discussed his case before with Judge Weber, and also with Mrs. Freeman, the conditions that led up to the examination. And I came there and they told me that they would have the doctor there when I got there. When I got there he was not there, so they sent someone for him.

Q. Who? A. I really couldn't tell you. I don't know. Someone they said he would come with.

Q. A police officer? A. I really don't know. He might have been an un-uniformed officer, for all I

know. They said he would come with this man, and they knew where they could find him, and they brought him there.

Q. How long after that examination was it that you saw him again? A. After the examination? I never saw him after that examination.

Q. As the result of that examination you signed the commitment, is that right? A. I did.

Q. Did you, in that commitment, make that examination the foundation for your action? A. Did I what, Senator?

Q. Refer to that examination, in the commitment that you signed, or the paper you signed committing him, as a justification for signing it? A. Nothing more than enough to meet the requirements of the law.

Q. In that commitment was there this question: "State by number which of the above questions are answered by physician on his own knowledge, and state by number which of the above questions are answered on hearsay," and did you say, "Number of questions answered on physician's own knowledge 1, 4 and 9," and were those questions or paragraphs as follows: 1. Patient resides at Metuchen, County of Middlesex. Age 60 years. Nativity: If foreign, how long in U. S. U. S. life. Sex M. Color, W. Occupation, merchant. Married."

Mr. Brown: I submit the instrument is the best evidence of what it contains.

The Court: I suppose this is only a copy that he has here, and not the original.

Mr. Strong: It is a certified copy of it.

The Court: What is the purpose, Senator?

Mr. Strong: To show that the only questions the Doctor answered as of his own knowledge were what I have just read, and

4: Was the present attack gradual or rapid in its onset." A. Gradual. 9. Has the patient insane relatives, if so, state the degree of consanguinity, and state any taint of insanity that can be ascertained. A. No history.

Q. Is that a fact, Doctor? A. Let me see the paper and I can tell you better. Answer one is from my own knowledge. I knew that he was about sixty years old, and that he lived in Metuchen, and that he was a merchant now by occupation. That he was married. Number two was his family history, which I had not gone into, which I have marked as obtained from others. Number three, obtained from others, was the question of number of previous attacks, which I construed to mean the number of previous commitments, which I had not made, and I consequently did not know. The age of the first attack, about forty years, that was twenty years before. I had nothing to do with that, consequently I have referred to it here as history obtained by others. That the attack was gradual, I knew that was so, and that is marked as number four, which was my own knowledge; I knew it was gradual, because I had seen it coming on. The question of his physical condition I marked as fair, which it was. He was not in perfect health. The cleanly or uncleanly, that is history obtained from others. As far as I could learn it was cleanly, but at times he was a little bit—he mussed his bed, and other things, which information had been furnished at that time. That information I obtained from Mrs. Freeman, and also from the history that Judge Weber had given me. Number 7, violent, excited, and threatened homicide. That history was obtained from others. Number 8, the use of alcohol and drugs,

that I put in the class history obtained from others, for the reason that I did not know of the history of drugs; I had obtained that; while one-half of the question I knew from personal knowledge, that he was addicted to the use of alcohol, but the drug history I had obtained from others. I had never precribed for him. As to the history of insane relatives, at the time that this examination was made no one was present who could give me the family history. Therefore I was compelled to fill it in as no history. State the patient's habits as to the use of liquor, tobacco, drugs and so on, the answer is alcohol and numerous drugs.

Q. That you got on information? A. That I got on information. The alcohol I knew of.

Q. But you put it on information? A. Yes. And the numerous drugs is the part I got on information. And the same answer applies to number 8 that does to number 10, because it is a multiple condition from alcohol and drugs; the drug condition was from history obtained. And in the personal examination, had driven Burt, the chauffeur, out of the room four times during the night, and said his wife was crazy, this was his own statement to me at the time; that he had to use force on his wife to keep her hands out of his pockets.

Q. That you stated on information? A. What is that?

Q. You stated that on information? A. No. This patient said this to me himself. This was the patient's statement to me.

Q. Questions answered on physician's own knowledge, one, four and nine. A. That is above. That has nothing to do with this. Nothing below that point (indicating).

Q. That one below is on your own information? A. That is the information I obtained. This is the examination, after.

Q. You mean that is what he said? A. That is what he said to me. He told me that he had driven Burt out of the room four times during the night, and said that his wife was crazy, and said that he had to use force on his wife because she was putting her hands in his pockets.

By the Court:

Q. The rest of the question, Doctor, from that point on, is all from the examination you made that day? A. Yes, personal examination; and the questions on information obtained has absolutely nothing to do with what follows.

Mr. Watson: Is the document offered, Senator?

Mr. Strong: Yes, I will offer it.

Mr. Davey: It has been offered, I think.

Mr. Strong: It has been offered before I think, and it is offered again, if it was not.

The Court: I do not think so.

Mr. Davey: I thought the entire record was offered.

The Court: Of the Chancery case, but not of the commitment.

Mr. Strong: We offer it.

The Court: No objection, I suppose?

Mr. Watson: No: He has been examined upon it, and I think it ought to be in, to make the examination intelligible.

(Document entered in evidence and marked Exhibit P-1, 9/11/23.)

Q. How do you know that Doctor Freeman, gradually or otherwise, dissolved his friendships with others besides yourself? A. In conversation

with men who had been formerly friends of his, men who used to meet together.

Q. By hearsay, in other words? A. Well, if you would class that as hearsay. We discussed Doctor Freeman on numerous occasions during those last years.

Mr. Strong: I ask that testimony be stricken out.

The Court: Oh, no.

Mr. Strong: I move it be stricken out.

The Court: Oh, no. You got it out yourself.

Mr. Strong: I have got it out that it was obtained on hearsay and, therefore, I move the testimony that he had dissolved his friendships be stricken out.

The Court: No. I think that comes within one of the exceptions. It is practically a matter of pedigree.

Q. Doctor Freeman was a man of very positive character, was he not? A. He was.

Q. And he was a good friend, was he not? A. In his early days he was a good companion, yes.

Q. And he was positive in his likes and dislikes, was he not? A. Apparently so, yes.

Q. He was inclined to resent injuries, was he not? A. Well, I never saw him when he had occasion to do. I really couldn't tell you what he would do if he had a serious injury.

Q. He was a man of a great deal of force of character, wasn't he? A. He was.

Q. A strong willed man? A. Yes.

Q. Doctor, veronal is not a habit forming drug, is it? A. All depressing drugs, all drugs that are given for the relief of distress, I believe are habit

forming drugs. I believe even bromide, which is one of the mildest, is a habit forming drug, because the continued use of it, in my interpretation of the habit, the continued use of them develops a tolerance for them, and very recently an effort has been made to put veronal on the list of narcotics that are recognized by the Harrison Act, for that same reason.

Q. And has not been successful? A. Not as yet. The effort has only been started.

Q. There are no restrictions on it? A. Not as yet.

Q. You disagree with Doctor Cotton as to veronal being a habit forming drug.

Mr. Brown: I object to the question.

The Court: Objection sustained.

Q. You heard Doctor Cotton's testimony that veronal was not a habit forming drug?

Mr. Brown: I repeat the objection.

The Court: Objection sustained.

Mr. Strong: I am going on the same fashion as a hypothetical question here.

The Court: Objection sustained. I will not permit any witness to comment on the testimony of another witness. I will leave that for counsel to do.

Q. Veronal does not accumulate in the system, does it? A. I do not think it does.

Q. It passes off in the urine? A. I suppose so.

Q. Opiates do accumulate in the system? A. Not as opiates, no.

Q. But as what? A. As a destruction to the nerve tissue, which develops a tolerance, and a demand for them.

Q. And by reason of that the action of opiates is worse? A. It is more active as a habit forming drug than veronal. Veronal is a milder habit forming drug, in my opinion, than opiates.

Q. Is it not a fact that men may absorb great quantities of alcohol over a long lifetime, and yet retain their faculties? A. Yes.

Q. Unimpaired? A. Yes.

Q. And some men are very much better able to withstand the destructive effects of alcohol than others? A. Some men do.

Q. In other words, can absorb larger quantities without bad results? A. Some men have more powers of resistance than others, a few.

Q. Is it not a fact that a great many chronic alcoholics have very much improved in their condition since the Eighteenth Amendment was enacted?

Mr. Watson: I object to that, because that takes within its scope not only a question of medicine, but also a sort of political question.

The Court: Objection sustained.

Q. Do you know of chronic alcholics whose condition has been very greatly improved because of restriction in the amount of—because of lessening, or total deprivation in the amount of alcohol they have absorbed, in consequence of the enactment of the Eighteenth Amendment?

Mr. Brown: I think that question is about the same, and I object to it for the same reason.

The Court: I will sustain the objection. What we are concerned with is not other alcoholics, Senator, but the man whose will is

now under examination, and I think the questions ought to be limited to what, if any, knowledge the Doctor has, of how he reacted, I mean how Doctor Freeman reacted after the Eighteenth Amendment and the Volstead Act were passed.

Mr. Strong: It seems to me I have a right to show that alcoholics can recover.

The Court: Oh, yes, you have that, but I did not think your question was that. I thought your question was rather a question of fact.

Mr. Strong: Oh, no. I am asking for the abstract.

The Court: Then do not limit it to after the Volstead Act, or any other time.

Q. Do you not know of chronic alcoholics whose condition has been greatly improved by lessening, or entirely giving up the use of alcohol? A. I have never known a chronic alcoholic to improve beyond the point of the destruction to his brain tissue. Chronic alcoholics improve to the extent of the removal of the alcohol, and the functional limit that the cell may have. In other words, if a nerve cell has been destroyed fifty per cent., and you remove that man's alcohol, the function of that cell will only improve up to that point of fifty per cent., and does not improve any farther.

Q. But a man might have his nerve cells slightly impaired, or destroyed, and yet be able to attend to the ordinary affairs of life, including his business? A. Depending entirely—his limit of mentality will depend entirely upon what destruction has been done to his brain tissue by his alcohol before.

Q. The extent of it? A. To the extent, pure and simple.

Q. And is it not a fact that during the period which you have stated that you knew Doctor Freeman, and since the time when you said that he had fallen away from you and other friends, that he owned and supervised a large business in the City of Metuchen, the Manning Freeman & Son, Inc.? A. I knew he owned it, but the extent of his management I did not know.

Q. Then the quantity of alcohol that different men can absorb, without impairment of their nerve cells, or tissues, varies as to the individual? A. Largely.

Q. And are you prepared to swear just what quantity of alcohol Doctor Freeman could absorb, without impairment to his nerves and tissues? A. Only one way in the world to determine that is to put them through the test, and see what the difference is when they get through.

Q. Did you ever do it? A. He did it.

Q. Did you ever do it? A. Myself?

Q. Yes. A. Oh, yes, I have tried it. I gave it up.

Q. I did not mean to make it personal; I mean with Doctor Freeman? A. I committed Doctor Freeman on the strength that he had gone the limit, yes.

Q. On the strength of that? A. On the strength that he had gone his limit.

Q. From what you were told? A. From what I had observed.

Q. From what you had observed in that one interview? A. On that one interview?

Q. Yes. That one examination? A. No. I had seen it coming on for years with Doctor Freeman.

Q. You hadn't seen him for six months? A. That is true, but I had seen him for thirty years before, and I had seen the change coming on. I

had seen this change in Doctor Freeman ten years before this commitment.

Q. Yes, but you had seen him very little for fifteen years? A. That is true.

Q. And are you now prepared to say, from what you saw of him in those fifteen years, and your single examination of him at the Recorder's office, that you could determine the amount of alcohol he could regularly drink without impairment? A. I couldn't direct the quantity, but I could see the result that the alcohol had had on him in that time, yes.

Q. Doctor Maudsley is a man, or was a man who considered pretty nearly everybody insane, did he not? A. I never heard it.

Q. Wasn't he a man who was criticized for extending the domain of insanity unduly? A. No. You are thinking of Spitzka.

Q. No. Is there not great difference of opinion amongst different specialists and experts and alienists as to just what insanity consists of? A. Well, no, I didn't think there was any difference.

Q. You don't think there is? A. No.

Q. If it were proved that for two or three months after his release from the State Hospital on October 3rd, 1921, Doctor Freeman did not drink at all, and became quite like his old self, normal in appearance, able to attend to his business, with the sole exception of his impaired eysesight, would that indicate to you that his condition, as you observed it, had improved? A. If such was proven to me, yes.

Q. If it appeared that in May, 1922, he executed, at the instance of a creditor of his corporation, a trust conveyance of his stock, and very shortly thereafter sought to have the same cancelled, and if it appeared that that trust was made to his at-

torney, Mr. Watson, and that Doctor Freeman engaged an attorney from outside of Middlesex County to procure the cancellation of such trust, would that lead you to believe that he he possessed reasoning power, and some mental ability? A. That he did that of his own volition, or on advice of counsel?

Q. If he did it on his own volition? A. If he did, yes.

Q. If it appeared that Doctor Freeman, on June 18th, 1922, wrote out instructions for a will to be prepared by his new attorney, and executed such will, after it had been so prepared, on June 21st, and it appeared that his written instructions were legible and coherent, and that he in that will left to his wife only one dollar a year, because of his resentment of her action in procuring his commitment to the hospital, it being the fact that she did sign the application for his commitment, would you consider that an act of natural resentment, or a delusion? A. I would think it was an act that was coupled with his delusion.

Q. It could have been an act of resentment, probably a delusion, but could have been an act of resentment? A. The delusion prompted the resentment, yes.

Q. Well, it could have been an act of resentment, without delusion? A. Well, without the delusion he would not have done it.

Q. He would not have done it? A. No.

Q. Why not? A. Why, because his delusion of persecution on the part of his wife is not only a symptom of the condition for which we have examined him, but it is also the thing that prompted his cutting off the wife.

Q. You are acting now on the hypothetical question. It was not a delusion that she signed that

commitment, was it? A. No. But it was his interpretation of it was a delusion. He took it as a persecution on the part of his wife, while she was doing it for his benefit.

Q. That might be a matter of opinion, too, might it not? A. That is my opinion, yes.

Q. Do you mean now to say—

The Court: How could it be a matter of opinion, Senator?

Mr. Strong: If there is any objection to it, I will withdraw the question, because I had another one I wanted to put to him right away. It does not seem to me of very great importance.

The Court: I am curious to know how it could be a matter of opinion, that Mrs. Freeman's action in this matter had any other motive than for Doctor Freeman's good.

Mr. Strong: No. But as to the way Doctor Freeman would interpret the action.

The Court: That was not your question. Your question was whether it might be a matter of opinion as to whether Mrs. Freeman did act for his best.

Mr. Strong: I did not have Mrs. Freeman in mind at all.

The Court: I just wanted to clarify the situation.

Q. Do you mean to say that a man discharged from an asylum, and sane, could not resent the action of persons committing him to that asylum?

Mr. Brown: I object, because it is not based upon fact. What happened was, ac-

cording to the testimony so far, that Doctor Freeman was released as not being a man who was dangerous to be at large. As to there being any stamp of approval, or adjudication that he was mentally fit, that is not the fact, in the testimony as far as we have it now.

The Court: I will permit the question on another theory than the one you have in mind. I do not care whether it recites the exact facts in this case or not. It is a general question put to an expert, and I will permit him to answer it.

(Question repeated by stenographer.) A. A man discharged from the asylum—

Q. You could answer that yes or no.

The Court: No. The Doctor may answer it the way he feels that he should answer it. Because those questions are not susceptible of being answered yes or no.

A. A man discharged from a hospital as sane rarely resents it, if ever. I have never known a man to resent it, who has been discharged as sane.

Q. Rarely resents it? A. I have never known one. I have known a man who was discharged, within a few months, I have known a man who was discharged, who was not entirely recovered, and he came down and abused me most unmercifully for his commitment. A short time after that his family returned him to the institution, and he remained there for about three or four months, and when he returned he came in and thanked me for his commitment; the last time he was sane, the first time he was not.

Q. Why is it that a sane discharged patient never resents his commitment to the asylum? A. Because they appreciate that it was done for their welfare, and they enjoy the benefit of the treatment they got there, and they come back, and they are sane enough to express it; while the man who is not entirely recovered is still a victim of his delusions, and carries it around, as a very great many of them do; a very great many men who are committed, and have returned to the town, very rarely speak to you. I have a number now who do not speak to me at all, who have been committed, but they are men who have not entirely recovered.

Q. I suppose by the same reasoning, criminals committed to prison never resent their commitment, because it was for their good?

Mr. Brown: I object to that as immaterial and irrelevant.

A. I haven't a large acquaintance with criminals.

The Court: Objection sustained. It is not a parallel case.

Q. In how many cases do you suppose you have listened to the grateful comments of discharged patients from insane asylums? A. I have had a great many times. I have never kept track of them. It is over a period of thirty-five years.

Q. Is that also true of alcoholics? A. Yes, sir.

Q. They never resent, you have never known an alcoholic to resent his commitment to an insane asylum? A. I have never known a chronic alcoholic to recover, so consequently I have never been in position to state.

Q. Have you ever known a man committed to an

insane asylum for alcoholism, to resent his commitment after he was discharged? A. Let me get that question? Have I ever known an alcoholic, or chronic alcoholic?

Q. An alcoholic? A. I have known alcoholics to be committed to an insane asylum and recover and come back and be perfectly friendly.

Q. Yes, but that is not my question? A. You will have to make it a little clearer then.

Q. No, it is clear enough.

(Question repeated by stenographer.)

A. Not an acute alcoholic.

Q. Just answer that question, please?

The Court: He is answering it.

Q. I have not said anything about acute? A. There are two classes, alcoholics are divided into two classes. Which one do you ask me about?

Q. Alcoholics generally? A. I can't answer your question. Or no other man.

Q. Certainly they can. A. No, it is impossible to answer a question of that kind.

Q. You can't answer it, is that right?

The Court: He cannot answer it because you do not ask him the question in a way that it can be answered, Senator. There are two classes of alcoholics recognized in medicine; one is the acute class, and the other is the chronic. You ask him generally alcoholics. And he says he cannot answer unless you designate which you mean, the chronic or acute.

Mr. Strong: That covers both classes, and certainly that makes it easier for him to answer.

Q. Then I will ask you if you ever knew a person suffering from acute alcoholism, who was committed to an asylum, and afterwards discharged and cured, to resent his commitment? A. I don't recall one.

Q. Did you ever know a person committed as a chronic alcoholic, and afterwards discharged and cured who resented his commitment? A. I never knew one to be cured.

Q. Or after his discharge, cured or otherwise, who resented his commitment? A. Yes, sir; I know one now, right opposite me.

Q. Right opposite you? A. Not here, no.

Q. Can a person of unsound mind execute a will, Doctor, a valid will? A. A person of unsound mind?

Q. Yes? A. I believe there are certain forms of mental unsoundness in which they could, yes.

Q. Which requires the greater mental strength, the making of a contract, or the making of a will?

Mr. Brown: I object to that question. I think that is a legal question.

Mr. Strong: No, it is not. How can it be legal?

Mr. Brown: It is legal in this sense: Because contracts vary in their form and in their complications, so do wills also vary in their forms and complications. I do not know of any medical rule upon the subject of just to the extent of mental capacity that is required to execute a will, as compared with a contract. What I mean by the medical condition, or condition of the mind is that the rule about the extent of mental unsoundness or soundness is looked upon by the legal profession, and by the courts, as more of a legal proposition than a medical

one, and its weight on the side of a man making a contract having to be called on to possibly exercise greater mental acuteness and stability than one who was making a will. One is where he is dealing with someone at arm's length, and he has to have his wits about him. The other is sort of an ex-party functional performance he can do with due deliberation, and surrounded by more agreeable circumstances.

The Court: It does not seem to me it is a fair question to put to a medical man.

Mr. Strong: Doctor Cotton had no difficulty in answering it yesterday.

Mr. Brown: We did not object yesterday, but should have done it. The question was answered before it should have been.

Mr. Strong: I have a suspicion your argument was for the purpose of enlightening Doctor Ramsay what his answer ought to be.

Mr. Brown: Not at all. I am objecting point blank.

The Court: I think I will sustain the objection. I would have sustained the objection yesterday if it had been made.

Q. If it was the fact that in September, 1922, he appeared in better physical condition than on the date of his release from the State Hospital, and showed no indication of any further mental impairment, and that in November or December 1922, he consulted with the attorney for the corporation with the Lehigh Valley authorities regarding an important business matter, appearing at the time of such consultation nervous, high-strung, smoked cigarettes incessantly, but did not appear to the men with whom he was in consultation under the influence of either liquor or drugs, said that he did

say intelligently, and appeared to be entirely sane and competent, and that soon thereafter, having received the specifications for the construction, or re-construction of a railway trestle, he went to the trestle, had the specifications read, and personally examined the structure, and then wrote, or caused to be written, a letter to the railroad authorities, raising questions regarding the advisability of specifying a certain grade of yellow pine lumber, and whether galvanized hardware would not be better than the plain, which was specified, and whether the bolts were large enough, and also considered the question of whether money could not be saved by building it himself, instead of having it done by the railroad people, would that not indicate to you that he was competent to make a valid will? A. No.

Q. Why? A. A certain amount of that work was in his line of business, and may have been automatic. The mere fact that he sat at that meeting and said nothing—

Q. It does not appear that he said nothing.

Mr. Brown: Will you permit the witness to answer?

Q. There is no proof in that question that he said nothing? A. Took no interest in it.

Mr. Watson: I object to the question on the ground that that feature is not incorporated, that part of the testimony.

Mr. Strong: Where does it say he took no interest in it?

Mr. Watson: We are objecting because it does not say it.

Mr. Strong: You are pretty late in your objection. The witness is making your objection for you. The question, as I put it—

The Court: He has answered it and said no.

Q. Why?

The Court: He has given an explanation on that too. I do not know whether he completed it or not.

Q. Why? A. Because a large part of that work was automatic, and did not indicate any reasoning. He was in the line of the lumber business, and it was perfectly natural—

Q. Didn't a large amount of it indicate reasoning? A. I don't think so, no. I don't see anything there that required any great reasoning power.

Q. First, he appeared in better physical condition than on the date of his release from the State Hospital, and he was released as cured, and showed no indication of further mental impairment, and that in November or December he consulted with the attorney for the corporation with the Lehigh Valley authorities. Did that indicate any reasoning at all, to consult with the corporation, or the Lehigh Valley authorities?

Mr. Brown: I object. There is no evidence before this court, or in the records anywhere, that Doctor Freeman was released as cured from the asylum. He was released improved; that is the testimony, and that is the record.

Mr. Strong: The discharge was offered in evidence, as I understand it.

Mr. Brown: I know it was, but that does not show he was cured. He was discharged.

Mr. Strong: He was discharged as cured; he was discharged as sane.

Mr. Brown: He was discharged from the asylum, that is all that happened.

Mr. Strong: He was discharged as sane.

The Court: Does the discharge say that?

Mr. Strong: I understand so.

Mr. Davey: It is in the decree of the Court of Chancery.

Mr. Watson: As I view that decree, it applies to his condition within the meaning of the asylum act, so-called, which may be entirely different from that under inquiry here, namely, his testamentary capacity.

Mr. Strong: Here they are claiming he was not sane within the meaning of the asylum act, and now we show he is discharged as sane.

Mr. Watson: In the statute, the statutory words are, if I recall them correctly, that he is incapable of controlling himself, or managing his estate, or words to that effect, which is a different test than that of testamentary capacity.

Mr. Davey: Committed as insane, as a chronic alcoholic, and he was discharged as being sane.

Mr. Strong: Then I will put in the question, having been discharged as being capable of controlling himself and managing his business.

A. I do not believe he was cured; I do not believe he was capable of managing his business.

Q. That is not the question at all. (Question repeated by stenographer.) A. No.

Q. You think a man could not consult with a corporation about an important business matter—

A. Not in his mental condition, no.

Q. That is not the question. I am trying to find out now, putting a supposed mental condition. A. These questions are asked about Doctor Freeman, and I am answering the questions about Doctor Freeman. If you have somebody else in mind that you are describing, that is a different thing.

Q. I am asking it about Doctor Freeman. A. Doctor Freeman was not capable of entering into any such discussion.

Q. If Doctor Freeman consulted the attorney of the Lehigh Valley Railroad, and the Lehigh Valley authorities, regarding an important business matter, could he have done that without intelligence? A. If he did.

Q. If he did it, it was without intelligence, is that what you mean? A. We are talking about Doctor Freeman, and I do not think that Doctor Freeman was capable of carrying on an intelligent business transaction.

Q. No, but I ask you if he did that, did that indicate? A. If he did, yes.

Q. That is all I want of you. A. If he did, yes.

Q. Said what he did say intelligently, and appeared to be entirely sane and competent. If that was the fact, did that indicate that he had intelligence? A. If that was the fact, yes.

Q. Did that indicate also that he was sane and competent?

Mr. Brown: I object. Those questions are the conclusions of Mr. Van Duzer, taken in the form of depositions in New York City.

The Court: Don't you see, Mr. Brown, that the Senator is bringing out what he can that is favorable to his side, and any question which does not include all of the facts which I may subsequently determine have been proved in this case, has very little value

as proving anything. If Senator Strong wants to bring out these questions in that way, you are not going to be injured by it at all.

Mr. Brown: Except I wanted to point out to counsel, and the Court, I think the question is wholly irrelevant, except it is complete. It is true Mr. Van Duzer expresses the opinion that the Doctor was highly nervous, and he thought he was competent that day. Objection was made to his characterization as a conclusion, that he was not fit to make that, was not qualified to make such a judgment, and then finally, in the conclusion of his testimony he says that he would not have transacted business without the lawyer being present. We have none of those elements in there.

The Court: It is in the testimony.

Mr. Brown: It is in the testimony.

Mr. Davey: On account of his eyesight.

Mr. Brown: His eyesight was on account of the alcohol.

(Question repeated by stenographer.)

Q. If he appeared to be entirely sane and competent, did that indicate that he was? A. No.

Q. It didn't even indicate it? A. It did not, because that act did not involve any of his delusions. His delusion may have been there, that involved other conditions that were entirely irrelevant to that meeting.

Q. You are assuming that the delusions exist? A. They did.

Q. According to your assumption? A. Yes, sir.

Q. But if the man did appear entirely sane and competent, and said what he did say intelligently, do you mean to say that that does not tend to prove

that he was sane? A. No. The mere appearance does not prove that a man is sane.

Q. And his saying what he did intelligently does not tend to prove it, even? A. No. Because he had delusions independent of that.

Q. A man, I suppose, can never recover from delusions? A. He can, yes.

Q. But you say this man did not? A. No.

Q. And that soon thereafter, having received the specifications for the construction or reconstruction of a railway trestle, he went to the trestle, had the specifications read, and personally examined the structure, and then wrote, or caused to be written, a letter to the railroad authorities, raising questions regarding the advisability of specifying a certain grade of yellow pine lumber, and whether galvanized hardware wouldn't be better than the plain, which was specified, and whether the bolts were large enough, and also considered the question of whether money could not be saved by building it himself, instead of having it done by the railroad people, would that not indicate that he was competent to contract? A. No.

Q. Not even to contract respecting those matters? A. No.

Q. Woudl that indicate that he possessed intelligence? A. In certain lines it might.

Q. Would that not indicate that he could make a valid will? A. No.

Q. If it appeared that he in fact mentioned all his relatives in his will, and made a bequest to each, would you say that he appreciated who were the natural objects of his bounty? A. Not necessarily.

Q. Would you say that he might have appreciated the natural objects of his bounty? A. It is impossible to say about what he might do.

Q. Certainly it is; if you say not necessarily, that

would indicate that he might? A. The question of degree comes in there, as well as the question of who is the natural beneficiary.

Q. How does the question of degree come in there? There is nothing in there about degree. What right have you to inject it in that question?

The Court: Senator, that is not fair. That is not proper at all.

Mr. Strong: I will strike that out then, that last.

Q. How does it appear in that question? A. Well, possibly it does not.

Q. He might then, by that, have recognized the natural objects of his bounty? A. He might, yes.

Q. If it appeared that he explained fully to his attorney the condition of his corporation, the number of its shares of capital stock, the total of its outstanding book accounts, the value of its property, the fact of the trust executed by him of its shares of stock, the fact of its need of ready funds, the facts regarding its bank loans, his whole estate being the shares of stock of that corporation, would you say that he knew of what his estate consisted? A. If it was a matter of record, yes. He would know from his records.

Q. Well, but without his records before him? A. Without his records before him? He might, yes.

Q. Any doubt about it? Does not that show a pretty high order of mental comprehension, if he could remember those things without his records? A. Did you ask me if there was any doubt about it?

Q. Yes. A. Yes, there is.

Q. About his knowing of what his estate consisted, if he could recite those matters without his records, accurately? A. Yes.

Q. That would constitute a pretty good order of intelligence, wouldn't it? A. But some doubt about it, as you asked me a minute ago, yes.

Q. You or I would have difficulty in doing that, wouldn't we, without our records, with respect to our estate?

Mr. Brown: I object to the question because neither one of those distinguished gentlemen are on trial here.

The Court: Objection sustained.

Q. Would you say that a man who had that comprehension of his business affairs might not be able to contract intelligently?

Mr. Brown: I object to that question. We are not in that issue here.

The Court: Objection sustained.

Mr. Strong: Your Honor, we certainly have a right to show what the man's mental capacity was, if he could make that contract.

The Court: Yes, but I think you have gone into that so extensively, Senator, that I do not think the test as to whether he was able to contract, or might be able to contract, controls whether he was able to make a will anyway.

Mr. Brown: You would have to go into the elements of all that contract, and all the circumstances.

The Court: A man might be able to make a promissory note, which is in the nature of a contract.

Mr. Brown: Or a promise of marriage.

Q. Would you say that that indicated his ability,

or that he possessed ability to make a will? A. No.

Q. Would you say that that does not even tend to prove that he had ability to make a will? A. No.

Q. If he afterward told an accountant who periodically audited the books of his corporation, what he had done in his will, told his servant that he had provided for her, as he had in fact, would you say that he understood what he had done? A. No, I would not.

Q. If any other man told an accountant who periodically audited his books, or the books of his corporation, what he had done in his will, told his servant that he had provided for her, as he had in fact, would you say that that man understood what he had done? A. No.

Q. Just let it go at that. If it appeared that he explained fully to his attorney, that is, any man other than Doctor Freeman, if it appeared that any other man than Doctor Freeman had explained fully to his attorney the condition of his corporation, the number of its shares of capital stock, the total of its outstanding book accounts, the value of its property, the fact of a trust executed by him of its shares of stock, the fact of its need of ready funds, the facts regarding its bank loans, his whole estate being the shares of stock of that corporation, would you say that that man knew of what his estate consisted?

Mr. Brown: I object for this reason: It is to some other person than Doctor Freeman. I do not see why we should try the case of someone else.

The Court: I think it is competent. I will permit the Doctor to answer it.

A. The knowledge of his estate, as I have said be-

fore, is a matter of record. A man could quote from his records, and yet be absolutely insane.

By the Court:

Q. In other words you mean it does not mean anything one way or the other? A. It does not show any reasoning.

Q. Standing alone it indicates nothing? A. It indicates nothing.

Mr. Strong: It does not appear from my question that he was quoting from his records.

By Mr. Strong:

Q. I am asking now if he did that from memory, without his records? A. This man had memory to a limited degree.

Q. I am not talking of Doctor Freeman. A. Any man has memory to a limited degree.

The Court: As I understand the Doctor's answer to that question,—let us see if this clarifies the atmosphere,—it is that standing alone it means nothing one way or the other.

Mr. Strong: All right.

Q. If it appeared that a man other than Doctor Freeman in fact mentioned all his relatives in his will, and made a bequest to each, would you say that that man appreciated who were the natural objects of his bounty? A. Just by the act of mentioning them?

Q. Yes. A. No.

Q. Well, I mean making them bequests. A. Yes, if he mentioned them, he knew who they were, yes. Certainly.

Q. If a man other than Doctor Freeman, consulted with the attorney of a railroad corporation, and the authorities of that corporation, regarding an important business matter, appeared at the time of such consultation nervous, high-strung, smoked cigarettes incessantly, but did not appear to the men with whom he was in consultation under the influence of either liquor or drugs, said what he did say intelligently, and appeared to be entirely sane and competent, and that soon thereafter, having received the specifications for the construction or reconstruction of a railway trestle, he went to the trestle, had the specifications read, and personally examined the structure, and then wrote, or caused to be written, a letter to the railroad authorities, raising questions regarding the advisability of specifying a certain grade of yellow pine lumber, and whether galvanized hardware would not be better than the plain, which was specified, and whether the bolts were large enough, and also considered the question of whether money could not be saved by building it himself, instead of having it done by the railroad people, would that not indicate to you that that man was competent to contract? A. No.

Q. Would it, in your opinion, be evidence tending to show that he was competent to contract? A. A great many other things required in connection with that to make it necessary to—

Q. This is not Doctor Freeman we are talking about— A. Well, any man. I do not think that evidence indicates—lots of men can go, an ordinary laborer could go and do that, if he was familiar with the lumber business.

Q. Do you think a man who could do that could make a valid will? A. No, I don't, not with those facts alone.

Q. Do you think that tends to show that such a

man could make a valid will? A. I wouldn't say that it did, no.

Q. What would you say it did? A. I would have to know. To simply pick a man to make a will on those requirements would be very insufficient.

Q. I am asking you if it tended to show that he could make a will? A. A man who can make a contract cannot necessarily make a will. A contract is an agreement between two people, and he has the other fellow to check him off. A man who has to make a will has to do it of his own accord, his own ability, his own reasoning.

Q. That is the best answer you care to make to that? A. Well, the question is open to such a wide field, I do not see how you can answer it intelligently any other way.

Q. It does not even tend to show that a man could make a will? A. I do not see that there is anything there to establish a man's ability to make a will there. Here is a man, you are asking, who does almost an automatic act, an act that is in connection with his regular work that he has been in for thirty years, and he makes a simple performance, a function, you might say, without ever knowing in what shape he did it, or anything of the kind, and then to say that he can make a will, I do not think it is sufficient.

Q. Where does it appear there that he didn't know in what shape he was doing it? A. I say I don't know what shape he was doing it in.

Q. Nothing in that state of facts indicating— A. Nothing more than some automatic acts.

Q. (Continued)—intelligence to contract? A. Nothing more than some automatic acts.

Q. Nor intelligence to make a will? A. I don't think so.

Q. If it appeared that a man, other than Doctor

Freeman, executed, at the insistence of a creditor of his corporation, a trust conveyance of his stock, and very shortly thereafter sought to have the same cancelled, and if it appeared that trust was made to his attorney, and that he engaged another attorney from outside of the county where he resided, to procure the cancellation of that trust, an attorney outside of the county where the trust was executed, would that lead you to believe that he possessed reasoning power and some mental ability?

Mr. Brown: I object to that. It has been answered before.

The Court: That was with reference to Doctor Freeman, and this is in reference to the public generally.

Mr. Brown: I will withdraw the objection, under your Honor's ruling.

(Question repeated by stenographer.) A. That is a question I dont' think indicates any reasoning power, or anything of the kind. He is working through an attorney, and I don't see that it does.

Q. Did you examine Doctor Freeman's eyes? A. I did.

Q. When and where? A. At the day of the examination in Metuchen.

Q. How extensively? A. Oh, not very extensive. Just enough to know what his condition was.

Q. Well, what extent of examination enabled you to know what his condition was? A. Well, I knew in the first place, before I went there, that he had an optic atrophy, and I knew that he could not see very well.

Q. How did you know he had optic atrophy? A. By information obtained.

Q. By hearsay? A. Yes.

Mr. Strong: I move that be stricken out.

The Court: Oh, no.

Mr. Strong: That is my motion, your Honor.

The Court: I will deny your motion.

Q. Now, what examination did you make at Recorder Weber's office? A. I examined his mental condition, through the course of the examination, and the usual physical examination that I make when I make these examinations.

Q. What examination did you make of his eyes? A. Made an observation of them, the reaction of the pupils, and so on. Just looked at the eyes and saw that he couldn't see very well. Saw that coming into the dark room he had to have a guide.

Q. You just looked at his eyes and saw that he couldn't see, and he needed to have a guide? A. And I knew what the condition was, from hearsay, as I have already said.

Q. I read from a paper purporting to be the last will and testament of Doctor Charles M. Freeman, bearing date July 12th, 1922: "In the name of God, Amen: I, Charles M. Freeman, of the Borough of Metuchen and the County of Middlesex and State of New Jersey, being of sound and disposing mind, memory and understanding, do hereby make publish and declare this my last will and testament, in the manner and form following, that is to say": And I ask you if he did in fact sign—if this will was in fact prepared in accordance with his directions, and properly and legally executed by him, certain questions respecting his provisions: "1. I do order and direct that all my just debts and funeral expenses be paid by my executor hereinafter named, as soon as conveniently can be done after my death." State whether or not that paragraph, under those circumstances, indicated that the testator possessed testamentary capacity? A. That is the usual form of a will, yes.

Q. It does indicate that? A. Yes.

Q. "2. I desire and direct that my body be cremated, and request my executor hereinafter named to dispose of my ashes according to instructions given him verbally." Does that indicate testamentary capacity? A. That shows that it is true to form, yes.

Q. Well, does it indicate testamentary capacity? A. No, not testamentary capacity. It shows it is a regular form of a will.

Q. "3. I give and bequeath to my friend, Harry Mohring, now in my employ at Metuchen, the sum of ten thousand dollars." Does that indicate testamentary capacity? A. No. It shows over-generosity.

Q. "4. I give and bequeath to Lettie Patterson, an old and faithful servant, the sum of one thousand dollars." Does that indicate testamentary capacity? A. I could not tell, for the reason that I do not know what obligations he was under to this old servant.

Q. You did know what obligation he was under to Mohring, is that it? A. I have heard of it here in court, yes.

Q. Then you have in mind the hypothetical question? A. Yes.

Q. "5. I give and bequeath to my sisters Nellie Bloomfield Freeman, Jane Parker Freeman, Augusta Stockton Freeman, and Sallie Bostwick Freeman, each the sum of two hundred dollars." Does that indicate that he possessed testamentary capacity? A. No.

Q. "5. I give and bequeath to my wife, Mary E. Wilkins Freeman, now living separate and apart from me, the sum of one dollar." Does that indicate testamentary capacity? A. It does not. It indicates that he is living true to his delusion of persecution.

Q. "7. In case any of the above named beneficiaries shall not survive me, the bequest to such as shall not be living at the time of my death shall be null and void, and the amount or amounts thereof shall form part of my residuary estate." Does that indicate testamentary capacity? A. No.

Q. "8. It is my will, and I order and direct that all of the foregoing bequests shall be paid to the respective beneficiaries living at the time of my death, free of inheritance or other taxes, either under the laws of New Jersey, or of any other state; that all such taxes, by whatever name called, be paid out of the funds of my estate." Does that indicate testamentary capacity? A. I didn't quite catch that last clause.

(Question repeated by Stenographer.) A. No.

Q. "9. All the rest, residue and remainder of my estate, wheresoever situated, and of whatsoever it shall consist, I give, devise and bequeath to my friend, Harry Mohring, to have and to hold the same, to him and his heirs forever, and this bequest is made in appreciation of the loyalty and devotion which I have appreciated, and which I have failed to receive from those nearer by ties of blood, marriage and business." Does that indicate testamentary capacity? A. No.

Q. "10. I nominate, constitute and appoint the above named Harry Mohring sole executor of this, my last will and testament, with full power and authority to sell and convey any and all real estate of which I may die seized, within or without the State of New Jersey, and I hereby order and direct that no bond be required of my said executor, either in the State of New Jersey, or elsewhere." Does that indicate testamentary capacity? A. No.

Q. Now, if that will were executed by any person other than Doctor Freeman, or were the will of any other person than Doctor Freeman, executed in the

manner I have stated, would it indicate testamentary capacity? A. I would have to know the other person stating it before I could give that. But that will right straight through shows delusions that we knew existed.

Q. From the hypothetical question? A. From information obtained from examination, from statements made to me at the time of examination. He had the delusion of persecution, which existed, and the statements of feeling against his wife, whom he accused of infidelity, and the will shows the vindictive spirit that goes with a delusion, and consequently I think that his will was entirely governed by his delusions, which were due to his mental condition, therefore I do not think he was capable of making that will, or any other man in a similar condition.

Q. In other words, because it was an unfair will? A. Yes.

Q. You would not see anything in the provisions of a will of that sort, executed by any man, that would indicate testamentary capacity, unless you knew about that man? A. It would be impossible to judge it.

Re-direct Examination by Mr. Brown:

Q. You haven't mentioned as to the effect of the excessive use of veronal, or the use of veronal on the system. Has veronal any nutritive value at all? A. None whatever.

Q. Does the use of veronal nourish at all any part of the body? A. It does not.

Q. Does the use of veronal burden the functions of the body? A. It does. It is a depressant.

Q. So that the more you take of veronal, the more your body has to labor in order to cast it out?

Mr. Davey: Mr. Brown has a most unfortunate method of testifying, and the witness nodding his head. I object to it as leading, and putting the words in the witness' mouth. He states it, and asks the witness if that is right.

The Court: It is a conclusion which he has drawn from the witness' testimony, and asking him whether it is right or not. I think it is a fair question.

Q. If veronal is a depressant, and it has no nutritive value, no nourishing value to the system, isn't the constant use of veronal—

Mr. Davey: I object. There is no testimony that it is a depressant.

The Court: Oh, yes there is. There is any quantity of testimony to that effect.

Mr. Davey: The testimony is that it is a sedative.

The Court: No. The testimony is that it is a depressant and sedative.

Q. Does not the constant use, or excessive use of veronal have the effect of destroying the functional parts of the body, such as the heart and brain and tissues, and everything else? A. All depressants do, in a mild degree.

Mr. Brown: That is all.

Our side is in. We are not going to call Doctor Smith. He had some work to do and he could not get here; we had him here all day yesterday. I think that concludes our case.

Mr. Watson: We want to make a further offer, something we think has been referred

to time and again through the case, and Mr. Brown thought it had been offered in evidence. I have not offered it because I did not consider it of any special importance. The will made October 4th, 1921, we should like to offer. Counsel has a copy of it, Mr. Davey has.

Mr. Davey: I do not think I have. I thought I had.

Mr. Watson: I sent you a copy.

The Court: I do not suppose it does any harm to have it in. I do not just see what relevancy it would have.

Mr. Watson: It has relevancy in this respect: It shows that the Doctor's mentality, as explained by the expert witnesses, had very much deteriorated, because in his will of October 3rd he made substantial provision for all those who had natural claim upon him.

The Court: Let it come in. Have you any objection to the will coming in, simply as an exhibit?

Mr. Davey: We do not attach any importance to the subject matter of the will, nor has it been referred to here. The question has only gone to the extent of the fact that he did execute a will, in the presence of witnesses, in Mr. Watson's office, on the 4th of October, and that fact is the only one that has been brought out. There has been reference to it, but not to its provisions, and we object to it.

The Court: I will permit the will to be offered at this time, and I will hold the question of whether I will admit it later on. It may be marked for identification at this time, and I will rule on the question of its admissibility later.

Mr. Watson: May I have it marked after recess? It is in my office. I will bring it up.

The Court: Yes.

The Court: Do you rest?

Mr. Brown: I do not know whether that decree that has been referred to is in evidence.

Mr. Davey: Yes, it is.

Mr. Brown: I think that in order for the exhibits to be properly before the court, there ought to go with it the testimony upon which the decree is based, as well as the record.

Mr. Davey: We offer the testimony, as we offered it before. It was then excluded, over Mr. Brown's objection, and we are glad to learn that he has withdrawn it.

Mr. Brown: Since the discussion about the exhibit I think the court ought to be in possession of all of it.

The Court: Let the testimony come in.

Mr. Davey: We felt then as he feels now, that it ought to go in, to make the record complete. This is, of course, a certified copy.

Mr. Watson: No objection.

(Twelve pages of testimony entered in evidence and marked Exhibit P-2, 9/11/23.)

The Court: You now rest?

Mr. Brown: Yes.

EDGAR B. FUNKHOUSER, a witness produced on behalf of the proponents, being duly sworn according to law on his oath, saith:

Direct Examination by Mr. Davey:

Q. Doctor Funkhouser, what is your profession?
A. Practicing medicine.

Q. For how long have you been engaged in the practice of medicine?

Mr. Watson: We will admit Doctor Funkhouser's qualifications.

A. Since 1900.

The Court: Doctor Funkhouser's qualifications as a physician and alienist are admitted.

Q. Where do you practice your profession, Doctor? A. State Hospital, Trenton.

Q. How long have you been engaged there? A. About twenty years.

Q. And what is your position? A. First assistant physician.

Q. Do you recall a patient at that institution, Doctor Charles M. Freeman? A. I do.

Q. Do you know when you first saw him? A. When he came first to the hospital.

Q. That was in August of 1920? A. Yes, sir.

Q. Did you see him again upon his second admission to the hospital? A. I did.

Q. That was on August 23rd, as I recall it, of 1921? A. That is right.

Q. How long was he there on that occasion, Doctor Funkhouser? A. Until October 3rd, 1921.

Q. What disposition was then made of his case by the hospital? A. His case was brought before the Vice Chancellor at the State House, and the order was issued.

Q. The order which has been admitted in evidence? A. To release him, yes.

Q. You are the Doctor Funkhouser who testified on the hearings before Vice Chancellor Buchanan in that matter? A. I am.

Q. Was, or was not Doctor Freeman under your personal charge at the hospital? A. He was.

Q. What other physician there had him in personal custody, or gave personal attention to his case? A. Doctor Rostow.

Q. What was Doctor Freeman's condition, Doctor Funkhouser, when he was then admitted? A. Well, he was a sick man, we looked upon him as a sick man, physically and mentally.

Q. From what was he chiefly suffering? A. Well, do you mean from the physical point of view, or otherwise?

Q. Yes, physically first? A. He was physically ill. He had, of course, some trouble with his eyes, he was nervous, he was restless. His general appearance was not that of a healthy man.

Q. What was his condition as to nourishment? A. He was fairly well nourished. I don't remember his exact weight. Fairly well nourished, I should say.

Q. Had he, or not, the appearance of under nourishment? A. Well, he had the appearance more of a sick man, a nervous man.

Q. What was his condition mentally? A. He was oriented. What I mean by that, he knew where he was. He knew me. He knew his surroundings.

Q. Did he know why or how he came to be there? A. Well, I don't recall that that was brought out in my presence, but I know that he knew before he left there.

Q. Do you know whether or not he expressed any resentment at his wife because of his confinement there? A. He did.

Q. Frequently, or otherwise? A. Well, I would say occasionally.

Q. What treatment, Doctor, did he receive there? A. The usual treatment; rest is one of the essential

things, rest treatment. Of course, the withdrawal of his alcohol that was withdrawn. He was placed in bed. He was given the usual examination; nourishing food. I don't recall whether he got any sedative or hypnotic to induce rest at that time.

Q. You said he appeared to be a sick man. Did he have any specific disease? A. Not in the sense that the medical profession speak of specific disease, meaning having one particular specific disease in mind.

Q. Did he appear to be strong or weak? A. He appeared weak.

Q. During his stay there how did he respond to treatment? A. He responded very well.

Q. Did his condition, or did it not, improve? A. It did improve.

Q. To what extent, Doctor, or in what measure? A. Both physically and mentally he improved.

Q. Well, I mean— A. His appetite improved, he gained in weight, he gained in general appearance.

Q. I mean, was his improvement marked, or slight? A. I would say quite marked improvement at the time he left.

Q. Do you know how often he was visited there by his relatives? A. I don't recall any of his relatives coming to see him.

