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N. J. COURT OF ERRORS AND APPEALS

ALLEN KNOWLES, ADM'R,
Appellant,
AND
ANNIE DOWNIE,
Respondent.

ON APPEAL
FROM
PREROGATIVE COURT

BRIEF OF JOHN S. BARKALOW,
Of Counsel with Appellant.

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NEW JERSEY COURT OF ERRORS AND APPEALS.

ALLEN KNOWLES, Administrator, Appellant, *vs.* ANNIE DOWNIE, Respondent.	On Appeal from Prerogative Court.

Brief of JOHN S. BARKALOW of counsel with appellant.

This brief does not refer minutely to the testimony, because the evidence is not so voluminous that the court cannot easily discover the facts of the case, and, also because it is already thoroughly analyzed and cited in the printed brief of Mr. Hilton, associate counsel, which is presented to the court, together with this.

In the year 1877, a man whose full name was Sam Thompson, died in the city of Paterson, on April 9th. He left a widow and three young children.

That widow and his friend, Allen Knowles, administered upon his estate.

A few days after the death of Thompson, his widow sailed for England, and on July 12, 1877, three months and three days after his demise was married to a former employee of her husband, who had returned to the old country, where she found him, and became Annie Downie.

The inventory and appraisement of the estate were made and sworn to by Mrs. Knowles (now Downie) before

she left this country, and they stated the amount in goods and money coming to the hands of herself and her co-administrator, as $11,555.

Subsequently to the filing of the inventory—as Mr. Knowles says—they found a sum of money in a drawer of the dead man's safe, which the two administrators counted, and which Mr. Knowles then entered in his books as $4,250, which he says was the amount of it.

Before filing his first intermediate account, however, he became convinced from the state of his cash account that he must have made a mistake somewhere, and he charged himself with $5,235 31 cash on hand not inventoried.

This made the total of the estate coming to his hands $16,790 31—or in round numbers $17,000.

Mrs. Downie, had before the filing of any account, been discharged from her office of administratrix in consequence of failure to give bonds after her marriage, but she was cognizant of the filing of both accounts, and repeatedly referred to the estate as amounting to $17,000—even when most displeased with Mr. Knowles, and when declaring that the estate was such that she ought to have more money allowed her.

See the evidence of Mr. Hilton, pages, 145, 146 and 147.

Eighteen months after that second intermediate account was filed, and had again and again been referred to by her without objection, Mrs. Downie suddenly asserted that the money found in the small drawer of the safe, and counted by her and Mr. Knowles, in April, 1877, had amounted to $7,555.

In other words she then claimed in effect, and almost in exact terms, that the amount of her first husband's estate was in round numbers $19,000, although she had recognized it for three years and a half as $17,000.

And it should be observed too, that in such recogni-

tion she had distinctly realized that the estate was made up of the inventory sworn to by her $11,555, and a sum of about $5,000 found in the safe.

See Mr. Hilton's testimony, pages 146 and 154.

This makes the issue in this case.

Annie Downie claims of Allen Knowles, eighteen hundred and nineteen dollars, which she alleges he took out of her husband's safe eight years ago in her presence, in excess of the amount with which he charges himself.

And Allen Knowles denies that he received any such excess and declares that he has charged himself with the whole amount dicovered in the safe.

None but these two know the truth of this matter. It is admitted by both that when the money was counted they were alone, and a decision of the question can only be justly arrived at by consideration of the character and attitude of the parties and the circumstances surrounding and succeeding the occurrence.

Let us examine Mrs. Downie's account of the affair, first :—

She says that on the day the inventory was taken, and before the arrival of the appraisers, the money was found in the safe—that Mr. Knowles told her to take it to her bed room so that it wouldn't get to the Orphan's Court—that he thought her husband meant it for her—and so she put it into her pocket and took it to her bed room—and kept it until the appraisers were gone. Page 11, lines 10, 20. Page 34, lines 6, 7.

She says they counted the money at the same time—on the side of her bed—he handling it and counting just so she could hear—but no memorandum was made and no piles of one hundred each arranged—simply that they counted at the same time and made it the same. Pages 27, 28.

That at the close he noted the amount on a piece of

brown paper, and also that he said it amounted to $7,055, deducting $500 which they had left in the safe because it wouldn't look well to take it all out. Page 19, line 6, 7. Page 32, lines 24, 25.

And her story is that having thus settled the amount in the safe beyond question and told her what it was Mr. Knowles and she proceeded to swear before the Surrogate of Passaic County, on April 23rd, that an inventory in which not one dollar of this money appeared—was a true and perfect inventory of all goods, chattels and effects which were of Sam. Thompson as far as had come to their knowledge or possession. She knew what she was doing, for the oath was read to her, Page 16, line 34.

I am obliged to differ from the opinion of this woman's conduct expressed by the ordinary when he says, "it is not strange that she should, under the circumstances as she declares them, have made the oath to the inventory."

I don't see how any court can rely upon the testimony of a woman who confesses that she made oath to a deliberate lie in a matter of fact within her knowledge.

She knew the fact was not as she swore it was, and the sophistry or lax morality which enabled her to falsify then, will enable her to falsify now.

If some supremely good motive justified her in her own eyes in perjuring herself on April 23, 1877, some equally powerful motive, good or bad, may have rendered possible her testimony of 1881.

She is a woman swearing for her own gain, against a man who has offended her, and she describes herself as one who has been party to a fraud which was carried out by her own false swearing,

She is uncorroborated by a single circumstance or person.

She has accepted for four years the figures which she now denies.

And now, with monstrous effrontery, after the admin-

istrator has properly refused to pay the taxes on her real estate, she demands of him on her own bare and unsupported statement, two thousand dollars.

I have said that we must look to the character and attitude of the parties, and the circumstances of the case, for a decision of this question.

And I claim that the petitioner has, by her own testimony, shown her character to be bold, unscrupulous and untruthful; that her attitude is contradictory of all she has said and done in reference to her husband's estate previous to making this claim; and that the circumstances are inconsistent with her story.

Now, what are the character and position of Knowles?

His character is evident in the testimony in this case —as distinctly as the petitioner's.

He is honest, for it appears that in the course of his administration he got some of the money of the estate mixed with his own—some forty dollars, he thought, but he couldn't tell exactly—but he insisted that his solicitor, Mr. Hilton, should debit him with ninety dollars, so that he might render to the estate its due beyond possibility of error, and with this instruction he turned over his papers to his lawyer, directing him to prepare his accounts.

After making the necessary calculations and arranging the receipts and disbursements and examining the cash in hand, it was found that Mr. Knowles had in hand nearly a thousand dollars more than his accounts called for.

What did he do? Did he sit down to figure away that balance? Did he suggest imaginary expenditures? Did he conclude that it must be money of his own? No. He said he knew it wasn't his, that it must belong to the estate, and that he must be charged with it. That fact he took care of at once, and then, being pressed to suggest some mode of accounting for the error, he said as a mere matter of possibility that he supposed he must have miscounted the money in the safe.

And it does seem as if that gratuitous exercise of his imaginative faculties is what has wrecked his case thus far.

Because he admitted the possibility of an error of $1,000, which his cash in hand showed to exist, and tried to account for it, he is held for a further sum of $2,000, which is not called for by anything in his accounts, nor by any evidence introduced, nor by any testimony worthy of consideration. Because he frankly says, "as the thousand dollars is there, charge me with it," he is treated as utterly unreliable and made the victim of this woman, who chooses to say that he had $2,000 more. She might have said five thousand more, or ten, and the evidence of it would have been just as good.

We may consider this testimony from the first word of it to the last and we can't find one syllable to fix or indicate the amount chosen except this woman's second oath, in contradiction of her first. We may examine the books offered in evidence from one end to the other and we cannot find a line which shows this sum.

All we do find is the slovenly work of an illiterate man—but nothing to indicate dishonesty—and, except for that matter of the thousand dollars, nothing to indicate confusion. There is absence of nicety; there are entries made out of time, and often in different ink from the body of the books; there are inaccuracies of manner, but no appearance of failure to charge what ought to be charged.

The day-book shows the amount $4,250 clearly entered after it was found. The ledger shows it entered at the top of three successive pages, just as it naturally might be by a man seeking to charge himself with what he had found and having no experience in such matters.

And why should he enter $4,250, if he sought to defraud this estate. If the amount found was $7,555, as Mrs. Downie swears they both knew it was, and if he had the audacity to plan the retention of a portion of

that sum under her very eyes, would he not have charged a sum which would seem more capable of misunderstanding. He might hope to convince her that they had counted $6,555 or $5,555, and not $7,555, and the statement would have some plausibility; but he would actually compel contradiction by changing $7,555 to to $4,250; and the absence of contradiction shows that it wasn't a change. Mrs. Downie saw his two accounts, heard them read, talked of them, calculated upon them, and never contradicted that item which was entered there, $5,235.31. She knew and referred to it as about $5,000—always.

See Mr. Hilton's testimony, to the whole of which the attention of the court is particularly requested.

How can this woman's testimony be accepted as she gives it now.

In April, 1878, and again in April, 1880, she was aware of this item, as has already been said; but it has not yet been remarked that its presence there, if her story be true, must have indicated that Mr. Knowles did not mean, as she says he had told her he did, to retain the sum found in the safe *for her*.

That would be the indication of such an entry, and yet she doesn't claim that she demanded any explanation from him. She didn't ask him why he put part of the money into his accounts and not the whole. Nor did she ask him what he meant to do with the other two thousand. Nor why he didn't turn it over to her, as they had agreed it was to be kept for her. Neither had she objected to his numerous payments of debts to the estate, out of the sum which she says they agreed to keep out of the money *for her*.

She accepted his account just exactly as people do accept an account which they know to be correct before they have determined upon a fraudulent attack upon it.

It was not until after the spring of 1881, as already said, when the administrator refused to pay her taxes that she began to assert that there had been more

money in the safe, and to fix upon the sum of $7,555, the last three figures of which are curiously identical with the last three figures of the inventory she swore to—$11,555.

As already pointed out she is a woman without scruples.

She said if she could have got hold of that money she would have kept it.

She did keep out of the inventory a watch and jewelry belonging to her husband.

She was hostile to Mr. Knowles because of his faithfulness to the estate and her children, in refusing to pay her taxes, and she threatened to injure him by taking away his property.

She seems to have concluded that all that was necessary was to fix the amount and to persist in it in utter disregard of everything else.

She is contradicted beyond question as to the finding and disposition of the key of the drawer, as appears from the small black book.

She declines to remember any process of counting. Page 33, line 20, &c.

She don't remember who swore her to the inventory. Page 14, line 8.

She is sure she signed but one paper; (pages 15 and 16) yet, she undoubtedly signed four.

She signed the Stapleton note for $1,000, but says she didn't. Page 14.

She can't remember within three months when she first consulted her present counsel. Page 16.

And she says the estate was able to pay its debts, but that there wasn't much left. Although it is clear that she had $1,850 and $6 a week for the support of the children, and that the estate owned four houses besides.

And yet, this court is asked to charge Mr. Knowles with $2,000 upon her naked, point-blank testimony four years after the inventory was sworn to. If this can be done administration becomes a perilous task.

One of the vice-chancellors of this state has recently decided, without criticism, that "a witness is not entitled to credit whose testimony is inconsisten with the common principles by which the conduct of mankind is usually governed."

Earle vs. New York and New Brunswick, Hosiery Co. 9, Stewart 188.

And again that "evidence to be believed must not only proceed from the mouth of a credible witness, but it must be credible in itself. Such as the common experience and observation of mankind can approve as probable under the circumstances." Daggers vs. Van Dyk, 10 Stewart, p. 130.

Is this evidence such.

Now let us look a little further into Mr. Knowles' transactions.

Notice is taken to his disadvantage of this entry in the small black book. "May 14, found the key of the safe drawer and in the same" and it is asked why didn't he complete the entry with the amount.

He says frankly he don't know: that fairly means, four years' after, that he don't remember.

We can only conjecture, but let us conjecture in favor of honesty, where as in this case, previous, lifelong, good character is presented.

Mr. Knowles opened his various books successively. This was the first. He wrote it up progressively in his second book, the day book, after he had procurred it. P 61.

Why may he not have concluded as he wrote that he might as well carry the amount at once by a single entry into his new day book.

It is easier to suppose that than to suppose that an honest man has suddenly become a rogue.

Besides he had a memorandum on paper which he afterwards threw away. P 94 and 97.

Why not transcribe the amount from that.

Then he is criticised unfavorably because he didn't tell Mr. Daggers what he had found.

There is no evidence that he did not. But if that were so, why should he. The point of the inquiry was what should be done with an amount found after inventory filed, and the answer told him.

We don't know how hurried the interview was, and surely he should not be charged $2,000 for not making it longer.

Again erasures written over are commented upon.

They make unsightly book-keeping, it is true, but they are hardly evidence of incorrectness. They may prove just the reverse.

One glance at these, written over in red ink, will certainly controvert any idea of concealment.

And there is no erasure in the day book.

Why may not the entry erased have been a carrying forward of the total of the previous page with the $4,250 incautiously added, before observing that there was already a posting on page 62, which would thus be thrown out.

As to traces of a figure 7—under the microscope—they do not appear to every eye, and if they did it is not possible to say that they are not a portion of the 2 in 23 on the other side of the same page and directly under the thinned surface of the erasure.

The argument from the bank-books of Mr. Knowles is so fully presented in the brief of the counsel with whom I am associated—on pages 26, 27, 28 of that document—that I shall not present it again here.

We submit that Mrs. Downie is before the court in an unfavorable attitude.

By reason of her personal character :

By reason of the character of her testimony ;

And by reason of laches in asserting her claim.

And that Mr. Knowles is before the court in an attitude which entitles him to consideration.

By reason of proved good personal character ;

By reason of candid, straightforward testimony ;

And by reason of prompt repudiation of this claim ;

All of which appear in the evidence.

If his books presented no account at all, the estate might be proved otherwise and he be charged with it.

But presenting as they do a laboriously minute account, defective only in elegance, he is entitled to the presumption of correctness and his accounts can only be discredited by satisfactory affirmative evidence, resting upon something more than the uncorroborated testimony of a single interested witness.

We present the administrator plus his books and his character, against the exceptant unsupported.

It is respectfully submitted that this case does not come within the doctrine and the exceptions laid down in Blauvelt vs. Ackerman, 8 C. E. G., 495, or in Gaston's Trust 8, Stewart 60.

These accounts are far from "negligent" and are clear and accurate unless this claim is proved.

JOHN S. BARKALOW,

Of Counsel with Appellant.

COPY FROM BOOKS.

Day-book.

Red ink on pages 2, 10, 11, 13, 15, 26.

Page 6.———Pater. April 10.———

Black.	T. L. Pd., for mourning, &c.	V. No. 1.
Black.	68, 300 clothes for children, &c.	18.
Blacker.	300 found in Piers, v. v. cash.	629, 12. *

Page 10.

Black.	Paid to J. & H., Habben for	
Black.	T. L. 61 chandeliers and books. No. 24.	See voucher v. 20, 80.
Red.	62 found in safe drawer.	4250.
*	302.	

This payment to Habben appears in ledger May 14, 1877.

Ledger.

Page 61.

1877.

23.	Goods and chattels selected by Annie, evidence, &c.,	199, 80. *
April 10.	Cash paid, &c.	18.
Blaek.	Cash paid telegraph, &c.	25.

Page 62.

1877.

Red.	Found in safe drawer.	4250.
Over erasure.		
Black.	May 17. Amount carried up.	$17,868 73.
Black.	May 17. Cash.	1.

Page 64. Same kind of entry. 4250.

Page 66. Same kind of entry. Figure below 4250 rubbed through.

Diary.

May 14.

Found the key of safe drawer and in the same

New Jersey Court of Errors and Appeals.

Between
ALLEN KNOWLES, ADMINISTRATOR OF SAM THOMPSON, DECEASED,
Appellant,
and
ANNIE DOWNIE,
Respondent.

On Appeal from Prerogative Court.

Appellant's Brief.

Annie Downie, the respondent in this case, was the widow of Sam Thompson, deceased, and is now the wife of Robert Downie.

Sam Thompson died April 9, 1877. Case, page 7, line 3.

On April 18, 1877, letters of administration on the estate of the said deceased were issued to the said widow and the appellant in this case, Allen Knowles. Case, page 255, exhibit D.

In July, 1877, the said widow was married to her present husband. Case, page 39, line 8.

On December 29, 1877, she was removed from her said office of administratrix on account of her said re-marriage, and her neglect to give the additional bond required in such cases by the statute. Case, page 259, Exhibit D.

On April 23, 1878, Mr. Knowles filed his first intermediate account, which was allowed on the 13th of the next month. Case, page 259, Exhibit B.

In this account Mr. Knowles charged himself with $5,235.-31, as "cash on hand not inventoried." Same exhibit.

This item was made up of the $4,250 entered on page 10 of day-book (Exhibit H) as "found in safe drawer," and $985.31 which Mr. Knowles found he had on hand more than his cash account called for. Case, page 141, lines 37, &c. Statement A hereunto annexed.

It was intended that this $985.31 should go into the account as money on hand not otherwise accounted for; but Benjamin Van Wagoner, who drew the account, united the two items and put in the aggregate amount, to wit, $5,235.31, as aforesaid. Case, page 144, line 35 to page 145, line 11.

In or about the month of November, 1881, Mrs. Downie presented her petition to the Passaic County Orphans Court, setting forth that the said $5,235,31 represented cash which was in the safe of the said Sam Thompson at the time of his decease, which was received and obtained by Mr. Knowles from the safe before the inventory was taken, and kept by him out of the inventory, and which amounted to $7,555; and praying that his intermediate accounts (a second having been filed in the spring of 1880), might be opened and he required to file a new account charging himself with the difference between said $5,235.31 and said $7,555. Case, pages 1, &c.

On this petition a rule to show cause was granted by the court. Case, pages 4, &c.

On this rule a hearing was had before the court. Case, pages 6, &c.

On Jannary 12, 1883, an order was made by the court denying the prayer of and dismissing the petition. Case, page 266.

From this order Mrs. Downie appealed to the Prerogative Court. Case, page 267.

On February 18, 1884, the Prerogative Court made a decree reversing the said order of the Orphans' Court, and decreeing that Mr. Knowles should be charged in his accounts with the sum of $1,819.69 in addition to the said $5,235.31, and interest on the said $1,819.69 from April 18, 1878. Case, page 278.

The $1,819.69 added to the $5,235.31 makes $7,055, which is $500 less than was claimed in Mrs. Downie's petition to the Orphans' Court.

The safe mentioned in Mrs. Downie's petition was first opened after Mr. Thompson's death by an expert from New York. Case, page 9, lines 1, &c.; page 45, lines 14, &c.

Mr. Knowles says this was done April 17, 1877. Case, page 51, lines 9, &c.: page 64, lines 2, &c.

In saying this he probably relied upon the entries in his books of money paid for opening the safe. See Exhibit I (little black memorandum book) and page 6 of Exhibit H (day book).

Mrs. Downie says the safe was opened by the expert the day before the inventory was taken. Case, page 8, lines 24, &c.; page 9, lines 12, &c.

The inventory could not have been taken before the appointment of the appraisers, and they were appointed April 18, 1877. Case, page 255, lines 15, &c.

The testimony of Mr. Knowles, these entries in his books, and the testimony of Mrs. Downie, therefore, all point to April 17, 1877, as the time, and that was no doubt the time, when the safe was first opened after Mr. Thompson's death.

Mrs. Downie and Mr. Knowles both say that a large sum of money was found in one of the drawers of the safe after it was opened. Case, page 10, lines 20, &c.; page 51, lines 27, &c.

This drawer was the lower or bottom one. Last reference.

But they differ as to the time when this money was found and as to some of the particulars relating to the finding and the counting.

Mrs. Downie says it was found in the morning of the day the inventory was taken, was carried up-stairs in her pocket and counted by her and Mr. Knowles on her bed, was then put by Mr. Knowles under a bureau in her bedroom and kept there until after the inventory was taken

in the afternoon and then carried by him back to the safe. Case, pages 10–12.

The entry in Mr. Knowle's day book relating to this money is under date of May 14, 1877. Exhibit H, page 10.

But as this entry is probably an interlineation, in the sense that it was written in on the line where it is after some of the succeeding writing had been done, it can hardly be regarded as conclusively fixing the date of the finding of the money.

Mr. Knowles said this money was found in the middle of May, 1877. Case, page 51, lines 21, &c.; page 68, lines 25, &c.

It is evident that in saying this he was governed by the entries in respect to this money in his books.

And he admitted that such was the case. Case, page 81, lines 18, &c.; page 96, lines 12–28.

But he denies that the money was found before the inventory was taken. Case, page 50, lines 6, &c.; page 56, lines 2, &c.; page 68, lines 25, &c. P. 58, l. 36 &c.

He also denies that it was, after it was found, taken upstairs, counted on the bed and then put under the bureau. Case, page 56.

Mrs. Downie and Mr. Knowles also differ as to how much money was so found.

Mrs. Downie claims that the amount was $7,555. Case, page 11, lines 26, &c.; page 12, lines, 34, &c. That $500 of it was left in the safe. Case, page 12, lines 38, &c. And that $7,055 of it was kept out of the inventory. Case, page 13, lines 12, &c.; page 11, lines 8, &c.

The amount of money so found is entered on Mr. Knowles' books as $4,250. Exhibit H (day book), page 10; Exhibit G (ledger) pages 62, 64, 66 and 302.

This sum is included in the $5,235.31 with which Mr. Knowles charged himself in his first intermediate account as already mentioned and explained.

Whether any of the $985.31 also included in the $5,235,31 as before stated, was found in the safe drawer in addition to the $4,250, and if so, how much, and whether

the mistake in such case was in the counting or the entering of the same, is at least a matter of uncertainty.

But however this may be, Mr. Knowles says he has charged himself in his accounts with all the money he has received. Case, page 56, lines 22, &c.

Also that he has not misappropriated any of the money belonging to the estate. Case, page 119, lines 32, &c.; page 124, lines 19, &c.

And it is claimed in his behalf that he should not be charged with any additional sum.

FIRST.

The claim that Mr. Knowles should be charged with any additional sum rests solely on the recollection of Mrs. Downie as to the result of the counting of the money found in the safe drawer.

She states her recollection of the result of her own counting. Case, pages 11, 12, 13, and 32. And her recollection of the result of Mr. Knowles' counting as stated, as she claims, to her at the time. Case, page 32.

She does not claim that her recollection in regard to the matter is aided by any entry or memorandum whatever.

The only memorandum made of the result of the counting, with the exception of the entries in Mr. Knowles' books, was made by Mr. Knowles at the time of the counting. Case, page 29, lines 11, &c.; page 97, lines 25, &c.

And this memorandum Mrs. Downie says she has never seen since. Case, page 29, lines 24, &c.

SECOND.

It was not possible for her to recollect the exact result of the counting for so long a time unless she was possessed of a most remarkable memory.

According to her own story she was sick at the time the money was found, got out of her bed in order to be present at the opening of the safe, and had to go to bed again before the money was counted. Case, page 10, lines 6 &c.;

page 23, lines 3, &c. And she, as she claims, was sick in bed for two weeks afterwards. Case, page 35, lines 3, &c.

Mr. Garside says that at the time the inventory was taken, which was the time she claims that the money was found, she was a very sick woman. Case, page 160, lines 26, &c.

In June, 1877 she went to Europe. Case, page 42, lines 25, &c.; page 200, lines 16, &c.; Exhibit H (day book) pages 16 and 17, under dates of June 14th and 23d.

Her husband, Mr. Thompson, died April 9, 1877. Case, page 7, line 3. And in three months and three days afterwards she married her present husband. Case, page 39, lines 5, &c.

Her first testimony upon this point was given Dec. 2d, 1881, more than 4½ years after it is claimed by any one that the money was found. Case, page 6.

And, so far as the evidence goes, it was just about 4 years after the money was found that the subject of this investigation was first agitated. Case, page 43, lines 27–38; page 44, lines 1–20; page 213, lines 1, &c.

There is not a particle of evidence that she ever claimed or pretended to any one before the latter part of the spring of 1881, 4 years after the money was found, that the money found was more than Mr. Knowles had accounted for.

If, under the circumstances and with the events and lapse of time above stated, she carried the exact result of the counting in her mind, her memory must be enormously greater than what is usually possessed even by the best educated persons.

THIRD.

Her testimony shows her memory to be exceedingly defective, and what she says is for this and other reasons very unreliable to say the least, as we will proceed to show.

1. She states under oath in her petition that the amount of money found in the safe and kept out of the inventory was $7,555. Case, page 2, lines 21–31.

And she first says in her testimony that the amount of money as found and counted on her bed and kept out of the inventory was $7,555. Case, page 10, lines 6–12; page 11, lines 26–31.

She also says that the money was counted again after the inventory was taken and there was then $7,555. Case, page 12, lines 10 and 11.

This was doubtless her original story as recited to her counsel and set forth in her petition.

And if she had adhered to it Mr. Knowles would have been charged with $500 more than he was by the Ordinary on the strength of her memory.

But there was a difficulty here which her counsel no doubt detected.

There was $629.12 of cash put into the inventory. Case, page 255, line 32. And she remembered that there was only "$100 and something" left in Mr. Thompson's purse. Case, page 37, lines 28–30. Where did the rest of the $629.12 come from?

It was doubtless to meet this difficulty that the series of very suggestive if not leading questions were asked her by her counsel, which led her to contradict her former statement so far as the counting on her bed and the keeping out of the inventory of $500 of the $7,555 claimed to have been found is concerned. Case, page 12, line 28 to page 13, line 15.

She says this $500 was left down stairs. Case, page 13, line 6. And was put into the inventory. Case, page 19, lines 10 and 11.

Her statement that $7,055 was the amount actually produced on the bed was evidently the result of a subtraction in her mind of $500 from $7,555, and not a statement from her memory of the result of the counting. Case, page 13, lines 12–15.

It is evident that her counsel had not been told of this $500 matter when he drew the petition, and that he was first told of it between the time of the drawing of the petition and the time of Mrs. Downie giving her testimony;

and it is probable that she told him about it when her attention was called by him to the difficulty above mentioned arising from the $629.12 included in the inventory.

When she made her first statement in her testimony in regard to the finding of this money and the subsequent proceedings relating to it, her counsel did all he could, without resorting to leading questions, to get her to mention this $500 matter; but she adhered to her original story as briefly stated in her petition. Case, page 10, line 20 to page 12, line 11.

Did she remember about this $500 matter when she swore to her petition and when she first testified as to the result of the two counts? If she did, she made a false statement under oath and testified falsely, and her whole testimony is thereby discredited. If she did not, the unreliability of her memory is an established fact. Such is the case if it be admitted, as it is not, that what she says about this $500 matter is true.

Mr. Knowles says the $500 that was put into the inventory was found in the iron drawer in the centre of the safe and before the money in the lower or bottom drawer was found. Case, pages 50 and 51; page 132, lines 1–4.

2. Mrs. Downie says, in substance, that right away after this money was counted, Mr. Knowles got into a buggy with Mr Garside and went to the quarry at Haledon. Case, page 11, lines 24–30.

This occurred, according to her statement, the next day after the safe was opened, and in the morning of the day that the inventory was taken. Case, page 9, lines 13–17; page 10, lines 6, &c.

It has already been shown that the safe was opened April 17, ~~1887~~ 1877. The next day was, of course, April 18, 1877.

Mr. Garside was one of the appraisers of the personal estate left by Mr. Thompson. Case, page 257.

At this time Mrs. Downie lived at 13 Governor street. Case, page 7, lines 31–35.

Haledon is in Manchester township about 2 miles from the place where Mrs. Downie then lived.

Mrs. Downie says that Mr. Knowles came to her house that morning (April 18, 1877) about 8 o'clock, and that the safe drawer was opened and the money found after that. Case, page 10, lines 6, &c.; page 19, lines 30, &c.

She also says that the money was placed under her pillow, before it was put under the bureau, about half past 8. Case, page 23, lines 26, &c.

According to her different statements in respect to the matter, the appraisers got there about 10 or 11 o'clock. Case, page 19, lines 32 and 33; page 195, lines 11–17.

Mr. Garside says he believes that when the inventory was taken he went there at 10 o'clock in the forenoon. Case, page 161, lines 3–7.

The inventory was not completed in one day. Case, page 161, lines 14 and 15. It could not have been commenced before the 18th, as the appraisers were appointed on that day. Case, page 255, Exhibit M. It was evidently commenced at the house. Case, page 159, lines 11, &c. And it is evidently to the first day of the taking of the inventory that Mrs. Downie refers when she speaks of the day on which the inventory was taken.

According to Mrs. Downie's statement, therefore, Mr. Knowles and Mr. Garside went to Haledon, two miles from her house, after 8½ o'clock in the morning of April 18, 1877; and it appears from the evidence, already referred to, that the appraisers, or at least one of them, Mr. Garside, went to her house about 10 o'clock the same morning.

On the same day application was made in writing to the Surrogate for the appointment of Mrs. Downie, then Mrs. Thompson, and Mr. Knowles, as administrators of Mr. Thompson. See certified copy of same. It is dated on that day. On the same day also the letters of administration were issued, and the appraisers were appointed. Case, page 255, Exhibits D and M. On the same day also, the administrators' bond was executed by the administrators

and two sureties. See certified copy of same. On the same day also the administrators, Mrs. Downie and Mr. Knowles, were sworn in. Case, page 206, lines 6–20; page 210, lines 22, &c. And the administrators were sworn in and the appraisers appointed at Mrs. Downie's house. Same references. Also page 16, lines 12–28.

All this must have been done, if Mrs. Downie's story be true, between 8½ and 10 o'clock in the forenoon; and within the same time Mr. Knowles and Mr. Garside must have gone to Haledon and got back in time for Mr. Knowles to execute the bond, take his oath of office as administrator, name the appraisers and notify them of their appointment.

This is altogether too much to crowd into an hour and a half of time.

But Mrs. Downie could not have seen Mr. Knowles and Mr. Garside go to Haledon between 8½ and 10 o'clock that morning, for Mr. Garside did not go to the house until 10 o'clock, as has already been shown.

Mrs. Downie may have seen Mr. Knowles and Mr. Garside go to Haledon together while the inventory was being taken.

According to Mr. Garside's testimony the appraisers were at the house the first day, both forenoon and afternoon, and went to the quarry at Haledon the next day. Case, page, 161, lines 1–20.

Mr. Crossley, the other appraiser, lived at Haledon. Case, page 228, lines 1, &c. It is probable, therefore, that Mr. Crossley went to the quarry from his house, and that Mr. Garside and Mr. Knowles went there together from Paterson.

The appraisers could not have gone there as appraisers right away after the counting of the money, for they had not then been appointed as appraisers.

Mrs Downie no doubt knew of this fact of the going to Haledon mentioned by Mr. Garside, and so wove it into her story. But in doing so she deprived her entire story of any credit whatever.

3. Mrs. Downie testifies that the key to the safe drawer in which the money was found was in the bunch with the rest at the time of her husband's death, and that she had the bunch, including this key, in her possession from almost immediately after his death until she gave it to Mr. Knowles on the morning of the day that the inventory was taken. Case, page 9, lines 20 and 21; page 17, lines 18–23; page 19, lines 14–20; page 188, lines 15–27; page 192, line 37, to page 195, line 24; page 196, lines 19–38.

Mr. Knowles says the key to this drawer had been hidden by Mr. Thompson or mislaid and was found by the widow (Mrs. Downie) at or about the time the drawer was opened and money found. Case, page 51, lines 27, &c.; page 52, lines 18–29; page 79, line 27, to page 80, line 4.

And he claims that this key was not in the bunch with the rest. Case, page 67, lines 10–36; page 78, lines 8–35.

Which is right in regard to this matter?

Exhibit I is a little black memorandum book that was first used by Mr. Knowles in keeping the estate accounts. Case, page 60, last line, and page 61, lines 1 and 2; page 108, lines 37, &c.

This book was put in evidence by Mrs. Downie's counsel. Case, page 185, line 16.

In this book, after the date of May 14, 1877, is this entry: "Found the key of safe drawer and in the same."

Mr. Knowles says this entry relates to this matter. Case, page 52, line 30, to page 53, line 6. And that it was made on account of its relating to a transaction of the day. Case, page 81, line 34–38. P. 82, l. 1–4

That he was in the habit of putting down the transactions of each day appears from this little book and the day book.

It is very clear, therefore, that this key was not in the bunch with the rest, that it was missing for a while and then found, and that the little drawer containing this money was not opened until this key was found.

It follows that Mr. Knowles' statement in regard to this matter is true and Mrs. Downie's false.

4. Mrs. Downie represents that in the morning of the day the inventory was taken, Mrs. Jackson, her nurse, assisted in dressing her, Mr. Knowles and Mrs. Jackson went down stairs with her, she and Mr. Knowles then found the money, and then Mr. Knowles and Mrs. Jackson went back with her, Mr. Knowles holding her arm. Case, page 10, lines 6–12; page 24, lines 1–15.

Mrs. Jackson was called as a witness in behalf of Mrs. Downie. Case, page 47.

She remembers these things mentioned by Mrs. Downie, except as to what took place in the parlor where the safe was, and which it does not appear and is not pretended that she witnessed. Case, page 48, lines ~~12–15~~. 9–37.

But she declares that this was the day before the appraisers were there, if she is not mistaken. Case, page 49, lines 12–15.

She therefore flatly contradicts the statement of Mrs. Downie that this going down stairs and back again took place the same day that the inventory was taken.

It is doubtless true that Mr. Knowles and Mrs. Downie visited the safe together for the purpose of examining its contents, between the time it was opened and the time the inventory was taken, and that they did so very soon after it was opened; and no doubt Mrs. Jackson saw them when they went to the room where the safe was and back again.

But it does not follow that the drawer in question was opened and the money therein contained found at that time.

5. Mrs. Downie can't say exactly how much money there was in Mr. Thompson's purse when he died, but thinks it was a hundred odd dollars. Case, page 37, lines 16–30.

The money inventoried was $629.12. Case, page 255. This included the $500 which Mr. Knowles says was found in the iron drawer in the center of the safe, and which Mrs. Downie says was taken out of the $7,555 and put back into the safe, and the money that was in Mr. Thomp-

son's purse. Case, page 50, lines 18–20; page 51, lines 15–18; page 37, lines 28–30; page 88, lines 11–33.

This leaves $129.12 as the amount that was in the purse.

Mrs. Downie ought to have been able to remember $129 as long as she could $7,555 or $7,055. *

6. Mrs. Downie cannot remember anything about the manner in which the money was counted, or the way in which the result of the counting was reached. Case, page 27, line 30, to page 29, line 10; page 32, line 30, to page 33, line 30.

She says distinctly that she cannot give the process by which the money was counted. Case, page 33, lines 20, &c.

Nearly all she pretends to know about the counting, is that the money was counted and amounted to $7,055. Case, page 33, lines 28, &c.

7. The Surrogate went to Mrs. Downie's house on the 18th, the same day that she was appointed administratrix and that she pretends the money was found. Case, page 206, lines 12–17.

Mrs. Downie remembers that he was there, but she can't say when it was. Case, page 15, lines 26–33.

If he was there the same day that the money was found she would have been likely to remember it.

8. She don't remember who swore her to the inventory, Mr. Garside or the Surrogate, but thinks it was Mr. Garside. Case, page 14, lines 8, etc.

It was the Surrogate. Case, page 258.

9. She is sure she signed one paper, but don't remember whether she signed more than one, and don't know what that paper was. Case, page, 15, line 37, to page 16, line 11.

She signed at least four papers at or about that time—

* It is true Mrs. Downie states the amount of the inventory (case, page 14, lines 9 &c; but no doubt her memory had been recently re-

the application for letters of administration, the administration oath, the administration bond, and the oath to the inventory.

9. Although there can be no doubt that she signed the Stapleton note for $1000, she declares that to the best of her recollection she never did sign it. Case, page 211, line 31, to page 212, line 3. This note is exhibit 4 on page 265 of case. See also the original.

10. Mrs. Downie said in her direct examination when first put on the stand, that there were two keys altogether belonging to the iron box and drawers of the safe, one for the box and one for the two drawers. Case, page 9, lines 27, &c.

She also said the keys were all in the bunch when given by her to Mr. Knowles. Case, page 19, line 20.

But Mr. Downie afterwards testified that there was a key to each of the two drawers, and that the key to the upper drawer was never taken out of the safe and was always in the drawer. Case, page 175, lines 13, &c. P 177 l. 35

Then Mrs. Downie, having had her recollection thus refreshed, testified the same way. Case, page 197, lines 1–20.

11. Mrs. Downie said she never saw the keys after Mr. Knowles took the money down into the safe. Case, page 12, lines 13–15.

But Mr. Downie afterwards said Mr. Knowles left the keys hanging in the desk 18 months after he came back. Case, page 184, lines 23–26.

He had been to England and came back in September, 1877. Case, page 177, lines 12–16.

Then Mrs. Downie, having had her recollection again refreshed, abandoned her position that she never saw the keys again, and admitted that she even had them in her possession again after she came back from Europe. Case, page 188, lines 21–25.

It may not appear from the evidence when she came back, but she doubtless came with her husband. *

12. Mrs. Downie said at first that she did not remember whether she sat up in bed or not when she took the money out of her pocket. Case, page 25, lines 30–34.

Soon afterwards she said she was lying down when she took it out. Case, page 26, lines 24 and 25.

13. Mrs. Downie said at first that Mr. Knowles did not tell her what figures he had put down on the paper after the counting of the money. Case, page 32, lines 2–6.

Soon afterwards she said that he did tell her. Case, page 33, lines 28–30.

14. Mrs. Downie said she did not remember whether she knew when she swore to the inventory how much it amounted to or not. Case, page 14, lines 22–24.

And then immediately afterwards she said she did not know what the inventory amounted to when she swore to it, nor until Mr. Knowles read it to her in the paper. Case, page 15, lines 11–16.

15. Mrs. Downie says it was two weeks after the money was found that she was able to be up some part of the time. Case, page 35, lines 4–14.

The idea she conveys is, that she was sick in bed and not able to be up any of the time for two weeks after the money was found.

And the claim is that the money was found April 18, 1877.

Yet she swore to the inventory when Mr. Knowles did at the Surrogate's office. Case, page 161, line 30, to page 162, line 9; page 15, lines 1–3; page 16, lines 29–34.

And the inventory was sworn to April 23, 1877, only five days after Mrs. Downie claims the money was found. Case, page 258.

16. Mrs. Downie says she subscribed to an oath while in bed. Case, page 16, lines 12–22.

* See case, page 200, lines 16-18.

She says, in substance, that this oath was made before Mr. Van Wagoner, the Surrogate. Case, page 15, lines 26–36; page 16, lines 23–26.

This oath must have been the administration oath which the Surrogate administered to her at her home. Case, page 206, lines 6, &c.; page 210, lines 22, &c.

But Mr. Van Wagoner says his recollection is that she was out of her bed when this oath was administered to her. Case, page 206, lines 26 and 27.

17. Mrs. Downie said she thought she first went to Mr. Stevenson in this matter about two months before the time she was then testifying. Case, page 44, lines 11–20.

The time she was then testifying was December 2, 1881. Case, page 6.

Two months before that was October 2, 1881.

But Mr. Stevenson says she first came to him on or about June 21, 1881. Case, page 213, lines 1, &c.

Thus the time that had elapsed since she first went to him was nearly three times as long as she thought it was.

If her memory serves her so badly in regard to matters of such recent date, what is to be expected of it when exercised upon matters that happened $4\frac{1}{2}$ years before.

18. During Mrs. Downie's examination the court said to her; "Mr. Thompson did not die insolvent; he paid his debts, didn't he?" She replied: "Yes, he paid his debts, but there was not much left." Case, page 201, lines 31–35.

She had already been paid $1,058.31, on account of her distributive share of the estate. Case, page 264, Exhibit 3.

She had also received $150 for wardrobe of children, and $150 for their trip to England. See order of Orphans' Court dated June 1, 1878.

She had also been allowed $6 per week in addition for the support of her children up to the time of the appointment of their guardian. See said order and page 78 of ledger.

There were also four houses belonging to the estate. Case, page 233, lines 4–19.

One of them was occupied by herself and family. Case, page 62, lines ~~4–9.~~ 13–18.

The other three houses brought in in rents, when all rented, over $30 per month. See ledger, pages 86 & 91.

Mr. Knowles then held $700 or $800 in cash, two $500 bonds, and lots bought in by him as administrator on foreclosure of mortgages, representing the sum of $2,500, all belonging to the estate. Case, page 244, lines 1–16.

And yet Mrs. Downie says "there was not much left."

18. Mrs. Downie says that in the spring or summer of 1877 Mr. Knowles paid her $500 which was not the money she went to Europe with, and also gave her $500 when she went to Europe. Case, page 40, lines 28 &c.

The fact is that the first $500 she received from Mr. Knowles was the money she went to Europe with. See day-book, page 16, under date of June 14th, 1877.

The other $500 was paid her July 5th, 1878. See ~~ledger~~ day-book, page 69. See also case, page 148, lines 20 &c.

This is the way she mixes things up.

It seems to be very clear that Mrs. Downie's testimony on account of a defective memory and other things appearing therein, is not sufficiently reliable to justify the charging of Mr. Knowles with nearly $2,000, interest and costs, or even any other sum however small, on the strength of it.

FOURTH.

Some of Mrs. Downie's statements in respect to the finding and counting of the money and attending circumstances, are so extremely improbable as to render it almost impossible to believe them, to say the least. We will mention a few of them.

1. It has already been shown that the application for letters of administration was signed, said letters issued, the

administration bond executed, and the appraisers appointed, on April 18, 1877, and that the inventory was sworn to April 23, 1877.

Thus five days elapsed between the time of the appointment of the appraisers and time the inventory was sworn to.

The inventory was finished the next day after it was commenced. Case, page 161, lines 17–21. And it was not a long one. Case, page 255.

It is highly improbable that the inventory was commenced in the morning of the same day that the appraisers were appointed and the other things mentioned were done, or that three days intervened between the completion of the inventory and the swearing to the same.

And Mr. Garside says the inventory was probably sworn to in a couple of days after it was commenced. Case, page 161, line 17.

2. Mrs Downie says that when this money was found, Mr. Knowles told her to take it up stairs into the bedroom, that if it got into the Orphan's Court they would scatter it all away, and that he thought Mr. Thompson meant it for her alone, and so she put it in her pocket as he advised her and took it away to her bedroom. Case, page 11, lines 11–16. Also, that when they swore to the inventory as true and correct, they both knew that the money so found, with the exception of $500 of it, was not in the inventory. Case, page 19, lines 4–8; page 43, lines 3–23.

The statements can be believed only with very great difficulty and upon conclusive evidence.

They involve the crimes of conspiracy and perjury, and the crime, or at least the contemplation of the crime of embezzlement, on the part of these administrators.

3. Mrs. Downie says that after the money was counted, Mr. Knowles put it under her bureau in her room where it remained till after the inventory was taken in the afternoon. Case, page 12, lines 1 &c.

The idea she doubtless intends to convey is that it was put there to keep it out of the way of the appraisers.

And yet when she says it was put there the appraisers had not been appointed, nor had the administration bond been executed, the letters of administration issued, or even the application for such letters signed.

For, according to her story, Mr. Knowles got there at 8 o'clock in the morning, and the time intervening between that time and the putting of the money under the bureau was occupied with the opening of the safe, finding the money and counting the same. Case, page 10, line 6 to page 12, line 5.

And when the appraisers did come she says they went up stairs to the same bedroom, as Mr. Knowles must have known they would do. Case, page 14, lines 5–8.

Mr. Knowles is right when he says he would have been a fool to put the money there. Case, page 56, lines 13–17.

Fifth.

The testimony of Mrs. Downie in respect to the amount of money found and the result of the counting thereof, is not only entirely uncorroborated, but is contradicted by Mr. Knowles' books and her own previous statements.

1. As to Mr. Knowles' books.

These include the little black book, day book, ledger and bank books.

The first book he used was the little black book. Case, page 60, last line, and page 61, lines 1 and 2; page 108, lines 37, &c.

On May 5th, 1877, he purchased the day book. Case, page 61, lines 9, and 16–18.

He then transcribed from the little black book into the day book, continuing his entries in the little black book, until all had been transcribed from it into the day book. Case, page 61, lines 19–28; page 108, lines 10–36.

He then depended on the day book for some time. Case, page 110, lines 10 and 11.

At length he opened the account beginning on page 60 of the ledger. Case, page 82, lines 24–38.

But he cannot tell when this ledger account was opened. Case, page 110, lines 6–8.

He then kept this ledger account in connection with the day book, the ledger being the "final account book," See note in, case, page 110, lines 2–5.

He continued to so keep this ledger account until the last of March, 1878, when he stopped it. See page 113 of ledger.

He commenced the cash account, beginning on page 300 of the ledger, in the fall of 1877. Case, page 110, lines 12–32; page 83, lines 11 and 12.

This cash account covers the same time that is covered by the old ledger account, and continues right along afterwards.

The said sum of $4,250 is entered on page 10 of the day book and pages 62, 64, 66 and 302 of the ledger.

There is some doubt as to when these entries were made.

Mr. Stevenson is evidently of the opinion that the entry in the day book and on pages 62, 64 and 66 of the ledger were all made at the same time in September, 1877. Case, page 97, lines 17–21.

The Ordinary is of the opinion that all these entries in the ledger were made after August 20, 1877. Case, page 275, lines 23–26.

It would seem from page 66 of the ledger that the Ordinary is right in this respect, and that the entries on pages 62, 64, and 66 of the ledger were all made about September 13, 1877.

But it does not follow that the entry in the day-book was made at the same time.

In the natural course of events and the usual order of business the entry in the day-book would have been made first.

Mr. Knowles thinks it was. Case, page 83, lines, 6–9 and 13–18.

And it must have been if, as he says, the ledger was the "final account book" he wrote in. Case, page 110, lines 4 and 5.

There cannot be any reasonable doubt upon this point.

And he may have made the entry in the day-book some time before he made these entries in the ledger.

But even if all these entries were made in September, 1877, and no one can suppose that they were made later than that, they are more reliable as to the result of the counting than the recollection of Mrs. Downie four years afterwards, even if they were made from memory alone.

But the probability is that the one first made, which was no doubt the one in the day-book, was taken from a memorandum made by Mr. Knowles at the time of the counting.

Mrs. Downie says a memorandum of the result of the counting was made by Mr. Knowles at the time. Case, page 29, lines 11–17 ; page 30, line 38, to page 31, line 11.

And she also says that Mr. Knowles said at the time that he would take the memorandum down with the money. Case, page 31, lines 36–38.

And Mr. Knowles says there was some such memorandum made, which he supposes he pitched away after he had entered it. Case, page 94, lines 20–24 ; page 97. lines 25–29.

If the entry was made from such a memorandum, and the money Mr. Knowles found he had on hand more than his cash account called for, or any portion thereof, was a part of the money so found, then there must have been a mistake in the counting of the same.

The Ordinary says Mr. Knowles swears he counted the money twice over, both times with the aid of Mrs. Downie, and that it seems highly improbable that, under the circumstances as Mr. Knowles states them, he could have made such a mistake. Case, page 278, lines 1–5.

Mr. Knowles did not swear that he counted the money twice over, either with or without the aid of Mrs. Downie.

He said on his direct examination that he and Mrs. Dow-

nie counted the money together. Case, page 51, lines 31-34.

This may mean that he counted a part and she a part and that then the results of their separate countings were added together.

And it does not appear from his lengthy cross-examination upon this point that either of them counted the money twice over. Case, page 92, line 35, to page 96, line 9.

But even if both of them did, a mistake of this kind would not have been highly improbable; or even if highly improbable, may nevertheless have been made.

Mr. Knowles was a weaver. Case, page 203, lines 9 and 10. Though he was not in business at that time. Case, page 119, lines 29–31.

It does not appear that either of them were educated or used to counting large sums of money.