Q. Do you know whether or not his wife visited him while he was there? A. I don't think she did.

Q. One sister has testified that she visited him on one occasion. Do you recall any of the others visiting him at any time? A. I do not.

Q. Doctor, what was his mental condition on the 3rd of October, when he was released, or discharged? A. He was much improved.

Q. Would you consider at that date that he had testamentary capacity? A. I would like to ask a question before I answer it.

The Court: You may.

A. I would like to have a definition of testamentary capacity.

Q. I will withdraw that question and put it in another way. In your opinion, when he was ordered discharged on the 3rd of October, do you think he had mind and memory sufficient to know who his relatives were, the natural objects of his bounty? A. I do.

Q. Do you think that he had mind and mentality sufficient to recall of what his property consisted? A. I do.

Q. Do you think that he had mentality enuogh to make up his mind what he wished to do with that property? A. I do.

Q. Do you think he understood the co-relation of one of those factors with each of the others? A. I do.

Q. Did you ever see Doctor Freeman again after his discharge from the hospital, Doctor Funkhouser? A. I did.

Q. How long after was it that you saw him, or when was it that you saw him, if you recall? A. I think it was in September, 1922.

Q. And where? A. In my office at the hospital.

Q. How came he there then? A. All I know is that he came in. I understood just to pass a little visit.

Q. He wasn't committed, or anything, he came voluntarily? A. Oh, no. Voluntarily.

Q. Did you have a conversation with him on that time? A. I did.

Q. What was his physical appearance on that day, as to bodily health? A. Much better than I had ever seen him before.

Q. Did he show any visible symptoms of having

drunk to excess since his discharge from the hospital? A. He did not.

Q. What, if you observed it, was his mental condition on that day, as compared with the time of his discharge? A. He seemed better.

Q. Did you comment to him on his appearance? A. I did.

Q. In what way? A. Told him that I was pleased to see him looking so well.

Q. Was that the last occasion, Doctor, on which you saw him? A. It was.

Q. In September. Was there anything in his appearance in September to indicate to you any retrogression from his condition at the time of his discharge? A. There was not.

Q. Doctor Funkhouser, what is the custom of the hospital with reference to following up the condition of discharged patients? A. As a rule within four months, usually the latter part of the period, we send out letters asking the condition of patients. Sometimes these letters are addressed to the patient, sometimes to the person that committed the patient, sometimes to the nearest relative.

Q. Do you know whether or not that rule was observed in the case of Doctor Freeman's second discharge, or second leaving the hospital? A. I do not.

Mr. Watson: I object to that, unless it appears that this witness did it.

Mr. Davey: I asked him whether or not he knew.

Mr. Watson: I will withdraw the objection.

The Court: You may answer.

A. I do not know whether the inquiry was made.

Q. Do you know whether or not it was followed

after his leaving the hospital in 1920? A. I think it was.

Q. Have you in the file of Doctor Freeman's case any response to such an inquiry? A. I think we have.

Q. From whom? A. From his wife.

Q. May I ask you to produce it, please?

Mr. Watson: I object to the introduction of it. It would only be impeaching testimony, at best, and Mrs. Freeman has not testified.

Mr. Davey: Part of the hospital record. There has been abundant testimony regarding his condition. Mrs. Freeman has not testified, but it is not our fault.

Mr. Watson: Taking it as direct evidence—

Mr. Davey: Your Honor will recall, of course, that Mrs. Freeman is a party to this litigation. This is a statement against interest.

The Court: I do not see how it is competent, Mr. Davey.

Mr. Davey: Statement of a party to a litigation, against the contention of her counsel, although she has not testified, it is certainly against—

The Court: It is not a statement against any interest, nor it is not a statement against any contention that she has made, so far as I know. This is addressed to a period in 1920. Not to a period in 1922.

Mr. Davey: Your Honor will let me put my offer on record, so that the paper may be identified. I have not formally offered it yet.

Mr. Strong: We have been combating tes-

timony going back twenty years or more, or forty years, in this case.

The Court: Yes, but Mrs. Freeman has not testified in this case.

Mr. Strong: No, but she is represented by counsel.

The Court: That might be her testimony. You could have called her as a witness.

Mr. Strong: This is the first knowledge we had.

The Court: She might have so testified, but that does not make it competent.

Mr. Strong: Put it on the ground of newly discovered evidence.

The Court: You can call her.

Mr. Brown: If she was here she could explain the letter, in case the letter is introduced.

Mr. Davey: We have no objection, if they want her here. I will offer in evidence letter signed Mary E. Wilkins Freeman, addressed Metuchen, New Jersey, December 8th, 1920, addressed to Henry A. Cotton, M. D., with a pencil memorandum, apparently in other handwriting, "Charles Freeman to return," on the face of it, that part being excepted from the offer as no part of the letter as written.

The Court: The offer will be overruled.

Mr. Davey: Prays exception.

Mr. Strong: May that be marked for identification?

The Court: I do not see how it can be marked for identification. We know what it is.

Mr. Davey: We want it somehow to appear. The letter is not in our custody, and not in our possession, and not available to

us. We want it to appear somehow, so that if the case goes further, the courts may be advised about it. We will ask leave to have a copy made in some way, so that we can identify it.

The Court: I do not doubt they will give you a copy of it if you want it.

Mr. Watson: So far as we are concerned we shall not object to the letter, not that I have changed my view at all, but it is away back in 1920, so remote as to have little practical effect. It was succeeded by his admitted deterioration at the time he was committed the second time, and rather than have any question about it, or run any risk, I have no objection to its going in.

Mr. Brown: I do not see on what ground it is material. It is a hearsay declaration, you might say, between two parties. What I mean by two parties, between two persons. It is true that one of them is a party to this suit, but even that does not make it evidential.

The Court: Aside from the question of whether or not it has any probative force, I cannot see how it is relevant.

Mr. Strong: May I amend the offer a little bit? We offer a letter described by my associate, in which Mrs. Freeman states that generally speaking her husband seems to be essentially different, and in a very desirable way, and that he seems more normal than she had ever known him, and very reasonable, and that his general health seemed excellent, and that he had gained in weight, and his flesh was firm and hard, and that he ate well, with no eccentricities of diet, slept well, and so far as she knew all regret-

table habits of the past were discontinued. And that she was very grateful for his interest.

The Court: I overrule the offer.

Mr. Watson: What is the date of the letter?

Mr. Strong: December 8th, 1920.

Mr. Davey: Your Honor will bear in mind that that furnishes a direct contradiction, by one of the parties in this case, to the testimony of Doctor Cotton, given in their behalf yesterday.

The Court: Yes, but that is not the way to contradict. You cannot take a letter written by a person. It is not relevant, it is not competent evidence at all.

Mr. Davey: The letter is produced from the hospital file, under Doctor Cotton's custody.

The Court: It does not make any difference from where it was produced. If you want the writer of that letter to testify, the proper way is to subpoena the writer of that letter.

Mr. Davey: Perhaps your Honor misapprehends the position we take. The position I take in reference to this is that Doctor Cotton's own files show reports made, in response to the custom of the hospital, diametrically contrary to his testimony as given. It is taken from his own files.

The Court: I am going to exclude the letter. You have enough of it on the record to be of whatever advantage to you you can get out of it, and if I am wrong, you have the advantage of the record. I do not believe the case is going to turn on that letter anyway.

Q. Doctor Funkhouser, if it were proved that for two or three months after his release from the State Hospital on October 3rd, 1921, Doctor Freeman did not drink at all, and became quite his old self, normal in appearance, and able to attend to his business, with the sole exception of his impaired eyesight, would that indicate to you that his condition, as you observed it, at the time of his discharge from the hospital, continued to improve? A. It would.

Q. If it appeared that Doctor Freeman, on June 18th, 1922, wrote out instructions for a will to be prepared by an attorney, and executed such will, after it had been so prepared, on June 21st, and it appeared that his written instructions were legible and coherent, and that in that will he left to his wife only one dollar a year, because of his resentment of her action in procuring his admission to the hospital, it being the fact that she signed the application for his committment, would you consider that an act of natural resentment, or a delusion? A. It may be a natural resentment.

Q. And that resentment you say you did know of before his discharge? A. I did.

Q. If that will, executed on June 21st, 1922, contained no mention of his four sisters, and it appeared that on July 5th following he gave instructions to his attorney to include their names, giving to his attorney the names of his four sisters, in full, and directing a bequest to each of them of two hundred dollars, and directed the change, at the suggestion of his attorney, of the bequest to his wife of one dollar a year to one dollar flat, stating to his attorney as a reason for including his sisters' names, and bequests, that he did not want them to be able to say that he had forgot that they were living, would that indicate to you his possession at

that time of testamentary capacity and memory? A. It would.

Q. It appears that Doctor Freeman executed a will on the date of July 12th, 1922, in which his wife and each one of his four sisters were mentioned; would that indicate to you his knowledge of who his natural heirs or beneficiaries were? A. It would.

Q. And in that will a bequest was left to a servant of one thousand dollars; would that indicate to you a possession on his part at that time of the ordinary reasoning faculties of a man about to make a will? A. It would.

Q. Practically the entire residue of his estate, after the provision for payment of debts, and so forth, and taxes, and what not, on the bequests, was made to one Harry Mohring, with whom for some months he had lived, as stated in the will, in acknowledgment or appreciation of a devotion and loyalty which I have not received from those nearer me by ties of blood, business and marriage; would that indicate to you an act of a sane and normal man, in the disposition of his estate, or of one suffering under a delusion? A. If he had sufficient reasons, to so put it, yes.

Q. I beg your pardon. A. If he had sufficient reasons it would be sure indication.

Q. From your observation of Doctor Freeman in September of 19—, did you say September, 1923? A. '22. Just about a year ago.

Q. I will withdraw that. Doctor Funkhouser, during Doctor Freeman's confinement at the hospital, in 1921, do you recall whether or not any veronal was administered to him? A. I do not.

Q. Are you familiar with veronal and its action? A. I am.

Q. What is veronal, Doctor? A. We look upon it as a hypnotic.

Q. It is known medically as diethylbarbituric acid? A. It is.

Q. Has it any of the effect of morphine or opium? A. Well, in producing sleep. As a medicine to induce a rest. Quiet the nervous system to induce sleep.

Q. Does it, or not, accumulate in the system, or pass off through the urine? A. It usually passes off through the urine.

Q. Is it known, or classified as a habit forming drug, Doctor? A. It is not.

Q. Are there any restrictions on its sale in the State of New Jersey? A. Not that I know of.

Q. Is there any such thing as an allotment, or allowance of veronal to one said to be a drug addict? A. There is not that I know of.

Q. Do you know, Doctor, what is the normal and ordinary dose of veronal for a person taking it? A. It is put up usually in five grain tablets; ten grains, however, or two tablets, is often given.

Q. It is a normal and usual dose? A. Yes.

Q. Does an ordinary man suffer any ill effect from repeated daily doses of that size of veronal, Doctor? A. In my experience I do not know of anyone.

Q. Can you tell whether or not it has any depressing effect upon the system when taken? A. Well, it has a quieting effect. It is given for that purpose. It is given to produce rest. It is given to quiet the nervous system.

Q. Is it not a fact, Doctor, that it is indicated in cases of nervousness from alcoholic stimulation? A. It is very often prescribed.

Q. Even in cases of delirium tremens? A. Yes.

Q. And with what effect? A. It usually has a good effect, a quieting effect.

Mr. Davey: You may cross examine.

Cross Examination by Mr. Watson:

Q. Doctor Funkhouser, John Breen visited Doctor Freeman all the while he was at the institution, did he not? A. I think so.

Q. Two or three times a week? A. I don't recall how frequently. Many times visitors come in that I don't see.

Q. But you know that Mr. Breen constantly went to see him? A. Yes.

Q. Was constantly in touch with him? A. I think he was.

Q. And Doctor Freeman had confidence in him? A. So far as I know.

Q. You never heard him express any feeling or resentment against Mr. Breen, did you? A. I never did.

Q. You testified as to your opinion of Doctor Freeman's testamentary capacity on July 12th, 1922. I understand that you last saw him, prior to that time, on October 3rd, 1921? A. '22.

Q. October 3rd, '21? A. That is the time he was released from the hospital.

Q. Prior to July 12th, 1922, that was the last time that you saw him? You didn't see him between October 3rd, '21, and July 12th, '22, did you? A. No.

Q. You had seen Doctor Freeman at the time of his admission to the hospital, when he was suffering from chronic alcoholism, did you not? A. I saw him both first and second admissions.

Q. And his condition then warranted his involuntary commitment to the institution, did it not? A. His voluntary?

Q. His condition warranted his involuntary admission or commitment to the hospital, did it not? A. We thought so at the time.

Q. And you thought so? A. Yes.

Q. He didn't have testamentary capacity at that time, did he? A. From the history of the case it didn't seem to me that he had.

Q. Now, Doctor Funkhouser, if it appeared—A. Judge, if I may get clear in my mind just exactly the definition of this testamentary capacity, it would help me very much. Whether it means sanity or insanity I am clear. If it means more than that, I am confused.

By the Court:

Q. Well, the legal definition of testamentary capacity I doubt would help you any in determining whether or not the man was so mentally diseased as not to be able to properly exercise that testamentary capacity. They are asking you the question now from a medical point of view, not from the legal point of view, and I am afraid to give you the legal definition of it would merely tend to confuse you. A. I am safe in bearing in mind sanity and insanity?

Q. Yes.

By Mr. Watson:

Q. Now, suppose it appeared subsequent, about December, 1921, that Doctor Freeman took a half pint of whiskey to bed with him each night, which he drank during the night, that he drank during the day besides a greater or less amount, that he was frequently intoxicated, the periods of intoxication lasting two or three weeks; that on the morning of July 12th he was intoxicated; that on the evening of July 12th, directly before the making of the will, he was intoxicated, and that on the morning of July 13th he was intoxicated, would you say that on the evening of July 12th, 1922, he had testamentary capacity?

Mr. Davey: I object to the question, when it states that he took a half a pint of liquor to bed with him, which he drank at bed time. There is no testimony that he drank it at bed time. I am aware of the testimony to which Mr. Watson refers.

The Court: Do you object, that the testimony was that he drank it during the night, and not at bed time? Your objection is because the question indicates that he drank it—

Mr. Davey: All at once. That is not the testimony. The testimony is that he drank it during the night.

Mr. Watson: I will accept that amendment.

Q. This daily half pint of whiskey was drunk during the night.

Mr. Davey: I object also to any statement in the question that he was intoxicated on the evening of July 12th. There is no such testimony.

Mr. Watson: Lettie Patterson said so.

Mr. Davey: Lettie Patterson did not so testify. Lettie Patterson testified, in most of her testimony, that he had been drinking during the day, and was not in good shape, or was in bad shape, but there is no testimony that he was intoxicated on the evening July 12th. The testimony is the other way.

The Court: I will overrule the objection. If it is not borne out by the testimony the answer does not amount to very much anyway.

Mr. Davey: There is not a word of testimony to warrant the charge that he was intoxicated. I object to the supposition in this

question, unless it be accompanied by a statement, certainly warranted by the evidence, that at the time of the execution of the will Doctor Freeman was sober.

Mr. Watson: I do not think that is necessary.

Mr. Davey: That is the testimony.

The Court: There is testimony to that effect, yes, and you may bring it out by cross examination, if you want to.

Mr. Davey: All right.

The Court: You cannot make a question which will embrace both sides, where there is a contradiction of testimony by one side or the other; and after all is said and done, if counsel will bear this in mind, it is the duty of the court to sift out and determine first the facts, and then upon the facts which the court determines are the controlling facts, to apply the expert testimony to those facts.

Mr. Davey: I apprehend now.

The Court: These objections do not do very much good, because I have to sift it out, after we get all through anyway.

Mr. Davey: My friends want fair questions, and we want them.

The Court: We are trying to get you everything that is fair.

Mr. Watson: "He was not in condition to walk very good, and he could not talk very good" (reading testimony).

Q. (Continued) Could not walk very good, he could not talk very good, he didn't know just what he was doing, practically, he had been drinking practically all day long that day, and was intoxicated on the morning of July 13th; on that state

of facts would you say that on the evening of July 12th, 1922, he had testamentary capacity? A. I would say that depended very largely on the degree of intoxication, if he was considered intoxicated. That is a thing of degree. A chronic alcoholic may consume a half a pint of whiskey in twenty-four hours, or even more than that, and not be intoxicated. If he is intoxicated, if it is brought out and established as a fact, that is a different proposition.

Q. Well, now, Doctor Funkhouser, having in mind his condition of chronic alcoholism at the time he was committed, and then having in mind that daily, during the night, beginning some time about December, 1921, until the following July, a period of seven or eight months, he consumed each night this half pint of whiskey, just what degree of intoxication must he be in to lose his testamentary capacity?

Mr. Davey: I object, that there is no testimony that shows that it was a matter of daily habit, from any time as early as December, for the Doctor to take liquor to bed with him. I am aware of the testimony. Lettie Patterson didn't come there until March. So far as her testimony is concerned, it cannot antedate that. There was a considerable hiatus between any testimony of Mr. Breen, and any testimony of Lettie's, which does not warrant any charge of daily.

Mr. Watson: Harry Mohring testified he did it the first few months he went there, and he went there in January.

Mr. Davey: I know he did it occasionally, but I do not think the charge of nightly is warranted.

The Court: If it is not warranted, of

course, the question does not mean anything. You may answer the question, Doctor.

(Question repeated by stenographer.)

A. That is a very, very difficult question to answer. It is well known that some chronic alcoholics take that amount of liquor and still retain their testamentary capacity, or at least not be insane. A man may take one pint and be so intoxicated, as far as knowing and doing right, and knowing right from wrong, and using judgment, he may be so impaired that he is temporarily a very insane man.

Q. Suppose he did that every day? A. As I said before, a man who is in the habit of using alcohol, he may imbibe that amount of liquor, and still retain his—still be a sane man.

Q. Very well, Doctor, we have your idea. Now, would it make any difference in your answer if this habitual period, habitual use nightly of a half pint of whiskey began in March instead of December, would your answer be the same? A. December the following year?

Q. In December '21, beginning in March '22, would your answer be the same? A. It would.

Q. Now, if it appeared that the degree of intoxication was considerable, then I take it you would think that he lacked testamentary capacity? A. I certainly would, if it was considerable.

Mr. Watson: That is all, Doctor.

Cross Examination by Mr. Brown:

Q. Doctor, you testified on the examination before the Vice Chancellor, on the 28th day of September, 1921, did you not? A. I did. I suppose that is the day.

Q. That was the occasion where Doctor Freeman

was released on October 3rd following that hearing. At that hearing you were asked this question, were you not—

> Mr. Davey: That is in evidence.
> Mr. Brown: I know, but I do not think there is anything to prevent me from asking the question.

Q. "Q. Do you consider him insane at this time?" and didn't you answer, "Well, that is a pretty hard question to answer. We consider him improved. If one knew the mental ability, or mental capacity of a person thoroughly a very great while before we judge him at the present time, we could answer it much easier. It is well known that in cases that indulge in alcohol for a very long time, they are apt to show some deterioration, both physically and in intelligence, but whether it is insanity it is disputed." You don't change your view about that, do you? A. I do not.

Q. If you knew the entire history of Doctor Freeman, as disclosed by the testimony in this case, and the hypothetical question to which you listened, you would be in a better position, would you not, to judge as to the Doctor's sanity or insanity, his testamentary capacity, or not? A. I would.

Q. The questions that were propounded to you in regard to the Doctor's exercising of judgment, or what not, as propounded by Mr. Davey here, those things taken alone prompted your answer, did they not? A. They did.

Q. You didn't consider, in answering those questions, the history of Doctor Freeman's case as disclosed by the hypothetical question? A. No.

Q. Did you not answer in this wise the question: "Q. Any lesions of any kind that you know of?

A. That is a pretty hard question to answer, because he tells us one story, and perhaps his wife or those who know the other side tell another story, and it is only by comparison of them that we reach" —and you didn't go any farther there. Did he have delusions which you know of? A. I don't know that he had.

Q. Well, now, if he had delusions in regard to his wife, you would not say that he had testamentary capacity, would you?

Mr. Davey: I object to that, because that is asking a Doctor a question of pure law, which has been many times decided by the Courts. Your Honor knows that it has been held many times that a man may have delusions, and still make a perfectly valid will, if the delusion be not pertinent to it, and this question is asking a question of pure law of a medical expert, and I object to it. It is the same objection my friend made once before.

Mr. Brown: I don't think it is comparable at all. Here is one of the natural objects of his bounty, and she has been referred to in the direct examination, and the question of testamentary capacity has been referred to. I think it is within the pale of cross examination to ask the witness if this natural object of his bounty, if he bore, or had a delusion as to her, whether or not then the witness would consider that he had testamentary capacity.

Mr. Davey: There is nothing in the question to indicate what delusion.

Mr. Brown: A delusion of any kind.

Mr. Davey: That may be utterly immaterial.

The Court: Concerning Mrs. Freeman.

Mr. Brown: Yes. A delusion that she was unfaithful.

The Court: I take it that meets your objection.

Mr. Davey: No. There was no reference in the question as propounded as to any particular delusion. The testimony in this case all is that—

The Court: The question has been amended to limit it to a delusion.

Mr. Davey: Now I object to it as being immaterial, because the testimony in this case all is that that particular delusion, if he had such a one, had no bearing on his making of the will; it was based explicitly upon his resentment of her action in having him confined, and that is the entire testimony in this case.

The Court: Objection overruled.

Mr. Davey: Prays exception.

The Court: No, you cannot have an exception.

Q. What is your answer? (Question repeated by stenographer.) A. If the man had delusions, there is no question about it that he would not be competent to pass on anything pertaining to the subject matter that these delusions led to.

Q. So that we will understand each other, when you refer in your answers to insanity, whether Doctor Freeman was sane or insane, what you meant was that his entire mind or reasoning was dethroned, that is what you mean by insanity? A. I do, yes.

Q. You do not mean, though, that the Doctor might have had a sector of his mind, if you may so term it, or a part of his mind sound, and other

parts unsound, you would not then classify him as insane, would you? If there was a spark of reason left you would classify him as sane? A. Not necessarily.

Q. Well, how much of his reason left?

Mr. Strong: I object to that. That is impossible to answer.

The Court: Oh, no, it is not.

Q. You have said if his entire reason was dethroned that he was insane.

Mr. Strong: That is not a fair question.

Q. How much of his reason would have to remain before you would declare that he was sane? All of his reason? A. I have never had a question put to me like that, and I don't think I can answer it. It is like answering a man, when is he an old man; when does he pass from middle life to old age, or when does a child pass to manhood.

Q. I don't think the same situation prevails at all. A. It seems to me so.

Q. Well, in your answers you didn't consider delusions at all, did you? A. I did not. It has not been brought out and proven. At least, it is not in our record that the man had delusions.

Q. Well, if there were delusions, as referred to in the testimony in this case, and if you had the histor yof Doctor Freeman, would you say that on July 12th he had testamentary capacity?

Mr. Davey: I object. If this question implies that he had delusions on July 12th, I shall object to it. If it means that he had delusions at earlier periods, I think it should be so stated, but I think as it stands the question is confusing.

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Mr. Strong: It says, as referred to in the testimony in this case. He did not hear all the testimony in this case.

Mr. Brown: He was sitting here. He was the first witness here that heard the—when I say testimony in this case, I mean the hypothetical question.

Mr. Strong: That is different.

Mr. Brown: As disclosed by the hypothetical question.

The Court: The period of delusions is understood to refer not to July 12th alone, but to—

Mr. Brown: All the time. To the date of his death.

Mr. Davey: I want the Doctor to understand the delusions are not connected to the date of the will.

Mr. Brown: I do not want him to so understand.

Q. I ask that the question be repeated to the witness. The delusions pertain to the time Doctor Freeman was placed in the hospital the last time, down to the day of his death, including July 12th. A. If that is true, if he had delusions from the time he was in the hospital, down to the date that he made his will, delusions of persecution, then I would say that he had not testamentary capacity. But I would like to qualify that by saying putting the emphasis on the "if". In our records there were paranoid trends, we looked upon them as trends toward delusions, not as defined delusions. Our diagnosis so embodies that idea.

Q. Didn't you testify before the Vice Chancellor that you couldn't tell whether there were delusions or not unless you knew the history of the case? A. Quite true.

Q. Do you change your testimony now? A. I am not changing it.

Q. There were even trends without the history, weren't there? A. There are trends, yes.

Q. Without the history, or anybody saying anything, there was a trend of a delusion? A. Those trends do not mean delusions. It is simply a straw indicating the direction of the wind.

Q. Without anybody saying anything to you, and from your examination and observation you even then could discern that there was a trend in that direction, couldn't you? A. I could.

Q. If you had the testimony and history of the case, as you said in the hearing before the Vice Chancellor, if you had that knowledge, then you could determine, couldn't you, whether he had delusions or not? A. I surely could. Understand this, I would say that would help me in determining.

Q. It is your opinion a man who is suffering from chronic alcoholism, that he cannot be restored to his full mental development or capacity? A. I think he can.

Q. So that no matter how hard a man drinks, and he becomes a chronic alcoholic, and his brain cells and his brain fibres are disturbed and destroyed, you might say, from the use of alcohol, due to that chronic condition, you say that if he stops drinking he can entirely recover? A. It depends entirely on the degree of destruction.

Q. If a man has been drinking for thirty or forty years, and drinking hard, and he has been drinking so hard as to affect his eyesight, and he has a shuffling gait, and he does things that are quite unnatural, would you say that that man can recover simply by abstaining for a short time from the use of liquor? A. It has not been proven to me that

this man lost his eyesight, or that his shuffling gait was entirely due to his alcohol.

Q. What do you say it is due to? A. It might have other things contributing to it.

Q. No. I am asking you, who have seen this man. A. I don't know what it was due to.

Q. Do you consider a man sane, who has a property that is worth about one hundred thousand dollars, or more, to make, as the substantial objects of his bounty, a young man he has lived with for four months, and has during that time, the decedent, a man of sixty-four years of age, been in the company of men between twenty-five and thirty years of age, journeying with them to places of amusement, and drinking while with them, a man of refinement, excluding and keeping away from all his friends, do you think that is an act of a sane man? A. It might be the act of an eccentric man.

Q. I am asking you if you think that is the act of a sane man? A. Well, I don't know whether it is or not.

Q. You don't know? A. I don't know. I think many an eccentric man might do the same thing.

By the Court:

Q. What is the difference between eccentricity and insanity? A. One is looked upon as a man without his reason. The other man is simply temporarily, or now and then will do something that seems very unreasonable.

By Mr. Brown:

Q. Does the hypothetical question in this case, as you have heard it, change your view as to whether Doctor Freeman had testamentary capacity on July 12th, or not? A. I am not convinced that the man was insane at that time.

Q. You would not say that he was not, would you? A. I would not.

Q. So that as far as you are concerned in this case, after hearing the hypothetical question, and the personal knowledge that you have of the case, you cannot say whether Doctor Freeman was sane or insane, or had testamentary capacity or not, on July 12th, 1922? A. I certainly would not.

Mr. Brown: That is all.

Re-direct Examination by Mr. Davey:

Q. Doctor Funkhouser, there is testimony in this case to the effect that on the evening of July 12th, 1922, and immediately before the execution of the will now offered for probate, Doctor Freeman, sitting on a porch enclosed with screen, was cautioned not to throw his ashes on the floor, but to put them in a receptacle that hung there; that he didn't see it because it was painted the same color as the screen; that he was laughing about the color that it was painted, and thought it ought to be painted a different color, and after having it pointed out to him, put his ashes in the receptacle. Do you consider those acts of a man who was under the influence of liquor, or intoxicated, or the acts of a man who was not under the influence of liquor, and not intoxicated? A. I don't see that it indicates that he was intoxicated.

Q. Will you say whether or not in your opinion a man addicted more or less to the use of alcoholic beverages, might, during periods of intoxication, do all of the acts referred to in the main hypothetical question first propounded by Mr. Brown and Mr. Watson to Doctor Cotton, and referred to in your cross examination, and still, when sober, be competent and normal? A. I think so.

Q. A hypothetical question was propounded to you regarding Doctor Freeman's ways with young men, and so forth, which you said you could not answer, as I recall it. Is it, or not, a fact that the incidents recited in that hypothetical question do not furnish a test of sanity, or an indication of insanity? A. I don't think they indicate a test.

Q. You don't think they furnish a proper test? A. I do not think so.

Q. And that was the reason you said you couldn't answer? A. Yes.

Q. Doctor Freeman was in fact present, was he not, at the hearings before Vice Chancellor Buchanan in Trenton? A. He was.

Q. And in answer to some question of Mr. Brown's regarding the hypothetical question propounded was asked, as I recall it, and upon the assumptions of that hypothetical question you had an opinion. You had, did you not, in fact, the additional personal observation of Doctor Freeman at the later period, September, 1922, to which you have testified? A. I did.

Q. And as the result of that observation, I understand you are of the opinion that, in connection with the circumstances recited, that at the time of the execution of the will, if sober, Doctor Freeman was competent to make the will in question? A. I am.

By the Court:

Q. Doctor, in your testimony as to the effect of veronal, you said it is not a habit forming drug, that it is a sedative or hypnotic, and a depressant, is that correct? A. I don't know that I used the word depressant. We speak of it ordinarily and think of it as a hypnotic, as a sedative, as a quieting medicine. We find it a very valuable medicine in

our work, and cases that have trouble in sleeping. Many times a person is fagged, he is worn out, or cannot reason properly because his brain does not get rest at night, when it should have rest. These medicines tend to quiet him, and oftentimes have a very fine effect.

Q. What is the after effect? A. In my experience I have not seen any ill effects of the drug.

Q. Isn't it a fact that quite frequently the user of veronal, to procure sleep, is very much depressed the next day? A. No. In my experience I have not found it that way. We find a man who is not getting his rest is altogether a different type of man. He is touchy, he is irritable, he is fussy. A man who can get four, five, to eight hours sleep at night is very apt to have a more favorable reaction the next morning.

Q. Will an overdose of veronal produce death? A. Well, of course, an overdose would have its corresponding effect. It would produce a longer sleep, and a longer drowsiness.

Q. What have you to say as to the cause of Doctor Freeman's mental incapacity when he first came to the institution? A. I think it was more largely due to the alcohol, since I have learned the history of the case. At first we all thought that morphine played a part, but we didn't know exactly what we were up against. We knew there was some reference made to morphine, and oftentimes we jump at a conclusion, and I think some of the doctors thought that morphine was playing a conspicuous part in the doctor's trouble at that time, which was later ruled out.

Q. Your subsequent conclusion was that it was largely due to the alcohol? A. Alcohol; yes, sir.

Q. Was it what you would call a case of chronic alcoholism? A. It seemed so.

Q. Had it progressed to such an extent as to bring about any structural breakdown of the nerve centers, or brain centers? A. Well, that wasn't brought out in our staff meeting. It is recognized that such a thing is possible, and it is spoken of as some deterioration. The degree of destruction that might have taken place, or that had taken place, was not discussed, and I don't know that anyone expressed themselves on that subject, the degree of damage.

Q. Can you say to me now whether or not there had been a structural breaking down? What is your opinion? A. Well, there is evidence of a structural break in his eye nerves, in what we call the optic nerves, and that, as anyone could tell, affected his vision. But whether or not that was due entirely to alcohol, or whether it was due to some other physical conditions contributing, is a problem. You may have such a result due to several, or a number of contributing factors.

Q. But in your opinion the alcoholism was one of the factors? A. I think so, it was one of the factors.

Q. When there has been a structural breaking down of the nerves, or nerve centers, due to chronic alcoholism, is there likely to be a recovery? A. Well, there is not likely to be a regeneration of a destroyed nerve cell. A nerve cell may retain certain functions, even though it is partially impaired in its function. At the same time the degree may not have gone so far as to rob a man of his reasoning, or put him in the class of the insane.

Q. I suppose the most pronounced symptoms of alcoholism, that a layman sees, are the functional impairments? A. I think so. The outward manifestations.

Q. His walk, or his talk, or his failure to react properly to ordinary impulses. Those things will

be cured, will they not, to a certain extent, by the cessation of the use of alcohol? A. I think so.

Q. They are merely local in character? A. Yes. They are temporary, we speak of them.

Q. But the breakdown of tissue, following the prolonged use of alcohol, is not repairable, is it? A. It is not repairable, I guess we are safe in saying that. Of course, one ought to qualify that by saying that no one can tell until after they get sections in the laboratory, of the degree of nerve cell damage. Prior to that time we have simply the symptoms, the outward manifestations of the trouble, which may be functional, or may be more central.

Q. You have said, I think, earlier in answer to my questions, that there was evidence of some breaking down of the tissues, in Doctor Freeman's brain. Can you tell the court to what extent that breaking down had progressed? Had it progressed to the extent that it had brought about an irreparable injury? A. I think it had brought about an irreparable injury, but I would also add that it is a question whether the degree of destruction had gone far enough to make him, or deprive him of his reason, when alcohol, or intoxication, was out of the question.

By Mr. Davey:

Q. That is what you refer to, the subject matter that the court has just been asking you about, in your testimony taken before Vice Chancellor Buchanan, in this question and answer: "Q. Isn't it a fact, Doctor, that Doctor Freeman's condition on the day he came to you was due to alcoholism, rather than insanity, as that term is commonly understood? A. Well, we took that view of it. We took that view of it, that his mental condition was

due to the toxic effect of the alcohol and such toxemia as may result." And where you testify later: "The mental condition that you now observe, in his improved state, is there still a mental unsoundness there, a mental imperfection?" That question referred, did it not, as you understand it, to the deterioration referred to in the questions just propounded by the court?- A. It did.

Q. And was your answer then, and do you still believe: "A. We have recognized that this long continued use of alcohol had caused what we thought some deterioration; in other words, we thought his intellect, perhaps is not as keen as it would be if he had not indulged," is that right? A. That is right.

Q. And that is still your opinion? A. It is.

Q. That notwithstanding that deterioration he might not be as keen as if he had not indulged, that he still retained mentality enough to enable him to do the ordinary things of life, both in business, and in the execution of a will? A. I do.

By Mr. Strong:

Q. What month and year was it you last saw Doctor Freeman?

The Court: September, 1922.

Mr. Strong: That is what I thought, but I understood from something Senator Brown said—

The Court: That is well fixed, September, 1922. That is not contradicted by anybody.

By Mr. Brown:

Q. Didn't you say, when you were asked if the Doctor could carry on business, that you didn't

think that he could, that he might advise to a degree, in the examination before the Vice Chancellor? A. I don't recall that.

Q. I will read the question and answer for you, page 6: "Q. At the present time do you think he is capable of managing his business affairs? A. I don't think he is capable of managing them, but I think he is capable of advising to some degree." That was the question and your answer, wasn't it? A. What was my answer to it, please?

Q. Your answer was: "A. I don't think he is capable of managing it, but I think he is capable of advising to some degree." A. I still agree to that.

Q. That is, after he had been in the hospital until October? A. That might be followed by stating that a man with his impaired vision, would of itself largely handicap him in taking care of a business, and I think his good judgment was shown, when he had been able to carry on business for so many years, his judgment was shown in selecting men who were competent.

Q. He wasn't capable of managing his business? A. That it indicates a man's ability when he is competent, or shows that he is competent in selecting good men to take care of a business. Many a business is successful, not because of the head, but because of his ability to get men who are competent.

Q. You were not asked anything about that, were you? You were asked if that was your testimony, and you said yes, and you are still of that opinion? A. That is right.

Mr. Brown: That is all.
The Court: That is all, Doctor.

CLARENCE ROSTOW, a witness produced on behalf of the proponents, being duly sworn according to law on his oath, saith:

Direct Examination by Mr. Davey:

Q. Doctor Rostow, how old are you? A. Forty-eight.

Q. Where do you live? A. Newark, New Jersey.

Q. And what is your profession? A. Physician.

Q. What is any institutions are you connected with in Newark? A. Beth Israel Hospital, and a private institution.

Q. Of what medical college were you a graduate? A. Medico-Chirurgical Hospital of Philadelphia, 1890.

Q. Were you formerly connected with the New Jersey State Hospital at Trenton? A. For a time.

Q. What other institutions, if any, for the treatment of mental diseases have you been connected with, or are you connected with? A. I was clinical director of the Dayton State Hospital, Dayton, Ohio.

Q. How long were you connected with the New Jersey State Hospital? A. About eighteen months.

Q. In what capacity? From what time? A. I was assistant to Doctor Funkhouser.

Q. When did that period begin? A. About 23rd of February 1921.

By Mr. Strong:

Q. How did it begin? A. I was giving service, and taking care of patients, looking over the patients, looking over the patients at first.

Q. I mean, how did you first happen to go to that hospital? A. I came in there first as a patient, voluntary; I had not been feeling well, and I came in there on the 12th of February.

Q. What was the difficulty with you? A. I had stones in my kidneys, and at that time was right after the grippe, I had worked very hard, and I thought it would be better for me to take an institutional position and that was my main object in going to the Trenton State Hospital. I had heard of Doctor Funkhouser, and I thought I would go there and take a position.

Q. Was that stone in the kidney of a painful nature? A. It is very painful for quite some time.

Q. About how many patients did you treat? A. I was on the main service, and I handled probably two-thirds of all the admissions on that male side. I handled two hundred and forty-two cases in the time that I was there, outside of the thousands and thousands of notes on the patients, and the great many examinations which I did. I was very active in the work there, I was, all the time in the hospital.

Q. Did you, in the course of your duties, perform any operations? A. I did.

Q. Of what nature? A. I did perform major operations. I did some appendicectomies, hernia operations; we had the removal of ribs; I did hundreds of tonsillotomies; removed a great many testicles; and assisted in a great many urological operations. Some I did myself.

Q. How did you happen to leave there? A. I got a position in Dayton, where better opportunities were offered to me, as clinical director at the big hospital, and I went there.

Q. Where was that? A. Dayton, Ohio.

Q. And you left Dayton when? A. I left Dayton in the latter part of January.

Q. For what reason? A. I thought at first I would make institutional work my life work, but I found things were very lonesome, my family would not go from Newark to Dayton, so I decided I had

better go back to private practice, where I had been for over twenty-five years.

Q. You came back to Newark? A. To my old home.

Q. Where you had been long before you went to the State Hospital? A. Oh, yes.

Q. That is where you are located? A. I am located in the same home where I have been for twenty years.

Q. How did you get along with Doctor Cotton at the State Hospital? A. Well, I regret to say, not very well.

Q. Why? A. Well, our ideas did not agree.

Q. In what respect? A. I was very frank to not agree on many operations, useless, to my mind, which were done, which didn't do any good, and I was frank to speak it up, in the very first week I was there.

Q. Were charges made for those operations? A. Well, I don't know anything about that, but I know there were a great many operations done, which since this Summer, have been stopped entirely.

Q. Operations of a natrue which have been stopped entirely? A. Entirely been stopped. Very serious operations, and without doing any good.

Q. How is that? A. They were very serious operations.

Mr. Brown: I object to this line of examination. It is not qualifying this man for anything, and there is nothing on the record so far that would call for this.

Q. Did you see Doctor Charles M. Freeman while you were at the hospital? A. I admitted him and treated him for all the time he was there. Of course, under the supervision of Doctor Funkhouser.

Q. State whether or not he was under your personal charge? A. He was under my charge. He was my patient.

Q. How frequently did you see him? A. I saw him every day, at least three or four times, probably half a dozen times.

Q. How often did Doctor Cotton see him? A. I don't know, to my knowledge, that he saw him ever.

Q. Would you have been likely to have seen Doctor Cotton talking with him, if he had seen him? A. I naturally would, because I spent a great deal of time in the ward Doctor Freeman was in.

Q. What was Doctor Freeman's condition when he came to the hospital? A. Do you mean physically?

Q. Yes. And mentally. A. He was a sick man. It looked like a run down condition. Fairly well nourished, but he looked rather flabby, and poor muscular tone; he looked like a man who was somewhat toxic, and to my opinion he was under-nourished.

Q. What was his condition mentally? A. He was not entirely clear, but he knew well when he came, he knew the place, and he asked for the Doctor who treated him before.

Q. Who was that? A. I think it was a Persian Doctor, who took care of him some time ago, and he had gone. He inquired about the attendants. He knew the time and place. But, as I say, he looked like a sick man.

Q. What treatment did you give him? A. Give him a bath the first thing, placed to bed, ordered a special tray of food for him, he was nourished, rested, and I do not recollect exactly at this date what medication I ordered, but I probably ordered some symptomatic treatment, whatever was indicated.

Q. State whether or not he responded to the treatment given him? A. He did very well indeed. He responded much better than I thought he would.

Q. Did he ever talk with you about his family? A. He did.

Q. What did he say with reference to it? A. Well, he resented very much of being sent to an insane asylum.

Q. Why? A. He said he rather would have been sent to an ordinary hospital, or to a sanatarium. He said he has the means to go there, and he doesn't see any reason why he should be sent to an asylum. I personally didn't find any violence in him, he wasn't dangerous. He could be well taken care of in any private hospital, but there he was, and I had to take care of him.

Q. He could have been as well taken care of in any private hospital? A. I have taken care of many worse cases than this in twenty-five years, in an ordinary hospital.

Q. Did he ever refer to any infidelity on the part of his wife? A. No.

Q. It was confined to this resentment you speak of? What else, if anything, did he say with respect to his home life? A. In fact, he spoke very well of his wife. He said his wife was a writer. I had many conversations with Doctor Freeman; he told me about her; he said she was a writer, and she was very clever in getting out stories, but she never made a home for him, and he hadn't been living at home for a number of years.

Q. Did he have anything to say with reference to his sisters? A. He spoke of his sisters, and at times he seemed to be wondering why none of them ever came to see him. I never saw anyone, with the exception of his wife, I saw once.

Q. What was the nature of her visit?

By Mr. Watson:

Q. You saw his wife once, you say? A. I did.

Q. There? A. Yes, sir. She saw me, but she did not see the patient.

By Mr. Strong:

Q. She did not see the patient? A. She did not see the patient; she didn't see the patient. I spoke to her in one of the consultation rooms. I wanted to get the complete history of the case. I had quite some difficulty to get it, because she was a very deaf woman, and part of it was in writing then. But I recollect very well that she did not go to see him.

Q. You saw him at the time that he left the hospital? A. I did.

Q. What was his condition at that time? A. He was very much improved physically; he built up nicely; he had good color, and he was mentally at that time still a man far above the average intelligence, but from the nature of his education, that I heard, and what he told me, he probably wasn't as high up as he ought to be, but he was still far above the average intelligence.

Q. State whether or not in your opinion at the time that he left the hospital he was capable of making a will? A. I think so.

Q. What have you to say with respect to his eyes, Doctor? A. He could only read, as far as I recollect, big print, and it looked to me,—I am not much of an eye specialist, I don't know much about those things, but it looked to me as if he was getting at that time a soft cataract. The pupils were cloudy, but I am not capable of fully testifying as to that.

Q. You have had some experience with the treat-

ment of the eyes, however? A. Not very much, but I could see that his eyes were cloudy, and it looked to me as if he was getting a cataract. Whether there was anything further beyond that I don't know.

Q. Did he attribute his condition of the eyes to anything? A. He told me he has been getting—been in that condition for some time, but I really do not recollect what conversation we had on that point.

Q. Now, Doctor, as to the amount of liquor that men can carry, or can drink, without incapacitating them mentally, state whether or not that varies in different individuals? A. That varies a great deal.

Q. Any instance in your own experience that would come under your observation, that you could mention? A. I have known patients who have done away with a quart of liquor a day, and continue their work. We have patients in the State Hospital to-day, who are above eighty, I have the records of their cases when they told me them, have been drinking all their lives, been fighters and boxers, and still in the hospital to-day, in good physical, and fairly good mental condition. Above eighty. Some men can drink a whole lot, and some men can't drink a teaspoonful.

Q. These men that you speak of drinking a quart a day, in the hospital, do they still retain their faculties as usual? A. Concerning their age they do.

Q. I mean to say, it does not make them drunk?

Mr. Brown: I object to this line of testimony. This witness has not been in the hospital for—I don't know when he left there. He is testifying to something he does not know anything about. I think it is beside the issue in this case. He left there many months ago.

By Mr. Brown:

Q. When was it you left? A. I have been in practice since, and I have been in the hospital since.

By Mr. Strong:

Q. Were you back there last week? A. I was.

Q. For what purpose? A. I was there, in fact, had been there for the whole month of August, on the pay roll of the hospital, assisting Doctor Funkhouser, and I have been over my records of all my cases, each and everyone of them, and I know what I am talking about.

Q. Those men drinking a quart of liquor a day, some of them, you say, continued their work as usual? A. They work around the grounds; most of them have no homes; they live there. They look in fairly good condition for their age.

Q. Could be discharged, if they had homes? A. Oh, you could, a great many.

Q. A great many of them? A. Yes, if they had homes.

Q. Now, Doctor, did you ever observe the use of liquor by anyone while you were in Virgina at any time

The Court: Senator, what is the purpose of this line of examination?

Mr. Strong: I want to show an instance—

The Court: I do not think one single instance is going to be of any value to the court, or any assistance to the court.

Mr. Strong: It is a single instance where men drank a large quantity of liquor. We will show habitual use of it, without a man getting drunk.

The Court: I know. I have seen instances of it myself.

Mr. Strong: We offer to show by the Doctor that he has observed Virginia mountaineers who drank a gallon of whiskey a day, and yet were not incapacitated; did that habitually.

The Court: I overrule the offer.

Q. Doctor, what have you to say as to veronal, is that a habit forming drug? A. Not considered so.

Q. Is it prescribed by the medical profession at times? A. Prescribed a great deal, and it can be bought at the drug counter by anybody.

Q. No restrictions upon it? A. No restrictions.

Q. Is it used in the treatment of nervousness due to alcoholism? A. It is.

Q. Did Doctor Freeman suffer from any delusions, as far as you could observe? A. None that I could observe at all.

Q. What was his condition? A. He was not quite as alert as I would expect a man of the education that he received; that is the time when he was treated; but he mended so quickly, and after a while we used to carry on many conversations, talked to him why he had given up the practice of medicine, and all this kind of business.

Q. How was his memory? A. Looked to be very good. He looked to be a man far above the average.

Q. Intellectually? A. Intellectually.

Q. What are paranoid trends? A. They are generally classified as resentments, or likes and dislikes.

Q. Did he have those? A. He had his dislikes. He was quite set on certain things.

Q. And as I understand it, what he had was paranoid trends? A. That is the way we classified them in a medical term.

Q. Doctor, if it were proved that for two or three months after his release from the State Hospital on October 3rd, 1921, Doctor Freeman did not drink at all, and became quite like his old self, normal in appearance, able to attend to his business, with the sole exception of his impaired eyesight, would that indicate to you that his condition, as you observed it at the hospital, had improved? A. It would.

Q. If it appeared that in May, 1922, he executed, at the instance of a creditor of his corporation, a trust conveyance of his stock, and very shortly thereafter sought to have the same cancelled, and if it appeared that that trust was made to his attorney, Mr. Watson, and that Doctor Freeman engaged an attorney from outside of Middlesex County to procure the cancellation of such trust, would that lead you to believe that he possessed reasoning power, and some mental ability? A. Why, necessarily so.

Q. If it appeared that Doctor Freenman, on June 18th, 1922, wrote out instructions for a will to be prepared by his new attorney, and executed such will, after it had been so prepared, on June 21st, and it appeared that his written instructions were legible and coherent, and that he in that will left to his wife only one dollar a year, because of his resentment of her action in procuring his commitment to the State Hospital, it being the fact that she did sign the application for his commitment, would you consider that an act of natural resentment, or a delusion? A. Why, I would think it was natural resentment.

Q. Would you consider it natural for him to

resent the action of the committing magistrate in committing him to the asylum? A. I would.

Q. If, in September, 1922, he appeared in better physical condition than on the date of his release from the State Hospital, and showed no indication of any further mental impairment, and that in November or December, 1922, he consulted with the attorney for the corporation with the Lehigh Valley authorities, regarding an important business matter, appearing at the time of such consultation nervous, high-strung, smoked cigarettes incessantly, but did not appear to the men with whom he was in consultation under the influence of either liquor or drugs; said what he did say intelligently, and appeared to be entirely sane and competent, and that soon thereafter, having received the specifications for the construction or reconstruction of a railway trestle, he went to the trestle, had the specifications read, and personally examined the structure, and then wrote, or caused to be written, a letter to the railroad authorities, raising questions regarding the advisability of specifying a certain grade of yellow pine lumber, and whether galvanized hardware would not be better than the plain, which was specified, and whether the bolts were large enough, and also considered the question of whether money could not be saved by building it himself, instead of having it done by the railroad people, would that indicate to you that he was competent to make a valid will? A. I should think so.

Q. If it appeared that he in fact mentioned all his relatives in his will, and made a bequest to each, would you say that he appreciated who were the natural objects of his bounty? A. I would. Quite natural.

Q. If it appeared that he explained fully to his attorney the condition of his corporation, the num-

ber of its shares of capital stock, the total of its outstanding book accounts, the value of its property, the fact of a trust executed by him of its shares of stock, the fact of its need of ready funds, the facts regarding its bank loans, his whole estate being the shares of stock of that corporation, would you say that he knew of what his estate consisted? A. I should think so.

Q. If he afterwards told an accountant who peridoically audited the books of his corporation, what he had done in his will, and told his servant that he had provided for her, as he had in fact, would you say that he understood what he had done? A. Yes, sir.

Q. And having done those things, would you say that he understood the co-relation of one of those factors to the others? A. I would.

Mr. Strong: Cross examine.

Cross Examination by Mr. Brown:

Q. When you went to the hospital in January, 1921— A. February.

Q. And you stayed there how long? A. Until September the following year.

Q. You were there as a patient during that time, were you not? A. I was not. I was only a patient there for a few weeks. I was on the pay roll all the time.

Q. What, for board and lodging, or what? A. No, sir. I got my pay.

Q. How much a week were you getting?

Mr. Davey: I object as incompetent and immaterial.

Mr. Brown: I think it goes to show the worth of his services.

The Court: I do not think so. It appears he was on the pay roll.

Q. When you went to the hospital you were taking dope, weren't you, or drugs? A. I was not taking dope. I had been sick. I was given,—I was not taking,—I was given morphine by my physician.

Q. What physician? A. The physician who took care of me in Newark, New Jersey.

Q. When you went down to the hospital you were still taking it, weren't you? A. I was not.

Q. Isn't it a fact that Doctor Funkhouser and the other staff there broke you off the habit of taking it? A. I never got a single dose of medicine from the day I came to that hospital until I left.

Q. What did they do to prevent or stop you from using dope or opium? A. They didn't do anything, except I rested off. I had passed through my stone, and I was through with it.

Q. But that is where you were cured of taking opium, wasn't it? A. I was cured before I came there.

Q. You were taking it when you went there? A. I was not.

Q. They would not give it to you there, would they? A. I didn't need it.

Q. Well, you went there pretty well charged with it? A. I was not charged with it.

Q. Well, then, why did you— A. I came there as a volunteer patient.

Q. I didn't say you didn't, but you came there pretty well loaded? A. I did not come loaded.

Q. Do you mean to say that while you were in that hospital you didn't take any opium, or there was none administered to you, or there wasn't any treatment given to you to prevent you from using opium? A. Exactly what I said. I never took a

does of medicine from the day I came to the hospital until I left it, eighteen months, and that is the gospel truth.

Q. Because you wouldn't get it, isn't that the reason? A. I didn't need it.

Q. How long had you been taking it before you went there? A. Couple of weeks.

Q. Just two weeks? A. I don't know exactly how long it was.

Q. Why did you take opium? A. I didn't take it. It was given to me.

Q. Then after it was given to you, you took it, didn't you? A. I didn't take it myself. The physician gave it to me.

Q. When he gave it to you, what did you do with it? A. He gave me a hypodermic, and I didn't know how much he gave me, or what he gave me.

Q. You knew you were going to get it, didn't you? A. Why, certainly.

Q. And you knew what the feeling was? A. Yes.

Q. Why did you know? A. Because I had a great deal of pain, and they had to relieve me. I have nothing to hide here.

Q. You stayed there from February until the following year, you say? A. Until the following year, in September, 1922.

Q. During all that time where was your family? A. In Newark.

Q. I suppose you were at the hospital every day, weren't you? A. I was there all the time. My house was leased, and I, as I told you before, I expected to take up institutional work.

Q. And you slept at the hospital? A. I did.

Q. What does your family consist of? A. Wife and two children.

Q. So that you stayed at the hospital in Trenton

from February of one year until September the following, night and day? A. I had a position there. I used to go home week ends.

Q. You had given up a practice of twenty-five years to go there, didn't you? A. I did.

Q. And then you went back to Newark again, did you? A. I did not. I got a position in Dayton, Ohio.

Q. How long were you in Dayton? A. About five months.

Q. Where did you go from there? A. Back to my home.

Q. Your family in Newark all the time? A. Yes, sir.

Q. While you were in Dayton? A. Yes, sir. Living at 655 High Street, Newark, New Jersey.

Q. Is your family there now? A. They are right there now, home.

Q. You have mentioned about conversing with Doctor Freeman. While you were there you conversed with people who were sane and insane, didn't you? A. Why, surely.

Q. So that the fact you conversed with Doctor Freenman didn't indicate anything, did it? A. What do you mean it didn't indicate? Every patient indicated to me a human life.

Q. How much liquor do you think a man has to take before he becomes mentally incompetent? A. It all depends upon the man.

Q. What you have in mind? A. I cannot give you my own statement. I can give you the statement of the greatest man in the world on mental diseases, he says one man can get drunk on a teaspoonful, and I agree with him.

Q. What do you know about it? A. As far as I know I have seen people get drunk on a teaspoonful of alcohol, and I have seen people drink a quart of whiskey.

Q. That is the limit, a quart? A. As far as I have seen.

Q. Well, about the daily consumption of whiskey, day in and day out, how long do you think it can be maintained? A. That all depends upon the patient. Some more and some less.

Q. If Doctor Freeman was using liquor excessively for years, you can't tell whether it had a chronic effort or not, can you? A. He must have had a mighty good constitution, if he lived to be sixty-four years of age, and have his mental capacity.

Q. Do you know whether he was sane or insane? A. I don't think he was insane.

Q. At the time at the hearing before the Vice-Chancellor, was he then sane or insane? A. To my opinion he was sane, as far as I recollect my testimony.

Q. Is all your testimony about as accurate as that answer? A. Well, as far as I recollect.

Q. Do you remember being asked this question: "Q. Do you consider him sane?", and didn't you answer: "A. It is very hard to tell. I thought he was a chronic alcoholic." A. Well, exactly what I am stating now.

Q. You didn't say that now, did you? A. I said he wasn't insane. I said he was a chronic alcoholic; that doesn't mean a man is insane.

Q. You said it was very hard to tell. A. So I say now.

Q. Now you say that he was sane, don't you? A. I think, from the condition, after observing the man all the time, and after hearing the testimony, that he was in better physical condition in 1922, that the man was not insane.

Q. Do you think that you are better able to judge now, from what you have heard in this case, includ-

ing the hypothetical question, whether Doctor Freeman was sane or insane on the 28th day of September, 1921, better than you did at that time? A. It would help me a great deal in making my conclusion.

Q. Of what his condition was in September, 1921? A. If I thought a reliable party, a reliable physician told me that that man was in good physical and mental condition, I certainly would say that man was not insane.

Mr. Davey: Mr. Brown, by inadventence, said September, 1921. I think he does not mean that. I think he means October.

Mr. Brown: Why don't you think I mean it

Mr. Davey: I thought you were talking, in cross examination, of the date I examined him in reference to.

Mr. Brown: The date of the examination is September 28th, 1921. What is there wrong about that?

Q. You understand that, don't you? A. This was the first examination, you mean, before the Vice Chancellor in Trenton?

Q. Yes. A. Yes, I recollect that very well.

Q. Was there any permanent effect on his mind from the excessive use of alcohol, or his brain, at the time of the examination? A. Not that I could observe in an ordinary person. As I stated before in my examination, that he was not as alert and up to date, as far as his education was, but he was still a man far above the average.

Q. Listen to this and see if this is not the question propounded to you, and your answer: "By the Court: Q. Is there any permanent effect on his

mental condition, from the use that has been made of these drugs, and the use of these drugs and alcoholic stimulants? A. It is hard to tell." A. Yes.

Mr. Davey: Go on and read the rest of the answer.

Mr. Brown: If you will give me a chance I will.

Q. "I haven't known him for many years. He has certainly improved a great deal since he has been in the hospital." Now, your answer there was that it was hard to tell, and you said in your answer previous to that, or in the previous part of the testimony, that you thought he was a chronic alcoholic. A. My testimony states that.

Q. Yes. Didn't you know that? A. Probably he was, probably I thought so at the time, from the history.

Q. What do you mean by chronic alcoholic? A. The only thing I could make the diagnosis at the time is from the history obtained.

Q. I am not asking you that. I am asking you what you mean by chronic alcoholic? A. A man who indulges in alcohol for a long period of time.

Q. And producing a permanent effect? A. That is hard to say. Some people drink all their lives and live to be ninety, and do not have any bad results.

The Court: Your answer is not responsive to counsel's question. Counsel's question is whether the term chronic alcoholism includes as a part of it a structural or tissue change in the patient. That is correct, isn't it?

Mr. Brown: Yes. I said permanent, but that is what I mean.

A. My interpretation of the term, there are two interpretations; you may have chronic alcoholism with deterioration, and a chronic alcholism without deterioration.

The Court: What we want is a definition of a medical term.

A. By chronic alcoholism we simply mean a man who has been drinking all his life, or a long time. It does not indicate whether he has deteriorated or not.

Q. You can't say whether the doctor was deteriorated, or not, at that hearing, can you? A. I have give you the benefit of it and told you that I did not think that the man was as bright as he ought to be, for the education he received. I have told you this several times.

Q. Well, now answer this, will you please: Didn't you say at that hearing that it was hard to tell? A. Yes. So I say now.

Q. Why do you change your testimony now? A. I say now it is hard to tell.

Q. Oh, you say it is hard to tell now? A. Of course it is.

Q. What is there in the examination that has been carried on here for the last two days, in your presence— A. I have not been here two days. I only came here this morning.

Q. You didn't hear the hypothetical question yesterday? A. Except what Senator Strong told me.

Q. Do you think a man is sane who will go to bed at night, about the age of sixty-four years, with a glass, or pint of whiskey, and take two pills of veronal before he goes, for not every night, but frequently, and get in such a condition that he has lost control of his bowels, do you think he is sane? A. He is still sane.

Q. He is sane? A. I don't think that makes him insane.

Q. What is the matter with him? A. The man is drunk.

Q. If that continues time and again, what have you to say, is he drunk, or insane? A. He is still drunk, unless you can show me that the man has actual lesions in his brain, which produce delusions, which produce a real atrophy of the nerve tissue, which has not been proven in any alcoholic case at all.

Q. Do you think a man is sane, who has an estate of over one hundred thousand dollars, and wills almost ninety per cent. of it to an employee, who is only in his employ for four months, where the employee has been paid, and has not given any extraordinary service? A. I would qualify it, if that employee has proven faithful to him in his last days, I probably personally would do the same thing.

Q. I don't doubt you are very apt to do that. A. Especially with the treatment that man received.

Q. What have you to say about a man being sane or insane, who will pull a great quantity of money out of his pocket, including many dollars, and bet with another party a dollar, or a more insignificant sum, as to the amount that he has in his hand? A. That happens every day, people gamble on that.

Q. They do? A. Why, naturally they do that. Kids do that in school.

Q. Do you bet? A. I am not a gambling man, but you see people gamble. Lloyds takes these chances.

Q. Are you still in the hospital, or out of it? A. I am out of it.

Q. What have you to say about a man who has, we will say, ten dollars in his hand, and he bets

with another man, I will bet you fifty cents that you can't tell the amount of money I have got in my hand? A. Isn't gambling all the way through that way?

Q. What have you to say about a man who does not know how much he has in his hands, and pulls out a lot of money and says, I have got more money in my hand than you have in your's? A. That is gambling still.

Q. What have you to say about a man who goes to bed at night, and while in bed sets fire to the bed clothing and almost burns himself up? A. How does he do that setting fire?

Q. Why, he falls to sleep with something lighted, and he is filled with drugs and liquor? A. Smoking cigarette?

Q. Cigarette, or cigar, filled with drugs and liquor? A. Well, that has happened to very many sane people, and I have treated them lots of times.

Q. Have you? A. Yes.

Q. So that is your characterization of a sane man? A. That does not indicate to me, because a man falls asleep with cigarette, and sets fire to his bed, that he is insane.

Q. What have you to say about a man who goes out on the porch and chases imaginary images or objects around the porch, when there isn't anything in sight, is he sane or insane? A. The man may be drunk at that time, he may have delirium at that time, which may be temporary; a man in pneumonia, or a man in typhoid will do the same thing.

Q. What have you to say about a man calling up a strange woman and accusing her son of taking advantage of his daughter, when he had no daughter?

Mr. Davey: I obect. There is no testimony to sustain that question. That is the

same objection your Honor sustained in the hypothetical question. It was not with reference to Doctor Freeman's daughter, but with reference to Mr. Breen's daughter.

Q. Well, Mr. Breen's daughter, the daughter of another man? A. If everything was corroborated, and eveything was true, unless the man was under liquor, I would think the man, there was something wrong with the man.

Q. Well, there was no foundation for it whatsoever, then what would you think about it? A. Well, you stated he was drunk all the time.

Q. Well? A. You said before that he was drunk all the time.

Q. What have you to say about a man who gives ten thousand dollars credit, out of his business, to a worthless creditor, against the advice of business associates and business men?

Mr. Davey: I object. There is no testimony that Doctor Freeman gave ten thousand dollars credit to a creditor, whether worthless or otherwise. Mr. Brown evidently refers to the Ferrar Colony, and in that case there were a very great number of creditors, not one.

Q. Well, a number of creditors, amounting to ten thousand dollars? A. That depends upon the man's sympathy for certain kind of work.

Q. What do you think of a man who received seventy-five dollars in a check, that is due and owing to him, and then destroys the check? A. Well, that single act would not indicate to me that the man was insane. A man may do that in a moment of anger.

Q. And nothing else. If there wasn't any foun-

dation for anger, or anything else, but he just got the check and tore it up, what would you think of him? A. Well, I don't know what I would think. Probably an eccentric act, but I wouldn't call this man—on this ground I wouldn't call the man insane.

Q. What would you think of a man who gave credit to a creditor of one thousand dollars, on the condition that he should receive five dollars a month in settlement of the claim? A. That is frequently done. Loan associations do that, charitable loan associations. They may have a friendly feeling towards the man.

Q. One thousand dollars. This is not a loan association, it is a business man. A. I don't know what his relations were with that man. He might have been friendly to that man.

Q. No security, and nothing else. A. I have loaned people, and so have you people without any security at all. I don't think you are insane.

Q. What have you to say about a man who frequents Chinatown, or goes to Chinatown, about the age of sixty-four or sixty-five years? A. Well, I don't know that is any sign of insanity. Lots of people do that.

Q. They do that? A. Oh, yes.

Q. Do you go there? A. I do not.

Q. How do you know? A. Well, I know life. I have been long enough in practice to know life.

Q. How do you know he goes to Chinatown? A. I know lots of people do, young and old. Some for amusement, some for other things.

Q. What do you think of a man who has one hundred thousand dollars worth of business, and his business is solvent, and still he wants to make an assignment for the benefit of creditors, or declare himself insolvent?

Mr. Davey: I object. There is no testimony to warrant such a question.

Q. Or wanted to confess judgment against his own estate? A. I don't quite comprehend this question.

Q. What do you think of a man who has a business worth one hundred thousand dollars, the business is solvent? A. What do you mean by solvent?

Q. Don't you know what solvent means? A. It is a legal term. I just want to have it defined.

The Court: It means that the assets are in excess of the liabilities.

A. He owns all the property?

Q. Yes. A. Yes.

Q. What do you think of a man being in that condition, and then offering to confess judgment against himself, to the sum of five thousand dollars? A. He probably wanted to reduce his own estate.

Q. You think that is all he wanted to do? What do you think of a man who wants to sell a valuable business for far less than it is worth, and the lawyer to whom he goes refuses to act as the lawyer, because he doesn't think the person is doing right, and the party who is going to purchase it wouldn't purchase it because of the reduced offer that he is making the business at? What do you think of a man who makes an offer of that kind? A. Perhaps the man wants to retire. What do I know what he wants to do with it?

Q. You think those are all acts of a sane man? A. There are certain definite lines of insanity, which are classified, which we know, and we have organized delusions, and we have real diseased condition of the brain, which are not reparable, like dementia praecox, or many times where a patient

is excited and isn't responsible for his acts. These are insane. But these are all eccentric acts. One man may do this, and another may do that. The conception of insanity today is entirely different than it was years ago.

Q. So you went to a State Hospital for the Insane to cure your kidneys, did you? A. I told you why I went there.

Q. That is why you went there? A. I had stones in my kidneys, and I had—

Q. That is why you went to a state institution? A. No. I went merely to the state institution, I wanted to get a state position, and I thought it would be easier for me to get along, I wouldn't have to work so hard.

Q. Just which was it? First you said you went there to effect a cure of your kidneys, and now you went there for a job. Which was it?

Mr. Strong: I don't think he said that, did he?

A. What is that?

Mr. Strong: You didn't say that.

The Court: Say what?

Mr. Strong: That he went there to cure his kidneys, and that he went there for a job.

The Court: I do not know just what he did mean.

Mr. Strong: He has not made a contradictory statement like that.

The Court: His testimony on direct examination was that he had stones in his kidneys, and that he knew Doctor Funkhouser, and he thought he would like to go down to the State Hospital for a short time.

Mr. Davey: To get into institutional work.

The Court: Now, in answer to Mr. Brown's question, he has just now said that he went there because he wanted to get a job, or a position.

Mr. Strong: He is representing that the witness made contradictory statements.

Mr. Brown: I do so yet.

Q. Which did you go there for, to get cured, or to get a job? A. Both.

Q. When did you make up your mind that you were going to get a job? A. Every time I felt private work, right after the grippe, was too hard for me.

Q. How long were you in the institution when you felt that way? A. I came there with the distinct purpose of that. Otherwise I would never have gone there.

Q. You had the grippe before you went down? A. I was attending to patients with the grippe a great deal, and I worked very hard at the time.

By the Court:

Q. You went down there to get a job by becoming a patient in the institution? A. No.

Q. You said you were a patient there the first three or four weeks you were there. A. I went there because I was tried out and worn out.

Q. And because you had been over-indulging in drugs? A. I wasn't indulging. It was given to me.

Q. You had taken more drugs than were good for you, put it that way? A. I wasn't taking any more drugs than were good for me, because the minute I had passed my stones I immediately didn't use any more, and I went down to the hospital, and as I swore before—

Q. It was so that you could recover from the

effects of the drugs that had been administered to you? A. Yes, sir. I told you I went there as a patient.

By Mr. Strong:

Q. And the drugs were administered by another physician? A. Yes, sir.

The Court: The only thing that is bad about it is the fact that the Doctor has been trying to conceal it, and he might just as well let it come out.

Mr. Strong: I do not think he is trying to conceal it.

A. I told you—

The Court: That is my judicial opinion from his testimony.

A. I regret, your Honor, if you take it that way.

Q. As I understand it, that was prescribed by the physician to prevent pain? A. Yes, sir.

Q. When the stones were passed and the pains ceased, you at once stopped taking them? A. Yes, sir.

The Court: That is the way I understand the testimony, Senator. It is not necessary to clear it up any more. It does not reflect at all on Doctor Rostow.

Q. State whether or not a person who, for a good many years, has been accustomed to drinking liquor, can absorb more alcohol, without showing the effects of it, than a person who has not been accustomed to it? A. Why, that is generally so

considered by most physicians. It is a well known fact that those people can drink a great deal more than ordinary people.

Mr. Watson: This is the will your Honor permitted to be marked for Identification.

(Will marked D-1 for Identification, 9/11/23.)

WILLIAM H. K. DAVEY, recalled:

Direct Examination by Mr. Strong:

Q. Mr. Davey, do you know Doctor Elis, who has testified here as an expert? A. I do.

Q. Did you ever have any conversation with him respecting Doctor Charles M. Freeman's mental capacity? A. I did.

Q. Prior to his appearing here in court as a witness? A. I did. It was in the latter part of March, or the very first of April of this year.

Q. And in the course of that conversation was anything said with respect to these efforts to commit Doctor Freeman to the asylum? A. Stated that he had a number of times—

Mr. Brown: I object to the question. This, as I understand it, is contradicting another witness. A foundation has been laid for the question, or should be laid, and then the question should be put to this witness just as it was to the other one.

Mr. Strong: I will withdraw that.

Q. State whether or not Doctor Elis said to you, that on several occasions he had refused to sign

papers for the purpose of committing Doctor Freeman to the asylum? A. He did. I think his exact language was that he had refused a number of times.

Q. State whether or not he expressed his opinion of Doctor Freeman's testamentary capacity? A. He did.

The Court: I will not permit that.

Mr. Strong: We make the offer to show that Doctor Ellis stated that he believed that Doctor Freeman possessed testamentary capacity.

The Court: There is no contradiction. Doctor Elis, on his own examination, did not deny that he had so stated to Mr. Davey. He said he couldn't remember whether he had told Mr. Davey that he did not consider Doctor Freeman incompetent, or not. So there is no foundation laid for any contradiction.

Mr. Strong: We offer to make that proof now, that he did make that statement.

The Court: Yes. The offer is overruled.

Mr. Strong: Cross examine.

Mr. Brown: No questions.

Mr. Watson: No questions.

Mr. Strong: We offer the will.

The Court: That has been offered.

Mr. Strong: We offer a certified copy of the record of Doctor Freeman's commitment to the asylum, and that was admitted in evidence.

The Court: I want to make the suggestion, Senator, why don't you take your list that you have there, and examine it in connection with the record, and if there is anything you failed to offer, it may be offered

next Monday morning. We may have two or three offers of the same thing. That will apply, of course, to both sides. If there are any records you want to offer, it can be done next week.

Mr. Strong: I wanted to ask Mr. Davey one question:

Q. At the time Doctor Elis had this conversation with you, that we have just spoken of, was Mr. Harry Mohring present? A. He was.

Q. Where is he at the present time? A. He is sick in Bayonne, 37 East 35th Street, Bayonne, his father's home.

Q. And unable to be here? A. Sick in bed.

Mr. Strong: That is all.

The Court: I suppose counsel will want to call Mr. Mohring for the purpose of corroborating. Are counsel willing to admit if Mr. Mohring was here present, that he would testify that Doctor Ellis had said in his presence that he had several times refused to sign commitments?

Mr. Brown: That he would testify to that if he was here. As to whether it is true, or not, we make no admissions.

Mr. Watson: We agree to that.

The Court: That ends that. There is nothing further this afternoon then, is there?

Adjourned until Monday, September 17th, 1923, at 10.00 A. M.

Sept. 17, 1923.

Mr. Watson: I find this bundle of twelve checks were marked for identification C4, on May 4th, 1923, but were not later actually marked in evi-

dence. They were considered as if in evidence, but they were not actually marked. May we have them marked?

Mr. Davey: In that connection, the will of October 4th was offered, and objection was made to it by myself, and decision as to its admissibility reserved by your Honor. I would like permission to withdraw that objection and ask that the will be marked in evidence.

Mr. Watson: We withdraw the offer.

The Court: Can you do that?

Mr. Strong: Not after the objection is withdrawn, I guess.

Mr. Watson: I think it is entirely immaterial one way or the other. I had decided not to pursue it.

The Court: Let the will go in anyway.

(Bundle of 11 checks, heretofore marked C4 for identification, 5/4/23, entered in evidence and marked Exhibit C4, 9/17/23.)

(Will dated October 4th, 1923, and marked D1 for identification, entered in evidence and marked Exhibit D1, 9/17/23.)

Mr. Strong: I asked the other day if Miss Nellie Freeman was in court, I wanted to ask her a question; that was the time Mr. Mohring was sick; and I offer now to prove by Mr. Mohring that Miss Nellie Freeman wrote a letter to the witness Lettie Patterson, since the beginning of this litigation, in which she stated that she and her sisters would provide a home for Lettie Patterson, and that she need worry about nothing. And I am perfectly willing that the other side should have time to produce Miss Freeman to contradict it, if she cares to. I have tried to find where Lettie Patterson was, to bring her here, and I have not been able to.

The Court: The best evidence as to that would be the letter, and there has been no offer here to produce the letter.

Mr. Strong: Of course, the letter is in Lettie's possession, and we have tried to ascertain where she was, and Mr. Mohring was sick for about a week, and that is the reason.

The Court: I do not see what bearing it would have on the case anyway, Senator. Even if the testimony was relevant, I cannot see that it would have any particular bearing, because the testimony given by Miss Nellie Freeman amounted to practically nothing anyway, so far as this case is concerned. And aside from that, it is the natural thing that the Freeman sisters, being the last of the family, would provide for Lettie Patterson, she having been an old family servant.

Mr. Strong: It would show Lettie's interest on their behalf. She sat with them during the case here. And also testified in a manner different from what she had led us to believe she would testify. We were surprised by her testimony, in other words.

The Court: I overrule the offer.

Mr. Strong: I tried last Saturday to get your Honor's office on the telephone several times, to say that I had found this task of briefing and preparing for argument in this case vastly greater than I had any conception of at all. I worked every day I could get last week, and Saturday all day, in the afternoon too, and yesterday morning and afternoon and evening. It is not in the shape I would like to have it, but it is an immense job to present the case as it should be presented, and I will try not to take a moment more than I can help, yet I trust your Honor will grant me more time than I thought I could finish in the other day. I do not think I could make it in an hour.

The Court: I am not going to stop anybody in the midst of an argument.

Mr. Davey opens the case on behalf of the proponents.

The Court: Do you have any particular significance in your statement that your contention was that Doctor Freeman knew his family and knew and comprehended his property? Is there any significance in the fact that you left the word "comprehended" out of the designation of his mental attitude toward the family? Or was that an inadvertence?

Mr. Davey: In our questions of cross examination to the Doctor we used the very language of the cases.

The Court: I mean your argument just now.

Mr. Davey: We argue that they in flat terms contradict, or express their belief, or do not agree with the well known rules of law, in the very words laid down by the cases. I do not think it is of very great importance. They did not agree either that he could be, or was competent to execute a will on the 4th of October, yet it is a fact that under the supervision of his own counsel, such a will was executed. Those go perhaps much more to the weight to be given to Doctor Cotton's and Doctor Ramsay's evidence, than they do to its character.

Mr. Brown argues the case on behalf of the Caveator, Mary E. Wilkins Freeman.

Mr. Watson argues the case on behalf of the Caveators, Nellie B. Freeman, et als.

Adjourned until 2:00 p. m.

Afternoon Session, 2:00 p. m.

Mr. Strong argues the case for the proponents.

The Court: I will not decide this case to-day. Have your final briefs in my hands next Monday, September 24th, 1923.

Mr. Watson: I wish it noted on the record that this will of October 4th, 1921, is lodged in the possession of the Surrogate.

Exhibit P-1 for Identification.

This is to direct and authorize Russell E. Watson, my trustee, in behalf of Manning Freeman and Son, Inc., to settle with John W. Breen his claim against the company for certain stock loaned by him to the company, to wit: twenty shares of United Drug common stock, by paying to the said John W. Breen out of the company's funds the sum of Twenty-five hundred Dollars.

John W. Breen is to assign the said stock absolutely to the company, and is to convey and transfer to the company all lands and other property now in his name belonging to the company.

Dated, Aug. 7, 1922.

Exhibit P-2 for Identification.

COPY of letter

WATSON to Dr. Cotton.

(Letter head of Watson firm.)

September 8, 1921.

Dr. Henry A. Cotton,
New Jersey State Hospital,
Trenton, N. J.

Dear Doctor Cotton:

I represent Dr. Charles M. Freeman, of Metuchen, New Jersey, who was recently committed to the State Hospital at Trenton and is now confined there.

I have known Dr. Freeman for several years, during which time I have had occasion to meet him fre-

quently both in a personal and professional way. As a result of that intercourse I am certain that he is not of unsound mind.

I would like an opportunity to confer with you with reference to his case. Could you see me either Monday or Tuesday of next week at your office, and if so at what hour?

Thanking you for your courtesy and with kind personal regards,

Yours very truly,

RUSSELL E. WATSON.

Exhibit P-3.

MEMORANDUM OF AGREEMENT, made and entered into this Fifteenth day of May, Nineteen hundred and twenty-two, between RUSSELL E. WATSON, of the Borough of Highland Park, County of Middlesex, and State of New Jersey, party of the first part: and CHARLES M. FREEMAN, of the Borough of Metuchen, County of Middlesex, and State of New Jersey, party of the second part:

WHEREAS, Charles M. Freeman has this day transferred and assigned to the said Russell E. Watson, all his holdings of the capital stock of Manning Freeman and Son, Inc., a corporation, consisting of two thousand (2000) shares of preferred stock, and nine hundred ninety eight (998) shares of common stock, which transfer and assignment is intended to be upon the trusts hereafter designated, limited and declared, that is to say:

1. Said Russell E. Watson will hold legal title

to the said shares of stock and will receive and collect all dividends which may be declared and paid thereon, and will faithfully account to the said Charles M. Freeman therefor.

2. The said Russell E. Watson will vote upon the said stock at all meetings, annual or special, of the stockholders of the said company, in such a manner as in his judgment will be for the best interests of the said Charles M. Freeman.

3. The trust hereby acknowledged and declared will continue for the term of one year from the date hereof, during which time it will be irrevocable.

4. The said Russell E. Watson will by virtue of his control of the said stock cause himself to be elected a director and officer of the Company with power and authority to supervise and have control of the financial affairs of the company, including the countersignature of all checks, notes and negotiable instruments, which may be issued by the Company.

5. The salary and perquisites of the said Charles M. Freeman, as president of Manning Freeman and Son, Inc., shall continue as heretofore and may be reduced only with the consent and approval of the said Charles M. Freeman.

6. The said Russell E. Watson as such trustee shall receive reasonable compensation for his services, which compensation shall be subject to the approval of the said Charles M. Freeman.

7. The said Russell E. Watson will retransfer and reassign to the said Charles M. Freeman the said shares of stock, preferred and common, upon the fifteenth day of May, 1923.

8. The said Russell E. Watson agrees to give to the said Charles M. Freeman a bond with an ap-

proved Company as surety, in the penal sum of Twenty five thousand Dollars, conditioned upon the faithful performance by him of his duties, as a trustee under this Declaration of Trust.

9. The said Charles M. Freeman hereby consents to the terms of this Declaration of Trust.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, the day and year first above written.

RUSSELL E. WATSON (L. S.)
CHARLES M. FREEMAN (L. S.)

Signed, sealed and delivered
in the presence of

JAMES LORD,
D. P. JOHNSON.

State of New Jersey, }
County of Middlesex, } ss.:

BE IT REMEMBERED that on this fifteenth day of May, in the year of our Lord One thousand nine hundred and twenty-two, before me, the subscriber, a Notary Public of New Jersey, personally appeared Russell E. Watson, who, I am satisfied is the person mentioned in the within instrument to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

MARGARET A. HARKINS,
Notary Public of N. J.

State of New Jersey, }
County of Middlesex, } ss.:

BE IT REMEMBERED, that on this fifteenth day of May, in the year of our Lord One thousand nine hundred and twenty-two, before me, the subscriber, a Notary Public of New Jersey, personally appeared Charles M. Freeman, who I am satisfied is the person mentioned in the within instrument to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

MARGARET A. HARKINS,
Notary Public of N. J.

Exhibit P-4 for Identification.

IT IS HEREBY AGREED, by and between the undersigned, that a certain "Memorandum of Agreement," made, executed and acknowledged by the undersigned under date of May 15th, 1922, is hereby terminated, cancelled and of no further force or effect.

Dated

IN WITNESS WHEREOF we have hereunto set our hands and seals, at Highland Park, this day of June, 1922.

CHARLES M. FREEMAN (L. S.)

Signed, sealed and delivered
in the presence of

Exhibit P-5 for Identification.

RUSSELL E. WATSON, Esq.,
Highland Park, N. J.

Sir:

PLEASE TAKE NOTICE that because of your failure to comply with the provisions of paragraph 8, of a "Memorandum of Agreement" dated May 15, 1922, signed by you and by myself, and to give to me the bond in the penal sum of twenty-five thousand dollars, conditioned as in said paragraph provided, I hereby rescind the said "agreement" and declare the same breached, and HEREBY DEMAND that you forthwith reassign and deliver to me Two Thousand shares of the Preferred Stock and Nine hundred ninety-eight shares of the common stock of the corporation "MANNING FREEMAN & SON, INC."

AND TAKE NOTICE that I further demand that you forthwith account to and pay over to me any and all moneys collected or received by you as dividends or otherwise from the said corporation.

AND TAKE FURTHER NOTICE that I demand that you forthwith execute and deliver to me your resignation as a director and officer of the said corporation, if such you be.

AND TAKE FURTHER NOTICE that I demand that you forthwith deliver to me, as President of the said corporation all books, papers, records, documents, accounts, bills and other property in your possession, and in case you have instituted actions for the collection of any bills, then written consents to the substitution of another attorney in such actions.

AND TAKE FURTHER NOTICE that I demand that you forthwith furnish me with full and detailed information as to every act or thing that you have done, in the name of the said corporation or as an officer thereof, including a full statement of all checks, notes or negotiabe instrument countersigned by you, and which have been or may have been issued by the said corporation.

AND TAKE FURTHER NOTICE that in case of your failure or refusal to comply with the foregoing demands, I shall without further notice take such action against you as I may be advised.

Dated, June 21, 1922.

Yours, etc.,

CHARLES M. FREEMAN.

Exhibit P-6 for Identification.

R. E. & A. D. WATSON
Counsellors at Law
41-43 Paterson Street,
New Brunswick, N. J.

June 16, 1922.

Dr. C. M. Freeman,
Metuchen, N. J.

Freeman Matter.

Dear Dr. Freeman:

I enclose herewith Bond given by me to you, with the National Surety Company as surety, in the

amount of $25,000.00, pursuant to our Declaration of Trust, dated May 15, 1922.

This is the original document and ought to be preserved by you with great care. I suggest that you annex it to the original Declaration of Trust, and place it in a safe deposit box.

Yours very truly,

RUSSEL E .WATSON.

REW*MAH.
Encl.

Exhibit P-7 for Identification.

KNOW ALL MEN BY THESE PRESENTS, That, RUSSELL E. WATSON, of the Borough of Highland Park, in the County of Middlesex, and State of New Jersey, as principal, and the NATIONAL SURETY COMPANY, a corporation of the State of New York, and authorized to do business in the State of New Jersey, as Surety, are held and firmly bound unto CHARLES M. FREEMAN of the Borough of Metuchen, in the County of Middlesex and State of New Jersey, in the sum of TWENTY-FIVE THOUSAND DOLLARS ($25,000.00), lawful money of the United States of America, to be paid to the said CHARLES M. FREEMAN, his executors, administrators or assigns; to which payment well and truly to be made, the said RUSSELL E. WATSON binds himself, his heirs, executors, administrators, successors and assigns, and the said NATIONAL SURETY COMPANY binds itself, its successors and assigns, jointly and severally, firmly by these presents.

SEALED with our Seals and dated the TENTH day of JUNE, in the year of Our Lord one thousand nine hundred and twenty-two.

WHEREAS, RUSSELL E. WATSON and CHARLES M. FREEMAN entered into an agreement of trust whereby the said CHARLES M. FREEMAN transferred and assigned to the said RUSSELL E. WATSON all his holding of the stock of Manning Freeman and Son, Inc., a corporation organized under the laws of the State of New Jersey, upon certain trusts therein set forth, a copy of the Declaration of Trust being hereunto annexed and made a part hereof;

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above bounden, RUSSELL E. WATSON, shall faithfully perform his duties as trustee under the said agreement of trust, and shall keep and observe the covenants and agreements entered into by him and by the said declaration of trust, without any fraud or other delay, this obligation to be void, or else to be and remain in full force and virtue.

RUSSELL E. WATSON.

NATIONAL SURETY COMPANY,
By FRANKLIN M. WOLF,
Resident Vice President.

Attest: ALBERT MEYER,
Resident Assistant Secretary.

Signed, sealed and delivered
in the presence of:

JAS. A. O'CONNELL,
Res. Agent.

State of New Jersey,
County of Essex, } ss.:
City of Newark,

On this 10th day of June, 1922, before me, the subscriber, a commissioner of deeds of New Jersey duly commissioned and sworn, personally came Albert Meyer who, being by me duly sworn, on his oath, saith: That he is the Resident Assistant Secretary of the NATIONAL SURETY COMPANY of the State of New York, and that he resides in the City of Newark, New Jersey; that he knows Franklin M. Wolf, Resident Vice President of the NATIONAL SURETY COMPANY, and he knows, too, the corporate seal of the said Company; that the seal affixed to the foregoing instrument is such corporate seal; and it was affixed by the said Resident Vice President and the said Instrument signed by the said Resident Vice President as Resident Vice President of said Company, attested by deponent as Resident Assistant Secretary by order of the Board of Directors of said Company in deponent's presence as the voluntary act and deed of said Company; that said Company has duly complied with all the requirements of Chapter 134 of the Laws of the State of New Jersey of the year 1902; that the good available assets of the Company exceed its liabilities, as such liabilities are ascertained in the manner provided in said Chapter; that the NATIONAL SURETY COMPANY is duly incorporated under the laws of the State of New York, and is authorized by the laws of that State and under its charter to become surety on bonds and obligations such as are mentioned in said Chapter; and has on deposit with the Superintendent of Insurance of the State of New York, good securities worth at par and at market value at least Two Hundred Thousand Dollars ($200,000) held for the

security of its obligations and has a fully paid up, safely invested, and unimpaired capital of Five Million Dollars, and said Company has appointed the Commissioner of Banking and Insurance of New Jersey and his successor in office as its true and lawful Attorney in the State of New Jersey, upon whom process of law can be served, and has filed in the office of the Commissioner of Banking and Insurance, a written instrument duly signed and sealed, certifying such appointment, together with the residence and office of such Attorney, within the State of New Jersey; and that the following is a true copy of a By-Law duly adopted by the Board of Directors of the said NATIONAL SURETY COMPANY on the 6th day of February, 1912, at a regular meeting, to wit:

ARTICLE XIII.

SECTION 1. *Signatures required.*—All bonds, recognizances, or contracts of indemnity, policies of insurance, and all other writings obligatory in the nature thereof, shall be signed by the President, a Vice-President, a Resident Vice-President, or Attorney-in-Fact, and shall have the seal of the Company affixed thereto, duly attested by the Secretary, an Assistant Secretary, or Resident Assistant Secretary. All Vice-Presidents and Resident Vice-Presidents shall each have authority to sign such instruments, whether the President be absent or incapacitated, or not, and the Assistant Secretaries and Resident Assistant Secretaries shall each have authority to seal and attest such instruments, whether the Secretary be absent or incapacitated, or not; and the Attorneys-in-Fact shall each have authority, in the discretion of such Attorneys-in-Fact, to affix to such instruments an impression of the Company's seal, whether the Secretary be ab-

sent or incapacitated, or not, or to attach the individual seal of the Attorneys-in-Fact thereto, or to use the scroll of the Attorneys-in-Fact, or a wafer, wax, or other similar adhesive substance affixed thereto, or a seal of paper or other similar substance affixed thereto by mucilage, or other adhesive substance, or use the word "seal" or the letters "L. S." opposite the signature of such Attorneys-in-Fact, as the case may be.

ALBERT MEYER,
Resident Assistant Secretary.

Sworn and subscribed in the City of Newark in the County of Essex and State of New Jersey this 10th day of June A. D. 1922, before me, a Commissioner of Deeds of New Jersey, duly commissioned and sworn.

HELEN HENNESSY,
A Commissioner of Deeds of New Jersey.

KNOW ALL MEN BY THESE PRESENTS, that RUSSELL E. WATSON, of the Borough of Highland Park, in the County of Middlesex, and State of New Jersey, as principal, and the NATIONAL SURETY COMPANY, a corporation of the State of New York, and authorized to do business in the State of New Jersey, as Surety, are held and firmly bound unto CHARLES M. FREEMAN, of the Borough of Metuchen, in the County of Middlesex and State of New Jersey in the sum of TWENTY-FIVE THOUSAND DOLLARS ($25,000.00), lawful money of the United States of America, to be paid to the said CHARLES M. FREEMAN, his executors, administrators or assigns; to which payment well and truly to be made, the said RUSSELL E. WATSON binds himself his

heirs, executors, administrators, successors and assigns, and the said NATIONAL SURETY COMPANY binds itself, its successors and assigns, jointly and severally, firmly by these presents.

SEALED with our seals and dated the tenth day of June, in the year of Our Lord one thousand nine hundred and twenty-two.

WHEREAS, Russell E. Watson and Charles M. Freeman entered into an agreement of trust whereby the said Charles M. Freeman transferred and assigned to the said Russell E. Watson all his holdings of the stock of Manning Freeman and Son, Inc., a corporation organized under the laws of the State of New Jersey, upon certain trusts therein set forth, a copy of the Declaration of Trust being hereunto annexed and made a part hereof;

NOW, therefore, THE CONDITION OF THIS OBLIGATION IS SUCH that if the above bounden, Russell E. Watson, shall faithfully perform his duties as trustee under the said agreement of trust, and shall keep and observe the covenants and agreements entered into by him and by the said declaration of trust, without any fraud or other delay, this obligation to be void, or else to be and remain in full force and virtue.

RUSSELL E. WATSON.

Signed, sealed and delivered
in the presence of

JAS. A. O'CONNELL,
Res. Agent.

NATIONAL SURETY COMPANY,
By ARTHUR M. WOLF,
Resident Vice-President.

(Seal)

Attest: ALBERT MEYER,
Resident Assistant Secretary.

State of New Jersey,
County of Essex,
City of Newark, } ss.:

On this 10th day of June, 1922, before me, the subscriber, a Commissioner of Deeds of New Jersey, duly commissioned and sworn, personally came Albert Meyer, who, being by me duly sworn, on his oath, saith: That he is the Resident Assistant Secretary of the National Surety Company, of the State of New York, and that he resides in the City of Newark, New Jersey; that he knows Franklin M. Wolf, Resident Vice-President of the National Surety Company, and he knows, too, the corporate seal of the said company; that the seal affixed to the foregoing instrument is such corporate seal; and it was affixed by the said Resident Vice President and the said instrument signed by the said Resident Vice President as Resident Vice President of said company, attested by deponent as Resident Assistant Secretary by order of the Board of Directors of said company in deponent's presence as the voluntary act and deed of said company; that said company has duly complied with all the requirements of Chapter 134 of the Laws of the State of New Jersey of the year 1902; that the good available assets of the company exceed its liabilities, as such liabilities are ascertained in the manner provided in said Chapter; that the National Surety Company is duly incorporated under the laws of the State of New York, and is authorized by the laws of that State and under its charter to become surety on bonds and obligations such as are mentioned in said Chapter; and has on deposit with the Superintendent of Insurance of the State of New York, good securities worth at par and at market value at least Two hundred thousand Dollars ($200,000) held for the security of its obliga-

tions and has a fully paid up, safely invested, and unimpaired capital of Five Million Dollars, and said Company has appointed the Commissioner of Banking and Insurance of New Jersey and his successor in office as its true and lawful attorney in the State of New Jersey, upon whom process of law can be served, and has filed in the office of the Commissioner of Banking and Insurance, a written instrument duly signed and sealed, certifying such appointment, together with the residence and office of such attorney, within the State of New Jersey; and that the following is a true copy of a by-law duly adopted by the Board of Directors of the said National Surety Company on the 6th day of February, 1912, at a regular meeting to wit:

ARTICLE XIII.

SECTION 1. *Signatures required.*—All bonds, recognizances, or contracts of indemnity, policies of insurance, and all other writings obligatory in the nature thereof, shall be signed by the President, a Vice-President, a Resident Vice-President or Attorney-in-Fact, and shall have the seal of the company affixed thereto, duly attested by the Secretary, an Assistant Secretary, or Resident Assistant Secretary. All Vice-Presidents and Resident Vice-Presidents shall each have authority to sign such instruments, whether the President be absent or incapacitated, or not, and the Assistant Secretaries and Resident Assistant Secretaries shall each have authority to seal and attest such instruments, whether the Secretary be absent or incapacitated, or not; and the Attorneys-in-Fact shall each have authority, in the discretion of such Attorneys-in-Fact, to affix to such instruments an impression of the Company's seal, whether the Secretary be absent or not, or incapacitated, or to attach the

individual seal of the Attorneys-in-Fact thereto, or to use the scroll of the Attorneys-in-Fact, or a wafer, wax, or other similar adhesive substance, affixed thereto, or a seal of paper or other similar substance affixed thereto by mucilage, or other adhesive substance, or use the word "SEAL" or the letters "L. S." opposite the signature of such attorney-in-Fact, as the case may be.

ALBERT MEYER,
Resident Assistant Secretary.

Sworn and subscribed in the City of Newark in the County of Essex and State of New Jersey this 10th day of June A. D. 1922, before me, a Commissioner of Deeds of New Jersey, duly commissioned and sworn.

HELEN HENNESSY,
A Commissioner of Deeds of New Jersey.

Exhibit P-8.

IN CHANCERY OF NEW JERSEY.

In the Matter of CHARLES M. FREEMAN.	On Habeas Corpus. Order for Discharge.

The body of Charles M. Freeman, in the writ of habeas corpus above mentioned, having been brought before this court at the time and place in the said writ directed and the return to the said

writ having been read and considered, and the testimony of Dr. E. B. Funkhouser and Dr. C. Rostow, having been adduced and it appearing to the Chancellor that the said Charles M. Freeman is sane and should be released and discharged.

It is, on this third day of October, nineteen hundred and twenty-one, ORDERED, that the said Samuel T. Atchley, Chief Executive officer of the New Jersey Hospital at Trenton, and Henry A. Cotton, Medical Director of the New Jersey State Hospital at Trenton, do forthwith discharge and release the said Charles M. Freeman from confinement at the said New Jersey State Hospital at Trenton.

E. R. WALKER,
C.

Respectfully advised:

MALCOLM G. BUCHANAN.
V. C.

A true Copy.

JESSE R. SALMON,
Clerk.

IN CHANCERY OF NEW JERSEY.

TO THE HONORABLE EDWIN ROBERT WALKER, CHANCELLOR OF THE STATE OF NEW JERSEY.