Mr. Knowles says he was agitated over the matter. Case, page 53, lines 35, &c. And there can be no doubt that Mrs. Downie was too. According to her own story she was very sick at this time if not agitated.

Bank tellers always count even small sums of money twice before paying them out, and no one will pretend that they never make mistakes in their counting.

The Ordinary says the testimony of Mr. Knowles in regard to the entries is so contradictory and the entries themselves are of such a suspicious character as to render them wholly unworthy of credit. Case, page 275, lines 32–37.

The Ordinary condemns the testimony of Mr. Knowles in regard to those entries as contradictory because, as he says, Mr. Knowles, on his direct examination swears that he made the entry in his day book at the time the money was found, and on the cross-examination says he cannot tell when the entry was made nor about what time; that he cannot tell within a month, and admits that it was not made on the day when the money was found. Case, page 275, lines 17–23.

Mr. Knowles did not say, on his direct-examination, or

at any other time, that he made the entry in the day book at the time the money was found.

He said, on his direct-examination, that he would not swear positively that he put it down immediately after it was found, but that he put it down very soon after. Case, page 51, lines 35, &c.

He did not say in this connection what he put it down in or on.

He might have referred to the paper memorandum or to the entry in the little black book. See case, page ~~53~~ 52, lines 30, &c.

Soon after, however, he said he could not tell when he entered it in the day book. Case, page 53, lines 10 and 11.

On his cross-examination he says at first that he is not certain whether this entry was made in this book the day the money was found or the day after. Case, page 82, lines 22–23; page 97, lines 8–16.

It is evident, however, that he was of the opinion that this entry was made no later than the day after.

It is also evident that this opinion was based upon his practice of entering transactions in this book as soon as possible after they occurred. See case, page 109, lines 31, &c.

No man can pretend to tell, except from his practice in that respect, when entries of transactions $4\frac{1}{2}$ years before, were made in his books.

This cross-examination of Mr. Knowles took place December 2, 1881. Case, page 6.

On the same day his attention was called to the entries of this money in the old ledger account. Case, pages 82 and 83.

And on that day Mr. Stevenson asked a question which showed that in his opinion these entries in the day book and in this old ledger account were made in September, 1877. Case, page 97, lines 19–21.

Soon after the court adjourned to December 6, 1881, Case, page 99.

This old ledger account terminated with an entry under the date of March 29, 1878. See ledger, page 113.

And, as has been shown, the cash account, commencing on page 300 of the ledger was substituted for it.

This old ledger account was, therefore, an old discarded thing, to which no attention was paid by Mr. Knowles, and any peculiarities in which, in respect to entries therein, had no doubt been forgotten by him.

But Mr. Stevenson having called attention to this old ledger account, and having evidently based upon it the opinion that these entries therein and in the day book were made in September, 1877, both Mr. Knowles and his counsel would naturally examine it before the time to which the court had adjourned.

And such examination could hardly have failed to convince them that these entries in this old ledger account were probably made about September 13, 1877, and that the entry in the day book was probably an interlineation which might have been made at any time between the time the money was found and September 13, 1877.

In that case, Mr. Knowles, upon again taking the stand, could not, without telling a lie, pretend to give the time when the entry in the day book was made, even "within a month."

And it was on the day to which the court had adjourned, to wit, December 6, 1881, that Mr. Knowles said, as stated by the Ordinary, that he could not tell, within a month, when that entry was made. Case, page 99; page 111, line 38, to page 112, line 9.

He also virtually admitted, at the same time, that this entry was an interlineation. Case, page 112, line 21, to page 113, line 2.

The natural supposition is that this change in his testimony resulted from an examination of this old ledger account in the interval between the two sessions of the court.

And if such is the case, this change in his testimony does not discredit the entries except so far as they are dis-

credited in the absence of proof that they were made as soon as they should have been.

It is a fact that what is here supposed to have occurred in this interval did actually occur in respect to Mr. Knowles and his procter Mr. Hilton.

The Ordinary also condemns all these entries as suspicious, as above stated, because the first two figures (42) in each are written, in the old ledger account, over erasures, and because it appears, as he says, by a close examination of the first of such entries that part of it is written over an entry which has been erased of a sum which seems to him to have begun with the figure 7. Case, page 275, lines 26–32.

This is probably the first time in the history of jurisprudence that a court has discredited, or condemned as suspicious, an entry in a day book, or other book of original entries, because a part of the same item, transferred to the ledger, is written, in the ledger, over an erasure.

No part of this entry in the day book, in which book the entry was no doubt first made, is written over an erasure.

And the natural supposition is, that Mr. Knowles made a mistake when he transferred the item from the day book to the ledger, and afterwards, upon discovering the mistake, corrected it so as to make the item conform to the entry in the day book.

A close examination of the first of these entries in the ledger (page 62) with a microscope, will show no trace of any part of a figure 7 made like any other figure 7 in the book.

The Ordinary regards the remark of Mr. Knowles that this entry in the day book means that was the money found in the safe, as near as he could recollect when he put it down (case, page 53, lines 17 and 18); as further showing the unreliability of his testimony in reference to the entry. Case, page 276, lines 15–19.

This idea of the Ordinary is evidently based upon the supposition, already shown to be erroneous, that Mr.

Knowles had said that he made that entry at the time the money was found.

As he never claims to have done that, the amount, when entered, to be entitled to any credit, must, of course, have been the actual amount found as near as he could then recollect.

The words "as near as I could recollect," &c., were doubtless used out of abundant caution to avoid the possibility of testifying falsely, and on account of the possibility, already explained, of his having made a mistake in making the entry.

He evidently did not remember whether he made the entry from the memorandum or from memory.

But even if it be conceded, as it is not, that the $4,250 does not represent the result of the counting, that the mistake in the amount, if any, was made in the entries in the books, and that no reliance is to be placed upon such entries, then a sum sufficient to cover such deficiency, if any, can be reached, within, at any rate, a very few dollars, to a absolute certainty, from Mr. Knowles' books and accounts.

Mr. Knowles says that after the widow (now Mrs. Downie) went away, he deposited in the First and Second National Banks and the Savings Bank all of this safe drawer money that had not been paid out, with the exception of 100 and odd dollars. Case, page 54, line 29, to page 55, line 36; page 98, lines 10–25; page 114, line 3 to page 115, line 30.

Mrs. Downie went away on or about June 23, 1877. Case, page 115, lines 16–22; day book, pages 16 and 17, under dates of June 14 and 23.

June 29, 1877, Mr. Knowles deposited $1,250 in the Passaic County Savings Bank. See ledger, page 106, and bank treasurer's certificate, Exhibit J. July 2, 1877, he deposited, $275 in the Second National Bank. See ledger, page 105, and bank book. July 5, 1877, he deposited $270.16 in the First National Bank. See ledger, page 104, and bank book. These deposits amount in the aggre-

gate to $1,795.16.

All these deposits were made in his name as administrator, and are the first deposits he made in banks as administrator.

And he says he kept his estate bank accounts in his name as administrator. Case, page 55, lines 12–16.

His individual bank books were produced and offered in evidence, and there is no evidence or pretense that he mixed the estate money with his own in the banks, except at one time in 1879, by mistake, which was afterwards rectified. See Second National Bank book and page 235 of case, line 16 to page 236, line 4.

Mr. Knowles is sure that all of the said money was paid out or deposited, with the exception mentioned, before September 1, 1877. Case, page 115, lines 2–11.

The only other deposit he made in the First National Bank before September 1, 1877, was $40, under the date of August 21, and which was evidently the $40 received on that day from Henry Hobbs. Ledger, page 306.

The only other deposit he made in the Second National Bank before September 1, 1877, was $120 under date of August 15, and which was evidently $120 of the $124 he received on that day from George Hindley. Ledger, page 306.

No other deposit was made by him in the said Savings Bank. It appears that he took a certificate of deposit for the money he deposited there as aforesaid; and that on August 3, 1877, that certificate was paid with interest and all but $200 of it re-deposited. See treasurer's certificate, Exhibit J, and ledger, page 106.

Up to this time, July 6, 1877, his expenditures had largely exceeded his receipts from other sources than this safe drawer money, so that he must have drawn largely upon this money in making such expenditures. See statement B. hereto annexed.

The $1,795.15 thus deposited, must, therefore, have included all the cash he had received and not paid out up to that time, including this safe drawer money, less the 100

and odd dollars mentioned.

At this time, July 6, 1877, there was money in the Paterson Savings Institution, put there by Mr. Thompson in his lifetime, and inventoried with interest ta $1,120 See inventory; case, page ~~255~~ 256, lines 29 and 30, and bank book.

Therefore at that time, there was in the four banks, belonging to the estate, the sum of ($1785.16 plus $1120.00) $2,915.16, which included all the money that had come into Mr. Knowles' hands as administrator, and not paid out, with the exception mentioned.

After that time, therefore, his bank account and bank books constituted a most reliable record of this money.

The 100 and odd dollars left in the safe as aforesaid, was soon afterwards taken out and properly appropriated. Case, page 55, lines 34–36; page 115, lines 10 and 11; day-book, pages 28 and 29, under dates of August ~~22~~ 27 and 28.

And Mr. Knowles did not deposit any money as administrator, in any other bank. Case, page 121, lines 13–28.

All that has to be done, therefore, in order to get at any sum in excess of said $4,250 that may have been found in the safe drawer, is to deduct the expenditures from the receipts, including in the receipts this $4,250 and the said Savings Institution money, and then deduct the balance thus found from the cash actually on hand, and the remainder, with the undeposited money added to it, will cover all the money so found, if any, not included in the said $4,250.

It was in this way that the $985.31 added to the $4,250 and making with it the $5,235,31 in the first account filed was reached. See statement, A hereunto annexed.

The only element of uncertainty at any time was the undeposited money.

Mr. Knowles said, when this first account was prepared that this undeposited money amounted, he thought, to about 40 or 50 dollars; but that he wanted to be sure and put in all he had belonging to the estate, and to give the

estate the benefit of the doubt. Case, page 143, lines 10–38.

So $90 was put into the account to cover this undeposited money.

2. As to Mrs. Downie's prior admission.

Mr. Hilton says, that in the year 1878, after the first account was filed, Mrs. Downie mentioned to him, two or three times at least, in his office, certain sums as being the amount of the inventory, the amount found in the safe drawer, and the total amount that came to Mr. Knowles' hands; that his best recollection is, that the sum she mentioned as found in the safe drawer was about $5000, and that he is sure the sum she mentioned as the total amount of the inventory and of the safe drawer money together, was the sum or about the sum of $17,000. Case, page 145, line 23 to page 146, line 19; page 149, lines 8–29; page 153, line 22, to page 154, line 15; page 246, line 24, to page 248, line 33.

He says he knew nothing about any such claim as the one she now makes until an interview he had with her in the spring or summer of 1881. Case, page 149, lines 3–7.

And that she never mentioned any amount that he objected to until this interview. Case, page 153, lines 38, &c.

Also that the amount of safe drawer money she mentioned never differed materially from the amount that was in the account. Case, page 247, lines 34–36.

This last remark had reference to the former interviews, and not to the interview of 1881. See page 246, line 24, to page 247, line 33.

Mrs. Downie denies that she ever told Mr. Hilton that this money found in the safe drawer amounted to or about $5000. Case, page 222, lines 25–30.

But she does not deny that she ever stated to him certain sums as the amount in the inventory, the amount found in the drawer, and the total amount; or that she

gave $17,000 as the total amount or about the tota amount.

The amount of the inventory, $11,555.89 plus $5,235.3 the sum put into the first intermediate account as cash no inventoried=$16,791.12.

The amount of the inventory, $11,555.89 plus $7,055.0 the sum Mrs. Downie claims was found in the safe drawe and not inventoried=$18,610.89.

Her denial doesn't seem to amount to much.

SIXTH.

Mrs. Downie's assertion that Mr. Knowles told her tha if this money got to the Orphans Court they would scatte it all away, and that he thought Mr. Thompson meant i for her alone; and the idea she conveys that the money wa kept out of the inventory for her benefit on account o what Mr. Knowles thus said to her. (case, page 11, line 12–16) are not consistent with the facts.

On May 16, 1877, $1,216.98 of it was applied in par payment of the $5000 Stapleton note. See day book page 10. Said note is Exhibit 5 on page 265 of case.

Mrs. Downie knew that this was done and did not objec to it. Case, page 35, line 15 to page 36, line 9; page 19 line 30, to page 200, line 9.

Before June 23, 1877, the time she went to Europe Mr. Knowles paid out $3,423.57 more than he had re ceived from other sources. See Statement B hereto an nexed.

Before April 1, 1878, the time to which the first interme diate account extends, he paid out $4,611.91 more than he had received from other sources. See same statement.

These excesses over what he had received from other sources must have come out of this safe drawer money.

There can be no doubt she knew that these payments other than that one to Stapleton, were being made out o this money, and there is no evidence that she ever ob jected to it.

While these payments were being made out of this money, the money in the savings institution inventoried at $1120 (case, page 256, lines 29 and 30), remained untouched, except to transfer it to the national banks.

And this transfer was made because there was some intimation that the savings institution was going to burst. Case, page 91, lines 28 and 29.

Then, before July 6, 1877, as has already been shown, all this safe drawer money, with the exception of a small amount, had been deposited in banks in Mr. Knowles' name as administrator, and that small amount was afterwards properly appropriated.

And there is no evidence or pretense that Mrs. Downie ever claimed of Mr. Knowles any portion of this money, or any more out of the estate than her distributive share, except in the matter of taxes hereinafter mentioned.

SEVENTH.

The charge involved in this case that Mr. Knowles has misappropriated nearly $2,000 of this safe drawer money is inconsistent with the facts.

1. Mr. Knowles and Mrs. Downie counted the money together, and both knew the result of the count.

Mr. Knowles therefore knew that any attempt on his part to misappropriate any portion thereof would be detected by her or her husband, when he came to file an account, if not before.

His only possible chance of safety, therefore, in case he was guilty of such a fraud, was to delay filing an account as long as he could in hope that she might forget the result of the count. But—

2. He filed his first intermediate account on April 23, 1878, just one year after the inventory was sworn to. Case, page 259, Exhibit B.

He even gave Mrs. Downie personal notice of the filing

of such account. Case, page 135, lines 9–13; page 200, lines 22–26.

He even sent his books, or the ledger at least, to the Surrogate's office, and left them there for inspection, and told Mrs. Downie he had done so. Case, page ~~134~~ 133, lines 13–15; page 135, lines 36, &c.; page 136, lines 21–35.

Both Mrs. Downie and her husband can read. Case, page 200, lines 27–30.

3. In June, 1877, Mrs. Downie was shown the statement marked Exhbit B, on pages 263 and 264 of case. Case, page 148, lines 18–26.

It states the cash on hand belonging to the estate to be 1,464.78.9 and the amount that could be spared her to be $504.77.

$500 of this $504.77 was paid her July 5, 1878. Case, page 148, lines 34–38; day book, page 69.

And she gave a refunding bond, bearing the same date as the said Exhibit B, for all she had then received on her own account, including the said $500. Case, page 148, lines 34–38; page 264, Exhibit 3.

If Mrs. Downie's present claim is true, the cash then on hand, or which should have been on hand, would have been $3,284, and she could have had at least $1,100.

She does not deny that she was shown this statement, nor pretend that she did not understand it, nor claim that she then objected to the sum she received as being less than could have been spared her.

4. Mr. Knowles, as has already been shown, included $90 in his first intermediate account, to cover undeposited money, of which he could have had no reason to suppose, any one but himself, had, or was likely to obtain, any knowledge.

5. There is not a particle of evidence that Mr. Knowles has mixed any of the estate money with his own, except as before mentioned, or that he has used one penny of it for

his own benefit, or any purpose not connected with the estate; nor is there a particle of evidence that Mr. Thompson should have had any more money when he died than has been accounted for, although all his books, checks, and papers and the book, checks and papers of the firm of which he had been a member, were produced and examined.

EIGHTH.

A misappropriation of funds belonging to the estate, and untruthful statements unless by mistake or from defective recollection, are inconsistent with Mr. Knowles' character.

His character in respect to honesty and veracity is of the highest order. Case, page 202, line 30, to page 204, line 12; page 225, lines 30–38, and pages 226 and 227.

The Ordinary declares that this evidence was entirely incompetent. Case, page 277, lines 4–9.

Evidence of the general good character of the parties is admissable even in civil cases, when the nature of the action ~~of the action~~ involves the general good character of the party, or goes directly to affect it. And such is especially the case when not only fraud, but an intent to defraud is charged or involved. / Greenleaf on Evidence, Redfield's Edition, §§54 and 55 and notes.

The petitition in this case charges an intent to defraud in the beginning (case page 2, lines 18–20,) and the case itself involves a charge of fraud consummated.

NINTH.

Mrs. Downie is shown to be of such a character, and to be possessed of such feelings of hostility, &c., towards Mr. Knowles as not to entitle her to be regarded as a credible witness, to say the least.

1. She married her present husband in 3 months and 3 days after the death of her first husband. Case, page 39, lines 5–8. And it is very evident that she went to Europe on purpose to get him.

2. She has said, in substance, that if she could have appropriated the money found in the safe drawer to her own use, without anybody's knowing it, she would have done so. Case, page 147, lines 4–17; page 63, lines 14–19.

In doing this she would have violated her oath of office as administratrix and embezzled a large sum of money belonging to her first husband's children.

3. She actually did keep out of the inventory a watch and other jewelry belonging to her late husband, by pretending to Mr. Knowles that they were her own, and appropriated the same to her own use. Case, page 70, lines 1–6; page 188, lines 29–38; page 230, line 26, to page 231, line 5.

4. Mrs. Downie was when she instituted these proceedings, and continued to be, on unfriendly terms with Mr. Knowles. Case, page 39, lines 19–38; page 146, line 25, to page 147, line 3.

5. She has expressed hostility to Mr. Knowles and an intention to take from him his property on River street. Case, page 147, lines 18–30.

6. She quarreled with Mr. Knowles because he would not pay, out of the estate, taxes for the year 1878, on the homestead, which was occupied by her and her husband. Case, page 62, lines 13–21; page 146, lines 32, &c.

And this was really the beginning of her animosity towards him. Last reference,

7. Mrs. Downie, without any expression of remorse, mortification or regret, represents herself as having committed with Mr. Knowles, the crimes of conspiracy and perjury, and contemplated with him the crime of embezzlement, in respect to the money found in the safe drawer and kept, as she claims, out of the inventory.

If this part of her story is not believed, she is not to be believed in anything she says except so far as what she says is supported by other evidence.

If this part of her story is believed, then she stands before the court as a *particeps criminis*, and her testimony is thereby discredited, and, without corroboration, is entitled to little weight. 1 Greenleaf on evidence, Redfield's edition, §§ 380 and 381, and notes; 1 Wharton on evidence, § 414 on page 361.

The Ordinary says it is not strange that she should under the circumstances as she details them, have made oath to the inventory notwithstanding the fact that, if her story be true, about $7000 of cash were withheld from the inventory. Case, page 274, lines 19–23.

In swearing to the inventory she swore that it was a true and perfect inventory of all the goods and chattels and effects, which were of the said Sam Thompson, so far as they had come to her knowledge or possession. Case, page 257. *

And it would certainly seem to most people, to say the least, to be a very strange thing indeed, for any one, possessed of ordinary intelligence, as Mrs. Downie doubtless is, and with sufficient moral principle and regard for truth and the obligation of an oath, to render her a credible witness, to take, even under the circumstances detailed by Mrs. Downie, such an oath as that, when he or she knows that $7,000 is purposely kept out of the inventory to which the oath is being made.

Want of acquaintance with business and the settlement of estates and the duties of an administratrix, mentioned by the Ordinary, furnished no excuse in this case.

Acquaintance with none of these things was necessary to enable Mrs. Downie to tell whether she was swearing to the truth or to a lie.

The Ordinary says it does not appear that she was in anywise aware that there was anything reprehensible in withholding the money from the inventory. Case, page 274, lines 23–26.

It certainly does not appear that she did not know that such a thing was reprehensible.

The burden of proof on this point is upon her.

* The oath was read to her. Case, page 16, lines 29-34.

She says this money was kept out of the inventory for her *alone*. Case, page 11, lines 13 and 14. See also page 43, line 12–17.

There can be no doubt that she knew that a large part of this money would, under the law, go to her children.

And it cannot be possible that she was not aware that there was anything reprehensible in appropriating to herself money that belonged to them.

The Ordinary says that according to her testimony she relied and acted upon the advice of Mr. Knowles.

But advice to swear to a lie and appropriate to one's use property belonging to others, furnishes no excuse for doing so; nor does it remove the conviction that a person who has done so cannot afterwards be regarded as a credible witness.

Besides, this remark of the Ordinary brings the testimony of a *particep criminis* to support her own testimony.

No one else swears to such advice, and Mr. Knowles denies the whole of this part of her story.

And Mrs. Downie nowhere says, directly or indirectly, in words or in effect or substance, that she did not know that it was wrong to do what she says she did in this respect.

The Ordinary says there is much to corroborate her. Case, page 278, line 8.

There is nothing to corroborate this part of her story, nor what she says as to the time the money was found or the amount found.

TENTH.

Mrs. Downie is an insterest~~ing~~ed witness.

Her direct pecuniary interest in the result of this suit is at least $1,000, to say nothing of her indirect interest therein on account of her children.

ELEVENTH.

The evidence against Mr. Knowles is totally and abso-

lutely insufficient to justify a decree against him for any amount whatever.

"In cases where the statements of the witness are improbable or are those of a *particeps criminis*, slight credit will be given; in other cases where a witness's character is unimpeached, and no attempt is made to contradict him, his single testimony is enough to prove a case." Wharton on Evidence, page 415, latter part of § 414.

It follows that where the statements of a witness are improbable or are those of a *particeps criminis*, his single testimony is not sufficient to prove a case.

And when to the improbability of Mrs. Downie's statements and the fact that she presents herself to the court as a *particeps criminis*, is added the other reasons above given why no reliance can be placed upon what she says except so far as it is supported by other evidence, it seems very clear that her bare and unsupported assertions as to the amount of money found cannot have the slightest weight in this case.

Mr. Knowles' Testimony.

It is not claimed that Mr. Knowles' testimony is in no respect conflicting or that he did not make any mistakes as to matters of fact.

But it is claimed that he intended to always tell the truth, that his testimony does not contain any more conflicting statements or mistakes of fact than testimony given so long after the occurrences testified to is generally liable to contain, and that the most of these resulted from his depending in what he said, upon entries in his books, and the like, such as the date of the inventory.

The material points, not already noticed, on which it was attempted to contradict or discredit his evidence, were as follows:

1. According to his evidence, as already shown, the drawer of the safe that contained the money in question

was not opened, on account of its key being missing, until after the inventory was taken.

To show that this could not have been the case both Mr. and Mrs. Downie testified that the safe contained only two drawers, besides the iron box. Case, page 174, line 38, to page 175, line 14; page 197, lines 1–4.

And a diagram of the safe was produced showing only two drawers, besides the iron box. Case, page 219, lines 37, &c.

And Mr. Garside, one of the appraisers, was called for the purpose of proving that everything in the safe was inventoried. Case, page 158, &c.

It will be observed, upon examining the testimony of Mr. and Mrs. Downie upon this point, that they both spoke of the safe as it then was.

And the diagram produced was made the night before it was produced, and, of course, only showed the safe as it then was. Case, page 220, lines 28 and 29.

These facts leave a broad ground for suspicion that the vacant space below the drawers, mentioned by Mr. Downie (case, page 175, line 12), contained at some time before then the drawer in which the money was found.

And this suspicion is strengthened by the fact that Mr. Knowles said that the key to the drawer in which the money was found was of a metallic color, and, he thought, was an iron key. Case, page 81, lines 19–25. While, according to Mr. Downie's testimony, the key to what was the lower drawer when he testified was brass. Case, page 178, lines 25–30.

Mr. Garside says he is sure two drawers were taken out of the safe at the time of the inventory. Case, page 163, lines 3–6.

But, even if it be admitted that the money was found that morning, it is clear that the drawer in which it was found was not included in the drawers mentioned by Mr. Garside.

Mrs. Downie says that after the money was taken out Mr. Knowles locked the drawers again and gave her back

the keys. Case, page 11, lines 17–22.

It is evident she meant "drawer" and not "drawers." This may have been a mistake of the stenographer.

The next time she mentions the keys is after describing the second count that afternoon, after the taking of the inventory on that day.

She says Mr. Knowles then took the money into the safe and did not bring back the keys. Case, page ~~11,~~ 12 lines 13–15.

She was asked whether she produced the keys to the persons taking the inventory, and she replied that Mr. Knowles got them that morning when the inventory was taken. Case, page 194, lines 37, &c.

But, according to her story, it was 8 o'clock in the morning when he did this. Case, page 195, lines 18–20.

And it was after that and before the appraisers came, that she says he gave her back the keys.

So far as Mrs. Downie's testimony goes, therefore, this drawer was locked, and the keys of the safe were in her possession, while the inventory was being taken.

Then Mr. Garside says that there were in each of the drawers taken out a great many papers, &c. Case, page 163, lines 7–13.

But according to the testimony of Mr. Knowles and Mrs. Downie, when the money was found in the drawer in question there was nothing but money in it. Case, page 10, lines 33–35; page 51, line 30; page 68, line 9.

Mrs. Downie says $500 of that money was taken out of it and left in the safe. Case, page 12, line 38,

But she does not say in what part of the safe it was left.

Mr. Garside thinks $500 was handed them from one of the places in the safe, but can't say whether it was taken from the iron chest or one of the drawers. Case, page 163, lines 13–20.

If this $500 was left in the same drawer, and the inventory was taken the same day, then that was all there was in it.

If it was not left in the same drawer, and the inventory was taken the same day, then the drawer must have been empty.

In either case it was not full of papers, &c., as Mr. Garside says both the drawers were that were taken out when the inventory was taken.

It is plain, therefore, that if there were at that time only two drawers to the safe, Mr. Garside is mistaken as to the number taken out, or as to the number the contents of which were produced before the appraisers.

2. According to Mr. Knowles' testimony there was a lounge near the safe at the time the money was fraud, and on which the money was partly counted. Case, page 92, lines 35–37.

But Mrs. Downie says that at that time this lounge was on the other side of the room from the safe. Case, page 187, lines 21 and 22.

Mr. Knowles, however, declares it was on the same side of the room with the safe. Case, page 93, lines 21–25.

This simply raises a question of veracity between them.

The lounge was on rollers and easily moved from one part of the room to the other. Case, page 192, lines 22–26.

Red Ink Entries.

The entries of the $4,250 in the day book and on pages 62, 64 and 66 of the ledger are in red ink.

Mr. Knowles, upon being asked on his direct-examination to explain why this entry in the daybook was so made, said he might have dipped into the wrong bottle, and had to his knowledge no other reason. Case, page 53, lines 30–38.

That he might have dipped into the wrong bottle was of course a mere supposition on his part. And he afterwards said he didn't know why the entry was so made. Case, page 127, lines 22–28.

There are a large number of red ink entries in this book, and the making of them seems to be governed by no prin-

ciple or practice whatever.

There are other interlineations in red ink, as on page 25; interlineations in black ink, as on page 27; and ordinary entries in red ink, as on page 59.

On page 108 is a red ink interlineation similar in situation to the one in question.

There is the same promiscuous use of red and black inks in the ledger. See pages 52, ~~58~~ 59 and 66 for examples.

It is true, therefore, as stated by Mr. Knowles, that he frequently got mixed up as to those bottles. Case, page 54, line 2.

Still, the probability is, that these entries of this money were made in red ink intentionally, and for the reason that they were interlineations of important matters. *

And it is evident that if there had been any intention on the part of Mr. Knowles to defraud by means of these entries, they would not have been made in red ink and thus rendered as conspicious as possible.

Entry in Little Black Book.

The Ordinary says it appears strange that Mr. Knowles should have omitted to insert in this book the amount of money found as well as the fact of the finding of the key. Case, page 276, lines 10–15.

Mr. Knowles says he cannot explain this matter. Case, page 97, lines 3–7. And, of course, nobody else can.

There are, however, certain things to be considered in this connection.

1. This book as used by Mr. Knowles was a temporary affair; and the amount of money found had already been put down on a piece of paper.

2. The $500 paid to Rossiter, (Case, page 260, Exhibit A), does not appear in this book at all, either as to the receipt of it or the payment of it, which shows that this book was not made a complete record of Mr. Knowles' transactions.

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* See case, page 85, lines 34-36.

3. The only entry positively claimed to have been made immediately after the finding and counting of the money was the one made on the piece of paper, and when the entry in this book was made Mr. Knowles may not have had that piece of paper by him from which to transcribe the amount.

Delay in Making Entries.

In respect to this matter there are also some things to be considered.

1. Mr. Knowles could not be expected to make any explanation of such delay, as he had evidently forgotten that there had been any such delay.

2. This money gave Mr. Knowles a great deal of anxiety. Case, page 84, lines 37 and 38. And he evidently did not know what should be done with it until he asked Mr. Daggers what should be done with money that came into an administrator's hands after the inventory was taken, and Mr. Daggers told him it should be credited to the estate. Case, page 134.

3. The $629.12 inventoried and the $500 paid Rossiter are both interlined, but the amounts are correct. Such interlineations show nothing but neglect to enter at the proper time. Daybook, page 6. The same can be said of an interlineation similar to this one in question on page 108.

4. The savings institution money inventoried at $1,120, does not appear in any of Mr. Knowles' accounts, until he transferred the same from that institution to the national banks on Febrnary 28th, 1878. This neglect to charge himself with this money for so long a time does not show any intent on his part to defraud the estate out of the same or any part thereof.

5. Mr. Thompson and Benjamin Stapleton had been in

partnership, and Mr. Thompson had settled off with Mr. Stapleton for $5,000 for which the note for that sum on page 265 of case was given. Stapleton afterwards threatened to open up the partnership business, and Mr. Knowles did not evidently want him, for that reason, to know of this money. Case, page 133, lines 3–13; page 154, lines 20 &c.

Probable Origin of Mrs. Downie's Claim.

The amount of the inventory was $11,555.89. Case, page 257.

Mrs Downie knew the amount of the inventory either at the time she swore to it or soon afterwards. Case, page 14, lines 19, &c.

And the probability is that she has converted, in her mind, in process of time, the $11,555 of the inventory into $7,555 as found in the safe drawer.

Mr. Knowles' Prompt Denial.

Mr. Knowles and Mrs. Downie talked about the estate quite often after her return from Europe. Case, page 60, lines 19–21.

Yet the first time he ever heard of her present claim as to the amount found in the safe drawer was in the spring of 1881. Case, page 57, line 17–34.

Then he heard it from her and he replied that she lied and she knew it. Case, page 57, line 38 to page 58, line 15.

This reply, though more forcible than elegant or polite, expressed the overpowering indignation of an honest man at a false charge of fraud.

Laches.

Mrs. Downie should have made this claim within a reasonable time after the filing of the first intermediate account.

If she did not examine it or have it examined to see if it

was correct she should have done so.

If she had, and this claim had been promptly made while the facts were fresh in Mr. Knowles' mind, he could doubtless have explained all these matters which he could not explain when his testimony was taken.

Such laches on her part, if they do not deprive her of the right to any relief, certainly throw upon her the burden of making out a perfectly clear case.

Four years and a half of time and the allowance of two intermediate accounts by the Orphans' Court, ought to afford some protection to Mr. Knowles against such a claim.

Mrs. Downie's Standing in Court.

Mrs. Downie comes before the court and says that she was a wrong-doer with Mr. Knowles in keeping this money out of the inventory for an unlawful and fraudulent purpose, and asks for relief on account of an alleged unlawful and fraudulent appropriation of a portion of the money in a manner different from the one originally contemplated.

The children of Mr. Thompson are not parties to the proceeding; the proceeding is by Mrs. Downie personally and in her private and individual capacity, and against Mr. Knowles' personally as administrator.

No relief should be granted under such circumstances.

Authorities Cited by the Ordinary.

The only authorities cited by the Ordinary are the cases of Blauvelt *v.* Ackerman, 8 C. E. Green, 495, and Gaston's Trust, 8 Stewart, 60.

The rule or principle laid down in those cases seems to be in substance as follows:

When there are no sufficiently clear and accurrate accounts from which to determine what should be charged or allowed to a trustee, as the case may be, and the court is obliged to resort to presumptions in order to determine the amount,

such presumptions must be against the trustee.

The only decisions in support of this rule or principle are those in the cases cited by the Ordinary.

It is true the decree in the case of Gaston's Trust was affirmed by this court "for the reasons given by Vice-Chancellor Van Fleet in the case below." 8 Stewart, 348.

But the Vice-Chancellor had given his reasons for his decision in that case before he proceeded to make the remarks upon general principles quoted by the Ordinary, and such general principles to the extent stated were not involved in that case.

These remarks upon general principles, therefore, cannot be regarded as having received the approbation of this court.

The rule, however, as enunciated in those cases, does not exclude proof in behalf of the trustee outside of his accounts.

If an item has been omitted from an account, or incorrectly entered in an account, the court will, no doubt, receive proof in behalf of the trustee as to what item should have been entered in the first case, and as to what the item should have been in the other case.

And any presumptions to which the court will resort in any case must have a reliable foundation, such as the rentable value of real estate when a trustee has charge of the same and has kept no or insufficient account of rents received.

In this case Mr. Knowles has kept regular, full, complete, clear and even elaborate and profuse accounts.

His day book is a regular ~~doing of~~ diary of daily occurrences relating to the estate.

He made rather a failure of it in his first ledger account; and it was for that reason no doubt that he soon abandoned it and substituted another account for it.

As to the profuseness of his accounts see real estate account on pages 51, &c. of ledger; account with Mrs. Downie on pages 56, &c. of same; interest account on pages 76, &c. of some; Mr. Thompson's children account on page 78 of same: stone account on pages 82, &c. of

same; rent account on pages 86, &c. of same; note account on pages 102, &c. of same; bank account on pages 104, &c. of same; account of debts due estate on book accounts, on page 115 of same; brick and sewer pipe account on page 116 of same; accounts relating to other items of the inventory on pages 116, 117, 118, 120 and 121 of same, besides separate accounts with a large number of individuals.

He seems to have endeavored to render any difficulty in settling with the estate, or those interested therein, an impossibility.

And the accuracy of no other entries in his accounts than those relating to the money in question is questioned.

And, unless the statement of Mrs. Downie be accepted as conclusive, it will probably never be positively known whether the amount entered in Mr. Knowles' books is the actual result of the counting or not.

So long as there is any reasonable doubt upon this point the fact is not established that he did not keep complete, clear and accurate accounts.

There can be no presumption that he did not; and any charge that he did not must be proved. Nor will his accounts be condemned as incomplete and inaccurate to such an extent as to subject him to this supposed rule of law merely because some items are interlined, and one of them may have been incorrectly entered.

This rule, therefore, does not seem to affect this case at all, and the question at issue seems to be merely whether or not Mr. Knowles is guiltly of the fraud charged, and the rule applicable seems to be that fraud when charged cannot be presumed but must be proved.

Or, to say the least, the question at issue is a question of fact, which cannot be decided against Mr. Knowles unless the weight of evidence is against him.

But if both of these views as to the question at issue shall be held to be incorrect, then it is to be observed that the rule referred to by the Ordinary is not to be always applied.

Vice Chancellor Dodd, in delivering the opinion in the case of Blauvelt *vs.* Ackerman, said it was a severe rule, such as might in many cases be admissable when no regular and reliable account could be produced. 8. C. E. Green, 502.

In that case there were but scanty and imperfect records of the transactions in question (page 498), and yet the Vice Chancellor refused to apply the rule. Pages 502 and 503.

And, all things considered, this case seems to be one to which the rule should be not applied even if it is applicable to the same.

If it is to be applied, then the question arises, has not Mr. Knowles satisfactorily shown that he charged himself in his first intermediate account with all the money and property that came into his hands as administrator?

If he has, then that is the end of the matter.

If he has not, then the question arises: is the uncorroborated testimony of Mrs. Downie as to the amount of money found and not inventoried, as it stands with all the evidence and probabilities standing against it, sufficient ground upon which to base a presumption that such amount was the same that she states it to be.

If it is not, then that is the end of the matter; for there is no ground upon which to base a presumption or guess that the amount found was more than the amount accounted for.

Further Observations on the Opinion of the Ordinary.

The Ordinary says that Mrs. Downie swears positively that there were $4,000 in bills in rolls and $3,555 in bills in flat packages. Case, page 273, lines 3–6.

It will be seen by examining what she says upon this point that she nowhere says that there were $3,555 in flat packages. See case, page 10, lines 36–38; page 21, lines 31 and 32; page 28, lines 37 and 38.

The Ordinary says the bills appear to have been of large

denominations so that they would have made a package not too large to be carried in Mrs. Downie's pocket from the safe to her bedroom upstairs. Case, page 273, lines 6–11.

Mrs. Downie says at first that the bills were mostly all $20 bills and she can't say whether there were tens or not. Case, page 21, lines 34 and 35. But it is pretty evident that she here refers only to the $4,000 in rolls.

Afterwards she twice mentions twenties, tens and fives as the denominations of the bills counted. Case, page 33, lines 1 and 2 and 16 and 17.

Mr. Knowles says the bills were of various denominations with quite a number of twenties. Case, page 101, lines 5–9.

There is no evidence that there was a single bill of a larger denomination than $20.

And so far as the evidence upon this point goes it would seem to have been impossible to make the $7,055 into a package small enough to get into even a woman's pocket.

The Ordinary assumes that Mr. Knowles did not state to Judge Daggers the fact that he had found this money and what the amount was. Case, page 277, lines 28–30.

The evidence relating to the interview between Mr. Knowles and Judge Daggers here referred to furnishes no basis for such an assumption. See Case, page 134, line 6, to page 135, line 8; page 139, line 33 to page 140, line 3.

The observations of the Ordinary, near the close of his opinion, in regard to what should be done by an administrator who finds a large sum of money after the making of the inventory, are doubtless correct.

But the difficulty with Mr. Knowles was that he knew little or nothing about the duties of an administrator.

He says he never was an administrator or executor before in Paterson. Case, page 62, line 37, &c.

And as he had lived in Paterson 43 years it is safe to say that he had never been an administrator or executor anywhere else. Case, page 62, lines 34–36.

He did not employ counsel to direct him until after Mrs. Downie came back from Europe, and did not even knew

before then that he was entitled to have counsel. Case, page 61, line 38, &c.; page 141, line 8, &c.

When the money was found the idea of calling in some disinterested person to assist in the counting or to verify the count, suggested by the Ordinary, probably did not occur to him.

He probably thought it was sufficient if he and Mrs. Downie counted the money together and both knew how much there was.

And, it is not likely that he supposed it possible that she would ever claim that the money amounted to more than it actually did.

The Ordinary was so exceedingly lenient towards Mrs. Downie as to "let up" on her entirely, notwithstanding her terrible story of her own misdoings in regard to the matter, that it seems as though he might have been more merciful towards Mr. Knowles than to hold that he had "made himself singularly liable to adverse conclusions," because he did not better understand the duties of, and the precautions that should be taken by, an administrator in such a case.

For there can be no doubt from what appears from the case as it stands, that both of them were just about equally ignorant in regard to the matter of the settlement of estates.

Statement A.

Same as statement on page 262 of case, with explanations and references.

Cash received according to cash account on pages 300–312 of ledger, exclusive of Savings Institution money. Case, page 261	$10,841.82
Savings Institution money. Savings Institution book, Exhibit F. See note	116.90
Cash received according to said cash account and Savings Institution book	12,002.72

Cash paid out according to said cash account. Case, page 261	11,203.73
Cash on hand according to said cash account and Savings Institution book	798.99
Cash actually on hand about	1,825.20
Cash on hand according to said cash account Savings Institution book	798.99
Cash on hand more than called for by said cash account and Savings Institution book .	1,026.21
Interest included in said Savings Institution money and charged by itself in account filed	40.90
Balance	985.31
Cash charged in books as "found in safe drawer"	4,250.00
"Cash on hand not inventoried" in first account filed	5,235.31
Cash in 1st Nat. Bank, April 1, 1878. Ledger, page 104	731.16
Cash in 2nd Nat. Bank, April 1, 1878. Ledger, page 105	1,004.04
Total	1,735.20
Allowance for undeposited money	90.00
Cash actually on hand about, as above stated	$1,825.20

NOTE.

The savings institution money is set down at $10 less than it actually was, owing, probably, to the amount being taken from the entry in the cash account, under date of February 28, 1878, of the $1,160.90 withdrawn from the institution, without remembering that $10 was left in the institution.

STATEMENT B.

In the matter of the estate of Sam Thompson, deceased:

Receipts, exclusive of the money found in the little safe drawer and of the money in the Paterson Savings Institution, and expenditures.

Expended prior to June 23, 1877	$7,413.64
Received " " " " "	3,990.07
Excess of expenditures over receipts . . .	3,423.57
Expended prior to September 13, 1877 . .	8,897.14
Received " " " " "	4,784.95
Excess of expenditures over receipts . . .	4,112,19
Expended prior to April 1, 1878	11,203.73
Received " " " " "	6,591.82
Excess of expenditures over receipts . . .	4,611.91

N. J. Court of Errors and Appeals

Between Allen Knowles, Administrator of Sam Thompson, deceased, *Appellant*, and Annie Downie, *Respondent*.	On Appeal from Prerogative Court.

POINTS FOR RESPONDENT.

This case presents little more than questions of fact. As the testimony, (254 pages) must be carefully read I shall not attempt to restate any of it. The opinion of the ordinary clearly states the issues.

I.

THIS IS A PROCEEDING IN REM.

Exton vs. Tule. 1 McCarter, 501—509.

Allen Knowles, the administrator, is one party and all persons interested in the estate of Sam Thompson are the other party. The rights of three infants are involved. The respondent's counsel is in this court, as he was below from the commencement of the litigation, the counsel of the three infants duly employed by their guardian.

This court cannot decide against the respondent without at the same time deciding in favor of this delinquent administrator against three infants who are his *cestui que trustent.* The filing of the petition was only nominally on behalf of the respondent.

Of course, the intermediate accounts attacked have no finality. Orphans' Court Act, sec. 108, applies only to final accounts.

Liddell vs. McVicker, 6 Halst. 44.

II.

IT IS THE "FIRST DUTY" OF ALL TRUSTEES INCLUDING AGENTS, RECEIVERS AND EXECUTORS ("FOR IN THIS RESPECT THEY ALL STAND IN THE SAME SITUATION") TO KEEP CLEAR AND DISTINCT ACCOUNTS.

Lewin on Trusts (L. Lib 87) p. [599] 491.

Walker vs. Maundie, 19 Ves. 429.

Freeman vs. Fairlie, 3 Mer. 43.

3 Williams on Exrs. 6 Am. Ed, p. 2156 [2048.]

2 Story Eq. Jur. sec. 1275.

"It is one of his [a trustee's] most imperative duties "to keep regular and accurate accounts during the whole "course of the trust of all property coming into, passing "out of, or remaining in his hands. These accounts "must clearly distinguish between the trust property "and his own individual assets—for the two should "never be mingled in the accounts nor in use; they "should show all receipts and payments, and should "at all times be open to the inspection and produced "at the demand of the beneficiary."

2 Pom. Eq., Jur. sec. 1063, and cases cited.

The reasons for this great rule of the law of trusts are numerous.

(1) The trustee may die and in such case without "clear and distinct" accounts it might be impossible to get at the condition of the trust estate.

(2) The trustee's memory ordinarily can not be relied on. No memory can hold a complicated matter of account. Hence the use of books and systems of bookkeeping.

(3) The clear and distinct accounts give the information to the *cestui que trust* which he is entitled to "at all times."

(4) "Clear and distinct accounts" kept "during the whole course of the trust" are an enormous preventive of fraud.

III.

"A FAILURE TO KEEP FULL OR ACCURATE ACCOUNTS RAISES ALL PRESUMPTIONS AGAINST THE TRUSTEE."

2 Pomeroy's Eq., Jur. sec. 1063 n. 1 and cases cited. Blauvelt vs. Ackerman s. C. E. G. 476, 502 Gaston's Trust, 8 Stew. 60.

Vice Chancellor Dodd's statement of the principle in Blauvelt vs. Ackerman *supra* is incorporated in the text of the last edition of Perry on Trusts. It is as follows: "Where a trustee has kept his accounts in a negligent way, or has kept no account whatever of his receipts, all presumptions should be strongly against him and obscurities and doubts should not operate to his advantage but adversely."

IV.

MR. KNOWLES HAS GROSSLY VIOLATED HIS DUTY TO KEEP "CLEAR AND DISTINCT ACCOUNTS."

(1) He kept no check book (p. 218) and his day book and ledger are garbled and interlined to such an extent as to make them unintelligible and utterly unreliable.

(2) He made no entry *at the time* of the greatest item of all his receipts.

(3) He falsified his books by interlineations and attempted a gross deception by his entry in the "little black book" of the finding of the key. He made that entry to show that he found the key on May 14th, and therefore that was the date of the finding of the money. But the page shows that on May 9th $170 was taken out of the money found in the safe, and also that on May 16th Ben. Stapleton was paid $1,216.98 out of the same fund, and that the entry was made after May 16th.

(4.) He worked over all his accounts about September 13th, 1877, (see ledger, p. 66) and prepared a new ledger account to show to his counsel (see ledger, p. 300, etc.)

(5) He kept no account of $40 or $50, mixed it with his own money, p. 143, and finally admitted a "mixing up" of double that amount, p. 150.

(6) Mr. Knowles utterly fails to explain his entries—tells two or three stories about almost every interliniation or other entry brought under examination. As to the *time* when each important entry was made Mr. Knowles' contradictions are simply "too numerous to mention." When asked to explain suspicious entries he is unable to do so. p. 111.

(7) Without attempting further to refer to the proofs that the "accounts" of Mr. Knowles are false and fraudulent it is enough to utterly discredit them that Mr. Knowles himself admits that they are false upon the only point in this controversy, viz: the amount of money found in the safe. The entries on page 10 of the

day book and on pages 62, 63, 64 and 65 of the ledger—also repeated on page 302 of the ledger—all showing the amount of money to be $4,250, are admitted by Mr. Knowles to be false, to be about $1,000 in error.

The case stands then thus: the administrator has kept no true account of the receipt of the money but has manufactured and exhibited a false and fraudulent one.

V.

BUT MR. KNOWLES WITH NO "ACCOUNT" TO SHOW THE AMOUNT OF THE MONEY, HAS NO MEMORY, UTTERLY FAILS TO TESTIFY WHAT THE AMOUNT WAS.

His claim is sufficiently audacious. What is it? He admits his books are false and that he has no memory. He readily abandoned his entries and his memory and with the help of his counsel drew by inferences from his false and discredited account books, the conclusion that he was about $1,000 in error, and now he asks this court, without a grain of evidence, to *infer* and adjudge that he could not have been $1,800 more in error.

Mr. Knowles says: "*My books lie whenever they undertake to state the amount of money and I cannot remember the amount, but you must assume that all the other entries are true and by mathematical computations determine the exact size of the lie.*" This is precisely the process Mr. Hilton swears he followed. pp. 141, 142.

VI.

THE CONDUCT OF MR. KNOWLES, AFTER MR. HILTON DISCOVERED THE SO-CALLED ERROR, IN CONCEALING THE FACT FROM MRS. DOWNIE ESTABLISHES A STRONG PRESUMPTION OF FRAUD.

The money was found in the spring of 1877. In the

fall of 1877 Mr. Knowles and Mr. Hilton were obliged to admit the entry of $4,250 to be false. Mr. Knowles could not *remember* the true amount. They laboriously study the false and garbled accounts and finally *infer* that the entry $4,250 is about $1,000 too small. And yet they concealed their difficulty from Mrs. Downie and did not ask her what she remembered as to the amount. She was the only other person besides Mr. Knowles who counted the money and knew the amount the event was then quite recent. Why did they not ask her? I charge that this conduct establishes itself a strong presumption against Mr. Knowles. What right has he to challenge her *memory* now, when he would not put it to the test within six months after the event?