The petition of Charles M. Freeman, of the Borough of Metuchen, in the County of Middlesex and State of New Jersey, respectfully shows:

1. Petitioner is confined in the State Hospital at Trenton and is restrained of his liberty by Samuel

T. Atchley, Chief Executive Officer of the said State Hospital and Henry A. Cotton, Medical Director of the said State Hospital.

2. Petitioner was committed to the said New Jersey State Hospital at Trenton, on August 23, 1921, upon the application of petitioner's wife, Mary E. Wilkins Freeman, to the best of petitioner's knowledge and belief. No final hearing upon the said application has been held and petitioner has not been adjudicated insane.

3. Annexed hereto is a copy of the papers by virtue of which petitioner is confined as aforesaid.

4. Petitioner's confinement and imprisonment as aforesaid are illegal in that petitioner is of sound mind.

Petitioner prays that a writ of habeas corpus be issued out of this Honorable Court directed to the said Samuel T. Atchley, Cheif Executive Officer of the New Jersey State Hospital at Trenton, and Henry A. Cotton, Medical Director of the said Hospital, requiring them to have petitioner before your Honor in this Honorable Court at a certain time and place to be expressed therein, with the cause of petitioner's taking and detention; and to do, submit and receive whatsoever this Honorable Court shall then and there consider of them in this behalf.

And your petitioner will ever pray, &c.

CHARLES M. FREEMAN,
Petitioner.

Exhibit P-8.

State of New Jersey, }
County of Mercer, } ss.:

Charles M. Freeman, being duly sworn, according to law on his oath deposes and says that he is the petitioner named in the foregoing petition; that the matters and things set forth in the said petition are true.

CHARLES M. FREEMAN.

Sworn and subscribed before me this
27th day of Sept. A. D., 1921.

RUSSELL WATSON,
Master in Chancery of New Jersey.

A True Copy.

JESSE H. SALMON,
Clerk.

IN CHANCERY OF NEW JERSEY.

In the Matter of CHARLES M. FREEMAN.	On Habeas Corpus. Order.

This matter being opened to the court by Russell E. Watson, of R. E. & A. D. Watson, solicitors for Charles M. Freeman, and the petition of the said Charles M. Freeman having been read and considered,

It is on this twenty-seventh day of September, nineteen hundred and twenty-one, ORDERED that

a writ of habeas corpus issue directed to Samuel T. Atchley, Chief Executive Officer of the New Jersey State Hospital at Trenton, and to Dr. Henry A. Cotton, Medical Director of said Hospital, commanding them to have Charles M. Freeman, before this court on Wednesday, the twenty-eighth day of September, nineteen hundred and twenty-one, at two o'clock in the afternoon, with the cause of his taking and detention, and to do, submit to and receive whatsoever shall be ordered by this court.

E. R. WALKER,
C.

Respectfully advised:

MALCOLM G. BUCHANAN,
V. C.

A true Copy.

JESSE R. SALMON,
Clerk.

THE STATE OF NEW JERSEY*

New Jersey, ss.:

TO Samuel T. Atchley, Chief Executive Officer of the New Jersey State Hospital at Trenton, and Dr. Henry A. Cotton, Medical Director of The New Jersey State Hospital at Trenton.

(L. S.)

We command you that you have the body of Charles M. Freeman by you restrained of his liberty and detained in your custody as is said, by whatsoever name he may be called and known, to-

gether with the day and cause of his being taken and detained by you or either of you before the Chancellor (or such Vice-Chancellor as may sit for him) at the State House in the City of Trenton on Wednesday the twenty-eighth day of September, nineteen hundred and twenty-one at two o'clock in the afternoon of said day, then and there to do, submit to and receive whatsoever our said Chancellor shall then and there consider in that behalf.

WITNESS, Edwin Robert Walker, Chancellor of the State of New Jersey, at Trenton, this twenty-eighth day of September, nineteen hundred and twenty-one.

JESSE R. SALMON,
Clerk.

R. E. & A. D. WATSON,
Solicitors.

A true Copy.

JESSE R. SALMON,
Clerk.

State of New Jersey, }
County of Middlesex, } ss.:

Russell E. Watson, being duly sworn, according to law, on his oath deposes and says that he is one of the Solicitors for Charles M. Freeman, the petitioner, and the person named in the writ of habeas corpus, of which the annexed is a true copy.

Deponent further says that he went to the New Jersey State Hospital at Trenton on September 28, 1921, for the purpose of serving the said writ; that deponent was informed at the

office that Samuel T. Atchley was not at his office because of illness, that Dr. Henry A. Cotton was in New York City, and that the Institution was in charge of Dr. E. B. Funkhouser whereupon deponent served the said writ of habeas corpus upon the said Dr. E. B. Funkhouser of reading the same to him and delivering the original to him.

RUSSELL E. WATSON.

Sworn and subscribed before me this
28th day of Sept. A. D., 1921.

MARGARET A. HARKINS,
Notary Public of N. J.

A true Copy.

JESSE R. SALMON,
Clerk.

IN CHANCERY OF NEW JERSEY.

To the Honorable Edwin Robert Walker,
Chancellor of New Jersey:

We, Samuel T. Atchley, Chief Executive Officer of the New Jersey State Hospital at Trenton, and Dr. Henry A. Cotton, Medical Director of the New Jersey State Hospital, at Trenton, to whom the within Writ is directed for return thereto, have the body of the said Charles Manning Freeman as therein we are directed; and we do further certify that he is detained in custody at the New Jersey State Hospital at Trenton by virtue of a temporary Order "Class C" approving admission of the said

Charles Manning Freeman, the patient, providing for his detention until final hearing and fixing time and place of said hearing, in accordance with Chapter 147 of the Laws of 1918, as amended by Chapter 97 of the Laws of 1919, page 232, etc., which said Order was made on September 3, 1921, by the Honorable Frank L. Cleary, Judge of the Court of Common Pleas sitting in Middlesex County at New Brunswick, and made returnable for final hearing as in the statute made and provided on September 9, 1921, a copy of which temporary Order is hereto annexed; the original of which is herewith produced and exhibited, which is the cause of his detention; and we do further certify that any continuances in the matter of the commitment of the said Charles Manning Freeman from and after September 9, 1921, as aforesaid, as provided by section 416 of said statute, as amended by the Session Laws of 1919, page 434, etc., will appear of record as endorsed on a certified copy of the application for commitment as shall appear of record in the office of the County Adjuster in the Court House of the County of Middlesex at New Brunswick, New Jersey.

Dated, September 28, 1921.

THOMAS F. McCRAN,
Attorney General, Attorney for Respondents.

Exhibit P-8.

(COPY)

Order Approving Admission of Patient; providing for Patient's Detention until Final Hearing and Fixing Time and Place of said Hearing.

(To be used in "Class C" cases only.)

STATE OF NEW JERSEY,

COUNTY OF MIDDLESEX.

Before—FRANK L. CLEARY, Judicial Officer.
CHAS. M. MACWILLIAM, County Adjuster.

if the County of ..... having presented to me a certified copy of the application of Mary Wilkins Freeman requesting the admission to and confinement in the New Jersey State Hospital, at Trenton, of Chas. Manning Freeman, hereinafter called the "patient" as an insane person; also, a certified copy of certificates, under oath, of W. E. Ramsay and J. V. Shull, duly qualified physicians of the State of New Jersey, setting forth that, in their judgment, the said patient is insane and that his condition was such that he should be placed under immediate restraint and confinement in an institution for the insane in order to prevent him from doing harm to himself or others, and it appearing from said Application that it was impossible to obtain an Order of Temporary Commitment from a judge of any court of record in the County, in which the said patient was at the time of the said application for admission and it appearing that said patient was admitted to the New Jersey State Hospital, at Trenton, on the 23rd day of August, 1921, by virtue of said Application and Physicians' Certificates and is now confined therein, and application now being made for an Order

of Temporary Commitment, approving the admission and confinement of said patient, providing for his detention therein until final hearing to determine his legal settlement and indigency and fixing the time and place for such hearing.

Now, therefore, I do hereby order that the admission and confinement of said patient in the said institution by virtue of said application for admission and said certificates of two physicians, be approved and that said patient be detained in said institution pending final inquiry, for a period not exceeding twenty days from the date of the admission of such patient, or until further order in this proceeding as provided by statute, unless such patient is otherwise released by due process of law and it is further

ORDERED, that final hearing to determine the sanity, legal settlement and indigence of said patient, be held before the Court of Common Pleas at New Brunswick, in the County of Middlesex, on the 9th day of September, 1921, and it is further

ORDERED, that the County Adjuster of the County of Middlesex serve or caused to be served on said patient personally, or on his attorney, at least one day before the date of holding said final hearing, a notice in writing, setting for the time, place and purpose of said hearing and containing a statement that if said patient desires to oppose the application for a final order committing him to said institution, as an insane person he may appear personally or by attorney at the time and place fixed, and it is further

ORDERED, that at least two days' notice, of the time, place and purpose of this hearing be served

upon or mailed to Mary W. Freeman, the applicant herein and upon .....
.....

(Husband or wife, or nearest Relative of Patient, if applicant be other than such)

And it is further

Ordered, that at least days before the final hearing, notice, by personal service or by registered mail, be given to .....
.....

(Husband, Wife, Parents, Grandparents, Children or Grandchildren of Patient)

informing that, at said final hearing, if said patient is found to be an insane person and ordered committed to aforesaid institution and said patient's estate is not sufficient to pay for maintenance therein, said relatives severally and respectively, will be sought to be charged therewith, as provided by statute.

Dated, Sept. 3rd, 1921.

FRANK L. CLEARY.

Exhibit P-8.

THE STATE OF NEW JERSEY

New Jersey, ss.:

TO Samuel T. Atchley, Chief Executive Officer of the New Jersey State Hospital at Trenton, and Dr. Henry A. Cotton, Medical Director of The New Jersey State Hospital at Trenton.

(L. S.)

We command you that you have the body of Charles M. Freeman, by you restrained of his liberty and detained in your custody, as is said, by whatsoever name he may be called and known, together with the day and cause of his being taken and detained by you or either of you before the Chancellor (or such Vice Chancellor as may sit for him) at the State House in the City of Trenton on Wednesday, the twenty-eighth day of September, nineteen hundred and twenty-one at two o'clock in the afternoon of said day, then and there to do, submit and receive whatsoever our said Chancellor shall then and there consider in that behalf.

WITNESS, Edwin Robert Walker, Chancellor of the State of New Jersey, at Trenton, this twenty-eighth day of September, nineteen hundred and twenty-one.

JESSE R. SALMON,
Clerk.

R. E. & A. D. WATSON,
Solicitors.

A true Copy.

JESSE R. SALMON,
Clerk.

Exhibit P-8.

IN CHANCERY OF NEW JERSEY.

In the Matter of CHARLES M. FREEMAN.	On Petition. Testimony.

Testimony taken in the above entitled cause, at the State House, Trenton, New Jersey, on Wednesday, the twenty-eighth day of September, 1921, at Two o'clock, P. M.

Before—Hon. MALCOLM G. BUCHANAN,
Vice Chancellor.

APPEARANCE:

RUSSELL E. WATSON, Esquire, for Petitioner.

EDGAR B. FUNKHOUSER, a witness on behalf of the petitioner, being duly sworn testifies as follows:

Direct Examination by Mr. Watson:

Q. Dr. Funkhouser, you are a physician? A. Yes, sir.

Q. You are on the medical staff of the State Hospital at Trenton? A. I am.

Q. How long have you been engaged in that practice, Doctor? A. About seventeen years.

Q. How long have you been at the State Hospital at Trenton? A. Seventeen years.

Q. Do you know Charles F. Freeman of Metuchen? A. I do.

Q. He is here today? A. Yes.

Q. He was admitted to the institution on August 23rd, was he not? A. He was.

Q. Did you see him on that day, Doctor? A. No, I didn't.

Q. Well, soon after that? A. Soon after that.

Q. And you examined him? A. Yes.

Q. And have you examined him since then from time to time? A. I have.

Q. He has been under your professional care? A. He has.

Q. Dr. Rostow has also had something to do with the professional care of Mr. Freeman, has he not? A. He has.

By the Court:

Q. Any other? A. Other members of the staff, yes, Dr. Barry has seen him, too; in fact, all the members of the staff on our side of the house. The patients have to go through daily—

Q. Which physicians have seen him most frequently? A. I believe Dr. Rostow has seen him as much as any physician on the staff.

Q. More than yourself, Dr. Funkhouser? A. Probably more frequently, yes.

Q. What is Dr. Freeman's mental condition? A. Do you mean today of the time he came to us?

Q. Today.

The Court: I think we might as well start at the beginning.

Mr. Watson: All right.

Q. What was his condition at the time he came to you? A. It seemed to me that when Dr. Freeman came to us he was very nervous. He was apparently a sick man, physically and otherwise.

By the Court:

Q. By otherwise do you mean mentally? A. It seemed to me so. It seemed to me he was reacting like a man who had been indulging in too much alcohol, or alcohol and drugs—a combination as the history of the case, I think would sustain. He is not exactly delirious, not that; making some extravagant statements, such as alcoholics often make. He was; not so bad he didn't know where he was. He greatly improved, I think; I am quite sure of that; he gradually improved; gradually became more at ease. It was quite the common course of cases of this kind.

Q. What is his present mental condition, Dr. Funkhouser? A. I think it is considerably better than it was at that time.

Q. You know, do you not, Dr. Funkhouser, that Dr. Freeman is a man who is sometimes addicted to the excessive use of alcohol, and goes on sprees? A. That is the history.

Q. When he came to you on August 23rd was that his condition? A. I took it to be so.

Q. Do you consider him insane at this time? A. Well, that is a pretty hard question to answer. We consider him improved. If one knew the mental ability or mental capacity of a person thoroughly and very well before we judge him at the present time we could answer it much easier. It is well known that in cases that have indulged in alcohol for a very long time they are apt to show some deterioration, both physically and in intelligence, but whether it is insanity is disputed.

Q. Isn't it a fact, Doctor, that Dr. Freeman's condition on the day he came to you was due to alcoholism rather than to insanity, as that term is commonly understood? A. Well, we took that view of it; we took that view of it,—that his mental

condition was due to the toxic effect of the alcohol and such toxemia that may result.

Q. That was a temporary condition? A. We view it that way.

Q. Since he has been there has he been a quiet patient? A. A very good patient.

Q. Has he had delusions? A. I can't say that he has.

Q. Any illusions? A. None that we recognize at this time.

Q. Any illusions of any kind that you knew of? A. That is a pretty hard question to answer, because he tells us one story and perhaps his wife or those who know the other side tell another story, and it is only by comparison of them what we reach—

Q. No, I am not talking about before he went there, I am talking about since he has been there? A. It would be impossible for me to say there were delusions. I only heard his statement. I couldn't say he has shown delusions.

Q. At the present time do you think he is capable of managing his business affairs? A. I don't think he is capable of managing them, but I think he is capable of advising to some degree.

Q. Do you mean because of his poor eyesight? A. Physical impairment as well as—Well, I don't know how much he has been in touch with business affairs.

Q. Isn't it a fact that recently you have been willing to permit, Dr. Freeman to be discharged, if Mrs. Freeman would consent to it? A. I believe I made that statement,—if she was willing for him to go out I would be willing, and I think the Medical Director, perhaps would.

Q. You are still of that opinion, are you not, Doctor? A. I have no reason to change from that statement.

By the Court:

Q. Why did your willingness to have him go out depend upon his wife's consent? A. She signed his request to come in. That has been our custom in the hospital, that where the person has signed the request, if he is not a dangerous individual, and has shown improvement since he has been with us, we often let a person go out.

Q. Do you discharge him or put him on parole? A. On parole. Of course, I was bearing in mind the system we follow rather than any particular case. We very often let patients go out who we recognize are not entirely recovered, but capable of a trial. I didn't know the case was coming up in court, at that time.

Q. I understood you to say that his condition at the time he entered the institution, as you viewed it, was the result of indulgence in alcoholic intoxicants and of drugs? A. Yes, that was our history, and of course we saw no reason to disregard it.

Q. And the mental condition that you now observe in his improved state; is there still a mental unsoundness there,—a mental imperfection? A. We have recognized that this long continued use of alcohol had caused what we thought some deterioration. In other words we thought his intellect, perhaps, is not as keen as it would be if he had not indulged. That is a slow, chronic process, and it is very difficult to determine the degree of deterioration in an alcoholic case.

Q. Was that result caused solely by the alcohol or partly by the drugs? A. We think a combination has worked here.

Q. What kind of drugs? A. Years ago there was a history of morphine. Our history may not be correct, but as I knew it that was discontinued,

and prior to his admission it was veronal that was given, I think, with the idea of quieting him and producing sleep. How long it was taken, and how much I don't know.

Q. What is the narcotic constituent of veronal? A. It is hypnotic. It produces sleep—produces rest. It can be taken to excess, but I think it is the alcohol that has been taken to a greater excess than the other thing. Our history may be imperfect.

Q. Veronal, as compared with other drugs, is very much less harmful, isn't it? A. No.

Q. It is not the kind of drug usually taken by drug addicts, is it? A. No, sir, it is not.

Q. It is not that kind? A. No.

CLARENCE ROSTOW, a witness produced on behalf of the petitioner, being duly sworn, testified as follows:

Direct Examination by Mr. Watson:

Q. You are a practicing physician? A. Yes, sir.

Q. How long have you been a practicing physician? A. Going on twenty-four years.

Q. Where? A. Newark, N. J.

Q. Are you on the staff of the State Hospital at Trenton? A. Since Spring.

Q. Do you know Charles M. Freeman, Doctor? A. Yes, sir.

Q. Did you see him at the time, or shortly after his admission to the hospital on August 23rd? A. I admitted him.

Q Has he been in your professional care since then? A. Practically so.

Q. What was his mental condition when he was admitted on August 23, and what change has there

been if any? A. When he was admitted he looked to me like he had indulged in alcohol or some drug and he is very much improved since that time.

Q. How much improved, Doctor? A. A great deal improved.

Q. Did you not express yourself as being willing to have him discharged from the hospital if Mrs. Freeman would consent to it? A. Something to that extent.

Q. Do you consider him insane? A. It is very hard to tell. I thought he was a chronic alcoholic.

Q. And that was a temporary condition, wasn't it, Doctor? A. It appeared that way at that time.

Q. And it has now cleared up? A. Yes.

By the Court:

Q. Is there any permanent effect on his mental condition from the use that has been made of these drugs,—from the use of these drugs and alcoholic stimulants? A. It is hard to tell. I haven't known him for many years. He has certainly improved a great deal since he has been in the hospital.

Q. Does the use of the alcoholic stimulants and these drugs,—morphine and verinol,—or what ever drugs you think he may have used, if indulged in over a considerable period of time, does that result in a pathological condition of the brain, what you would recognize as a mental disease? A. That is a depatable question. Some authorities hold it does and some that it does not,—half and half.

Q. What is your opinion? A. I think if a man stops the use of liquor or the use of drugs, he may not be as bright as he was before, but I think he would get along very well.

Q. No matter how long he has kept it up? A. It seems to me that way in a good many cases.

Q. In your opinion, then, the patient is not at the present time suffering from any recognized form of what is generally known as insanity? A. It doesn't give that appearance.

The hearing of this matter is continued to Monday, October 3rd, at the State House, Trenton, at 10:30 A. M., in the meanwhile the patient to be and remain in the custody of the State Hospital.

IN CHANCERY OF NEW JERSEY.

In the Matter of Charles M. Freeman.	On Petition. Testimony.

Proceedings had in the above entitled cause, at the State House, Trenton, New Jersey, on Monday, the Third day of October, 1921, at 10:30 A. M.

Before—Hon. Malcolm B. Buchanan,
Vice Chancellor.

Appearances:

Russell E. Watson, Esquire, for Petitioner.

Francis H. McGee, Esquire, for the State.

Mr. Watson: If your Honor please, Senator Thomas Brown, solicitor for Mrs. Freeman, was notified by me that the hearing in this case was continued to today at 10:30 in order that Mrs. Free-

man might have an opportunity to be represented and heard, if she so desired. I asked him to let me know if he intended not to contest the matter. He did advise me on Saturday that Mrs. Freeman would not be present and would make no contest. I will say that an adjustment has been made between Mrs. Freeman and Charles M. Freeman.

The Court: Is there any contest on the part of the State?

Mr. McGee: No, sir; there is no contest.

The Court: Dr. Funkhouser and Dr. Rostow testified, on the return of the writ, and from the testimony given by them at that time there appears to be no condition of the kind known as insanity,—at least under the terms of the Asylum Act, and if there is no contest on the part of Mrs. Freeman or the State, and no further testimony to be offered, then I see nothing to be done under the statute, but to direct the discharge of the patient.

I hereby certify that the foregoing, including the testimony of Dr. Edgar B. Funkhouser and Dr. Clarence Rostow, is a true and correct transcript of the proceedings before Hon. Malcolm G. Buchanan, one of the Vice Chancellors of the above named court, in the above-entitled cause; that the said proceedings were taken down by me personally stenographically and by me reduced to typewriting; that the witnesses were duly sworn by me before said court; and that the foregoing transcript accurately sets forth the questions of counsel and the court and the answers of the witnesses and other proceedings.

SAMUEL POWIS, JR.,
Official Chancery Court Reporter.

A true copy.

JESSE R. SALMON,
Clerk.

Exhibit P-9.

I, ELMER E. WYCKOFF, Sheriff of Middlesex County, New Jersey, do hereby appoint Dr. C. M. Freeman, Metuchen, N. J., my Special Deputy, for the purpose, and no other, of preserving the Peace in said County and to do any and all necessary act and acts for the purpose aforesaid. Said Deputy shall serve as my Posse whenever required, and this appointment is revocable at my pleasure.

Witness my hand and seal this 12th day of June A. D., 1922.

ELMER E. WYCKOFF,
Sheriff.

State of New Jersey, }
County of Middlesex, } ss.:

Dr. C. M. Freeman, being duly sworn, doth depose and say that he will well and faithfully execute the duties of Special Deputy, above mentioned, according to the best of his skill and judgment.

C. M. FREEMAN, M. D.

Sworn and subscribed before me this
12th day of June A. D., 1922.

FREDERICK GOUEN,
Notary Public of N. J.

Exhibit P-10.

SPECIAL DEPUTY SHERIFF

MIDDLESEX COUNTY, NEW JERSEY.

THIS CERTIFIES, That I have duly appointed Dr. C. M. Freeman to be a Special Deputy Sheriff of Middlesex County, N. J., this appointment to be in effect from the 12th day of June, 1922, to November 30, 1922, unless sooner revoked.

ELMER E. WYCKOFF,
Sheriff, Middlesex County, N. J.

Exhibit P-11.

UNITED AMERICAN LINES, INC.
Department of Passenger Traffic
39 Broadway, New York.

Any Person Accepting this Pass Assumes all Risk of Injury from any Cause Whatever.

Pass

On Board S/S BAYERN

On Date of

O. SCHUAMBERGER,
Assistant to the Director of Passenger Traffic.

Exhibit P-12.

IN THE NAME OF GOD, AMEN:

I, Charles M. Freeman of the Borough of Metuchen, County of Middlesex, State of N. J., being of sound mind do declare this to be my last

will & testament—revoking all wills made by me especially of in the possession of Russell E. Watson of Pattersonson St., New Brunswick, N. J.

1. I desire that my funeral expenses and just debts be paid.

2. I leave and bequeath un-reseridrilly to Harry Mohring the sum of $10,000 also the use of the apartment over the garage on Volkmar Place, Metuchen, N. J.

3. I leave and bequeath to Letty Patterson and old and faithful servant the sum of $1,000.

4. I leave to Mary E. Wilkins Freeman if she should outlive me the sum of 1.00 a year.

5. The balance of my estate I bequeath to Harry Mohring to be disposed of as he sees fit.

6. If any of the above legatees dies without issue their bequests heretofore made shall revert to my estate.

I hereby appoint Harry M as my sole executor who shall not be requ

CHARLES M. FREEMAN (L. S.)

Witnesses:

W. H. DAVEY,
LOUIS MOHRING.

Exhibit C-4.

Eleven Checks.

All bear, across the end, the printed matter as follows:

Established 1850

MANNING FREEMAN & SON, Inc.
John W. Breen, Sec. & Treas.
Metuchen, N. J.

PEOPLES NATIONAL BANK

New Brunswick, N. J., July 1st, 1922.

Pay to the order of C. M. Freeman, $50.00/100
The sum of $50 and 00 cts. DOLLARS

MANNING FREEMAN & SON, Inc.,
Russell E. Watson,
President.

No. A916

John W. Breen,
Treasurer.

(Endorsed)

C. M. Freeman.

THE METUCHEN NATIONAL BANK.

No. 4774. Metuchen, N. J., July 7th, 1922

Pay to the order of C. M. Freeman, $30.00/100
The sum of $30 and 00 cts. DOLLARS.

Russell E. Watson,
President.

John W. Breen,
Treasurer.

(Endorsed)

C. M. Freeman.

Exhibit C-4.

THE METUCHEN NATIONAL BANK.

No. 4773. Metuchen, N. J., July 5th, 1922.

Pay to the order of C. M. Freeman, $20.00/100
The sum of $20 and 00 cts. DOLLARS.

RUSSELL E. WATSON,
President.

JOHN W. BREEN,
Treasurer.

(Endorsed)

C. M. Freeman.

THE METUCHEN NATIONAL BANK.

No. 4784. Metuchen, N. J., July 10th. 1922.

Pay to the order of C. M. Freeman, $2.00/100
The sum of $2 and 00 cts. DOLLARS.

RUSSELL E. WATSON,
President.

JOHN W. BREEN,
Treasurer.

(Endorsed)

Pay to the order Johnson Taxi & Garage
C. M. Fremar.
Johnson Taxi & Garage, Carson A. Johnson, Prop.

Exhibit C-4.

PEOPLES NATIONAL BANK.

No. A918. New Brunswick, N. J., July 12th, 1922.

Pay to the order of C. M. Freeman, $20.00/100
The sum of $20 and 00 cts. DOLLARS.

MANNING FREEMAN & SON, Inc.,
Russell E. Watson,
President.

John W. Breen,
Treasurer.

(Endorsed)

C. M. Freeman.

PEOPLES NATIONAL BANK.

No. A921. New Brunswick, N. J., July 14th, 1922.

Pay to the order of C. M. Freeman, $28.00/100
The sum of $28 and 00 cts. DOLLARS.

MANNING FREEMAN & SON, Inc.,
Russell E. Watson,
President.

John W. Breen,
Treasurer.

(Endorsed)

C. M. Freeman.

Exhibit C-4.

PEOPLES NATIONAL BANK.

No. A924. New Brunswick, N. J., July 18th, 1922.

Pay to the order of C. M. Freeman, $20.00/100
The sum of $20 and 00 cts. DOLLARS.

MANNING FREEMAN & SON, INC.,
RUSSELL E. WATSON,
President.

JOHN W. BREEN,
Treasurer.

(Endorsed)

C. M. Freeman.
Morton Goldsmith.

PEOPLES NATIONAL BANK.

No. A925. New Brunswick, N. J., July 19th, 1922.

Pay to the order of C. M. Freeman, $10.00/100
The sum of $10 and 00 cts. DOLLARS.

MANNING FREEMAN & SON, INC.,
RUSSELL E. WATSON,
President.

JOHN W. BREEN,
Treasurer.

(Endorsed)

C. M. Freeman.
Chinu L. Quint P. M.

Exhibit C-4.

PEOPLES NATIONAL BANK.

No. A926. New Brunswick, N. J., July 21st, 1922.

Pay to the order of C. M. Freeman, $20.00/100
The sum of $20 and 00 cts. DOLLARS.

MANNING FREEMAN & SON, Inc.,
Russell E. Watson,
President.

John W. Breen,
Treasurer.

(Endorsed)

Pay to bearer C. M. Freeman.
James Lawless.

PEOPLES NATIONAL BANK.

No. A927. New Brunswick, N. J., July 24th, 1922.

Pay to the order of C. M. Freeman, $25.00/100
The sum of $25 and 00 cts. DOLLARS.

MANNING FREEMAN & SON, Inc.,
Russell E. Watson,
President.

John W. Breen,
Treasurer.

(Endorsed)

C. M. Freeman.

PEOPLES NATIONAL BANK.

No. A931. New Brunswick, N. J., July 27th, 1922.

Pay to the order of C. M. Freeman, $15.00/100
The sum of $15 and 00 cts. DOLLARS.

MANNING FREEMAN & SON, INC., 10
RUSSELL E. WATSON,
President.

JOHN W. BREEN,
Treasurer.

(Endorsed)
C. M. Freeman.

Exhibit C-6. 20

"NARCOTIC LICENSE"

$3. SPECIAL TAX STAMP $3.
United States Internal Revenue.

KEEP THIS STAMP POSTED.

PRACTITIONER DISPENSING OPIUM, ETC.

Issued by the Collector for the Fifth District of New Jersey. 30

Name, Chas. M. Freeman, M. D.
Address, 159 Lake Ave.
City, Metuchen.

Regis. 6296 4

FISCAL YEAR
1922.

T. C. Ferguson,
Jun 23, 1921. 40

Photographic Copies of Signatures of C. M. Freeman on Eleven Checks.

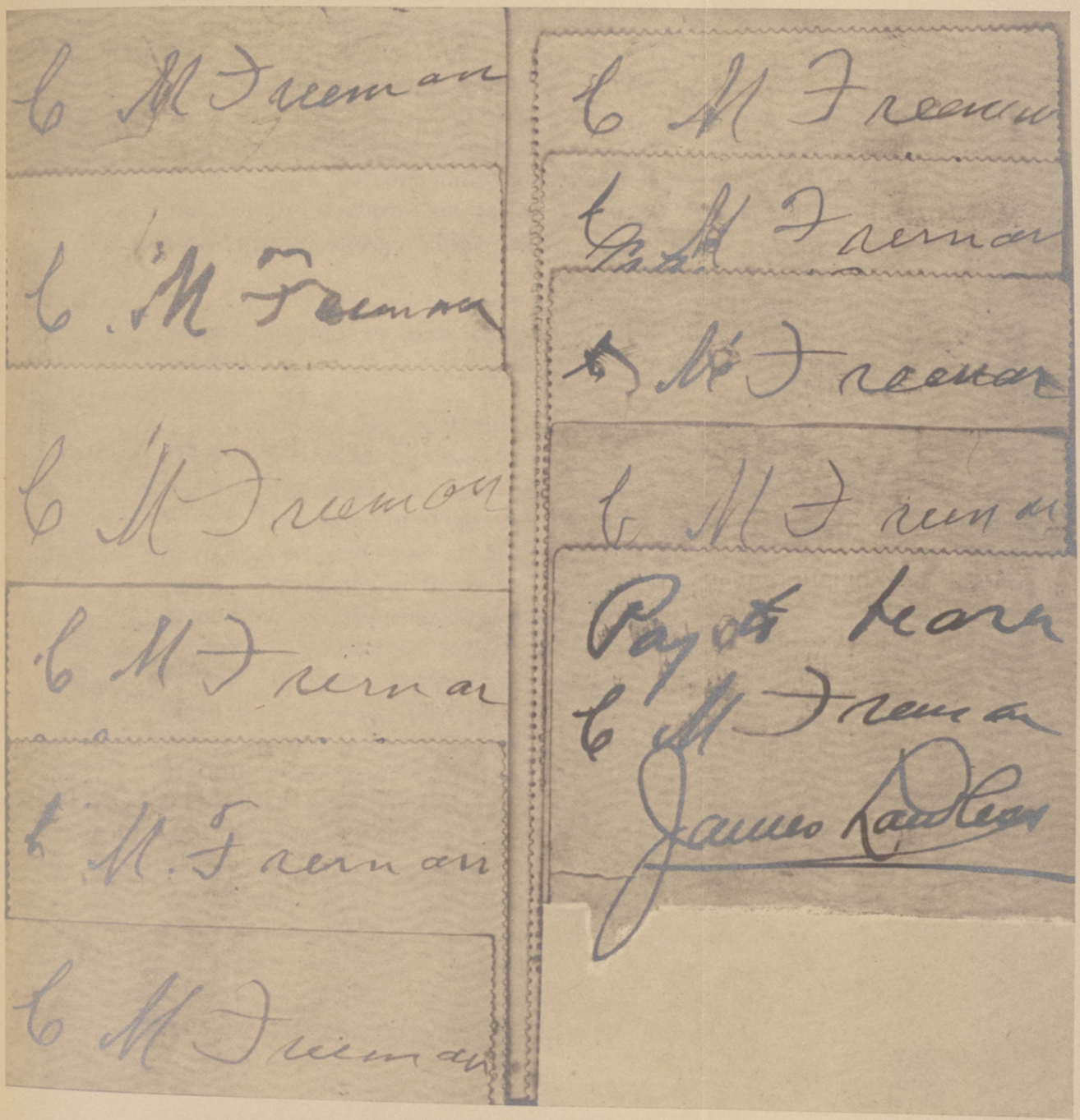

Exhibit D-1.

Will of October 4, 1921.

In the Name of God, Amen.

I, Charles M. Freeman, being of sound and disposing mind, memory and understanding, do make, publish and declare this to be my last will and testament in manner following:

1. I direct that all my just debts and funeral expenses be paid as soon after my decease as convenient.

2. I give and bequeath unto my wife, Mary E. Wilkins Freeman for and during the term of her natural life and so long as she remains my widow the sum of One Hundred dollars per month to be paid out of the dividends accruing upon my holdings of the perferred stock and common stock of Manning Freeman and Son, Inc., a corporation organized under the laws of the State of New Jersey hereinafter bequeathed to my sister, Sally B. Freeman, John W. Breen and John W. Breen, Jr. It is my will, and I so direct that the holders of the preferred stock and common stock hereinafter bequeathed to my sister, Sally B. Freeman, John W. Breen and John W. Breen, Jr., shall contribute to the bequest to my said wife, Mary E. Wilkins Freeman of the said annuity of Twelve hundred dollars payable in monthly instalments of One Hundred dollars in proportion as the said stock is bequeathed to my said sister, Sally B. Freeman, John W. Breen and John W. Breen, Jr.

3. I give and bequeath unto my sister, Sally B. Freeman, two-thirds of my holdings of the preferred stock of Manning Freeman and Son, Inc.,

and two-thirds of my holdings of the common stock of Manning Freeman and Son, Inc., a corporation.

4. I give and bequeath unto John W. Breen two-ninths of my holdings of the preferred stock and two-ninths of my holdings of the common stock of Manning Freeman and Son, Inc., a corporation.

10

5. I give and bequeath unto John W. Breen, Jr., one-ninth of my holdings of the preferred stock and one-ninth of my holdings of the common stock of Manning Freeman and Son, Inc., a corporation. This bequest and the foregoing bequest to John W. Breen are made in recognition of loyal and faithful service to Manning Freeman and Son, Inc., and to me personally and as a token of my appreciation.

20

6. The foregoing bequests to Sally B. Freeman, John W. Breen and John W. Breen, Jr., are subject to and charged with proportionate contribution payable out of dividends accruing upon the said stock to the foregoing bequest to my wife, Mary E. Wilkins Freeman of an annuity of Twelve hundred dollars payable in monthly installments of One hundred dollars each.

7. It is my will and I so direct that the business of Manning Freeman and Son, Inc., a corporation,

30

be continued for a period of at least ten years, if the business continue profitable, and for that time John W. Breen and John W. Breen, Jr., be associated with the management of the business as heretofore. I do further direct that my sister, Sally B. Freeman be elected President of the company to succeed me and that she receive for her services as President of the company the same salary that I have received.

40

8. Should my sister, Sally B. Freeman, die before me then I give and bequeath two-thirds of all

my holdings of the preferred stock and two-thirds of my holdings of the common stock of Manning Freeman and Son, Inc., to those of my sisters who survive me upon like terms and conditions as those upon which the said stock is hereinbefore bequeathed to my sister, Sally B. Freeman, and particularly upon the condition that John W. Breen and John W. Breen, Jr., continue to be associated with the management of Manning Freeman and Son, Inc., as heretofore for a period of ten years.

9. I give, devise and bequeath all the rest, residue and remainder of my property, of every sort and description, real, personal and mixed, wheresoever situate, unto my sister Sally B. Freeman, her heirs and assigns forever.

10. I nominate, constitute and appoint my sister, Sally B. Freeman and John W. Breen, executrix and executor of this my last will and testament and direct that they be required to give no bond or other security for the performance of their duties.

11. I hereby revoke all former wills by me made.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this fourth day of October, in the year of Our Lord, one thousand nine hundred and twenty-one.

CHARLES M. FREEMAN. (L.S.)

Signed, sealed, published and declared by the said testator to be his last will and testament, in the presence of us, who, both being present at the same time, in his presence, at his request, and in the presence of each other have hereunto subscribed our names as witnesses.

James Lawless, 435 Main St., Metuchen, N. J.
Charles Hartman, Metuchen, New Jersey.

Stipulation as to Record.

NEW JERSEY COURT OF ERRORS AND APPEALS.

HARRY MOHRING, Appellant, and MARY E. WILKINS FREEMAN and SALLIE B. FREEMAN, Respondents.	On Petition, etc. Stipulation.

It is hereby stipulated by and between the proctors for the respective parties, pursuant to Rule 19 of the Court of Errors, that the foregoing printed record embraces all of the papers necessary and proper to be considered in this court on this appeal.

Dated, December , 1924.

THEODORE STRONG,
Proctor for Appellant.

THOMAS BROWN,
Proctor for Respondent,
Mary E. Wilkins Freeman.

R. E. & A. D. WATSON,
Proctors for Respondent,
Sallie B. Freeman.

New Jersey Court of Errors and Appeals

HARRY MOHRING, Appellant, and MARY E. WILKINS FREEMAN and SALLIE B. FREEMAN, Respondents.	On Petition, &c.

BRIEF FOR APPELLANT.

Statement.

This is an appeal from a decree of the Prerogative Court, entered September 25, 1924, affirming a decree of the Orphans' Court of Middlesex County, entered November 23, 1923, denying probate to the paper offered as the last will and testament of Dr. Charles M. Freeman, deceased.

Both decrees are based upon a holding that Dr. Freeman, at the time of the execution of the paper offered, was not possessed of the mental capacity to make a valid will.

Dr. Freeman died at Metuchen, Middlesex County, March 7, 1923, at the age of 64. The will in question was made and bears date July 12, 1922. Two caveats were filed against its probate, one by Mary E. Wilkins Freeman, the widow (Thomas

Brown, proctor), and the other by Sallie B. Freeman, a sister (R. E. & A. D. Watson, proctors).

Charles M. Freeman, the decedent, was the only son of Manning Freeman, a prominent resident of Metuchen. He had four sisters, all of whom survived him. He lived all his life in Metuchen, except a few years of service in the Pension Bureau, at Washington, neither the date nor the duration of which service appear in the record.

He was highly educated and widely read, a graduate of Rutgers College and of the Medical School of Columbia University (Ramsey, p. 974). He had been a drinking man practically during his entire adult life, and is described, especially in the earlier years, as a periodical drinker, whose sprees were at rather long intervals, these intervals decreasing as time passed. During his service at Washington he had tried all sorts of narcotics, but this was experimental rather than habitual. He had, however, for some years preceding his death been more or less in the habit of taking veronal, in doses of 5 to 10 grains, as a sedative.

He is described as a high strung, positive man, strong in his likes and dislikes, highly educated, a brilliant conversationalist, selfish, an effective business man, becoming abusive when intoxicated.

It does not appear that he ever practiced his profession, except during his service at Washington, and after his return from Washington to Metuchen he entered the coal and lumber business conducted by his father, at Metuchen, and this business was left to him by his father's will and (incorporated under the name of Manning Freeman & Son) continued up to the time of his death.

At various times during the later years of his life Dr. Freeman was treated in various institutions for his drinking habits, having been at differ-

ent times at institutions at Belle Mead, The Oppenheim Institute, Dr. Towne's Institute, and twice at the State Hospital at Trenton, once as a voluntary patient and once committed. All the testimony shows that on such occasions he responded readily to treatment, but that he thereafter resumed the use of liquor.

About 1901 he married Mary E. Wilkins, an authoress of wide repute, with whom he lived until in 1920, when they separated. She continued to live in the home he had built for her at Metuchen, and he boarded with various employes of the business, and finally took up quarters in an apartment over a garage owned by the corporation, where William Breen (a corporation employe) and his wife lived.

Dr. and Mrs. Freeman had no children. After their separation, and in August, 1921, Dr. Freeman was committed to the State Hospital, on the complaint of his wife and the certificates of Dr. Ramsey and his office assistant, by Judge Webber, a Justice of the Peace at Metuchen, as an insane person, the cause shown by the papers being chronic alcoholism (976). He sent for R. E. Watson, who at the time was attorney for the corporation, and a writ of habeas corpus was obtained, hearings were had at which two of the hospital staff, Drs. Funkhauser and Rostow, testified, and on October 3, 1921, a decree was made by the Court of Chancery declaring him sane and ordering his discharge from the Asylum (Ex. P-8, p. 1094).

On the day of his discharge a formal separation agreement between him and his wife was executed by him, having been prepared by either Mr. Watson or by Mrs. Freeman's attorney, Mr. Brown, and on the following day, in Mr. Watson's office, he executed a will prepared by Mr. Watson, before Charles Hartman and James Lawless, as witnesses, which will is in evidence (Ex. D-1, p. 1125).

Following his discharge from the Asylum he resumed his business activity, but so far as appears he never saw his wife nor spoke to her again, and it is proved that he did not speak to either the doctors nor the judge who committed him. There is abundant testimony that he bitterly resented the action of his wife in having him committed, and extended his resentment to all who had any part in his commitment.

In December, 1921, he discharged William Breen, the employe with whom he had been living, and employed in his place Harry Mohring, a young man then employed at the Raritan Arsenal, and who lived with his wife's parents directly across Volkmar Place from the garage, and Mohring with his wife and two children (one born at the very time Mohring was employed) took up their residence in the apartment and Dr. Freeman continued to live with them till his death. In March, 1922, he employed Letty Paterson, an old colored servant for many years in his father's household, and she also lived at the garage apartment till Dr. Freeman's death.

In May, 1922, the business had a very large volume of outstanding accounts, and little cash on hand, and a creditor suggested an arrangement looking to an improvement of the business finances, and on May 15, 1922, Dr. Freeman executed a trust agreement, by which he vested title to his entire holding of the corporate stock (being all except two qualifying shares) in his attorney, R. E. Watson, as trustee. This agreement is in evidence (Ex. P-3, p. 1080).

At or about the time of the execution of this trust agreement, Dr. Freeman was told to stay away from the corporation office, and not to take any part in the business. Within a few days after the execution of the trust agreement, Mr. Breen,

the secretary and next to Dr. Freeman the manager of the business, discharged two men Dr. Freeman had employed, and reinstated two of his sons, one of whom Dr. Freeman had discharged for cause only a few days previously.

Very shortly after that happening, Dr. Freeman asked Louis Mohring, the father of Harry Mohring, if he knew a reliable attorney, from outside Middlesex County, and in response to such request Louis Mohring took Mr. Davey, with whom he had been acquainted for years, to Metuchen on Sunday, June 18, 1922, and introduced him to Dr. Freeman.

The testimony shows that on that day Dr. Freeman told Mr. Davey the entire situation, explaining to him the trust agreement, the business situation, the corporation, its stock, its assets, liabilities, lack of cash capital, his separation from his wife, his commitment to and discharge from the State Hospital, his exclusion from his office, the making of the separation agreement and of a will on October 4, 1921, and asked Mr. Davey to take steps to procure the cancellation of the trust agreement and to prepare a new will. That during the course of that day Mr. Davey and Dr. Freeman went to Mr. Watson's home to ask for the will, but did not find Mr. Watson home; that then Dr. Freeman drew up and signed a paper containing instructions for a new will (Ex. P-12, p. 1116), which will was prepared by Mr. Davey according to such instructions, and which was executed the following Wednesday evening at Dr. Freeman's home, Mr. Davey and his wife, and Mr. Louis Mohring and his wife driving down to Metuchen for that purpose. That will, like the one now offered for probate, was witnessed by Mr. and Mrs. Davey and Mr. Louis Mohring.

On the following day Mr. Davey returned to Metuchen and with Dr. Freeman went to Mr. Watson's office in New Brunswick, and requested him

to sign a consent to the cancellation of the trust agreement (Ex. P-4, p. 1083), and upon his refusal Mr. Davey served him with a notice of rescission, previously prepared and signed by Dr. Freeman (Ex. P-5, p. 1084). Later the same day they went to John Breen and requested him to sign deeds transferring to the corporation certain real estate the title to which stood of record in his name, and that he refused to do so until the matter of a loan on which certain stock belonging to him was pledged as collateral was adjusted (Davey, p. 597).

That later Mr. Watson called on Dr. Freeman and persuaded him to accept the bond, required by the trust agreement, the failure to deliver which was the ground of rescission of such agreement, and Dr. Freeman telephoned Mr. Davey, and being told that any litigation to cancel the trust agreement could not be finally decided before the date of the expiration of the trust (May 15, 1923) told Mr. Davey not to proceed with any such litigation, and announced his intention to await the termination of the trust (Davey, p. 628).

That on July 5, 1922, Dr. Freeman went to Mr. Davey's home and gave Mr. Davey instructions for a change in his will, inserting a bequest of $200 to each of his four sisters, giving Mr. Davey their names in full, and stating in explanation that he did not want them to be in position to say that he had forgotten that they were alive; and also, at Mr. Davey's suggestion, changing the bequest to his wife from "$1.00 a year" to "One dollar" (Davey, p. 45).

That Mr. Davey redrew the will, incorporating the changes as directed, made an appointment by telephone for the attendance of Louis Mohring, as a witness, notified Dr. Freeman, and the will, as so redrawn, was executed at Mr. Davey's home on the evening of July 12, 1922 (Davey, p. 43).

That is the will now offered for probate.

Execution of Will.

Counsel for caveatrices stated as one of the grounds of contest, lack of due execution of the document offered for probate.

Such due execution, however, is established by the testimony of the three subscribing witnesses, W. H. K. Davey, the attorney who drew the will, Louisa B. Davey, his wife, and Louis Mohring, father of the principal beneficiary.

Their testimony stands wholly uncontradicted by a single word of evidence.

The cross examination of these witnesses indicated an intent on the part of counsel for caveatrices to prove that the decedent did not, in fact, sign the document offered for probate, or that, if the signature were genuine, the paper was not at that time in the form in which it was presented for probate, but beyond the insinuations and innuendoes of cross examination, they did not pursue that course, and offered no word of testimony to question or contradict the testimony of the subscribing witnesses.

The testimony of the three subscribing witnesses shows that Dr. Freeman, in June, 1922, requested Louis Mohring to procure him an attorney from outside of Middlesex County (p. 128). That on Sunday, June 18, 1922, Mr. Davey, an attorney long known to Mr. Mohring, went to decedent's home in Metuchen with Louis Mohring, accompanied by their wives. That on arrival there Mr. Mohring introduced Mr. Davey to Dr. Freeman, with whom he had an extended conference relating to decedent's business affairs; that after that conference the entire party had dinner, during which there was a general conversation, and then Dr. Freeman and Mr. Davey, with the entire family party drove in two cars to Highland Park, where Mr. Davey and Dr. Freeman went to Mr. Watson's

house; that Mr. Watson was not at home, and thereupon the party returned to Metuchen and there Dr. Freeman drew up in pencil and signed instructions from which a will was to be prepared by Mr. Davey (Davey, p. 46, Ex. P-12, p. 1116). That on the following Wednesday evening Mr. Davey, his wife, Louis Mohring and his wife again drove to Metuchen where, after dinner, a will drawn according to those instructions was executed by Dr. Freeman, being witnessed by Mr. Davey, his wife, and Louis Mohring (Davey, pp. 41-44; Louisa B. Davey, pp. 111-113; Mohring, pp. 123-125, 172).

The testimony further shows that on the evening of July 5, 1922, Dr. Freeman went to Mr. Davey's house in Belleville, told Mr. Davey he wanted to make a change in his will, and gave Mr. Davey oral instructions for the bequests to his four sisters, explaining that he did not want them to say that he did not remember they were alive; that he gave their names in full to Mr. Davey and that, on the suggestion of Mr. Davey he directed that the legacy to his wife be made one dollar, instead of one dollar a year (p. 43).

That the new will was prepared by Mr. Davey at his office on the following day, the only changes from the former will being the insertion of a legacy of $200 to each of Dr. Freeman's four sisters, by name, and the change in the bequest to Mrs. Freeman; that when the will had been prepared an appointment was arranged by Mr. Davey by telephone, and that pursuant to such appointment Dr. Freeman and Louis Mohring came to Mr. Davey's home on the evening of July 12, 1922, where and when the paper now offered for probate was executed (pp. 44-111-123).

The testimony shows that Dr. Freeman came in his car, driven by Harry Mohring, and was accompanied by Mohring's wife, her two children and Letty Paterson, his colored servant; that Louis

Mohring met them there; that Mr. Davey was not yet at home, and the entire party got out of the car and sat in the screened porch, awaiting his return. That upon his arrival Mr. Davey had his dinner, the party remaining on the porch, and when he was ready he called Dr. Freeman, took him into the dining room; that Dr. Freeman was seated at the dining table, directly under a lighted gas dome light, and that there Mr. Davey read him the will, holding it on the table before Dr. Freeman, indicating the words as read with a pencil; that the interlineation was made at Dr. Freeman's direction, on page 2, and notation made at the foot of the attestation clause; that when the reading was completed, Mr. Davey went out and called in Mrs. Davey and Louis Mohring, from the porch (p. 54); that upon their entry the door was closed, and Dr. Freeman asked each of them if they thought he was capable of making a will, and that they answered that they did; that he then signed it; that Mr. Davey then turned back to the interlineation, and he initialed that; that Mr. Davey then inquired if he signed, sealed, published and declared that as his last will and testament, and requested them to sign as witnesses, and he said that he did; that then the witnesses signed, Mrs. Davey first, but on the second line; Louis Mohring next, but on the last line, and Mr. Davey last, but on the first line; that then the will of June 21, 1922, was torn across by Dr. Freeman, and torn into smaller pieces by Mr. Davey, who carried it to the adjoining room and put it in a waste basket; that the original will was then enclosed in an envelope, sealed, and retained by Mr. Davey until filed for probate (p. 44).

All three attesting witnesses testify that the paper as produced in court is in exactly the same condition that it was when its execution was completed (pp. 42-113-125).

A most stringent cross examination failed to modify or change in any way the testimony of any of the subscribing witnesses, except that Louis Mohring did become confused as to the date (p. 60 et seq.)—which was explained at page 172.

It is submitted that this uncontradicted and unshaken testimony establishes the due execution of the paper as the last will and testament of the decedent as required by law.

Re Gluckman's Will, 87 N. J. Eq. Reversing id., 280.
Re Livingston's Will, 37 Atl., 770.
Re Eatley, 82 N. J. Eq., 591.
Hildreth v. Marshall, 51 N. J. Eq., 241.
Lyons v. Van Riper, 26 N. J. Eq., 337.
Harris v. Vanderveer, 21 N. J. Eq., 561.
Day v. Day, 3 N. J. Eq., 549.
Patton v. Hope, 37 N. J. Eq., 522.

In *Re Gluckman's Will,* supra, Mr. Justice White, reversing the Prerogative Court and admitting to probate the will there in question, said:

> "Where, however, the testator by reason of physical or educational disability, as by blindness or by inability to read the language in which the will is written (as in the case *sub judice*), is unable by the exercise of his own faculties to see for himself that the will expressed his testamentary desires, an additional burden is imposed upon the proponents of the will, where there are no circumstances which lead the court to suspect that he may have been imposed upon (Patton v. Hope, 37 N. J. Eq., 532) namely, that of showing to the satisfaction of the court that such a testator was made acquainted with the provisions of the will, so that he understood them."

That burden, it is submitted (if in the circumstances of this case it rested on proponent) has been borne. Dr. Freeman's sight was much impaired, still he could see somewhat. Mr. Davey's testimony is that he read the will to decedent, word by word, indicating the words as read by a pencil (p. 96), and that he believed Dr. Freeman could and did follow the reading of the will; and there is no testimony to indicate that he did not.

The will, in its essential features, is in accord with the original pencil instructions written by Dr. Freeman himself. Dr. Freeman told the witness Higgins, after its execution, that he had made provision in his will for Harry (Mohring) and Letty (Paterson) (p. 799) and Mr. Higgins identified the pencil memorandum as in Dr. Freeman's handwriting (802).

Mr. Davey, who drew the will, is an attorney of considerable experience. He was admitted June, 1889-1892 and admitted in New York in 1906, and is admitted in various federal courts (p. 40).

The will is short and easily understood. Its simple provisions did not require a high degree of mentality to understand (ptd. at p. 6). There is not a scintilla of evidence to show that its provisions were not fully comprehended at the time of its execution nor is there a word to indicate that the testator was in any way misled as to its provisions. The testimony shows the contrary.

It is therefore submitted that, prima facie, the document should be admitted to probate.

In *Re Eatley,* 82 N. J. Eq., 591, Vice Ordinary Backes, reversing the Orphans' Court and admitting the will to probate, said:

> "The evidence offered satisfied me that the paper writing offered for probate was executed as wills are required to be * * * that she had full knowledge of its contents; that it was

fairly read and explained to her, and that she executed it understandingly and with an appreciation of its legal effect. * * *

If capacity, formal execution and volition appear, the will of the most impious man must stand unless there is something in the actual disposition against good morals or against public policy. It may be harsh, it may be extremely cruel under some circumstances to disinherit one child and bestow the whole estate upon another, but if the testator be of disposing mind and memory and duly execute such will in the forms prescribed by law, no court can interfere." (Citing cases.)

In *Patton* v. *Hope,* supra, it was said:

"The execution of the paper according to law raises a presumption in such a case as it does when the testator is not illiterate, that he understood its contents and, the proponent is not called upon to produce affirmative proof of knowledge of the contents until fraud, practice or undue influence is charged and SUPPORTED BY AT LEAST SOME EVIDENCE. Vernon v. Kirk, 30 P. St., 218. In this case there is no evidence of any imposition, nor of any attempt at deception, nor of any influence upon the testatrix, nor of any evil practice or fraud, nor of any circumstance which would lead the court to suspect that the will may not be her true last will and testament. On the other hand all the evidence on the subject leads to the conclusion that she fully understood both of the instruments. They were drawn not by any person interested, but by her own lawyer and by her own procurement. The codicil she had in her own possession when she executed it and when she pro-

duced it for execution she stated that it was a codicil to her will. It refers to the will by its date, and ratifies and confirms it."

Counsel for caveatrices in cross examination made a great point of the fact that the three pages of the will are tied with a blue ribbon—a practice so common at least among the older members of the bar as to make the insinuations of substitution of pages absurd, and this the more as the testator placed his initials opposite a correction on page 2, and signed on the last page, the bequests on the first page being the least important.

So too, with their magnificent gesture of requiring the attesting witnesses, while on the stand, to sign their names and put down their addresses, solemnly impounding the signatures so made,—and then dropping the subject without a word (pp. 103-114-169).

Such insinuations and intimations, unsupported by a single word of evidence, demonstrate only the desperation of counsel in their search for grounds for their contest.

The trial judge held that the paper was properly executed by decedent; that there was no fraud in its execution, and it is submitted that despite the slurs and innuendoes of counsel for caveatrices, no other finding was possible in the absence of one single word of evidence to the contrary.

Undue Influence.

Undue influence was stated as one of the grounds of caveat, but this ground also was, practically, abandoned on the trial, as no evidence whatever was offered on behalf of either of the caveatrices to sustain it.

The law is well settled that undue influence, to

induce a court to invalidate a will, must be such as to deprive the testator of his free agency.

Re Gillespie, 26 N. J. Eq., 533;
In Re Williams' Will, 123 Atl., 555;
Re Berengle, 85 N. J. Eq., 487;
Turner v. Chesman, 15 N. J. Eq., 243;
Whitenack v. Stryker, 1 Gr. Chy., 8;
Re Benson, 114 Atl. Rep., 456—the last reported case in N. J.

It is also well settled that kindness and attention of the beneficiary to the decedent do not, of themselves, constitute influence which will invalidate a will.

In Re Mannion, 86 N. J. Eq., 232-239, the court said:

> "It was as true with the testator as it is with the rest of humanity in general that at the last those who most impressed him with their love and kindness remained longest in his memory and held the strongest claims upon his testamentary gratitude. Influence acquired over a testator by kind offices, unconnected with any fraud or contrivance is lawful and proper."

In Waddington v. Busby, 45 N. J. Eq., 172, the will was drawn by the executor, whose wife and son were favored legatees, and the testatrix, at the time of the execution of the will was about 83 years of age, feeble, forgetful and nearly blind, "so that she could not read or did so with difficulty" and was "not of very strong will" (174) yet made a will under those circumstances, which was probated.

In *Re Wilford's Will*, 81 Atl., 501, is found an example of persuasive evidence of undue influence

not present in the record in this case, but there the court held (p. 503) that meretricious relations between testatrix and beneficiary raise no presumption of undue influence, and said:

> "I am constrained to the conclusion that undue influence has not been proved, and that, therefore, the will should be admitted to probate."
>
> Re Williams' Will, 123 Atl., 555.

In that case the court commented upon the fact that testatrix HAD NO CHILDREN, and of the different attitude of the courts where a child, especially if helpless, is disinherited especially in favor of a stranger.

A like situation exists in the case at bar. Dr. Freeman had no children. The contest is by those to whom he would consider himself under no such ties of blood and affection as would have bound him to offspring of his own. The wife was self supporting and of independent means if not of a fortune far in excess of his own, and they were estranged, living apart under a separation agreement. So also with his sisters, especially Sallie, the other caveatrix. Her own evidence shows that she had been critical of him, and indifferent to a most marked degree. She saw him at the Hospital in September, 1921, for an hour or so, and never again alive.

It is apparent that, as the court commented in Scarboro v. Miller, 72 N. J. Eq., 248, he

> "Did have certain grievances against his family which may or may not have been well founded;"

except that Dr. Freeman's grievances seem from the record to have been, in fact, well founded.

It is to be noted, also, that the three sisters other than Sallie were not mentioned in the earlier will, AND THEY ARE NOT CONTESTING THIS WILL, although two of them did testify and their testimony accentuates the solid basis of Dr. Freeman's grievance.

The case of Kustus v. Hager, 112 Atl., 45 (Penna.), quoted more at length later in this brief dealt with a will which contained an explanatory clause similar in purport to that in Dr. Freeman's will. There, as here, the testator was avoided by his relatives because of his indulgence in liquor; there, as here, his estate was given to one who had served him, and with whom he lived. The circumstances of the two cases are strikingly parallel, and there the court commented that:

> "If it be said that her influence over him thereby became disproportionately great as compared with that of his contesting relatives IT NEED ONLY BE ADDED THE DISPROPORTION WAS DUE TO HER KINDNESS AND THEIR NEGLECT."

Dr. Freeman lived for a year before his death with Mohring and the feeling he entertained toward him is well illustrated by the fact that he called him "Son" and by the explanation in the will itself of his appreciation of Mohring's service.

If, under the rule laid down in re Morrisey's Will, 91 N. J. Eq., 480; Sparks Case, 63 N. J. Eq., 242, and Dale v. Dale, 38 N. J. Eq., 274, that confidential relation cast upon proponent the burden of showing that testator's mind was not unduly influenced, that burden has been borne by him.

There is no single word of testimony as to the exercise of any influence, due or undue, by Mohring or by any other in his behalf over the testator. Mohring's own testimony, frankly given, wholly

uncontradicted, shows, as the trial court held, that the will was not the result of any undue influence exercised over the testator.

It is submitted that no other finding would be possible from the evidence and lack of evidence in the record.

The remaining question, testator's mental capacity, remains to be considered.

The decision of the court below is based upon the testimony of medical experts, which will be analyzed under a separate heading.

The Medical Testimony.

The medical experts, Drs. Cotton, Ellis and Ramsey, were all three called on behalf of Mrs. Freeman, and none on behalf of Sallie Freeman.

The effort of counsel for Miss Freeman was to leave the way open for the probate (in case the will of July 12, 1922, could be overthrown), of the will of October 4, 1921.

Counsel for Mrs. Freeman, however, was throughout endeavoring to establish the incompetence of Dr. Freeman to make either will.

The somewhat unusual situation is therefore presented that Mr. Brown, representing Mrs. Freeman, called no fact witnesses, but did call three medical experts, while Mr. Watson, representing Miss Freeman, called many fact witnesses, and no medical experts—and each claimed the right to, and did, cross examine the other's witnesses.

It is to be borne in mind that the provisions of the will of October 4, 1921 (admitted in evidence) show first that John Breen and his son, John Breen, Jr., and Sallie Freeman were the chief beneficiaries, and that Mrs. Freeman would benefit by establishing decedent's incapacity to make either will, or any will.

The substance of the testimony of each doctor (with reference to pages) is as follows:

Dr. Henry A. Cotton, Medical Director of the State Hospital for 16 years saw Dr. Freeman first on the occasion of his first coming there for treatment, as a voluntary patient, August 2, 1920. Saw him every day till August 25, 1920, when he escaped.

When he came he was very nervous, confused, restless; very bad eyesight, could hardly see anything; reflexes very sluggish; pupils very stiff; vision markedly impaired; blood vessels somewhat hardened; enlarged liver. That was his physical condition. He admitted mentally that he was restless, confused; been smoking to excess; used alcoholic drinks for a number of years; having delirium tremens. He seemed indifferent. Had hallucinations of sight and hearing; saw things about the place, heard people in the house. These disappeared in the hospital. He had delusions, not fixed, in regard to various people. Memory was defective (p. 842).

Delusions of false hearing; heard voices and conversed with many people living and dead. Admitted seeing things. Delusions were indefinite. Was holding mock operations; tried to make believe patient died on operating table and was going to hold funeral exercise. Memory defective and some fabrication. Had no knowledge of medicine. Very much deteriorated. No plans for future (p. 843).

Very much deteriorated from use of alcohol and drugs. Had paranoid ideas, hallucinations of hearing and some of sight, and this condition continued. Had very marked lack of judgment, which showed dementia, called an alcoholic deterioration (p. 843).

Next saw him when he came in a year later, August 23, 1921. He went out October 3, 1921.

At that time he seemed more deteriorated than on first admission, showing progressive disease. Blood pressure very high (p. 844).

He was almost blind. Mentally he was worse. Had marked delusions of wife's infidelity. Wanted to sue me for $100,000 and sue his wife for like amount. He was in worse mental condition, not quite so bad physically. Had very bad teeth which were removed (844-5). He had gone on from bad to worse, shown by these very pronounced delusions about wife, which were fairly well fixed at that time.

Never saw him outside institution (845).

Following that, and in reply to a hypothetical question reported on pages 845 to 888, Dr. Cotton testified that in his opinion Dr. Freeman was not mentally capable of making a will on July 12, 1922 (p. 888).

Contrasting the two times Dr. Freeman was at the hospital, Dr. Cotton said: The two times contrasted showed him in very much worse condition in 1921 than in 1920; at that time he had all the symptoms of a chronic alcohol deterioration, the second time going further than before, with delusions of infidelity of his wife; with hallucinations, and with history of continual drinking following that period I can definitely say what his mental condition would be; that it was a chronic alcoholic deterioration, with lack of judgment, with periods of hallucinations, with delusions of persecution at the time he was in hospital, which continued, and that this was complicated with drug habits, which, with the alcohol, would certainly make him a great deal worse. That the effect of veronal is stupifying, more or less of a sedative, a depressant, and continually taking it would reduce a patient to more or less a confused state (890).

On cross examination: He responded to treatment, he was better to the extent that he didn't

have his alcohol, and he was quiet there (894). He had improved a little, naturally, under treatment, *but I didn't consider him well at the time* (894).

Since I saw him in 1920 at no time did I consider he had testamentary capacity (896).

A man in the condition I saw Dr. Freeman in at the hospital could have lucid intervals, yes (897).

His partial blindness was part of his brain trouble. The optic nerve was affected (899).

The fact that he left $1 to his wife would indicate insanity (903).

A sane man would resent being committed to an asylum by his wife. He wouldn't be kept there in the first place. A sane man wouldn't come to the asylum. Never does. A sane man never has been committed. He wouldn't be kept there 15 minutes if he was sane (899-900). Responding to hypothetical questions by proponent's counsel, Dr. Cotton admitted:

If he didn't drink at all after his release from the hospital for two or three months, became quite like his old self, normal in appearance, able to attend to his business with the sole exception of his impaired eyesight (901) I would say his condition had improved, provided he was perfectly normal for two months (902).

If in May, 1922, he executed at insistence of a creditor a trust conveyance of his stock, and shortly after sought to have same cancelled; that that trust was made to his attorney, Mr. Watson, and that he engaged an attorney from outside Middlesex County to procure the cancellation of such trust, he certainly possessed some mental ability (902).

I think making a will is a much more difficult proposition, or test of a man's ability, than making a contract in business (903).

If it appeared that he in fact mentioned all his relatives in his will, and made a bequest to each,

I would say that he appreciated who were the natural objects of his bounty in a delusional way, yes; he appreciated who were the natural objects of his bounty, but because of his delusions he did not appreciate what they deserved (914).

If he explained fully to his attorney the condition of the corporation; the number of its shares, the total of its outstanding accounts; the value of its property, the fact of the trust, its need of ready funds, of its bank loans, his whole estate being the shares of that corporation, I would say he knew of what his estate consisted, yes (914).

If he afterwards told an accountant what he had done in his will, told his servant that he had provided for her, as in fact he had, I would say that he understood what he had done (915).

Dr. Cotton's bias is plainly shown by his answer to a question relating to the recital in the residuary bequest "This bequest is made in appreciation of a loyalty and devotion I have appreciated which I have failed to receive from those nearer by ties of blood, marriage and business" (p. 931). He said that indicated lack of testamentary capacity because it was a statement absolutely contrary to the facts (931). "In my opinion" (931, l. 21). But admits that if it did state the facts it would be a normal statement (931, l. 34). And his summation of the will is found on page 1213, "The provisions of the will show it is the will of an abnormal mind, based on the prejudices and delusions regarding his wife and family" (933, l. 29).

While not desiring to criticise the Court of Chancery for ordering Dr. Freeman's discharge, Dr. Cotton admits that very often cases come before the court and patients are discharged that "we consider should not be discharged" (p. 934).

Dr. Alfred L. Ellis. Practiced in Metuchen 12 years. Had known Dr. Freeman 19 years. Was one of his physicians. Saw him considerably so-

cially up to 10 years ago, and professionally 5 or 6 different times (945).

Saw him just before he went to Trenton first time. Chauffeur called me. He was making a good deal of trouble. Threatening the household; had delusions and hallucinations. Had idea servants were misbehaving in the house; that the house was disreputable, and he objected to it (946). I advised that he go to Trenton and take a rest, and get straightened out. *It looked like a case of delirium tremens to me* (946).

Next time I saw him was after he came out of the hospital the last time, and that was the last time I saw him. I saw him two or three times. Last administered to him last December (1922) (947). He had a case of grippe, high temperature, pretty sick. I didn't see him often. Sometimes wouldn't see him for a month during the last two years of his life (947).

Responding to the hypothetical question Dr. Ellis said he would say that on July 12, 1922, Dr. Freeman was not able to make a will (947).

Cross examination: Refused to deny stating to Mr. Davey and Mr. Mohring that in April, 1923, he told them in his opinion Dr. Freeman was competent to make a will on July 12. "I don't deny it. I don't remember saying it" (948, l. 36).

Admitted hearing of Dr. Freeman's resentment of wife's action in having him committed (951). Admits they separated shortly after Dr. Freeman's return from hospital the first time (950). Admits Dr. Freeman was man of strong likes and dislikes who remembered an injury (952). Knew of his taking veronal—no other drug (952). Not subject of narcotic allottment (952). Saw Dr. Freeman a week or so after his discharge from hospital in October, 1921. I thought he looked well. I thought he looked improved (953). Testimony that for 2 or 3 months afterward he abstained from

drink and became quite his normal self in appearance accords with my recollection (953). I had one conversation with him during that 2 or 3 months. At that time he didn't appear to have been drinking at all (953). I didn't see anything unusual about him at that time. Speech was clear (954).

I don't think he was able in October, 1921, to execute a valid will (954).

Replying to proponent's hypothetical question (p. 955), admits that if it were proved that for 2 or 3 months after his release from State Hospital on October 3, 1921, he didn't drink at all, became quite like his old self, normal in appearance, and able to attend to business, with the sole exception of his impairment of eyesight, I would say that would indicate that at that period his mental capacity was such that he could have executed a valid will (955). And admits that he has no opinion, from his own observation or conversation with Dr. Freeman, except the one interview referred to, as to his condition during that 2 or 3 months; nor any information from others (956). Admits that mention of each relative in his will indicates he knew who were his natural heirs and appreciated his natural obligations; admits that bequest to servant indicates he was alive to his obligations; and telling her afterward that he knew what he had done (957-8). Admits that explanation of situation to attorney shows he apprehended of what his estate consisted (958). That telling the accountant afterward indicated that he remembered what he had done (959). Admits that insertion of sisters, giving names in full to attorney, with bequests of $200 to each, would indicate appreciation of family ties (959-60). Considers resentment against wife not natural (960). Don't think he was competent to make a will on October 4, 1921 (967).

Dr. William E. Ramsey. 35 years a practitioner. Knew Dr. Freeman from immediately after my graduation in medicine. He graduated from the same medical school a few years before (969). He graduated 1884 and I in 1888 from Medical Department Columbia University. We were very friendly in our early days. On his visits to Perth Amboy we frequently met at the hotel there, I learned to know him very well at that time. We had frequent meetings up to within the last 15 years; then we gradually drifted apart. He drank to excess during all my acquaintance with him. There was no estrangement, but the change in his character was so marked that we were not as agreeable as before. He grew more distant. He was not of the same calibre as before (969-70). I attributed the change to his excessive use of alcohol. I did not know about the impairment of his eyesight so well until the time of my examination for his commitment. I examined him for his commitment to the State Hospital in August, 1921 (970). He was rather depressed, responses were slow, he was indifferent to his condition and surroundings, his eyesight was very poor, had a distinct tremor and did not show full conception of his surroundings or condition (970). There was no acute intoxication; there was the chronic condition. He was in an advanced stage of chronic alcoholism. That condition was permanent (971).

Answering the hypothetical question, Dr. Ramsey testified he did not think Dr. Freeman capable to make a will on July 12, 1922 (971).

His loss of eyesight was due to optic atrophy, atrophy of the optic nerve, which was the result of alcoholism, in my opinion. The change in the optic nerve in that condition is simply an external manifestation of what is going on in the central nervous system, or in the brain; one of the indications

of the condition of his brain (971-2). That condition (mental incapacity) would come on so gradually it would be difficult to draw a distinct line. As Mausley says, there is a dividing line, but no border stone; this condition came on gradually without any distinctive point that you could say there was a total incapacity. The excessive use of alcohol would result in a nervous condition, irritable condition on the passing off of immediate alcoholic stimulation. Veronal would be taken as a sedative to overcome that irritable condition (973).

Excessive use of alcohol develops a marked change in the structure of the brain. Its first action is functional; the continued use of it produces a structural disturbance. The functional condition is relieved with the withdrawal of alcohol; the functional disturbance may be remedied but the remedy in the nerve cell, up to the extent of its destruction by the processes of inflammatory or other processes that go on in the brain cell, that is not repairable after a certain degree. In the early stages in Dr. Freeman's case his functional condition would be relieved with the withdrawal of alcohol. But after a number of years of excessive use of alcohol the cell changes; the nerve fiber changes; there would be an irreparable damage done to the brain. Chronic alcoholism means just that, a chronic condition that does not improve. A period of sobriety would produce repair or restoration only to the extent that the functional condition could be improved. The structural condition would not change (973-974).

In Dr. Freeman's younger days he was very interesting, intelligent, an educated, cultured gentleman (974). In later years his character changed. He grew very verbose, very argumentative, without reason. His mental ability did not improve; on the

contrary there was a marked deterioration of mental ability. I think his withdrawal from his old friends was a result of that change (975).

Cross examination: In my opinion he was not capable of making a will on October 4, 1921 (976).

Before the examination in Weber's office I had not seen him for 5 or 6 months. I made that examination at the request of Mrs. Freeman and Judge Weber. It was at Weber's office. Dr. Shull, my assistant, was with me (976). It took say half an hour. I had discussed his case before with Judge Weber and Mrs. Freeman. When I got there he was not there; they sent for him and brought him there. I never saw him after that. I signed the commitment as a result of that examination (976-977).

Dr. Freeman was a man of positive character; a good companion in his early days; positive in his likes and dislikes; of great force of character; a strong willed man (981).

Men may absorb great quantities of alcohol over a long lifetime and yet retain their faculties unimpaired. Some withstand the effect of alcohol better than others. A few have more power of resistance than others (983). The quantity that different men can absorb without impairment of their nerve cells varies, largely, with the individual. I committed Dr. Freeman on the strength that he had gone the limit, from what I observed in that one interview. I had seen it coming on for years with him (985).

Admitted that if it were proved that for two or three months after his release from the State Hospital on October 3, 1921, Dr. Freeman did not drink at all, and became quite like his old self, normal in appearance, and able to attend to his business, with the sole exception of his impaired eyesight, that would indicate that his condition as I observed it, had improved (986).

If, on his own volition, in May, 1922, he executed at instance of a creditor, a trust conveyance of his stock, and shortly after sought to have it cancelled; that the trust was made to his attorney, Mr. Watson, and that Dr. Freeman engaged an attorney from outside Middlesex County to procure the cancellation of such trust, that would lead me to believe he possessed reasoning power, and some mental ability (986-7).

Considers resentment of wife's action having him committed a delusion (987 et seq.).

"I do not believe he was cured; I do not believe he was capable of managing his business" (referring to the period after his discharge from the hospital in October, 1921 [996]).

Referring to conference with L. V. R. R. people: "We are talking about Dr. Freeman and I do not think that Dr. Freeman was capable of carrying on an intelligent business transaction" (997). If it was a fact that (in that interview) he said what he did say intelligently, and appeared to be entirely sane and competent, that would indicate that he had intelligence (997). That would not indicate that he was sane and competent, because it did not involve any of his delusions. "Q. You are assuming that the delusions exist? A. They did" (998).

That he mentioned all his relatives in his will, with a bequest to each, would not necessarily indicate that he appreciated who were the natural objects of his bounty (999).

Full explanation to his attorney of condition of corporation, etc., would indicate, if made without records, that he knew of what his estate consisted (1000) but would not indicate ability to make a will (1002).

Telling an accountant afterward what he had done in his will, telling his servant that he had pro-

vided for her, would not indicate that he knew what he had done (1002).

A man who can make a contract cannot necessarily make a will. A contract is an agreement between two people, and he has the other fellow to check him off. A man who has to make a will has to do it of his own accord, his own ability, his own reasoning (1005).

I examined Dr. Freeman's eyes on the day of his examination in Metuchen; just enough to know what his condition was. I knew, in the first place, before I went there, that he had an optic atrophy; that he could not see very well (1006). I made an observation of his eyes, the reaction of the pupils, and so on. Just looked at the eyes and saw that he couldn't see very well. Saw that coming into the dark room he had to have a guide (1007).

Will is in usual form. None of its provisions indicate testamentary capacity (1007-1009).

He had the delusion of persecution and the feeling against his wife, and the will shows the vindictive spirit that goes with a delusion; consequently, I think his will was entirely governed by his delusions, which were due to his mental condition, therefore I do not think he was capable of making that will. In other words, because it was an unfair will (1010).

The attention of the court is especially called to the fact that a very considerable part of the happenings and acts of the decedent referred to in the hypothetical question propounded to the three medical experts for the caveatrix, Mrs. Freeman, were happenings or acts subsequent to his discharge from the hospital on October 3, 1921. That is after the time he had been adjudicated sane by the Court of Chancery, his alleged acts and doings, recited in the hypothetical question, form the basis, of a substantial part of the basis upon which the

medical experts declare that at and long before that adjudication, he was in fact insane, incompetent—although all the fact witnesses for the other caveatrix as well as those called for proponent, declare that after his discharge, pursuant to that decree, he was in fact sane, competent, normal, able to attend to business, and that he, in fact, did attend to it.

It is also to be noted that both Dr. Funkhouser and Dr. Rostow testify that the things recited in the hypothetical question, and which decedent is alleged to have done, are such as might be expected of a man when intoxicated, and are quite consistent with perfect ability of the same man, when sober, to attend to business and to have full testamentary capacity.

The special significance of the pencil memorandum prepared by Dr. Freeman on June 13, 1922, and of the change in the will prepared in accordance with the directions contained in that writing which he directed on July 3rd, 1922, are illustrated by the query of the court in Whitenack v. Stryker, 1 Gr. Chy., 8.

> "If the testator had been unfit to dispose of his property or to do any business, as some of the witnesses supposed, how is it possible he could have dictated these wills?"

It is shown, and it is entirely uncontradicted, that on the day that memorandum was written Dr. Freeman in a very long conference with Mr. Davey, made a full and detailed statement regarding his property, his corporation, the trust agreement, the real estate held by Breen, the outstanding accounts and the lack of cash, his domestic relations, and stated his immediate needs or desires (a) to draw a new will, and (b) to terminate the trust.

If he were hopelessly incompetent, as the medical experts declare, how, as the court asked in the Whitenack-Stryker case, could he have done that?

Certainly after that lengthy conference, that full disclosure, Mr. Davey—although he had never met decedent before—was in a better position to judge of his mentality than Cotton, who only saw him at the hospital; than Ramsey, who had only seen him once when he committed him, and, as he says, "knew what he would find" before he got there; than Ellis, whose own observation as he admits, accorded with the testimony of other witnesses that after his discharge from the hospital Dr. Freeman was normal, but who upon the basis of the hypothetical question, declared against the evidence of his own senses, and who could not remember whether or not he told Mohring and Davey after Dr. Freeman's death, that he was competent at the time of the making of the will.

Mr. Davey was again with Dr. Freeman (after that memorandum was drawn) when the will was executed, three days later, and still again the whole of the day following, and got from him the fullest and most detailed statements of facts of a complicated character, from which he prepared a bill in chancery in which those facts are fully recited (pp. 589 et seq.).

With the one exception that Dr. Freeman told Mr. Davey he was still president of the corporation —based upon the paragraph in the trust agreement which provides that his prequisites as president shall not be changed—Mr. Davey found no error in Dr. Freeman's statement (593).

Assuredly a man such as described by Dr. Ramsey with a brain so structurally destroyed that he was wholly and incurably incompetent, could not make such a complete disclosure of a complicated business as Dr. Freeman certainly did.

Men who have been adjudicated insane have made wills which have been admitted to probate, and the probate of such wills sustained on appeal.

In *Re Coleman,* 38 N. J. Eq., 284, affirmed Id. 578, a commission had found (doubtless on expert testimony) that the testator had been of unsound mind and without lucid intervals for seventeen months prior to the inquisition. Nevertheless, the court admitted to probate his will made during that period of seventeen months.

In *Brady* v. *McBride,* 39 N. J. Eq., 495, the court says (p. 500):

> "The finding of the jury that the lunacy had existed for three years is not conclusive. Any presumption which it raises is rebutted by the proof that the testatrix had testamentary capacity at the time of making the will."

In that case the testatrix was about eighty-two years old, and blind. In November, 1873, an inquisition in lunacy found that she was then of unsound mind and had been so for three years preceding, but her will, executed February, 1876, was sustained.

The limited basis for expert testimony commented on by the court in *Scarboro* v. *Miller,* 72 N. J. Eq., 248, is enlightening, and reads closely upon the testimony in this case.

> "There is some little evidence * * * that he did not at times make correct change to purchasers, but such evidence is very trifling in amount and weight. It is possible, in my view, that leaving out the physician who testified on behalf of the complainant, all that the complainant's witnesses testified to may have been true without in any way proving that this

man was not perfectly competent to transact business and to know the value of his property, and to negotiate intelligently for its sale. I think it is quite possible that an Italian who was in the habit of drinking, and who was enraged at his family, might have raved and stormed at them and accused them of all kinds of things, and yet have had entire mental equipment of a sound nature to enable him to transact his ordinary business with all the skill that he ever possessed. The physician produced by the complainant did give his opinion that the man was not able to transact business, but such opinion is not based upon any experience with the man in this respect, and was based solely upon his view of what he termed 'Barber's delusions'. These delusions, according to the physician, were that members of his family were immoral, and that they were robbing him. According to his testimony he had been suffering from the disease which produced these delusions for at least two years prior to the 26th of June, 1903.

I am inclined to think, from the testimony, that this man had no delusions in the proper sense of that term. The doctor assumed that he had delusions, or testified that he had delusions, then testified that one thus circumstanced would not have been able to transact business.

* * * * * * * *

I am inclined to think that he did not have delusions, but did have some grievance against his family which may or may not have been well-founded."

It will be noted that all three of the experts for caveatrices opine that Dr. Freeman was not capable, either on July 12, 1922, or on October 4,

1921, of making a valid will; that on both those dates he lacked testamentary capacity.

The acquaintance of Drs. Cotton, Ramsey, and Ellis with Dr. Freeman was of the slightest.

Dr. Cotton only saw him at the hospital on his *two* sojourns there. Dr. Ramsey had known him, well, some 10 or 15 years before but only saw him very rarely for 10 years. Dr. Ellis had known him long but most casually.

Notwithstanding such acquaintance as they had with him their testimony is purely expert and not fact testimony.

It is on this testimony that the Orphans' Court based its decree denying the will probate, and the court commented on the argument that if the will of July 12, 1922, were thrown out so also would be that of August 4, 1921.

Yet all of these medical experts admit that if for two or three months after his discharge from the hospital, on October 3, 1921, Dr. Freeman entirely abstained from drink, became quite his old self, normal in appearance, and capable, with the sole exception of his impaired vision, of managing his business, that would indicate that his condition (which they declare incurable) had improved;—that he had done what they testify could not be possible. In other words, they frankly do not believe that he did—as all the fact witnesses testify he did—get back to his old normal self; that he did recover his mental poise; his business ability.

Let me quote briefly the testimony of witnesses for caveatrix, Sallie B. Freeman, on that point.

> Dinwiddie (pp. 190-191): "I think it was the next day after his release that he came up to our house and had dinner with us. And he was in excellent shape; very jubilant over the fact that the doctors pronounced him sane; talked on almost every subject under the sun.

I had never seen him in better shape. He was not at all under the influence of drugs. He was in excellent shape for at least two months; said he was never going to use drugs again, but wouldn't promise not to drink whiskey."

John Breen, Jr.: "I saw him at times when he was all right. That was after he came from the hospital the last time. For about two months he was in good condition" (485).

John W. Breen (p. 543): "From the day he returned until, I think, about the first of December Doctor was in good shape, and a man I considered I could do business with. First thing when he came back he wanted to look over his business and see what we had done in that time. I don't think he touched a drop of whiskey for a month after he came back from the hospital."

Charles Hartman (p. 280): "After he came from the hospital he was all right for two months about. Used to come in every day. Nice a man as you wanted to meet. Starting about two or three months after he seemed to be worse." Mr. Hartman witnessed the will of Oct. 4, 1921.

James Lawless: "He was all right at times last summer. He could not see well, but was all right to talk to" (290). "Dr. Freeman purchased the auto, Essex Sedan $2,485. He knew what he was doing. Able to do business" (292). Mr. Lawless witnessed the will of Oct. 4, 1921.

David P. Johnson (p. 339): "At times (in the last two years), I have seen the Doctor when I considered him perfectly normal. For maybe six weeks after he came from the hospital he seemed to have the alcohol out of him and be a different man for a short time."

Charles C. Weber (p. 378). "Only time I noticed improvement was four to six weeks after he came from the Hospital he looked better than I had seen him for a good many years. He was not drinking then."

James W. Breen (pp. 426-7). "The time right after he came from the Hospital he was all right for two or three months. That was the only time that he appeared to me to have his right mind."

Sallie B. Freeman (p. 400) saw him at the Hospital before his discharge. That was the last time she saw him alive, and she described his condition then as follows:

"His questions concerning his business, his requests that he made to me to convey to Mr. Breen, small details about his business and his affairs; his discussion of his domestic difficulties; his discussion of his plans for the future were those of a man who was not having what I would call a lucid interval, but were those of a perfectly sane man in spite of the fact that he was in the State Hospital for the Insane."

And this witness is one of the caveatrices.

Mr. Watson did not testify directly on this point but his actions speak far louder than mere words could. He considered Dr. Freeman fully capable of making a valid will, for he drew and Dr. Freeman executed, in his office and under his supervision, the will dated October 4, 1921 (p. 290). Watson drew and had Dr. Freeman execute the separation agreement either before or immediately after his discharge from the Hospital (558). In the May following, (1922) Watson drew and had Dr. Freeman execute the trust agreement to him-

self and conferred with him day after day thereafter (p. 567). This course of action, non constat Mr. Watson's protestations that he did not consider Dr. Freeman competent and did it "for his own good," conclusively proves that Watson did fully believe Dr. Freeman competent, sane, and able to do business, or else Mr. Watson would never have done that kind of business with him.

It was during this same period that the Rev. Dr. Bogart read regularly to Dr. Freeman. Mohring's testimony—entirely uncontradicted—is:

> "Dr. Freeman used to like to go up to his house every day, or possibly three or four times a week; sometimes he wouldn't miss a day, and he would have Dominie Bogart read to him editorials out of the Tribune and the Times" (729).

This continued down to Dr. Freeman's death. Watson knew the fact, for Watson, as Trustee, paid Dr. Bogart's charge for that service. Dr. Bogart is well known to caveatrices and their counsel. He could have been brought in to refute the statement, if Mohring's testimony were other than literal truth.

Mental improvement, declared by the medical experts to be impossible, because of structural brain deterioration, did follow the treatment at the State Hospital, and to such extent that from October, 1921 to the summer of 1922 Dr. Freeman was able to and did transact business is proved to by not only the witnesses for the caveatrices, but by witnesses for proponents. Hannauer, Paperlein, Van Duzer, Cowen, Stello, Noe, Stork, and Noack —not to mention Louis Mohring and his wife, and Mr. and Mrs. Davey.

Notwithstanding the expert testimony that Dr. Freeman's habitual use of alcohol had resulted in

such structural mental derangement as to make him utterly incompetent, both on October 4, 1921 and on July 12, 1922, and that it was incurable, that even withdrawal of liquor could not effect a cure (although even Cotton admits improvement), the fact remains, and it is proved by practically all the witnesses,—as shown by the quotations and the names above,—he did recover. The fact is, and it is the unquestionable fact that the experts are clearly mistaken; that there was no such structural brain deterioration; that when acute intoxication passed off, Dr. Freeman was sane, competent, able to talk business; able to do business, and by all the legal tests had full testamentary capacity.

This is shown, also, by the testimony of Dr. Funkhouser, who had Dr. Freeman in personal charge at the hospital, and of Dr. Rostow who, under Dr. Funkhouser, was in personal charge of Dr. Freeman, during the whole of his stay at the hospital.

It was on the testimony of these two that the Vice Chancellor based his decree finding Dr. Freeman sane, and ordering his discharge (pp. 1106-1113).

They testified before the Vice Chancellor that while Dr. Freeman might not be as keen as would have been the case if he had never drunk, still if he did not drink to excess he would do very well (Ex. P-8, pp. 1094-1110, l. 30, p. 1112, l. 38).

Dr. Funkhouser saw him again, after his discharge, in September, 1921, at the hospital. He testifies:

> "I saw him again, I think it was in September, 1922. In my office in the hospital. All I know is he came in, I understood, just to pass a little visit; he came voluntarily. I had a conversation with him that day. His physi-

cal appearance, as to bodily health, was much better than I had ever seen him before. He did not show any visible symptoms of having drunk to excess since his discharge. His mental condition seemed better. I commented on his appearance. I told him I was pleased to see him looking so well (pp. 1117-1118). There was nothing in his appearance to indicate any retrogression from his condition at the time of his discharge" (p. 1118.)

The whole testimony of Dr. Funkhouser, as well as that of Dr. Rostow, shows the utter fallacy of the fine theory of Dr. Ramsey, adopted by Dr. Cotton. In fact, it is to be noted that Dr. Ellis, who testified that he saw Dr. Freeman about a week after his discharge from the hospital and thought he looked very well; improved, and who admitted that the testimony of others that for two or three months at least thereafter he abstained from drink and became quite his old normal self in appearance, accorded with his own recollection (p. 953), would not even believe the evidence of his own eyes, and notwithstanding that on that occasion Dr. Freeman's speech was clear, and he did not seem to have been drinking at all, and Dr. Ellis didn't see anything unusual about him, Dr. Ellis still does not believe that at that time Dr. Freeman was capable of executing a valid will (p. 954).

Dr. Funkhouser testified that he had Dr. Freeman under his charge at the hospital; that on admission he was sick, physically and mentally (1015), had trouble with his eyes, was nervous and restless; that he was oriented, knew where he was; that he expressed resentment against his wife because of his confinement. That alcohol was not given him (1015-1016). That his condition im-

proved, both physically and mentally, he gained weight, gained in general appearance; his improvement was quite marked (1016). That he was much improved when he was discharged; that at that time he had all the elements of testamentary capacity (1017, 1023).

He also testified affirmatively to the proponent's several hypothetical questions as indicating testamentary capacity; improvement in mental condition; that his resentment against his wife was natural resentment (pp. 1023 to 1024). That 10 grains of veronal was a normal and usual dose, and that it is a sedative, giving a good, quieting effect (1025).

Dr. Rostow testified that he was connected with the hospital for 18 months, leaving to become clinical director of the Ohio State Hospital at Dayton (1046). That he had Dr. Freeman under his personal charge at the hospital and saw him at least three or four times a day there. That on admission he was sick, run down, toxic, and undernourished (1049). That he knew where he was, and asked for the doctor who treated him before. He inquired about the attendants. Treatment was special food and such symptomatic treatment as was indicated. That he responded very well. That he resented being sent to an insane asylum. Would have preferred sanatorium (1049-50). Spoke of his wife and sisters, seemed to wonder why they never came to see him (1050). That his wife came once, but did not see the patient. That when he left he was much improved physically, had built up nicely; had good color, and was mentally still far above average intelligence; probably not as high as he ought to be, but still far above average. That he was then capable of making a will (1051).

As to his eyes, that it looked as if he was getting soft cataracts, pupils were cloudy, looked like soft cataracts (1051).

Both these doctors testify that all the incidents referred to in caveatrices hypothetical question could have been the acts of a man merely drunk.

Dr. Rostow also testified (p. 1374) that Dr. Freeman did not suffer from any delusions; that he mended quickly, and that he and the witness used to carry on many conversations about why he had given up the practice of medicine, and all kinds of business. That his memory was very good (1054).

In his opinion the trial judge states (p. 15), that "Dr. Funkhouser substantially agrees with Dr. Cotton, Dr. Ramsey and Dr. Ellis, that when alcoholism had reached the chronic stage there is no recovery from it. * * *

"Having in mind that he was called by the proponents and interpreting his testimony in the most favorable light to them, it cannot be said that he materially contradicts the testimony of Dr. Cotton, Dr. Ramsey and Dr. Ellis."

This ignores Dr. Funkhouser's unqualified testimony regarding the improvements he noted in Dr. Freeman in September, 1922 (1118): That he testified that some chronic alcoholics take large amounts of liquor and still retain testamentary capacity, and that he testified (p. 1043) that a man who suffers from chronic alcoholism can be restored to full mental development or capacity. He also testified that on Dr. Freeman's admission to the hospital on August, 1921, "we all thought that morphine played a part, but we didn't know exactly what we were up against. We knew there was some reference made to morphine * * * and I think some of the doctors thought that morphine was playing a conspicuous part in the doctor's trouble at that time, which was later ruled out" (1041).

In other words, the loose talk of "drugs" misled the hospital physicians until they learned the truth—that their patient was not a drug addict.

So that we have here the three medical experts for contestants, with a beautiful *theory* of structural brain deterioration, irreparable, indicated by the failing eyesight, and advanced to such a terrible stage that the making of a valid will, either on October 4, 1921 or on July 12, 1922, was utterly out of the range of possibilities—and we have opposed to this theory the testimony of all fact witnesses called by the one caveatrix who were in closest touch with Dr. Freeman that he did improve; that he was normal for a period, at least, after his discharge; that he was competent to make a will on October 4, 1921, and did so.

We have the testimony of proponent's many witnesses that he was capable of attending and did attend to business throughout 1922; that he continued to improve (although on some occasions he did become intoxicated), and further,

We have the evidence of the two doctors who had him in personal charge at the hospital, and on whose testimony the Vice Chancellor found him sane, and ordered his discharge, that he was capable of making a valid will when he was discharged; also the testimony of the one, Dr. Funkhouser, that away along in September, 1922, he was still better, looked better, had continued the improvement from the time of his discharge.

On the one hand, we have *all the fact witnesses;* on the other the *three medical experts.*

Even the barometer, by which the experts Cotton and Ramsay gauged the irreparable brain deterioration, was clouded, not by optic atrophy, but by soft cataracts (Rostow 1051).

As to this sort of testimony, the courts have many times declared their preference for the facts, as contrasted with the theory.

Mr. Justice Peckham, then a Justice of the New York Court of Appeals, later of the U. S. Supreme Court, commenting on this kind of expert evidence

in the case of *Roberts* v. *N. Y. E. R. R. Co.,* 128 N. Y., 455-484, said:

> "Expert evidence, so-called, or in other words, the evidence of the mere opinion of the witnesses has been used to such an extent that the evidence given by them has come to be looked upon with great suspicion by both courts and juries, and the fact has become very plain that in any case where opinion evidence is admissible the particular kind of an opinion desired by any party to the investigation can be readily procured by paying the market price therefor. We have said lately that the rules admitting the opinions of experts should not be unnecessarily extended because experience has shown it is much safer to confine the testimony of witnesses to facts in all cases where that is practicable and leave the jury to exercise their judgment and experience on the facts proved. As is said by Earl, J., in Ferguson v. Hubbell, 97 N. Y., 507: 'It is generally safer to take the judgment of unskilled jurors than the opinions of hired and generally biased experts.' "

This well expressed rule was followed (not cited) by Vice Ordinary Backes in the Prerogative Court, in the *Morrissey* case (91 Eq.) 480, where the expert opinions of three doctors, much more imposing a trio than Drs. Cotton, Ramsey and Ellis, namely, Drs. B. D. Evans, Wm. J. Arlitz and G. W. King, were in a very like case, much the same as those testified to here by the experts for the contestants, that a testator was incompetent, incurable, and that, as Dr. Evans put it, if a cure had resulted it was a miracle; found and held that notwithstanding these positive OPINIONS, a cure had resulted, and that the cause was

not supernatural, but the result of better surroundings, better care, better food, etc.