VII.

THE MOST SLENDER TESTIMONY IS SUFFICIENT TO FIX THE AMOUNT IN FAVOR OF THE INFANT CESTUI QUE TRUSTENT AGAINST THIS DELINQUENT ADMINISTRATOR.

To sum up so far, Mr. Knowles has grossly violated his duty to keep accounts and has established all presumptions against him; he has *no* account of the amount of the money in controversy; he has altered and garbled all his accounts so as to make them valueless; he has no *memory* of the amount; he has acted most suspiciously in concealing his crooked accounts from Mrs. Downie when she should have been consulted; he utterly fails to explain his accounts in most important particulars, and contradicts himself over and over again as to the time and circumstances of the entries in question; he then secretly reaches a conclusion by *inference* from his false books and accounts and asks the court to say that that inference is c orrect.

Surely the slighest evidence should be enough to find the truth against such a trustee.

VIII.

THE ENORMOUS WEIGHT OF EVIDENCE IS IN FAVOR OF MRS. DOWNIE'S STORY.

(1) Her story is clear, accurate in all its details, and unshaken by successive cross-examinations.

(2) Improbability of her inventing such a story. She might have easily agreed with Mr. Knowles as to the *time* of finding the money, and differed only as to the *amount*. She would have saved herself from all stain by such a course. Why should she discredit herself?

(3) Her memory was well tested. She had no dates, and yet all her statements as to *time* afterwards were proved true.

(4.) Mrs. Jackson, the nurse, corroborates her.

(5.) Mr. Van Wagoner also corroborates her and proves a most *important* "error" in Mr. Knowles' testimony.

Mrs. Downie at the start testified that the inventory was taken the day after the expert opened the safe. This made it, after we got the dates, April 18th, 1877 (p.). Mr. Knowles (pp. 51,137) swore that the inventory was taken "nearly a week after" the expert opened the safe, and fixes the date April 23rd. Surrogate Van Wagoner explained the whole matter and showed that Mrs. Downie was correct. (P. 205, etc.)

(6) Mr. Knowles was exposed to a great temptation, an unusual temptation, to be dishonest. Look at the admitted facts: Sam Thompson, just before his death, had effected a dissolution of his partnership with his brother-in-law, Ben. Stapleton (p. 133, l. 1-20). Thompson had over $5,000 in cash in his safe, but gave Stapleton a note for $5,000 at 30 days, evidently to conceal this money. Mr. Knowles was "arbitrator" for Thompson in the business. He must have suspected the existence of the money, and when he found it he knew

it was a secret fund. When the $5,000 note came due Thompson was dead and Mr. Knowles paid the note by turning over accounts to Stapleton, paying $1,216.9 in cash taken from the secret fund, and by giving a note for $1,000 for the balance at 6 months, drawing interest at 7 per cent. Why did he give this note when he had, according to his own admission, about $4,000 uninvested in the safe? He gives the reason on page 154. It was to continue the concealment of the money.

The only persons who knew of this money were Mr. Knowles and Mrs. Downie. Mrs. Downie was ignorant of business, left all to Mr. Knowles' management and went to England in June, 1877. Mr. Knowles certainly had an unusual chance to embezzle. If he planned an embezzlement he also did well to have the money kept out of the inventory and then have Mrs. Downie swear to it. That, he might well suppose, would stop the mouth of the only witness, if she ever should look into the matter and suspect a fraud on her.

(7.) The claim is made that Mr. Knowles was an honest man. The evidence of general good character was admitted under objection (p. 203) and was excluded by the Chancellor. What if Mr. Knowles was considered honest? Baldwin, Hadden, Palmer and Boice were all considered honest men.

(8.) Mr. Knowles' story is improbable. No administrator would take an inventory and leave a wooden drawer locked in the safe without getting at its contents. Any pen-knife would have opened the drawer. No appraisers would pass by such a drawer. As a matter of fact the appraisers always "go through" the premises of the decedent; they do not wait for the articles to be produced.

(9) Mr. Knowles' evasions, contradictions and uncertainties as a witness leave him hopelessly discredited.

(*a*) He says (p. 51) that he put down the amount of money, of course in the day book where it was first entered, very soon after the money was found; (p. 82) that

he is not certain whether he made this entry in the day book the day the money was found or the day after; (p. 97) that he made the entry "as soon as he could get the day book and it was transferred." As the day book was got May 5th, this last statement seems to admit that the money was found before that date.

Last of all he says (p. 112) that he can't tell within a month when the entry was made, and he admits (p. 112 l. 31) that the entry was an interlineation.

(*b*) He says (p. 53) that this "original" entry in the day-book means the amount of money found in the safe "as near as he could recollect when he put it down."

(*c*) He says (pp. 52, 53 and 81 and 82 l. 5) that he made the entry in the little black book *then* (*i. e.* when the money was found) right on the desk; (p. 92) that he thinks he made the entry *on that day in the afternoon:* (p. 103 l 20) that he is sure he made it *that night or the next day;* (p. 96) he made it that he made it *that night.*

(*d*) He explains (pp. 53 and 127) that the entry in the day-book p. 10 was made in red ink because he was agitated about finding it and might have dipped into the wrong bottle. He is evidently trying to pretend that this entry was made at the time of the finding of the money.

But the slightest examination of the books shows that *all* the red ink entries in both day-book and ledger were made after Aug. 20th—in fact, after Sept. 13th—(see ledger p. 66 and page 62, 64.)

(*e*) After a rapid cross examination he admits that the money was found April 18th, (pp 66-68)

(*f*) He says (pp. 69 and 70) that he is almost sure they opened the safe April 17th—that he can't tell positively when they first opened it—that he is sure they opened it then in the afternoon.

(*g*) After another rapid cross-examination he again puts the finding of the money on April 18th.

(*h*) He accounts for use of red ink in ledger and the interlineation because it was an extraordinary finding

(p. 85, l. 36) and had given him a great deal of anxiety, (p. 87.)

(*i*) He can't explain the erasure on page 300 of ledger (p. 89 l. 12).

(*k*) He can't explain (p. 97), why he did not add the amount of money to entry in little black book. Is it not plain that he wrote that entry long after the money was found, and did not dare fill out the amount; and that the entry was made to deceive?

(*l*) He shows (p. 128), that the money was in the safe when the appraisers came. But it was paid out to Rossiter, April 21st. Hence the appraisers came before that date as Mrs. Downie says, and not on April 23rd, as Mr. Knowles insisted.

See Mr. Van Wagoner's testimony where the matter is explained.

(*m*) He attempts (p. 134), to give the impression that he told Judge Daggers about the finding of the money, and then admits that he did not, (p. 135), and does not explain why he put abstract questions to Judge Daggers, instead of telling him the facts.

Is not the concealment evident?

(*n*) He thinks (p. 137), the appraisement was made and sworn to the same day. All the witnesses contradict him. Mrs. Downie, both appraisers and Mr. Van Wagoner.

(*o*) Mr. Knowles describes minutely the counting of the money and the position of the safe and lounge. This count at the safe Mrs. Downie says never occurred. We show that till 1878, the safe was on the other side of the room from the lounge, and that the lounge could not have been near it without blocking up the door. (See diagram).

Mr. Knowles, therefore, invented his story after 1878, when the lounge and safe came together.

(*p*) Mr. Knowles says (pp. 105, 106, 107), that he don't think the safe was opened in the presence of the appraisers; that he returned the money to them *i. e.*

stated the amount ; that his recollection is that the safe was not opened.

Mr. Garside swears that the safe was opened and the drawers taken out. (pp. 158–164).

(*q*) Mr. Knowles fixes the date of finding the money as May 14th, because that is the date of the entry of finding the key ; he says he put down the finding of the key that *night*. But the entry in the little black book was evidently made long after the account on the same page was balanced. This account runs down to May 16th, when Stapleton was paid out of the money in the safe and contains an entry of May 9th of $170 taken from the safe. Mr. Knowles fails to explain this entry (pp. 110, 111.) The money ($170) must have come from the fund in question as the $500 had been paid to Rossiter, April 17th, and there was only $129.12 in cash besides and the first intermediate account (Exhibit B.) and the books show up to May 9th receipts in cash amounting to only $5 or $6 and disbursements amounting to about $300.

It is plain from the little black book that the money was found prior to May 9th and that the entry of finding the key was made after May 16th. Is it not evident that Mr. Knowles made this entry in a blank space, under an old account, long after the account was closed? Is not this entry a plain fraud?

(10) Mr. Hilton's testimony with its "impressions," and even "faint impressions," and corrections does not help Mr. Knowles.

I will note only a few points.

(*a*) Mr. Knowles (p. 143) admitted that a little balance had got mixed up with his own money *i. e. He had no account of it.*

(*b*) Mr. Hilton spent several days (p. 143) on the books "studying every item."

Yet he never saw the red ink entries till after this suit was begun and he did not examine the day book when the question was reduced to the single item. (p. 151, 152, &c.

(c) Mr. Knowles told him about finding the money (p. 144) and the mistake in counting the money is admitted, and yet Mr. Hilton does not ask Mrs. Downie what she remembers as the true amount; he studies and infers as to the amount and does not even look at any one of the entries of the amount in either day book or ledger—looks only at the entry on page 302 of ledger, the new account made after Mr. Knowles spoke to Judge Daggers.

(d) Mrs. Downie only spoke to Mr. Hilton about where the money had gone to and he gave her a statement of the main disbursements—Mrs. Downie had no occasion to speak of the receipts or items of resources and Mr. Hilton's "faint impressions" and impressions that she named the sum found in the safe and put it at $5,000, are not evidence.

(e) Mr. Hilton says he can't give any reason why he did not ask Mrs. Downie what her recollection was as to the amount of money.

(f) Mr. Hilton never saw the "little black book" till after the filing of Mrs. Downie's petition, and never till then saw the entry in the day-book (pp. 156, 157).

I suggest as probable that there was no entry in the little black book until after the petition was filed, and possibly there were no red ink entries till then.

(g) Mr. Hilton shows (pp. 160 and 167) that he and Mr. Knowles took the amount in the book, added the amount that got mixed in Mr. Knowles' pocket with his own money and "agreed upon the probable amount" of the error, and put it at $1,825.

They ask the court to take their guess as to the "probable amount"!!!

(11.) The case stands in this way: Mrs. Downie swears positively to the amount, and while Mr. Knowles is understood to contradict her, he does not pretend, by books of account or by his own memory or oath, to show what the true amount is.

What is the court to do? What evidence can be

taken to fix the amount if Mrs. Downie's testimony is rejected? With all presumptions against Mr. Knowles, all doubts and obscurities to be solved against him, is not the duty of the court clear? If the court rejects Mrs. Downie's positive testimony fixing the amount, there is absolutely no testimony left to determine it—only Mr. Knowles' and Mr. Hilton's guess as to the "probable amount," based on calculations from books which are admitted to be false on the point in controversy.

IX.

PUBLIC POLICY DEMANDS THAT IF IN THIS CASE THERE IS A POSSIBILITY OF ERROR IN THE DECREE WHICH EVER WAY IT GOES, THE TRUSTEE SHOULD SUFFER RATHER THAN THE INFANT CESTUI QUE TRUSTENT.

These infants ought not to suffer: They are innocent.

If Mr. Knowles is in fact injured by this decree, whom can we blame but himself? Will his case not be a useful warning to all trustees? Ought any trustee to be allowed to shelter himself behind his own gross errors and omissions of duty, and ask a court of equity to be very cautious, lest it possibly may unjustly afflict him with the consequence of his own ignoranee and carelessness.

X.

I respectfully submit, in behalf of—both the petitioner and the three infants, that the application of the principles of equity above cited to the facts of this case require that the decree of the Chancellor should be affirmed.

EUGENE STEVENSON,
Of Counsel.

PETITION.

To the Honorable the Orphans' Court of the County of Passaic.

The petition of Annie Downie, wife of Robert Downie, of the city of Paterson, in the County of Passaic and State of New Jersey, respectfully shows that your petitioner was the widow of Sam Thompson, deceased, late of said city—that said Sam Thompson died intestate on or about the ninth day of April, A. D. 1877, leaving your petitioner, his widow, and three infant children him surviving, and that your petitioner and one Allen Knowles were on the eighteenth day of April, A. D. 1877, duly appointed administrators of the estate of Sam Thompson by the Surrogate of Passaic County, and that on July 12th, A. D. 1877, your petitioner married Robert Downie, her present husband, and was on December 29th, A. D. 1877, removed from her administratorship aforesaid by this court for failing to give bonds with her said husband for the faithful performance of the duties of said administratorship, leaving said Allen Knowles sole administrator of said Sam Thompson, deceased.

And your petitioner further shows that on the twenty-third day of April, A. D. 1877, an inventory of the estate of said Sam Thompson was filed in said Surrogate's office by said administrators, although the said Allen Knowles controlled and directed the making thereof, and upon him your petitioner relied to have the same correct, the total amount of which inventory was eleven thousand, five hundred and fifty-eight dollars and eighty-nine cents.

And your petitioner further shows that in the term of April of this court in the year eighteen hundred and

New Jersey State Library

seventy-eight the said Allen Knowles, being then sole administrator of said Sam Thompson, deceased, presented an intermediate account of the estate in his hands, which account was then duly allowed by said court, that the said Allen Knowles in said account charged himself with the amount of said inventory, to wit: $11,558.89, and an item therein stated as "cash on hand (not inventoried), $5,235.31," that is to say, the said Allen Knowles charged himself in said account with cash to the amount of five thousand, two hundred and thirty-five dollars and thirty-one cents which had not been included in said inventory.

And your petitioner further shows that the said item of five thousand, two hundred and thirty-five dollars and thirty-one cents represents the cash which was in the safe of Sam Thompson at the time of his decease, and which came to the hands of said Allen Knowles before said inventory was filed, and your petitioner believes that said Allen Knowles left the said cash out of said inventory for a fraudulent purpose.

And your petitioner further shows that the said item of cash in said intermediate account is less than the actual amount of cash belonging to said estate received by said Allen Knowles as aforesaid. That said Allen Knowles, in fact, received and obtained from said safe before the said inventory was filed the sum of seven thousand, five hundred and fifty-five dollars, and that amount should have been included in said inventory, or having been omitted from said inventory should have been charged against said Allen Knowles in his said intermediate account.

And your petitioner further shows and insists that the said Allen Knowles in his said intermediate account fraudulently understated the amount of cash in his hands not inventoried, to the extent of two thousand, three hundred and nineteen dollars and sixty-nine cents.

And your petitioner further shows that in the term of this court of April, A. D. 1880, the said Allen Knowles

presented a second intermediate account of said estate to this court, which was duly allowed by said court, in which account the said Allen Knowles charges himself with a balance from his said first account of seven thousand, one hundred and sixty-eight dollars and forty-one cents; but your petitioner shows and insists that the same error in said first account above set forth exists in said second account, and that said balance should be increased by said sum of $2,319.68.

Your petitioner therefore prays that the said two accounts may be opened and corrected, and that said Allen Knowles may be compelled to file a final account of said estate, charging himself with the said sum of $2,319.68, and that your petitioner may have such further and other relief as may be deemed just.

And your petitioner will ever pray, &c.,

EUGENE STEVENSON,
Proctor for Petitioner.

STATE OF NEW JERSEY, }
COUNTY OF PASSAIC, } *ss.*

Annie Downie, of full age, being duly sworn, on her oath saith that she is the petitioner in the foregoing petition named, and that the matters and things set forth in said petition so far as relates to her own acts are true, and so far as relates to the acts of others she believes them to be true.

ANNIE DOWNIE.

Sworn and subscribed before me, this 17th day of November, A. D, 1881.

JOHN H. REYNOLDS,
Master in Chancery of New Jersey.

PASSAIC ORPHANS' COURT.

RULE TO SHOW CAUSE.

In the matter of the application of ANNIE DOWNIE to open the intermediate accounts of ALLEN KNOWLES, Administrator of Sam Thompson, deceased.	*On petition.* *Rule to show cause.*

The above-named petitioner, Annie Downie, having represented to the court by petition that the said Allen Knowles, administrator of Sam Thompson, deceased, in his first intermediate account, filed and allowed at the term of April, A. D. 1878, charges himself with an item therein called "cash on hand (not inventoried), $5,235.31," and that said charge is two thousand, three hundred and nineteen dollars and sixty-eight cents less than the sum should have been, and that the second intermediate account of said administrator, presented to the court and allowed in the term of April, A. D. 1880, contains the same error, and it appearing that the said administrator has filed no final account.

It is on this eighteenth day of November, A. D. 1881, on motion of Eugene Stevenson, proctor of said petitioner, ordered that the said Allen Knowles, administrator as aforesaid, show cause before this court on the second day of December next, at the Court House at Paterson, at ten o'clock A. M., why the said two intermediate accounts should not be opened and corrected as claimed by said petitioner as aforesaid, and why said

Allen Knowles should not file a final account of the estate in his hands, charging himself with the said sum of two thousand, three hundred and nineteen dollars and sixty-eight cents, and why said petitioner should not have any other proper equitable relief on her said petition.

And it is further ordered that the testimony upon this rule be taken in open court on the said second day of December next, at ten o'clock A. M.

And it is further ordered that a copy of this rule be served upon the said Allen Knowles or his proctor on or before the twenty-second day of November instant.

A. B. WOODRUFF, *President Judge.*
JOHN R. DAGGERS,
HENRY P. SIMMONS.

Passaic Orphans' Court.

On application of ANNIE DOWNIE to open the intermediate accounts of ALLEN KNOWLES, Administrator of Sam Thompson, deceased.

Before Judge A. B. Woodruff, Presiding, and Judges Daggers and Simmons.

PATERSON, Dec. 2nd, 1881.

ON RULE TO SHOW CAUSE.

APPEARANCES:

E. STEVENSON, *for Petitioner.*

MESSRS. G. S. HILTON and H. A. WILLIAMS, *for Respondent.*

TESTIMONY.

ANNIE DOWNIE, petitioner, being sworn, testifies as follows:

By Mr. Stevenson:

Q. Were you the wife of Sam Thompson, deceased?
A. Yes.

Q. When did your former husband, Mr. Thompson, die?

A. April 9th, 1877.

Q. What is your present husband's name?

A. Robert Downie.

Q. You married him the same year?

A. Yes, sir.

Q. Were you appointed one of the administrators of your former husband?

A. Yes, sir.

A copy of the letters of administration is admitted in evidence.

Q. Do you recollect the taking of the inventory of your husband's estate?

A. Yes, sir.

Q. How long after his burial was that?

A. I cannot say that sure.

Q. About how long?

A. I guess it was some 10 or 11 days; I could not say.

Q. Were you sick at that time?

A. Yes, sir.

Q. So as to be confined to your bed?

A. Yes, sir.

Q. Do you recollect the safe which your husband owned?

A. Yes, sir.

Q. Where was that safe kept?

A. In the parlor.

Q. Whereabouts did you reside then?

A. Where I reside now.

Q. What is the number of the house?

A. 13 Governor street.

Q. You were residing there with your family at the time of his death?

A. Yes, sir.

Q. Where was the bedroom in which you were sick at the time of the burial of your husband?

A. Up-stairs.

Q. And the parlor was down-stairs?

A. Yes, sir.

Q. Had you a parlor immediately below the bed room?

A. No, sir; it came through the dining room to the parlor.

Q. Your bedroom was in the rear or in the front?

A. In the front.

Q. The parlor was down stairs in the rear?

A. No, sir; it was in the front and rear both.

Q. Was the safe at the time of your husband's death locked?

A. Yes, sir.

Q. What kind of a lock did it have?

A. A combination lock.

Q. One of these locks that you turn with a knob?

A. Yes, sir.

Q. With numbers on it?

A. Yes, sir.

Q. Requiring a knowledge of certain numbers in order to open the lock?

A. Yes, sir.

Q. When was that safe opened?

A. The day before the inventory was taken.

Q. Who opened it?

A. An expert from New York.

Q. Had any attempt been made to open it prior to that?

A. Yes, sir.

Q. What attempt had been made?

A. Mr. Knowles had attempted to open it.

Q. With your assistance?

A. Yes; I was there when he tried to open it.

Q. They had certain numbers?

A. Yes; I had a book with numbers in.

Q. State what attempts were made to open the safe before the expert came from New York.

A. Mr. Knowles tried to open it, and I tried to open it, but I did not reverse to throw open the lock; we first turned to the figure "0," and we tried the handle, and it wouldn't come open, so we thought there was something the matter with the safe, and Mr. William Tillier, of this city, went to New York and ordered an expert to come up from New York.

Q. Did Mr. Tillier make the attempt too?

A. I don't remember whether he did or not.

Q. Did Mr. Murray?

A. I think he did; but I was up-stairs sick at that time.

Q. The expert came from New York the day before the inventory was taken?

A. Yes, sir.

Q. Did he open it then?

A. Yes, sir.

Q. Was there an inside door to the safe?

A. Yes, sir.

Q. Where were the keys?

A. I had them.

By the Court:

Q. Had you the key to the box?

A. Belonging to the box, yes, sir; and to the drawers inside the safe.

Q. How many keys were there altogether?

A. Two keys.

By Mr. Stevenson:

Q. One for the iron box and one for the two drawers?

A. Yes, sir.

Q. When were those inside doors of the box and drawers opened to your knowledge?

A. The morning that the inventory was taken.

Q Were they opened the day the expert opened the safe?

A. No, sir.

Q. You had the keys then?

A. Yes, sir.

Q. State to the Court all the circumstances under which you opened the iron box and drawers of the safe.

A. On the morning the inventory was taken Mr. Knowles came to my house, about 8 o'clock, and he wished me to come down stairs, if I was able, to open the safe; and Mrs. Jackson was my nurse, and she insisted on dressing me, and Mr. Knowles and Mrs. Jackson brought me down stairs, and then I gave Mr. Knowles the keys, and he opened the drawers and took out $7,555.

Q. When you went down did you sit down in front of the safe?

A. No, sir; on the side of the safe; Mr. Knowles sat in front, and he opened the drawer and laid them—

Q. Where did he get the key from?

A. I handed him the keys, and then he laid the money on my lap.

Q. I want you to state the facts in the order in which they occurred. You say he took the keys, opened the drawers and then you were sitting by the side of the safe?

A. Yes, sir.

Q. And he was sitting in front of the safe?

A. Yes, sir.

Q. Tell the Court what was then done?

A. Then he opened the drawer and put the money on my lap.

Q. Where did he get the money from?

A. Out of one of the drawers; not out of the iron box.

Q. When you first saw it, what did it look like?

A. The drawer was full.

Q. Full of what?

A. Money.

Q. In what shape?

A. Some of it was rolled up, and some of it was flat, just as it would come from the bank; he laid it on my lap as he handed it out of the safe.

Q. Did you know then what amount was there?

A. No, sir.

Q. You say he put it in your lap; what did you receive it in, your apron or what?

A. I took it this way [describing], in my dress, as he took it out of the drawer.

Q What did you then do?

A. Then Mr. Knowles went and got a newspaper from under the lounge cushion and put all this money up in a paper and put four rubber straps around it and two across *this* way and told me to take it up-stairs into the bed room, but he said if it got to the Orphans' Court they would scatter it all away, and he thought my husband, Mr. Thompson, meant this money for me alone; so the money I put in my pocket as he advised me and took it away to my bed room.

Q. Did he lock the drawers again?

A. Yes, sir.

Q. Did you take all the money out?

A. Yes, sir.

Q. Did he give you the keys back?

A. Yes, sir.

Q. Did you go up-stairs together?

A. Yes, sir.

Q. What did you do up-stairs?

A. Then I went back to bed, for the parlor was too cold for me to sit in there, and then after I had got into the bed Mr Knowles and I counted over the money, and there was $7,555; he laid it under my pillow and went to the quarry at Haledon—got into a buggy with Mr. Garside.

Q. In what shape was the money when it was put under your pillow?

A. In a square shape.

Q. Did he put it back into the newspaper in the same sort of a parcel?

A. Yes, sir.

Q. What occurred next?

A. Then he thought Mrs. Jackson would see it when she made the bed and would ask me what it was, so he placed it under my bureau in my room till after the inventory was taken in the afternoon, and then he came up and counted the money over again.

Q. Where did he count the money over again?

A. On the bed.

Q. Did you count it over that time?

A. Yes, sir.

Q. How much was there then?

A. $7,555.

Q. What was done with it then?

A. Then he took it down into the safe, and he did not bring me back the keys of the safe; I never saw the keys after that.

Q. Did you go down to see whether it was in the safe or not?

A. No, sir.

Q. All you know is, he took the money, counted it the second time and went away with it?

A. Yes, sir.

Q. And took the keys with him?

A. Yes, sir.

Q. What became of the keys after that?

A. I don't know.

Q. Did you see that money after that?

A. No, sir,

Q. Do you know of $500 of that money being separated from the rest at any time?

A. No, sir.

Q. Do you recollect whether the whole amount of $7,555 was actually present when it was counted on the bed, or was $500 included which was somewhere else?

A. There was $7,555 in the safe when it was found.

Q. When you carried it up and counted it on the bed did you have the whole amount, or was $500 included in that amount that was somewhere else?

A. In the safe he left $500; Mr. Knowles said that it

would not look right to take all the money out of the safe.

Q. Then you were incorrect in stating that the whole amount was carried up-stairs from the safe to your bed room?

A. He left $500 down-stairs.

Q. When you made the count up-stairs the amount that you actually had on your bed was $500 short?

Objected to as leading. Objection sustained.

Q. What was the actual amount of money that was produced on the bed at the time you made the count, at the time you say you counted $7,555?

A. $7,055.

CROSS-EXAMINATION.

By Mr. Williams:

Q. How soon after your husband's death was the inventory taken?

A. Some 10 or 11 days; I don't know exactly.

Q. Do you remember the day of the month it was taken?

A. No; I do not.

Q. Do you know how long before it was filed?

A. No; I do not.

Q. Did you assist in taking that inventory?

A. No, sir.

Q. Who did take it?

A. Mr. Garside was there.

Q. Who else?

A. Mr. Knowles and Thomas Crossley.

Q. Were those two men acting as appraisers?

A. Mr. Crossley was; I don't know whether Mr. Knowles was or not.

Q. Was Mr. Garside acting as an appraiser?

A. Yes, sir.

Q. And were you present?

A. No, sir; I was up-stairs.

Q. Didn't you see them when they were busy taking the inventory?

A. No, sir; they came up-stairs to the bed room, but not down-stairs.

Q. Did you sign the inventory?

A. I don't remember whether I did or not.

Q. Did you swear to it?

A. Yes, sir.

Q. Who swore you?

A. I think it was Mr. Garside; I could not say for sure whether it was he or not.

Q. You don't recollect who swore you?

A. No, sir, I do not; the Surrogate was down some two or three times, but I don't remember whether it was he or not.

Q. Do you know how much the inventory amounted to?

A. $11,555.

Q. Did you know when you swore to it how much it amounted to?

A. I don't remember whether I did or not.

Q. How do you know now it amounted to that?

A. Because Mr. Knowles told me and it was advertised in the paper.

Q. What was advertised?

A. The amount of the inventory, $11,555.

Q. How did it come to be advertised in the paper?

A. I don't know.

Q. What paper did you see it advertised in?

A. In the Press and Guardian.

Q. You say you think you swore to this by an oath that was administered by Mr. Garside?

A. I think so; but I can't say whether it was he or the Surrogate.

Q. Did you come up to the Court House to swear to it?

A. If I remember right, I did; I came up here one time to the Court House, but I don't remember that it was for that; I don't remember now what it was for.

Q. You knew what you were swearing to when you swore to that inventory?

A. I did not know anything about it, only that it was law; I did not know anything about it.

Q. You did not know anything about it?

A. Not exactly what I was swearing to, for I never had been in any law or anything like that before.

Q. You knew what it footed up to at that time?

A. When?

Q. When you swore to it?

A. Not then; I did not know what it amounted to till Mr. Knowles read it in the paper to me, when I was in bed.

Q. When was it that you first knew that the inventory amounted to over $11,000?

A. I couldn't say when it was; I can't tell the day of the month; it was after it was advertised.

Q. What did you say when he read it to you from the paper?

A. I don't know what I said.

Q. You don't remember anything about that?

A. No; I do not.

Q. Do you recollect who was Surrogate at that time?

A. Yes, sir.

Q. Who?

A. Mr. Van Wagoner.

Q. Did he come down to your house?

A. Yes, sir.

Q. When?

A. I can't say; it was while I was sick in bed.

Q. Did he take your affidavit down to the house?

A. That I can't say, whether he did or not; he brought a paper, but what it was I can't say now.

Q. Did you sign any paper there?

A. Yes, sir.

Q. Do you know what paper it was that you signed?

A. No.

Q. Who brought that paper which was signed?

A. Mr. Van Wagoner.

Q. Did you sign more than one paper?

A. I don't remember whether I signed more than one paper or not.

Q. Are you sure that you signed one?

A. Yes, sir.

Q. And you don't know what it was?

A. No; I do not.

Q. Do you know whether you subscribed to an oath while you were in bed?

A. Yes, sir.

Q. Was it the affidavit that you subscribed your name to while you were in bed?

A. I don't know whether it was the affidavit or not.

Q. Was there a book presented to you for you to lay your hands on?

A. Yes.

Q. Where?

A. While I was in bed.

Q. Who did that?

A. Mr. Van Wagoner.

Q. Was anybody else sworn at that time?

A. Mr. Knowles.

Q. Anybody else?

A. I don't know as there was anybody else.

Q. Don't you know that you came up here to the Surrogate's office and swore to the inventory?

A. I don't know that it was.

Q. What is your best recollection about that?

A. I don't recollect anything only that I came to the Surrogate's office and something was read over and I, of course, swore to it, but I don't know what it was.

Q. What was the business of your husband?

A. He was a contractor.

Q. How long had he lived in Paterson before his death?

A. Some 9 years, I guess—I couldn't say how long.

Q. You say the safe was opened by an expert?

A. Yes, sir.

Q. Who was that expert?

A. I couldn't tell you his name.

Q. Who brought him there?

A. Mr. Tillier went to New York to the Herring Safe Company.

Q. Was that before or after the inventory was taken?

A. The day before.

Q. Were you present?

A. No, sir.

Q. How did you know it was opened?

A. The expert first came up stairs to me, because Mr. Knowles was not at the house then, and I sent some of the children for Mr. Knowles, and the expert went down with Mr. Knowles to open the safe.

Q. Who had the key?

A. I had.

Q. To whom did you give it?

A. To Mr. Knowles.

Q. Do you know what he did with it?

A. He opened the safe the next morning with it.

Q. Were you present when Mr. Knowles opened the safe?

A. Yes, sir.

Q. Who else was present?

A. No one.

Q. Was that before the inventory was taken?

A. Yes, sir.

Q. What part of the safe was opened after the outside doors?

A. The little wooden box or drawer, whatever you may call it.

Q. Do you understand that that little wooden box was opened before the inventory was taken?

A. Yes, sir.

Q. And in that was found this money which you say amounted to $7,555?

A. Yes, sir.
Q. Before the inventory was taken?
A. Yes, sir.
Q. Are you certain of that?
A. Yes, sir.
Q. Try to refresh your memory?
A. I am certain of it.
Q. What other money was found in the safe besides that which you say was in the little box?
A. None, sir.
Q. None in the safe?
A. Not that I saw.
Q. There was other money in the inventory?
A. Yes, sir.
Q. Where did that come from?
A. It was in the safe.
Q. In what part of the safe?
A. In the same box where the $7,555 was.
Q. Wasn't there money in that part of the safe?
A. No, sir.
Q. None whatever?
A. Not that I ever seen.
Q. Don't you know from recollection that the little box was opened two or three weeks after the inventory was filed?
A. No, sir.
Q. Do you mean to say you don't recollect or that it was not?
A. After it was filed?
Q. Yes.
A. How opened—what for?
Q. Opened and the money found in the little drawer?
A. No, sir.
Q. Then did you get no money out of the safe except what you found in the little drawer?
A. No, sir.
Q. You are sure of that?
A. Yes, sir.

Q. There was no money found in any other part of the safe?

A. No, sir.

Q. Then the appraisers found no money in the safe?

A. No, sir; only the $500 that Mr. Knowles took out of the $7,555 and put in $500 as I said before, saying it wouldn't look well to take all the money out.

Q. Were the appraisers by at that time?

A. No, sir.

Q. Did the appraisers put that $500 in the inventory?

A. Yes.

Q. You know that?

A. Only what Mr. Knowles told me.

Q. Who had the key to the little drawer?

A. I did, first.

Q. And when did you give it to Mr. Knowles?

A. When he went down the morning the inventory was taken.

Q. You gave him the key to the little drawer?

A. I gave him the keys; they were all in a bunch.

Q. You did not go down to the safe that morning?

A. Yes, sir.

Q. You were down with him?

A. Yes, sir.

Q. And the appraisers were there?

A. No, sir.

Q. Was this done before the appraisers came or after?

A. Before.

Q. What time of day was it?

A. About 8 o'clock.

Q. When did the appraisers come?

A. About 11, I think; I am not sure.

Q. What time did the expert get there?

A. This was the day before the expert got there, before the inventory was taken; the expert was from New York.

Q. The time you gave the key, the time you went

down to the safe, was that before or after the expert came?

A. After the expert was there.

Q. How long after?

A. The next morning.

Q. How long did the expert come before the inventory was taken?

A. The day before.

Q. Did you see the expert open the door?

A. No, sir.

Q. Was any money taken out on that day?

A. No, sir; not that I know of.

Q. Did you go down to look at the safe that day?

A. No, sir.

Q. Was the little drawer opened that day?

A. Not that I know of.

Q. Did you know before the safe was opened that your husband had any money in the little drawer?

A. I knew there was some money there.

Q. Did you know how much he had there?

A. No, sir; I did not.

Q. You did not know what he did?

A. No, sir.

Q. Did he ever tell you that he had money in the safe to any extent?

A. Yes, sir.

Q. Did you ever see him open the safe?

A. Yes, sir.

Q. Was there not more than one place there in which money was kept?

A. Sometimes he put it in the iron box and sometimes in a little drawer.

Q. Wasn't there some money found in the iron box?

A. No, sir?

Q. When the inventory was taken?

A. No, sir.

Q. Are you sure of that?

A. Yes, sir.

Q. Will you tell us then the day of the month when you and Mr. Knowles took the money out of the little drawer?

A. I can't tell you the day of the month.

Q. But it was before the inventory was made?

A. Yes, sir.

Q. And before the appraisers came there to make the inventory?

A. Yes, sir.

Q. Of that you are certain?

A. Yes, sir.

Q. Who opened the little drawer?

A. Mr. Knowles.

Q. And you saw him do it?

A. Yes, sir.

Q. Were you surprised when you found money in there?

A. No, I don't know that I was surprised; I knew there was money in there, but I didn't know how much.

Q. It was counted then?

A. No, sir.

Q. Didn't you count it?

A. Not right there.

Q. Didn't Mr. Knowles count it?

A. No, sir; not right there.

Q. Wasn't it all in bills?

A. Yes, sir.

Q. No specie?

A. No, sir.

Q. Were they large or small bills?

A. There were $4,000 that were rolled with an elastic around them.

Q. How large were the bills?

A. Mostly all $20 bills; I can't say whether there were tens or not.

Q. Still he took that money out of the drawer and put it in your lap?

A. Yes, sir.

Q. What did you do with it?

A. Mr. Knowles got a newspaper and put it in a small package and put four elastics around it, two *this* way and two across.

Q. It was not counted before Mr. Knowles put it in the newspaper?

A. No, sir.

Q. Then at that time you don't know how much there was there?

A. No, sir.

Q. Neither did Mr. Knowles?

A. No, sir.

Q. And Mr. Knowles took it away with him?

A. No, sir; Mr. Knowles told me to put it in my pocket so that Mrs. Jackson, the nurse, would not see it.

Q. How big was the package?

A. About so large and so wide.

Q. Did you put it in your pocket?

A. Yes, sir.

Q. Where did you go with it?

A. Up-stairs.

Q. Did Mr. Knowles go up-stairs with you?

A. Yes, sir.

Q. At the same time?

A. Yes, sir.

Q. When you got up-stairs with it what did you do with it?

A. Placed it under the pillow first.

Q. Did you go to bed?

A. Yes, sir.

Q. Were you dressed?

A. No; I had on two skirts and a blanket around my shoulders.

A. And you went to bed without making any other preparation, take off any clothes or put on any others?

A. Yes; until half an hour afterwards.

Q. Why did you go to bed?

A. Because Mr. Knowles was in the room.

Q. Is that the reason you went to bed?

A. That is the reason I went to bed with my skirts on.

Q. What was the necessity of your going to bed?

A. I was sick.

Q. You had been up some time?

A. No, sir.

Q. Had you been in bed long?

A. I had been in from the time my husband was buried till that morning.

Q. How long was that?

A. I can't say exactly.

Q. What was your sickness?

A. I can't say exactly.

Q. Did you have a physician?

A. Yes, sir.

Q. Who was it?

A. Dr. Blundell.

Q. How soon after your husband's death?

A. I think it was the next day.

Q. We have got you in bed and got you with this package of money under your pillow. What was then done with it? What did you do with it from that time?

A. I didn't do anything with it; Mr. Knowles took it from under the pillow and put it under the bureau.

Q. The money was placed under your pillow?

A. Yes, sir.

Q. You were in bed?

A. Yes, sir.

Q. And about what time of day?

A. I guess it was about half-past eight.

Q. Give it as nearly as you can?

A. That is as near as I know; I can't say how long exactly.

Q. What day of the week?

A. That I can't say.

Q. Who was in the house at that time?

A. Mrs. Jackson and Mr. Knowles and myself.

Q. Was Mrs. Jackson in your room?

A. When?

Q. When you went up-stairs with the money?

A. Yes, sir; she went up with me.

Q. And you carried it in your pocket up-stairs?

A. Yes, sir.

Q And you went to bed with the money in your pocket?

A. Yes, first off.

Q. While Mrs. Jackson was in the room?

A. Yes, sir.

Q. Did Mrs. Jackson stay in the room?

A. No, sir.

Q. Did you go up before Mr. Knowles?

A. Mr. Knowles went up with me, holding my arm.

Q. When you carried the money up in your pocket did he go with you?

A. Yes; he had hold of my arm.

Q. Assisting you up?

A. Yes, sir.

Q. And you went to bed immediately?

A. Yes, sir.

Q. And had the money in your pocket?

A. Yes, sir.

Q. Did you take the money out of the package then?

A. Yes.

Q. When?

A. Right after Mrs. Jackson went down stairs.

Q. How soon did she come down after you and Mr. Knowles came up?

A. As soon as I got into the bed and got covered up.

Q. How soon after?

A. About a minute, I suppose.

Q. Did you ask her to leave?

A. No, sir.

Q. Do you know where she is now?

A. Yes, sir.

Q. Where does she live?

A. About Plum street and some other.

Q. How long did you lie in bed before you took the package of money out of your pocket?

A. Not a minute; Mr. Knowles said we must put it away.

Q. You took the package out of your pocket?

A. Yes, sir.

Q. What part of your dress had you the package in?

A. My skirt.

Q. Underskirt?

A. Yes, sir.

Q. Did you have the package in your underskirt?

A. It was the underskirt of my dress.

Q. And there was a pocket in it?

A. Yes, sir.

Q. Was it the dress you wore in your daily business?

A. Yes, sir.

Q. How large was that pocket?

A. I don't know, the usual size of a pocket you put in a dress.

Q. Which side of the dress was the pocket?

A. On the right hand side.

Q. Did you make the dress?

A. Yes, sir.

Q. You went to bed with that dress on and with the money in that pocket?

A. Yes.

Q. Did you take it out yourself?

A. Yes, sir.

Q. Could you take it out without sitting up in bed?

A. I don't remember whether I sat up in bed or not.

Q. You don't remember anything about that?

A. I don't remember whether I sat up or not to take it out.

Q. Do you remember taking it out?

A. Yes.

Q. How can you remember that?

A. Very well.

Q. Which hand did you take it out with ?

A. The right hand.

Q. What did you do with the left hand while you were taking it out with the right?

A. I don't know.

Q. Did you use your left hand in assisting to take it out?

A. I don't remember.

Q. Didn't it require force to get it into your pocket?

A. I don't remember.

Q. Didn't you have to pull hard and make a good deal of effort to get it out?

A. I don't remember.

Q. How many inches wide was this pocket?

A. I couldn't say.

Q. Could you get the package out of your pocket with one hand?

A. I don't remember whether I used two hands or not, but I got it out with my right hand I know.

Q. Were your hands under the bed clothes when you got it out of your pocket?

A. I don't know whether I threw off the bed-clothes or not.

Q. Did you sit up or lie down when you took it out?

A. I was lying down.

Q. On which side?

A. I don't know which side I was lying on.

Q. You got it some way or other?

A. Yes, sir.

Q. When you got it what did you do with it?

A. I laid it on the bed there.

Q. What part of the bed?

A. The side of the bed.

Q. Which side?

A. I think it was on the left side; but it was on the bed.

Q. Where was Mr. Knowles?

A. Sitting on the bed.

Q. On what side?
A. The left side.
Q. What did you say when you took it out of your pocket and laid it down on the left side of the bed?
A. I don't remember that I said anything.
Q. Not a word?
A. I don't remember that I did.
Q. Who took the elastics off that package?
A. Mr. Knowles did.
Q. What did he do with them?
A. He left them on the bed.
Q. Then what did he do?
A. Counted the money.
Q. Where did he lay the money?
A. Right on the bed.
Q. Where were you?
A. In bed.
Q. Sitting up or lying down?
A. Lying down.
Q. All the time?
A. Yes.
Q. Did you help to count the money?
A. Yes; he counted over the bills, laid them by the bed, and of course as he counted them I counted them too.
Q. Did you take the bills in your hand?
A. No; I did not.
Q. Who did?
A. Mr. Knowles.
Q. Tell us how he counted them?
A. I couldn't tell exactly, only as he unfolded the elastics off the money he laid it aside the bed, and as I laid there he counted them and I counted them with him.
Q Did he count them in an audible voice?
A. I don't know as he did very loud, just so I could hear him; I was very near him.
Q. Did you keep a memorandum when he counted 100.

A. No ; he put them out in several piles.

Q. When he counted 100 did he commence another pile ?

A. I couldn't say whether it was 100 or not.

Q. Can't you tell us something about it ?

A. No ; I could not ; but I know the amount.

Q. Do you know whether he counted it correctly or not ?

A. Well, I was there, and my eyes seen it.

Q. Do you know whether he did count it correctly or not ?

A. I counted just the same as he laid the bill down.

Q. Did you count audibly or mentally ?

A. I just kept it in my mind as he counted it.

Q. When he counted out 5, 10 and 15 did you keep it all in your mind ?

A. Yes.

Q. Did you know when he got to 100 ?

By the Court :

She had not said she counted it in that way.

Mr. Williams :

She said he counted it in several piles.

By the Court :

But not in parcels of 100.

Q. Do you know how many parcels he made ?

A. No, sir.

Q. About how many ?

A. I can't say.

Q. Can you tell us how much there was in any one parcel ?

A. There was $4,000 in rolls ; that was when he got it in the safe.

Q. I mean when he counted it; can you tell me how much he put in any one parcel—it was put all on the bed?

A. Yes, sir.

Q. How much was in any one parcel?

A. I can't say.

Q. How do you know how many dollars there were in that package that you put in your pocket?

A. Because he counted it up and it amounted to that amount of money.

Q. Was any memorandum made in figures of the amounts?

A. Yes, sir; I think when he took it down to the safe figures were made on a small piece of brown paper, about so large [describing], common brown paper, not paper that they wrap up groceries in, but a little heavier.

Q. What did he mark on that with?

A. Pencil.

Q. Who gave him the pencil?

A. He had it in his pocket.

Q. What became of that paper?

A. I don't know.

Q. Have you ever seen it since?

A. No, sir.

Q. Have you ever asked him for it?

A. No, sir.

Q. Ever speak of it before?

A. Not that I remember.

Q Did you ever tell any person before that those figures were put on a piece of brown paper?

A. Yes, sir.

Q. Whom?

A. I don't think it is right for me to say.

Q. Who was it?

A. My husband, for one.

Q. Did you tell any one else?

A. I don't remember as I did.

Q. When did you tell your husband?

A. I can't say.

Q. About when?

A. I don't know.

Q. Did you ever tell Mr. Hilton?

A. No, sir.

Q. You have had many interviews with Mr. Hilton about this matter?

A. I have seen him two or three times; I had other business with Mr. Hilton.

Q. Did you have statements given to you concerning the estate; did he give you statements in writing about the money received and paid out?

A. Not to me.

Q. Never had any memorandum?

A. No, sir.

Q. Sure of that?

A. Yes, sir.

Q. Quite sure?

A. Yes, sir.

Q. Did you never receive one in any way?

A. No; not me.

Q. What do you mean by "not me?"

A. I never have.

Q. Who else?

A. I can't say; I think Mr. Griggs did.

Q. Didn't you ever, in talking over this matter, tell Mr. Hilton that the money was counted on the bed and the figures were put down by Mr. Knowles on a piece of brown paper?

A. Not that I remember.

Q. How large a piece of paper was that?

A. About so large. [Witness indicates about 4 inches.]

Q. How large the other way?

A. It was a kind of a three-cornered paper.

Q. Did you see him foot it up on the piece of brown paper?

A. He just put the amount on a piece of brown paper.

Q. Only the total amount?

A. Yes.

Q. He didn't put down several amounts?

A. No, sir.

Q. He only put the total amount?

A. Yes.

Q. Then there was no memorandum of the amount till he finished; is that what you say?

A. Yes; not till he had finished counting.

Q. On this piece of brown paper he put down figures representing the amount of money that was there?

A. Yes.

Q. Who kept account of the number of hundreds as he counted?

She has not said it was kept in that way. She has said she did not know how much there was in any one parcel, and she did not know how many there were.

Q. Did you see the figures which he made on this piece of paper?

A. He made the figures there.

Q. Did you see the figures?

A. He just held it up, and he said: "I have put it here, the amount on this piece of paper."

Q. Did you see the figures on that piece of paper?

A. Not close by me.

Q. Just state what Mr. Knowles said when he showed the paper and you saw the figures on it.

A. He did not hold it up and show it to me; he just had the money and the paper, and the paper was on his lap; and then he put down the figures, and I suppose he was about a half a yard from the bed, and he ran over the figures as he counted the money, and then he put those figures down, and he says: "I will take this down in the safe with the money."

Q. Is that all he said?

A. That is all I remember he said.

Q. He did not tell you the amount of the figures on the paper?

A. It was the amount we had counted.

Q. Did he tell you what figures he had put down?

A. No, sir.

Q. Did you see what figures he put down?

A. No; only as he said he had done it.

Q. You kept the amount of dollars in mind as he counted it?

A. Yes, sir.

Q. How much did you make it?

A. With the $500 in the safe it was $7,555.

Q. I want to know how many dollars you made in that parcel which you put in your pocket and took to bed with you, and which was counted on the bed?

A. $7,055.

Q. Are you sure of that?

A. Yes, sir.

Q. Are you sure of that from anything that Mr. Knowles, or from your own counting as he counted out the money?

A. Of course we both counted it, as I told you.

Q. Did Mr. Knowles say it amounted to $7,055?

A. Yes, sir.

Q. Did you agree with him?

A. Yes, sir.

Q. What did you say?

A. I didn't say anything, only we counted it over.

Q. How much did you make it?

A. Just the same.

Q. Tell us how you reached that conclusion.

A. I don't know how I counted it only as he laid the bills down.

Q. Can you tell the Court in any way how it was done?

A. No, sir.

Q. Can you tell the Court how you kept it in your mind?

A. I kept it in mind as he laid the bills down, twenties, tens or fives ; I cannot recollect what they were.

Q. You made no figures to assist your memory ?

A. No, sir.

Q. Did you keep it in your mind in hundreds or some other way ?

A. I can't tell you.

Q. Do you mean to say you knew when Mr. Knowles had finished counting that there were $7,055 there ?

A. Yes, sir.

Q. You mean to say that ?

A. Yes, sir.

Q. Give me your reason for saying that.

A. Because I counted it.

Q. In what way ?

A. As he laid down the bills, twenties, tens and fives, I saw what there was.

Q. When you came to 100 what did you do ?

A. I don't remember that we did it that way.

Q. Tell us, if you please, with more certainty, if you can, how you carried in your mind the amount so that you could tell there was $7,055.