In this case there is abundant testimony to show that the same causes led to the same result, that better care, better food, better and happier surroundings, had led to the better condition testified to by Dr. Funkhouser, and by many other witnesses.

See also the court's opinion of the testimony of Dr. Worthington, who like Drs. Cotton and Ramsey, had never seen the testator after he left the asylum, when he testified in the case of *Pancoast* v. *Graham,* 15 N. J. Eq., 294-301.

The cases listed below are also in point:

Andrews case, 33 N. J. Eq., 514-516;
Garrus v. Davis, 84 N. E. Rep., 224-237;
Waddington v. Busby, 45 N. J. Eq., 173-174;
Grant v. Stemler, 68 N. J. Eq., 355-358.

In the *Grant-Stemler* case, testatrix was for five years an inmate of an insane asylum on Ward's Island. She was discharged August 12, executed a will September 27, and died October 12, and her will was probated in spite of the opinion of the experts that she lacked capacity.

Proponent therefore submits that the evidence does not warrant the finding of the trial court affirmed by the Prerogative Court that the testator lacked capacity on July 12, 1922.

That holding is based upon the rule laid down in *Bannister* v. *Jackson,* 45 N. J. Eq., 702, affirmed 46 N. J. Eq., 593, as follows:

> "It is not a law that a dissipated man cannot make a contract or execute a will, nor that one who is in the habit of excessive indulgence in strong drink must be wholly free from its

> influence when performing such acts. If fixed mental disease has supervened upon intemperate habits, the man is incompetent and irresponsible for his acts. If he is so excited by present intoxication as not to be master of himself his legal acts are void, though he may be responsible for his crime."

If the testimony of the three expert medical witnesses means anything, it means that structural brain deterioration, caused by habitual alcoholism, had rendered Dr. Freeman wholly incompetent at least before his commitment to the asylum in August, 1921; and that his condition was wholly incurable. "That fixed mental disease had supervened upon intemperate habits," and such was the finding of the court (Opinion, p. 29, l. 20) concurred in by the Prerogative Court.

That opinion is wholly irreconcilable with the testimony of practically all the fact witnesses, that he came out cured, normal, like his old self, able to attend to business, able to converse (as Dinwiddie testified) on almost every subject under the sun (supra).

If, therefore, the testimony of witnesses who knew and testified to the FACTS is to be taken, it follows that the OPINION of the three experts is wholly wrong.

Condition of Testator at Time of Execution of Will.

We come, then, to the consideration of what the FACTS are regarding Dr. Freeman's condition on July 12, 1922, when he executed the will offered for probate.

We have, first, the testimony of the three attesting witnesses, Mr. Davey, Mrs. Davey, and Louis Mohring.

They all testify, positively, that Dr. Freeman was quiet, sober, knew what he was doing, and able to do it (106, 121, 170-172).

We have, second, the testimony of Harry and Mrs. Mohring, who were at the house. Both testify that he was sober, quiet and competent (733-776-7).

Opposed to this we have the testimony of three witnesses only on behalf of the caveators, John W. Breen, Letty Patterson and R. E. Watson, on this point.

John W. Breen, a witness directly in interest, testified that on July 12, between 8 and 9 in the morning he gave decedent a check for $20;

> "He was in such a condition that I couldn't reason with him; I would say he had been on a debauch all night and was still on it in the morning (p. 508). He didn't know what he was talking to me about; you couldn't understand what he was saying; I saw him make the endorsement on that check; it isn't Dr. Freeman's regular endorsement; the name is misspelled; there is no C" (p. 508).

Yet, at page 494 the same witness testified to Dr. Freeman's powers of recovery from liquor as follows:

> "I have known him to be under the influence of liquor at 11 o'clock and be back in the office at half past two and come walk in and attend to business as well as any one. I have known him to do that for years."

Mr. Watson, attorney at that time for Dr. Freeman and now attorney for one caveator, testified specifically to seeing Dr. Freeman on the morning of July 13.

> "I saw him on the morning of July 13, be-

tween 9 and 10 at my office. I wanted to confer with him with reference to the settlement of the Dinwiddie account. His mental condition was such it was impossible to confer intelligently with him; he was under the influence of liquor or drugs; I had seen him in that condition many times; his mind was sluggish; incapable of coherent conversation; enunciation poor; thick; eyes had peculiar glassy stare and he walked poorly. I let it pass and got rid of him" (p. 548).

Letty Paterson, the colored servant, testified as to July 12, 1922, as follows:

"I went twice in Dr. Freeman's auto to Mr. Davey's house, the first time he was very bad; he had been drinking all day; I gave it to him myself. He couldn't walk very good, didn't just know what he was doing" (p. 404).

And on cross examination:

"The first night at your house I got out of the auto; Harry Mohring and his wife and myself and the two children and Dr. Freeman were in the car. We sat on the porch, the doctor went into the house. Mr. Louis Mohring was there. * * *" (p. 406).

"That first night while on the porch at your house I remember conversation about ashes of his cigar; I said, 'Don't put them there, Mrs. Davey won't like it.' There was a receptacle there, but he didn't see it. He was laughing about the color it was painted; thought it ought to be painted a different color from the screen" (p. 408).

It is submitted that on Mr. Breen's own testi-

mony there was ample time for Dr. Freeman to have become entirely sober between the time he testified to—8 to 9 in the morning—and the time the will was executed that night at eight or nine o'clock. Likewise it is submitted that there was ample time and opportunity for him to have become intoxicated again after the execution of the will and before Mr. Watson saw him the following morning. The testimony of Letty Paterson, therefore, is the only testimony in the case adverse to proponent with direct reference to the time of the execution of the will, and her statement that he was in bad condition and had been drinking all day is absolutely inconsistent with her own admission as to Dr. Freeman's amusement over so trivial a matter as the color of an ash receiver.

Letty Paterson testified that this was the first time she was at Mr. Davey's house with Dr. Freeman. In that she is wrong. The testimony shows that she came with Dr. Freeman on July 5, 1922, but did not alight from the car, and it was her second visit when the party sat on the porch and Dr. Freeman went inside. The confusion as to the two visits is unimportant except as showing that she may also have confused other more important things.

That is all the testimony on behalf of caveators bearing on that day. It falls far short of attaining the probative force that caveator's case reached in the Lee case (Lee's Will, 46 N. J. Eq., 193). Where one of the two attesting witnesses, the other being the attorney who drew the will, testified that testator was not competent at the very time of execution, that he, the witness, did not know it was a will he witnessed or he would not have signed it, and yet that will was probated. In that case it was said:

"It is established that inebriety, although

long continued and resulting occasionally in temporary insanity, does not require proof of lucid intervals to give validity to the act of a drunkard, as is required where general insanity is proved. Consequently where habitual intoxication is shown there will be no presumption that there was incapacitating drunkenness at the time of making the will. Such a condition must be made affirmatively to appear or the presumption of capacity will prevail."

And in the case of *Elkinton* v. *Frick,* 44 N. J. Eq., 154, it is said:

"Proof that a testator at or about the time of the execution of his will was addicted to the habitual use of intoxicating liquors to such an extent that he was occasionally drunk is not sufficient to render it incumbent upon the proponents to show that at the time of its execution he was free from incapacitating intoxication; the persons who assert such drunkenness must affirmatively show that it existed at the very time the will was made."

This showing of intoxication at the very time of the execution of the will must, of course, be by a preponderance of evidence. Here we have, then, at the utmost, the evidence of but one witness, Letty Paterson, and her testimony very weak on that point. On the other hand we have the evidence of the three attesting witnesses, and of Harry Mohring and Elizabeth Mohring. Certainly caveatrices did not establish drunkenness at the time of the execution of the will by the evidence of that one witness.

Her evidence could not and would not in any

court be held to establish that fact over the testimony of the five other witnesses who were then present.

Great stress is put by respondents upon the testimony of John Breen as to the condition of Dr. Freeman on the morning of July 12,—the day the will was executed—and on Dr. Freeman's endorsement on the check of that date (No. 5, in Exhibit D 4, p. 1118) the endorsement being shown as the fifth in the first column on page 1124.

It is argued that that signature is of such character as to show that Dr. Freeman was (as Breen testified) intoxicated when he made it. We challenge the fullest comparison of signatures, and claim most emphatically that the signature on the will offered for probate as well as that on the penciled instructions, show plainly that at the times those were written Dr. Freeman was not intoxicated.

Both are clear, strong and plain, and both compare more than well with the signature to the will of October 4, 1921, signed under the watchful eye of Mr. Watson.

If respondents claim that Dr. Freeman's endorsement on that check of July 12, 1922, indicates that he was drunk at 8 A. M. (when he wrote it) as Breen testified, then the signature to the will offered plainly shows that at 8:30 or 9 P. M. when he signed that paper, he was quite sober (as the subscribing witnesses testified) and quite as sober as he was when he signed the earlier will, in Watson's office on October 4, 1921.

Divergence of Interest of Caveatrices.

It is to be borne in mind that the witnesses as to facts called on behalf of the caveatrices were

all called by the sister, Sallie Freeman, and that the only witnesses called on behalf of the widow were the three medical experts. The court will also recall that Sallie Freeman was the chief beneficiary under the will executed in Watson's office on October 4, 1921, the day after Dr. Freeman's discharge from the State Hospital. Probate of that will will be sought if the will of July 12, 1922, be thrown out, and there is already filed in the Surrogate's office a caveat against its probate by or in behalf of Mrs. Freeman. It will be noted, further, that all the medical experts called by Mrs. Freeman gave it as their opinion that Dr. Freeman was incompetent long prior to the execution of that will. It was clear throughout the trial that so far as Mrs. Freeman was concerned, she was trying to throw out both wills. Indeed this was referred to by the court on the argument to the effect that if he decided against the one, he must also decide sometime against the other—on the basis of the expert testimony.

But considering the expert medical testimony wholly insufficient to warrant denying probate to the will now before the court and in direct conflict with all the fact testimony, we desire to direct the attention of the court to the divergence of interest between the two caveatrices; the one seeking ground on which both wills could be overthrown at one stroke; the other seeking to overthrow that now offered, and still leave open the door for the probate of that of October 4, 1921. That explains the absence of fact testimony on behalf of Mrs. Freeman, for all the fact witnesses who testified on the point as shown above agree that after coming from the hospital, and for at least two or three months, Dr. Freeman's condition was normal, and he was capable of making, as he in fact did make, a will.

Let us consider, then, the testimony as to his condition after December, 1921, or January, 1922.

The witnesses called on behalf of Sallie Freeman attempt to show that early in 1922 Dr. Freeman's old habit so overcame him that he became an absolute sot; that he was practically all the time drunk or under the influence of "drugs" (although there is no evidence of his taking any drug but veronal, and that only in usual doses of 5 or 10 grains).

This constitutes an attempt to show not mental disease resulting in incapacity, but that his habit had gone to such an extent that because of it he was an habitual drunkard and therefore incapable. This brings the case in the same class with the Lee case, and Elkinton v. Frick, supra.

If the experts called by Mrs. Freeman had confined their testimony to the expression of the opinion that on July 12, 1922, Dr. Freeman was incapable, and had limited their expressed belief to a period subsequent to say January 1, 1922,—thereby leaving open the way for the probate later of the will of October 4, 1921—this testimony given by Dinwiddie, the Breens, Johnson, Lord, Weber and others would have been more convincing, as supporting the medical conclusion—in fact the trial judge did refer to it as supporting, although to us it seems to directly contradict, that medical opinion (Opinion p. 29). But inasmuch as their opinion carried incapacity far back of 1921 and fixed the incompetence of Dr. Freeman as antedating both wills, this testimony on behalf of Sallie Freeman can only be deemed such as described in the Lee case and Elkinton v. Frick, supra. As a basis for the decree it utterly fails.

Conflicting Fact Testimony.

Dr. Freeman's condition during 1922, is the subject of very serious conflict of testimony. Wit-

nesses called for Sallie B. Freeman, testify that he got worse and worse. Their best witness, the man most nearly associated with Dr. Freeman in business, is John W. Breen. His testimony is fairly illustrative of that of all her witnesses. He testified:

> "Well from what I saw of him after, say from January 1st, 1922 or so, on his condition any time that I saw him was—that he was either under the influence of liquor or drugs, or both, I don't know which" (pp. 503-4).

Various witnesses testify for respondent Sallie B. Freeman to seeing Dr. Freeman on various occasions and all to the same general effect as Mr. Breen. It is, however, to be noted that their occasions of seeing him became less and less. Mr. Breen admits this:

> "Q. How often during the summer did Dr. Freeman come to the office? A. Well, nearly every week. As a rule every Monday morning for his check.
>
> Q. Did you see him oftener than that, or between times? A. He would often come in and sit down in the office for two or three hours."

And then Breen told him to stay away from the office, after the Trust Agreement of May 15, and presumably only saw him, "Nearly every week" from then on.

Opposed to this is the testimony of many wholly disinterested fact witnesses called for proponent shows that during the summer of 1922 Dr. Freeman was very far from being such a drunken sot, so continually drunk or under the influence of

"drugs" as Miss Freeman's witnesses, most of them directly interested, testified.

Adolph Hanauer, a New Brunswick merchant; Richard E. Paperlein, Manager of National Beef Company; Ralph Van Duzer, Land Agent of L. V. RR. Co.; Frederick Gowen, Under Sheriff of Middlesex; Frances Stello, wife of a Metuchen contractor; Ralph Noe, Teller Metuchen National Bank; Harry Stork, of Oak Tree, a friend of Harry Mohring; William Higgins, auditor who supervised the corporate books; and Hugo Noack, a relative of Stork and a New York Police Officer, none of whom have the slightest interest in the outcome of this case, all testify to facts wholly inconsistent with the testimony of Sallie Freeman's witnesses.

Their testimony cannot be reconciled with the finding of the trial court that "it has been abundantly proven that fixed mental disease had supervened upon the intemperate habits of Dr. Freeman."

No more can Watson's actions be squared with that finding,—although his words tend, perhaps, to support it. Watson cannot pretend that he did not believe Dr. Freeman possessed testamentary capacity in October, 1921, for he prepared and supervised the execution by Dr. Freeman of a will which he still holds. That day or the day before Watson had Dr. Freeman execute the separation agreement. On May 15, 1922, Watson had Dr. Freeman execute the Trust agreement, and testified that throughout the Trust period he consulted with Dr. Freeman about everything he did. Watson's testimony does not indicate mental incapacity; nor fixed mental disease. Far from it. Would he "consult" with an incompetent? The real condition, as he believed it he described at page 576, as follows:

"In my opinion he was not a lunatic, and was not of unsound mind, within the meaning of the statute, and I still think so. He was an habitual drunkard and had he been proceeded against under the habitual drunkard statute he could not have been released by habeas corpus proceedings, or otherwise, until the Doctors thought he was cured, at least temporarily" (576).

Even that is a strain on credibility. It was Watson took upon himself the position of Guardian or "voluntary receiver" possessing himself under the trust agreement of every share of stock Dr. Freeman held in the Freeman corporation, although every useful purpose of the trust could have been as well served by taking one qualifying share; who elected himself President of that corporation although the agreement plainly contemplated Dr. Freeman continuing in that office; Watson, who, having been Dr. Freeman's attorney and Trustee during Dr. Freeman's lifetime, now is Sallie Freeman's proctor, in her attempt to break Dr. Freeman's will, and in such attempt besmirching the memory of his former client by calling him an habitual drunkard.

Will any court believe that if Dr. Freeman were such a drunken beast as Sallie Freeman's witnesses describe Under Sheriff Gowen would have appointed him a Special Deputy on June 12, 1922 (one month before the will was executed) in entire ignorance of any disqualification for such office? He testified that Dr. Freeman came in the office; he couldn't see very good, outside that he was all right, his appearance (660).

Does anyone believe such a man as Sallie Freeman's witnesses describe could have imposed upon Ralph Noe, Teller of the Metuchen Bank, who testified:

"I knew Dr. Freeman. He opened a personal account with our bank May 31, 1922. I came in contact with him personally four or five times after that up to his death. His condition seemed to be normal in my business dealings with him. His eyesight was very poor (675). I saw nothing wrong with the doctor. In my personal contacts he has always been normal, he conducted his business with me in the bank all right (683). His signature was always by himself" (684).

Can this court believe that Mr. Higgins, the accountant who audited the corporation books would have testified as he did regarding a man such as Sallie Freeman's witnesses describe? He said:

"In the last three or four years I had interviews with him probably every three or four months, and the last year every two months (797). On the occasions I have testified to during the summer of 1922, with the exception of two or three times when he was under the influence of liquor, I would say he was capable of recollecting of what his property consisted; who would be the natural objects of his bounty and to know and understand what disposition he wanted to make of his property (806). I never saw him that he wasn't able to walk without assistance (801). Doctor spoke to me about the railroad lease three or four months before he died; said the company had notified him he must build a new trestle (802). I last saw him ten days before his death. His condition seemed to me to be as usual. On the occasions I saw him he was, in my opinion, sane (802-3). * * * I don't remember seeing him drunk two or three times in that year, 1922. It was

prior to that. Don't think I saw him intoxicated during the last year. Possibly that day at your (Watson's) house he was a little bit off. He wasn't staggering but I don't think he was himself. Aside from that I don't think I saw him under the influence of liquor in 1922" (812).

Will this court, or any court, believe that such a man as Sallie Freeman's witnesses describe would have made a habit of going to Dr. Bogart to have read to him the editorials from the Tribune and the Times, and keep it up daily for months? That he did so is undenied, and undeniable.

Mr. Hanauer saw him during 1922 three or four times a week, and during the summer was negotiating the purchase of an interest in the coal and lumber business.

Mr. Paperlein saw him during 1922 twice or three times a week (598).

Mr. Van Duzer's testimony relates to an interview at his own office on November 29, 1922 (648).

Mrs. Stello saw him "once in a while" the last time being two days before his death. During the summer of 1922 he was there four or five times (666).

Harry Stork met Dr. Freeman about a year before his death and after that saw him nearly every day (689).

Hugo Noack met Dr. Freeman 13 months before his testimony was given, and after that saw him usually once a week. He saw him during July, 1922 (819-20).

It is also to be noted that these witnesses include all the people with whom Dr. Freeman was doing business during 1922; and that after the trust agreement, especially, the Breens, Dinwiddie, Weber and the other witnesses called by Sallie Freeman saw him less and less.

It is submitted that the clear weight of the testimony shows that Dr. Freeman, although occasionally intoxicated, was mentally competent during and throughout 1922. This is strongly corroborated by Dr. Funkhauser, who saw him in September, 1922, and noted the continued improvement since Dr. Freeman's discharge in October, 1921 (1017-18).

Delusions.

We come, then, in logical sequence, to a consideration of the question of whether or not Dr. Freeman was a victim of delusions.

A number of alleged delusions were referred to in the argument, and three are mentioned (although not in words termed "delusions") in the opinion. Those are: Persecution by his wife and delusions of infidelity; turning against old friends, notably Breen, who had worked for him for twenty years and of whom he had not previously been suspicious; spending his time during his last year with "comparative strangers."

Delusion of persecution seems to be the term by which the doctors refer to Dr. Freeman's resentment against his wife for having had him confined in the asylum. There is no other "persecution" even hinted at in the evidence.

That he had such resentment is unquestionable. But, under the law, that was not a delusion Dr. Ramsey to the contrary notwithstanding.

In Middleditch v. Williams, 48 N. J. Eq., 733, insane delusions were defined with great care, as follows:

> "Whenever the patient once conceives something extravagant to exist which still has no existence but in his own heated imagination, and whenever, at the same time, having once

so conceived, is incapable of being, or at least being permanently reasoned out of that conception, such a patient is said to be under a delusion in a particular half technical sense of the term, and the absence or presence of delusion, so understood, forms, in my judgment, the true or only test criterion of present or absent insanity."

And at page 735 it defines what is not a delusion:

"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 absolutely 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 brief may show lack of judgment or want of reasoning power, BUT NOT THAT HIS MIND IS UNSOUND."

In *Davenport* v. *Davenport,* 67 N. J. Eq., 320:

"A mistaken belief as to a matter of fact or an illogical conclusion therefrom is not necessarily an insane delusion."

Clapp v. *Fullerton,* 34 N. Y., 190.

"No belief nor prejudice is an insane delusion, however mistaken it may be, which has some basis for it in fact."

Digest citations:

"As where those against whom the testator has a prejudice have sided against him in quarrels."

Dobie v. Armstrong, 160 N. Y., 584.
Re White, 121 N. Y., 406.

"Or have been lacking in interest and sympathy toward him when in trouble."

Riddle v. Gibson, 29 App. Cas. (D. C.), 237.
Trumbull v. Gibbon, 23 N. J. Law, 117.

All the testimony is that he did resent his wife's action in having him committed. Drs. Ramsey and Cotton call that a "delusion of persecution."

That, however, was no insane delusion; it had a solid basis of absolute fact, for it was she who signed the application for his commitment.

Along the same line, he resented his sisters' neglect. That was no insane delusion; it, also, was a fact.

Sallie Freeman testified that she saw him once at the hospital, in September 1921, and never again alive. He died March 7, 1923 (390-394).

Nellie Freeman testified she saw him "probably about once a year, possibly more" (258). The last time was the last Sunday in June, 1922 (260).

Jennie Freeman testified she saw him in May, 1922, and does not mention any later occasion (830-31).

The other sister did not testify, but it does not appear that she ever saw him after January, 1922, or at least more than once.

Will anyone be found to claim that his complaint of neglect by his sisters was a delusion, and not a fact, in the face of their own admissions?

Dr. Ramsey did mention some hearsay of accusations of infidelity on the part of his wife. Dr. Cotton testified Dr. Freeman made such accusations at the Hospital. Dr. Funkhauser and Dr. Rostow never heard of them. Neither, apparently, did any other witness, so far as the record discloses. There is no proof whatever that any such idea, if it ever found lodgment in his mind, remained there after Dr. Cotton's first interview with him. Certainly it was not a fixed delusion. There is no real proof of any such delusion at all, for Dr. Cotton may well have gotten the idea from others, as Dr. Ramsey admittedly did, but in any event no one else ever heard of it after his admission to the Hospital. If, therefore, it was a delusion at all, it disappeared under treatment there, and was never heard of thereafter.

But in addition to having abundant and valid reason for resentment against his wife, and against his sisters, Dr. Freeman had, likewise, abundant reason in proven fact for a change of attitude towards Breen, and the Breen family as a whole.

The evidence all shows, and Breen admits that when Dr. Freeman was not in personal charge, he, Breen, was in control of the business (491). The testimony shows that in May, 1922, when the trust was established, there were some $82,000 of outstanding accounts, a loan on which Breen's personal collateral was pledged for $5,000 and not sufficient cash in hand to pay Stevens-Eaton $6,000. As Mr. Lord expressed it:

> "They were lacking in someone to collect their bills, they were in good condition, but they owed quite a little money and had a great deal standing out on their books" (343).

In other words, the less Dr. Freeman had per-

sonal control, and the more Breen did have, the worse the financial condition got.

Also Dr. Freeman had tried living with three of the Breens, one after the other, without satisfaction.

He also felt, and told Mohring and Higgins so, that they were loafing on the job,—and it is to be noted that none of them deny the accusation (760).

More yet; only a few days after the execution of the Trust Agreement John Breen discharged two employees selected by Dr. Freeman, and put in their places two more Breens. Eight Breens, at one time, were working for the Company. Dr. Freeman had discharged one because of some trouble over a truck tire, and this notwithstanding he had paid him his wages during the entire period he was in war service. Can one wonder that Dr. Freeman began to believe that his business was suffering from "Too much Breen." Can anyone say that there was no just cause for suspicion; that his suspicion was an insane delusion?

Another friend against whom he is alleged to have turned is Dinwiddie. Dinwiddie fixes the time of the break as the first Sunday in June, 1922. That was only about two weeks after Watson, as Trustee, began his work of collecting the outstanding accounts, one of the largest of which was Dinwiddie's $3,500. It appears Dinwiddie could not and did not pay that account; that he gave some security and arranged for installment payments. It is perfectly evident, therefore, that as long as no one pressed him for payment of that large account, Dinwiddie was a warm friend; as long as he could buy whatever he wanted at the coal and lumber yard on credit, Dr. Freeman was a welcome guest; but when called on to pay up, that friendship ceased. Dr. Freeman "turned against his old time friend."

Still another friend against whom Dr. Freeman turned is Mr. Watson. Mr. Watson, Dr. Freeman's own attorney, who "for his own good" took over every share of Dr. Freeman's stock under a trust agreement he himself testified he did not consider "legally binding" (571) elected himself President of Dr. Freeman's corporation; told Dr. Freeman to stay away from the office; considered Dr. Freeman an habitual drunkard; failed for more than a month to deliver the bond called for by the Trust Agreement, and when—after such failure had been made the basis for rescission of that agreement, did deliver the bond in a condition which perhaps invalidated it (564); Mr. Watson who testified that he refused, on demand, to cancel that Trust agreement; Mr. Watson, who was forced to admit on the stand that as Trustee he had paid himself or his firm $50 for drawing the October 4, will although his or his firm's bill for that, along with other services, had been paid (569).

With such first fruits of the trust, can any one wonder that Dr. Freeman repented having executed it? Is it strange Dr. Freeman turned against his old friend Mr. Watson? Was it due to a delusion, or was there sufficient and more than sufficient reason to be found in Mr. Watson's own acts?

Dr. Freeman's feeling toward Mr. Watson was an awakening, not a delusion.

Those other friends against whom he turned were Weber, the Justice of the peace who committed him; Dr. Ramsey, the doctor who, with his office assistant, signed the certificate for his commitment.

He did not want anything more to do with those old friends who "for his own good" procured or partook in his confinement in an asylum for the insane.

Dr. Rostow was right when he testified at page 1054 that Dr. Freeman had no delusions.

It is submitted that Dr. Freeman's resentment was entirely natural, Dr. Ramsey's opinion to the contrary notwithstanding. That under the circumstances, it was quite to be expected in a man of his type.

Such resentment may well have been still more bitter, so far as his wife was concerned, by her bargain not to oppose his release for $50 a week.

The Chancery Decree.

One point worthy of separate mention is the effect of the decree of the Court of Chancery ordering the discharge of Dr. Freeman from the State Hospital, which was advised by Vice Chancellor Buchanan on October 3, 1921, after two hearings.

Dr. Freeman was committed, as already stated, on August 21, 1921, as an insane person, on complaint of his wife and on the certificate of Dr. Ramsey and his office assistant, Dr. Shull.

Habeas corpus proceedings were instituted in his behalf by Mr. Watson, two hearings were held at which the testimony of Dr. Funkhauser and Dr. Rostow was taken, and at which Dr. Freeman was in person before the Vice Chancellor. Thereupon a decree was advised, and entered, on Mr. Watson's motion, in which, among other recitals is this:

> "And it appearing to the Chancellor that the said Charles M. Freeman is sane."

Before the institution of the proceeding, Mr. Watson had written to Dr. Cotton a letter which is in evidence, in which he said (Plaintiffs' Exhibit 2, p. 1079):

> "I represent Dr. Charles M. Freeman, of Metuchen, N. J., who was recently committed to the State Hospital at Trenton, and is now

New Jersey State Library

confined there. I have known Dr. Freeman for several years, during which time I have had occasion to meet him frequently, both in personal and professional way, and as the result of that intercourse I am certain he is not of unsound mind. * * *"

That letter was dated September 8, 1921. On the witness stand Mr. Watson avows that he still entertained the belief stated in that letter.

Dr. Cotton's testimony entirely disagrees with that belief expressed, and reiterated at the trial, by Mr. Watson. Dr. Cotton, examined as to Watson's call on him and Dr. Freeman's condition, testified (593-4):

"He was allowed to stay in there. Mr. Watson took my advice, to treat him and get him in good condition, that he needed treatment, that he was insane. That was September. I don't think he was discharged until October."

The Chancery record, in evidence, shows that the statement of Dr. Cotton, that Mr. Watson took his advice to let Dr. Freeman remain there for treatment, is not borne out by the fact, for the proceedings were started about as quickly as was possible after that interview, and terminated October 3, in the decree.

The effect of that decree, in connection with this controversy over the will of Dr. Freeman, is a question for consideration on this appeal.

Objection was made to the admission of evidence as to Dr. Freeman's acts, habits etc., prior to the date of that decree, on the ground that, having been found sane by the Court of Chancery as of October 3, 1921, that adjudication was conclusive, and that testimony of earlier acts, habits, etc., were not competent, inasmuch as their only purpose must involve a collateral attack on that decree.

No case has been found where a like adjudication of sanity has been passed upon by an appellate court. It is interesting to note that bills providing for just such adjudication, at or before the making of a will, are pending before the New York legislature, the purpose being to enable a man to obtain such an adjudication at the time of making his will, to forestall a contest after his death, on the same question.

Cases such as *Re Coleman's Will,* 88 N. J. Eq., where there have been adjudications, on inquisition, that a testator was non compos mentis, have held that such a finding is not conclusive on the question of testamentary capacity, but only prima facie evidence of the fact so found as related to the validity of a will made afterward by the subject of the inquisition.

Brady v. McBride, 39 Eq., 495.

Counsel for caveatrices argue, and the trial judge in his opinion intimates that there is some distinction between "insane" and "of unsound mind" and contend that the decree only meant that, under the lunacy law, Dr. Freeman was a man safe to be at large.

This seems to be the exact distinction between tweedledum and tweedledees. Whatever its effect, the decree unquestionably did constitute a judicial finding by the Court of Chancery that Dr. Freeman was SANE, with all the effect that such a judicial finding involved.

The opinion of the trial court, in this connection, speaks of that decree as follows:

> "I take it, therefore, that the determination of the Vice Chancellor was merely that the deceased should be discharged from custody and this conclusion was arrived at by him after only hearing in an uncontested case one side."

We cannot agree, as this implies, that the Court of Chancery is less careful in ex parte matters than in contested cases. Such has not been our experience. It may, however, be assumed that "the other side"—had there been a contest—would have been Dr. Freeman's wife. But there, as again at the trial of the will case, she did not appear, she did not testify. She seems to have a strong aversion to testifying under oath in any court proceeding. Be that as it may, the record shows that the Vice Chancellor inquired with definite particularity as to Dr. Freeman's condition, and how it was likely to develop, before he determined and advised a decree that "The said Charles M. Freeman is sane."

True he did not have before him the learned experts Drs. Cotton, Ramsey and Ellis, to testify that, in their opinion, Dr. Freeman had been insane for several years; that his brain had structurally deteriorated to such an extent, as a result of chronic alcoholism, that his condition was incurable; that cessation of drinking would not improve that condition materially; and (of Dr. Ramsey) that his impaired eyesight, due IN HIS OPINION to an atrophy of the optic nerve, was a barometer or guage or indication of the breaking down of his mental faculties.

But he did have Dr. Freeman before him at both hearings, and he did have the two doctors from the hospital and he did inquire, as shown by the testimony now in evidence in this case, what they meant when they used the expression "deterioration," which they explained by saying that while he might not be as keen mentally as he would if he had not drunk to excess, he still might "do very well," which is in exact line with Dr. Rostow's testimony on the stand in this case, that Dr. Freeman, even then, was far above average intelligence.

Whatever he may now argue as to the meaning or

lack of meaning of that decree, Mr. Watson at the time took it at full face value. He took it, as an adjudication before death, of a man's sanity, of his competence to make a will, at or immediately before so doing, with the purpose of forestalling a contest after the man's death.

That same day Mr. Watson had Dr. Freeman execute a separation agreement with his wife, providing for weekly payments of $50 for her support. The next day he had Dr. Freeman execute a will, in Mr. Watson's own office, and under Mr. Watson's own supervision. On May 15, 1922, he had Dr. Freeman execute the trust agreement to himself, Mr. Watson as trustee.

With this documentary record of his adoption of the Chancery decree as an absolute finding of fact, Mr. Watson's arguments that it did not mean what it said is purely, so far as he is concerned, argument of a moot question. If he did not believe Dr. Freeman to be sane and competent, as the Court of Chancery decreed, he would not have had him execute a will, make an important contract, execute a trust deed to himself.

Whether or not the decree constitutes a legal estoppel, behind which caveatrices may not go, it is respectfully submitted that its evidential weight, and the presumption arising from it, of the sanity, of the competence of Dr. Freeman to make a will, cannot be overcome by the expert opinion testimony of Drs. Cotton, Ramsey and Ellis, and should have controlled the courts below, the more so because all the fact witnesses agree with the finding of that decree, and only the experts disagree.

In Conclusion.

Stress is laid by the expert witnesses and by the court in its opinion upon the fact that Dr. Freeman was separated from his wife and "had taken

up and spent the last year of his life with comparative strangers" (Opinion, p. 30) as evidence of fixed mental disease.

In 1920 Dr. Freeman and his wife had separated. There is no testimony whatever in the record as to the cause of that separation. It seems to be assumed by the counsel for caveatrices and by the court that that separation was due to Dr. Freeman's fault, but there is no testimony in the record to justify that assumption, for it appears that even before marriage he had been addicted to periodic sprees, and that fact must have been well known to his wife at the time of marriage.

The one witness, Mrs. Freeman, who could have explained the underlying cause, did not testify, although she is one of the contestants.

Many of the other witnesses, John Breen, Dinwiddie, Mr. Watson, Sallie Freeman, must have known what led to that separation, but none of them gave a word of testimony on that point.

Be the cause what it may, the fact remains that after such separation Dr. Freeman made repeated and evidently unsuccessful, attempts to find an abode which he could make a home. "He lived in numerous places" testified Dr. Ellis (p. 950). "He lived at John Breen's house; he lived with Will Breen and he lived with John Breen, Jr." (p. 950). Except that this was between September, 1920, and December, 1921, such residences are not fixed as to time nor duration. In October, 1921, when he was discharged from the Asylum, he came back direct to the apartment over the garage, where he then lived with Will Breen and his wife. That Will Breen himself testified (433).

In December, 1921, he discharged Will Breen, "because of his wife's vulgarity and Bill being lazy on his job" (p. 793). Mrs. Mohring testified to the neglect of Dr. Freeman by Will Breen and his wife, and explained that as follows:

"When I spoke of his being neglected by the Breens I meant about his personal self; they didn't care whether his clothes were sent to the laundry, after they were told to move, or his food; his room was awfully dirty" (792).

Then, after having vainly sought a home with three of the Breens, Mohring was employed, and with Mohring and his wife and his children Dr. Freeman found a home where he was content. Mohring testified:

"I used to stay home nights and entertain Dr. Freeman, play cards, and talk, explain radio, talk business; when Mr. Watson had taken control he started to explain things, how the business should be run, and when he got it back the changes he was going to make (751-2).

There was a radio set in the house, I built it and was working on an improvement. Doctor was very much interested and had me explain it; a week later he told me a mistake I had made (726).

Doctor was well educated and knew all the great plays; if there was an opera on the radio he would explain the whole opera. * * * One was Aida; there were three or four others, I cannot remember them (763-4).

He was improving in health after he lived with me; he was cutting down on the whiskey. * * * Before I came there he had a five gallon bottle once, and at his direction I poured it in the sink. He thought it was bad and was afraid to drink it" (739).

Harry Stork testified:

"Doctor said since he lived with Mohring it

seemed a new life to him; that he felt better, and he seemed to have a great lot of fun (693).

He spoke to me about his family relations, and the Breens, and the Business, and how much he thought of Mohring. He never mentioned the will" (711-712).

Dr. Freeman told Mohring, before the latter was employed but after the separation, that because Mrs. Freeman had him committed everybody thought he was crazy; that his trusted friends were doing him. He had Mohring figure up how much the Breen family was getting and it ran up into the thousands (722-3). He used, after Mohring was employed, to ask after Mrs. Freeman, if Mohring ever saw her, how she was looking, and told Mohring the only thing he had against her was sending him to Trenton Asylum. He said if she had had him confined in jail he wouldn't care, but committing him to the insane asylum was more than he could stand (p. 730).

Mohring further testified:

"When I first went there he used to drink pretty heavy; his clothes were shabby; his room was in an unfit condition. He took a sleeping tablet (veronal) before retiring. When I went there he used to take it every night. His use of liquor decreased. I tried to dissuade him from keeping it; after the agreement with Watson he made up his mind to taper off so that on May 15, 1923, when he got his business back, he could prove he didn't drink any more (720-21).

For the first two or three months he took the veronal, then he tapered from two tablets to one half a tablet; the last three months I don't believe he took any; I didn't see any;

didn't buy any, and he said he didn't take any" (721).

Mrs. Mohring testified:

"He drank less and less whiskey during the time we were there * * * through warm weather he much preferred beer, if he could get it; didn't care about whiskey for it made him sick (775).

In physical condition he improved greatly during the time we were there; so much that none of his old clothes would fit, he grew stout" (775).

Mr. Higgins testified:

"He said he had enjoyed the radio in the garage (801). The Mohrings treated Doctor all right, as far as I could see" (801).

Dr. Funkhauser testified:

"I saw him after his discharge from the hospital. I think it was in September, 1923; in my office at the hospital. He came there. I understood just to pass a little visit. I had a conversation with him; his physical condition was much better than I had ever seen him before; his mental condition seemed better than at the time he left the hospital; I commended him on his appearance; told him I was pleased to see him looking so well" (1117-8).

Does this testimony justify the opinion of the trial court that he did not comprehend the value of his estate at the time the will was made? The opinion states:

"The will itself would indicate that he did

not, and the fact that he left over one hundred thousand dollars to a man who had been in his service only about six months and who had been adequately compensated for the services he had rendered, indicates to me that the will was an unnatural one, the act of a disordered mind" (Opinion, p. 30).

What service had Mohring rendered? As shown by the testimony above quoted he had made a home for a man who, for over a year, had sought in vain for endurable residence with his oldest employe, John Breen, with other employes for years in his service, John Breen, Jr., and Will Breen. But not that alone! Mohring it was who helped him to control, his appetite for liquor; who helped him cut down, and later cut out taking veronal; who entertained him; did not continually criticise him but kept him interested with cards, conversation and the radio during the evenings and drove him all over in the car during the days. Mohring it was whom Dr. Freeman spoke of and spoke to as "son." Mohring and his wife it was, who as Higgins said "treated him all right" so that he grew stout to such an extent that his clothes did not fit, and so that he appeared to Dr. Funkhauser "better than I ever saw him before"—three months after the will was made.

Dr. Freeman had declined to allow his sister Nellie to come and keep house for him. She testified "He didn't think it would do" (259). But with the Mohrings he was happy, and in his will he explained the reason for what the trial court terms an "unnatural will."

"THIS BEQUEST IS MADE IN APPRECIATION OF A LOYALTY AND DEVOTION WHICH I HAVE APPRECIATED

AND WHICH I HAVE FAILED TO RECEIVE FROM THOSE NEARER BY TIES OF BLOOD, MARRIAGE AND BUSINESS."

The reference is to his sisters, who, by their own testimony had neglected him shamefully; who always criticised him; considered him "selfish," whom he did not want to live with him.

To the Breens whom he believed were loafing on the job; of whom eight, all told, were working for him at one time; with three of whom he had tried to find a home; under whose management or lack of management the business had got into such a deplorable state financially that the Trust was forced upon him;

To his attorney, Mr. Watson, who refused to cancel the trust agreement, on demand, because, as he testified:

> "He was no more competent to ask me to relinquish it than to take it. This notwithstanding I had written and still believed he was not of unsound mind; and notwithstanding my position I did take the precaution to put an anchor out to windward and have him sign a consent to the Breen settlement" (p. 574).

Mr. Watson, who only some two weeks after he became Trustee, paid to himself or to his firm fifty dollars for drawing the October 4, 1921 will, although he had already been paid for that service,—and got caught doing it. Mr. Watson on the witness stand first denied this, but on being shown the record was forced to admit it. His testimony was as follows:

"The bill for services in connection with his

release, as well as drawing the will, was $1,000. It was not paid all at once, but in two or three payments.

* * * * * * * *

That is right, a check was given specifically for drawing that will June 20" (p. 569).

To the wife from whom he had separated, yet against whom he never said a word, except to complain that she had gone too far when she had him committed to an insane asylum. The wife who never appeared in the court room during the hearings; never testified, although contesting his will; the wife who wrote the letter to the hospital authorities in December, 1920, following his first treatment there, which, had it been admitted in evidence, would have flatly contradicted Dr. Cotton out of his own file (pp. 1018-1022) which letter the court refused to have marked even for identification (p. 1020).

His wife, who, so far as appears expressed her heartfelt consideration for her husband only by having him committed to a lunatic asylum; who did not oppose his release but exacted a formal separtion agreement assuring her of $50 a week, and (presumably) the execution of a will giving her an annuity in case of his death.

The court will doubtless recall the interviews, published all over the wide world at the time of their marriage and given out by her, that theirs was not to be a sex marriage but the union of two artistic souls above and beyond such normal considerations. What wonder that Dr. Freeman told Dr. Rostow that she had never made a "home" for him? What wonder that she would not take the witness stand, with that sordid bargain not to oppose his release, evidenced by formally executed documents, to explain away if she were to continue

to pose as a much wronged wife, whose single thought for her dear husband was only what was best "for his own good"?

Mrs. Freeman's motive in procuring the committal of Dr. Freeman is wholly unexplained except at second hand through Dr. Ramsey. It is equally obscure as her motive or his in separating. The trial judge commented that he was curious to know how it could be "matter of opinion" that she had him committed for "his own good," but was it so purely altruistic, or did her absence from the witness stand conceal other and less worthy motives, known only to herself, suspected, perhaps, by him?

Her absence from the trial, her deliberate refusal to testify might well be taken to infer that "his own good" was not the real, the underlying motive for her action. Perhaps her terms for not opposing his release furnish a key to the mystery. A dozen possibilities suggest themselves, and the record is bare of the facts. True Dr. Ellis testified that their life was happy while they were together. But obviously there was some rift, else they would not have separated. Dinwiddie testified to an intimate friendship, but is silent as to the cause of separation. It is significant that he testifies that his friendship with Dr. Freeman continued, but does not state that Mrs. Freeman continued her intimacy with his family.

She and she alone is responsible for the failure of the record to throw some light into the hidden depths of her real motive.

Why, therefore, so confidently assume that he alone was at fault; that her only motive was "his own good"?

The will, however, is not "unnatural." The explanation of the bequest to Mohring was not the expression of a diseased mind, but a statement of absolute fact.

In Kustus v. Hager, 112 Atl., 45, a like will was before the Supreme Court of Pennsylvania. In its opinion, admitting the will to probate, the court said:

"On the other hand plaintiff, after she and her husband became acquainted with testator, not only took pity on his loneliness and visited and dined with him, but also carried to him, from her home at a distance, dainties cooked by herself; nursed him during his illness; she and her husband giving up their own home temporarily and living with him until he recovered; loaned him money when he needed it; at his request advanced the expense of altering his property; kept his apartments in order; when he was ill or suffering from excessive drinking cleaned him and took care of him exactly as a mother or a wife would have done; and, finally, after the will was made, at his request, she and her husband went to live in the same building with him. These facts are not denied, and if it be said her influence over him thereby became disproportionately great as compared with that of his contesting relatives, it need only be added that the disproportion was due to her kindness and their neglect. HER CONDUCT THEREFORE JUSTIFIED THE STATEMENT IN HIS WILL THAT WHAT HE DID WAS 'IN CONSIDERATION OF HER FRIENDSHIP AND FAITHFUL SERVICE' to him, and made the will a most natural one."

And further on the opinion continues:

"The will itself is brief and easily understood, and did not require great business

ability, either in determining to make it, or in comprehending it when made. It simply gave his estate to plaintiff and appointed his counsel as executor. In making such a will testator did not have to decide whether or not he would give his estate to those dependent upon him, or to relatives who were natural objects of his bounty, for there were none such. He did not have to decide between those who had been kind to him in time of need, for plaintiff was the only one who had. He did not have to consider how he would divide up his estate, for no question of division arose. He needed less business judgment in making the will than would have been required in making a gift intervivos, of a sum far less than the amount of his estate, for his own actual and possible needs did not have to be taken into account. It is this status, and not the ordinary situation when making a will, which must be taken into consideration in determining whether he knew and understood what he was doing. Stevenson v. Stevenson, 35 Pa., 469. From then until his death the will remained in the possession of his counsel, but testator clearly remembered its contents, and told a number of his friends he had made a will, giving his property to plaintiff."

How closely parallel to the instant case. In those points in which it is not exactly parallel the testimony shows that Dr. Freeman weighed and measured such bequests as he did make, that he had a reason, sufficient to himself, for what he did do.

No such exact parallel has been found reported in any one case in New Jersey, but the law is the same.

In *Bennett* v. *Bennett,* 50 N. J. Eq., 439, the court said at page 449:

> "* * * No court has power to refuse probate to a will because the disposition the testator has made of his property by it appears to the court to be unreasonable or unjust, for the very obvious reason that his right to make a will necessarily embraces the right to make any disposition of his property that his feelings or his judgment may approve, and for the additional reason that the testator, in deciding how his property should be distributed, may have BEEN CONTROLLED BY SECRET AFFECTIONS OR HATE, OR BY HIDDEN MOTIVES AND PURPOSES, WHICH, IF KNOWN AND UNDERSTOOD BY THE COURT AS THEY WERE KNOWN AND UNDERSTOOD BY HIM, WOULD MAKE A DISPOSITION WHICH IN THE ABSENCE OF SUCH KNOWLEDGE APPEARS UNREASONABLE AND UNJUST, APPEAR TO BE PERFECTLY REASONABLE AND JUST."

Here we do know testator's motive for all his bequests, that for the residuary bequest being given in the will itself.

In *Re Wilford's Will,* 51 Atl., 501, the court recognized the fact that testatrix had no children as one of importance in determining the validity of a will in which she ignored her relatives and left her property to her probable paramour. At page 502 the court said:

> "When there is a glaring disregard by a testator of a child—especially if such child is helpless by reason of infancy or disease—in

favor of a stranger, a court while saying that a man may do as he pleases with his property, will be alert in seeking for the presence of some influence which must have warped the judgment and controlled the will of the testator."

In Re Mannion, 86 N. J. Eq., 232, the court of Errors, affirming probate, said, in a case where the will was executed June 14, 1912, and the testator died on June 30, leaving $100 to his son John, and the balance of his estate to a friend who, as the will said "has cared for and watched over me for the past twenty years" "as a father over a child":

"It was as true with the testator as it is with humanity in general that at the last those who most impressed him with their love and kindness remained longest in his memory and held the strongest claims upon his testamentary gratitude. Influence acquired over a testator by kind offices, unconnected with fraud or contrivance, is lawful and proper."

In *Re Able's Will,* 85 N. J. Eq., 486, a testatrix left all her property to her son, with whom she lived, and who stood in a confidential relation to her, the court said:

"To choose him was her privilege. The exclusion of her daughter was for reasons which she regarded as good and sufficient and which she seems to have made generally known. Whether they were well founded need not be passed upon. It is enough to say that she had reasonable grounds for believing the circumstances which moved her to disown her daughter, and that those circumstances were

not extrinsic to the daughter's conduct. The decree will be reversed and the will admitted to probate."