A. As it was counted.

Q I only want to know if you can give us the process by which it was done ?

A. No, sir ; I cannot.

Q. You can't do it at all ?

A. No, sir ; only that it was counted, and that was the amount Mr. Knowles told me he put down on a piece of brown paper.

Q. You have never seen that paper since ?

A. No, sir ; I never have.

Q. What was done with the money after it was counted.

A. He put it under the bureau ; he wrapped it up in the same paper which it was wrapped in before and put the elastics around it and placed it under the bureau.

Q. On the floor ?

A. Yes, sir.

Q. Was it visible there to any person in the room?

A. No sir; it is a very low bureau.

Q. How long did it remain there under the bureau?

A. Till the same afternoon.

Q. What became of it then?

A. Mr. Knowles took it down to the safe.

Q. Did you see Mr. Knowles take it?

A. Yes, sir.

Q. Did you go down-stairs with him?

A. No, sir.

Q. Did you see him take it from under the bureau?

A. Yes.

Q. Where were you?

A. I was in bed.

Q. Had you been in bed from the time of the counting of the money till that time?

A. Yes, sir.

Q. Who else was in the room besides you?

A. No one when he took the money from under the bureau.

Q. Where was Mrs. Jackson?

A. Down-stairs.

Q. Had she been in the room between the counting of the money and the time you say Mr. Knowles took it from under the bureau?

A. Yes, sir.

Q. What did Mr. Knowles do with the money?

A. He said he took it to the safe that is all I know.

Q. Did you see it after that?

A. No, sir.

Q. Did you see it in the safe after that or any part of it?

A. No, sir.

Q. Did you have the keys to the safe?

A. No, sir.

Q. Did you have the keys to the little box?

A. No, sir.

Q. Do you know then of your own knowledge whether Mr. Knowles put it in the safe?

A. Only what he told me.

Q. Did you remain in bed sick long after that time?

A. Yes.

Q. About how long?

A. I can't say exactly.

Q. Well, to the best of your recollection?

A. I can't say.

Q. Three weeks?

A. I can't say whether it was three weeks or not.

Q. About how long?

A. I think it was two weeks after that I was able to be up some part of the time.

Q. Don't you know $1,000 being paid out of that money by Mr. Knowles in your presence?

A. He paid some $1,000, I think, to my brother.

Q. When was that paid?

A. I can't say what day of the month that was paid.

Q. Did you know when it was taken from the safe for that purpose?

A. He came down from the Eagle Brewery and that they were that much short of paying my brother; the Eagle Brewery owed Mr. Thompson some money, and he came down and said they were that much short.

Q. How much short?

A. I can't say the exact amount now, and he came down and said to me, "They are so much money short of paying your brother Ben, and I will take it out of that money that was placed in the safe," and he went in and took it out.

Q. Mr. Knowles said that?

A. Yes, sir.

Q. Did you see him?

A. No, sir.

Q. You don't know whether he took it out or not?

A. He went into the room, and I was sitting in the rocking chair.

Q. You saw him go to the safe?

A. Yes, sir.

Q. You did not see him take any money out?

A. He came out with some money in his hand.

Q. You don't know how much?

A. No, sir.

Q. Was it part of the $7,055?

A. He told me he was going to the safe to get some of it.

Q. On this occasion that I have just referred to, don't you know that Mr. Knowles got a key from a little inside drawer from you to get the money out to pay the money out?

A. No, sir.

Q. You are sure?

A. Yes, sir.

Q. Do you mean to say you never had the key of that little drawer?

A. I had before this money was found, but never after he took the money down in the afternoon.

Q. And you did not have it when he took this money for your brother?

A. No, sir; he said he had a right to have the keys of the safe.

Q. You had a little key to this drawer before the money was found?

A. Yes, sir.

Q. Why didn't you open that little drawer?

A. Because I could not open the safe.

Q. You had been there when the safe was opened?

A. No, sir; I was in bed.

Q. Had you been there no other time when it was opened?

A. When my husband opened it.

Q. I mean after your husband's death.

A. No, sir.

Q. Never at any other time?

A. Not till Mr. Knowles went down in the morning to open it.

Q. You had the key of the little drawer at that time?

A. Yes, sir.

Q. Why didn't you look into the little drawer at that time?

A. When?

Q. When Mr. Knowles opened the safe.

A. Mr. Knowles opened the drawer.

Q. You were present then?

A. Yes, sir.

Q. And he took the money then?

A. Yes, sir.

Q. That was before the inventory was made?

A. Yes, sir.

Q. You are sure of that?

A. Yes, sir.

Q. Did your husband have a purse?

A. Yes, sir.

Q. Was there any money in his purse when he died?

A. Yes, sir.

Q. How much?

A. I can't say exactly, but I think it was a hundred odd dollars.

Q. Wasn't there some in the chest of the safe?

A. No, sir; not in the iron box.

Q. In the inventory, under April the 10th, there is an item of cash in purse and safe of $629.12; do you remember anything about that?

A. I know that the $500 was left in the safe and there was $.00 and something left in his pocket book; I cannot say the amount.

Q. You knew that?

A. Yes, sir.

Q. Was this money which was in the purse and safe, $629.12, given up to the appraisers?

A. Yes, sir.

Q. Do you know Mr. Richard Rossiter?

A. Yes, sir.

Q. Was any money paid to him before the inventory was taken?

A. I don't remember that there was.

Q. Don't you know he was paid on a mortgage of $500?

A. Yes; but I don't know whether it was before the inventory was taken or not; I believe Mr. Knowles did; I can't say for sure; I think he did.

Q. You say you can't recollect whether it was before or after the inventory?

A. I do not.

Q. What is your best recollection about it?

A. I don't remember whether it was before or after.

Q. You can not say it was?

A. I can not say.

Q. Do you know, if it was before the inventory was made, where the money was got from?

A. I don't know whether he was paid before the inventory was taken.

Q. You know he was paid $500?

A. I don't know that.

Q. Did you get a notice this morning to produce some paper?

A. Yes, sir.

Q. Have you got that paper?

A. No, sir, I have not got that; the paper that the constable served me with.

Mr. Stevenson: I have a paper which I procured from Mr. Griggs, if I remember rightly, which I understood to be called for by the notice. It is entitled a statement of payments made Annie Downie by Mr. Knowles.

Mr. Hilton: That is not the paper.

Q. Just look at that paper and see if that is a copy of a paper which you received this morning?

The paper shown witness is admitted to be a copy of the paper given to the witness by the constable.

Q. When did you get married again ?

A. In 1877.

Q. How long after your husband's death ?

A. Three months and three days.

Q. How many children did you have by your first husband ?

A. Three.

Q. They are all living ?

A. Yes.

Q. Since your marriage you have not had much to do with the estate ?

A. No, sir.

Q. Are you friendly with Mr. Knowles ?

A. Not very now.

Q. You were formerly friendly with him ?

A. Yes, sir.

Q. When did you cease to be friendly with him ?

A. He came as a friend to the house ; I guess a year before my husband died ; I cannot say whether it was exactly a year or not.

Q. When did you become unfriendly ?

A. I cannot say how long ; he never was very pleasant with me after I came back from Europe.

Q. Tell us as nearly as you can when you became unfriendly.

A. I can't say ; I am not sure.

Q. What was the first cause that led you to be unfriendly ?

A. I cannot say ; one cause was that he told me when I asked him for money, and it was in cold weather, in the fall of the year, I think it was in 1877, I asked him for money for the children to have some shoes, and he says "Leave them go barefooted, they were not any better to go barefooted than he was when he was a child."

Q. Did you make an application to have the taxes paid on real estate which your husband left?

Objected to as immaterial.

Objection overruled.

A. I didn't have any real estate myself.

By the Court:

Q. Did you ever ask him to pay the taxes on the premises where you lived?

A. Yes; he said he shouldn't pay them.

Q When did you ask him?

A. I couldn't say when it was.

RE-DIRECT.

By Mr. Stevenson:

Q. What are the ages of your three children?

A. One is 13, one 12 and one 9.

Q. You spoke of Mr. Knowles using a paper. When the money was counted was that paper employed by him during the first count or the second count of the money?

A. When it was counted the second time.

Q. Did Mr. Knowles pay you any large sum of money in the spring or summer of that same year when your husband died?

A. He paid me $500.

Q What did you do with the money?

A. I took it home.

Q. Where to?

A. To my house, 13 Governor street.

Q Did you go to Europe about that time?

A. Not with that money; he gave me $500 when I went to Europe.

Q. In what shape was that?

A. He did not give me all the money; he paid out for the ticket and handed me the rest.

Q. In what shape?

A. In bills.

Q. Do you remember how long after the appraisers, were down at your house, when the inventory was taken, was it that you went to the Surrogate's office when you were sworn?

A. I don't remember.

Q. Do you recollect about how long it was?

A. No; I do not.

Q. You spoke of about $130 being found in your husband's purse?

A. Yes.

Q. Where was that money found?

A. In Mr. Thompson's pocket.

Q. In what pocket?

A. In his pants pocket.

Q. Where were his pantaloons when he died?

A. There was a knob on the bed, and they were just hanging up on the bed.

Q. Did they remain there at the time of his death?

A. Until a few minutes after he died.

Q. What was done with them?

A. Mr. Knowles took them down and took out the money.

Q. Was Mr. Knowles well acquainted with your family prior to your husband's death?

A. He was with my husband.

Q. Was he often at the house?

A. Yes, sir; very often.

Q. How frequently was he there after your husband's death and before the inventory was taken?

A. Many a time—I don't remember how many times.

Q. Did Mr. Knowles have any conversation with you about there being money in the safe before the safe was opened?

A. He said he thought there was some money in the safe; of course he had been to the bank and drew out some money for Mr. Thompson.

Q. Did you tell him anything what you knew about the money?

A. No, sir; I did not.

Q. You said you had had some conversation with Mr. Hilton about this matter—do you know how long ago that was?

A. No, sir.

Q. Do you remember who told you first about this account?

A. About what account?

Q. About the figure being $5,235.31 instead of seven thousand and odd dollars?

A. Mr. Stevenson told me, after examining the books.

Q. When the $1,100 was taken out of the safe, or a sum of about that amount, to be paid to your brother, did you say that you were in the same room with the safe when it was taken out?

A. No, sir; I said I was in the other room; he went into the other room where the safe was and came out with them in his hands; I was sitting in a rocking chair.

Q. What did you do with the money which Mr. Knowles gave to you when you went to England?

A. Well, first off, he laid it on the table, and then he said he changed his mind and said he would need to get some paper, a draft, and he would owe one of those drafts, and I would draw the money over in England at the bank there.

Q. Was that done?

A. Yes, sir.

Q. And you got the draft?

A. Yes, sir.

By the Court:

Q. When did Mr. Stevenson tell you about this amount of $5,235.31 instead of $7,555?

A. I cannot say how long it was; I guess it was over two months ago; I cannot say how long.

Q. It appears by the inventory that you were sworn on the 23d of April, 1877, before Isaac Van Wagoner, Surrogate of this county, and that you swore that the foregoing (referring to inventory) was a true and correct inventory of all the goods and chattels, etc., of said Sam Thompson, and in that inventory there is $629 put in as money. How did you come to swear to that if you knew about this money found in the safe, $7,000 of it, before that inventory was taken?

A. Because Mr. Knowles told me, and I swore to it for the best, I thought; he said if it got into the Orphans' Court it would be scattered away to nothing; of course I did not know anything about law, and I was very sick at the time, and he said he thought my husband intended that money for myself.

Q. Did that conversation between you and him occur before you swore to that before Isaac Van Wagoner?

A. Yes, sir.

Q. Then did you both know that this inventory was filed, that this $5,000 or $7,000 was there in money?

A. Yes, sir.

By Mr. Stevenson:

Q. When did you first learn of this discrepancy in Mr. Knowles' accounts, or that he admitted that he only received $5,000 and odd.

A. You told me first.

Q. Do you mean your first intimation as to this account was from me?

A. Well, no, not exactly; first off, my husband was at the Court House and seen it, and then I came to you.

Q. What did your husband tell you?

A. He told me that it was not near the amount of what I had said there was found in the safe.

Q. Do you know about how long ago that was?

A. No ; I do not know how long.

Q. Did you have any conversation with Mr. Hilton after that about it ?

A. I don't remember whether I ever spoke to him about it or not.

Q. Do you know how long after that was it that I made the examination of the account and stated the result to you ?

A. I think it was about a month after ; I can't say exactly.

Q. About how long ago was it that you came to me in this matter ?

A. I don't remember exactly the time.

Q. About how long ago was it ?

A. I think it was about two months, or over two months ; something about that ; I can't say exactly ; it was in quite warm weather when I first came to you.

Q. It may have been a great deal more than that, may it not ?

A. I cannot say for sure.

WILLIAM TILLIER, sworn on behalf of the petitioner, testifies as follows :

By Mr. Stevenson:

Q. Where do you live ?

A. In 26th street, Paterson.

Q. Did you know Mr. Thompson, the deceased, in his life time ?

A. Yes, sir.

Q. Do you recollect the time of his death ?

A. It was in the fore part of April, 1877.

Q. Were you present at his funeral ?

A. Yes, sir.
Q. Do you know of his having a safe there?
A. Yes, sir.
Q. Whose safe is it—whose make?
A. Herring's.
Q. Did you make any attempt to open the safe?
A. There was some attempt made; Knowles and myself were present there; Mr. Knowles tried to open it, but could not.
Q. Did he use certain numbers?
A. He told me he knew the numbers, but he failed to open it on the combination.
Q. Do you know how that safe was opened?
A. Mrs. Thompson asked me to go down to Herring's and get the right combination, and I went down and brought up the combination, and it could not be opened, and then I suggested to Mrs. Thompson to have an expert, one of Mr. Herring's men, to come up and open it; Mr. Knowles could not open it. So I went down again the next day and saw Herring, and they sent up a man and had it opened; I think the lock was out of order at that time.

By the Court:

Q. Do you know the man's name that came up to open the safe?
A. No, sir, I do not; they said they would send one up.

By Mr. Stevenson:

Q. Did you go to Mr. Herring's place in New York?
A. Yes, sir; corner of Murray street and Broadway.
Q. Did you come up with the expert yourself?
A. No, sir.
Q. Do you know what day of the month it was?
A. No, sir.

By the Court:

Q. How long was it after Mr. Thompson's death?
A. I think it was two or three days after the funeral.

By Mr. Stevenson:

Q. Was it within a week after his death?
A. Yes; I guess it was. Mrs. Downie sent for me to come down there, and I went down.
Q. Do you know who paid the expert, if anybody?
A. I don't know.
Q. Do you recollect the name of the expert?
A. No, sir.

Mr. Williams:

You will find the item for the expert is charged on the 17th of April, 1877, $5.00.

CROSS-EXAMINATION.

By Mr. Williams:

Q. You were not present when the expert was there?
A. No, sir.
Q. Were you present at any time when Mr. Knowles tried to open the safe?
A. Only once; that was previous to the expert's coming up.
Q. Was Mrs. Downie there?
A. I could not say positively; she was sick at the time.
Q. Was she up at any time you called at the house after Mr. Thompson's death?
A. Not when I was there. It was some months after that. It was over a month.
Q. Do you know when the inventory was taken?

A. No, sir.

Q. You did not assist in any way in that?

A. No, sir; they wanted me to assist, but I could not attend to it.

Mr. Stevenson puts in evidence pages 300 to 325, entries admitted to be made by Mr. Allen Knowles, showing his account of receipts and disbursements.

Recess.

SARAH JACKSON, sworn on behalf of the petitioner, testifies as follows:

By Mr. Stevenson:

Q. Where do you live?

A. Spring street.

Q. In the city of Paterson?

A. Yes.

Q. How near to Governor street?

A. No. 219 Spring street.

Q. Did you know Mr. Sam Thompson in his life time?

A. Yes, sir.

Q. Do you recollect the time when he died?

A. Yes, sir.

Q. Were you present in his house at the time of his death or at his funeral?

A. I was at his funeral.

Q. Where were you living at that time?

A. The same place where I am now.

Q. What was Mrs. Thompson's condition at the time of the funeral of her husband?

A. She was not very well then; she was taken sick shortly after the funeral.

Q. Did you nurse her during that illness?

A. Yes, sir.

Q. Do you recollect seeing Mr. Knowles there at that time?

A. I seen him there at different times after the death of Mr. Thompson.

Q Do you recollect any occasion on which Mrs. Downie went down stairs with him?

A. Yes, sir; I remember it.

Q. Do you know what she went down there for?

A. They went into the parlor to have the safe opened; I did not go into the room at all.

Q. Was Mrs. Downie in bed at that time?

A. Yes.

Q. Did she get out of bed to go down there?

A. Yes, sir.

Q. Who assisted her, if anybody?

A. If I am not mistaken Mr. Knowles helped her down stairs.

Q. How was she dressed or covered?

A. Something loosely thrown around her shoulders; but I could not pretend to say exactly.

Q. Did you help to dress her so that she could go down?

A. I remember seeing her put on her shoes and stockings and such as that.

Q. Do you recollect when she came back?

A. Yes, sir; I remember when she came back; Mr. Knowles took hold of her arm up-stairs.

Q. Do you mean assisted her up-stairs?

A. Yes, sir.

Q. Back to the bed?

A. Yes, sir.

Q. Were you in the room when she came in?

A. Yes, sir; but I went right away out again.

Q. Where did you go to?

A. I went down into the lower room.

Q. Why did you go down ?

A. Well I had no other business to do ; they did not want me that I knew of, and they did not ask me to stay.

Q. Were you attending to the house-work at that time ?

A. Yes, sir.

Q. Do you remember when the appraisers were there, Mr. Garside and Mr. Crossley.

A. Yes, sir.

Q. Was that before or after this occasion when Mrs. Downie was assisted down to where this safe was.

A. It was after ; the next day after, if I am not mistaken.

Q. Do you recollect who was there besides Mr. Garside and Mr. Crossley ?

A. I do not ; Mr. Knowles was there.

Petitioner Rests.

Mr. Hilton opens for Respondent.

ALLEN KNOWLES, sworn for respondent, testified as follows :

By Mr. Williams :

Q. Were you the administrator of Sam Thompson ?

A. Yes, sir.

Q. Was anybody with you at any time.

A. The widow Thompson was co-administratrix ; her name I think is on the paper.

Q. She was the widow of Sam Thompson ?

A. Yes, sir.

Q. Did you have an inventory made?

A. Yes, sir.

Q. Who were the appraisers?

A. Mr. Lees Garside and Thomas Crossley.

Q. State if you please to the Court whether or not, so far as you know, a full inventory was made of all the personal estate of Thompson, deceased.

A. After Thompson's death I was sent for to get there before he died, but I didn't arrive there till he was dead, and there was John H. Van Houten there and James Demarest; whether Mrs. Thompson found his pocketbook—

Q. Question repeated.

A. Yes sir, certainly; all that we knew of.

Q. What did you find in the safe at the time of making the inventory?

A. We found $500 in this iron drawer in the centre, and I had been told about that before Sam's death and what to do with it.

Q. By whom?

A. Sam Thompson.

Q. What other money, if any, did you find at the time of the appraisement?

A. We found none at that time, only what we found before at his death; it was found in his purse.

Q. Was that put in the appraisement?

A. Yes, sir.

Q. Did you or not inventory all the money that was found at the time the appraisement was made?

A. All that I knew of and that I knew of, for all I knew.

Q. Was the money produced at the time of the inventory?

A. I don't know that it was produced; I can't remember that it was.

Q. That was the true amount you knew of at the time?

A. Yes, sir.

Q. And so placed in the inventory?

A. Yes, sir.

Q. When and how did you get the safe open?

A. Mr. Tillier, that had been employed by Mr. Thompson to write up his accounts before Thompson died, was going to New York, and I was working in the Erie Railroad.

Q. When was it opened?

A. On the 17th of April, 1877.

Q. Before the appraisers were there?

A. It was before.

Q How long before?

A. It was 6 days, I think.

Q. Did you look at the safe that time?

A. Yes, sir; and the widow did too.

Q. And that was the time you found the $500?

A. Yes, sir.

Q. You found a further sum afterwards, did you not?

A. Yes, sir.

Q. When was that found?

A. That was found in the middle of May.

Q. Of the same year?

A. Yes, sir.

Q. State the circumstances, if you please, of the finding and how much it was.

A. Well, the widow had found the key of the little drawer in the bottom, had been either hidden by Thompson himself or mislaid, and she told me, and we opened it, and behold there was a nest of greenbacks. We immediately counted them, both of us together, right close by the safe on the lower part of the lounge, at the foot of the lounge, and we both counted it, and we counted it two or three times over; we disagreed about the amount, but eventually we agreed about it, and I would not swear positively about that, that I put it down immediately then, but I put it down very soon after, and it was put immediately back in the safe and the safe shut up.

Q. How much did you make it upon the count?

A. I thought I made it $4,250.

Q. You say you did not agree as to the amount. What do you mean by that?

A. She made it a different amount from what I did the first time, but we finally agreed.

Q. There was no disagreement in words, or anything of that kind?

A. No, sir; only a difference in the amount that each thought there was there.

Q. How near did you come together in making your separate counts?

A. I think there was some $500 difference the first time.

Q. Was that the first time you knew of money being in that drawer?

A. The very first, sir; I had no idea there was any.

Q. Had you the key to that drawer before it was given to you by Mrs. Downie?

A. No, sir.

Q. When was it given to you by Mrs. Downie?

A. At that time, I believe.

Q. That same day?

A. I can't say positive whether it was me or her opened it, but we were both present.

Q. Was that the first day you knew of such a key?

A. Yes, sir; I knew there should be one.

Q. Was that the first you ever saw of the key?

A. Yes, sir.

Q. After you put the money back in the drawer, as you state, did you make any entry of it?

A. Yes, sir; I did.

Q. In what?

A. In a little memorandum book.

Q. Have you got that?

A. Yes, sir.

Q. Will you produce it? [Book produced.]

A. This is the book that the widow gave me; it had black india rubber band around it.

Q. Did you make any entry as to the amount found?

A. No, sir.

Q. The entry then was as to the finding of the key? [After examining the book]

A. Yes, sir, and the money ; but I did not put the amount.

Q. In what book, if any, did you enter the amount of the money?

A. In what I call the day-book.

Q. When did you enter that? 10

A. I can't tell that ; I transcribed from that.

Q. I refer you to page 10 of the book you have produced and to an entry of May 14th. "Found in safe drawer $4,250." Whose handwriting is that?

A. It is mine ; I put it there.

Q. What does that mean?

A. That means that was the money that we found in the safe, as near as I could recollect when I put it down.

Q. Is that the amount which you and Mrs. Thompson supposed to be there? 20

A. Yes, sir.

Q. Did she agree upon the same amount?

A. I can't say positively as to that, but that is my belief.

Q. If there was any difference as to how much was it?

A. We had agreed about the amount ; there was no difference as to the quantity after we had counted it that day.

Q. I see that this is entered in a different colored 30 ink?

A. There were two ink bottles there, red ink and black ink.

Q Explain as to that.

A. Well, I was somewhat agitated about finding it, and not having put it into the inventory, and I might have dipped into the wrong bottle.

Q. Have you any other reason than that to your knowledge for writing that in red ink?

A. I don't know of any other; I frequently get mixed up as to those bottles.

By the Court:

Q. What are those figures in the margin there?

A. They have reference to the folios in the ledger.

By Mr. Williams:

Q. Is this the book you refer to, to which references were made in the margin of the other book?

[Showing witness a book.]

A. Yes.

Q. What book do you call that?

A. That is the ledger.

Q. In what was that item referred to in the book before examined?

A. "Found in iron safe $4,250;" that is it, sir.

Q. Under what date?

A. Under date of May 14th.

Q. That is taken from the day book?

A. Yes, sir.

Q. Did you count that money at any time afterwards?

A. I don't know that I did the whole amount.

Q. What became of it?

A. It was paid out and deposited in the bank or banks.

Q. When was it deposited in the banks?

A. I didn't deposit any of that, I think, until the widow went away.

Q. When?

A. She went away about the 20th of June.

Q. What did you do with it then?

A. I deposited it to the amount of perhaps $120,

$130 or $140; that was in when she came back; it was in from the same money.

Q. How much did you deposit in the banks?

A. I can't remember; it is down in figures there.

Q. Can you tell by looking at any book?

A. Yes, sir.

Q. Have you got the books with you?

A. That ledger there will tell.

By the Court:

Q. What bank did you keep your account with?

A. The First National and Second National.

Q. All under one name, or did you keep it Allen Knowles, administrator?

A. Allen Knowles, administrator.

Q. How much of this particular money, which you say you took out of the safe when Mrs. Thompson went to Europe, how much of that did you deposit in the banks?

A. I can't remember.

Q. About how much?

A. I deposited all there was left, except perhaps $140 or $150.

Q. Did you deposit any in the Savings Bank?

A. I am not sure—yes, $510.98 in 1880. There was a deposit June 29th, 1877 at 3 per cent., $1,250.

Q. What has become of the Passaic Savings Bank book?

A. I don't know what has become of it.

Q. Did you have your account settled? Did you give the book up?

A. I believe I did.

Q. What became of the one hundred and odd dollars which you left in the safe of this money?

A. I gave it to Mrs. Downie, I think.

Q. You have heard Mrs. Downie's testimony here this morning?

A. Yes, sir.

Q. Did you hear her say that you and she counted this money before the inventory was made?

A. Yes.

Q. Is that true or not?

A. No, sir; not a word of truth about it.

Q. Did you take the money and fold it up in a paper and give it to her for any purpose?

A. No, sir.

Q. Did you go up into her bed-room with her and count the money on the bed?

A. No, sir.

Q. After it was counted, as she has stated, did you put it again in a paper and place it under the bureau.

A. No, sir; I should think not.

Q. What do you mean by that?

A. I should have been a fool to have done it.

Q. Did you do it?

A. No, sir; I did not.

Q. Is she then entirely mistaken about that matter?

A. Oh, completely.

Q. Have you charged yourself in your accounts with all the money from every source received on account of that estate?

A. Everything down to 15 cents, as far as my knowledge goes; I think the lowest entry is 15 cents.

Q. How is it when you say you charge yourself with having found $4,250 when in your entry you charge yourself with $5,000 and something?

A. Well there was more money than there should have been according to the books and hence there might have been a mistake in counting it.

Q. When did you find you had more money in hand than the books called for?

A. I didn't find it out till we were making up the accounts for the year.

Q. Who was assisting you in making it up?

A. Mr. Hilton, and I think Mr. Hilton employed an

insurance man on the same floor there to do some part of it. I have forgotten his name now.

Q. How much money did you find more than what you supposed you had?

A. Something over $1,000.

Q. Why did you put to it the money found in the drawer; when you counted you supposed there was only $4,250?

A. That was the conclusion, I suppose, of Mr. Hilton and the Surrogate.

Q. Did it convince you that you had made a mistake on that occasion?

A. Almost it did; it looked like it.

Q. Could you have received money from any other source and forgotten to charge yourself with it?

A. No; I don't think so.

Q. When did it first come to your knowledge that Mrs. Downie claimed there was more than $5,000 in the safe?

A. Only a few months since, I believe.

Q. Was that the first you heard of it from her?

A. Yes.

Q. Was that the first you heard of it from any person?

A. Yes.

Q. Had she ever been over the account; had you rendered any statements to her at any time?

A. Many a time she would want to know what had become of all the money, and I would make some of the biggest payments out and give them to her on a paper; I paid several mortgages off.

Q. In what way did it come to your knowledge from her that she claimed there was more in the drawer?

A. The first I heard from her was in Mr. Ward's office, one day this spring.

Q. State how it came about.

A. There was a settlement being made about the lawyer's fees, as to who should pay Mr. Ward for attending to a foreclosure case; Sam had employed him before he

died, and the mortgage was made out in the name of Mrs. Thompson, and when Ward went on with the suit I contended that his charges should not come out of the estate, but that she should pay it herself; and at that time we had a few words, and she then said there was more money in the safe than I had allowed, or something to that effect.

Q. State as nearly as you can what she did say.

A. I don't know as I can.

Q. When was that, sir?

A. It was some time this last spring.

Q. What did you tell Mrs. Downie when she said all the money was not put in the account?

A. She said there were ~~$755~~ found in it, and I told her she lied and she knew it.

$755.55

Q. Did she say anything else?

A. Yes; there was some more chinning that didn't amount to much.

Q. Was there anything said by her at that time or any other time to the effect that that money was found before the inventory was made?

A. I don't know whether she mentioned that or not; it did not strike me that she did.

Q. Did she ever mention it to you?

A. No, sir; she was always by, sat by nearly all the time when I would do any business for the estate; I considered her the leader in it; it was her money, and I was only an assistant.

Q. Was there any understanding between you and her, as she has stated, that this money should be kept out of the inventory?

A. She stated, if I remember right, in her evidence, that I told her it would not look well to have all the money out, that there must be some left; I never told her such a thing, never such a thing occurred.

Q. When you swore to the inventory was it, as you swore, to the best of your knowledge and belief true?

A. Certainly it was.

Q. Can you tell us about how much of this money which was found in the little drawer had been used for the purposes of the estate before you made the deposits in the bank?

A. Yes; I think there was $1,200 and odd dollars paid to Ben. Stapleton to pay off a note, and I think I paid $1,200 and odd to a man named Hamilton, down towards the Notch.

Objected to as immaterial, and that it must be proved from the books.

The Court.—It must all appear on the books.

Q. Can you tell about how much of the money that was found in this drawer had been applied to the purposes of the estate before you deposited the balance in the banks?

Objected to on the grounds that the books are presented here which Mr. Knowles has kept, in which he has entered everything he has received and everything he has paid out, with the date of each item.

Q. Where did you keep these books of account which are produced here?

A. In the first place I kept them there at the house.

Q. For how long, about?

A. I think all the time till she went away, unless I would carry the day-book over to post part of this expense account.

Q. Were they left so she could see them and handle them?

A. Yes; and she would sit by me while I was writing half the time, and she knew everything that was put down, for I would tell her.

Q. Did she know of this charge, under date of 14th of May, of $4,250.

A. I could not swear positively that she did.

Q. It was in the book there?

A. Yes, it was in the book; I think it was put down when she was by.

Q. Did she examine the books from time to time or did she not; would you read from them?

A. I read from them quite frequently, and they were there for her to examine.

Q. When did you take them away finally?

A. When she went away in 1877.

Q. What became of the books after that?

A. I kept them at home, chiefly.

Q. When did she return from Europe?

A. I kept them home chiefly after she returned.

Q. Did you show them to her frequently after that?

A. I don't know that I did.

Q. Did you and she ever talk about the estate after she returned?

A. Quite often.

Q. Can she read and write?

A. Yes; I believe she can.

Q. Then she had full access to them while the books were there?

A. Yes, sir.

Q. Left in her possession?

A. Yes, sir.

Q. Do you know where in the house they were kept?

A. On the desk.

Q. Locked up?

A. No, sir; they were put in a form where you can put a book about that size on its end. The biggest part of the time they were on the desk, not with the leaves open, but loose on the desk.

Q. You did not keep the books in the safe?

A. No, sir.

Q. Which is the book you first used?

A. That little memorandum book [referring to a book].

Q. Was that left there also?

A. I can't say positively.

Q. When did you commence your day-book, which you have here?

A. Some time after the 5th of May.

Q. How long after the 5th?

A. I brought the book on the 5th.

Q. Did you commence making entries in it as soon as you purchased it?

A. No; I copied from the other book first.

Q. Did you commence to copy as soon as you purchased it?

A. I think I did.

Q. I see here, on the 5th of May, an entry "Paid $1.25;" does that refer to this book?

A. Yes, sir.

Q. And then you transcribed from this little book to that?

A. Yes, sir.

Q. When did you do that?

A. I think I did that some time after that.

Q. After what?

A. After I bought the book I didn't have it written up, and I kept putting it down in that little book till I had it all down in this book. Then I used that in place of the other.

Q. This book was left there until she went to Europe?

A. Yes, sir.

Q. You have spoken of one difficulty with Mrs. Downie, which occurred in Mr. Ward's office, growing out of the payment of fees for the foreclosure of a mortgage. Was that the only difficulty you had with her?

A. No, sir; not the only one.

Q. When did the next one occur, if at all?

A. The first I remember occurred when she came back

from Europe with her husband, over a bill for an iron fence or paling around an area-way. She objected that I should not pay, and I think that was about the time one of my sureties advised me to employ a lawyer. I was entitled to one ; I never had one before that.

Q. Whom did you employ ?

A. Mr. Hilton.

Q. And he has been your counsel in this matter from that time ?

A. Yes, sir.

Q. Was there any other difficulty about anything she wanted you to do ?

A. There was a difficulty as to who should pay the taxes on the homestead. I was advised not to pay it, that it ought not to come out the estate.

Q. Was that the place occupied by her and her husband ?

A. Yes, sir.

Q. When did that occur ?

A. That occurred the following year when the taxes came due ; I paid the first year's taxes.

Q. How long was that before she was removed as administratrix ?

A. It was after she was removed some time.

The Court : When was she removed ?

Mr. Stevenson : It was filed Dec. 29th, 1877.

Q. She married in England ?

A. So I understood.

Q. She came back with a person as her husband ?

A. Yes.

Q. How long have you lived in Paterson ?

A. I have lived in Paterson 43 years, it will be nearly, in the Spring.

Q. Have you been administrator and executor in this place ?

A. No, sir; not before and never will again.

Q. Have you since then?

A. No, sir; I have had offers since, but I have refused them.

Q. In the occasions which you have referred when you and she talked about the expenditures of money and you would explain that to her, did she at any time refer to the money that was found in the drawer?

A. No, sir; I never heard any dispute or any difficulty at all until lately.

Q. At any time did she say anything in reference to that money having been filed in that account?

A. No, sir; never said a word about it to me.

Q. Did she say anything to you to the effect that she wished she had got hold of that money?

A. She often said that; she said—and her eyes would blaze in her head—she wished she would have got hold of that, she would take good care there would be no trouble about it.

Q. Before or after her return from Europe?

A. After.

Q. How did this conversation come about?

A. Well, talking about the matter, and she wanted her share of the estate, her rights, as she called it, and then those things would occur.

Q. She said when she asked you for money on one occasion, referring to the children, you said they might go barefooted, as you did in your boyhood.

A. I never said such a thing, and I never went barefooted in my life.

Mr. Stevenson puts in evidence the bank-books from the First and Second National Banks.

CROSS-EXAMINATION.

By Mr. Stevenson:

Q. What was the date you opened that safe?

A. I did not open it, sir.

Q. What was the day when it was first opened?

A. It was the 17th of April.

Q. Did you open it at any time after that?

A. Yes, sir; very frequently.

Q. I thought you just said you didn't open it. What was the day you first opened the safe?

A. The next day afterwards—I suppose April 18th.

Q. Who was present when you opened the safe?

A. Mrs. Downie, generally.

Q. Who was present on that occasion?

A. I think she was present on that day.

Q. Do you know whether she was or not?

A. I could not swear positively, but I think so.

Q. Was there anybody else present besides yourself and her?

A. Only the man that opened it.

Q. Was anybody else present on the 18th of April, when you opened the safe besides yourself and Mrs. Downie?

A. I don't know that there was.

Q. Can't you state whether there was or not?

A. I think not.

Q. Don't you know there was not?

A. I am not so positive about these things—these trifles.

Q. You think that was a trifle, do you?

A. I don't think there was anybody there but she and me.

Q. You are sure she was present?

A. I think so.

Q. Are you sure or not?

A. I am almost positive she was.

Q. How was she dressed on that occasion?

A. I can't tell you.

Q. Do you remember whether she was sick in bed?

A. She was sick in bed many a time.

Q. On that day?

A. She was sick in bed and up both.

Q. She was sick that day?

A. Yes.

Q. Immediately before you went to open the safe she had been in bed, had she not?

A. I don't recollect that she was.

Q. Don't you know that she got up out of bed and went with you to open that safe?

A. She might have done so, but I cannot remember the circumstances.

Q. Do you know who had the keys of the safe?

A. She had the keys of the inside—there was no key for the outside.

Q. Were they on a ring?

A. Some of them.

Q. In a bunch?

A. Yes, sir.

Q. Where did you see the keys at first that day?

A. In her possession, I think.

Q. Where was she?

A. Down-stairs, in the parlor?

Q. She had come down?

A. I believe so.

Q. Do you remember her coming down?

A. I do not; but I remember her being there.

Q. Do you remember whether she had a blanket on?

A. No.

Q. Do you remember whether she was only partly dressed?

A. No, sir, I don't recollect that; I don't think she was; I don't think she ever came there partly dressed.

Q. Do you remember whether she was assisted down stairs to where the safe was or not?

A. She might have been assisted.

Q. Do you remember whether she was or not?

A. I don't think she was that day; I don't remember.

Q. Do you remember whether Mrs. Jackson was there that day?

A. She was around the house that day, I believe.

Q. Did you assist Mrs. Downie back up-stairs after the safe had been opened?

A. I might have done so, but I can't say.

Q. You don't recollect whether you did or not?

A. No, sir.

Q. Did you sit or stand while you were opening the safe there?

A. I did not do either; I kneeled down.

Q. Where did Mrs. Downie sit or stand?

A. She sat on the foot of the lounge I think, or in a chair.

Q. Near the safe?

A. Yes.

Q. Had she given you the keys before that, up-stairs?

A. No, sir, I think not; I think she opened it herself.

Q. And produced the keys?

A. The key—not the keys.

Q. Wasn't there a bunch of keys?

Mr. Williams.—What time are you referring to?

The Court.—He is referring to the 18th of April.

Q. You say she produced a key?

A. Yes.

Q. Didn't you see a bunch of keys?

A. Yes, sir.

Q. What kind of a bunch was it?

A. A small bunch, with 3 or 4 keys on it.

Q. Did she hand that bunch to you?

A. No, sir.

Q. Did you ever have it in your hand?

A. Not at that time.

Q. Did you have the key or keys in your hand when the safe was opened that day?

A. I had the key after it was opened.
Q. Who opened the safe—the outside door?
A. I did.
Q. And who opened the inside drawer?
A. It is likely I did it.
Q. Where did you get the key?
A. From her.
Q. Then you took the key from her?
A. Yes.
Q. Was it a single key or a bunch?
A. It is a single key.
Q. You are sure of that?
A. Yes, sir.
Q. Did you see any other keys in Mrs. Downie's hand?
A. I think it was in the iron box door.
Q. Where were the keys?
A. They were in the door of the iron drawer.
Q. What keys were there?
A. This bunch you speak of.
Q. And you had a single key in your hand?
A. She had given me a single key, I think.
Q. What was the key on?
A. On nothing.
Q. Did you open anything?
A. It opened this little drawer.
Q. Was the bunch of keys in the iron drawer?
A. No; in the key-hole of the iron drawer.
Q. When you opened the outside door of the safe by using the combination and swung it back did you see the bunch of keys hanging from the iron box?
A. Yes.
Q. What was the key you got from Mrs. Downie?
A. A little key.
Q. Of what?
A. Of that little drawer.
Q. How many drawers were there?
A. There were three or four.

Q. Were they locked?

A. Generally.

Q. Were they locked then?

A. I did not try any one, only this one.

Q. Did you open the little drawer?

A. Either me or her; I will not swear which; I think it was me.

Q. What did you find in the little drawer?

A. I found this nest of greenbacks.

Q How much was that?

A. I thought there was $4,250.

Q. That was the time you counted the greenbacks?

A. Yes, sir.

Q. Did you take the keys out of the iron box that you saw hanging there?

A. No, sir.

Q. Did you open the iron box?

A. Not at that time.

Q. You left it just as it was.

A. Yes, sir.

Q. Had you opened the iron box prior to that?

A. Many a time.

Q. After Mr. Thompson's death?

A. Yes, sir.

Q. What was the date of this occurrence, when you and Mrs. Downie went down there, that you opened the drawer when you found the nest of greenbacks?

A. It was in May, about the middle of May.

Q. Don't you know I have been questioning you about the 18th of April all along?

A. No, sir.

Q. We will go back, and before doing so I will ask you, when you and Mrs. Downie found this nest of greenbacks, do you know how she was dressed?

A. Dressed ordinarily.

Q. That was the time she was sick in bed?

A. I could not say positively whether she was or not.

Q. Didn't she get up out of bed and come down with you at that time and open the safe?

A. When the drawer was opened?

Q. Yes.

A. No, sir.

Q. When you found a nest of greenbacks?

A. No, sir.

Q. What was the date of the time that she went down with you—got up out of bed and went down with you to open the safe?

A. It was immediately after the safe was opened.

Q. What day was it?

A. It might have been the 18th.

Q. If the safe was opened on the 17th what was the date?

A. It was likely the 18th.

Q. Don't you know whether it was or not?

A. I cannot tell.

Q. Don't you know whether it was the next day after or not?

A. I must have opened it the next day, the very next day after that.

Q. I speak of the time when you and Mrs. Downie went together and opened the safe—the first time you opened it—what was the date of that?

A. The first time we opened it together after the expert had been there?

Q. Yes.

A. I don't think that we opened it again; I tried to that same day.

Q. Do you know whether you did or not?

A. I am almost sure we did.

Q. That you opened the safe?

A. Yes.

Q. You and she?

A. Yes, sir.

Q. Anybody else?

A. No, sir.

Q. Did you open any of the inside doors?

A. We might have done, but not particularly; we only tried to open the safe.

Q. Can you tell whether you and Mrs. Downie opened any of the inside doors of the safe the same day that the expert opened the inside door?

A. I think the iron drawer was opened.

Q. Who opened it?

A. Mrs. Downie; she had all of her jewelry there.

Q. What day was that?

A. I would not be positive; the day it was opened or the day after.

Q. Can you tell positively what was the first time when you and Mrs. Downie together opened that safe?

A. No; I can't tell positively.

Q. Do you remember the first time?

A. I remember that we opened it and tried it several times, just for the purpose of opening it.

Q. What was the date of the first time?

A. I think it was the same day that the expert opened it.

Q. Wasn't Mrs. Downie sick in bed that day?

A. Yes; but she was up occasionally and down.

Q. Do you remember whether you and Mrs. Downie did open the safe the day the expert opened it?

A. Yes, sir; I am sure we did.

Q. You are sure of it?

A. Yes, sir.

Q. What time of day was it?

A. In the afternoon.

Q. When was the expert there?

A. I think he was there before dinner.

Q. This was the afternoon?

A. Yes.

Q. Did you see Mrs. Downie in her room before she got up that day?

A. I don't know that I did, unless I took up medicine or something for her.

Q. Did you see Mrs. Jackson that day?

A. I think so.

Q. She was there taking care of the house, wasn't she?

A. She was there occasionally.

Q. On this first occasion when you and Mrs. Downie opened the safe, on the afternoon of the day the expert opened it, what did you find in the safe?

A. I think we found that $500.

Q. And this was on April 17th?

A. 17th or 18th; I would not be positive as to the date.

Q. You said just now that you were sure that Mrs. Downie went with you and you opened the safe on the afternoon of the day the expert opened it.

A. Yes, sir; but I am not positive about taking the $500 that day; I may have taken it the next day.

Q. Tell what occurred the first time you and Mrs. Downie opened the safe, which you now say was on the afternoon of April 17th?

A. It was shut again.

Q. Did you simply open the outside door?

A. Yes.

Q. You did not open any inside door?

A. I cannot say as to that.

Q. Do you know whether you did or not?

A. I can't tell.

Q. Did you find out anything what was inside?

A. I would not be positive about that.

Q. Did you see any money that afternoon?

A. It is likely I did, but I am not sure.

Q Did you take any money out that afternoon? I mean April 17th.

A. I think not.

Q. Do you recollect anything else you did that afternoon about the safe?

A. No, sir; except it was to open and shut it.

Q. And open and shut the inside doors?

A. No, sir; just to get master of the combination.

Q. Did you open any of the inside doors on that day?

A. I don't remember; I told you once or twice.

Q. What was the first occasion upon which you now

remember seeing any money in the safe after the expert had opened the outside door?

A. I can't fix the date positively, but I think it was the next day.

Q. Who was present?

A. Mrs. Thompson—the present Mrs. Downie.

Q. And yourself?

A. Yes, sir.

Q. Anybody else?

A. No, sir.

Q. You two were together?

A. Yes, sir.

Q. How was Mrs. Downie dressed?

A. I can't tell you.

Q. Had she got out of a sick bed to come down there with you?

A. She might have done so.

Q. Had she?

A. I don't remember.

Q. Have you no recollection on the subject whether Mrs. Downie went down partially dressed—having went down out of a sick bed?

A. No, sir; I don't think she went down partially dressed.

Q. Have you any recollection whether or not she got up out of a sick bed and went down?

A. She might have done.

Q. Have you any recollection on the subject?

A. Not particularly.

Q. Have you any recollection on the subject whatever?

A. I say not particularly, as to whether she got up then or immediately after.

Q. Do you recollect whether she was confined to her bed at that time?

A. Yes, sir; but not all the time

Q. Where did the key come from with which the inside drawer was opened?

A. Came from her.
Q. She gave it to you?
A. Yes, sir.
Q. And you opened it?
A. Yes, sir.
Q. What was it that you opened?
A. The drawer.
Q. What drawer?
A. The little drawer with the greenbacks in it.
Q. How many greenbacks were they in it?
A. I thought there was $4,250.
Q. This was the day after the expert had been there?
A. No, sir.
Q. I do not want you to tell me of anything that occurred after April 18th until I give you notice. I will distinctly inform you when I want you to do so. What occurred when you and Mrs. Downie opened the safe on April 18th—I will ask you particularly; first, who furnished the key?
A. There was no key; there was a bunch of keys furnished then.
Q. Who furnished the bunch of keys?
A. Mrs. Thompson.
Q. Where was she when she furnished them?
A. In the parlor.
Q. You mean she had brought them down with her?
A. I don't know whether she brought them down or whether they were there; I think they were inside one time when we opened it.
Q. I am speaking of this time only; this similar occasion on the 18th of April.
A. She furnished the keys.
Q. A bunch of them?
A. Yes, sir.
Q. Where were you and she?
A. In the parlor right by the safe.
Q. Did you open any of the inside doors with those keys?

A. I might have opened the iron door, but I am not sure whether I did or not.

Q. Did you open any other drawer?

A. No, sir.

Q. What did you find in the iron drawer?

A. I am not sure whether I found this $500 that day or the day before, but I think it was then.

Q. You say, "we had seen it the day before?"

A. That is her and me.

Q. Had you been down there with her the day before?

A. That was the day it was opened; yes, sir.

Q. And you opened the inside drawer then?

A. I am not sure whether I did or not.

Q. You are sure you were both there?

A. Yes, sir.

Q. And you opened the outside door together?

A. Yes, sir.

Q. And exposed the inside door?

A. Yes.

Q. This was the afternoon of the day the expert was there?

A. Yes.

Q. What drawer did you open then?

A. The iron drawer, I think.

Q. What did you find in there?

A. I am not sure whether we found this $500 or not; her jewelry was there.

Q. How did you get into that iron drawer?

A. With the bunch of keys she produced.

Q. She produced them the same day the expert was there?

A. Yes, sir.

Q. And also the next day?

A. I don't know whether she did or not; most likely she did.

Q. You opened the safe the next day after that?

A. Yes, sir.

Q. Who furnished the keys then?

A. She did; or whether they were left hanging in there I am not positive.

Q. Did you count the $500 on this afternoon, of the day the expert opened the safe?

A. I think not.

Q. How do you know it was $500?

A. Because Thompson had spoken of it and ordered me to pay the $500, before he died.

Q. Did you pull the bills out of the iron box?

A. I can't say whether I did or whether she did.

Q. What was done with them after that?

A. They were put in again, I think.

Q. Do you know whether they were put in or not?

A. I am not sure.

Q. This was April 17th?

A. It was not taken out that day.

Q. Did you see it that day?

A. I am not sure whether I did or not.

Q. Now, the next day, April 18th, the day after the expert had opened the outside door, when you and Mrs. Downie went to the safe you say the bunch of keys was hanging in the iron drawer?

A. I think so.

Q. And she furnished you another key then?

A. No, sir; she did not.

Q. When you and she went to open the safe together on that day, April 18th, the day after the expert had been there, all you had to do was to open the outside door, and then the keys were hanging there in the inside?

A. In the iron box door.

Q. What kind of a bunch of keys was that?

A. It contained four or five on a ring.

Q. Did you open the iron door?

A. Either she or I did.

Q. What was in it?

A. I generally preferred her to open it because she had her jewelry there.

Q. What was in the iron box?

A. There was $500 in it, I think.

Q. Did you count the $500 on that day, the 18th of April?

A. I am not sure; I know it was counted before I took it to pay it out.

Q. Did you take money out of the iron box that day?

A. I am not sure whether it was that day or not.

Q. You don't know whether you opened the iron door and looked at the money, or took it out?

A. I am not sure; the date I paid it out to Rossiter will tell.

Q. Had you seen that $500 before you paid it out to Rossitor?

A. Yes; I believe I did.

Q. The book show the 21st of April. Now, I ask you whether on the 18th of April you took the $500 out of the iron box?

A. I don't, I think I did; no, sir; I did not take it; I might have taken it out of the iron box, but I didn't take it away.

Q. Did you take it out of the iron box?

A. I might have.

Q. You don't know?

A. No, sir; I don't know.

Q. Did you open any of the other drawers?

A. No, sir.

Q. Why didn't you?

A. I had no call for that.

Q. What did you go down to open the safe for?

A. I am not sure that I opened that; I think Mrs. Thompson opened it.

Q. What was the object of your going down there to open the safe on the 18th of April?

A. I don't know as there was any special object, unless it was to see about this $500.

Q. Did you or not know whether you had any particular object in going down to open the safe?

A. No; I do not.

Q. You took pains that Mrs. Downie should be present?

A. Yes.

Q. And she got out of bed to come down there?

A. She might have done.

Q. Didn't she?

A. I didn't see her get up.

Q. Don't you know she was sick in bed that day?

A. Yes.

Q. And you helped her up afterwards?

A. I might have done so.

Q. And you don't know the object of your going down that day to open the safe?

A. No, sir; I do not.

Q. When did you make that entry there, "Found key of safe ?"

A. I think the last date is the 14th of May, according to memorandum.

Q. On the 18th of April, after opening this iron box, did you shut the iron box again?

A. Of course.

Q. Did you leave the bunch of keys hanging in the door?

A. I can't tell; I don't remember.

Q. Do you know how the bunch of keys got to that door?

A. She must have left them the day before.

Q. Then you remember she took them there the day before?

A. They were frequently left hanging there.

Q. You say you found the keys hanging on the iron door on April 18th?

A. Yes, sir.

Q. Do you know how they got there?

A. I can't tell any nearer than that she left them there the day before.

Q. Did you see them in her hand the day before?

A. Yes, sir.

Q. Did she give them to you the day before?

A. I don't know that she did.

Q. Did she open that iron box with it the day before?

A. I think she did.

Q. That was the same day the expert was there?

A. Yes.

Q. Do you know whether those keys were left in that iron box when you shut the outside door of the safe that afternoon of April 17th?

A. Yes; from the fact that they were safer there than anywhere else.

Q. You left them there?

A. I don't know that I did.

Q. And you and she did then?

A. Yes.

Q. On the 18th of April did you close the safe door and leave the keys hanging there?

A. I don't remember.

Q. What was done with the keys?

A. Mrs. Thompson got them, of course.

Q. Did you try any of the other drawers?

A. No, sir.

Q. On the 18th of April I am speaking of.

A. Not that I remember.

Q. On April 17th or 18th did you try any of the keys in the other drawers?

A. They might have been tried to open, all of them, to see what was in them.

Q. Did you?

A. I don't distinctly remember; there was no key to open one.

Q. Which was that?

A. The little one on the left hand side.

Q. The little key?

A. Yes, sir.

Q. On April the 18th, I understand you to say, when you and Mrs. Downie opened the safe, you left the keys hanging in the iron door?

A. I don't think we did.
Q. Who took them?
A. Mrs. Thompson, of course.
Q. When did you see them next after that?
A. I don't know; the first time we wanted anything likely.
Q. Do you know when?
A. Not particularly.
Q. Do you know when they passed from her possession to yours?
A. I don't know that they ever did.
Q. Don't you know whether you had those keys in your possession after that or not?
A. I might have had them.
Q. Didn't you have them altogether in your possession after a time?
A. No, sir.
Q. Didn't you take them from Mrs. Downie and keep them yourself?
A. I took one of them.
Q. Which one of them?
A. The nest drawer, as I call it.
Q. Dont you know whether you did or not?
A. I am almost positive I did.
Q. When was that?
A. After the money was found.
Q. Who first told you about the finding of this little key?
A. Mrs. Thompson.
Q. Where was it she told you that?
A. In the house.
Q. What did she say to you?
A. I don't remember the words; she said she had found the key of that little drawer.
Q. When was it?
A. It was about that time, the middle of May.
Q. When with reference to this date that you say this drawer was opened and the nest of money found?

A. It was the same day.

Q. How did you know the key of this drawer was not in that bunch?

A. Because we tried them.

Q. I thought you said a little while ago you didn't know whether you tried these drawers or not?

A. We tried them.

Q. When did you try them?

A. I can't say.

Q. What was the reason you were anxious to get at this little drawer?

A. To know what was in it—curiosity.

Q. Did you think there might be money in it?

A. No, sir; I did not.

Q. When Mrs. Downie told you she had found the key, did she tell you where she found it?

A. No, sir.

Q. Did you ask her?

A. I don't know as I did.

Q. Whereabouts in the house did she tell you this?

A. It was in the parlor.

Q. How came you to go there that day?

A. I went there for the usual business.

Q. What business did you go for that time?

A. There were men working there, carpenters, laborers, fixing around the house.

Q. Were they repairing and fixing the house when you opened this drawer?

A. I don't know but they were.

Q. Dont you know whether they were or not?

A. I can't tell just now whether they were or not.

Q. When Mrs. Downie said she had found the key did she produce it?

A. Yes, sir.

Q. Right away?

A. Yes, sir.

Q. You had not heard before that she had found the key?

A. No.
Q. What did you do then?
A. We opened the safe and opened the drawer?
Q. You opened the little drawer
A. Yes, sir.
Q. Did you count the money then?
A. Yes, sir.
Q. How long after Mrs. Downie told you that she had found the key, that you and she opened the drawer with that little key?
A. It was immediately.
Q. And prior to that time you did not know anything about this key?
A. No, sir.
Q. And did not suspect there was any money in this drawer?
A. No, sir.
Q. And this was on May 14th?
A. I think it was, because it is dated there.
Q. What kind of a looking key was this?
A. A small one.
Q. What color?
A. A metallic color.
Q. Brass or iron?
A. I think it was iron.
Q. Were you very much surprised to find this amount of money in there?
A. Yes, sir; very.
Q. Had you been engaged in searching for the key of that drawer, or didn't you consider it of any importance?
A. I didn't consider it of any importance; it had been searched for, I believe, merely for curiosity.
Q. When did you make this entry in this book about finding the key?
A. I believe right on the desk.
Q. How came you to make that entry there?
A. For reference.

Q. Why did you think it was of very great importance?

A. It was a transaction of the day, and I put everything down that I thought of.

Q. Did you put down that day the finding of the money?

A. I made that entry.

Q. Whereabouts was that book when you made that entry?

A. It was there.

Q. Did you have it in your pocket?

A. I either had it in my pocket or it was on my desk.

Q. Do you know whether it was in your pocket or not?

A. I don't know; it is possible, I think, I kept it in my pocket.

Q. Did you that day make any entry in any book of the finding of this money?

A. Yes; in that.

Q. Did you make any entry that day of the finding of this money?

A. I am not certain whether I made it that day or the day after, in the day-book.

Q. [Showing the witness day-book and referring to page 10.] What does that number 62 mean?

A. It has reference to the folio of the ledger.

Q. Whereabouts were you when you made this entry that I have just shown you in the day-book, "Found in safe drawer $4,250?"

A. In the parlor, at the desk.

Q. You don't know whether it was that day or the next?

A. No; I am not positive as to that.

Q. Then the reference in your ledger refers to the 62nd page of this book?

A. Yes.

Q. Where was this book when you made the entry?

A. It was not made; it was there, but it was not made

Q. When did you make any entry in this book?

A. It was some time after.

Q. When was this purchased?

A. I found it there and nothing in, only on a leaf or two.

Q. Which entry was made first, the one in the day-book or the one in the ledger?

A. The day-book, of course.

Q. How could you put down number 62 as the page of the ledger to which that corresponded?

A. I had two systems of keeping that account; when I started the cash account I copied it again.

Q. I understand you to say that this entry was made in the day-book on May 14th, before this entry was made?

A. I think so.

Q. Was it, or not?

A. I can't be positive about that.

Q. When was the number 62 added there?

A. Some time after; it must have been several weeks.

Q. Number 62 was added several weeks after that?

A. It might have been.

Q. Do you know?

A. That was for posting.

Q. When was this number 62 entered there with reference to the time you entered the words, "Found in safe drawer $4,250?"

A. I can't tell.

Q. How many weeks after was it?

A. I can't say.

Q. Can't you tell about how many weeks?

A. No, sir.

Q. Was that number 62 added in your day-book at the same time you made the other entry in the ledger?

A. Yes, sir.

Q. Just as soon as you made the entry in your ledger you turned back to the day-book and put the page there?

A. I think so.

Q. I understand you to say that all the money that you finally took out of the safe with the exception of about $150—

A. Yes, sir.

Q. What was the day when you did that?

A. I don't remember.

Q. Do you know about when it was?

A. I didn't take it all out at one time.

Q. Did you finally take it all out?

A. All but that.

Q. About what time in there had you taken it all out except that?

A. I can't say positively.

Q. Did you get it all out by July?

A. I might have before July; I can't say.

Q. When you took it all out, did you put it in the bank?

A. Yes, sir.

Q. Did you put it in at once?

A. No, sir.

Q. What did you do with it?

A. I left in what I did not take out.

Q. I understand you to say you took money at various times out of the safe and paid various parties?

A. Yes, sir.

Q. I call your attention to the entry on page 62 of the ledger, "Found in safe drawer $4,250," and I will ask you when that entry was made there?

A. When the posting was done and only for the purpose of bringing it into this account.

Q. When was it put there?

A. I can't tell anything about it, sir, because that has no reference to any date only when I was posting.

Q. Why did you put it in right there?

A. Because it was conspicuous.

Q. A mere accident?

A. No; it was a conspicuous affair, an affair that had given me a great deal of anxiety.

Q. Did you put it in there with reference to any date?

A. No, sir.

Q. How came you to pick out that particular page?

A. Because that is the page to show it, I guess.

Q. Did you enter that there because that would be the place for an item of May 17th?

A. No, sir; it was not put there on that account when I posted it up.

Q. When were these entries put there?

A. At the time they bear date probably.

Q. You kept your book posted right along didnt you?

A. Yes; I posted every two or three weeks.

Q. So that all those entries were made in one day?

A. Yes.

Q. The dates being taken from the day-book?

A. Yes, sir.

Q. Do I understand you to say that you did not make this entry, "Found in safe drawer $4,250"—did you make that entry at that particular point and on that page because it was where it should go if the date was May 17th?

A. No, sir.

Q. It was an accident?

A. No; it was incidentally done to carry forward my indebtedness.

Q. You put it at that particular point accidentally?

A. No, sir.

Q. Why did you select that line at that place?

A. Because I wished it to be against myself.

Q. Wouldn't it have done just as well to put it here? [Referring to another page.]

A. Yes, sir; it was carried forward in red ink.

Q. Why did you take the trouble to carry it forward in red ink?

A. Because it was an extraordinary finding.

Q. And for that same reason you carried it forward there?

A. Of course.

Q. Can you tell by looking at these entries when you entered these?

A. No; I can't tell.

Q. You entered that at the same time you carried it forward there, didn't you?

A. I don't think so.

Q. Don't you know that you entered that there—made that entry with the same ink and at the same time?

A. Not at the same time, sir.

Q. Do you recollect this bottle of ink?

A. Yes, sir.

Q. Where was it?

A. It was there in the parlor on the desk; I have frequently carried it home.

Q. You just saw Mrs. Downie shake her head, didn't you?

A. No, sir; it didn't make any difference in my testimony.

Q. Where did it come from?

A. It came from Sam Thompson's; it was there when he died.

Q. In his desk?

A. On his desk.

Q. Were there any other bottles of ink there?

A. Yes.

Q. What were they?

A. Black ink.

Q. And you carried this red ink home finally?

A. Yes, sir; and used it for that purpose.

Q. Did you make any other entries at Mr. Thompson's with this red ink?

A. It is likely.

Q. Where were these books kept?

A. They were kept there.

Q. Where did you use to do your posting?

A. Chiefly at home.

Q. Sept. 17, 1877, where were those books?

A. I don't know whether they were there or at my house.

Q. Don't you know that they were at your house and that they were never at Mrs. Downie's after she went to Europe?

A. I am not so positive about that.

Q. You say you made entries in these books sometimes at Mr. Thompson's while the books were there in the desk?

A. While they were on the desk.

Q. How long after Mr. Thompson's death were the books left there?

A. I think till the widow went to Europe, about the 20th of June.

Q. And you made the entries there?

A. Yes, sir.

Q. And all the entries in these books that you made prior to the time Mrs Downie went to Europe were made at Mrs. Downie's house?

A. I would not say that; no, sir, not all of them.

Q. Did you carry the books back and forth?

A. I may have when I have been posting.

Q. Did you?

A. I know I did, but not all the time.

Q. How many times did you carry them home?

A. I don't know.

Q. Did you ever see Mrs. Downie look at these books?

A. No, sir; I don't know that she did. She used to sit by when I was writing.

Q. Did you ever see her read a word in any one of them?

A. I can't say.

Q. Don't you know that she could not comprehend one of these books?

A. No, sir.

Q. Don't you know that she could not take these books now and find out the facts that you would find out from them without difficulty?

A. It is likely the case, but I would not swear to it.

Q. You have no reason to suppose she knows anything about book-keeping?

A. No, sir.

Q. You never knew her to keep books?

A. No, sir.

Q. Did you ever see her make an entry in any book?

A. I have seen her write.

Q. What have you seen her write?

A. I have seen her write a letter.

Q. Did you get the money out of Mr. Thompson's pantaloons?

A. No, sir.

Q. Who did?

A. I don't know.

Q. Where did you first see it?

A. I saw it, I think, first in the hands of Master James Demarest.

Q. How long after Mr. Thompson's death?

A. About an hour.

Q. Was the money then handed to you?

A. Yes, and I gave it back to him to count.

Q. Did he count it?

A. Yes.

Q. What was it in?

A. I don't know what it was in when he originally found it.

Q. What was it in when it was handed to you?

A. It was in nothing but greenbacks.

Q. Just a roll?

A. Yes, sir.

Q. What did you say was the amount?

A. $129 and some cents.

Q. I show you the entry on page 300 of your ledger of the date of April 10, "Cash in purse and safe after it was opened $629.12." Is that entry all made at one time. Look at it closely and see if it was?

A. It looks as if it were made with a different pen with less ink on it.

Q. The words " after it was opened" are in different ink than the words "cash in purse and safe"?

A. It is paler.

Q. It is all in your handwriting?

A. Yes.

Q. Do you remember when you added the words " after it was opened"?

A. I don't recollect.

Q. You can't explain why that appears in a different ink?

A. No, sir.

Q. Do you know why these figures $629.12 are upon the erasure?

A. It looks thinner.

Q. Did you do that?

A. I don't recollect; I don't remember doing it.

Q. You have no recollection of it?

A. No, sir.

Q. You are sure you cannot explain why that entry is in different ink from this?

A. No, I cannot.

Q. When you put that entry, " Cash in purse and safe," you meant that was the total amount of cash you found after Mr. Thompson's death belonging to him, didn't you?

A. I presume so.

Q. And you added the words " after it was opened" for what purpose?

A. I don't know.

Q. Do you know what those words meant there?

A. No, sir.

Q. You have no idea?

A. None whatever.

Q. You say that you and Mrs. Downie finally found a nest of greenbacks and counted them. What was the amount of money you counted that day?

A. I have told you many a time, $4,250.

Q. Even?

A. Yes, sir.

Q. Just that amount?

A. Yes, sir.

Q. In what sort of packages was it?

A. Some of it was in $1,000 packages and rolls and bound together, and some piles were broken.

Q. You had not suspected before that there was any deposit of money?

A. No, sir.

Q. You did not suspect that Mr. Thompson had more than $500?

A. No, sir; I knew what was on the books.

Q. On what books?

A. His books of collection.

Q. You had no suspicion that there was that amount of money there?

A. No, sir.

Q. Had you heard Mr. Thompson say anything about it?

A. Not a word.

Q. Didn't you know that he had $4,000 at least?

A. No, sir.

Q. You knew he was making a good deal of money?

A. Not at that time—he was making none.

Q. You knew he had made a good deal of money?

A. Not positively.

Q. Didn't you know that he had been doing a good business and was making money?

A. I thought the company had.

Q. What company?

A. Ben Stapleton & Co.

Q Didn't you think it queer that he did not have any bank account?

A. No, sir; it never struck me at all; it was none of my business.

Q. When you came to examine the estate in order to take the inventory, did you suspect there was any money anywhere?

A. No, sir.

Q. Did you inquire at the banks to see?

A. No; only where he had books.

Q. What books did he have?

A. He had a book on the Merchants' Loan & Trust Co. and the First National Bank; there was only between one and two dollars in the Merchants' Loan & Trust Co. and in the First National Bank between four and five.

Q. Was there any money anywhere else?

A. In the savings bank I think.

Q. How much?

A. I don't know; it is in the inventory.

Q. Was there any money in the Second National Bank?

A. No, sir.

Q. Did you go to inquire?

A. No, sir; I didn't see any book.

Q. Did you find any indication of money deposited anywhere?

A. No, sir.

Q. Will you find in that inventory the statement of the amount of money in the savings bank? [Referring to record of inventory.] I show you this item in the inventory, "Paterson Savings Bank, No. 6,506, and interest, $1,120." Did you draw that money out of the Savings Bank?

A. I think I did; there was some intimation it was going to burst.

Q. So you let it stay there till you got that intimation?

A. Yes, sir.

Q. And you did not draw any of it till then?

A. I don't know that I did.

Q. What did you do with it?

Objected to.

Q. I show you an item in the ledger under date of February 28th, 1878, "Received from Paterson Savings Institution, $1,160.90." What did you do with that money?

Objected to. Objection sustained.

The Witness.—I think it can be explained where the money from that savings bank went.

Mr. Hilton.—You need not answer that question; it has been ruled out.

Q. You say that you and Mrs. Downie counted this $4,250 together?

A. Yes, sir.

Q. Who pulled it out of this drawer?

A. I don't know whether it was me or her.

Q. Did you make this entry in this book, of your finding the key, before or after you had pulled the money out?

A. It was after, I guess.

Q. How long after?

A. I cannot state.

Q. Did you do it there?

A. I think it was done there at the desk.

Q. That same day?

A. I think so.

Q. What time of day was it?

A. In the afternoon, I think.

Q. Did you enter on this book the finding of the money?

A. No, sir.

Q. What did you count the money on?

A. It was partly on her lap and partly on the front of the lounge.

Q. Who pulled the bills out of the drawer?

A. Both of us, I think.
Q. Do you know that you did?
A. I think both of us did.
Q. You mean you took some out and she took some out?
A. To count it; yes, sir.
Q. Did you count it as she took it out?
A. Yes, sir.
Q. Do you understand the question?
A. Yes, sir.
Q. As fast as you took it out you counted it?
A. Yes, sir.
Q. Were you kneeling or sitting?
A. I think we were both sitting.
Q. On what?
A. In a chair and this lounge.
Q. In what portion of the room was the safe?
A. In the corner
Q. Where was the lounge?
A. Alongside of it.
Q. Don't you know that that lounge was not on that side of the room?
A. No, sir.
Q. Do you know whether it was or not?
A. I know it was.
Q. Which of you sat on the lounge?
A. I can't say.
Q. Did either of you sit on the lounge?
A. I think so.
Q. Do you know?
A. No.
Q. Then you both might have been sitting on chairs?
A. We might have been, but I rather think one was sitting on the lounge.
Q. Who put the key in the drawer and turned the lock?
A. I don't know whether it was her or me.
Q. When the drawer was opened did you see the money there?

A. When the drawer was opened I did.

Q. Do you know whether she pulled it out or whether you did?

A. I don't know.

Q. The moment it was pulled out you could see bills lying there?

A. Yes, sir.

Q. Were you surprised?

A. I don't remember.

Q. Did she seem to have any knowledge that that money had been there before?

A. No.

Q. Do you think she was equally surprised with yourself?

A. Yes, sir.

Q. You say you took some of the money out and she took some of the money out?

A. As we were counting it.

Q. How did you count it?

A. We counted it, and both kept account, and I marked it down on something, but I think it was not a brown piece of paper; I think it must have been a white one. I marked the sums down as we counted them.

Q. Which did the counting?

A. We would count 100 and then pile it up.

Q. Did you handle the bills?

A. Yes, and she did too.

Q. You mean she took up a handful and then counted till you got 100 and so on?

A. Yes, sir.

Q. Did she follow you when you were counting yourself?

A. Sometimes.

Q. Did she right straight along follow you?

A. Not all the way through.

Q. Did she handle any of the money herself and count it?

A. Yes.

Q. When she handled the money and counted it did she count it out in hundreds ?

A. Yes, sir; in piles.

Q. Did you follow her then ?

A. It is likely.

Q. Did you ?

A. Not after she had mentioned the word, I think.

Q. What word ?

A. Whether it was 5 or 6 or 10 or 100.

Q. Were you both counting at the same time ?

A. The first time there, I think, we both counted.

Q. Each counted then a portion of the money ?

A. Yes.

Q. And you added together the amounts ?

A. Yes, sir.

Q Did you count it over the second time?

A To be sure.

Q. Had you disagreed ?

A. Yes, we disagreed, and there was a difference between us.

Q. That was on the first count that you disagreed ?

A. Yes, I think so ; and finally we agreed.

Q. Did you disagree on the first count so that you counted it over the second time to see it was right ?

A. Yes, sir.

Q. What was the difference between you ?

A. I don't recollect exactly. I think it was about 500.

Q. You counted it all, and she counted it all ?

A. Yes, sir.

Q. And that is the way you came to agree ?

A. Yes, sir.

Q. The first time, after you had counted a lot did she count a lot ?

A. No, sir.

Q. The first time you counted a portion and she counted a portion, and you added the amounts together ?

A. Yes.

Q. How did you disagree on the first count?

A. I can't tell you, only she thought she was right and I thought I was.

Q. How could there be any difference between you if you counted a portion and she a portion and you added the two sums together?

A. I can't tell; there was a difference; we might have counted it twice.

Q. Did you count it on the floor or lounge?

A. On the lounge and on her lap.

Q. What day of the month was this?

A. May 14th.

Q. Do you know whether it was the 14th of May or not?

A. If it is down, it was the 14th of May.

Q. The only knowledge you have as to the date is from your book?

A. It depends principally upon that.

Q. Have you any recollection as to the date?

A. Of course.

Q. How long before Mrs. Downie went to Europe was it?

A. Five or six or seven weeks.

Q. How long after Mr. Thompson's death was it?

A. It was from the 9th of April to the 14th of May.

Q. How do you know it was the 14th of May?

A. Because I put it down.

Q. When?

A. Then.

Q. That day?

A. Yes; that night.

Q. In what book?

A. In that pocket-book.

Q. You put down the amount of money?

A. No, sir,

Q. What did you put down?

A. The finding of the key and in it———

Q, The entry you made was the finding of the key and not the money?

A. Found the key and opened the drawer and in the drawer———and there it stops.

Q. "Found the key in safe drawer and in the same"—that is the entry. Why does it stop there?

A. I cannot explain it.

Q. How long after that was it that you put it in the day book?

A. As soon as I could get the day book, and it was transferred.

Q How long after you had made the entry in this book did you make the entry in the day book?

A. It might have been the day after.

Q. Don't you know.

A. No, sir.

Q. Don't you know it was not made till September?

A. No, sir.

Q. Don't you know you made the entry in the day-day and ledger in red ink and all those entries at the same time, in September?

A. No, sir.

Q. Sure of that?

A. Yes, sir.

Q. After you had agreed on the amount, after the second count, did you keep the memorandum?

A. Sometimes.

Q. What did you do with it?

A. I pitched it away, I suppose, after I entered it.

Q. After you had counted the money what did you do with the money?

A. Put it back into the drawer.

Q. What drawer?

A. The drawer it was found in.

Q. Did you lock the drawer?

A. Certainly, and the safe too.

Q. Did you take the key of the drawer?

A. Yes, sir.

Q. You took possession of it then?

A. Yes, sir.

Q. From that time Mrs. Downie did not have that key in her possession, did she?

A. No; only when I was there.

Q. Did you give it into her hand after that?

A. It is likely I might.

Q. You have no recollection of it?

A. No, sir.

Q. Did you take any of that money and deposit it in the bank?

A. When?

Q. Did you take any of the $4,250 and deposit it in either of these banks?

A. I think I did, but I am not sure.

Q. You had taken it all out by the summer except $150?

A. Yes, sir.

Q. What did you do with it?

A. I either put it in the banks or paid it out.

Q. Either in the First National or Second National Bank of this city?

A. Or the savings bank; yes, sir.

Q. Or you had paid it out?

A. Yes, sir.

Q. Do you recollect furnishing Mrs. Downie with $500 when she went to Europe that spring or early in summer?

A. Yes, sir; or more.

Q. How much more was it, if more?

A. $10 or $11, I think.

Q. More than $500?

A. Yes, sir.

Q. Why didn't you put that in your account?

A. It is in.

Q. Do you say it was put it your account?

A. Certainly; in the books.

Q. I refer to your account filed in the court.

A. How do you mean?

Q. I mean that we have here an intermediate account which you presented to the court in April, 1878, in which you undertook to give an account of the estate of Sam Thompson, deceased, as it stood in your hands. At that time I ask you whether this $510 or $511 which you say you furnished Mrs. Downie before she went to Europe, in the early part of the summer of 1877, was included in that intermediate account?

Objected to as improper, and on the further ground if it is not in the intermediate account it will show for itself.

The court then adjourned to December 6th, at 11 o'clock A. M.

PASSAIC ORPHANS' COURT.

In the Matter of the Estate of Sam Thompson, deceased.

December 6th, 1881.

PARTIES MET PURSUANT TO ADJOURNMENT.

ALLEN KNOWLES recalled and cross-examination continued by Mr. Stevenson as follows:

Q. What time of day was it when you and Mrs. Downie counted the money first, when you found, as you thought, $4,250 there.

A. I think it was in the afternoon, sir.

Q. About what time?

A. I can't tell exactly.

Q. Who first saw the money, you or Mrs. Downie?

A. I cannot tell; we may have both seen it at once.

Q. Who took it out the drawer?

A. That I can't remember; one of the two of us.

Q. Did the one who took it take it all out in one parcel?

A. No, sir; it was taken out in different parcels as it was found.

Q. Can't you recollect whether you took any of it out or not?

A. Possibly I might.

Q. Can't you recollect whether you took any of the money out or not?

A. I have no doubt at all but I did.

Q. Can you recollect whether you did or not?

A. Yes, sir.

Q. You recollect that you did take it out?

A. I took some of it out.

Q. Did you take it all out?

A. I don't think I did.

Q. Do you know whether you did?

A. I can't swear positively, but to the best of my knowledge I did not. I think we each took some out.

Q. You counted it out on the end of the lounge?

A. Yes, and on the widow's lap.

Q. Where was she sitting?

A. Close by the sofa.

Q. Where were you sitting?

A. Close by.

Q. Where you could touch the sofa?

A. Yes, sir; with my hand stretched out.

Q. When you counted the money where did you lay it?

A. Laid it some on her lap and some on the lounge.

Q. Did you lay it on her lap?

A. Some of it.

Q. And you laid some of it on the lounge?

A. Yes, sir.

Q. You are sure of that?

A. Yes, sir.

Q. So as you counted it it was spread over part of the lounge and over her lap?

A. Yes, sir.

Q. What was the denomination of the bills?

A. It was various denominations.

Q. How high was the highest?

A. I cannot recollect; there was quite a number of twenties I know.

Q. Were there any separate parcels?

A. Yes, sir.

Q. Do you know what the amounts in those parcels were?

A. There were $1,000 in either two or three of them, rolled up and elastic straps around them.

Q. How many were so rolled up?

A. I know there were two.

Q. Two one-thousand dollar parcels.

A. Yes, sir.

Q. What was the form of the others?

A. There were some broken into, open.

Q. You mean there were $2,250 in loose bills?

A. I would not be positive as to that amount.

Q. How did you count it then?

A. The same as I ordinarily count anything.

Q. Did you lay in separate piles?

A. Yes, sir.

Q. What amount in each parcel?

A. I guess about $100.

Q. Do you recollect?

A. The usual way of counting.

Q. Do you recollect?

A. I recollect it was the usual way of counting that I counted it.

Q. Do you recollect in what parcels you laid the money?

A. 100 dollar parcels.

Q. Do you recollect that?

A. Yes, sir.

Q. You swear to that?

A. I have done it

Q. After you had finished counting it what did you do with the money?

A. Put it in the safe again.

Q. Who gathered it up?

A. I guess I did.

Q. Do you know whether you did?

A. I think I did, but I wouldn't like to swear to that positively.

Q. You can't tell whether you did or not?

A. I know it was taken up anyhow.

Q. But you can't tell whether you gathered it up or Mrs. Downie?

A. To the best of my recollection I did.

Q. Have you a recollection on the subject?

A. I have a distinct one.

Q. What is that distinct recollection?

A. These details I would not swear positively to unless I was certainly sure.

Q. What is that distinct recollection as to who gathered the money up?

A. To the best of my knowledge I did.

Q. You said just now that you had a distinct recollection on that subject?

A. That is the subject of finding the money.

Q. You stated a moment ago that you had a distinct recollection as to who gathered the money up; is that right?

Mr. Williams: The witness did not say so.

Q. Have you a distinct recollection as to who gathered the money up?

A. Not who gathered it and put it in the safe, but I have a distinct recollection of locking the safe up.

Q. Have you a distinct recollection of closing the drawer after the money had been put back?

A. Yes, sir.

Q. Who locked the drawer?

A. Me.

Q. What did you do with the key?

A. Put it in my pocket.

Q. What did you do with the key after that?

A. I kept it in my pocket until I wanted to use it again.

Q. And after that was the key out of your possession?

A. I might have lent it to her after, when we were both together?

Q. (Repeated.)

A. No, sir; I do not think it was, for awhile at any rate.

Q. (Repeated.)

A. No, sir.

Q. When did you make the entry of the finding of the key in the little black book?

A. I made it either that night or the next day.

Q. Are you sure of that?

A. Yes, sir.

Q. Might it not have been the third day after?

A. No, sir.

Q. Where were you when you made that entry in the little black book?

A. In the house?

Q. In what house?

A. Thompson's house.

Q. Where the safe was?

A. Yes, sir; in the parlor.

Q. Can't you say whether the entry was made the day you found the money or the day after?

A. Not positively.

Q Did you open the safe after you found the money and before you made the entry in the book?

A. I don't think I did.

Q. Don't you know whether you did or not?

A. Before I entered it?

Q. Yes.

A. No, sir; I do not.

Q. Then you think you might have opened the safe door after you found the money and before you made that entry in the book?

A. It is very possible.

Q. Do you recollect opening the safe, after you and Mrs. Downie had counted the money and closed the safe on that day?

A. Yes, sir; I am sure so, in fact, that I opened it and tried to learn her the combination.

Q. Did you on that day open the money drawer?

A. I think not; I am sure not.

Q. Did you open the money drawer the next day after you had found the money?

A. I don't believe I did.

Q. Do you know whether you did or not?

A. Yes.

Q. Did you or not open the money drawer the day after you found the money?

A. No, sir.

Q. Did you open the money drawer within a week after you found the money?

Q. Yes, sir.

Q. What did you open it for?

A. To take out some money to pay the necessary business expenses of the estate.

Q. How much money did you take out?

A. I think it was over $1,200.

Q. How long after you and Mrs. Downie found the money in the drawer was it that you took out this sum that you think was $1,200.

A. It was within a short time; within two or three days.

Q. You say you did not open the money drawer

again after you had found the money on that day, and you did not open it the day after. Did you open it the second day after?

A. Most likely I did; I believe I did.

Q. Was that the first money you had taken out of the money drawer; I mean out of the wooden drawer where you say you found $4,250?

A. Yes, sir.

Q. This sum of $1,250 was the first money you had taken out of the larger sum of $4,250?

A. I don't know that it was $1,250 exactly; it was over $1,200.

Q. Whatever the sum was, that was the first portion of this large quantity of greenbacks that you had taken out?

A. Yes, sir.

Q. When did you take the $500 out which you paid Mr. Rossiter?

A. A week before that, I guess, and more too; indeed it was taken out before the inventory was taken.

Q. In what form was that $500?

A. In bills.

Q. In a roll or a package?

A. In a package, I believe.

Q. Did you take the package apart?

A. I cannot say positively whether I did or not.

Q. Did you take the $500 all out at once?

A. Yes, sir.

Q. In order to pay Mr. Rossiter?

A. Yes, sir.

Q. Did you take it out of the safe the same day you paid Mr. Rossiter?

A. I believe I did.

Q. When the appraisers made their appraisement was the safe opened?

A. I don't think it was; I returned that money to them.

Q. What do you mean by that?

A. I gave the account up.

Q. Do you mean you simply stated the amount of money that you were willing to have go into the inventory ?

A. I stated the amount of money that there was; that I knew about.

Q. And they took your word for it ?

A. I suppose so.

Q. Well, do you know whether they did see the money or not ?

A. I do not.

Q. You cannot say ?

A. No, sir.

Q. Were the inside drawers of the safe opened in the presence of the appraisers ?

A. I think not.

Q. Do you know whether they were or not ?

A. I don't know that they were.

Q. Have you any recollection as to whether the safe was opened in the presence of the appraisers ?

A. My recollection is that it was not.

Q. In the inventory there is a Paterson city bond, No. 19, stated ; was that produced before the appraisers ?

A. Yes, sir ; I believe it was.

Q. Where did you get it ?

A. I must have got it out of the safe ; either then or before.

Q. Do you know whether you did or not ?

A. No ; I can't tell whether I did or not.

Q. You have no recollection on that subject ?

A. My recollection is that I showed them the bonds and notes.

Q. I notice in the inventory a number of bonds and mortgages and notes, sewer bonds, city bonds, and I ask you were those securities not produced before the appraisers ?

A. Yes, sir.

Q. Where did you get them from when you produced them before them?

A. I got them out of the safe when I did get them.

Q. Was not the safe open then in the presence of the appraisers?

A. I can't tell positively whether it was or not; I think I said so before.

Q. Can you not tell whether you got these things out of the safe, or the appraisers got them out of the safe?

A. Yes; I can tell the appraisers did not get them out.

Q. Can't you tell whether you stood by when they were pulled out of the safe or not?

A. I cannot.

Q. You have no recollection on that subject?

A. I can't recollect.

Q. What was the first money that you took out of the safe?

A. It was that $500.

Q. In the presence of Mrs. Downie?

A. Yes, sir.

Q. Did that $500 stay in the safe till you took it out to pay it over to Mr. Rossiter?

A. I believe it did.

Q. Do you know whether it did?

A. Must have done, because we found it there when it was opened.

Q. Who found it there?

A. Me and her.

Q. I ask you whether, after you and Mrs. Downie found the $500 in the safe, as you say, and put it back, did it remain there till you took it out in order to pay it to Mr. Rossiter?

A. Yes.

Q. Did you take any portion of it out for any other purpose?

A. No, sir.

Q. Then that $500 stayed there all the time from the

time you found it with Mrs. Downie till you took it out and gave it to Mr. Rossiter, did it?

A. Yes, sir.

Q. What was the next amount of money that you took out of the safe, at any time, leaving out of view this $500?

A. It was $1,200 and odd.

Q. That was the next amount?

A. Yes, sir.

Q. I understand you to say that you bought this day-book about May 5th?

A. Yes, sir.

Q. When did you begin to make entries in it?

A. I don't know; I can't remember.

Q. How long after you bought it did you begin to make entries in it?

A. Perhaps, not very long.

Q. Do you recollect how long it was?

A. I had to transcribe it first into that little black book.

Q. (Repeated.)

A. No, sir.

Q. Can you tell within a week or a month how long after you bought this book you began to make entries in it?

A. Not from memory; I can't tell exactly; but I don't think it was a month.

Q. Was it a week?

A. I can't say.

Q. If you bought it May 5th, can't you state within a week what the time was when you began to make entries in it?

A. I began to make entries in it—the way I understand your question, as soon as I had transcribed out of that little pocket-book into that; then I began to make entries in it and stopped the other.

Q. Then this little black book was the book in which you made your entries till you purchased this one?

A. Yes, sir.

Q. Did you have any other book besides this black book and this day-book?

A. No, sir.

Q. Did you keep any memorandum of your transactions?

A. I frequently took memorandums on pieces of paper.

Q. Do you mean to say that all the entries in this day-book you either transcribed from this little black book or entered at the time?

A. I wouldn't swear to that.

Q. From what source did you get the entries in this book besides from this black book?

A. All that was in that black book; I had paper sometimes, and when I had been selling something or paid a bill I marked it on a piece of paper.

Q. Did you have any book of a permanent form besides the black book from which you transcribed into this day-book?

A. No, sir; only that.

Q. After you had transcribed from the black book into this day-book you kept this day-book right straight along of the transactions, assisting yourself with memoranda from day to day such as you might make on pieces of paper?

A. Yes, sir.

Q. There was no permanent memoranda of anything?

A. No, sir.

Q. Were the transactions entered into this book right away after they occurred?

A. As soon as possible.

Q. What do you mean by that?

A. As soon as I could get to the book and do the business.

Q. Would you ever let items accumulate before transcribing?

A. No, sir ; no longer than I could help.

Q. Was the ledger kept in connection with that day-book ?

A. Yes, sir ; that was the final account book that I wrote in.

Q. When did you open this ledger in connection with that day-book ?

A. I can't remember.

Q. Can you tell within a week or month ?

A. No ; I cannot tell within a week or month ; I depended on the day-book for some time.

Q. When did you commence this cash account ? [Showing witness page 300 of the ledger.]

A. The last account was commenced after I had consulted one of my securities, and he put me in the way of keeping that account and showed me his cash book.

Q. When was that ?

A. I think it was in the fall.

Q. And those entries were all entered at one time, were they not ?

A. No ; I don't think so.

Q. If you did not open this cash account till the fall of the year you must have had 6 or 8 pages to transcribe at once ; did you do that at one sitting ?

A. I don't think I did.

Q. Did you do it as a straight job from day to day ?

A. No, sir.

Q. What did you transcribe those entries from ?

A. From the day-book.

Q. Do you know what time in the fall you began to make it ?

A. I think it was in September.

Q. I call your attention to the 6th page of the little black book and ask you what that item is under date of May 9th, 1877 ?

A. It says " Received from safe."

Q. What else does it say ?

A. "170."

Q. 170 what?

A. It appears to be dollars.

Q. It is in the dollar column, is it not?

A. Yes, sir.

Q. Will you explain that entry?

A. I cannot now.

Q. I call your attention to another entry further down on the same page. Please read that entry.

A. "Received from safe $1,250."

Q. What is the date of that?

A. It is under the fourteenth.

Q. Is there not in the margin the figure 15, which has been rubbed out?

A. No, sir; I don't think so.

Q. Can you explain that entry?

A. No, sir; no further than it is there.

Q. You made that entry, did you not?

A. I believe I did.

Q. Do you know why that entry was stricken out with a lead pencil?

A. That entry was stricken out no more than these others as having been past.

Q. Isn't that entry stricken out by itself in a way different from the way in which the pages are cancelled?

A. I don't think it is.

Q. With the aid of that glass (showing the witness a magnifying glass) look on the margin of that book and state whether or not you see the date of May the 15th before the last entry which you have been looking at?

A. (The witness examines it). No, sir, I cannot see anything; I cannot make that into a figure.

Q. Do you know whether that was rubbed out or not?

A. It was not rubbed out by me.

Q. Have you no recollection of rubbing it out?

A. No, sir.

Q. I ask you what is your recollection as to the time

when you made the entry on page 10 of the day-book, "Found in safe drawer $4,250?"

A. I cannot tell when that entry was made, sir.

Q. What date is it under?

A. It is under date of May 14th.

Q. About when was it made?

A. I can't recollect.

Q. Can you tell within a month?

A. No, sir.

Q. Where was it made?

A. That I cannot tell you, but I think it was made in the house.

Q. At whose house?

A. At the widow's house.

Q. What made you think it was made there?

A. Because I kept the book there for quite some time.

Q. Is that your only reason for thinking that the entry was made there?

A. Yes, sir.

Q. Was that item, "Found in safe drawer $4,250," entered in the book before these items that followed it?

A. That I cannot say; it was certainly after this was done.

Q. After the next item you mean?

A. Yes.

Q. You mean that the next item, dated May 15th, was entered in that book before you had entered the item, "Found in safe drawer $4,250"?

A. I think it was.

Q. Then you wrote the item in red ink, "Found in safe drawer $4,250," in a blank space in the book, did you?

A. Right between those two lines.

Q. Those 4,250's at the head of each page, are they in your handwriting?

A. Yes, sir.

Q. You say that the item on page 10, under date of

May 15th, was entered before the entry, "Found in safe drawer $4,250"?

A. I think it was.

Q. I call your attention to the 5th item under date of May 15th, "Paid bill of April 19th, 1877, omitted at the time." When was that item entered there?

A. I can't tell you unless it was entered at the time.

Q. Was it entered after April 19, 1877?

A. I should think it might be.

Q. Then why did you date it May 15th, 1877?

A. I can't tell. I wish to state here that, whatever blunders are found in those books, there is no intent or design on my part to wrong that estate one single dollar.

Q. I show you page 62 of the ledger; I understand you to say you made that entry, "Found in safe drawer $4,250," simply because you found that a convenient place to put it in?

A. I don't remember what the idea was now.

Q. You say it was not entered about May 14th or 15th?

A. I cannot say.

Q. Was it entered prior to May 17th?

A. I cannot tell you.

Q. Don't you know whether it was or not?

A. No, sir.

Q. I call your attention to the way in which the $4,250 is carried along from column to column, and referring to page 64 of the ledger, where the column is footed up $19,039.43, and I ask you does that amount of $19,039.43 include the $4,250?

A. I don't think it does.

Q. Then when you added up that column the $4,250 was not there?

A. I cannot tell you.

Q. Don't you know by looking at your own book whether that $4,250 was there?

A. No, sir.

Q. You cannot tell?

A. No, sir.

Q. I understand you to say that you finally took all the money out of the safe with the exception of $150?

A. I don't know exactly, but it was something over $100.

Q. By what time had you got it all out of the safe except the $150 or $100?

A. I don't recollect.

Q. Did you leave any large proportion of the money in the safe after Mrs. Downie went to Europe?

A. Yes, sir.

Q. For how long a time?

A. I don't recollect; I slept at the house myself some time.

Q. When you ceased to sleep at the house did you take the money away?

A. Not all of it.

Q. When did you reduce the money in the safe to the sum of $150?

A. I can't tell; I don't remember.

Q. Can you tell what month?

A. It might have been August.

Q. Was it August?

A. I don't remember.

Q. Will you name the first time when you can safely swear that you had reduced the money in the safe to $150?

A. I cannot.

Q. Can you name the year?

A. Yes; 1877.

A. You mean before the 1st of January, 1878, you had reduced the money in the safe to $150?

A. Yes, sir.

Q. Had you so reduced it by the 1st of October, 1877?

A. Yes, sir.

Q. You can safely state you had taken the money out down to $150 after the 1st of October, 1877?

A. Yes, sir.

Q. How much further back in 1877 can you safely swear that you had reduced the amount of money down to $150?

A. Well, certainly to the beginning of September.

Q. What do you mean?

A. What I said, that was all taken out with that exception before the 1st of September.

Q. With the exception of $150?

A. Yes, sir; and I think that was out before then, paid to the widow at the time.

Q. I only want to fix the date approximately. Can you state whether you had taken it all out except that by the 1st of July?

A. No, sir; I cannot state that.

Q. You recollect that Mrs. Downie went away in June?

A. Yes, sir.

Q. Supposing she left for Europe on the 23rd of June, can't you tell us within a week about what time you had got money out of the safe all with the exception of $150?

A. No, sir; I paid it out by degrees or deposited it; I paid two mortgages off, I remember.

Q. Had you got it out down to $150 by the 1st of August?

A. I can't say; I don't think I had.

Q. Do you recollect the portion that you took out when you left about $150?

A. No, sir.

Q. Wasn't it the payment that you wanted to make to Mr. Hamilton that reduced it to about $150?

A. I cannot say whether it was the payment that I wanted to make to Mr. Hamilton, or Mrs. Van Riper, or a deposit.

Q. How long after you found the money with Mrs. Downie, which you thought was $4,250, did you pay Mr. Stapleton?

A. It was within a day or two, or two or three days.

Q. I want you to tell me with the assistance of your books, if they will help you, what was the first sum of money that you took out of the $4,250.

A. I can't tell exactly.

Q. I show you the first intermediate account which you presented to this Court in April, 1878, and I shall call your attention to the pages where you pray allowance for various items. Will you take that account and from that tell me what was the first sum of money that you took from that $4,250. [Showing the witness an account.]

A. I don't know that it is in here; it is in the book; I delivered the books up at the time, and they were left in the Court House.

Q What book is it?

A. It is in the day-book and the ledger too, I think.

Q. What was the first money you took out of that $4,250 after you found it in the drawer?

A. I do not see any allowance for that $1,200 here.

Q. I call your attention to the item of May 16th, 1877, "B. Stapleton on account of note $4,041.58," and I ask you, was any portion of that sum taken out of the $4,250?

A. Yes, sir; $1,250.

Q. And the balance was an indebtedness from John Shaw and the Eagle Brewery that was turned over to Mr. Stapleton?

A. Yes, sir.

Q. So you paid him on account of his note, May the 16th, 1877, $4,041.58 by giving him about $1,250 in cash and the balance in accounts that were due the estate?

A. Yes, sir.

Q. Mr. Stapleton held a note of about $5,000 against the estate?

A. Yes, sir.

Q. And at that time you gave him a note of the administrator?

A. Yes, sir.

Q. And that note was paid with interest?

A. Yes, sir.

Q. And the entry of "$1,035—note with interest" is the entry of it?

A. Yes, sir.

Q. In that way you settled the indebtedness that Mr. Stapleton held for $5,000?

A. Yes, sir.

Q. And you only took $1,250 from the safe to make that payment?

A. Yes, sir.

Q. And the entry "Received from safe $1,250," indicates the amount that you paid Stapleton?

A. Yes, sir.

Q. I call your attention to an item on the other side of the account book, under date of May 16th, "B. Stapleton, $1,216.98;" is that the exact amount that you paid him?