In Re Eatley's Will, 82 N. J. Eq., 591, the Surrogate admitted the will to probate; appeal was taken to the Orphans' Court and order for probate reversed. Appeal to the Prerogative Court was decided by Backes, V. O., who said:

"We are not at liberty to destroy wills simply because they strike us as unjust. That is only a formidable circumstance in the consideration of the cause. The power of disposition belongs equally to the good and to the bad, and wills cannot be set aside merely because unequal or unjust. If capacity, formal execution and volition appear, the will of the most impious man must stand, unless there is something * * * in the actual disposition against good morals or against public policy. It may be harsh and severe, it may be extremely cruel, under some circumstances to disinherit one child and to bestow the whole estate upon another, but if the testator be of disposing mind and memory, and duly execute the will in the forms prescribed by law, no court can interfere."

Probate granted.

If Dr. Freeman's will treated his sisters and his wife harshly, in that it left to them only nominal bequests, the testimony abundantly shows that he had a reason for so doing, sufficient, at least to him, to justify his act. Perhaps his decision was hard, possibly it was not justly arrived at, but it is very evident from all the testimony that such reasons as he in fact had would impel such a man to exactly such action.

He was a man who remembered a friend; a man who resented a wrong. He was a man who, when he made up his mind, was hard to turn from his purpose. He was positive, self-willed, and so far as his wife and his sisters are concerned, his reasons for leaving them nominal sums only were, as was said in Re Able's Will, supra, "not extrinsic to their own conduct." If, by their own acts, they had incurred his resentment,—and they certainly had—he was the sort of man who would show his resentment in no uncertain way. All the testimony shows that he was not the sort of man to turn the other cheek, but rather one who would follow the less saintly, but more human course of hitting back.

This point was referred to in *Trumbull* v. *Gibbons,* 22 N. J. Law, 117, where the court, speaking of a question regarding a will, left to a jury, said:

> "In my judgment the jury rightly responded to the inquiry, so emphatically and so properly put to them in the charge; that they were to inquire not whether the will was a fair will, a just will, an equitable will, the will of a kind-hearted and right-thinking man, but WHETHER IT WAS THE WILL OF THOMAS GIBBONS. The judge properly put the case to the jury with a directness and an emphasis suitable to the occasion. No other verdict could have stood, and it was right that the jury should not be permitted to err from feelings which possibly may have been excited by the harshness of the will, when the evidence was clear and the case free from doubt."

And again, in *Re Morgan's Will,* 68 Atl., 953, Chief Justice Mitchell of Pennsylvania said (954):

> "A will was written by counsel in November,

1903, and a codicil by the attending physician on March 22, 1904, both from dictation of the testator without aid or interference of any other person. Under such circumstances a prima facie case is made out, which can only be overcome by clear, definite, circumstantial and weighty evidence of facts not reconcilable with the possession of testamentary capacity. Opinions of experts and the usual testimony as to the failings of age, lapses of memory, irritability, etc., are of little weight in such cases. (Citing cases.) Between the dates of the will and the codicil the testator made several very material changes in the disposition of his estate; and it was argued that this showed such weakness and vacillation of mind as to be strong evidence of want of testamentary capacity. But whatever weight such fact, unexplained, might have in ordinary cases, is obviated here by the plain indication that the impelling motive of the testator was to prevent his estate going into the hands or coming under the management of his son-in-law. He was less concerned as to where it should go than where it should not.

Testator had an only child, a daughter, whom he passed over, and gave the bulk of his estate to her two children, and it is argued from this that the will is an unnatural one, and evidence of undue influence. BUT A WILL IS UNNATURAL IN A LEGAL SENSE ONLY WHEN IT IS CONTRARY TO WHAT THE TESTATOR FROM HIS KNOWN VIEWS, FEELINGS, AND INTENTIONS WOULD HAVE BEEN EXPECTED TO MAKE. WHEN IT IS IN ACCORDANCE WITH SUCH VIEWS IT IS NEVER UNNATURAL, however much it may differ from

the ordinary actions of men in similar circumstances. In the present case it was shown that the testator had a prejudice against his son-in-law, and that his reason for passing over his daughter was to avoid the possibility of his estate coming into the hands or management of her husband. It is conceded that the prejudice was without any just foundation, but just or unjust, its existence explains the testator's action and deprived it of all weight as evidence of mental incapacity. As said by Paxon, J., in Caufman v. Long, 82 Pa., 72, quoted by the learned judge below, 'A man's prejudices are a part of his liberty.' "

In *Bennett* v. *Bennett,* supra, the court said:

"Few rights are more valuable and important than the right of testamentary disposition. To the aged, whose vigor is abating, and who, in consequence of the infirmities of old age are compelled to look to others for many of the things that render life pleasant and comfortable it is more precious than any other, and should, for that reason, be guarded by the courts with a jealous care and upheld with the utmost firmness."

In the case at bar we have that exact situation, for after the unexplained separation from his wife, Dr. Freeman tried time and time again to find, with old and trusted employes, some "of the things which render life pleasant and comfortable," but without success until he employed Mohring, and when he knew that with Mohring, his wife and little children he had attained that comfort,—and the testimony abundantly shows that he did,—he felt impelled to reward them for "such loyalty and devotion" in the way he did.

No one's rights, no one's natural expectations were overlooked. He considered his obligation to his wife extinguished by her act; he felt under no special obligation to his sisters, yet did not want them to think or leave it open to them to say that he forgot their existence. He had no offspring of his own. His sisters were and long had been self-supporting, beside having what his father left to them. His wife he knew had a fortune and an income of her own. She was no longer, if, indeed, she had ever been wife in more than bare legal name. His old colored servant he provided for. Whose claim, then was overlooked? As in the case of Re Mannion, supra, those who "most impressed him with their love and kindness remained longest in his memory and held the strongest claims upon his testamentary gratitude." To his servant, he left $1,000. To Mohring, in whose family he at the last, after a year's search, had found a "Home" comfort, help in his purpose of self-control, and a reasonable measure of enjoyment, so that he came to speak of and to Mohring as "Son" he left, practically, his all.

Will this court say that Mohring's services were "fully compensated" by his wages of $24 a week, or will it say that of the value of such services, such "loyalty and devotion" Dr. Freeman, in the circumstances in which he stood, and being the man he was, was the best judge, and that he had a right to fix that compensation without reproach, to include "all the rest, residue and remainder" of his estate.

We therefore respectfully submit that the will was not unnatural, but like those in *Kustus and Hager,* and Trunbull v. Gibbons, supra, and for the same reasons, was a most natural one.

Reply to Respondent's Claims.

Commenting on the pencil instructions for the first will (Ex. P-12, p. 1116) Mr. Watson makes

many claims which inspection of the document (which will be handed up on the argument) will show to be without foundation.

Errors there are, of spelling, punctuation, and alignment, and one in numbering paragraphs, but many things claimed by Mr. Watson as errors are not so, in fact. For instance, he says "Paterson Street" is termed "Patterson Ave." He is wrong. It reads "Patterson St."

But he avers that the third paragraph has been torn off. That is mere conjecture, and is wholly untrue. The paper used, as Mr. Watson well knows, is a bill head of the corporation, with the printed heading torn off.

We submit that the writing is exactly what might be expected of a man with the impaired sight of Dr. Freeman, writing—as the testimony shows this was written—on a dining room table, and that his signature favorably compares with that on the will Mr. Watson drew and had Dr. Freeman execute on October 4, 1921.

The further claim that Mr. Breen's testimony, his own and that of Letty Paterson show that Dr. Freeman was drunk when the will was signed has been answered above. Breen testified to seeing Dr. Freeman at 8 A. M. Mr. Watson testified to seeing him the following morning, and only Letty Paterson, to seeing him at or near the time of the execution of the will.

And Mr. Watson's testimony as to the condition of Dr. Freeman on the morning of July 13th, 1922 is almost identical with his testimony as to his condition when he called at Watson's office with Mr. Davey on June 22, 1922, and as to that day both Mr. Davey and Mr. Mohring flatly contradict Mr. Watson,—and Mr. Watson called no one from his office,—although such evidence naturally would have been easy for him to adduce—to cor-

roborate him as to either the one time or the other.

So, also, the testimony of Mr. Watson as to the fact that Mr. Freeman did not follow up, with him, many matters of which Watson spoke to him. Mr. Mohring explains that by stating that Dr. Freeman was having Mr. Davey and Mr. Higgins keep him posted.

We therefore submit:

1. The will was duly and properly executed by the testator, without fraud, deceit or any evil practice, and was signed by him with a full understanding of its contents.

2. That the testator responded to all the tests as laid down by the cases, of competence.

3. That no undue influence was exercised by the proponent or anyone else, to procure the execution of the will.

4. That the will, in the circumstances, is not unnatural.

5. That there is no sufficient evidence to sustain the holding that fixed mental disease had supervened upon testator's habitual use of liquor.

6. That the testimony of the fact witnesses disproves the theory of the medical experts for caveatrices, and establishes that at a much later time then they fix, Dr. Freeman was certainly possessed of testamentary capacity.

7. That the Chancery Decree likewise disproved the theory of the medical experts for caveatrices, and establishes as an adjudicated fact that on October 3, 1921, Dr. Freeman was sane, and therefore competent.

8. That the utmost that can be said to be proved as to Dr. Freeman's drinking habit, after December, 1921, is that he was occasionally intoxicated.

9. That the testimony utterly fails to establish

incapacitating drunkenness at the time of the execution of the will.

10. That the decree appealed from should be reversed, and the will admitted to probate.

Dated, January 3, 1925.

Respectfully submitted,

THEODORE STRONG,
Proctor for and of Counsel
with Appellant.

W. H. K. DAVEY,
of Counsel.

PRESS OF FREMONT PAYNE, 80 Washington Street, New York City.

[41444]

New Jersey Court of Errors and Appeals

Between

HARRY MOHRING,
Appellant,

and

MARY E. WILKINS FREEMAN and SALLIE B. FREEMAN,
Respondents.

BRIEF FOR SALLIE B. FREEMAN, ~~AN~~ A ~~ADMINISTRATRIX~~ CAVEATRIX AND RESPONDENT.

The Facts.

It is difficult to discuss with brevity the facts established in the taking of testimony, which consumed nine days, and the transcript of which occupies more than 1,000 pages. It seems sufficient at this time to dwell upon the outstanding facts, pro and con, upon which this respondent relies.

The will was executed on July 12, 1922. The testator, Charles M. Freeman, left nearly all his estate to the appellant, Harry Mohring, a young man, who had been his chauffeur for a little more than six months, virtually ignoring his wife and his sisters.

The most comprehensive testimony of the testator's habits, physical being and condition of mind is that of William Dinwiddie and John W. Breen, Sr., whose testimony covers the last sixteen or eighteen years of the testator's life.

The testator was about 64 or 65 years of age at the time of his death, in March, 1923. He

graduated from Rutgers College in 1880, with the degree of A. B., and from Columbia University in 1884, with the degree of M. D., at which time he also received the degree of A. M. He did not practice his profession, but a few years after his graduation engaged in the lumber business at Metuchen, New Jersey, with his father, who died in 1898. He had four sisters, all of whom have been partially self-supporting since their father's death. Dr. Freeman received a larger share of his father's estate than did the sisters. The testator married Mary E. Wilkins, one of the ablest contemporary writers of fiction.

Dr. Freeman was an educated, cultured man and associated with people of refinement. The last few years of his life his friends gradually withdrew from him because of his offensive habits. He and his wife separated. Mr. William Dinwiddie appears to have continued social relations with the testator longer than anyone else, but on June 25, 1922, he could no longer endure Dr. Freeman's changed habits, and on that day their friendship ceased, as had all the others.

Dr. Freeman was always a heavy drinker of alcoholic liquor, and as early as 1907 he was on the verge of delirium tremens. He frequently went on sprees of intoxication lasting two or three weeks. The frequency of these sprees and his daily consumption of liquor increased as years went on. He always took a considerable amount of veranol, and during the last eight years of his life habitually took strychnine. He entered institutions for treatment for chronic alcoholism five times; at Oppenheim's in New York in 1906 or 1907; at Dr. Towne's, February, 1918; at Belle Mead, New Jersey, in May, 1919; at the State Hospital for the Insane, at Trenton, New Jersey, from August 2nd until August 25th,

1920, and in the same institution from August 23rd to October 2nd, 1921 (pp. 492, 493, 494). The last was upon an involuntary commitment.

His eyesight was so impaired that he was unable to read at most times anything but newspaper headlines. Sometimes he was unable to read at all. The doctors who gave expert testimony in this case testified that his impaired eyesight was the result of excessive alcoholic indulgence, causing atrophy of the optic nerve, a manifestation of the structural deterioration of the brain cells and tissue.

After his separation from Mrs. Freeman he lived with Will Breen, who had been in his employ for several years, in an apartment in the building which the corporation owned over a garage, on Volkmar Place, Metuchen, New Jersey, until January, 1922, when he discharged Will Breen from his employ and employed Harry Mohring in his place. Mohring and his wife and two children lived in the apartment with Dr. Freeman, virtually as one family, from January, 1922, until the date of the death of Dr. Freeman in March, 1923. Letty Patterson, a negro servant, who had been in the employ of the Freeman family for thirty years prior to 1915, also lived in the apartment as a servant, from March, 1922, until March, 1923. Between 1915 and 1922 she saw Dr. Freeman every two or three months.

Mr. Dinwiddie testified that during the last two or three years of his life Dr. Freeman was almost constantly intoxicated, except during the times that he was confined in institutions for treatment, and for short periods thereafter (p. 219, l. 32); and his moral resisting power greatly decreased; that he had delusions about his friends and wife, charging his wife with

improper familiarity with a chauffeur and being suspicious of his friends; and that between January, 1922, and June 25, 1922, he became worse and worse and more and more incapacitated, both physically and mentally. When he was intoxicated he became very vituperative, and suspicious of his friends; his mind slowly dulled until he was in no condition to do anything; he suffered from megalomania and he became rapidly less effective in everything he did until he was actually unintelligible.

His sister, Sallie B. Freeman, testified that when intoxicated he was incoherent in speech, his voice was thick, he thought and spoke very disconnectedly and shuffled in his walk. This general picture of his indulgence in alcoholic liquor and drugs and its effect upon his mind and body is corroborated by twenty-eight witnesses called for the caveators and several of the witnesses called for the proponent. These witnesses were social friends, business associates, lumber and building material salesmen, attorneys with whom he had transacted business, doctors and acquaintances. They all knew him personally, most of them for many years. Some were interested, but the majority of them were disinterested and gave their testimony in a manner which carried conviction.

The following incidents illustrate his condition of mind and body when he was intoxicated. He destroyed a check for $70 (p. 250, l. 34). He dropped large sums of money on the floor (p. 251, l. 12). He forgot that he had paid an employee his wages (p. 253, l. 19). Upon several occasions he was unable to leave his home for two or three weeks (p. 271, l. 23; p. 272, l. 16). He had to be helped in and out of his automobile, and in and out of the barber chair (p. 273, l. 13; p. 279, l.

21). He was drunk at least twice a week for the last five years of his life (p. 289, l. 11), except only when in institutions, and for short periods thereafter, and two drinks at a time would render him intoxicated (p. 289, l. 18). He carried a bottle of liquor in his pocket and offered drinks from it to salesmen during business hours (p. 302, l. 20). He gave orders to material salesmen for material for which he had no use, of which they took no notice because of his condition, once for carload of pipe, once for a carload of metal lath (p. 304, l. 21; p. 305, l. 18), and once for seventy-five carloads of cement (p. 366, l. 34; p. 367, l. 1). He failed to follow up orders so given, and made no complaints about non-delivery (p. 325, l. 10). He offered his business for sale to the witness, Johnson, upon such ridiculously inadequate terms that Johnson's attorney, A. S. March, refused to draw the papers (p. 315, l. 20; p. 322, l. 9). In his earlier years he was a keen buyer and knew market prices and conditions, but during the last two years of his life he deteriorated rapidly in this regard (p. 326, l. 38). A Metuchen merchant, Mr. Kramer, stopped him from entering his store (p. 360, l. 38). Upon an occasion in 1907 he was arrested for shooting crap with negroes (p. 377, l. 14). While he pleaded not guilty, and was not indicted, still before the Justice he accused the negroes of stealing money from him. He required a truck driver to wash the tires of the truck before taking it into the garage so that the floors would not be soiled (p. 416, l. 25). The garage was an ordinary garage, with a concrete floor stained with oil and grease. He kept the garage doors locked until late in the morning, and would not allow the trucks to be taken out on time because it would wake the Mohring

babies, who slept in the upper apartment (p. 417, l. 38). He brandished a hay knife in his home (p. 418, l. 37), broke open the doors of his room with an Indian club (p. 419, l. 20), and went upon a porch roof in his pajamas (p. 419, l. 33). In December, 1921, he set his bed on fire (p. 434, l. 16). He held a directors' meeting while confined to his bed by intoxication, and attempted to transfer all his stock in the company to John W. Breen, Jr. (p. 452, l. 19; p. 481, l. 4). On another occasion he attempted to transfer his stock to John W. Breen, Sr. (p. 504, l. 18). Both offers were refused. He wrote a letter to Senator Frelinghuysen seeking passes to board a German vessel in the Port of New York in order to meet a relative returning from the war (p. 456, l. 35). The letter was a lie, and the deception puerile. It is explained by the proponent that it was a shrewd trick to gain access to the German boats in order to get German beer. It is apparent that in deceiving Senator Frelinghuysen, a personal friend, by deliberate misstatement of facts, his perception of the difference between right and wrong had vanished.

He wrote a letter to the Standard Oil Company seeking employment as a chemical expert, although he had had no technical experience since leaving college (p. 460, l. 30). He ejected from his office a customer, Thomas, who came to buy lumber (p. 461, l. 22). He proposed the sale of property for a valuable consideration subject to a rent free lease, oblivious of the fact that the property would have no market value under such conditions (p. 462, l. 16). Over the objections of Mr. Breen, he sold lumber to members of the Ferrer Colony to the amount of nearly ten thousand dollars, most of which was

a total loss to the company (p. 463, l. 20; p. 498, l. 3). He sold lumber to Theodore Mundy, nearly one thousand dollars worth, on payments of $5 per month (p. 498, l. 27). He did a similar thing with the Witty account (p. 498, l. 30). He purchased several thousand dollars worth of hardware from Philip Weigel, Jr., a New Brunswick merchant, for which he had no use, and which was a total loss (p. 498, l. 38). He attempted to confess judgment for a debt which he did not owe, which would have destroyed the company's credit (p. 499, l. 17; p. 524, l. 20). He telephoned a Metuchen woman, anonymously, and stated that her son had gotten his daughter into trouble and that he was going to have her son arrested, which was a fabrication (p. 500, l. 16). He installed alarm bells in the lumber yard and purchased shot guns for all his employees in case of burglary, an entirely unnecessary precaution (p. 500, l. 26). He purchased a tractor, at a large expense, for which he had no use, and which was a total loss (p. 501, l. 22). He was present at a meeting at which an oral agreement was made for the re-building of a trestle by the Lehigh Valley Railroad Company. He never ascertained whether the contract was actually entered into or the expenditure incurred or actually made by the company, and manifested no further interest in it (p. 550, l. 23; p. 650, l. 30). He consulted the witness, Hanauer, with a view to taking him into the business, but had no idea of the amount of his investment (p. 601, l. 30). He offered to sell lumber at half of its value (p. 297, l. 3). He had to have assistance in dressing himself, and in preparing and eating his food (p. 434, l. 3; p. 247, l. 29). He was unable to recall his telephone number (p. 244, l. 10). He lost control of

his natural functions (p. 413, l. 28; p. 443, l. 16). From December, 1921, until his death, he took with him to bed a half pint of whiskey and a quantity of veranol which he consumed during the night (p. 405, l. 10; p. 411, l. 18; p. 441, l. 4). This was in addition to his use of liquor, often as much as a pint, and veranol during the day.

The evidence shows conclusively that Dr. Freeman was an habitual drunkard and lacked testimentary capacity when he was under the influence of liquor or drugs, or both.

Against this array of witnesses, the appellant adduced the testimony of Mr. Davey, a lawyer friend of his father, whom Dr. Freeman knew only twenty-five days prior to the making of this will; the lawyer's wife, Louise B. Davey; the proponent's father, Louis Mohring; Mr. Hanauer and Mr. Paperlein, New Brunswick merchants; Mr. Van Duzer, a Lehigh Valley Railroad official, who saw Dr. Freeman once in several years; Deputy Sheriff Gowen, who had seen Dr. Freeman but once; Frances Stello, an Italian woman, a neighbor, the gist of whose testimony was that the doctor always looked "nice"; Mr. Noe, a Metuchen bank official who stated that Dr. Freeman was unfit to conduct his own business; Mr. Stork, a friend of the proponent, under twenty-five years of age; the proponent himself; the proponent's wife; Mr. Higgins, an auditor, who saw Dr. Freeman only once each two or three months, and who said he would not have considered Dr. Freeman sane if he had known the doctor's habits, as established by the testimony; Mr. Novak, a New York policeman, under thirty years of age, a cousin of the witness, Stork; and two alienists.

Notwithstanding the fact that the proponent was with the testator constantly for fourteen months prior to his death, during which time he traveled with him over one hundred thousand miles by automobile, he called but two residents of Metuchen, and not a single friend or associate of his better days.

The will was executed on July 12, 1922, in the evening at Belleville. Mr. Davey, Mrs. Davey, Mr. Louis Mohring, the proponent, and his wife testified that on that night Dr. Freeman was sober and competent. It appears in the testimony of other witnesses that on Christmas Day, 1921 (p. 434, l. 3), Dr. Freeman was intoxicated and unable to dress himself, and that he was in the same condition on New Year's Day, 1922 (p. 451, l. 27); that upon an occasion in March, 1922 (p. 247, l. 29), it was necessary to prepare his food and feed him; that on April 30, 1922, he was so intoxicated that he was confined to his bed (p. 451, l. 35); that he was intoxicated on May 15th (p. 324, l. 21), and again on May 21st (p. 455, l. 17) and again on June 27th (p. 334, l. 34), and that he was intoxicated on July 5th and did not know that the preceding day was July 4th, the national holiday (p. 455, l. 30; p. 509, l. 20). John W. Breen, Jr., and John W. Breen, Sr., testified that he was intoxicated on the morning of July 12th, fixing the time by a check which was offered in evidence (p. 465, l. 10; p. 508, l. 37). The endorsement on this check made at that time by the testator, is in very poor handwriting, his name being misspelled. Letty Patterson testified, against her own material interest, that he was intoxicated on the night of July 12th when he went to Mr. Davey's house (p. 404, l. 35). Testimony was given that the testator was intoxicated on the

morning of July 13th and incapable of helping with a business transaction then under way (p. 549, l. 10).

The witnesses testified that when he was intoxicated he shuffled, his speech was thick and incoherent, so that it was almost impossible to understand him, he was incapacitated from carrying on any business, and was without ability to walk, talk or think.

Harry Mohring testified that during the fourteen months that he lived with the testator, he saw him intoxicated but four or five times (p. 739, l. 5). Elizabeth Mohring (p. 785, l. 40), W. K. Davey (p. 106, l. 5), Louise B. Davey (p. 122, l. 27) and Louis Mohring (p. 170, l. 32), testified that they never saw testator intoxicated, never saw anything abnormal about his conduct or appearance, and that he always appeared normal, physically and mentally, except for his eyesight. Louis Mohring, Mrs. Davey, Harry Mohring and Elizabeth Mohring testified that they knew nothing of the contents of the will. Harry Mohring and Elizabeth Mohring went further and said that they did not even know that a will had been executed, and were not sufficiently interested or curious to ascertain what was Dr. Freeman's business with Mr. and Mrs. Davey and Louis Mohring (p. 752, l. 20; p. 788, l. 14). Harry Mohring and Elizabeth Mohring made these statements not only with reference to the will executed on July 12th but also as to the memorandum alleged to have been prepared by the testator in the Mohring apartment on June 18th and the will executed on June 21st.

A lead pencil memorandum alleged to have been prepared by Dr. Freeman on June 18th was

introduced into evidence. A careful examination of it shows that the appellant would have done better never to have produced it. The printed record of it at page 1116 (Ex. P. 12) is not an accurate reproduction of it.

The memorandum is in legal phraseology. It does not appear that Dr. Freeman ever had any legal experience. Who coached him?

The lines run together in several places, and in other places are out of alignment.

The document is unpunctuated, except in one place. The "t's" are not crossed except in six places, and the "i's" are undotted.

In the fifth line the word "mind" is misspelled. In the ninth line there is an illegible word. In the tenth line Russell E. Watson's middle initial was originally "N" and the "E" being placed over it. In the same line "Patterson" is misspelled, and there appears an illegible word.

In the eleventh line the word "New" is misspelled. In paragraph 1 the word "expenses" is misspelled and the "j" is undotted. In the first paragraph marked 2 the word "bequeath" is misspelled. In the second line the first word is illegible, and the name "Mohring" is misspelled. In the third line the ten thousand dollar bequest to Mohring is in figures. Was the testator as careless with his zero's as with the other symbols? In the fifth line the word "garage" is misspelled. In the sixth line the word "Metuchen" is misspelled.

In the second paragraph marked 2, the sequence of the paragraph is forgotten. In the first line the word "bequeath" is misspelled and the word "Letty" is unfinished. In the

second line the word "Patterson" is misspelled and the word "and" is substituted for the word "an". In the third line the word "servant" is misspelled and the dollar mark is omitted. In the fourth paragraph the name "Wilkins" is misspelled in the first line, and in the second line the word "the" is misspelled. In the third line the word "sum" is misspelled. There appears a legacy of 1.00 a year, a foolish provision. A dollar sign is omitted.

In the fifth paragraph in the first line the word "balance" is misspelled. In the second line the word "Metuchen" and the word "be" are misspelled. In the third line the words "dispose" and "fit" are misspelled.

In the sixth paragraph in the first line the word "legatees" is misspelled. In the third line the word "make" is used for "made". The word "shall" is misspelled. In the fourth line the words "my" and "estate" are misspelled. In the sixth line the name "Mohring" is unfinished.

Most important of all a part of the memorandum has been torn off, namely: the third paragraph. The memorandum is on two sides of one sheet. The second paragraph ends at the bottom of one side, and turning the other side appears the fourth paragraph. The bottom of the sheet is not true as in cut paper, but is torn. At the bottom of the reverse side, it appears that the writer used the words, "shall not be required to give bonds" but only a part of them appear. The middle portion of the phrase being on that part of the sheet which was torn off. There is no testimonium clause or date.

The memorandum is not the work of a cultured, educated gentleman in possession of his

faculties, but is the feeble, befuddled effort of a mind bereft of reason and competency, temporarily at least, through excessive alcoholic indulgence. The removal of a part of the memorandum is an incriminatory fact which the proponent has not seen fit to explain.

The physical make-up of the will itself invites suspicion. It consists of three typewritten pages, tied together with baby-ribbon in such manner that the original sheets could easily have been removed and new ones substituted. The first sheet bears no identification mark of any kind, while the second sheet bears as an identifying mark only the initials "C. M. F.", which could easily have been forged. The third sheet contains absolutely nothing but the testimonium clause, the attestation clause and the signatures.

It is a cardinal rule of every careful lawyer that no document, whatever its kind, shall bear upon the last page only the execution, and it is quite common practice, particularly in cases where caution is necessary, to have all the sheets of the document marked or attached in such manner that substitution is impossible. The first sheet might well have had upon it clauses making substantial provisions for his wife and sisters. This view is consistent with the bequest of $10,000 and of the residue to Harry Mohring. If there was substantial bequests to others, the two provisions for Harry Mohring are consistent, otherwise the $10,000 bequest is futile. This supports the contention that a part of the lead pencil memorandum was torn off.

The Orphans' Court properly viewed the legacy of $10,000 and the bequest of the remainder to Harry Mohring as showing that the testator did

not comprehend the extent of his property, using the following language:

> "It seems to me also that the very physical construction of the Will itself and its provisions indicate that the Will was the result of a disordered mind. It contains a legacy of Ten Thousand Dollars to Harry Mohring, and then disposes of Eight Hundred Dollars in other legacies and makes provision concerning the payment of taxes on the estate, etc., and then gives all the rest, residue and remainder to Harry Mohring to whom the Ten Thousand Dollar legacy had earlier been given. It has been argued that this is a perfectly natural disposition because he wanted to be sure that Mohring received the largest portion of his estate. If this argument correctly states the reason why Doctor Freeman made the provisions in his Will, then it certainly indicates that he did not know the estate that he had to dispose of because it is agreed that it exceeds One Hundred Thousand Dollars and this argument itself therefore demonstrates that he did not possess, at the time the will was made, one of the elements required, that is, a knowledge and comprehension of the estate that he had to dispose of."

The will is an unnatural one. Dr. Freeman inherited the lumber business which constitutes his estate from his father. He had four sisters and no brothers. He received a much larger share of his father's estate than did his sisters. They are all maiden ladies and have been partially self-supporting since their father's death. The proponent attempts to rebut the inference to be drawn from the unnaturalness of the will by showing that Dr. Freeman was incensed against Mrs. Freeman because she made the complaint upon which he was committed to the Insane Hospital, and against his sisters because they did not visit him oftener. There is much

positive testimony that he suffered from delusions as to his wife, even to the extent of charging her, a cultured, refined woman of about his own age, with intimacy with a chauffeur. It is true that his sisters did not visit him very often. This was occasioned, however, not by their lack of desire but by the testator's disinclination to see them. His habits were such that he was ashamed of himself in their presence, and for that reason he preferred not to be with them. Miss Nellie Freeman offered to keep house for him, but her offer was refused. It does not appear anywhere that he ever did anything showing any hostility toward his sisters, but on the contrary, his sister, Sallie B. Freeman, was a director of his corporation, and had his confidence. That the infrequency of visits between testator and his sisters was his desire, and not theirs is not only established by positive evidence, but is the only fair inference to be deduced.

On May 15, 1922, Dr. Freeman's corporation, which always had been prosperous and had always discounted its bills, became so involved that it was unable to meet its current obligations for lack of cash. At the insistence of creditors, he created a voluntary trusteeship by which he withdrew from the management of his business for a period of one year. Mr. Lord and Mr. Johnson, representing the creditors, and the trustee, all testified that at the time of the execution of the paper, Dr. Freeman was incompetent, and that their reason for consummating the matter was that it was for Dr. Freeman's interests that his property be conserved, the alternative being a receivership which would destroy the company's credit. Mr. Higgins, an

auditor, called by the proponent testified that the trusteeship was necessary and that the business was better off without Dr. Freeman.

Much is made by proponent of the testimony of Mr. Davey that the testator gave to him information with which he drew a bill in Chancery, which was never filed, for the removal of the trustee, and the setting aside of the agreement of trust, indicating that the testator had full and complete knowledge and understanding of his business affairs. It is a singular fact that notwithstanding the life-long residence of the testator in Metuchen, and his long business career in that community, the proponent could call no one other than Mr. Davey, the draughtsman of the will, and the attorney for the proponent, who could testify that the testator had such a complete comprehension of the condition of his business. Mr. Davey admitted on cross examination that he was in conference with Mr. Higgins, the company's auditor, with reference to the matter set forth in the bill, and it is entirely probable that the information contained in the bill was obtained in substantial part from Mr. Higgins, who had a detailed knowledge of the affairs of the company. All of the evidence adduced by the caveatrices contradicts him, and there is much evidence adduced by the proponent opposed to his. The testator told Mr. Davey that Mr. Watson was vice-president of the corporation, whereas he told Mr. Hanauer that Mr. Watson was president of the corporation, which was the fact. When Mr. Hanauer asked him how much money would be involved in buying the business, Dr. Freeman stated that he did not know. Mr. Higgins every two months conversed with Dr. Freeman about the bi-monthly audit.

Mr. Higgins doesn't tell of one single, substantive statement made by Dr. Freeman during all those conversations.

1.

Testator was lacking in testamentary capacity because of intoxication on the evening of July 12th, 1923.

The testator's habitual drunkedness is conclusively established. It also clearly appears in the testimony that Dr. Freeman's periods of intoxication were protracted, lasting for two or three weeks at a time. He was intoxicated on June 25, 1922, on July 5th, and upon dates immediately subsequent to July 12th, according to uncontradicted testimony. There is a sharp conflict of evidence as to his condition on the evening of July 12th. John W. Breen, Jr., and John W. Breen both testified that he was intoxicated on the morning of July 12th. They fixed the time by a check given to Dr. Freeman at his office and endorsed by him on the morning of July 12th, the check being in evidence (Exhibit C. 4, p. 1120). They recall the transaction in which the check was given. The endorsement on the check is feebly written and the name misspelled (See the fifth endorsement, p. 1124). Letty Patterson testified that on the evening of July 12th, he had been drunk all day, could not walk very good, could not talk very good, was intoxicated and did not know what he was doing. The writer of this brief testified reluctantly out of a sense of duty, and stated that Dr. Freeman was intoxicated and incompetent on the morning of July 13th, the time being fixed by the reference to records of a business

transaction concerning which Dr. Freeman was uselessly consulted at that time. Harry Mohring, Elizabeth Mohring, Louis Mohring and Mr. and Mrs. Davey, all testified that he was sober on the night of July 12th. The credibility of their testimony is destroyed by their unanimous protestations that Dr. Freeman was not an habitual drunkard. Mr. Davey testified that he never saw Dr. Freeman in anything but a normal state (p. 106, l. 5). Harry Mohring testified that he saw Dr. Freeman intoxicated but four or five times during the fourteen months (p. 739, l. 5). Elizabeth Mohring testified that she never saw Dr. Freeman intoxicated during the fourteen months (p. 739, l. 5). Louis Mohring testified that he never saw Dr. Freeman in anything but a normal condition (p. 170, l. 32). His testimony is further impeached by his uncertainty as to place and time of the execution of the will, he having fixed the place first at Mr. Davey's house and then at Metuchen, and having fixed the time as late as October or November, 1922. The improbability of the testimony of these witnesses is demonstrated by other circumstances. Louis Mohring testified that he knew nothing of the contents of the will, and that he did not even tell his son, Harry, that a will had been executed (p. 172, l. 25; p. 156, l. 31). Mr. Davey testified that he did not tell Harry that a will had been executed (p. 86, l. 30). Harry and Elizabeth Mohring testified that they did not know that a will had been executed, and went further and alleged that they did not even inquire what business was being transacted for Dr. Freeman in which Mr. Louis Mohring had a part. They professed that they had no curiosity on that point whatever (p. 752, l. 20; p. 788, l. 14). These statements are not only astound-

ing but are unworthy of belief. They are contradicted by the will itself, paragraph 2, providing that the testator's body be cremated, and his ashes disposed of according to instructions given verbally by his executor. This manifestly implies that the testator had given Harry Mohring instructions in his capacity as executor of his will.

The only disinterested witness is Letty Patterson. She testified against her own interests because if this will is set aside she loses a legacy in the amount of $1,000. Her testimony was given in a convincing manner, and no one doubted that she was speaking the exact truth.

The rule of law as laid down in *Bannister* v. *Jackson,* 45 N. J. Eq., p. 702, affirmed 46 N. J. Eq., p. 593, is that the burden is upon the caveator in cases of habitual drunkeness to show that the testator at the very moment of the execution of his will lacked testamentary capacity, and in that case and in later cases in which the rule is discussed, it was found almost uniformly that the caveator had not sustained that burden. The reason is obvious. Intoxication at a particular day and hour is usually extremely difficult to prove after a lapse of time, particularly whereas in this case, the will is executed with such secrecy, and its execution is thereafter concealed. If the transaction is *bona fide,* the testimony of the attesting witnesses is sufficient. If the transaction is not *bona fide,* it is almost impossible to bring the guilt home to the attesting witnesses.

In this case good fortune attended the caveators, these respondents. It so happened that Dr. Freeman engaged or attempted to engage in business transactions on the morning before and

the morning after the execution of the will, of which there was documentary evidence, and by this stroke of luck, the caveators were put in possession of evidence which added to that of Letty Patterson, demonstrates the incapacity of the testator at the actual hour of the making of the will.

This conclusion finds further support in the unnatural and unjust disposition of the testator's property, and in the secrecy with which the will was executed and the act thereafter concealed.

In this case the caveators have sustained the burden of proof that the testator was incapable on the evening of the making of the will by the testimony of credible witnesses, which is opposed by the testimony of interested witnesses, who are discredited out of their own mouths.

2.

Fixed mental disease supervened upon the testator's habitual drunkenness and rendered him incompetent.

The rule here relied upon reads as follows:

> "It is not the law that a dissipated man cannot make a contract or execute a will, nor that one who is in the habit of excessive indulgence in strong drink must be wholly free from its influence when performing such acts. *If fixed mental disease has supervened upon intemperate habits,* the man is incompetent and irresponsible for his acts. If he is so excited by present intoxication as not to be master of himself, his legal acts are void, though he may be responsible for his crimes."

It was first laid down by Chief Justice Denio in *Peck* v. *Cary,* 27 N. Y. 9, 23, and has been applied in this State in the cases of

Bannister v. *Jackson,* 45 N. J. Eq., p. 702, affirmed 46 N. J. Eq., p. 593;

Fluck v. *Rea,* 51 N. J. Eq., p. 232, affirmed 51 N. J. Eq., p. 639;

Lee's Case, 46 N. J. Eq., p. 193;

Koegel v. *Egner,* 54 N. J. Eq., p. 623;

In re: Mannions Estate, 86 N. J. Eq., p. 232.

The testimony of the lay witnesses and the expert witnesses conclusively shows that fixed mental disease supervened upon Dr. Freeman's intemperate habits. In this case curiously enough, all of the expert witnesses knew Dr. Freeman personally, and their testimony does not rest entirely upon a hypothetical question.

Dr. Cotton, Dr. Ellis and Dr. Ramsay all testified that Dr. Freeman's habitual drunkenness had resulted in the partial destruction of the brain cells and tissue to such an extent that on July 12, 1923, his mentality was permanently impaired so that he lacked testamentary capacity.

Dr. Ramsay showed without dispute the pathological connection between Dr. Freeman's impaired eyesight and his mental deterioration. His loss of vision was due to atrophy of the optic nerve caused by excessive alcoholic stimulation, which was a manifestation of his mental deterioration. The great weight of evidence is that he was almost blind indicating that his ability to think and reason had left him.

Dr. Rostow called by the proponent was so confused in his statements that his testimony is here disregarded. Dr. Funkhauser, also called

by the proponent, was a fair and conscientious witness. A careful reading of his testimony shows that he is almost in agreement with the other doctors. He testified that there was a breaking down of nerve cells due to alcoholic indulgence, which had brought about irreparable damage, but that it was questionable in his opinion whether the degree of destruction was sufficient to deprive him of his reason when he was free of alcohol. The weight of expert testimony is overwhelmingly with the caveators, and moreover is in accordance with the great weight of lay testimony as to Dr. Freeman's condition during the last year of his life.

We submit that the testimony in this case squarely meets the test of Chief Justice Denio's rule, that the testator was the victim of fixed mental diseases caused by his habitual drunkenness resulting in his mental incapacity and irresponsibility.

3.

The will was the result of undue influence.

Where confidential relations exist between the testator and the principal beneficiary slight additional evidence will place on the beneficiary the burden of showing that the testator's mind was not unduly influenced.

This rule has been applied in many New Jersey cases. Reference is here made to

Dale v. *Dale,* 38 N. J. Eq., p. 274;
Spark's Case, 63 N. J. Eq., p. 242;
In re: Cooper's Will, 75 N. J. Eq., p. 177;
In re: Gordon's Estate, 89 Atl. Rep., p. 33;
In re: Eatley's Will, 82 N. J. Eq., p. 591;
In re: Morrisey's Will, 91 N. J. Eq., p. 480.

As to the confidential relation, it is not necessary that the relation be that of doctor and patient, attorney and client, or clergyman and parishioner. Any confidentical relation between the testator and the chief beneficiary coupled with slight additional facts causes the burden of proof to shift.

Dr. Freeman lived with Harry Mohring and his wife and children as one family. Dr. Freeman called Harry Mohring "son" (p. 738, l. 16). Harry Mohring drove with Dr. Freeman over 100,000 miles in one year, and was in Dr. Freeman's confidence as to his personal and business affairs (p. 735, l. 14). Mohring and his wife spent their evenings playing cards with Dr. Freeman and entertaining him in various ways (p. 751, l. 30; p. 759, l. 3). They lived together a family life. This establishes exactly the confidentail relation which appeared *in re*: Morrisey's Will above cited.

Evidence of weak mindedness is "slight additional evidence" which shifts the burden of proof. Concealing the making of the will or if the will is one which the testator could not make consistently with the claims of duty or affection have the same effect. *In re: Spark's case,* 63 N. J. Eq. 242, 247.

This caveator charges and holds that the evidence shows that the undue influence complained of was exerted upon the testator as a result of a conspiracy on the part of Harry Mohring and Elizabeth Mohring. The confidential relation is established and the slight additional evidence necessary to cast the burden of proof upon the proponent appears in the evidence of the testator's weak mindedness and mental disease caused by his habitual drunkenness, in the concealing of

the fact that a will had been made and in the unnaturalness of the document.

"Undue influence" is defined as:

> "The exercise of sufficient control over the person, the validity of whose act is brought in question, to destroy his free agency and constrain him to do what he would not have done if such control had not been exercised."
> *Bennett* v. *Bennett,* 50 N. J. Eq. 439.

How has the proponent carried the burden of proof thus imposed by law upon him?

> "The absence of any influence which can be regarded as undue, must, in the main, of necessity be proved by the legatee himself. The testimony of the legatee unless controlled by some other creditable testimony or *discredited by its improbability,* cannot be arbitrarily disregarded." *In re: Spark's Case,* 63 N. J. Eq. 242, 248.

In this case, as in the Morrissey's case, there is no direct evidence of undue influence. The legatee, Mohring, has denied the exertion of undue influence, as have his colleagues. But they go further as pointed out in other connections and deny that Dr. Freeman was an habitual drunkard; Harry Mohring alleges that he saw Dr. Freeman intoxicated but four or five times during the period of fourteen months (p. 739, l. 5); Elizabeth Mohring denied that during the same period she ever saw Dr. Freeman intoxicated (p. 785, l. 40); Louis Mohring and W. K. Davey both assert that they never saw Dr. Freeman except in a normal condition (p. 170, l. 32; p. 106, l. 5). Davey denies that he told anyone of the contents of the will and denies that he told Harry Mohring or Elizabeth Mohring that a will had been executed (p. 90, l. 20; p. 98, l. 8), Louis Mohring denies that he

told his son, Harry Mohring, or his wife, that a will had been executed. Harry Mohring and Elizabeth Mohring, his wife, deny knowledge of the execution of the will, and go further and aver that they did not even inquire as to the nature of the business being transacted and were not even curious enough to ask Louis Mohring why he was present and what he was doing (p. 752, l. 20; p. 788, l. 14). The assertion of Harry Mohring as to his knowledge of the execution of the will is denied by the second paragraph of the will speaking of instructions as to cremation verbally given to the executor. The testimony of the legatee and his wife is discredited by its own improbability, and in the words of Vice-Chancellor Backes *in re: Eatley's Will*. 82 N. J. Eq., p. 591, p. 596, reflects a fraudulent procurement.

In the Morrisey case it was held that the burden of proof shifted to Mrs. Fleming, one of the principal beneficiaries. She denied the exercise of undue influence. It appeared that the testatrix received Five Thousand Dollars in cash shortly before a guardian was appointed for her in lunacy proceedings. When the guardian was appointed it was found that the money had vanished. Mrs. Fleming professed to be ignorant of what became of the money. Vice-Chancellor Backes found that Mrs. Fleming did not carry the burden of proof imposed upon her by the law in the following language:

> "She was the old lady's caretaker and knew her every move. Her story that Mrs. Morrisey carried these bundles of bills on her person—the $3,000 when she was admitted *non compos*—and her intimation that she frittered them away, are improbable and incredible. I believe she knew more than she was willing to tell on the witness stand,

> and that she either had the money or knew what became of it. Her disingenuous disavowal of knowledge concerning its disappearance *impeached her testimony as a whole and renders her denial of unlawful complicity in the making of the will untrustworthy and undependable.* The burden cast upon the proponents of neutralizing the presumption of undue influence *by believable evidence* has not been met, and probate must therefore be denied." (Italics ours.)

Substitute for Mrs. Fleming's professed ignorance of what became of Mrs. Morrisey's cash money, the ignorance of Dr. Freeman's habits and condition of mind, and the lack of curiosity as to the nature of his business with Mr. Davey, professed by Henry Mohring and his wife, and the analogy of the Freeman case to the Morrisey case is complete.

Nor is proponent aided by the lead pencil memorandum of July 18th. The unreliability of that document has been heretofore demonstrated in the statement of facts. Moreover, the proponent in carrying the burden of proof, must not only show that the will was the free act of the testator, but must also show that this lead pencil memorandum upon which is alleged to have been based was also his voluntary act. This memorandum adds to the improbability of the testimony of the witnesses referred to. It is alleged that this lead pencil memorandum was written on July 19th on the dining-room table in the Mohring apartment, while Harry Mohring and his wife were in and out of the room, and it passes human understanding that neither of them should have shown the slightest interest in the document, which was being written, nor any curiosity as to its contents.

The making of the will was kept a secret and care was taken by those responsible for it that it should not come to the knowledge of any of Dr. Freeman's relatives or friends.

A coincidence which shows that undue influence was exercised by Harry Mohring and his wife is the change in the feelings of Dr. Freeman toward John W. Breen, Sr., and John W. Breen, Jr., which began at about the time that Harry Mohring and his family went to live with Dr. Freeman. These faithful employees who had served him for years for modest salaries, without the large increases which were prevalent during war time, in whom he had always reposed implicit confidence, suddenly became the objects of his hostility and suspicion. Reasonable men will conclude that this was the direct result of their connivance.

The Orphans' Court found that there was no undue influence. The Vice-Ordinary commented upon this finding as follows:

> "I do not, however, desire to be understood as concurring in the conclusion of the Court below that the proponent sustained the burden of proving absence of undue influence." (p. 33, l. 35.)

We submit that the proponent has not overcome the presumption of undue influence by believable evidence, and that for that reason probate should be denied.

COMMENTS UPON THE ARGUMENTS OF THE APPELLANT.

The following comments upon the position taken by the appellant are submitted:

The proponent relies almost entirely upon the testimony of the attesting witnesses, taking his position that the Court is virtually bound by it as if it were something sacred. The following citations from cases cited by counsel for the proponent show the fallacy of the argument.

> "It is often said that subscribing witnesses are those called by the testator himself to attest to his capacity; and that, on this account the law attaches great weight to their opinion. But it most frequently happens that a testator gives it very little thought as to who are the witnesses of his will, and in fact has nothing to do with selecting them, but leaves it altogether to the scrivener who draws his will. An individual, called into a sick chamber to witness the will of an invalid, would be thought destitute of good breeding and impertinent should he propound any question for the purpose of testing the sanity of the man whose will he is called upon to attest. Such an occasion is regarded as a mere business one, and is dispatched with little ceremony, and most frequently without any opportunity being afforded of judging of the state of mind of the man who executes the instrument. Whether a subscribing witness or not, we must look at the intelligence of the man, and the means he enjoyed of forming the opinion which he advances and give weight to his opinion accordingly.
>
> *Turner* v. *Cheesman,* 15 N. J. Eq. 243, 262.