A. It might have been with interest.

Q. Do you know whether it was or not?

A. No, sir; I can't remember whether it was or not.

Q. I show you page 10 of your day-book and call your attention to the entry "Paid to B. Stapleton the sum of $5,000 to take up note of Sam Thompson given before his death, with interest at 7 per cent." Did you make that entry there?

A. Yes, sir.

Q. Is that the correct entry of the transaction with Stapleton?

A. I believe it is.

Q. And the account stated of Shaw is correct?

A. Yes, sir.

Q. "Cash $1,216.98" is the amount of cash you paid him?

A. Yes, sir.

Q. A note of $1,000 for 6 months after date indicates the note that you gave him at the time; does it not?

A. Yes, sir.

Q. That was the way that you made payment of the $5,000 note to Mr. Stapleton?

A. Yes, sir.

Q. It appears that about May 14th, 15th or 16th you took $1,250 out of the safe; I show you this same account and your books, and I ask you to state what was the next amount that you took out of that $4,250.

A. It is impossible for me to tell, because sometimes I pay bills out of my own pocket and do not go to the safe or draw a check either.

Q. Can you tell any other sum that you took out of that $4,250 in the month of May or June, July or August, 1877?

A. Yes, there is one entry here, I think it is August 3d, Eliza Van Riper $719.84.

Q. How did you pay that to Mrs. Van Riper?

A. I paid it through an attorney.

Q. What attorney?

A. I paid it to him, I believe; he is the son of a prominent lawyer that used to be in town here, Mr. Pennington.

Q. Did you pay it by check or in cash?

A. I don't remember.

Q. Do you know whether you took that money out of the $4,250 to pay it with?

A. I can't remember, but I think I did.

Q. How much money was there in the safe on the 1st of June, 1877, after you had taken the $1,250?

A. I don't know; there must have been the difference.

Q. That would be the difference between $4,250 and $1,250?

A. Yes, sir.

Q. And yet there was $1,000 more there than you had reckoned. Now, supposing there to have been $5,250 in the safe when you and Mrs. Downie found the money, and you took $1,250 out about May 15th or 16th

to pay Mr. Stapleton, how much money, in your judgment, was there there June the 1st, 1877?

Objected to.

Q. Supposing there were $4,250 in the safe, and you took $1,250 out about May 15th or 16th to pay Stapleton, how much money was there, in your judgment, in the safe on the 1st of June, 1877?

Objected to on the ground that it is a mere matter of computation.

Q. I want to know what was the next portion of money that you took out of that $4,250.

A. After paying Stapleton I can't tell.

Q. Can you find out from your account or from the books.

A. No, I cannot; because I was receiving money all the time.

Q. What did you do with the money that you received?

A. I applied it to its proper place.

Q. What did you apply it to?

Objected to.

By the Court:

Q. Were you carrying on any business at that time, in 1877 and 1878?

A. No, sir.

Q. You did not take any of this money in your own business?

A. No, sir; I did not take any of it for any purpose of my own.

Q. Will you look at this account again, where you pray allowance for the various items that you paid out for the estate, beginning April 10th, 1877, and going

down to Oct. 1st of the same year, and tell me whether that account is a complete list of all the expenditures that you made on account of the estate at that time?

A. I don't think it is, sir.

Q. What is out of it?

A. I can't tell what is out of it, because I don't know how that operated with the books to make that report out.

Q. You know about the books, but not about this account?

A. No, sir; it was left to my counsel.

Q. Do you know how this amount of $5,235.31, which is called cash on hand not inventoried, was reached?

A. No, sir.

Q. Do I understand you to say that the difference between that item and the $4,250 is an amount of money that you overlooked in the safe, or did not count?

A. I could not account for it when it was found out.

Q. So you thought there must have been that much more in the safe?

A. That naturally follows.

Q. Do you know when those figures, $5,235.31, were written in this account?

A. No, sir.

Q. Do you know why they are in paler ink than the other figures?

A. I don't know anything about it.

Q. Don't you know that these other figures were all put in and that was left blank, and finally that amount was written in?

A. No; I don't know a thing about it.

Q. Give us the date of the deposit in the savings bank, as administrator, which you mentioned the other day.

A. June 29th, 1877, $1,250.

Q. Is that $1,250 still on deposit there?

A. No, sir.

Q. Where is it?

A. I don't know.

Q. Did you draw it out afterwards?

A. I guess I drew it out afterwards and deposited it somewhere else.

Q. Do you know whether you did or not?

A. Yes; I think I deposited it in the two banks, First National and Second.

Q. Did you make any other deposit, as administrator, in the savings bank except that?

A. I don't think I did; I don't remember any.

Q. Do you know whether you did or not?

A. No, sir.

Q. Did you deposit any money, as administrator, in any other bank besides this savings bank and the two national banks in Paterson?

A. Not at that time I think.

Q. Did you at any time?

A. Oh, yes.

Q. Did you deposit any money, as administrator, in any bank except in the two Paterson savings banks and the two Paterson national banks?

A. I don't think I did, sir.

Q. Do you know whether you did or not?

A. Yes.

Q. Did you?

A. No, sir.

Q. Why didn't you say so at the start?

A. Well, the books will tell.

Q. Have you any other bank book in which your accounts with the national banks, as administrator, have been besides those?

[Showing witness bank books.]

A. No, sir; I don't think I have.

Second National Bank book, marked Exhibit 1. First National Bank book, marked Exhibit 2.

Q. Where did you keep the money as administrator?

A. In the savings bank and both the First and Second national banks.

Q. Then all the money that you have in your hands as administrator you have in one savings bank and two National Banks?

A. Yes, sir; what is in the shape of money.

Q. I call your attention to the Second National Bank book. Is that the balance in your hands as administrator there deposited?

[Referring to Exhibit 1.]

A. No, sir.

Q. Have you deposited in that bank since as administrator?

A. I don't remember; I have drawn that out; I know I put it in the savings bank, some portion of it.

Q. And the balance you had June the 6th, 1881, was $398.71?

A. Yes, sir; according to that book in that bank.

Q. Can you tell us whether you have drawn that out since?

A. I have drawn some of it out to deposit in the savings bank.

Q. Do you know how much you have drawn out?

A. No, sir.

Q. Well, about?

A. I think it was $350, or over.

Q. I call your attention to the First National Bank book and to the item of November the 11th, 1880, "Balance, $3.17." Was that the balance you had in the bank then, so far as you know?

A. Yes, sir.

Q. And these are the amounts that you have deposited there since?

A. Yes, sir.

Q. And you have made no other deposits that are not noted here?

A. No, sir.

Q. Have you drawn any portion of the money out of the First National Bank which appears on this last page of the account?

A. Yes, sir.

Q. How much, about, have you drawn out?

A. I have drawn out all that there was down to the last deposit.

Q. Then you have less than $70 in the First National Bank now?

A. Yes, sir.

Q. About how much in the Second National?

A. A few dollars; I can't tell how much.

Q. The rest of the money you have in the Paterson Savings Institution?

A. Yes, sir.

Q. And none anywhere else?

A. None, not in money.

Q. What books belonging to the estate have you in your possession; can you state the list of them?

A. I have only one of them, I think, besides these two, one that I got all the accounts out of for collection.

Q. Have you in your possession the last check book which Mr. Thompson used?

A. No, sir; I never had it.

Q. Have you the check book of B. Stapleton & Co.?

A. No, sir.

Q. Have you any of the return checks of B. Stapleton & Co. in your possession?

A. No, sir.

Q. You have in your possession a good many papers and books that you found in Mr. Thompson's place, haven't you?

A. I have no papers at all, only some bills made out by Mr. Tillier for collection and the book that I collected some debts or tried to collect some debts from; it is nearly like that ledger.

Q. Those are all the books you have?

A. Yes, sir.

Q. Haven't you a bundle of checks?

A. Not a check, only what belongs to myself as administrator.

Q. What is the book that you have as administrator?

A. It was an account book of his.

Q. One book?

A. Yes, sir.

Q. A large one or a small one?

A. A small one, about the size of that book there.

Q. Have you any papers belonging to the estate in your possession?

A. No, sir; unless there are some bills I tried to collect.

Q. How did you come to discover that you had more money than the $4,250?

A. Because I know very well that every dollar going into my hands belonging to that estate was appropriated to that estate.

Q. How did you come to find out that you must have had more than $4,250?

A. By the settling up.

Q. Explain that?

A. By the figuring.

Q. What did you figure?

A. I figured the sum toward that result I presume, or Mr. Hilton did.

Q. Where did you get the figures?

A. Out of the books.

Q. What time in the year was it?

A. In the spring of the year.

Q. That was the first you found out there was a discrepancy of over $1,000?

A. Yes, sir.

Q. In the spring of the year 1878?

A. Yes, sir.

Q. When you came to make out your first intermediate account?

A. Yes, sir.

Q. Did you find it out yourself, or did some others find it out?

A. I can't say whether it was Mr. Hilton, the Surrogate or myself.

Q. What were you figuring at?

A. To get the books closed up as far as I could.

Q. Explain briefly to the Court how that discrepancy appeared?

A. I can't tell you.

Q. You had kept track of the money you paid out?

A. I entered every dollar that I received and the same that I paid out in those books for that estate.

Q. Had you entered every dollar that you had received and every dollar that you had paid out in those books down to the time that the account was made out?

A. Yes, sir.

Q. So that when the account was made out those books showed exactly how much money you had paid and received?

A. Certainly.

Q. And the discrepency was between those two amounts, as appeared from the book?

A. So the Surrogate says.

Q. How much at any one time have you had in the Paterson Savings Institution?

A. I can't tell you.

Q. Have you while you have been administrator, down to the present time, kept any portion of the money of this estate in any place besides this safe or the four banks that you have mentioned?

A. No, sir; unless it has been in my pocket transiently.

Q. What amount have you kept in your pocket transiently?

A. No more than I could help.

Q. You mean when you collected money you would have to put it in your pocket till you would deposit it.

A. Yes, or pay it out.

Q. Did you deposit any money in the safe after you had found the $4,250?

A. No doubt I did.

Q. Did you?

A. If I got any large sum undoubtedly I did.

Q. Did you?

A. I can't remember distinctly whether I did or not; but the cautious practice I always used must have been the fact that I would do it.

Q. Do you remember whether you did deposit any money in that safe after you discovered the $4,250?

A. I can't distinctly recollect any one particular case.

Q. Did you at any time?

A. I can't say.

Q. Do you remember?

A. No, sir.

Q. You have no recollection?

A. No, sir; not of that thing.

Q. What thing?

A. Putting the money in the safe after collecting it.

Q. I understand you to say that the key of that little wooden drawer was an iron key?

A. I think so.

Q. (Showing the witness a bunch of keys). Will you pick it out if it is on that string?

A. I think *that* is the key of the iron door in the centre of the safe (picking one out); I can't tell you which it was.

Q. Did you have that bunch of keys in your possession?

A. Sometimes at first.

Q. When Mrs. Downie gave you the little key, as you say, did you put that in your pocket?

A. I believe so.

Q. Did you put it on a string?

A. I don't remember.

Q. Don't you know whether you put it on a string or carried it loose in your pocket?

A. No, sir.

Q. You can't tell which of those keys is the key of the drawer, if any of them?

A. No, sir; I cannot now.

Q. Do I understand you to say you got that bottle of red ink at Mr. Thompson's?

A. Yes, sir.

Q. Sure of that?

A. Yes, sir; certainly I am.

Q. And you made the entry in red ink at Mr. Thompson's?

A. Some of them.

Q. I refer to the entry in the day-book, "Found in safe drawer $4,250."

A. I can't say positively, but I think so; to the best of my knowledge I did.

Q. How did you come to make that entry in red ink?

A. Because it was such a remarkable find; I dipped in the wrong bottle; I can't tell why.

Q. You don't know why?

A. No, sir.

Q. You have no idea?

A. No, sir.

Q. Where were the sewer bonds, city bonds and mortgages when the appraisers inventoried them?

A. I don't exactly know whether they were in the safe; I rather think I fetched them out.

Q. Where were the appraisers when they were inventoried?

A. I think they were present anyhow.

Q. Who did the writing?

A. Mr. Garside, if I remember right.

Q. Were the papers brought before him?

A. I think so, and he figured up the interest due on some of them.

Q. What room of the house was this in?

A. I guess it was in the parlor.

Q. Don't you know whether it was or not?

A. I do not.

Q. Can you tell me whether the appraisers were in that parlor or not?

A. Yes; certainly.

Q. They went into the parlor?

A. Yes, sir.

Q. Did they see the safe?

A. Yes, sir.

Q. Did they ask what was in it?

A. I don't remember whether they did or not?

Q. You don't remember whether the safe was opened in their presence or not?

A. I can't say positively whether it was or not.

Q. Do you still say money was not produced before them?

A. Yes, sir; it was not; because it was not there.

Q. Wasn't the $500 there?

A. No, sir.

Q. Where was the $500?

A. It must have been in the safe.

Q. I thought you just said it was not there?

A. It must have been in the safe, I presume.

Q. Was the $500 brought before the appraisers when that amount was put in the inventory?

A. I don't remember that it was.

Q. Do you know whether it was or not?

A. No, sir; but the account of it was it.

Q. Do you know whether the money was produced before them or not?

A. I can't tell.

Q. Do you know whether the bonds were produced before them.

A. Yes, sir.

Q. Where were they brought from?

A. From the safe, I presume.

Q. Do you know whether they were brought from the safe or not?

A. No; I can't tell positively, but to the best of my recollection they were.

RE-DIRECT EXAMINATION.

By Mr. Williams:

Q. Is that your signature? [Showing the witness his intermediate account for 1878.]

A. Yes, sir.

Q. Who was your attorney at the time this account was prepared?

A. Mr. G. S. Hilton.

Q. Did you take your books before him to make up the account?

A. Yes, sir.

Q. All the books that have been produced here?

A. Yes, sir.

Q. Was that the time that you found out that you had more money belonging to the estate than you supposed you had?

A. Yes, sir.

Q. Was that matter gone over in your presence with Mr. Hilton comparing with the books?

A. Yes, sir; I believe it was.

Q. Do you know why that excess was added to the money which you had charged in your book as "Found in safe $4,250?"

A. Because it was there; it was so much over.

Q. Is that the reason that you supposed there must have been more money found in the safe than the $4,250?

Objected to as leading.

Q. Did you call the attention of the Surrogate to that?

A. No, sir; I had no conversation with him; the counsel did that.

Q. I refer to the item paid to Richard Rossiter under date of April 21st, 1877, and ask you how did you come to pay that before the inventory was made—$500?

A. At the request of Mr. Thompson; it was agreed on before he died.

Q. What was it paid for?

A. It was paid for the lots in Governor street.

Q. Was that upon lots purchased or agreed to be purchased in Mr. Thompson's life-time?

A. They had been purchased before that time.

Q. By whom?

A. I don't know; by Mr. Thompson, I suppose.

Q. Did you take a receipt from Mr. Rossiter the time you paid him $500?

A. Yes, sir.

Q. When you paid it to him did you pay it to him for himself or as the agent of any other body or person?

A. It was due to the Society.

Q. You understood Mr. Rossiter to be agent of the Society?

A. Yes, sir.

Q. Do you know Mr. Rossiter's handwriting?

A. No, sir.

Q. Did he give you a receipt at the time?

A. Yes, sir.

Q. See if that is the paper that he gave you?

A. Yes, sir; that is the paper.

Q. Do you know why that is marked "duplicate?"

A. No, sir.

Q. That was the paper that Mr. Rossiter gave you on the payment of $500?

A. Yes, sir.

Q. Was the deed delivered to you, or had it been delivered in Mr. Thompson's life time?

A. It was delivered to me.

Q. What did you do with it?

A. I recorded it in the County Clerk's office.

Q. The deed was made out to Mr. Sam Thompson?

A. Yes.

Q. Had the deed been executed before Mr. Thompson's death?

A. I can't tell; it had been agreed between Mr. Rossiter and Mr Thompson.

Q. Do you remember the date of the deed?

A. No, sir; do not.

The Court:—I presume there is no dispute about that?

Mr. Stevenson:—No, sir.

Q. You say Mr. Thompson spoke to you about paying this balance?

A. Yes, sir.

Q. Did he say anything about where the money was that was to pay it?

A. Not particularly so; I think he told me money was in the safe and he would get it.

Q. Did you find the money upon the same day that you paid it to Mr. Rossiter?

A. I believe I did, sir.

Q. In what part of the safe did you find the $500?

A. I think it was in the iron box in the centre of the safe.

Q. Was there any more in that box that you saw?

A. Not that I remember.

Q. When the appraisers came, on the 23rd of April, what did you say to them about this $500?

A. I told them there was $500, and likely I told them I had paid it out.

Q. Was it then put upon the inventory?

A. Yes, sir.

Q. At that time, on the 21st, when you took out the $500, had you any knowledge that there was other or more money in the safe?

A. None whatever.

Q. Had you at any time till you found it in the drawer?

A. I don't remember any.

Q. Had you at any time any knowledge of any other money in the safe, after taking out the $500, until you found the money in the drawer?

A. I don't think there was.

Q. You had no knowledge of any?

A. No, sir.

Q. Had you any knowledge of any?

A. No, sir.

By the Court:

Q. Did Mr. Thompson ever say anything to you while he was living about your being his administrator?

A. Not about being administrator, but he calculated to make me an executor or trustee.

Q. He did not make a will?

A. No, sir.

Q. Did he die suddenly?

A. Yes; but he was quite low for a long time.

Q. Did he have a physician?

A. Yes, sir.

Q. Who was he?

A. The last physician he had was a doctor from New York, a very eminent physician.

Q. Who was the Paterson physician?

A. I don't remember, unless it was Dr. Blundell.

[Receipt of Richard Rossiter put in evidence and marked Exhibit A.]

Q. Did he never before he died say anything to you about how much money he had on hand?

A. No, sir.

Q. You were intimate with him?

A. Yes, sir; very intimate. There was a difficulty between him and his partner, Benjamin B. Stapleton, and in the settlement of the partnership Mr. Thompson appointed me as a sort of arbitrator, and Mr. Stapleton appointed John Shaw, the brewer, and every meeting that we had Mr. Thompson would give me instructions what to do, what to offer, or anything of that sort, and then I would report, until finally Stapleton set a certain amount of money that he would take, and it was $5,000, and he paid him in a note—I think it was a month or so—and the papers were drawn up and settled, and when he agreed to pay $5,000 I asked him where the money was going to come from; "Oh, I will find that," he said.

Q. That was all he said to you about it?

A. Yes, sir.

By Mr Williams:

Q. You said in your cross-examination that you did not think the safe was opened on the day the inventory was taken. How could you produce before the appraisers anything that was in the safe?

A. I don't think I meant to say so if I did.

Q. How is the fact; was the safe opened on the day the inventory was made?

A. I can't positively state; but the papers were all produced.

Q. What do you mean by all the papers being produced?

A. The notes and bonds and mortgages.

Q. Who produced them?

A. Either me or her; I can't tell which.

Q. Where were they got from?

A. Out of the safe.

Q. Were they taken out at that time or taken out previously to the meeting of the appraisers?

A. I can't say whether it was taken out immediately before they came or when they were there.

[Recess.]

Q. After you found the money in the drawer, as you have mentioned, did you speak to any person about it?

A. Yes, sir.

Q. To whom?

A. I spoke to Mr. Daggers.

Q. For what purpose?

A. I asked him what I ought to do with the money that came into my hands after the inventory was taken?

Q. Where was it that you so spoke to Judge Daggers?

A. I can't recollect.

Q. To the best of your recollection, locate the time.

A. I can't fix the time.

Q. Was it before or after you had paid part of it out?

A. I think it was after I had paid some of it out.

Q. What did you ask Mr. Daggers? State as nearly as you can?

A. I think I asked him what should be done with the funds that came into an administrator's hands after the inventory was taken. I don't remember that I told him how it came.

Q. And what did he say?

A. He told me it should be credited to the estate.

Q. Did you make any reply to that, and if so what?

A. I don't remember what the conversation was.

Q. If there was anything said as to the amount, have you any recollection of it?

A. No, sir; I have not.

Q. When you put that question, as you have stated, did you refer to yourself, or did you give him to understand that you referred to yourself?

Objected to.

The Court :—The witness must state what he said.

A. I think I did not state whether it respected myself or not.

Q. Did you make any other reply than that which you have given ?

A. I don't remember ; no.

Q. Did Mrs. Downie know when you were to file your intermediate account ?

A. Yes, sir.

Q. How did she know it ?

A. I told her ; I also told her she could find everything out ; the books were at the Surrogate's office, and she could find out everything that she wanted to know.

Q. Did she say anything to that ?

A. I don't remember what she said.

Q. How long did you leave your books at the Surrogate's office ?

A. I don't remember the time, but they were there the necessary time, advertised in the papers.

Q. Did you leave them there at the same time you filed your account ?

A. Yes, sir ; they were left there before the account was filed.

Q. The Surrogate made up the account for you ?

A. Yes, sir.

Q. Did you assist him ?

A. No, sir.

Q. It was in the Surrogate's office—was it young Mr. Van Wagoner or the old gentleman ?

A. It was Benjamin.

Q. Do you know whether she ever went there to look at the account or examine the books ?

A. I do not.

Q. Where was it you told her the books and everything were left at the Surrogate's office, that she could examine them if she thought proper ?

A. At the house.
Q. Who was present?
A. I don't remember.

RE-CROSS-EXAMINATION.

By Mr. Stevenson:

Q. You say Mr. Benjamin Van Wagoner made up your account?
A. Yes, sir.
Q. Did he discover the discrepancy?
A. He said nothing to me about it; it was through Mr. Hilton.
Q. When Mr. Van Wagoner made up the account had you learned of that discrepancy?
A. Yes, sir.
Q. Who told you that before?
A. Mr. Hilton and me arrived at that before the books went there.
Q. What books went there?
A. I don't remember whether I took both of them or only the ledger.
Q. Do you mean the ledger produced here in evidence?
A. Yes, sir.
Q. And the day-book?
A. Yes, sir.
Q. Were those entries in red ink in the ledger then?
A. Yes sir; they are just the same.
Q. There are entries in that book that you have made since, are there not?
A. According to the progress of the concern, of course.
Q. But the red ink entries were in the books then?
A. Yes, sir.
Q. The inventory was taken the day after the expert was there?
A. No, sir.

Q. Were the appraisers down there, and did they go through the property the day after the expert was there?

A. No, sir.

Q. What day was it?

A. It was nearly a week after that.

Q. Can you fix the date when they were there?

A. Yes, sir; it was the 23rd of April.

Q. Was that the day they were at the house?

A. Yes, sir.

Q. And also the day when they were at the Surrogate's office with the inventory?

A. I can't say that positively.

Q. What is your recollection about it?

A. I have no recollection about it.

Q. Do you recollect when you came up here with the appraisers and swore to the inventory?

A. No; I do not.

Q. Was the oath to the inventory administered here, or at the house?

Objected to; allowed.

Q. Can you state the date when the appraisers were at the house and took the inventory?

A. As far as my knowledge leads me, it was on the day that it was signed, or dated.

Q. Do you mean to say the appraisers were down there and took the inventory the same day that they swore to the inventory?

A. I can't say.

Q. Do you know whether there was any period of time between?

A. I think so; but I think it was the case.

Q. You think what was the case?

A. That it was all done the same day.

Q. That the appraisers made the inventory and swore to it in one day?

A. I would not swear positively that was the case.

Q. Have you any recollection on that subject?

A. Not positive recollection.

Q. Have you any recollection?

A. I have no positive recollection.

Q. Do you recollect whether the inventory was made out and sworn to on one day, or whether it was made out on one day and sworn to at some future day?

A. I do not.

Q. Benjamin Stapleton was some relation to Mrs. Downie?

A. I understood he was a brother.

Q. Didn't you have a conversation with Mr. Thompson some time before his death about getting some money out of the bank?

A. I got money myself for Mr. Thompson from the bank.

Q. How much did you get?

A. One occasion I got a thousand dollars.

Q. How long before his death was that?

A. I can't say positively.

Q. How did you get it?

A. By check.

Q. Drawn to your order?

A. Mr. Thompson's check.

Q. Was it his check or the check of B. Stapleton & Co.?

A. I can't remember.

Q. What bank was it on?

A. The Merchants' Loan and Trust Co.

Q. Do you know where that check is now?

A. I do not.

Q. Did you find it among the papers of the estate?

A. I don't remember.

Q. I understand you to say you have none of the returned checks?

A. No, sir.

Q. Where abouts in the safe did you get the bonds and mortgages?

A. I can't say; it was in some of the drawers. There was more than one full of papers and bonds and deeds, and one thing and another.

Q. Did you get the bonds and mortgages out of the iron box?

Objected to; question withdrawn.

By the Court:

Q. Can't you remember now whether that money that you got just before Mr. Thompson died was got on his own check or not?

A. No, sir; I cannot.

Q. Then you never have known, and do not know now, whether he kept an account in the Merchants' Loan and Trust Company?

A. I got the money from there.

Q. Did you ever know, or do you know now, that he kept an account with the Merchants' Loan and Trust Company?

A. I can't say whether it was Sam Thompson or Benjamin Stapleton & Co.

Q. Wasn't it one of them?

A It certainly was one of them, for I drew out a dollar and some cents after his death, out of the Merchants' Loan and Trust Company.

Q. Did you ever go there afterwards to find out whether Thompson had an account there?

A. I found a book with the Merchants' Loan and Trust Company in the safe somewhere.

Q. Where is that now?

A. I don't know; it was left there in the safe.

Q. Do you remember how long it was after you found the money that you asked Judge Daggers about the duties for an administrator?

A. No, sir.

Q. Was he at that time one of your securities?

A. Yes, sir.

Q. Why didn't you say something to him about the amount that you found?

A. I can't tell whether I did or not.

By Mr. Williams:

Q. Did you draw out the balance in Thompson's account in the Merchants' Loan and Trust Company?

A. Yes; I think it was Thompson's individual account.

Q. What was the balance which you drew out?

A. It was only a dollar and a few cents.

By the Court:

Q. You say you think it was his individual account?

A. Yes, sir.

By Mr. Stevenson:

Q. Do you say that that bank-book showing the account of Sam Thompson with the Merchants' Loan and Trust Company was in your possession after Mr. Thompson's death?

A. Yes, sir; it was found in the safe.

Q. Where is it now?

A. I don't know; I left everything only these books.

Q. Why did you take these books and leave the other?

A. Those books were not in existence then.

Q. You say whatever bank-books Sam Thompson had you left in the safe, and they are there now, so far as you know?

A. Yes, sir.

GEORGE S. HILTON, sworn for respondent, testifies as follows:

By Mr. Williams:

Q. Are you a counsellor at law in Paterson?

A. Yes, sir.

Q. Did you act as counsel for Mr. Knowles in the Thompson estate?

A. I did; after the fall of 1877.

Q. Before or after Mrs. Downie was removed?

A. About the time; I think it was very soon after I became the counsel of Knowles I drew the order for her removal.

Q. When you say you became his counsel do you mean counsel for him as administrator of the Sam Thompson estate?

A. Yes, sir.

Q. State to the Court your first connection with this matter which was brought before you in reference to the accounts?

A. I drew that order relating to Mrs. Downie, and the books were brought to my office some time, I think, in the latter part of the winter; I think it was some time in February, according to the best of my recollection.

Q. What books were then brought?

A. Those two books; day-book and ledger.

Q. And the little black book?

A. No, sir; only those two.

Q. For what purpose were they brought to you by Mr. Knowles?

A. For the purpose of having his account prepared to be presented at the next term of court.

Q. Did you assist in regulating the accounts and preparing them?

A. I first examined the books myself, and one of the first things I did was to see how his cash stood. That

is, whether he had his cash on hand as his cash accounts would call for, and the discovery I made was that he had more on hand than his account called for; and then Mr. Knowles went over the books—he took his day-book and I took the ledger, comparing item by item, to see that everything was in the ledger that was in the day-book, and not being satisfied with the result, the ledger was placed in the hand of Mr. Borden, who was something of an expert, and he went through the ledger. I have the figures here that Mr. Borden gave me at the time. (Produced.)

Q. How did that compare with your examination?

A. The same; there is some figuring of my own on the end, which I carried forward the time that Mr. Borden figured it up. I will state that that shows simply the accounts as they stood in the ledger with this exception. Along somewhere in the ledger Mr. Knowles commenced putting in an entry whenever he deposited in bank; deposited in bank so much, and whenever he drew out of the bank, so much, and of course in figuring up the ~~claims~~ we disregarded those items, because it did not make any difference whether it was in the bank or Mr. Knowles' pocket. Then there is some money not included in that figuring there, which did not appear in the ledger account except "a certain amount of money drawn from the Paterson Savings Institution." In order to get at the actual cash received you have to add the cash received in the Savings Institution.

Q. In making up his account from the books what did you consider as to moneys received after the inventory was made?

A. He took the items as he had them in the ledger, $4,250.

Q. What did you find?

A. We found he had about $1,000 on hand more than the accounts and what was in the savings bank called for.

Q. Did you call his attention to it?

A. I did.

Q. What was said and done by him in reference to it?

A. He was surprised—

Objected to as an improper inference.

He expressed surprise.

Q. Did he tell you how much he had on hand before you told him that?

A. No; I got it from his books; he gave me the amount he had in each book, and after that he told me that that did not represent all the money that he had in hand belonging to the estate; that he had taken in small sums which he had not put into the bank, taken in money and paid it out, and he thought there was a little balance got mixed up in his pocket with his own money that belonged to the estate, that he wished to have added to the rest.

By the Court:

Q. Did he say he had mixed the money of the estate with his own?

A. Small sums; yes, sir.

By Mr. Williams:

Q. About how much?

A. He thought about $40 or $50.

Q. What was done with reference to that?

A. Nearly double that amount was added to the amount in the bank; he said he wanted to be sure and get in all that he had belonging to the estate, and he wanted to give the estate the benefit of the doubt; I find the sum is put at nearly $90. How he happened to put it as large as that in looking over the figures now I cannot understand, being double nearly what he thought he had mixed up in his pocket with his own money; I have the exact statement here.

Q. Explain that to the Court.

A. That was made up within a few days after the account was drawn.

By the Court:

Q. There is an item charged in account filed as interest, $40.80. Has that anything to do with it?

A. $40.80 had already been put into the bank, and it avoided charging him by deducting it; it went into the account in another shape; it merely goes to show how that item was made up, that is all.

By Mr. Williams:

Q. What more, if anything, did he say in respect to the sum that you found he had more than he supposed?

A. We did everything we could to account for that discrepancy. I suppose I spent several days, I don't know but nearly a week, on his books, studying every item, trying to find it out. Some time during the examination he said he did not know how it could be accounted for in any other way than that there was some mistake made in counting that money found in the safe in the small drawer, and then he told me about finding some money and thought there might be some mistake there.

Q. What did he tell you about finding the money in the drawer?

Objected to—question withdrawn.

Q. What did you do with this excess of money?

A. We concluded to let the account be drawn by Benjamin Van Wagoner. At that time I had never drawn any account and knew, perhaps, as little about that as almost any other thing connected with the prac-

tice of law, and I stated to Benjamin Van Wagoner that there was some money that could not be accounted for that ought to be put in, and I suggested that it should be put in by itself as money on hand not otherwise accounted for. After the account was drawn up I saw that he had united the two items—the $4,250, with this excess. Being of the opinion myself that the excess was occasioned by a mistake in the amount, I did not think it was worth while to separate the items. He said he thought that was the best way to put it in, and I let it go in according to his judgment.

Q. Up to this time had you conversation with Mrs. Downie in reference to these accounts, and if so, state fully?

A. I could not say whether I had or not up to that time. She had been to my office several times before the filing of the account, but whether anything was said when she was there about the accounts or not I don't remember.

Q. Was there anything said to her at any time about the amounts in the inventory, or about the amount found in the safe?

A. Mrs. Downie came to my office quite frequently during the year 1878, after the account was filed, and several times she mentioned matters connected with the estate and wanted to know where the money had all gone to that had come into Mr. Knowles' hands, and on some occasions, two or three at least, she would use language like this——

Objected to.

The Witness:

I can only state the substance of the conversations. She would say that there was so much in the inventory, and many times—at least two or three times—she men-

tioned exact figures; not round numbers, but right down to the dollar.

By the Court:

Q. Was that before the account was passed?

A. No; that was after the account was passed; along some time, I think, in the summer of 1878. But what the figures were that she used I can't recollect. Then she would say there was so much found in the safe drawer, mentioning the sum, which I don't recollect distinctly; but my best recollection is, and my impression is so strong that I have no doubt of it in my own mind, yet I cannot say positive, that it was about $5,000. I think that was used as the round numbers; but one thing I am sure of, that on two or three occasions the sum of $17,000 was mentioned as being the sum, or about the sum, of money and property that went into Mr. Knowles' hands as administrator.

By Mr. Williams:

Q. Down to what time did these conversations take place?

A. She came in about several of these matters during 1878, and I think after she and Mr. Knowles got at swords' points she came in less frequently; she came once or twice in 1879 and once or twice in 1880, and I think after the difficulty with Mr. Knowles she did the same thing, inquiring as to where the money had gone to.

Q. When did the difficulty occur between her and Mr. Knowles?

A. I can't fix the time, but it occurred over the taxes for the property that she and her husband were living in.

Q. State what occurred in reference to that?

A. She wanted Mr. Knowles to pay the taxes on that

property, and he wouldn't; that I know from her talk with me and also Mr. Knowles; she came to see me about it herself.

Q. Did she say anything about the money found in the drawer at any time and express any wish that she had got hold of it?

A. Two or three times.

Q. What did she say?

A. She said that if she had only got hold of that money and Mr. Knowles not known it, that Mr. Knowles or nobody else would have known anything about it; that she would have kept it; she said so two or three times.

Q. When?

A. She said so once or twice before the difficulty with Knowles; she admitted it since, I think, within a year or so.

Q. Did she say anything as to what she would do with Mr. Knowles, or make any threats, or anything of that kind?

A. Not till recently.

Q. When?

A. The latter part of the spring, or the first part of the summer.

Q. This year?

A. Yes, sir.

Q. What did she say?

A. She said she was going to take away from Mr. Knowles his property down on River street; she had got some money, and she had employed a lawyer; that was a short time before the settlement was made in Mr. Ward's office with regard to the Sutcliffe matter—the conversation referred to by Mr. Knowles in his testimony. She said the papers were all prepared by her lawyer to go ahead then, but her lawyer thought it was best to wait till the Sutcliffe matter was settled.

Q. Did you ever furnish Mrs. Downie a statement of the account?

A. Mrs. Downie spoke to me several times, saying she did not see where that $17,000 had gone to; I would explain to her the best I could, so much paid to Stapleton, so much on this mortgage and so much on that, and that did not seem to satisfy her; I told her I would make out a statement of the large items, and I came up to Surrogate's office and made a statement of all the expenditures of $10 or over, or over $10—I forget which—and I mailed it to her; that was in 1878 or 1879, I cannot say which.

Q. Did you give her any notice to produce that statement here?

A. Yes, sir.

Q. That was the one referred to in her testimony?

A. Yes, sir.

Q. You have not see it since?

A. No, sir.

Q. Did you show the statement to Mrs. Downie at any time?

A. Yes; after the account was filed Mrs. Downie wanted money, and Mr. Knowles was willing to advance to her all the money he safely could; and in order to convince her that he was doing so, I made out a statement of the cash on hand and showing how much he could give her—about $500; I have the statement here which I showed to her in her house in Governor street.

Q. That does not embrace the amount of money that you found in the safe?

A. No; but it states in the beginning the amount on hand.

Q. When?

A. June 5th, 1878; the sum was $1,464.79.

Q. Was that the time when the $500 was paid out?

A. The $500 was paid shortly after that. She gave a refunding bond, which I have here, for the full amount she had received, inclusive of what was received for the benefit of the children.

Q. State fully anything further that you know about

this matter, that came under your observation as pertinent to the case.

A. I don't think of anything further; only that I knew nothing about any such claim as she has made here until the time of that interview I have mentioned, the latter part of the spring or the first of the summer.

Q. When was the first that you knew that she knew how much he had charged himself in his account as money in the safe?

A. It was not long after the filing of the first account that she, in speaking of matters connected with the estate, wondered where it had all gone to and went over a statement of the sums, both what was in the inventory and what was found in the safe; but the exact date I can't fix, nor can I fix the exact sum that she mentioned.

By the Court:

Q. The precise sum?

A. No; I hardly think it was a precise sum. With regard to the inventory she mentioned the precise sum.

By Mr. Williams:

Q. She got that down to a cent?

A. Not to the cent, but to the dollar; but I know the sum she mentioned was one I did not object to.

Q. In all your dealings as counsel in the matter of this estate, what was the apparent desire of Mr. Knowles in reference to giving up everything and making an exhibition of all his accounts?

Objected to.

CROSS-EXAMINATION.

By Mr. Stevenson:

Q. How long after you had examined the books did you find out this mistake?

A. Right away; from the examination of the books and his statement to me of what he had in the banks. It did not appear in the ledger account, which, I think, is the only account I examined at first.

Q. Is this amount of $1,825.20 the cash which he said was actually on hand at that time?

A. It is the sum we agreed on as the probable amount—adding in the sum which he had on hand in the bank—that got mixed up with his own money in his pocket.

Q. That was put in because of the difficulty about the $40?

A. About that much that was in his pocket.

Q. So that that amount was within $40 of the cash he had on hand then?

A. No; it includes about $80 and odd; in order to get it large enough he made it about double.

Q. That amount is within $100 of the amount on hand at that time?

A. Yes, sir.

Q. In the bank and in his pocket and everywhere else, assuming his statement to be correct?

A. Yes, sir.

Q. Was that the amount that he stated was in his hands in the shape of cash at that time?

A. I don't know as he stated any more than I stated; in talking the matter over we agreed to put it at that sum, as certainly large enough to cover what he had.

Q. The element of indefiniteness was this $100?

A. The sum he had in the bank.

Q. Apart from that that $1,820.25 represents the amount of cash Mr. Knowles had when this statement was made?

A. Yes, sir.

Q. And this statement was made when ?

A. A few days after the account was drawn. I kept little memoranda of the conclusions we arrived at on separate pieces of paper; and in order to have a permanent record I drew it from the memorandum.

Q. When did you first learn about the money found by Mr. Knowles in the safe ?

A. During the examination of his books. At that time he could not account for the discrepancy.

Q. Did he tell you about that before you examined the books ?

A. No, sir.

Q. You questioned him about it, did you ?

A. No, sir ; he voluntarily stated after he looked the books over that he could not account for it in any other way than that there was a mistake made in the money found in the safe drawer.

Q. Before that time did you question him about that item ?

A. No, I did not ; I never observed it particularly.

Q. Didn't you observe those entries in red ink in the book ?

A. The account I looked at was the account on page 300 ; there was no red ink entry there.

Q. Did you examine the account on pages 62 and those following?

A. I did not ; no, sir.

Q. Why not ?

A. Because he said that it was all in that book, and he took his day-book and read the items in the day-book, and I compared them with this account on page 300, etc.

Q. Although your examination was so careful, you did not turn back to look into that account at all ?

A. No, sir ; because he said that was the way he was keeping it then ; he did not commence that way.

Q. When was your attention first called to this red ink entered here ?

New Jersey State Library

A. I think I first noticed that within the last week.

Q. Can't you state whether you observed it before or not?

A. Last week—I certainly had not till within two weeks. Mr. Knowles brought his books up to get ready for the examination.

Q. You saw that item, did you not?

A. I did not; because when we compared Mr. Knowles read from the day-book and I went along with the ledger.

Q. Did Mr. Borden examine these entries?

A. He took the same that I did.

Q. That ledger account was the account made up by Mr. Knowles afterwards?

A. Yes; I have learned so now.

Q. You did not go back to the original ledger?

A. No, sir.

Q. If you went back to the day-book didn't you observe that entry?

A. He read the items from the day-book.

Q. Do you know whether Mr. Borden examined this day-book?

A. No, sir; he only saw the ledger.

Q. When did Mr. Knowles first tell about his finding the money in his safe?

A. In the winter of 1877, during the first examination of the books.

Q. Did he state the circumstances of finding it?

A. He did not.

Q. I ask you generally.

A. Only a few of them.

Q. Did you inquire of Mrs. Downie about that item?

A. I did not.

Q. You never had any conversation with Mrs. Downie about that transaction?

A. It was referred to in the conversation I had with her the latter part of last spring or the first of the summer.

New Jersey State Library

Q. Not before.

A. Only as I said before; she mentioned the item in reckoning up the amount Mr. Knowles had in hand.

Q. When was that that she mentioned it?

A. She mentioned it first within a short time after the first account was filed.

Q. When there appeared to be a discrepancy, as Mr. Knowles stated that he thought he had made a mistake in counting that $4,250, why didn't you go to Mrs. Downie and ask her about it?

A. I don't know as I can give any reason.

Q. Was any conversation had between you and Mr. Knowles, any reason stated by him why you did not go and see Mrs. Downie?

A. No, sir.

Q. You do not know why you did not go and inquire of her?

A. I did not see any necessity for it; we had not fully made up our minds then, at least Mr. Knowles had not, and I was pretty well satisfied there was a mistake in the counting; he thought it probable.

Q. After the first account was filed you had a conversation with Mrs. Downie?

A. Several.

Q. In which there was a talk about the items?

A. Yes, sir.

Q. She thought the money had gone and did not know where it was gone?

A. Yes.

Q. Wasn't that the substance of the conversation, that she thought there was more money than appeared?

A. She stated the particulars.

Q. She stated the amount of money that was in the safe?

A. Yes, sir.

Q. And it was more than the amount that was in the account?

A. No, sir; she never mentioned any amount that I

objected to till this last conversation in the latter part of the spring or first of the summer of this year.

Q. I refer now to the conversation had after the filing of the first account. Did Mrs. Downie state the amount that was found in the safe?

A. She did.

Q. Do you know what amount she stated?

A. I do not exactly, but according to the best of my recollection it was $5,000.

Q. What was the exception that she took to the condition of the estate at that time?

A. To know where the whole of that $17,000 which Mr. Knowles had received had gone to.

Q. Then you did not come down to particular items?

A. No, sir.

ALLEN KNOWLES, recalled, further testifies as follows:

By the Court:

Q. At the time you paid Stapleton $1,250, according to the statement of the books, there were $3,000 left. Why didn't you pay the whole note in money? Why did you give a note for $1,000?

A. Only because Ben. was threatening to open up the partnership business and claim those houses that had been repaired and fixed up.

Q. That is the only reason you can assign now?

A. That is the only reason I can assign now.

GEORGE S. HILTON, cross-examination resumed by Mr. Stevenson.

Q. Mrs. Downie from that time on was dissatisfied with Mr. Knowles' administration?

A. No, sir; she did not express dissatisfaction to any extent till after he refused to pay the taxes for 1878.

Q. I mean after the filing of the account.

A. There were one or two things that he had done that she expressed dissatisfaction about, I think.

Q. But in that conversation she mentioned the amount of money found in the safe?

A. She did; the inventory, the amount in the safe and the aggregate sum in some of the conversations; I do not say in all of them, but she did in some of them.

Q. Was this book delivered to Mr. Borden?

A. Yes, sir.

Q. And the day-book also?

A. Not the day-book.

Q. Have you here a statement in his handwriting?

A. Here are his figures casting up his accounts. [Referring to a paper.]

Q. He was not there long at this work was he?

A. No, sir.

Q. It was only a matter of a few minutes?

A. He had the book half a day, I guess.

Q. Did you confer with Benjamin Van Wagoner when that account was being made up?

A. I conferred with him before he commenced making it.

Q. Did you arrange to have the account made up and completed and a blank left opposite the item of cash not inventoried?

A. I told him when I first agreed with him about that excess to leave that blank, in order that we might have a few more days to see whether it might have to be changed or give an explanation of it.

Q. After the account had been made up by him you

put in the figures opposite the amount of cash not inventoried, or gave the figures to go in there?

A. I gave him the figures before he commenced drawing the account, but I told him not to put them in for a few days, but to leave them blank because we wanted further time to consider.

Q. Were the figures determined when he started out to make his account?

A. Yes, sir; the excess was determined.

Q. Were the 5,000 and odd dollars determined when you made that account?

A. The item of 900 and odd dollars was determined as the excess. I did not unite the two; he united them.

Q. You then set Mr. Van Wagoner at work?

A. Yes.

Q. And you gave him the figures?

A. Yes, sir.

Q. All he had to do was to add them together and it made that amount?

A. Yes, sir.

Q. And no change was made?

A. I told him after two or three days to put them as I gave them to him at first.

Q. Where did you first see that little black book?

A. Since your petition was filed.

Q. Do you know why Mr. Knowles did not give it to you when you were working at this account in 1878?

A. I do not.

Q. Did you ask him if he had any more books?

A. No, sir.

Q. Did he say he had more?

A. He did not?

Q. If you had known he had another book would you have called for it?

A. I should have done so; I should have tried to get all the light I could on the subject.

Q. When did you first know of page 10 of the day-book having in red ink, "Found in safe drawer $4,250?"

A. When your petition was filed.

Q. Then your acquaintance with Mr. Knowles' accounts was rather slim, was it not, till this proceeding was started?

A. After the comparison between the day-book and the ledger, he holding the day-book, I saw no occasion for going back and running through his day-book.

Q. Your acquaintance, then, with Mr. Knowles' accounts prior to the commencement of this present proceeding was confined to that portion of the ledger— to page 325?

A. Not entirely; I had occasion to examine some of his other accounts as, for instance, the stone account and rent account and account of money paid to Annie Downie.

Q. Did you notice on page 300 of the ledger the difference in ink between the words, "Cash in purse and safe," and "after it was opened?"

A. I never noticed any difference in the ink.

Q. You notice it now?

A. [Referring to book.] No, sir; it occurs to me one is blotted a little more freely than the other.

Q. You say *that* was written and dried and the other was written and afterwards blotted?

A. Yes.

Q. Did you notice the erasure?

A. Not till you called Mr. Knowles' attention to it the other day.

Q. Did you ever question Mr. Knowles closely upon the circumstances in which the money was found in the safe?

A. I have.

Q. Prior to the commencement of this procedure?

A. No, sir; since.

Q. When Mr. Knowles told you he thought there might have been more money in the safe than he had allowed did you take any steps to find how that money was counted originally?

A. He told me how it was counted at the time and told me about finding it.

By Mr. Williams:

Q. How did he tell you?

A. He said he and Mrs. Downie counted it together, and that on their first counting they differed, and afterwards they agreed upon how much there was.

Q. You were asked on your cross-examination whether Mr. Knowles referred to the transaction of finding the money in the drawer, and you answered in the affirmative. State what he said in referring to that transaction.

A. I think I have stated all that was said.

Respondent's counsel puts in evidence a deed from the Society of Useful Manufactures to Sam Thompson referred to in the testimony, Book T 5 of Deeds. Accounts put in evidence and marked Exhibits B and C. Respondent rests with the privilege of calling Judge Daggers as a witness.

Lees Garside, sworn for petitioner, testifies as follows:

By Mr. Stevenson:

Q. How long have you lived in Paterson?

A. 40 years.

Q. Have you been in the auctioneer and real estate business during a good deal of that time?

A. Over 30 years.

Q. Have you frequently acted as an appraiser of estates of deceased persons in the city of Paterson?

A. A number of times.

Q. Do you recollect acting as appraiser of the estate of Sam Thompson, deceased, in 1877?

A. Yes, sir, I believe so.

Q. Look at that inventory, (showing witness page 320 of Book G of Inventories); you say you acted as appraiser when that inventory was made?

A. Yes, sir.

Q. Where did you go to take the inventory?

A. To the house.

Q. Whereabouts is the house?

A. We went all through the house.

Q. The house in Governor street?

A. Yes, sir.

Q. In which Mr. Thompson lived and died?

A. Yes, sir.

Q. Do you recollect finding a safe there?

A. There was one; yes.

Q. Will you state now from your book the inventory of the property in that safe?

A. After we got through with the house we went to the safe, and Mr. Knowles opened the safe door, threw it wide open, and he took out some of the papers, and I took out others, and we put them on a table and then went to work and examined them there carefully to see what they were.

Q. Who did the writing?

A. I did.

Q. Was everything taken out of the safe?

A. For anything that I knew of.

Q. Do you recollect whether any money was produced before you?

A. Whatever the inventory says here.

Q. Was any portion of the interior of that safe left locked so you could not get at it?

A. Not that I am aware of.

Q. Would you have passed any portion of that safe and left it locked, any drawer or compartment?

Objected to—objection sustained.

Q. Do you recollect what was done with the drawers of the safe while you were making the examination?

A. I am under the impression that they were taken out and left on the table, and what there was in the middle drawer, in the little safe inside, was handed out. In the iron box were mortgages and notes, and they were carefully examined, and we wrote down what they were.

Q. Do you know when it was that you put the inventory on the Surrogate's blank?

A. I did not put any on the Surrogate's blank; I always write them just as this states here, and sign them at the bottom, and then take them in to the Surrogate.

Q. Do you recollect where Mrs. Downie was at that time; on the day you went down there to take the inventory?

A. I think she was in bed when we first went to the house.

Q. Were you at the house more than once that day?

A. Yes, twice; forenoon and afternoon.

Q. What is your recollection of Mrs. Downie's condition?

A. Well, she was a very sick woman.

By the Court:

Q. Do you recollect whether you took an inventory of the bonds, etc., that were in that safe, in the forenoon or afternoon?

A. It was in the afternoon, sir.

Q. Do you recollect what time of day?

A. It must have been from two to three o'clock, if not before that time.

CROSS-EXAMINATION.

By Mr. Williams :

Q. What time did you go there?
A. Ten o'clock, I believe.
Q. How long did you remain there?
A. Till 4 or 5 in the afternoon.
Q. Did you leave for dinner?
A. Yes, sir; about 12 o'clock, and got back soon after 1.
Q. And left at what time?
A. Between 4 and 5.
Q. Did you complete your inventory that day?
A. No, sir.
Q. When was it sworn to?
A. It was sworn to probably in a couple of days. We had to go up to the quarry at Haledon the next day, and we went up to the quarry and examined that and came back and finished it. It took some time to examine the book of accounts.
Q. Do you remember the day you went there?
A. No; I don't remember that.
Q. Who took it to the Surrogate's office?
A. I did.
Q. Who went with you?
A. Mr. Knowles, I think.
Q. Who else?
A. I think Mr. Crossley; I am not positive.
Q. Who swore to it?
A. Me and Mr. Knowles.
Q. Do you recollect his swearing to it?
A. Yes; it was in the regular form.
Q. Did anybody else swear to it except Mr. Knowles and yourself?
A. Mrs. Thompson.
Q. Were you present when they swore to it?
A. Yes, sir.

Q. Where was the oath administered?

A. In the Surrogate's office.

Q. By whom.

A. By the Surrogate.

Q. Are you sure of that?

A. Yes, sir.

Q. You are sure it was sworn to in the Surrogate's office?

A. Yes, sir.

Q. Was Mrs. Downie there in the forenoon?

A. Yes, sir; at the house.

Q. Was she up when you went there?

A. No, sir; I think not, but I am not sure. It runs in my mind that Mr. Knowles said, "Wait a little, and I will call Mrs. Thompson".

Q. You then thought you had found all the property you could find?

A. Yes, sir.

Q. Who opened the safe door that day?

A. Allen Knowles.

Q. Who opened the iron chest?

A. Mr. Knowles, I suppose; I don't know of anybody else.

Q. How many drawers were there in that safe?

A. Well, I am not positive whether there were two or three; but I think there were two.

Q. No more than two?

A. I think two or three; I am not positive, but two I am sure of; there was one above and one below.

Q. On one side, or on both sides?

A. One on top the iron chest and one below.

Q. None on the side of the iron chest?

A. Not that I am aware of; if my memory serves me right that is it.

Q. Were the drawers taken out?

A. I think so.

Q. Have you any positive knowledge about that?

A. The papers were all taken, and they were put on a

table, and from the drawers we took them out and examined them and then laid them down on a desk again.

Q. How many drawers were taken out?

A. Two, I am sure of.

Q. You are sure two were taken out?

A. Yes; I feel positive two were taken.

Q. Was there something in each of those two drawers?

A. There were a great many papers.

Q. Can you recollect what was in each of those two drawers?

A. I cannot—bonds and mortgages and papers belonging to the estate; a great many things we just looked at that did not belong to the appraisers to examine; I think there was $500 from one of the places handed to us

Q. Was that in the drawer?

A. It was in the safe.

Q. Do you know whether that was taken from the iron chest or one of these drawers?

A. I can't say.

Q. Was Mr. Knowles there all the time?

A. He was.

Q. Can you tell us with more certainty the date you went there to commence the inventory?

A. We went in the morning.

Q. The day of the month?

A. I can't tell you.

Q. What is the date of that inventory?

A. [Referring to the recorded inventory.] April 23rd, 1877.

Q. By looking at that can you tell us with any certainty when you commenced?

A. We commenced on that day.

Q. Were you more than one day busy?

A. Yes; but we always take it from the day we commence.

Q. Then you commenced on the 23rd; have you any recollection about it?

A. That is my own handwriting; I wrote it, and I know I did not write it on the wrong day.

Q. What day did you swear to it?

A. Well, it must have been a day or two afterwards; I don't know whether it was here or not.

Q. What do you mean when you say you commenced a day or two before the 23rd?

A. We commenced on the 23rd; we went up to Haledon to the quarry; I have no doubt you will find something about it in here.

Q. Did you take it up yourself to the Surrogate's office?

A. I did.

Q. Did Mrs. Downie go up with you?

A. I can't say whether she went with me, but she was at the Surrogate's office; I went with Mr. Knowles.

Q. You are sure of that?

A. Yes; because Mr. Knowles done all his business with me.

By the Court:

Q. Was she well enough to go to the Surrogate's office?

A. She could get out; how she went I don't know, whether in a carriage or not.

The court then adjourned to Tuesday, December 13th, 1881.

PASSAIC ORPHANS' COURT.

In the matter of the estate of Sam Thompson, deceased. } Before Judges Woodruff and Simmons.

December 13th, 1881.

Parties met pursuant to adjournment.

Mr. Hilton:—In looking over the testimony as copied by the stenographer, I notice there are a few instances in which my evidence was misunderstood—a word or two—and there are one or two instances where, perhaps, I desire to make a little modification.

Mr Stevenson:—I have no objection to Mr. Hilton's taking the stand now and making such corrections or modifications as he desires.

GEORGE S. HILTON further testifies as follows:

On page 237 of the evidence, as written out by the stenographer, I was speaking about Mr. Knowles putting into his banks money and drawing it out, and it says here, "Of course in figuring up a column we discovered." The word used was "disregarded." On page 238 "Then there is some money not included in that figuring there which did not appear on the ledger account, except a certain amount of money drawn from the Paterson Savings Institution." It should have been except "as" a certain amount—the word "as" should be inserted. On page 240, in referring to the statement I made up showing how this excess was

arrived at, the testimony says, "What was made up," instead of "that." In speaking of the $40.80 deducted from the excess, it says here, "$40.80 had already been put into the account, and avoided charging him by deducting it." I said, in substance, that it was deducted in order to avoid charging himself with it twice, for I go on and state it went into the account in another shape. The next is a little modification I would like to make. In speaking, on page 241, of the time spent in endeavoring to explain this excess, I said, "I spent several days—I don't know but nearly a week." I did not mean by that I spent all the time for a week, every working hour in the day, but that we were at it that length of time. Mr. Knowles came to my office every day, some part of the day, I think for at least a week.

On page 244 I see the sum of $17,000 was mentioned as being the sum, or about the sum, of money that went into Mr. Knowles' hands as administrator. I presume that is just as I stated, but I meant that the $17,000 represented the money and property, that is, what was included in the inventory and found in the safe combined.

On page 246, according to the written testimony, I say, "She said so once or twice before the difficulty with Mr. Knowles, and she admitted it since, I think within a year or two." If I used the word "admitted" I did not mean to; I meant "said".

The Court:—It is the same thing; if she said it she admitted it.

Mr. Hilton:—On page 248 we had been speaking of a statement, and the question was put, "Did you show the statement to Mrs. Downie at any time?" The question would seem to refer to the statement already mentioned. My answer was to a question whether I showed any statement.

On page 251 appears this question, "How long after

you had examined the books did you find out this mistake?" My answer is, "Right away, from the examination of the books and his statement to me of what he had in the banks. It did not appear in the ledger account, which I think is the only account I examined at first." Now right there, after the period in that answer, I think Mr. Stevenson showed me the red ink entry and the day-book, and the latter part of the answer was that that did not appear in the ledger account, which, I think, was the only account I examined at first.

The Court: What do you say it should be?

Mr. Hilton: I did not say that the mistake did not appear in the ledger, but it did appear in the ledger in conjunction with the savings bank book.

On the same page, 251, is the question: "Is this amount of $1,825.00 the cash which he said was actually on hand at that time?"

"It is the sum we agreed on as the probable amount, adding in the sum which he had on hand in the bank that got mixed up with his own money in his pocket." I meant to say it was the sum we agreed on as the probable amount, adding in the sum which he had on hand in the bank and that which got mixed up with his own money in his pocket.

With regard to the question asked me by Mr. Stevenson on page 254, whether, in examining Mr. Knowles' accounts, I examined pages 62, etc., of the ledger, I stated that I did not, which was according to my recollection. In thinking over the matter since it has occurred to me that I did examine to a certain extent that part of the ledger, but to what extent I can't say.

On page 256 the question is put "Did you inquire of Mrs. Downie about that item?" The answer is "I did not." I desire to add there, so far as I remember of. I have a faint impression now that something was said to her about it.

On page 265 of the testimony and the bottom of page 264, Mr. Stevenson says, in speaking of the difference in ink, "Do you notice it now." My answer is, "No, sir; it occurs to me one is blotted a little more freely than the other." My answer should have been blotted a little more quickly or something to that effect.

CROSS-EXAMINATION.

By Mr. Stevenson:

Q. Will you please give your answer to this question: "How long after you had examined the books did you find out this mistake?" referring by the word "mistake" to the discrepancy?

A. I don't think I had the books in my hands more than a day or two.

Q. What error was there in your original answer to that question?

A. I don't remember what my original answer was.

Q. Then you found out the discrepancy right away from the examination of the books, did you?

A. And the statement of Mr. Knowles of what he had actually on hand at the banks.

Q. In what form was that statement made?

A. I think Mr. Knowles took his ledger and turned to it and made a verbal statement, and I may have examined the bank account myself also. I recollect I got a statement from him. He stated to me first himself.

Q. Then the discrepancy appeared from Mr. Knowles, own books of account without reference to his bank books, did it?

A. No; if you mean by his book of accounts that part of his ledger in which his bank account is contained, it would appear in the book of accounts.

Q. Do you mean that a discrepancy appears by the examination of pages 300 to 325 of the ledger?

A. Not in footing them up in the way that we did, by

disregarding those items where he charges himself with money put in the bank and money drawn out of the bank ; leaving out those items as we did and adding up the columns, I think you will find he expended a little more than he received. I am not certain about that. The books will show, and I think they show, by adding up that way, that there were some hundreds of dollars less than a thousand on hand more than he paid out.

Q. Did you examine then the account with the banks in the prior part of the ledger ?

A. I cannot say whether I examined them or took Mr. Knowles' statement when he examined them and gave me a verbal statement ; he took the books and examined them and gave me a verbal statement ; I can't say whether I did or not.

Q. What did he give you a verbal statement of ?

A. He gave me a verbal statement of the cash that he had on hand in the banks.

Q. At that time ?

A. At that time. I think I am wrong ; I think that statement was discovered in this way, by adding up the columns and then adding to the difference between the cash received and the cash paid out the amount of money that Sam Thompson had when he died in the Paterson Savings Institution. It does not appear in those pages of the ledger except in this way, so much drawn from the Paterson Savings Institution. In adding up those columns in the ledger, as stated before, we disregarded entirely all items of money deposited and money withdrawn, and we got at the difference in this way ; then there was this money in the Paterson Savings Institution which appears in the inventory ; that we added on to the difference between the receipts and expenditures as arrived at in that way.

Q. In arriving at the receipts and expenditures in that way, you did not take into account at all this deposit in the Paterson Savings Institution ?

A. Not when we added up the columns, we did not.

Q. Do you mean to say that the amount in the Paterson Savings Institution was an asset of the estate which you had not put into the account in any way till then?

A. No, I do not say that ; Mr. Knowles had entered it in the latter part of his account for that year, so much drawn out of the Paterson Savings Institution ; but I did not regard, when he drew it out, that he then received it, because that was actually cash in his hands when he was appointed administrator.

Q. I understand you to say that, after you had footed up the columns which you did foot up, you added the amount received from the Paterson Savings Institution. Is that correct?

A. That is correct, but as I stated, disregarding all deposits and withdrawals from the banks.

Q. Among which was this item, which was also disregarded?

A. Yes, sir.

By the Court:

Q. I do not understand how you added up these columns, disregarding these deposits and withdrawals. You must have done that on another piece of paper, didn't you?

A. I think the last pages there include both; that figuring on that paper does not include any deposits or withdrawals from the bank ; it is merely receipts and expenditures.

Q. Then, for instance, you would have left out on that, "Received from Merchants' Loan & Trust Co., $1.08."

A. I think that was put in because that was not money that Mr. Knowles deposited in the bank.

Q. There is an interlineation there on page 301.

A. It was not till the latter part of the account that year that they began to put this in ; his footing was somewhat mixed, and for that reason I discarded his footings entirely and went over it again.

Q. There is an item of deposit in the Second National Bank between the 17th and 21st of December, 1877; it is interlined in red ink.

A. There are a good many of those.

Q. Now all these interlineations, if I understand you correctly, were there when you first saw the book?

A. Yes; if I put a mark there, I put a lead pencil mark by each one of those.

Q. Then in carrying the account forward do you remember whether this was the amount with those items in or with those items out?

A. He included them; that is his figuring; Mr. Borden and myself left them out with the exception of those two withdrawals from the Merchants' Loan and Trust Co. and the First National Bank; I did not understand his method of book-keeping, so I disregarded those footings entirely.

By Mr. Stevenson:

Q. Do I understand you to say that after you had examined the books you found that, according to the books, there was a sum in cash still in Mr. Knowles hands as administrator?

A. Yes, sir.

Q. How did you find the discrepancy between that amount and the actual amount?

A. I added up the columns and those pages in the ledger to the 310th page; I think that was the last written on when I first examined the matter and found the difference.

Q. The difference between the receipts and expenditures according to the books?

A. Yes, sir.

Q. How did you come to know that the result was not correct?

A. Mr. Knowles then gave me a statement of the actual cash on hand, and the actual cash on hand was

more than he was required to have according to his books, in the neighborhood of $1,000.

Q. Did he state where that cash was?

A. Yes, sir.

Q. Where?

A. In the banks, with the exception of some $40 or $50 which he had not deposited.

Q. What banks?

A. Some in the First National, some in the Second National, I think, and also a small balance in the Paterson Savings Institution, according to my recollection.

Q. Did he produce any bank books before you?

A. I don't think he did produce any bank books before me.

Q. Did he give you the figures in writing?

A. He did not; he stated them, and I took them down, and I think I also examined his bank account as contained in the ledger, although I am not sure of it.

Q. Did he make the statement from memory?

A. He made the statement from the bank account as contained in the ledger, according to my recollection.

Q. Are you sure of that?

A. I have no doubt of it.

Q. Do I understand you to say that in answer to the question originally put to you by me on your former cross-examination, "How long after you had examined the books did you find out this mistake?" that I produced a book before you when you answered that question?

A. If you will allow me to see the testimony——

Q. Your answer was "Right away, from the examination of the books and his statement to me of what he had in the banks. It did not appear in the ledger account, which I think is the only account I examined at first." I want to understand what correction you meant to make in the latter part of that answer?

A. Let me see the testimony.

[The minutes are handed to the witness.] The first

part of the answer needs no modification, "Right away, from the examination of the books and his statement to me of what he had in the banks," and then the last part, "It did not appear in the ledger account, which I think is the only account I examined at first;" that is also correct, providing by the ledger account you mean pages 300 and so forth, and also disregarding his bank deposits and bank withdrawals; but my impression was that you showed me an entry in the day-book just there, as I said that it did not appear in the ledger account; and yet I may be mistaken as to that, and still the answer, with the explanation I make of it, is correct as it stands.

By the Court:

Q. You have no correction to make as to the ledger being the first book you examined?

A. No, sir; it was the first book I examined; on page 300 and something.

By Mr. Stevenson:

Q. The pronoun "it" at the commencement of the second sentence in your answer refers to the mistake or discrepancy, does it not?

A. That I understand refers to the discrepancy; I cannot now say without looking at the figures, whether there would not a small mistake appear by the examination of the ledger account.

Q. When did you prepare that statement? [Showing the witness a paper.] "Notes on account of Allen Knowles, administrator."

A. Within a few days after the account was drawn up—the first account; this was drawn from a memorandum that I prepared before.

Q. Are all the entries in your handwriting on that paper?

A. Yes, sir.

Q. Including the lead-pencil entries at the close?

A. Yes, sir.

Q. When did you make the lead pencil marks?

A. About a week ago; but that needs correction;

Q. What correction does it need?

A. There would be included cash in First and Second National Banks, and then there was a small balance, I believe, also in the Paterson Savings Institution, which I discovered the other day.

[Paper referred to is marked Exhibit D.]

Q. Is that the account of Allen Knowles, administrator, in the Paterson Savings Institution? [Showing the witness a book.]

A. It is Sam Thompson's account.

Q. Are these the figures of Mr. Borden?

A. Yes; those are the ones he gave me.

Q. Is this the slip that Mr. Borden gave you? [Showing the witness Exhibit C.]

A. Yes.

ROBERT DOWNIE, sworn on behalf of the petitioner, testifies as follows.

By Mr. Stevenson:

Q. You are the husband of Mrs. Downie?

A. Yes, sir.

Q. Do you recollect my going with you to your house within a day or two after this investigation was commenced, in order to examine the safe and desk?

A. Yes, sir.

Q. Will you just describe the interior of that safe;

after you have opened the outside door, what is the interior that is disclosed?

A. There are two small drawers and then a side safe and above that pigeon holes.

Q. And on the left hand side is there an iron box?

A. Yes, sir.

Q. And above the iron box one wooden drawer?

A. Yes.

Q. And below the iron box another wooden drawer?

A. Yes, sir.

Q. And below that wooden drawer what is there?

A. Nothing; a vacant space.

Q. There are then two wooden drawers and an iron box in the safe?

A. Yes, sir.

Q. Has each of these a key?

A. Yes, sir.

Q. Did you examine carefully through all the papers in the safe and in the desk and everywhere else where you thought there would be anything of the estate of Sam Thompson, deceased?

A. Yes, sir.

Q. Do you know whether a particular examination was made of the bank-books?

Objected to as leading.

A. There were no bank books in the safe of any kind.

Q. Or in the desk?

A. Or in the desk.

Q. Were any checks found?

A. There were plenty of checks.

Q. Are those the checks? [Showing the witness a package of checks].

A. Yes, sir; they came out of the safe.

Q. Were there any more checks anywhere?

A. There were checks at the First National Bank.

By the Court:

Q. You mean there were more checks in the safe than these that are handed to you?

A. Yes, sir.

By Mr. Stevenson:

Q. Have you brought the checks on the First National Bank with you?

A. Yes, sir.

Q. Please produce them?

[The witness produces checks].

By the Court:

Q. I would like to know about that iron box. Was that an iron construction with a door to it; or was it a drawer?

A. There was a key to open it with; a little door.

Q. When the door was open anybody outside could see what was in it?

A. Yes, sir.

By Mr. Stevenson:

Q. Were there any other checks besides the bundle of checks on the Merchants' Loan and Trust Company which you have produced and this bundle of checks on the First National Bank?

A. No, sir.

Q. And no bank books whatever?

A. No, sir.

Q. Do you know whether any particular search was made for any checks later than September, 1876?

A. Everything was turned out of the safe and desk; that is the latest.

Q. There were checks for the winter 1876 and 1877 in the Merchants' Loan and Trust Company?

A. 1876 is the latest. There are checks of 1876 there, and there are none later than that.

Q. Do you know up to what time Mr. Knowles has had access to that safe?

A. About 18 months after I came home.

Q. Do you know of his taking anything from the safe?

A. No, sir; I never interfered with the safe when he had it.

Q. What do you mean by 18 months after you came home?

A. I came home in September, 1877.

Q. You lived here before you went to England?

A. Yes, sir.

Q. Have you the keys of the safe with you?

A. Yes, sir.

Q. Will you produce them?

[The witness produces keys].

Q. Were you in the employ of Mr. Thompson in his life time?

A. Yes, sir.

Q. Did you ever see him with any of these keys?

A. Yes, many times.

Q. Did you ever open any portion of this safe during his life time?

A. Yes, sir.

Q. Which is the key of the iron box?

[The witness indicates it, and also the key of wooden drawer.]

Q. Is there any key of the upper drawer there?

A. It is not here; it was never taken out of the safe; it was always in the drawer; it has never been taken out to my knowledge and has never been used.

Q. You mean the key of the upper drawer was left in it?

A. Yes, since the safe was bought.

By the Court:

Q. Was that the same key that unlocked the lower drawer?

A. Yes, sir.

Q. Then the two keys that unlocked the iron box and the two drawers were brass keys?

A. Yes, but the other key was a different key altogether.

Q. But they were both two brass keys?

A. Yes, sir.

Q. And they are the only brass keys on that string?

A. Yes, sir.

Q. Had you any more than two?

A. There is another small key of the top drawer.

Q. On that string?

A. No, sir; that never was used.

By Mr. Stevenson:

Q. You say that this larger brass key on this string is the key of the iron box?

A. Yes, sir.

Q. And the other brass key on the string is the key of the lower drawer?

A. Yes, sir.

Q. Do I understand you to say that there is a third brass key, which is the key of the upper drawer?

A. Yes, sir.

Q. Is that third brass key the same sort of a key as this?

A. No, sir; it would not open the drawer.

Q. Did you ever unlock that wooden drawer?

A. Yes, sir.

Q. For what purpose?

A. I went and took money out for Mr. Thompson, and I have put money in.

Q. Did you live there when Thompson died?

A. No; I went away the year before he died to Scotland.

Q. Before you went to Scotland you did reside in his family?

A. Yes, sir.

Q. And it was during that time that you went to the safe with those keys?

A. Yes.

CROSS-EXAMINATION.

By Mr. Williams:

Q. Did you have the combination of that safe?

A. Yes, sir.

Q. Did you ever open the outside door?

A. Yes, sir.

Q. What was the combination?

A. The same as it is now.

Q. What is it now?

A. I don't think it is right to tell.

Q. Who gave you the combination in Mr. Thompson's life time?

A. I was with Mr. Thompson when he bought the safe.

Q. Have you told any person the combination?

A. No, sir.

Q. Did you tell Mr. Stevenson?

A. No, sir.

Q. Who opened the safe for him when he was down there?

A. Myself.

Q. How many times did you open that safe while you were there living with Mr. Thompson?

A. A good many times ; I can't tell exactly.
Q. Were you his book-keeper ?
A. No, sir.
Q. Did you keep his accounts ?
A. No, sir.
Q. Did you have any control of his money affairs ?
A. No, sir.
Q. Did you work for him as an individual, or was he connected with any person ?
A. I was foreman.
Q. For whom ?
A. Mr. Thompson.
Q. In what business ?
A. The mason business, contracting—anything.
Q. Who was with him in business ?
A. Mr. Stapleton, I believe.
Q. Did you work for Thompson individually ?
A. I worked for the company, I believe.
Q. Did you ever work for Mr. Thompson individually ?
A. Yes.
Q. When ?
A. Before he went into partnership.
Q. How long ?
A. About 18 months, I guess, or two years.
Q. At the same business ?
A. Yes, sir.
Q. The same he was engaged in after he went into partnership ?
A. Yes, sir.
Q. He kept the partnership books ?
A. Yes.
Q. Did you assist ?
A. I assisted to figure, that is all.
Q. Did you have any knowledge as to where Thompson kept his individual money ?
A. I knew the money was in the safe.
Q. Did you know whereabouts in the safe it was kept?

A. Yes.

Q. Where ?

A. In the small drawer, and some in the iron part inside.

Q. Where generally ?

A. Generally just wherever he told me to go and get money.

Q. Did you have a key to the little drawer ?

A. He gave me the keys.

Q. Did you keep the key to the drawer ?

A. No, sir.

Q. Did you always return it to him again ?

A. Yes.

Q. Did you have a key to the iron box ?

A. It was on the string.

Q. And you then opened the box or drawer as he told you ?

A. Yes, sir ; just as he told me.

Q. Did you know at any time about how much money he kept there ?

A. No, sir ; I never counted it.

Q. Do you know how much you took out at any one time ?

A. Yes ; I have taken out $100, and sometimes a little more.

Q. For what purpose ?

A. I don't know ; I did not ask him that.

Q. Was that connected with the partnership affairs or the individual affairs ?

A. I believe it was—I don't know ; I suppose it would be.

Q. Would be what ?

A. Connected with the partnership.

Q. Was the money he kept in that safe partnership money or individual money ?

A. I believe it was partnership money ; I paid the wages out of it many times.

Q. Do you know where he kept his individual money ?

A. In bank.

Q. Individually?

A. No.

Q. I speak of his individual money.

A. I don't know anything about that.

Q. You say you have taken money out of the little drawer. Was it the lower or the upper drawer?

A. The lower drawer.

Q. You never opened the upper drawer?

A. No, sir; I have seen him open it.

Q. When you opened that little drawer to take money out, could you form any judgment as to the quantity of money there?

A. No, sir.

Q. You never made any examination for that purpose?

A. No, sir.

Q. How long did you leave this country before Mr. Thompson's death?

A. A little over a year; I think I sailed in 1876, on New Year's day.

Q. When did you return?

A. September, 1877.

Q. Were you in Thompson's employ or Thompson & Co's at the time you left?

A. B. Stapleton & Co.

Q. Had they dissolved partnership when you left?

A. No, sir.

Q. Do you know whether they had dissolved before Mr. Thompson's death?

A. I seen it in the papers.

Q. Do you know it of your own knowledge?

Mr. Stevenson.—How can he when he was in Europe?

Q. When you came back where did you go to live?

A. Where I am living at present.

Q. Where is that?

A. 13 Governor street.

Q. The place where Mr. Thompson lived at that time?

A. Yes, sir.

Q. And the place where he died?

A. Yes, sir.

Q. You married his widow?

A. Yes.

Q. When did you first examine the safe after you returned from Europe?

A. I never examined the safe till within a few days.

Q. The time Mr. Stevenson refers to?

A. Yes.

Q. Had you ever opened the safe from the time you returned till the time you referred to?

A. No; not till after Mr. Knowles gave the keys up.

Q. When did Mr. Knowles give up the keys?

A. I can't remember exactly; he left them hanging on the desk; he did not really give them up.

Q. You say you did not open the safe till you and Mr. Stevenson were there together?

A. Oh, yes; many times before that.

Q. When was the first time you opened the safe after you got the keys?

A. I can't tell exactly.

By the Court:

Q. When did you first open that safe after you came from abroad?

A. After he gave up the keys.

Q. You said not till Mr. Stevenson was there, did you not?

A. No; I said I had opened the safe many times.

By Mr. Williams:

Q. When did you find these checks which you produced this morning?

A. When Mr. Stevenson was with me.

Q. When?

A. I don't remember the date.

Q. About when?

A. I think week before last; I can't tell exactly the date.

Q. Where have they been since then?

A. In a pigeon hole where they have always been, I suppose.

Q. Who brought them up this morning?

A. I did.

Q. Where did you get them from?

A. Out of the pigeon hole in the safe.

Q. Are these the same checks that you and Mr. Stevenson examined or saw?

A. I believe so; nobody else has been in the safe that I know of.

RE-DIRECT.

By Mr. Stevenson:

Q. About when was it that Mr. Knowles left these keys hanging in the desk?

A. It must have been about 18 months after I came back; he used to come in there and open the safe; I never went in to see what he was doing; he had the whole control of the safe.

Q. After you got the keys did you ever remove any of the papers, checks, bank-books or anything of that kind?

A. No, sir; never touched them; Mr. Knowles, before he went away, left some bonds there; I never saw them, and he came and demanded them of me; I told him to go and open the safe and take them; he would not take them; I went and opened the safe, and he took the bonds out; I never knew what they were; I never saw them.

By the Court :

Q. Was that in September, 1877, or September, 1878, that you came home?

A. 1877, sir.

Petitioner's counsel puts in evidence the following:- Bank book Paterson Savings Institution, in account with Allen Knowles, administrator, marked Exhibit E.

Bank book Paterson Savings Institution, in account with Sam Thompson, marked Exhibit F.

Ledger, marked Exhibit G.

Day-book, marked Exhibit H.

Little black book, marked Exhibit I.

Certificates of deposit from Passaic County Savings Bank, marked Exhibit J.

[Certificates June 29, '77, $1,250;
certificates August 3rd, '77, $1,53.59.]

Petitioner also puts in evidence record of appointment of Annie Downie and Allen Knowles, dated April 18th, 1877, Book B of Administrations, 355.

Also bank book of Second National Bank with Allen Knowles individually, marked Exhibit K.]

ANNIE DOWNIE, recalled, further testifies :

By Mr. Stevenson :

Q. Are Mr. John Shaw and Benjamin Stapleton both dead?

A. Yes, sir.

Q. At the time of your husband's death what was the location of the lounge and the safe in the parlor?

A. The safe was close to the entrance of the front door, in the corner. There was a small hall when you went to the front door, and that left a place about *so* large in the parlor. (Illustrating.) And the safe stood right against that.

Q. The parlor is a good sized room, is it not?

A. Yes.

Q. In what shape?

A. It is long; it is 7½ yards in length.

Q. As you enter the front door the parlor is on your left?

A. Yes, sir.

Q. And as you turn to the left and enter the parlor what position of the room do you get into, the front or the rear portion?

A. The front portion.

Q. And the parlor stretches back?

A. Yes, sir.

Q. Is there any other door into the parlor from the hall?

A. From another room in the rear.

Q. So that the parlor reaches from this door from the hall, beyond which there is another door from the adjoining room?

A. Yes, sir.

Q. As you enter from the front door and turn to the left into the parlor, where was the safe at the time of your husband's funeral and immediately after?

A. As you go into the front door it was to your right in the corner.

By the Court:

Q. You say you go into the front door and you go a little distance from the hall and you turn to the left. Now, is the safe on the left hand or on the right hand?

A. On the right hand.

By Mr. Stevenson:

Q. In the rear corner?
A. No, sir; near the front.
Q. But on the right hand side the door enters into the parlor?
A. Yes.
Q. Is there a sort of a corner made by the chimney?
A. No, sir; it is from the hall. As you go into the hall there is a place a yard and a quarter; it takes that amount of oil cloth. As soon as you get into the parlor, on your right, the safe stood there.
Q. In a sort of recess or corner on your right?
A. Yes, sir.
Q. The corner is made by the stairs, is it not?
A. No; it is made by the hall.
Q. A portion of the room is taken out of the hall?
A. Yes.
Q. Where did the lounge stand?
A. The lounge stood on the other side from the safe.

By the Court:

Q. Opposite the safe?
A. No, an angle from the safe.
Q. How wide is the parlor?
A. I guess it is about 4 yards and a half in width.
Q. I show you a rough diagram. [Showing the witness a paper.] Is that something like the shape of the parlor, showing the hall taken out from the parlor?

Objected to.

Q. I understand you to say that this safe was in a corner which is formed by taking out part of the hall for the room?

A. Yes, sir; it was when Mr. Thompson died.

Q. Which end of the parlor was the sofa nearest to, the front end or the back end?

A. The front.

Q. Where was the lounge?

A. On the other side the parlor.

Q. Across the parlor from the safe?

A. Yes; at an angle.

Q. Across from the safe and towards the front or the rear?

A. Toward the rear.

Q. Was that lounge near the safe at any time during the month or two that followed your husband's death?

A. No, sir.

Q. Is this the bunch of keys which you referred to in your former testimony? [Showing keys to witness.]

A. Yes, sir.

Q. Did you have that bunch of keys at the time of your husband's death and burial?

A. Not before he died; I had them afterwards.

Q. After you gave that bunch of keys to Mr. Knowles how long was it before you had them in your possession again?

A. Not till after I came back from Europe a good while.

Q. What was the date when you gave them to Mr. Knowles?

A. It was the day the inventory was taken.

Q. Did you have any jewelry in that safe at any time; if so, what was it?

A. No, sir; never.

Q. Did you have any of your own private, personal property in that safe before the inventory was taken?

A. Well, there were some deeds or mortgages of my own there that Mr. Thompson had given to me.

Q. Was there anything like jewelry belonging to you?

A. No, sir.

A. Was there anything of that nature put there afterwards?

A. Yes, sir.

Q. Tell what it was?

A. There were some of Mr. Thompson's, studs and watch and different little things of his.

Q. When was that put there?

A. I can't say when they were put there.

Q. When, with reference to the time when the inventory was taken?

A. It was after the inventory was taken that those were put there.

Q. How long after?

A. I can't say.

Q. Do you know why they came to be put there?

A. Mr. Knowles put them there for safe keeping.

Q. In any receptacle or box?

A. They were in a box that he got some soap in. He had some little sores or breaking out on his face, and he got the sulphur soap, so the box was lying there, and he placed the watches and little things in this same box.

Q. Who did?

A. Mr. Knowles.

Q. Where did he put them?

A. In the safe.

Q. About how long after the taking of the inventory was that?

A. I don't know; it was while I was sick in bed.

Q. Did you find any money in that safe after the day you found the $7,555?

[Objected to as a repetition].

Q. Did you find $4,250, or any other sum of money with Mr. Knowles on or about the 14th day of May, as he has testified?

A. No, sir.

Q. Did you count any money on the lounge, down stairs in the parlor, with him?

A. No, sir.

Q. Where were the books kept that have been shown here. I call your attention to the ledger and day-book particularly?

A. Mr. Knowles locked them up in the desk drawer; not in a drawer, but a closet, and he put them in there, and there are two shelves there.

Q. Where was the closet or desk?

A. In the house—in the parlor.

Q. Were any of the books of the estate kept there?

A. Yes, sir; there were some books.

Q. Do you know whether any of these keys belonged to that desk?

A. Yes, sir. [Referring to the bunch of keys.] *That* one.

Q. That unlocks what part of it?

A. Well, that drawer in the desk.

Q. Do any of these other keys unlock any portion of the desk?

A. No, sir.

Q. What are they keys of?

A. I do not know; *this* one is a key of a trunk he brought with him from Europe.

Q. Who?

A. Mr. Thompson, when he first came here; and *that* little one opens the small tin box he brought from Europe with him; it is in the desk.

Q. So that *those* two and the one you pointed out first, and *this* little key, unlock places where books of Mr. Thompson's, papers, etc., were kept?

A. Yes, sir.

Q. Did you have those keys in your custody after the inventory?

A. No, sir; never.

Q. Were they all in one bunch when you gave them to Mr. Knowles?

A. Yes, sir.

Q. You say these books were generally in the desk?

A. Yes, sir.

Q. You say these books were generally in the desk?

A. Yes, sir.

Q. Did you ever examine those books while they were there?

A. No, sir.

Q. Did you know anything about the contents of them?

A. No, sir; I did not.

Q. Do you know anything about the ink that was kept there, in or on the desk?

A. Black ink was always kept there.

Q. Did you see any red ink there?

A. Never in my life that I know of.

CROSS-EXAMINATION.

By Mr. Williams:

Q. Did you ever file an account as administratrix of the estate of your husband?

A. Not that I know of.

Q. You have never accounted at all?

A. No, sir.

Q. You were discharged as administratrix shortly after your return from Europe?

A. In anything I know of, I was.

Q. Were you called on at any time to file an account?

A. No; not that I remember, I was not.

Q. There has never been any notice given you to file an account?

A. No, sir.

Q. Are you willing to file an account as administratrix up to the time of your discharge?

A. I do not know; I would have to consult my lawyer about that; I do not understand what you mean.

Q. You will be willing to do what your lawyer tells you?

A. If it is right I am ; yes, sir.

Q. When was the safe removed from the place where it was at your husband's death ?

A. It was moved when we came here ; it was in the summer after we came home that it was removed.

Q. To that time did it remain in the same place that it was at your husband's death ?

A. Yes.

Q. When you returned it was in the same place ?

A. Yes, sir.

Q. And that was in a little recess in the parlor ?

A. There is a piece of wall as you go into the door; it stood against that wall.

Q. Do you call that the parlor there ?

A. Yes, sir.

Q. Was it one parlor ; double or single ?

A. A single parlor.

Q. You say there was a lounge in that room ?

A. Yes, sir.

Q. What kind of a lounge ?

A. It was a lounge.

Q. Was it on rollers ?

A. Yes, sir.

Q. Easily moved from one part of the room to the other ?

A. It was ; if you wished to move it.

Q. Was it one of these settees ?

A. No, sir ; it was a regular lounge ; not a settee at all.

Q. Is that in the same place now that it stood in at the time of your husband's death ?

A. No, sir.

Q. It has all been changed ?

A. Yes, sir.

Q. Is that lounge in the parlor now ?

A. Yes, sir.

Q. In your husband's life time who kept the bunch of keys that you produced here ?

A. My husband.

Q. Where did you find them at his death?

A. Mr. Knowles took them out of the pocket of his pants; his pants hung on the bed; there was a kind of knob on the bed, and he never would have me put away his pants.

Q. Did you see him take them out?

A. Mr. Knowles did.

Q. Did you see him do it?

A. Yes, sir; I did.

Q, Was it before or after the funeral?

A. It was five or ten minutes after he died; the undertakers were there.

Q. What did Mr. Knowles do with them?

A. He took them over by the second window, where the bureau was.

Q. I am talking about the keys.

A. He took the keys and the bunch; they were all in his pocket.

Q. What did he do with the keys?

A. He put them in his pocket.

Q. In whose pocket?

A. In his own.

Q. Right there in the room?

A. Yes, sir.

Q. When did you see the keys next after that?

A. In the morning; after he had put down the amount of money there was found in his pocket, and those keys he brought over to me, and he said: "You must keep those keys and the money."

Q. When did you next see the keys after you saw Mr. Knowles take them out of your husband's pantaloons pocket and put them in his own pocket?

A. As I was going to explain——

Q. When?

A. Then he came to me that night——

Q. I do not ask you that. When did you see them again first?

A. The next morning after his death.

Q. Where ?

A. Down stairs in the dining room.

Q. How did you come to see them the next morning?

A. Well, my husband always told me that if anything happened to him, never to give up those keys to any one.

Q. What was done with the keys when you saw them the next morning down stairs in the parlor ?

A. I asked Mr. Knowles ; I said : "Mr. Knowles, my husband said I should not give them up."

Q. What was done with the keys ?

A. He handed them to me.

Q. You took them ?

A. Yes, sir.

Q. What did you do with them ?

A. Put them in my own pocket.

Q. For how long did you keep them in your pocket?

A. Until that day.

Q. How long was it ? Was it a week, or two weeks, or what ?

A. I cannot say exactly, but it was the same day the inventory was taken.

Q. Can you give us any idea about the length of time between that and the taking of the inventory ?

A. I can't say exactly how long it was.

Q. Then we are to understand you that you took the keys from Mr. Knowles the next morning after your husband's death, in the parlor ; you put them in your pocket, and you kept them till the day of the taking of the inventory ?

A. Yes, sir.

Q. Are you sure of that ?

A. Yes, sir ; I am sure of that.

Q. Had you given them to any other person, to any person, in the meantime ?

A. No, sir ; nobody.

Q. Did you produce them to the persons taking the inventory ?

A. Mr. Knowles got them that morning when the inventory was taken.

Q. Mr. Knowles got them that morning of whom?

A. Of me.

Q. Where were you when you gave the keys to Mr. Knowles that morning?

A. In the first place we came down to open the safe —him and me.

Q. (Repeated.)

A. Not till we got down to the parlor.

Q. Were the appraisers there then?

A. No, sir.

Q. How soon after that did they come?

A. I could not say exactly the time; I think it was about ten o'clock.

Q. About ten o'clock they came?

A. Yes, sir.

Q. About what time was it that you and Mr. Knowles met in the parlor when you gave him the keys?

A. About 8 o'clock.

Q. And that is the first that the keys were out of your possession from the time Mr. Knowles gave them to you the morning after your husband's death?

A. Yes, sir.

Q. Did you say whether the safe was removed from the place where it was at your husband's death, before you went to Europe?

A. After I came back from Europe.

Q. It was not before?

A. No, sir.

Q. Who removed it?

A. Mr. Downie and Johnnie Sanderson.

Q. Is it in the same place now to which it was removed?

A. Yes, sir.

Q. In your husband's life time who kept the keys of the safe?

A. My husband.

Q. Did you ever open the safe during his life time?

A. I did once or twice when we first got the safe; he taught me to open it then.

Q. Did you continue to open it after that?

A. No, sir; I did not.

Q. Could you open it at any time?

A. No, sir; I could not.

Q. Did you ever know of Mr. Downie opening the safe in your husband's life time?

A. Yes, sir.

Q. You have seen him do it?

A. Yes, sir.

Q. How many times?

A. Many times.

Q. Who would be present when he would open it?

A. I was out of the room sometimes, and sometimes I would be in the room to see what Mr. Thompson had sent him for.

Q. But you said Mr. Thompson always kept the keys?

A. Yes, sir; he kept them in his pocket.

Q. Were the keys then just the same as they are now upon the string?

A. Yes, sir.

Q. Of course the safe opens by the combination outside?

A. Yes, sir.

Q. And these are just as your husband carried them in his pocket?

A. Yes, sir.

Q. Are there any additions to them at all?

A. Not to my knowledge.

Q. Did you often see those keys in your husband's possession—your first husband's?

A. Yes, sir.

Q. Do you know when your husband came into personal possession of these keys after your first husband's death?

A. It was a good while; I can't say exactly how long; It was quite a long time after.

Q. How many drawers are there in this safe?
A. Two.
Q. Wooden drawers?
A. Yes.
Q. How many more?
A. There is an iron box.
Q. No more than two wooden drawers?
A. There are little pigeon holes.
Q. But only two drawers and the iron box?
A. Yes, sir.
Q. The safe has but one outside door?
A. Yes, sir.
Q. Is the key on here which opens the upper drawer?
A. No, sir; that is in the drawer.
Q. Has that ever been on the ring?
A. No, sir; never.
Q. Why was that kept in the drawer and this one that opens the lower drawer kept on the ring?
A. I don't know; he just kept papers and mortgages and such things there, and the key was never taken out.
Q. Do you know of any reason?
A. I do not know of any reason at all.
Q. Did you open the lower drawer with that key at any time during your husband's life time?
A. No, sir.
Q. Did you open the upper drawer?
A. No, sir.
Q. Did you know at all what was in that drawer at the time of your husband's death, the drawer that this little key opens?
A. No, sir; I don't know what was in that drawer.
Q. Didn't you know where your husband kept his money in the safe?
A. I knew he kept it in the safe.
Q. Did you know what part of the safe?
A. I have seen him open that drawer with money in, but I did not know how much.

Q. Which drawer?

A. The lower drawer.

Q. Then you have seen money in the lower drawer in your husband's tife time?

A. Yes, sir.

Q. I understood you to say you did not?

A. I did not say that to my knowledge

Q. Have you seen money in the iron box also?

A. Yes, sir; sometimes.

Q. Did you know whether he kept any distinction in the safe between the company's money and his private money?

A. I could not say anything about that.

Objected to as irrelevant.

Q. Then you did know in your husband's lifetime that there was money in the little drawer?

A. Yes, sir; some money.

Q. Did you know at the time of his death that there was money in that drawer?

A. Not for a certainty.

RE-DIRECT.

By Mr. Stevenson:

Q. When first after the death of your husband did you open the outside door of that safe, if you ever have opened it since?

A. I never opened it until after we came back from Europe, after we had the keys.

Q. You mean you never opened the outside door?

A. Yes, sir.

Q. Do you recollect the occasion of your first opening that outside safe door after you came back from Europe?

A. No; I do not.

Q. Do you know whether you knew the combination at that time?

A. Yes, sir; I knew it.

By the Court:

Q. If I understand your chief examination when you were on the stand before, you said that Mr. Knowles and yourself counted that money, and he announced how much there was, and he put some of it back, some five or six hundred dollars back, into the safe and took the rest up-stairs, and then afterwards it was put somewhere?

A. Yes, sir.

Q. You did not give it up to the appraisers?

A. No, sir.

Q. Where was it kept immediately after the appraisers went away?

A. Mr. Knowles took it down into the safe.

Q. After the appraisers went away?

A. Yes, sir.

Q. From where?

A. From underneath the bureau after he counted it again.

Q. Did you go down with him to the safe?

A. No, sir.

Q. You don't know whether he put it in the safe or not?

A. No, sir.

Q. When did you next see any part of that money?

A. I did not see any of it till he came down from the Eagle Brewery to pay up my brother some money that they were short—I don't know the exact amount.

Q. How long was that after the appraisers went away?

A. I think it was about a month afterwards.

Q. Whom did you say he wanted to pay money to?

A. To my brother, Benjamin Stapleton.

Q. Did you then see some money?

A. Yes; I was sitting in the rocking chair, and he came in and told me they were so much short, and he went into the parlor and brought it out in his hand.

Q. How much did he say he brought out?

A. I can't say the amount.

Q. Haven't you any recollection of how much?

A. I think it was somewheres around $1,200, but I would not be certain of that.

Q. When did you next see any of it after that?

A. I don't know that I ever saw any of it, only the money he brought out for me to go to Europe with.

Q. Did he get money to meet that draft for you to go to Europe?

A. Yes, sir.

Q. You went to Europe in June or July, and you came back in September, 1877?

A. Yes, sir.

Q. And you then were already married to your present husband?

A. Yes, sir.

Q. Did neither you nor your husband have any talk about Mr. Knowles going to file his account the next April by the next term of the court?

A. He told me he was going to file his account; Mr. Knowles did.

Q. Can your husband read?

A. Yes, sir.

Q. And you can read?

A. Yes, sir.

Q. Do you remember signing a note as administratrix with Allen Knowles as administrator?

A. No; I do not.

Q. Wasn't there a note given to your brother Stapleton, which you signed and Mr. Knowles also, for $1,000?

A. I don't remember of it; I don't remember signing it.

Q. If Mr. Knowles notified you he was going to file

the account why didn't you look into it to see if it was correct or not?

A I don't know; I came up here to the court one time but I don't know—I think that was when he filed his first account and they allowed so much for the children; I don't remember much about it now.

Q. You stated that Mr. Knowles said that he had better take the greater part of that money, not to give it up to the appraisers, because your husband undoubtedly meant that for you and your children. Why was it that you did not insist on having the money yourself?

A. I don't know; I could not keep the money and the baby with me; I was confined to my bed and Mr. Knowles said he would take it, and may be it would be best to put it in bonds he said.

Q. When you came back from Europe did you ask him what he had done with that money and whether he had put it in bonds?

A. I did, sir.

Q. What did he tell you?

A. He said he had put it in the banks.

Q. Did he tell you what bank?

A. No, sir; I think he said some in the First National Bank.

Q. What talk did you have about putting it in bonds?

A. He said it would be best to put it in bonds, but he said it wouldn't do to put it in my name, for if it was put in my name, and any one found it out, they would wonder where I got the money.

Q. Mr. Thompson did not die insolvent; he paid his debts, didn't he?

A. Yes; he paid his debts, but there was not much left.

By Mr. Stevenson:

Q. Did you have any negotiation with Mr. Stapleton

and Mr. Knowles which resulted in a settlement down at the Eagle Brewery?