> "While the Court will expect material assistance from the attesting witnesses, upon the law's theory that they are placed around

the testator to protect him from fraud, and to ascertain and judge of his capacity, it cannot place reliance upon their testimony without subjecting it to all tests of credibility. 'Our experience,' says Chancellor Williamson, in Garrison *v.* Garrison's Exrs., 2 McCart. 269, 'in these matters, is sufficient to satisfy us that the subscribing witnesses seldom or ever take any pains to ascertain the capacity of the testator, and are generally those who know least of his general character and disposition or of his mental capacity. As a general thing, very little regard is paid by the testator to the character of the individuals who are called upon as the attesting witnesses to this most solemn and important act. Their duty is discharged by their formal attestation of the instrument, and any effort on their part to ascertain the state of mind of the testator, or the fact whether he was the dupe of others who were more active in the transaction and upon whom the testator was reposing his confidence, would be regarded as inquisitive and as an unwarrantable interference with matters that did not concern them. The opinion of a witness who is a stranger to the testator, and who sees or hears nothing, except what is necessary to enable him to attend the instrument as a subscribing witness, is not as much to be relied upon as that of a neighbor and familiar acquaintance of the testator. The truth is, the opinion of neither is of any weight with the Court, except as it proves itself to be a correct and sound conclusion from facts which justify and warrant it. A man who will subscribe an instrument attesting that the testator is of sound mind, memory and understanding, and then repudiates under oath his own attestation, does not occupy a position that will justify a court in giving any weight to his mere opinion. A will may be sustained, although all the subscribing

witnesses depose to the incapacity of the deceased."

Lee's Case, 46 N. J. Eq., pages 193, 201.

To the same effect is:

Clifton v. *Clifton,* 47 N. J. Eq. 227, 239.

Secondly, the proponent overlooks the fact that his case is unusually barren of collateral facts and incidents occurring at the time of the execution of the will. The only outstanding one is the incident about the ash receiver. Just as a drunken man might wear his hat backwards, and know that he was doing so, and still not have testamentary capacity, so in this case the testator, after having failed to see the receiver at all, might have remarked that it was the same color as the screen without having testamentary capacity. A similar coincidence is that virtually all of the testimony of *facts* tending to show the testator's testamentary capacity, comes from the witness, W. K. Davey, the attorney who drew the will. Mr. Davey testified that the testator gave him in detail the information upon which the drafting of the bill in Chancery was based. No other witness does so, not even Mr. Higgins or Dr. Funkhauser. All of the proponent's witnesses testified that Dr. Freeman was in fine condition, or seemed normal, but they are strangely silent as to his acts and doings upon which they founded their opinions. Contrast this with the case of the caveators, which is replete with incidents and occurrences showing testamentary mental incapacity. The following cases, taken at random, from the more prominent ones cited by the proponent, show the contrast in this respect between those cases and the case of the proponent here presented.

"At the date of this writing, and its execution, April 20th, 1882, Ruth W. Buzby

was about eighty-three years old, and she died in 1886. She was feeble and forgetful to the extent that persons ordinarily are at such an advanced age, and she was nearly blind, so that she could not read, or did so with difficulty. But she could at that time go about the house, knew the members of the family, talked about her business affairs, remembered the amount of her property and where it was invested, objected to the reduction of the percentage of interest, took a part in the routine of the house and the payment of bills, and conversed with visitors whom she knew."

Waddington v. *Buzby,* 45 N. J. Eq. 173, 174.

"On the first of November following, he purchased a farm of eighty-two acres, near Bordentown, for the sum of three thousand five hundred dollars; he stocked his farm at a cost of nearly $500 and went to farming; he bought and sold for himself, and transacted all the ordinary business required in carrying on such a farm; he had very considerable money transactions with various individuals; he kept a bank account, deposited his money, and drew it out from time to time by checks; he kept memorandum books, in which he entered generally, in his own writing, moneys which he from time to time received, and took receipts for money paid out. The books are neatly kept, and the entries made correctly and intelligently. All these transactions were almost of daily occurrence up to within a few days of his death, which occurred in June, 1853."

Pancoast v. *Graham,* 15 N. J. Eq. 294, 298.

Thirdly, the proponent overlooks the abundant testimony of professional and lay witnesses showing fixed mental disease, and the effect of it.

In *Turner* v. *Cheesman,* above cited, it was shown that the disease was not calculated di-

rectly to affect the mind, and that there was nothing indicating permanent alienation or derangement of intellect (see pp. 251, 254). In Lee's case, above cited, there was abundant evidence that fixed mental disease did not supervene upon the testator's inebriety (see p. 199). In *Fluck* v. *Rea,* 51 N. J. Eq., page 233, there was no evidence in the case to warrant the claim that fixed mental disease has fastened upon the testator (see p. 235).

Fourthly, there are other elements favorable to the wills under inquiry in the cases relied upon by the proponent not presented in this case. For instance, in *Paton* v. *Hope,* 39 N. J. Eq. 522, at page 528, the will was drawn by the testatrix's own lawyer of long standing, by her own procurement. In *Clifton* v. *Clifton,* above cited, the will was declared to be a reasonable one (see p. 240). In *Pancoast* v. *Graham,* above cited, the will was declared to be a reasonable one (see p. 295). In the same case (p. 309) it was found that there was no evidence going to impeach the moral character and intellect of the attesting witnesses. Using the word "impeach" in the sense of creating suspicion and inviting inquiry and scrutiny, there is an abundance of impeaching evidence in this case outlined in the main brief.

The rule is that each case stands on its own state of facts. In every case which has come to the attention of the writer of this brief, in which the will was probated, the decision turned upon favorable elements or facts not presented in the case at bar.

Exception is taken to the suggestion on page 74 of the appellant's brief, beginning at line 30, that the marriage between the testator and his

wife was a sexless one. There is no evidence whatever in the case bearing upon this subject, and the comment is unjustified and unfair.

The statement on page 73, beginning at line 30 of the appellant's brief, that the proctors for this respondent enriched themselves fraudulently in the amount of $50 at the expense of the testator, is passed with the observation that the testimony does not bear out the allegation. The testimony, page 568, beginning at line 34, merely shows that the witness imperfectly recalled whether the $50 item in question was included in a larger bill which was paid in two or three installments, or was paid separately. No inference of wrong doing was drawn, nor was any impropriety alleged before the Orphans' Court.

The evidence shows that the will was executed at a time when the testator was mentally incompetent, as a result of intoxication, that he was suffering from mental disease supervened upon his intemperate habits which rendered him incompetent, and that the execution of the will was procured by undue influence, for which reasons the decrees of the Orphans' Court and of the Prerogative Court should be affirmed.

Respectfully submitted,

R. E. & A. D. WATSON,
Proctors for Sallie B. Freeman,
Respondent.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

HARRY MOHRING, *Appellant,* and MARY E. WILKINS FREEMAN and SALLIE B. FREEMAN, *Respondents.*	*On Petition.*

BRIEF.

FOR MARY E. WILKINS FREEMAN, RESPONDENT

This is an appeal from a decree of the Prerogative Court affirming a decree of the Middlesex County Orphans' Court, denying probate to a paper purporting to be the last will and testament of Dr. Charles M. Freeman. Probate of this will was contested on the ground that it was the result of undue influence exerted upon the testator by the principal beneficiary who is the appellant in this court and also upon the ground that the testator lacked the testamentary capacity necessary to make a will. The Orphans' Court found that the will was not the result of undue influence but denied probate of the paper on the ground that at the time the said paper was executed, Dr. Freeman did not possess testamentary capacity to make a will.

On the question of testamentary capacity, the opinion of the Vice-Ordinary coincided with that of the Orphans' Court. It is worthy of special notice however, that the Vice-Ordinary in his opinion (p. 33) made the following statement:

> "I do not however desire to be understood as concurring in the conclusion of the court below that the proponent sustained the burden of proving absence of undue influence."

In taking this appeal in this court the grounds of appeal as urged by the appellant are:

1. The evidence in said cause was not sufficient to sustain such decree.

2. The said paper writing was and is the last will and testament of the said Charles M. Freeman, deceased, and should have been admitted to probate as such.

3. The said decree is contrary to equity.

4. The parts of said order of said Orphans' Court, appealing from and each of them should have been reversed, set-aside and for nothing holden.

The last three grounds are in reality nothing more than different forms of stating the first ground of appeal, namely that the evidence was not sufficient to sustain the decree, so that on this appeal the sole question is whether or not there was evidence which could have led the Orphans' Court and the Prerogative Court to make the decrees which were made by these courts respectively.

Before going into a discussion of the evidence in this case, it will be well to state briefly the legal status of this case as it now comes into this court.

As has already been stated, this case was first tried in the Middlesex County Orphans' Court. The filing of caveats under the provisions of the Orphans' Court Act prevented the Surrogate from hearing the matter and required that the case be first tried in the Orphans' Court. This was done and after the conclusion of the trial, the Judge of the Orphans' Court decided against the probate of the paper and announced his reasons for so doing in a well considered opinion

(pp. 12-31 inc.). This opinion sets forth fully and clearly the facts found by the learned Trial Judge on which he based his conclusion, that as a matter of law, the paper offered for probate was not the last will and testament of the deceased and should therefore be denied probate. The case was then taken on appeal to the Prerogative Court.

In such a situation it is the settled law of this State that the Prerogative Court is a court of original jurisdiction and that on an appeal from the Orphans' Court in a case involving the probate of a will the question before the Prerogative Court is not whether the decree of the Orphans' Court shall be affirmed or reversed but whether the paper offered for probate is the last will and testament of the decedent and should be admitted to probate as such. In other words, the Prerogative Court shall try the whole case over and may take additional evidence if it is deemed necessary, or if the parties desire, the case may be submitted to the Prerogative Court on the same evidence that was taken before the Orphans' Court.

Smith v. *Smith,* 48 N. J. Eq. 566;
Sanderson v. *Sanderson,* 52 N. J. Eq. 243.

The Prerogative Court, therefore, heard this case *de novo* upon the evidence taken in the Orphans' Court and in his opinion the Vice-Ordinary stated that on the question of testamentary capacity his conclusion after reviewing the evidence and proceedings, coincided with that of the Orphans' Court and on the question of undue capacity made the qualifying statement quoted above. The same question, namely: is the paper offered for probate, the last will and testament of Charles M. Freeman, deceased?—has therefore been adjudicated twice by the

courts of this State acting in each case as a court of original jurisdiction and both courts have arrived at the same conclusion. Its status in this court, however, is different from that in the Prerogative Court. This court is a court of appellate, and not of original, jurisdiction and the question to be decided in this court is not whether the paper in question is the last will and testament of Dr. Freeman but whether the decree of the Prerogative Court should be affirmed or reversed.

It is well settled in this State that all findings of fact in the Trial Court are binding on this court and will not be reversed here if there is any evidence at all to support them. This applies as well to the findings of fact by a jury as to findings on questions of fact by a court sitting without a jury.

Dimock v. *U. S. Nat'l Bank,* 55 N. J. L. 296;

Schorb v. *Hauroud,* 76 N. J. L. 768.

In this connection it is also interesting to note what was said by Ordinary Magie on this point in the case of

Wright v. *Flynn,* 69 N. J. Eq. 753.

In discussing the weight to be given to the findings of fact by the Judge of the Orphans' Court he said on page 754,

> "The learned judge of the orphans' court, before whom these witnesses testified, reached the conclusion that their evidence was worthy of credence. An appellate court, reviewing the case upon the evidence appearing in a transcript, ought not to pronounce the conclusions reached under such cirstances to be erroneous unless clearly convinced of the error. As I do not find in the case sufficient proof of error to convince my judgment, the decree must be affirmed."

This was an appeal to the Prerogative Court which court as has been pointed out, in cases such as this, is a court of original jurisdiction in which the question of admitting the will to probate is tried *de novo,* and yet in such a situation the Ordinary held that he should not pronounce the conclusions reached in the Orphans' Court to be erroneous unless clearly convinced of the error. If that be true in the Prerogative Court how much more so is it in this court which is solely an appellate court and in which the only question is that of affirming or reversing the decree of the Prerogative Court. If the lower court has correctly applied the law to the facts as found by it, the decree of the lower court should be upheld in this court if there is any evidence at all to support the findings of fact by the court below.

The appellant in this case does not allege in his grounds of appeal any errors of law on the part of the Prerogative Court but bases his appeal solely on the ground that the evidence was not sufficient to sustain the decree of the Vice-Ordinary. This being the case, it is only necessary to examine the evidence taken to ascertain whether or not there was any evidence at all to support the facts found by the lower court. If there was, then this court can do nothing but affirm the decree of the court below.

THE OPINION OF THE ORPHANS' COURT.

The opinion filed by the Vice-Ordinary stated that on the question of testamentary capacity, his conclusion as to the facts coincided with that of the Orphans' Court. Let us, therefore, first examine the opinion of the Orphans' Court (pp. 12-31) to ascertain what the findings of fact were in that court. At the very outset the opinion states that:

> "it seems clear that the habits of Doctor Freeman, continued over a long period of time, as hereinafter mentioned, had so completely changed his character, temperament and disposition as to make continued living together not only uncomfortable for Mrs. Freeman, but dangerous as well" (p. 12).

The opinion sketches briefly the outstanding facts concerning the testator's life's history,

> "In his early life and up to a period shortly before his death, Doctor Freeman was a cultured and brilliant man. He was a desirable and congenial companion and a man with whom it was a pleasure to converse and to meet socially and otherwise. This is abundantly disclosed by the testimony of many of his intimate friends" (p. 13).

The use of alcohol and veronal by Doctor Freeman is then taken up and the progress of the doctor's use, mention being made of various institutions to which the doctor was taken at various times in an effort to cure him of the use of alcohol and drugs. The daily use of liquor during the year 1922 is adverted to (p. 15) as disclosed by the testimony of Lettie Patterson, an old family servant. The comment of the court regarding the weight to be given to her testimony is of special importance to this court in considering the evidence in the case.

> "Her testimony is entitled to the utmost consideration, not only because of her demeanor upon the stand, her apparent sincerity and intelligence, but also because her testimony must be considered as being against her own interest, because by the terms of the will under attack she was a beneficiary to the extent of a Thousand Dollar legacy, which, if the will is denied probate, must fail" (p. 16).

This is important because our appellate courts have time and again held that the trial judge before whom the witness appeared, is the best judge of the weight to be given to the testimony of a particular witness because he is in a position to observe the demeanor of the witness while on the stand and the manner in which the testimony is given and to take note of the many other personal characteristics of the witness all of which are necessarily incapable of being incorporated into the record, but which are the best means of enabling the judge or the jury to determine whether or not the evidence given by the witness is credible and the extent to which it is worthy of belief.

Wright v. *Flynn, supra.*

The alienation of Dr. Freeman from his former friends and his associations during the last two years of his life were with persons much younger than himself and far below him in social and intellectual station is touched upon (p. 16) and then follows a recital of the execution of the trust agreement and the retaining of Mr. William H. K. Davey, to set aside the trust agreement and also to draw the will which is the subject of this litigation. The circumstances leading up to the execution of the will are set forth in considerable detail and the unusual and illogical physical construction of the will is noted and commented upon (p. 19).

The Court then proceeds to take up the various grounds upon which the probate of this will was contested. The charge of fraud is briefly disposed of and found to be without substantial basis. In this connection however, the trial judge states that he is inclined to believe that Mr. Davey was over credulous and that he did not use the care that a more prudent and less credulous individual would have used in the preparation and execution of the will in question (p. 20).

The charge of undue influence is next considered. The Court rightly held that the confidential relations existing between Dr. Freeman and the appellant were such that the burden of proof was shifted to the proponent to show that the will was not the result of undue influence. The proponent denied the charge and the trial court held that he had thereby satisfactorily sustained the burden of proof cast upon him.

Attention has already been directed to the fact that in this respect the Vice-Ordinary distinctly did not desire to be understood as concurring in the opinion of the Orphans' Court. In other words, the Vice-Ordinary plainly intimates that he does not feel that the proponent has satisfactorily sustained the burden of proof cast upon him, which can only mean that the Vice-Ordinary did not consider the testimony of the proponent denying the charge as being impeccable and convincing.

It was the third ground on which probate of the will was contested, namely, lack of testamentary capacity which led the Orphans' Court to deny probate. In considering this question the Orphans' Court had in mind the well settled test of testamentary capacity in this State, which

has always been defined as the ability on the part of the testator to comprehend the property he is about to dispose of, the objects of his bounty, the meaning of the business in which he is engaged, the relationship of each of these factors to the other and the distribution that is made by the will and the ability to deal rationally with those elements.

After analyzing minutely the medical testimony given in this case the Court found as a fact that fixed mental disease had intervened upon the intemperate habits of Dr. Freeman and that he was therefore incompetent and irresponsible for his acts.

Bannister v. *Jackson,* 45 N. J. Eq. 702.
Affirmed 46 N. J. Eq. 593.

The findings of fact by the Orphans' Court with regard to the various elements by which testamentary capacity is to be tested, are stated on page 30 and are summed up as follows:

> "I am convinced that Doctor Freeman knew, the general objects of his bounty, the business that he was engaged in at the time the will was made and the distribution that that will made, I am unable to find that he did know the value of the estate that he had to dispose of. And I am of the opinion that he did not have the mental capacity to deal rationally with each of those elements. His delusions of persecution, his unwarranted resentment of his wife's act in having him committed to the State Hospital for the Insane, his bitterness towards his sisters, were all the results of a disordered and diseased mind directly affecting the disposition of his estate" (pp. 30-31).

In view of these findings of fact the Orphans' Court held that the testator lacked the necessary mental capacity to make a valid and effectual will and therefore denied probate to the paper in

question. These findings of fact are accepted by the Vice-Ordinary in the Prerogative Court. Where the only ground of appeal is that the evidence was insufficient to sustain the decree of the lower court, this Court will not disturb that decree if there is any evidence to support the facts upon which the decree was based.

THE TESTIMONY.

An examination of the testimony will leave not the slightest doubt but that there is not only **some** evidence but an **abundance** of evidence to justify the findings of fact in the lower court.

Dr. Freeman was born in the year 1859 and was therefore 63 years of age at the time he executed the paper now offered for probate as his will and 64 years of age at the time of his death. He was the only son of Manning Freeman there being however four sisters in the family all of whom survived the doctor (p. 380).

Dr. Freeman attended Rutgers College, receiving his Bachelors Degree from that institution in 1880 and later the degree of Master of Science from the same institution. He then entered the medical school at Columbia University and graduated from there with his medical degree in 1884 (p. 974). At Rutgers he was a member of the Phi Beta Kappa honorary fraternity and he is described as having been in his younger days, a very interesting, intelligent, educated and cultured gentleman. This is the testimony of Dr. Ramsay who had known the decedent from the time of his graduation from the Columbia medical school and who was on terms of intimate friendship with him up until about the last fifteen years of his life.

It is also the testimony of Mr. Dinwiddie whose acquaintance with Dr. Freeman began about 1907 and who during the last fifteen years of the doctor's life was described by Dr. Freeman himself as the best friend he had in the world (p. 177).

It appears that Dr. Freeman never engaged in the active practice of his profession although for a short time he was employed in the pension bureau at Washington in a medical capacity. With this exception Dr. Freeman was engaged for practically the whole of his adult life in the coal and lumber business at Metuchen. This business had been built up by his father Manning Freeman and upon the death of the latter in October, 1899 (p. 380), the doctor became the sole owner of the business under the terms of his father's will. Subsequently the business was incorporated under the name of Manning Freeman and Son, Inc., Dr. Freeman owning all the shares of the business except one share which was held by John W. Breen, Sr., and one by Sallie B. Freeman, a sister of the decedent, merely for the purpose of enabling them to qualify as incorporators. Dr. Freeman however was to all intents and purposes the sole owner of the business.

Dr. Freeman was married to Mary E Wilkins, the celebrated American writer, although the date of the marriage does not appear in the record. They lived together at Metuchen until about 1920 when the doctor's habits became such that a separation became necessary.

The appellant's brief is in error when it states on page 3 that Mrs. Freeman continued to live in the home **he had built for her** at Metuchen.

The record does not disclose who built this home and the fact is quite the contrary to that stated in the appellant's brief, since Mrs. Freeman built it herself from her own savings, not a penny of its cost having been paid for by the doctor.

As has been stated, Dr. Freeman was a very talented and brilliant man up until the last few years of his life. However, it is undisputed that all during his adult life he was addicted to the excessive use of alcohol and drugs. Dr. Ramsay testified that he drank to excess during all his acquaintance with him. Mr. Dinwiddie also testified that as early as 1907 he was a periodic drinker and at times was very seriously under the influence of liquor. The effect of the doctor's use of liquor during the early period of Mr. Dinwiddie's acquaintance is described by this witness as follows:

> Q Confine yourself to the early days of your acquaintance with him. A May I say that in 1907 Doctor Freeman was a very talented and brilliant man.
>
> Q Yes. A One who could talk on almost all the world and national problems. He struck me as a very effective business man when he was sober. On a periodic, in the early period, he was equally talented and brilliant, but always his mind worked in one way, that is, as the period of intoxication when on he became very vituperative, suspicious of his friends, and then his mind slowly began to be dulled, until he was in no condition to do anything, and if I may use the word megalomania, not in the technical sense, but he did suffer from a megalomania that constantly increased, that is, I mean the belief in his own importance, and his own powers, becoming rapidly less effective in everything he did, until he was actually unintelligible.

Q How did it effect him physically? A Of course, toward the end it affected his locomotor senses so he couldn't locomotor.

Q Couldn't walk? A Couldn't walk; no, sir.

Q You are speaking now of alcohol? A Yes (pp. 180-181).

Mr. Dinwiddie also became acquainted with the fact that the doctor was in the habit of using veronal at this early period from the doctor's own admission to him. The testimony of this witness as to the progressive use of liquor and drugs by the deceased is best summed up in his answers to questions put to him by the court.

Q Let us get the things down, in answer to a direct question, and find out just what you mean. As I understand it, you want me to understand that for many years prior to his death Doctor Freeman used drugs? A Yes, sir.

Q Veronal? A Veronal only, sir.

Q Veronal only? A Only, sir. But that he has bragged to me—

Q But that he at other times periodically during the last years of his life, did use other drugs, but not constantly, is that correct now? A No, sir. I want to re-state that by saying that Doctor Freeman has told me, not to my knowledge, that he has used all the other drugs, at different times, but to my own personal knowledge I do not know whether he has used any of the opium by-products.

Q And you also want the court to understand that during the time that you have known him, from 1907 to 1922, that he was a periodic user of alcohol? A Yes, sir.

Q To excess? A Yes, sir. It became more frequent as the years went on.

Q That is, you mean the periodic sprees or using of the alcohol became closer together? A Closer, sir.

Q And during the last three years how frequently did he indulge to excess in alco-

hol? A I think that he became almost a constant drinker and a constant user of drugs, during the last few years of his life. That is, I don't think he was capable of going by twenty-four hours. It had changed its condition, from being a periodic drinker, who could go a year without going on a spree, to a man who could not live without stimulation.

Q I want to get this clear: You want me to understand that during the last three years of his life he was constantly under the influence of drugs? A Not when he was confined to an institution?

Q Except during the time that he was confined in an institution? A And the immediate period after his coming out of the institution, when he was cleared up and perfectly normal.

Q Except for those periods, that is, the period of his incarceration, and the period immediately succeeding it, that he was constantly under the influence of drugs? A Yes, sir.

Q And constantly more or less under the influence of alcohol? A Yes, sir.

Q That is correct? A And that his condition varied, I mean even then it varied up and down, dependent upon the volume, or the amount. That is, I mean there was no absolute condition of sottishness. He would go all the way from being fairly sober to being extremely drunk.

Q Was there any time, during the last three years of Doctor Freeman's life, except while he was in the hospital at Trenton, and the period of about six weeks or two months immediately succeeding his release from the hospital, that you saw him, when he was not under the influence of either drugs, or liquor, or both? A I think not, sir (pp. 227-229).

During this time Dr. Freeman was taken to various institutions in an effort to cure him of his liquor and drug habits. The first of these institutions was Oppenheim's Institute in New

York City (p. 492), where he was taken sometime probably between 1907 and 1909. He was next taken to Dr. Towne's Sanitarium in New York City (p. 493) in November, 1918. In April or May of 1919, he was in the Belle Mead Farm Colony and Sanitarium (p. 493). Then in August of 1920, he was admitted voluntarily to the State Hospital for the Insane at Trenton. However, he only stayed there four days and then ran away (p. 189). On August 23, 1921, he was again committed to the State Hospital at Trenton, this time on the complaint of his wife. On this occasion he was confined there until Ocober 3, 1921, when he was released by order of the Court of Chancery on a writ of habeas corpus. This order appears as part of Exhibit P. 8 (pp. 1094 and 1095). He never stayed at any of these institutions for any length of time and generally ran away from them soon after he arrived. In fact, he used to boast of his ability to get away from keepers (p. 187).

After his release from the State Hospital on October 3, 1921, events moved rapidly. On the following day, October 4, 1921, a separation agreement with his wife was executed and a will was signed in the office of Mr. Watson, who now represents the caveatrix Sallie B. Freeman.

By the terms of this will his entire estate was given to his sister Sallie B. Freeman and John W. Breen, Sr., and John W. Breen, Jr., subject however to the payment of $100.00 a month to his wife during the remainder of her life. In January, 1923, Dr. Freeman employed Harry Mohring, the present appellant, who at that time lived across the street from the doctor and with whom he had been acquainted since 1917 (p. 716). Mr. Mohring and his wife very soon thereafter moved into the living quarters over the garage

where Dr. Freeman was living at that time and from then until the Doctor's death he made his home with these people.

On May 15, 1922, at the suggestion and insistance of certain creditors of Manning Freeman and Son, Dr. Freeman executed a trust agreement whereby he assigned to Russell E. Watson, the attorney above mentioned, all his stock in the corporation and gave Mr. Watson authority to run the business for him. This agreement was to run for the term of one year and in pursuance of its terms Mr. Watson was thereupon elected president of the corporation and was in charge of the business during the term of the agreement. However, the Doctor is alleged to have repented of this agreement very shortly afterward and asked Mr. Louis Mohring, the father of the appellant, if he knew of some lawyer outside of Middlesex County, who could look after the Doctor's legal affairs. Thereupon Mr. Mohring, Sr., brought his old friend Mr. Davey to Metuchen on Sunday, June 18, 1922, and introduced him to Dr. Freeman (p. 45). Mr. Davey spent the entire day at Dr. Freeman's and talked over with the latter the question of having the trust agreement abrogated and also the question of making a new will.

In accordance with instructions alleged to have been given by Dr. Freeman, Mr. Davey prepared a will which he brought down to Metuchen on June 21, 1922, where it was executed by Dr. Freeman. This will left practically the entire estate to Harry Mohring, the sisters being cut off with nothing at all and the wife being given one dollar a year. Apparently the conscience of someone must have been troubled on account of this entire neglect of the Doctor's own flesh and blood, and we find soon afterward the doctor in

Davey's house on July 5, 1922, at which time the will was changed so as to leave the Doctor's sisters $200.00 each and his wife's legacy changed from $1.00 a year to a flat bequest of $1.00 (p. 43).

Mr. Davey then prepared a second will and on July 12, 1922, we find Dr. Freeman in Mr. Davey's home in Belleville, New Jersey, where the purported will was executed and is the paper which is now offered for probate.

On the evening when the will was executed Dr. Freeman was driven in his automobile by Harry Mohring from his home in Metuchen to Mr. Davey's home in Belleville. Mrs. Mohring and her two children and Letty Patterson were also taken along. Mr. Louis Mohring, Harry's father, came from his work in New York by trolley. The party arrived at Mr. Davey's home early in the evening. Mr. Davey himself was not at home but arrived later. Mr. Davey took Dr. Freeman into the dining-room of his home and there at the dining-room table he says that he read the will over to the doctor as it lay on the table. Mr. Davey admits that he knew Dr. Freeman could hardly see (p. 55) and the testimony of all the witnesses who knew the doctor is unanimous in stating that his eyesight was so bad that he could not read anything but the large heavy type headlines of the newspapers. Occasionally. Mr. Davey says that he read the will over to the doctor, following with his pencil the text of the will as he read it, and he says that he believes the doctor could follow the reading so that he knew himself what the contents of the will were. Mr. Davey further admits that the will was written on the typewriter in his office (p. 51) so that the type would be but little larger than the ordinary type with which newspapers are printed,

and yet Mr. Davey would have us believe that this man who was unable to read anything in the newspapers except the headlines in the largest type could follow the reading of this will as it was read to him. It is no wonder that the Judge of the Orphans' Court in his opinion made the following comment on this phase of the question:

> "Mr. Davey may very well have been deceived into believing Doctor Freeman possessed a much greater mental capacity than he had. He may very readily have been mistaken and honestly mistaken, as to Doctor Freeman's mental capacity. In fact I am inclined to believe that he was over credulous and that he did not use the care that a more prudent and less credulous individual would have done in the preparation and execution of the will in question" (p. 20).

After this alleged reading of the will and the alleged explanation of its contents to the doctor, Mr. Davey then called his own wife and Mr. Louis Mohring, the father of the appellant and chief beneficiary, into the dining-room and it is alleged in their presence the will was first signed by Dr. Freeman and then by Mrs. Davey; Mr. Louis Mohring and Mr. Davey in that order.

The situation that existed then when the will was executed cannot be better described than in the language of the opinion of the Orphans' Court:

> "Thus we have before us the picture of this man, feeble physically, almost blind, advanced in years and possibly aged beyond his actual years by his excessive alcoholic indulgence, separated from his friends and acquaintances of earlier years, estranged from his wife, and refusing to associate with his own sisters, surrounded by strangers in the home of a lawyer, a stranger to him, to all of his earlier associates, and only a casual acquaintance of two or three weeks,

gathered together for the purpose of executing a solemn document. There was present no disinterested person and the Court does not have the benefit of a single disinterested witness to what transpired at the time of the execution of this will. No person disinterested in the result of this case can testify as to its execution. None of the subscribing witnesses attempt, with the exception of Mr. Davey, to recite any facts showing that they had attempted in any manner to find out whether or not Doctor Freeman possessed testamentary capacity. He was surrounded at the time of the execution of the will by those who would benefit by its terms, or by the friends of those who would so benefit. He had no opportunity to secure the benefit of independent advice" (pp. 20 and 21).

Undue Influence.

Can it be said then that under these circumstances this will represented the free and unrestricted expression of the testator's desire with reference to the disposition of his estate? As was said in the case of *Lynch* v. *Clements,* 24 N. J. Eq., p. 431 to p. 434:

"It is impossible to define or describe with precision and exactness what undue influence is, what the quality and extent of the power of one mind over another must be to make it undue in the sense of the law, when exerted in the making of a will. Like the question of insanity, it is to some degree open and vague and must be divided by the application of sound principles and good sense to the facts of each given case. In Trumbull *v.* Gibbons, 2 Zab. 136, it was said by Chief Justice Green: 'All influence on the part of the devisee in procuring a devise in his favor is not undue influence. The influence of affection, of kind offices, even of persuasion, does not invalidate a will; otherwise the very motive to the testator's

> benevolence would make void the gift. The influence which the law denominates as undue influence over the testator, must be such as to destroy his free agency, and amounts to moral or physical coercion; it must be proved, moreover, that the act done was the result of such coercion; there must be a control exercised over the mind of the testator, or an importunity practised which he could not resist, or to which he yielded for the sake of peace'."

It is true that in the first instance the burden of proof is upon the caveators to prove the existence of undue influence. However, where confidential relations are shown to exist between the testator and the principal beneficiary this fact, together with slight additional evidence will operate to shift the burden of proof to the proponent to show that the will was not the result of undue influence.

Dale v. *Dale,* 38 N. J. Eq., p. 274;
Spark's Case, 63 N. J. Eq., p. 242;
In Re Morrisey's Will, 91 N. J. Eq., p. 480.

The Orphans' Court rightly held that the circumstances in this case were sufficient to shift the burden of proof to the proponent. However, the Orphans' Court held that this burden was met by the denial on the part of the proponent that he exerted any undue influence on the testator. The Vice-Ordinary did not share in this opinion although the opinion filed by him does not disclose the grounds on which his different conclusion is based. A consideration of the circumstances surrounding the relation between Dr. Freeman and Harry Mohring cannot fail to satisfy anyone that Dr. Freeman would certainly not have made the disposition of his property which was attempted in the paper now offered for probate had it not been for the constant influence and coercion exerted upon him by the

appellant when his mind was so weakened by disease that he was unable to withstand it.

Harry Mohring testifies that his employment by Dr. Freeman commenced in January, 1922, hardly five months prior to the making of the will. He does say that he was acquainted with Dr. Freeman for a few years prior to that time but does not claim that this was any more than a casual, passing acquaintance. As to his employment the appellant himself states that he was not employed by Dr. Freeman personally but that he was employed by the corporation as an automobile mechanic. He did repair work to the automobiles owned by the corporation and drove Dr. Freeman only when there was no repair work (p. 717). This condition prevailed until after Mr. Watson took over the management of the business under the trust agreement after which the repair work was done by public garage. This was the latter part of May and from that time on his duties consisted solely in driving and repairing the car that Dr. Freeman rode around in (p. 719). In spite of the fact therefore that Harry Mohring spent much of his time doing other work he testifies that while he was employed by Dr. Freeman he drove the car over one hundred thousand miles during a period of less than fourteen months. This would represent an average use of the car of over two hundred miles for each and every day of Harry Mohring's employment by the doctor. But this extraordinary use of the car can be easily accounted for. The proponent and his witnesses all testified to the frequent automobile rides which the doctor took to road houses all over New Jersey and to Chinatown in New York City. During all this time the doctor was constantly indulging in the excessive use of alcoholic liquors,

particularly whiskey, and also veronal. The assertion of the proponent and his wife that they never saw the testator intoxicated is impossible of belief in view of the testimony of Dr. Freeman's many friends and acquaintances who testified that they never saw him in any other condition during the last years of his life. This testimony is also directly contradicted by Miss Jennie Freeman who testifies that on the occasion of a visit to the doctor's in the latter part of May, 1922, the doctor was in a state of practically helpless intoxication and that Harry Mohring and his wife and Lettie Patterson were all present (pp. 830 to 833). Furthermore there was no good reason for this gift of over one hundred thousand dollars to a comparative stranger. Harry Mohring received for his services $24.00 a week in wages and also lived in the quarters over the garage free of rent. There is no evidence of any extraordinary kindness on his part and no evidence that Dr. Freeman at any time regarded his services as being of an unusual character. Harry Mohring admits that the only time the doctor ever expressed himself in this connection was to remark casually that he, Mohring, was a careful driver (p. 736). Nevertheless this man, less than half as old as the doctor and far below him in social standing and intellectual attainments, and who, with his friends and relatives, lived on the doctor's bounty during all these months, would have us believe that he did nothing to induce the doctor to leave him practically his entire estate and that he knew nothing at all about the contents of the will either prior or subsequent to its execution. His protestations of ignorance and innocence are manifestly false and are unworthy of the slightest belief, as the Prerogative Court very plainly intimates.

This case is in fact almost identical in its essential features with that of *Barkman* v. *Richards,* 63 N. J. Eq., p. 211. In that case the deceased became an inmate of the family of the principal beneficiary, about Christmas, 1899, while in the last stage of consumption. He remained with them until his death in March 29, 1900. The alleged will was executed January 27, 1900. Benjamin, the beneficiary, was not a relative of the deceased nor does it appear that there had been any previous close intimacy between them. The will was drawn by Barkman, a lawyer, who shared his office with Benjamin, the beneficiary. It was Benjamin who suggested the employment of his friend Barkman to draw the will. It was alleged in that case that instructions were written by the deceased that all his property should be left to his friend Benjamin. These instructions were carried by Benjamin to the lawyer who thereupon drafted a will in accordance therewith. Subsequently this will was changed so as to leave a small legacy to the sister of the deceased who was his sole next of kin. This was the paper which was finally executed and whose probate was contested in that case. In his opinion Ordinary Magie held that the burden of proof rested upon Benjamin to show that it was executed by the deceased without undue influence and he further held that this burden had not been sustained in spite of the denial by Mr. Benjamin that any influence at all was exerted by the deceased. The Ordinary stated that he did not believe that a full disclosure had been made and that what was disclosed clearly indicated that influence had been exerted by Benjamin and that the latter had dominated the deceased so as to cause him to make this will which ignored his relatives and gave practically his whole estate to a comparative stranger. The

parallel between that case and the present case is extraordinarily striking, and it must be apparent upon a careful examination of the evidence that here, too, there has not been a full disclosure by the beneficiary but that enough has been revealed to prove conclusively that it was his influence dominating this once brilliant man whose mind was now ravaged and weakened and in a condition of chronic alcoholism so that he was unable to withstand the importunities of this scheming and unscrupulous adventurer who had wormed himself into the doctor's confidence. No other conclusion is possible but that this alleged will was executed solely as the result of the dominating influence of this appellant and his relatives and friends. If that is so then the will was not the free expression of the testator's wishes, but was the direct product of undue influence and should therefore be denied probate.

Lack of Testamentary Capacity.

When we come to consider the question of mental incapacity the evidence is still more convincing. The testimony of his old friend Mr. Dinwiddie has already been quoted regarding the decedent's use of liquor and drugs and his testimony is fully corroborated by a long list of other witnesses all of whom had known the deceased intimately either socially or through business relations for many, many years. To a man they agreed with Mr. Dinwiddie regarding the gradually increasing use of liquor by the doctor. These witnesses, included his handy man Rubien Cobbs, his barber Charles Hartman who had shaved the doctor for thirty-two years, James Lawless who formerly owned a saloon and had sold liquor to Dr. Freeman for twenty years (pp. 286 and 287), Benjamin Nelson, a carpenter who had

known the doctor for five years and had had business transactions with the corporation, and various salesmen and business men who did business with the corporation for many years; the members of the Breen family who were associated with him in the business and also two of his sisters and the old family servant Lettie Patterson. All of these witnesses had known the doctor for periods ranging from five to thirty years and were in frequent and in most cases almost daily contact with him and the unanimity of their testimony regarding his liquor and drug habits is such that it must be accepted.

In opposition to this testimony is that of the proponent and his wife and a few friends and others, many of whom, notably Ralph Van Duser and Frederick Gowen testified as to only one event in the life of the deceased. None of them except Adolph Hanuer and Richard Paperline claim to have known Dr. Freeman for any length of time and an examination of their testimony is not in substantial contradiction to that of the lay witnesses produced by the caveatrices. But the important and in fact the decisive testimony on this question was that given by the medical experts, particularly Doctors Cotton and Ramsay. Both of these men are specialists in the study of mental diseases and have had a wide experience in dealing with such cases. Their testimony furthermore was not based primarily upon the hypothetical question but was the result of personal acquaintance with and observation of the deceased. Dr. Cotton unhesitatingly testified that from his own knowledge of Dr. Freeman's condition while confined in the State Hospital for the Insane, and subsequently and from the testimony in the case, that the doctor was not mentally capable of making a will on July 12,

1922 (p. 888). This same opinion was given by Dr. Ramsay (p. 971) and by Dr. Ellis who had been Dr. Freeman's family physician for a great many years (p. 947). Doctors Cotton and Ramsay further testified that the use of alcohol and veronal to the extent indulged in by Dr. Freeman must necessarily have resulted in a permanent structural disturbance of the brain cells causing irreparable damage to the brain. It is a condition of chronic alcoholism that cannot improve (pp. 889 to 891) and (pp. 973 to 975).

The testimony of Dr. Funkhouser who was called by the proponent does not materially contradict that of the doctors above mentioned. He practically admits that after a certain stage has been reached in the progress of a condition of chronic alcoholism that there can be no recovery (p. 1037). He also admits that he is unable to state whether or not Dr. Freeman was sane or insane or had testamentary capacity or not at the time the will was made (p. 1039).

The testimony of Dr. Rostow is for obvious reasons given but little weight by the Court for the reason that he was merely an ordinary practicing physician with but a limited experience in such cases and in fact had been a patient himself at the State Hospital.

It was this great preponderance of the evidence which led the Court to find that in this case fixed mental disease had supervened upon the intemperate habits of Dr. Freeman so as to deprive him of the testamentary capacity necessary for the execution of a will.

But apart from this it appears that Dr. Freeman was in a state of complete intoxication at the very time the will was executed.

John W. Breen, Sr., testifies that on the morning of July 12th, the day the will was executed Dr. Freeman called at the Lumber Company's office and was given a check for twenty dollars by Mr. Breen. Mr. Breen testified that he then had been on a debauch all the night before and was still at it at the time and that it was impossible to understand what he was saying or to reason with him or to do anything at all with him (p. 508).

Mr. Watson testified that on July 13th between 9 and 10 o'clock in the morning Dr. Freeman came to his office in a condition identical to that described by Mr. Breen (pp. 548 and 549).

But most convincing of all is the testimony of Dr. Freeman's old family servant, Lettie Patterson. She testified that on the day the will was made he had been drinking practically all day long. She said that his condition was the same on that date as it was the first time she had accompanied him to Mr. Davey's, at which time she said that he was hardly able to walk or to talk (p. 404.) She also testified that she always put a half pint bottle of whiskey under his pillow every night before he went to bed and that he would drink the whole bottle before morning. Her testimony is entitled to great weight since it is directly against her own interest, for if this will is denied probate the legacy to her of $1,000 must of necessity fail.

The delusions from which Dr. Freeman suffered are also important as bearing upon the question of lack of testamentary capacity. A delusion has been defined as a spontaneous conception of the mind and an acceptance of that as a fact which has no real existence except in the

imagination and the persistent adherence to this conception against all evidence to the contrary.

Middleditch v. *Williams,* 45 N. J. Eq. 726.
Smith v. *Smith,* 48 N. J. Eq. 566.

A delusion arises from morbid internal impulse and has no basis in reason. It is of course, also true that the delusion must be responsible for the provisions in the testator's will. That is, he must have been influenced by these delusions to make the disposition of his estate which is contained in the will.

Middleditch v. *Williams, supra.*
In re Baker's Will, 90 Atl. 1009.

This is precisely the situation in this case. There is no doubt about the delusion on the part of Dr. Freeman of his wife's infidelity and of his persecution by his wife and others, or of the dishonesty of the Breens who had in fact faithfully endeavored to keep the business going under the most trying circumstances.

His resentment toward his wife as the result of his committment at her instance to the State Hospital for the Insane was likewise the result of a disordered mind. Dr. Cotton testified that in all his experience at the State Hospital, he had never known a single patient who had been discharged as sane to resent the fact of having been committed to the institution, whereas in every case where resentment was shown by the person it developed that the mind had not yet recovered, but that the person was still insane (p. 900).

There is no question but that Dr. Freeman harbored these feelings toward these persons and it is also true that not a single word of evidence was introduced to prove that there was any foundation in fact for them. They were therefore

delusions in the legal sense of that word and there can be no doubt but that they had a direct influence on the making of the will of July 12, by Dr. Freeman.

In the will made by the doctor on October 4, 1921, he left his wife an annuity of $1,200.00 a year and gave the Breens 1-3 of his property and the 2-3 to his sister Sallie B. Freeman. In the later will all of these natural objects of his bounty are practically ignored.

It is argued in the brief of the appellant that his feelings of resentment toward his sisters were justified, but it is not perceived on what ground this is so. The sisters admitted that they used to remonstrate with their brother about his excessive use of alcohol and drugs and this criticism was keenly resented by him. Whenever he was in an intoxicated condition or under the influence of liquor he always avoided them as much as possible and apparently took no pains to hide this fact from them. Since he was rarely in any but an intoxicated condition during the later years of his life, is it any wonder that his sisters found it difficult to retain the degree of intimacy which would probably have continued under normal conditions. They testify that their brother was always a very selfish man whether drunk or sober and that their letters to him unless containing a direct request for advice were almost never answered.

Who then is to blame if during the last few years of the life of this unfortunate man he did not have the companionship and society of those who were nearest to him by ties of blood and relationship? He alone was to blame for the alienation of his immediate relatives and also of his former intimate friends. He, himself, by his habits and his actions, made it almost too plain

that he no longer desired their friendship and therefore had no cause for complaint if they acquiesced in his known wishes. This only affords additional evidence of the rapidly increasing mental deterioration from which the deceased was suffering at the time the will was made.

The proponent appears to lay great emphasis on the decree of the Court of Chancery which was advised by Vice-Chancellor Buchanan on October 3, 1921, on habeas corpus proceedings. Just what connection this decree has with the question of the capacity of Dr. Freeman to make a will on July 12, 1922, nearly a year subsequent to the decree, is not quite clear, but presumably the implication is that since the Court of Chancery found him sane on that date, the question of his sanity thereby became *res adjudicata.* This position finds no support in the decisions of this or any other state. It is well settled that a person who is insane in not necessarily incompetent to make a will.

Trumbell v. *Gibbons,* 22 N. J. L. 117.

It has also been held that in an action to set aside a will for mental incapacity, the fact that the testator has been discharged from a hospital for the insane is not conclusive as to his sanity.

Milcham v. *Montagne,* 125 N. W. 664.

Furthermore the question at issue at the present time is totally different from that in the habeas corpus proceedings and the parties are also different. The doctrine of *res adjudicata* only applies to actions between the same parties or their privies involving the same subject matter and where the issues are identical. That is certainly not the case here. The Chancery hearing was an *ex parte* hearing and the question at issue there was whether or not Dr. Freeman was insane within the meaning of the statute where-

as in this case, the question of his legal sanity is not in issue at all but rather the question of his testamentary capacity which is a totally different thing.

is not the test of testamentary capacity. The test is rather that the testator

The sanity of the testator moreover, can comprehend the property he is about to dispose of, the objects of his bounty the meaning of the business in which he is engaged, the relationship of each of these factors to the other and the distribution that is made by the will.

Bannister v. *Jackson, supra.*
Bennett v. *Bennett,* 50 N. J. Eq. 439.
McCoon v. *Allen,* 45 Eq. 708.

All of these elements must co-exist in order to make a valid will and the absence of any one or more of them will result in the invalidation of the entire instrument. The Orphans' Court found as a fact that three of these elements existed, namely that the doctor knew the general objects of his bounty, the meaning of the business in which he was engaged and the distribution which was made by the will, but the Court also found that he did not know the value of the estate that he had to dispose of and that he did not have the mental capacity to deal rationally with each of these elements. Having found these facts, it was of course, impossible to do otherwise than to hold that the deceased did not possess the testamentary capacity necessary to make a valid will and therefore denied probate to the paper offered by the proponent.

It is therefore respectfully submitted:

1. That the will was the product of undue influence exercised upon the deceased by the proponent and that this undue influence was directly responsible for the disposition of his estate attempted to be made by the deceased.

2. That the will is an unnatural will in that it practically excludes the natural objects of the testator's bounty and bestows his entire estate upon a comparative stranger to whom he was not and had never expressed himself as being under any obligation whatsoever. Certainly his obligation to Harry Mohring was not greater than to Lettie Patterson, his faithful old colored servant who had been a member of the household almost from his infancy and whom he considered sufficiently rewarded by a legacy of $1,000.00.

3. That the deceased did not possess the required testamentary capacity to make a valid will.

4. That fixed mental disease had supervened upon the intemperate habits of the deceased, causing a permanent and irreparable structural impairment of the brain.

5. That the will was the direct result of his insane delusions.

6. That at the actual moment of making the will the deceased was in such a state of intoxication as to be unable to understand what he was doing.

7. That there is an abundance of evidence to support the findings of fact in the Orphans' Court and the Prerogative Court and that therefore the facts as found in these courts are conclusive and binding on this Court.

8. That the decree of the Prerogative Court is supported by the great preponderance of the evidence and should be affirmed by this Court.

Respectfully submitted,

THOMAS BROWN,
Proctor for and of Counsel with
Respondent, Mary E. Wilkins
Freeman.