A. No, sir.

Q. Do you know anything about the making of a bond by Mr. Stapleton and Mr. Shaw to Mr. Knowles?

A. He told me something about it, but I don't know what it was.

Q. Do you know what the bond was given for?

A. No, sir.

By the Court:

Q. Did you assist in making the inventory when it was made?

A. No, sir.

Q. Were you sick in bed that day?

A. Yes, sir.

Petitioner puts in evidence a bond given by Benjamin Stapleton and John Shaw as security to Allen Knowles and Annie Downie, administrators, conditioned that if the necessities of the estate are such that any portion of the $4,000 which they then and there paid over to Stapleton should be required, that he (Stapleton) would refund it.
Marked Exhibit L.

JOHN R. DAGGERS, sworn on behalf of the respondent, testifies as follows:

By Mr. Williams:

Q. Do you know Mr. Knowles?

A. Yes, sir.

Q. How long have you known him?

A. I have been intimately acquainted with him 25 years and have known him probably 40 as a man.

Q. Where has he resided during that time?

A. For the last 25 years he has been a resident of this city.

Q. What has been his business during the greater part of that time?

A. His business that he has conducted has been that of a weaver, table cloths and hoop skirt tape weaving.

Q. What character does he bear in the community for truth and veracity?

A. I never heard it called in question.

Objected to—allowed.

The Witness:—I would be glad to state, if permitted, that people who knew our intimate relations for the last 25 years, and since this case commenced and has taken such a public course, have spoken to me; have stopped me on the street, and came to my office, and they are astonished at the charges preferred against that man. He is of the most honorable character.

Counsel for petitioner moves to strike out the answer, with exception of last sentence. Motion granted.

Q. Give all your dealings and acquaintance with him; and give the estimation in which he is held by the public, and what is his character for honesty and veracity?

Objected to—objection sustained.

CROSS-EXAMINATION.

By Mr. Stevenson:

Q. Prior to the commencement of the present pro-

ceedings, did you ever hear his reputation for veracity discussed?

A. It has been generally understood as a public man —he has filled public positions in this county—that he was looked upon with a great mark of respect and confidence for honesty.

Q. You do not answer my question; which is, whether prior to the commencement of these proceedings you have ever heard his reputation for veracity discussed?

A. No, sir; I don't think I ever have; no necessity for discussing it.

Order for removal of Annie Thompson as administratrix, filed December 29th, 1877, put in evidence by petitioner. Also puts in evidence first intermediate account, filed April 23rd, 1878; second intermediate account, filed April 10th, 1880.

The Court :—The order removing Mrs. Downie is received, subject to what further appears in the case as to whether she had any notice of it or not.

Mr. Williams :—There are two persons here who swore to the inventory; the inventory has been offered and recorded, and she admitted that she swore to it. Letters of administration were granted to them under the statute. She swears that after the inventory was filed there came into her hands a sum of money. Mr. Knowles, the other administrator, says there was some money found, but only such a sum came into his hands. Therefore, there is a dispute between them as administrators as to the amount that came into their hands, and that dispute existed at the time of this apparent discharge. Now, she is just as much responsible for whatever money came into the hands of the administrators, because it came into their hands jointly. The

mere fact of discharge does not release her from her liabilities, and she ought now to be called to an account; and if she filed her account, according to her own oath, she would be charged with $7,555.

The Court :—What is the point you wish to make?

Mr. Williams :—The question is whether the Court should not stop these proceedings and call upon Mrs. Downie to account, and that the matters may come up on her accounting as well as upon the accounting of Mr. Knowles. I do not see how the Court can settle the dispute between them.

The Court :—I think the amount of money that Sam Thompson had on hand can be arrived at to a very high degree of certainty. The facts connected with his death and his accounts at that time are put before the Court. If a man has money on hand he generally gets it from somewhere, and as a general thing he gets it for some purpose.

Mr. Stevenson :—I would ask the other side to produce whatever books or accounts Mr. Knowles has in his possession relating to this estate. I will, myself, produce everything that is in the possession of Mrs. Downie or that was in that safe.

Isaac Van Wagoner, sworn on behalf of the petitioner, testifies as follows :

By Mr. Stevenson:

Q. Were you Surrogate of this county in the spring of 1877?

A. I was.

Q. Do you recollect issuing letters of administration to Allen Knowles and Annie Thompson upon the estate of Sam Thompson, deceased?

A. I do.

Q. I show you the record from Book B of Administrations, page 355, in order to refresh your recollection. Do you remember going to the residence of the widow of Sam Thompson to swear her to anything at or about the same time that letters of administration were issued?

A. From the date as appears in that book I would say that I went there on that date for the purpose of administering the oath of office to the administrators therein named.

Q. On April 18th, 1877?

A. Yes, sir.

Q. Do you recollect the fact of your going to the house?

A. I do.

Q. Do you recollect where you found Mrs. Thompson at that time?

A. It was in one of the rooms of the house, but I can't say which particular room it was.

Q. Do you remember whether she was in bed or not?

A. My recollection is that she was out of her bed when the oath of office was administered to her; whether she was in bed when I went into the house I cannot now say.

Q. Do you recollect whether she was ill or not?

A. She appeared to be quite ill.

Q. Do you recollect swearing the administrators and appraisers to the inventory after that?

A. I can't say that I do.

Q. I show you the record of the inventory in Book G of Inventories, page 321; the date of the inventory and the date of the affidavits is the same, is it not, April 23rd?

A. Yes, sir.

Q. Do you know where you swore these people?

A. I don't recollect.

Q. Do you know whether you swore them down at the house or at your office?

A. That I don't recollect.

Q. Have you any recollection of going to the house the second time after the occasion you mentioned a while ago?

A. I have not.

CROSS-EXAMINATION.

By Mr. Williams:

Q. What is done with the inventories in your office?

A. They are recorded in books that are prepared for that purpose.

Q. And what is done with the original inventory?

A. The originals are sent down to the Secretary of State every three months or about that time; the Secretary of State does not require them to be sent in regularly.

Q. What paper is that? [Showing witness a paper.]

A. This is the appointment of discreet and judicious persons to act as appraisers upon the estate of Sam Thompson, deceased.

Q. Sworn to before you?

A. The appointment is made by me and the appraisers are sworn before me as Surrogate.

Q. What is the date of that?

A. April 23rd, 1877; the appraisers were sworn in on that day; the date of the appointment is the 18th of April.

Q. They swore also to the inventory, did they not?

A. One of the appraisers generally does; I do not recollect of more than one occasion swearing to an entire inventory.

Q. That is simply the oath that they will perform their duties properly?

A. The appointment and oath.

Q. Then the record that you have here of the inventory is a true copy of the inventory which was filed in that office?

A. Yes, sir; I believe so.

Q. It is a record of that?

A. Yes, sir.

Q. Do you recollect whether you went down to the house of the late Mr. Thompson more than once in this matter?

A. I can't say, sir; I did not fix it in my mind at all.

RE-DIRECT.

By Mr. Stevenson:

Q. I notice the date of the appointment of the appraisers is the 18th the same date the administrators were sworn in, and the date of the oath of the appraisers is April 23rd. As a matter of fact do you know whether the appraisers did their work, the work of the appraisers, made their list, etc., before the 23rd of April?

A. I should say that they must have done it between those two dates.

Q. What was the practice in reference to that matter, that is to say, the nomination of the appraisers and the final swearing to the inventory and the swearing of the appraisers?

A. I can't say there was any particular practice.

Q. Was it a common practice that the appraisers came to your office with the inventory ready and the appraisement in fact made before they took their affidavit to make the appraisement?

A. Very often the appraisers would come to the office with a statement or a list of the personal property after the appraisers had been sworn, then that list would be copied, and the inventory they swore to.

Q. So that the whole work could be completed in your office at one time ?

A. Yes, sometimes. I would state that the appraisers, after being sworn—they are always sworn—go over the list together, and then state that that is their appraisement, that they have merely gone over the list of property, etc., and then they would say that that was their appraisement.

By Mr. Williams :

Q. You have no positive recollection of this particular case?

A. No, sir ; I have not any positive recollection of this particular case, but I have an impression that I went over the second time, but for what purpose I cannot say—that is merely a recollection ; I am asked about a positive recollection, but I am not positive about that.

Q. I do not understand you to say that they would have completed their duties as appraisers before the oath of office was taken ?

A. Yes ; understand me correctly.

Q. But may have been done all at the same time ?

A. Yes, sir ; the same day.

Q. They would bring the inventory made out, and they would present it to you as their inventory, and you would then administer the oath to them, and they would swear ?

A. No, sir ; they would bring a paper on which they had a statement of the property ; then that statement would have to be copied or another copy made out after they were sworn, and then they would go over the matters and would say that that was their inventory of the property of whomever it might be.

Q. But supposing they brought a paper there in proper form with the appraisement all regularly made, would there be any necessity of copying it ?

A. No, sir; not under those circumstances. Then they would have to examine into the matter, look over it and state that was their appraisement.

By the Court:

Q. If you did that on the 23rd you would not date your appointment of them as appraisers on the 18th?

A. No, sir.

By Mr. Williams:

Q. You appoint them many days sometimes before they make the appraisement?

A. Yes; but they might not be sworn in for some time afterwards. After they were sworn in as appraisers they were obliged to look over the papers to see that everything was right.

Q. How do you explain that the appointment on that same paper is dated the 18th and the affidavit on the same paper is dated the 23rd?

A. On the 18th, if I am not mistaken, I was down at the late Mr. Thompson's house for the purpose of swearing in the administrators. I must have had that paper there at that time and have requested the administrators to name the appraisers. They having at that time requested me to name the appraisers, I did so, and their names appear in that paper, which was drawn up at the time that these administrators were sworn in. Then the papers, including the oath of office of the administrators, had been taken back to the office. Afterwards the appraisers appeared on the 23rd with a statement or an inventory of the personal property. They were sworn in; after that they examined the inventory, if it was an inventory, or statement, and then after that, being satisfied with it, and the administrators being present and also being satisfied that the inventory was correct; then the inventory was sworn to.

Q. Is that your recollection of the facts of this particular case?

A. I cannot say that is my recollection as to the particular facts of the inventory, but I have no more doubt of it than that I am sitting here, that that is correct.

Q. You don't know then from anything that appears here when the administrators commenced their work of making the inventory?

A. I do not.

Q. Do you remember the time of day you went down to the house of Mrs. Thompson?

A. I recollect it must have been, I think, in the forenoon; but even that I will not be positive of. I recollect going down there when Mrs. Thompson and Mr. Knowles were sworn as administrators.

Q. Were these persons that you nominated as appraisers present?

A. I think not; I am pretty certain they were not.

Appointment and oath of the appraisers put in evidence by petioner and marked Exhibit M.

ANNIE DOWNIE, recalled, further testifies as follows:

By the Court:

Q. Do you recollect signing a note with Allen Knowles for $1,000 to your brother, Mr. Stapleton?

A. I don't recollect of it.

Q. [Note shown witness.] Do you remember John Shaw and your brother giving a bond dated the 16th of May?

A. If it has been given, it has been through Mr. Knowles.

Q. Didn't you sign that note?

A. No, sir; not to my recollection did I ever sign that note.

Q. That is dated the 16th of May. Did you ever hear about a note that your husband, Sam Thompson, gave Mr. Stapleton for $5,000?

A. I heard him say something about the matters up to the Eagle Brewery.

Q. Did you ever hear about a note that your husband before he died gave to Benjamin A. Stapleton for $5,000?

A. No, sir.

Q. It is dated about a month before he died, March 1st, 1877. Did he ever say anything to you about it?

A. No, sir.

Q. Never said anything about paying it?

A. No, sir.

Q. Never said he had a note coming due about the time of his death?

A. No, sir.

Q Never told you where the money would be found to pay it?

A. No, sir.

Q. You don't know why a note was given on the 16th of May for $1,000 for six months, bearing interest, when this money was in the safe?

A. No, sir.

By Mr. Stevenson:

Q. Did you take any active part in the settlement of any of this business?

Objected to.

A. I have never done anything.

EUGENE STEVENSON, sworn for petitioner, testifies as follows :

I am the proctor for Mrs. Downie in this matter, and I offer myself as a witness simply to fix the time at which she came to me ; I find by reference to my book that she came to me first on the 21st of June last, and also on the 22nd and 23rd. I distinctly recollect that I adjourned the matter from day to day in order to examine the accounts in the Surrogate's office. That is the date, and that was prior to the time that Mrs. Downie referred to in her testimony when she had an interview in Mr. Ward's office. I remember distinctly when that occurred ; that was some time afterwards. Mrs. Downie brought me papers in relation to that dispute. I saw Mr. Ward's tax bill of costs and other things that came up there.

By Mr. Williams :

Q. Do you know the date that reference had been made to Ward's office ?

A. No, sir, I do not ; I think I might possibly come near it by examination of my books.

Q. You say the interview with Mrs. Downie was prior to that ?

A. Yes, sir ; I had never seen her till she came to my office.

Q. What were the dates of your interview ?

A. 21st, 22nd and 23rd. I find she was there on all three days ; there is just a bare possibility that she may have been there a short time before, but that is the first entry that I find in my books of her being there, and as there were three days in succession that she was there and as I remember I had her come back immediately after I examined the accounts, I infer that was the time.

ROBERT DOWNIE, recalled, further testifies as follows:

By Mr. Stevenson:

Q. Is there any check, account book, or book of any kind, or memorandum of any kind in the safe or in the desk down there that in any way relates to the matter in controversy, that you have not produced?

A. No, sir.

Q. I show you an envelope. Do you recollect getting that out of the safe?

A. Yes, sir.

Q. What is the endorsement on that?

A. "Allen Knowles."

Q. Do you see, "Inventory of Sam Thompson" on it?

A. Yes, sir.

Q. Was there any inventory found with it?

A. No, sir.

Q. Did you search particularly for the Merchants' Loan & Trust Co. book?

A. Yes; we turned out all the drawers we could find and saw nothing belonging to the estate.

Petitioner rests, reserving the right to put in evidence a sketch of the parlor in Mr. Thompson's house and a transcript of the account of B. Stapleton & Co. and Sam Thompson with the Merchants' Loan & Trust Co.; also the individual account of Mr. Knowles in the Second National Bank and the First National Bank, if there is any, and the Paterson Savings Institution; also the account of Allen Knowles, administrator, and the accounts in the same institutions of B. Stapleton & Co. and Sam Thompson.

ALLEN KNOWLES, recalled, further testifies as follows:

By the Court:

Q. What became of your own checks after the bank returned them to you?

A. I have them; I don't know that they are all here; I have both the administration checks and my own.

By Mr. Stevenson:

Q. Have you taken any checks from the safe that was formerly Sam Thompson's?

A. No, sir.

Q. Do you recognize those checks as checks out of there?

A. I can't tell whether those are the ones or not, but there was a great pile of them there.

Q. You took none of them away?

A. No, sir.

Q. Do you know where the checks of B. Stapleton & Co. after September, 1876, are to be found?

A. No, sir; I do not.

Q. B. Stapleton & Co. were doing business after September and until the following winter or spring, were they not?

A. They were in company together.

Q. You don't know where the checks are for that period?

A. No, sir; I do not.

Q. [Showing witness a book.] Is your account book with the Paterson Savings Institution, your private account book?

A. Yes, sir.

Q. Did you have no account with the Paterson Savings Institution before April 29th, 1881?

A. No, sir.

Q. Did you have no individual account with any savings bank prior to that?

A. It is a good many years ago if I had.

Q. In the spring of 1877 what bank accounts did you keep individually?

A. I don't think I had any.

Q. Where did you keep your money then?

A. I kept in the house what I had; I might have had some in the bank, but I can't tell.

Q. What bank did you have it in, if any, at that time?

A. I can't say, because I have in my time done business with both banks and all of them sometimes.

Q. You mean in your time you have kept an account in all the banks here?

A. Yes, sir; some time or other.

Q. I refer to your individual account, not to your account as administrator. Have you kept a bank account individually on any other bank in Paterson than the Second National Bank and Paterson Savings Institution?

A. To the best of my knowledge I have not.

Q. Your account with the Second National Bank seems to begin July 1st; what year was that?

A. I don't know; they didn't put it down on the book.

Q. If in the spring of 1877 you kept any bank account, where did you keep your money?

A. I have answered that once; I don't know where I kept it unless I kept it in the bank; my money was generally put out on bond and mortgage or in sewer bonds or something of that kind.

Q. Were you in business?

A. No, not then.

Q. Whereabouts in the house did you keep your money?

A. Very likely in my pocket.

Q. Have you within 5 years had a bank account in any other banks than the Second National and the Paterson Savings Institution?

A. I can't say positively whether I have or not.

Q. If you have, what banks have you had such accounts with?

A. One or the two deposit banks.

Q. Either the First or Second National?

A. Yes, sir.

Q. If you have had any savings bank account within five years, where has it been?

A. In one of the two savings banks of Paterson.

Q. Have you any other Paterson checks or vouchers relating to the estate of Sam Thompson which have not been produced here?

A. There are all those vouchers that have been put in.

Q. Are those all the checks that have come to you as administrator, I mean checks of Allen Knowles, administrator, which you have?

A. They are all that I have; and all of my own too. [Checks produced by respondent.]

Q. Haven't you got a bunch of checks of Allen Knowles, administrator?

A. They are all there.

Q. All that you have?

A. Yes, sir; all that I can find.

Q. When the checks came back to you you kept them?

A. Yes, sir; I thought so; I put them away.

Q. Have you searched diligently to find any others?

A. Yes, sir.

Q. Can't you find any more?

A. Can't find any but them.

Q. Where is the account book of Stapleton & Co.?

A. It is in my house; the one I have got all accounts out of, where I have collected money, and used, and got judgments, etc.

Q. What book is that?

A. It is an account book of Stapleton & Co.

Q. Kept by Stapleton & Co.?

A. Kept by Sam Thompson or some of his help.

Q. Was that book before the appraisers when they made their inventory?

A. Yes; I believe it was.

Q. From that they took the book accounts?

A. Yes, sir.

Q. Will you produce that book here?

A. Yes, sir.

By the Court:

Q. Didn't you keep a check book?

A. No, sir.

Q. Didn't you keep a check book, so that the stubs of your checks would tell?

A. I have one in the Second National, but I do not use it always; I had none on the First National.

Q. You see some of the checks are signed simply, "Allen Knowles," and some, "Allen Knowles, administrator." You have mixed them all up together?

A. Yes, sir.

By Mr. Stevenson:

Q. I show you an entry on the intermediate account of April, 1878, which reads, "Commission $400," and on the margin, "May 18, 1880. This allowance, when made, was made up in full for whole settlement of estate. J. S. B." I ask you was that allowance of $400 made to you in full for all claims for commissions up to and including the settlement of the estate?

Objected to.

The Court:—That has nothing to do with the question before the Court here.

Mr. Williams:—We shall object to the accounts of Stapleton & Co. being received in evidence.

Mr. Stevenson:—One question here is as to where this money came from, and everything that throws light upon that is evidence. The principal account is with the Merchants' Loan & Trust Co.

The Court then adjourned to Tuesday, December 20th, 1881.

PASSAIC ORPHANS' COURT.

In the matter of the estate of Sam Thompson, deceased.

Parties met pursuant to adjournment.

December 20th, 1881.

WILLIAM BRAUNSTEIN, sworn for petitioner, testifies as follows:

By Mr. Stevenson:

Q. What is your business?
A. Architect.
Q. Doing business in the city of Paterson?
A. Yes, sir.
Q. What is your firm?
A. Yurich & Braunstein.
Q. Did you prepare that diagram yourself?
A. Yes, sir.

[The witness being shown a diagram].

Q. Is that a diagram of the premises in Governor street occupied by Mr. and Mrs. Downie?

A. Yes, sir.

Q. What is the scale of the diagram of the ground floor.

A. This is a quarter of an inch to the foot, and *this* is a quarter of an inch to one inch, and the diagram of the safe is quarter of the natural size?

Q. What is the scale of the room?

A. Quarter of an inch to the foot.

Q. What is the distance from the edge of the safe to the door?

A. Five feet and one half inch.

Q. Have you measured the green lounge that is there?

A. Yes, sir.

Q. What are the dimensions of that lounge?

A. It is six feet and three and one half inches long.

Q. What does that black line indicate?

A. To show where it would go if the safe stood in the corner.

The witness further explains the diagram to the Court. Counsel for petitioner offers the diagram in evidence.

CROSS-EXAMINATION.

By Mr. Williams:

Q. When did you make this diagram?

A. Last night.

Q. At whose request?

A. Mr. Downie's.

Q. Who was with you when you made it?

A. Mr. Downie.

Q. Anybody else?

A. Mr. Downie was present in the room.

Q. Do you know for what purpose you made it?

A. No.

Q. Had you ever been at that place before?

A. Yes.

Q. When?

A. Several times on business; I never was in the parlor before.

Q. But at the house?

A. Yes, sir.

Q. How long have you known Mr. Downie?

A. About two years and three months.

Q. Did you know him before he was married?

A. No; I knew him from the first day I came to this country; I worked on the same building Mr. Downie worked on.

Q. I see you have got something marked "safe," [Referring to diagram.] There is no safe *there* now?

A. No, sir.

Q. Why did you put that there?

A. Mr. Downie requested me to draw that safe which is standing now in that room; that I should draw it in that position there.

Q. He told you that is where the safe formerly stood?

A. He told me to draw the safe in there?

Q. The lounge is represented there?

A. Yes; as it stands at present.

Q. Was anything said as to whether that lounge had been in any other place in that room?

A. Yes; Mr. Downie told me it formerly stood there.

Q. Did he say anything about the lounge in connection with drawing the safe there?

A. He told me I should draw in the plan the lounge placed so it would show as if the lounge had stood there?

Q. What is *that?*

A. That is a table Mr. Downie told me I should draw in there.

Q. Did he say why?

A. He said at that time the safe had stood *here* and the table had stood *there.*

Q. That lounge is 6 feet $3\frac{1}{2}$?

A. Yes.

Q. Is that from the extreme outside?

A. Yes, sir.

Q. And from the safe to that door is how much?

A. Five feet and half an inch from the safe to the door.

ANNIE DOWNIE, recalled, further testified as follows:

By Mr. Stevenson:

Q. Is the lounge which has been referred to by the last witness, and which was measured by him in your parlor this morning or yesterday, the same lounge that was there at the time of Mr. Thompson's death?

A. Not in the same place where it was.

Q. Is it the same lounge?

A. Yes, sir.

Q. Has that lounge ever been removed from that house since your husband's death?

A. No, sir; it has not.

Q. Did you in any conversation ever tell Mr. Hilton that the amount of money found in that safe or drawer was $5,000 or about $5,000.

Objected to—objection overruled.

A. No, sir.

Q. You had a number of conversations with him about the estate, settling it up, etc., did you not?

A. I was there some three or four times.

By Mr. Williams:

Q. You visited Mr. Hilton's office quite often; did you not?

A. At one time I did.
Q. When was that?
A. That was in 1878.
Q. How often did you visit his office at that time?
A. I couldn't say; Mr. Knowles advised me to put it in Mr. Hilton's hands to foreclose a mortgage for me.
Q. How many times did you visit Mr. Hilton's office in reference to this estate?
A. I cannot say; some three or four times.
Q. In 1878 how many times?
A. That was not about the estate when I visited him in 1878.
Q. I asked you about the estate.
A. I said some three or four times.
Q. After that how many times in 1879?
A. I did not say 1879.
Q. But I ask you in 1879.

Objected to.

Q. Did you visit Mr. Hilton's office in 1879 for any purpose?
A. Not to my knowledge.
Q. How many times in 1878, to the best of your recollection?
A. I cannot say how many times.
Q. To the best of your recollection?
A. I could not say, surely, how many times; both me and him went together at that time.
Q. Did Mr. Downie go with you there in 1878?
A. Yes, sir.
Q. How many times?
A. I couldn't say.
Q. Have you no recollection?
A. No, I don't recollect.; we were there several times, but I could not say how many.
Q. Did you not call in there in reference to this estate about once every two weeks in 1878?

A. No, sir.

Q. Can you say you did not—can you tell us about how many times you did call in?

A. I don't know.

Q. Was it once a month?

A. No; I don't think I did.

Q. You have no recollection about it?

A. No; I was in some two or three times.

Q. You have no recollection how many times you went in?

A. No, sir.

Q. Have you a recollection of what was said the several times you went in there?

A. Not anything very particular.

By the Court:

Q. In 1878 did you visit Mr. Hilton's office in company with your husband, about this account, before it was filed?

A. No, sir.

Q. Then before you visited him in 1878 the account had been filed?

A. I don't know whether it had or not.

Q. Did you ever have any talk with him about making that account?

A. No, sir.

Q. As to how much ought to be put in it?

A. No, sir.

RE-DIRECT.

By Mr. Stevenson:

Q. Did you ever visit Mr. Hilton's office in the spring of summer of 1878 with your husband at all?

A. Yes, sir.

Q. What did you go there about?

A. Foreclosing a mortgage.

Q. Did Mr. Hilton foreclose a mortgage for you?

A. Yes, sir.

Mr. Stevenson :—I have a statement here of B. Stapleton & Co. from the books of the Merchants' Loan & Trust Co.—a certificate copy. Mr. Williams and myself have both inspected the accounts of B. Stapleton & Co. in the First National Bank, and we will have a transcript made.

Admitted by consent. Petitioner's counsel offers in evidence the account book of B. Stapleton & Co., which is produced by defendant.

Mr. Stevenson :—Mr. Downie has brought to me two old checks of B. Stapleton & Co. dated back in 1872 and 1873, and the other book produced is a recent check book of Mr. Knowles, from which a very few checks have been used, and Mr. Downie states that was all there was in the safe connected with that matter.

Petitioner rests.

JOSEPH JOHNSON, sworn for defendant, testifies as follows :

By Mr. Williams :

Q. Do you live in Paterson?
A. Yes, sir.
Q. How long have you resided in Paterson?
A. About 40 years.
Q. What has been your business the greater part of that time?
A. Hardware, sir.

Q. Do you know Mr. Allen Knowles?

A. Yes, sir.

Q. How long have you known him?

A. I have lived a neighbor to him for 34 or 35 years in Paterson.

Q. Have you had business relations with him at all during that time?

A. Nothing but merely neighborly visits that we had to do betwixt us.

Q. What business has he been engaged in principally during the time you have known him?

A. He has been in weaving and several other businesses; weaving mostly.

Q. Are you acquainted with his general reputation?

A. Yes, sir.

Q. Are you acquainted with his general reputation for truth and honesty?

A. I think I am, sir.

Q. Is it good or bad?

A. It is good as far as I have known, or as far as I have heard of it.

Q. Have you ever heard it questioned?

A. No, sir.

By Mr. Stevenson:

Q. You have never heard it talked about, have you?

A. Never.

WILLIAM DOUGLAS, sworn for defendant, testifies as follows:

By Mr. Williams:

Q. How long have you lived in Paterson?

A. I was born here.
Q. You have lived here most of the time since?
A. Yes, with the exception of two years I was south.
Q. Do you know Mr. Allen Knowles?
A. Yes, sir.
Q. How long have you known him?
A. I never had any business transactions with him—I was associated with him.
Q. Are you acquainted with his reputation for truth and honesty in this community?
A. Yes, sir.
Q. Is it good or bad?
A. I never heard it questioned before this trial.
Q. Is it good or bad to your knowledge?
A. Good.

———

JOHN MURPHY, sworn for defendant, testifies as follows:

By Mr. Williams:

Q. How long have you lived in Paterson?
A. About 50 years.
Q. Do you know Mr. Allen Knowles?
A. I do, sir.
Q. How long have you known him.
A. Well, to be intimately acquainted with him, probably over 20 years; I have done business with him.
Q. Are you acquainted with the general reputation for truth and honesty?
A. I never heard it questioned.
Q. Is it good or bad?
A. Good; he always bore a good reputation.

———

THOMAS CROSSLEY, sworn for defendant, testifies as follows:

By Mr. Williams:

Q. Do you reside in Paterson?

A. No, sir; I reside in Haledon at the present time.

Q. How long have you lived there?

A. About 5 years, I think, next month.

Q. Did you know Mr. Thompson in his life time?

A. Yes, sir.

Q. Do you know Lees Garside?

A. Yes, sir.

Q. Were you one of the appraisers of the goods and chattels of Sam Thompson?

A. Yes, sir.

Q. Were you at the house in which Sam Thompson died?

A. Yes.

Q. State what was done at the house in making the appraisement and whether the safe was opened or not.

A. It is that long since that a great many transactions are quite obliterated from my mind; I would not say whether I saw the safe opened that day or not.

Q. What is your recollection about it?

A. I do not remember, to my knowledge, seeing the safe opened that day.

Q. Did you see any money produced before you that day?

A. I don't remember such a thing, sir.

Q. Do you recollect the papers and notes, as to how they were produced before you?

A. To the best of my knowledge, I think the documents that were produced that day were taken from the desk.

Q. Of which room?

A. In the sitting room or parlor; in the room in which the safe was.

CROSS-EXAMINATION.

By Mr. Stevenson:

Q. What documents were produced before you?

A. Well, I really couldn't tell you, sir, which documents were produced there.

Q. Do you remember what sort of looking papers they were?

A. Well, I don't think I could just at present.

Q. Do you remember whether any money was produced or not before you?

A. I really don't remember, sir; there might have been money, but if there was I have forgotten it; I don't remember seeing any; in fact I supposed that I was only a kind of satellite there, with Mr. Garside doing all the business, but I don't remember seeing any money.

Q. Who did the writing?

A. Mr. Garside.

Q. Had you ever acted as appraiser before that day for an estate?

A. Well, there was at one time a man by the name of Vernon, if you call that being an appraiser—there was something relating to the old lady there, and I filled about the same position as I did in Mr. Thompson's place.

Q. You knew Mr. Garside at that time?

A. Yes, sir.

Q. And you relied upon him to attend to the thing in a proper manner?

A. Yes, sir.

Q. Do you recollect going to the Surrogate's office to swear?

A. Yes, sir.

Q. When was that with reference to the time you took the inventory?

A. I couldn't give the day of the week nor the date,

but I remember going up one morning there to the Surrogate's office.

Q. When was that with reference to the time that you were down at the house with Mr. Garside?

A. It was a few days after, but I could not state the number of days.

Q. Do you recollect whether Mrs. Downie was sick the day you were down at the house with Mr. Garside and Mr. Knowles?

A. Well, sir, I could not state; I know she was sick about that time.

Q. You were asked where the documents were taken from; can you swear positively to that?

A. Well, I really couldn't swear; but I saw some of the documents taken out of the desk before we went down to the dining room to examine them.

ALLEN KNOWLES, recalled, further testifies as follows:

By Mr. Hilton:

Q. Did you ever see any jewelry in the safe that has been mentioned?

A. Yes, I have seen it in the safe in Mrs. Thompson's hands at that time, but merely seen it.

Q. Do you recollect when that was?

A. No, sir; it was some time about the time of this taking of the inventory or before.

Q. Where in the safe was the jewelry?

A. I think it was in that iron box.

Q. Do you know whose it was?

A. Mrs. Thompson claimed it, and I took no further interest in it.

Q. It was not inventoried then?

A. No, sir.

Q. State whether you put that jewelry in the safe that you saw there?

A. No, sir; I never had it in my hands; I never touched it.

Q. Mrs. Thompson states that there was a box that you got some soap in; that you had some little sores or breaking out on your face and got some sulphur soap, and the box was lying there, and you placed the watches and things in this same box. State whether that is true. [Referring to page 318 of the minutes].

A. It is not true; I never had a blotch on my face in my life; I never used any soap; I never saw any.

Q. Did you ever put that jewelry in such a box?

A. No, sir.

Q. Do you recollect of taking the keys out of Mr. Thompson's pocket after his death, the night he died?

A. No, sir; I do not; I can't remember of that. The money was taken out of his pocket; whether I took it out or the widow took it out I can't say; but Mr. James Demarest fetched me from the house, and he counted the money, and I watched him, and the amount found in the pocketbook was $129 and some cents, I think.

Q. Do you recollect of her saying to you a day or two after Sam Thompson's death something to this effect, that Sam had told her that she must keep the keys, and upon her saying that to you you gave up the keys to her?

A. I do not remember anything of the kind about it.

Q. While Mrs. Thompson was abroad you had charge of the keys of the safe?

A. Yes, of the whole house, everything; I have got up in the night to go over there from my own house.

Q. How long after Mrs. Thompson came back from Europe was it that you gave up the charge of the keys and of the safe?

A. I don't think it was a week; it could not have been over two weeks.

Q. What did you use the safe for after Mrs. Thompson got back from Europe?

A. I never used it for any purpose only going there to get papers or to cut off coupons off the bonds that were kept there belonging to the estate, and I would borrow the scissors from Mrs. Downie for that purpose; I would go there sometimes to get mortgages or bills, when we were collecting the money for the estate and the bonds, and mortgages, suing on them.

Q. Do you know whether or not Mrs. Downie signed that note for $1,000 to Stapleton with you?

A. Yes, sir; I believe her name was always first.

Q. Did she or did she not?

A. She did.

Q. State whether, to your knowledge, after Sam Thompson's death and before that note was given, Mrs. Thompson knew about the indebtedness of Sam to Ben. Stapleton.

A. Yes.

Q. State any circumstance, or anything, that calls that fact to your mind.

A. All this came to my mind since puzzling my brain over the circumstances, and I must apologize to the Court.

The Court:—Just answer the question; we don't want any apology.

Q. Repeated.

A. She used to wait in the hallway when I would come down stairs from Sam, to get what news she could. He wouldn't let her know anything, and I didn't dare let her know much; didn't dare let him find it out.

Q. News about what?

A. About the accounting in regard to the settlement of his partnership, etc.

Q. Did you ever hear her say anything about it after Sam's death and before that note of $1,000 was given?

A. I cannot recall anything in particular to my mind, but we talked the matter over all the time; all the business belonging to the estate.

Q. Mrs. Downie has stated that Sam Thompson's debts were paid, but there was not much left, or something to that effect. Is that true about there not being much left?

A. No, it is not true; the books will show that that is not true.

Q. Did he leave any real estate?

A. Yes, sir.

Q. How many houses?

A. There were three—at least there were two houses and a barn, and the barn was subsequently turned into a dwelling house.

Q. Where were those?

A. In Governor street.

Q. Any other house?

A. There was a house No. 37 ——— street.

Q. Do you know how long Mr. Thompson was sick before he died?

A. He was sick a long time—sick for a year or two.

Q. He was not confined to his room?

A. No, sir; not all that time.

Q. How long was he confined to his room?

A. I should think he was confined to his room nearly all the time from the death of a little boy that died called James, and it seems to me it was some time before the fall of the year; he seemed to fail very fast after that.

Q. Was it in the fall of 1876?

A. Yes, sir.

By the Court:

Q. Did you see that note of $5,000 signed that he gave to Stapleton?

A. No, sir.

Q. Do you know who did?

A. No, sir; I cannot tell.

Q. Do you know who made that settlement with Stapleton?

A. Through that note?

Q. About 30 days before Mr. Thompson died he gave a note to Stapleton for $5,000. Do you know anything about it?

A. Yes; I was at the settling of the partnership.

Q. You say you did not see the note signed?

A. I don't remember seeing it signed.

Q. Do you know in whose handwriting it is?

Mr. Williams:—It is in Peter Ryle's handwriting.

By Mr. Hilton:

Q. Can you explain now why it was that the indebtedness of John Shaw and the Eagle Brewery Co. was turned over to Ben. Stapleton in part settlement of that $5,000?

A. Yes; it was pre-arranged before Thompson's death in regard to the building of his house on Broadway, and he had kept delaying. He said this was arranged so as to take this note up by Shaw paying his own bill and the company paying their bill, and Thompson left a slip of paper in his secretary somewhere. I found one first stating a demand from Shaw for over $3,000, and he reduced it down to $1,900 and some odd.

Q. Shaw did?

A. Shaw did.

Q. You say Thompson demanded $3,000?

A. Yes, sir; about that.

Q. State whether Stapleton agreed with Shaw as to the amount actually due.

A. There was a great deal of flagging done and some kind of repairs around the place, and Mr. Thompson

had charge of this, and Mr. Shaw contended that that was in the contract—whatever contract was referred to I can't say—and Stapleton said it was so, and he produced vouchers and receipts for one amount and another that reduced the amount that I was told to collect to $1,900 and some odd.

Q. Who told you it was pre-arranged between Thompson and him?

A. It has come to my mind since.

Q. Who told you at the time?

A. Thompson.

Q. And this matter has come to your mind since you were on the stand before?

A. Yes, sir; Sunday morning when I was lying in bed it came to me.

Q. I show you your bank account with the Second National Bank as administrator [Ex. 1], and I call your attention to the entry of $147 in black ink, opposite to it, "Private Account," red ink, and also $230 in black, and an entry of "Private Account" in red ink opposite. Can you explain that? And if you can do so.

A. That was the account that had been received from ———& Demarest, and I was sick at the time and sent my boy up to the bank with $377, I believe it was, and he must have taken the wrong bank book, possibly; that is the reason that that appears there; and I eventually rectified that.

Q. I call your attention to the individual account with the Second National Bank, the same figures, Feb. 3, $147 and $230; is that the same account?

A. Yes, sir.

Q. The same amount as in the other book?

A. Yes, sir.

Q. The same money?

A. Yes, sir.

Q. When did you discover the mistake?

A. Some time afterwards I went up and had the bank book settled up.

Q. Then you discovered it?

A. Yes, sir.

Q. Then what did you do after you discovered it?

A. I went to ask them to rectify it.

Q. The Court allowed a certain sum of money for your services as administrator?

A. Yes, sir.

Q. How much?

A. $400.

Q. At the time these sums were deposited how much had you drawn?

A. I think I drew $250 of it at one time; that I recollect.

Q. The first entry in your individual account?

A. Yes, sir; I only drew it as I thought I wanted it.

Q. State whether after that you sold a bond, a bond to the estate.

A. I sold a sewer bond.

Q. How much was the bond?

A. It was a five hundred dollar bond, with interest and premium; I got $550 I think.

Q. State whether or not you drew this money that was deposited by mistake in your individual account on account of the money that was due you from the estate for that bond and your commission?

A. Oh, yes; it was put to that account, one of the accounts.

Q. You do not remember which one?

A. No, sir; I do not.

Q. Do you remember did you draw out all of that $550 out at once?

A. No, sir.

Q. How much do you remember drawing out at once?

A. I remember drawing $300, I think.

Q. By a check to whom?

A. William D. Holmes; a loan of $300.

By the Court:

Q. It was a long time after Mr. Thompson's death?
A. Yes.

By Mr. Hilton:

Q. Is that the check? [Check shown to the witness.]
A. That is the check.
Q. Is that drawn out of your individual account or the account as administrator?
A. I do not remember which; it is dated May 15, 1879; it must have been out of my own account.
Q. It is signed by you individually?
A. Yes, sir.
Q. I show you the account book that you produced this morning; where did you get that? [Ex. 1 of Dec. 20.]
A. I got it at Mr. Thompson's.
Q. At the house in Governor street?
A. Yes.
Q. I call your attention to page 71; are there any red ink entries there?
A. Yes.
Q. I call your attention to page 97; are there any red ink entries there?
A. Yes, sir.
Q. What is it?
A. I don't know; it is a blot that was on when it came into my possession.
Q. Turn to page 126; are there any red ink entries there?
A. Yes, sir.
Q. Do you know whether you made those marks in red ink in that book?
A. No, sir.
Q. Did you settle the account with Bamberger mentioned in that account?
A. No, sir; I settled the account with the two sons; the father was dead long before that.
Q. What is that? [Showing witness a book.]

A. That is a check book from the Second National Bank; I used part of it.

By the Court:

Q. Do you know in whose handwriting those figures are, "299," on page 71?

A. No, sir.

Q. Are they yours?

A. No, sir; they are not mine.

Q. In whose handwriting is *that* word "paid?"

A. I do not know.

Q. Is it your handwriting?

A. No, sir.

By Mr. Hilton:

Q. What book is that? [Showing witness a book.]

A. This is a book of the Paterson Real Estate and Building Association; that belonged to Mr. Thompson, and I followed it up since his death.

Q. Whose handwriting is that?

A. The Secretary of the Paterson Real Estate and Building Association.

The Court: Is the book in evidence?

Mr Hilton: We merely produce it on notice of the other side to produce all books.

The Court: It may be considered in evidence.

Q. In this account produced this morning there appears to be some pages cut out and torn out.

A. No, sir; they were that way when they came into my possession.

Q. State whether or not you have taken the ledger

referred to in that book away from Mrs. Downie's house.

A. The ledger referred to in that account book?

Q. Yes, sir.

A. No, sir; I never took it away; there are two very large volumes of the account books used as ledgers they were very large volumes.

Q. Did you leave them there?

A. Yes, sir; there is another book the size of that somewhere; like one of those there [referring to a book on the table], besides 20 or 30 little books with leather backs that Mr. Thompson used to keep his memoranda in.

Q. Have you any of those in your possession?

A. No, sir; they were left there.

CROSS-EXAMINATION.

By Mr. Stevenson:

Q. Those last books that you referred to, 20 or 30 of them, were time books, were they not?

A. Something like that; yes, sir.

Q. No other entries in them except the time of his employes?

A. Yes, sir.

Q. What other entries were in them?

A. There were entries in them of work at different places; I remember it showed particularly from this fact, that I was trying to make out an account, and Mrs. Thompson was well aware of the fact of the building of that monument down at Cedar Lawn; that is the reason I got acquainted with those small books.

Q. They are kept in a tin box; are they not?

A. I can not say.

Q. Are there any entries in these large books that you referred to?

A. Yes.

Q. Very little?

A. There is not much.

Q. You say there is a ledger that corresponds with this book in size down there?

A. I never saw one.

Q. Is there any book down there that is similar in size to that used as a ledger?

A. I cannot say that I saw a ledger; I could not make as much use of it as that.

Q. Do you think it is down there now?

A. It is down there now; it ought to be.

Q. What jewelry did you ever see in the safe?

A. I can't tell you what it consisted of.

Q. What did it look like?

A. Like buttons, or rings, or bracelets, or something of that kind; and I think there was a watch there.

Q. Don't you know that that was Mr. Thompson's watch?

A. I could not tell; she claimed everything that was there.

Q. Did you not know that that was Mr. Thompson's watch?

A. No sir; I did not know that.

Q. I mean the one he had worn?

A. I seen him wear a chain like that.

Q. Do you remember seeing these things in a box?

A. Only the box I referred to since; an iron box.

Q. Did you see them in a paper box, or small box of any kind?

A. No, sir.

Q. Did you not know that Mr. Thompson had a sore face, for which he got something in a box?

A. I cannot call to mind anything particularly of a sore face.

Q. Do you not recollect his using some salve for some little sores; for a breaking out on his face.

A. I do not especially.

Q. Do you not recollect putting the watch and some

other things in the box after the inventory was taken and putting them in that safe?

A. No, sir; I never handled them at all.

Q. When did you see that jewelry there?

A. I cannot tell exactly the time; it was some time about or before the taking of the inventory.

Q. How long before?

A. I cannot tell you how long, exactly.

Q. About how long?

A. I cannot specify the time.

Q. Can you give us any idea?

A. No, sir; I couldn't give you any idea as to the exact time.

Q. Do you recollect Mrs. Downie giving you the keys the day after Mr. Thompson died?

A. No, sir.

Q. You do not recollect it?

A. No, sir.

Q. Have you any recollection on the subject?

A. If I wanted it for anything, but I could not require it, because the safe was not opened; no, sir.

Q. Do you recollect your giving Mrs. Downie the keys the day after Mr. Thompson died?

A. No, sir.

Q. Do not you recollect getting the keys the day after his death?

A. No, sir; it was night when he died?

Q. Well, then, the night he died.

A. No, sir.

Q. Have you any recollection on the subject?

A. No; not of the keys.

Q. You do not know who had the keys the night of his death?

A. No, sir.

Q. Do you recollect your getting them the next day or the day after?

A. No, sir.

Q. You had them before the safe was opened by the expert, had you not?

A. I do not think I had them before the safe was opened ; I do not remember that.

Q. The first you had them was the day after the expert opened the safe ?

A. I cannot positively state.

Q. You kept all the papers, bonds, etc., belonging to the estate in that safe ?

A. Yes, sir ; or in the secretary.

Q. What did you keep them in ?

A. Sometimes there would be something in the secretary, when I was using them.

Q. You kept them there after you had filed your first account ?

A. No, sir ; not all the time.

Q. Where did you keep them ?

A. What have you reference to ?

Q. I speak of the papers, bonds, etc., belonging to the estate. Did you keep them in the safe and secretary till after that—after you had filed your first account ?

A. The important papers and bonds were kept in the safe.

Q. Whereabouts in the safe ?

A. I cannot tell you exactly.

Q. Can you not tell whether they were in the drawer or pigeon-hole ? You kept them locked there, did you not ?

A. No, sir ; they were open to the family.

Q. Do you mean to say that after Mrs. Downie had been removed, in December, 1877, and you had become the sole administrator, you left the bonds and valuable papers of the estate where anybody else but yourself could get them ?

A. Yes, sir.

Q. In the safe ?

A. Yes, sir ; I had full confidence in the people.

Q. Did you leave some of them in the secretary too ?

A. The important papers were left in the safe.

Q. Do you say that Mrs. Downie had any jewelry during the winter and spring of 1878?

A. I do not know where it was, sir; I never saw it during that time that I know of.

Q. When did you take away the bonds and other valuable papers belonging to that estate?

A. I took them away at the time Mr. Griggs was appointed guardian of the children.

Q. When was that?

A. It was in June of last year—in June, 1880; at the time Mr. Griggs was appointed guardian I wanted them in my possession for the purpose of turning them over, some of them, to Mr. Griggs.

The Court:—I do not see how that can throw any light upon the question of how much money Mr. Knowles had in his hands within a month after Mr. Thompson died.

Q. During the winter and spring of 1878 you had the keys in your possession, did you not?

A. Yes, sir.

Q. Did you not have the keys in you possession up to the time you filed your first account?

A. No, sir.

Q. Who had them?

A. They were left at the house.

Q. Where?

A. With Mrs. Downie.

Q. When did she get them?

A. I never carried them away; after they were settled down I turned them over.

Q. Where were they kept?

A. They kept them; I always asked for them when I wanted to go into the safe.

Q. How much cash have you now belonging to the estate?

A. The books will show that.

Q. How much cash have you now belonging to the estate?

A. Seven or eight hundred dollars, I believe.

Q. What else have you that represents cash?

A. Two sewer bonds for five hundred dollars each.

Q. What else?

A. I have nothing in the shape of or that represents money, only a number of lots that I bought in at foreclosure sales.

Q. How much do those lots represent? What was the amount of your decree in those foreclosures?

A. One was $1,500, the amount of the mortgage; the other was $1,000.

Q. Then you mean you own real estate which represents $2,500 of the estate?

A. That is the amount of the mortgages.

Q. Do you know whether *that* is Harry Smith's handwriting, the word "page" in red ink on page 71?

A. No, sir; I cannot swear to Harry Smith's writing; I only think it is.

Q. He took the books home when he kept them?

A. I do not know anything about it.

GEORGE S. HILTON, recalled, further testifies as follows:

By Mr. Williams:

Q. There are one or two points I wish to direct your attention to; you have them in your mind?

A. The mortgage that Mrs. Downie mentioned that was brought to me to be foreclosed was, according to the best of my recollection, brought to me in the winter of 1877, I think about February, in that neighborhood —February, 1878; it was about that time to the best of

my recollection when she came to see me about foreclosing that mortgage; her husband came with her as she stated; after the filing of the first account, in April, 1878, up to the time of the difficulty that arose over the payment of the taxes for 1878, she has made very frequent visits to my office alone to inquire and talk about matters relating to the estate of Mr. Thompson, deceased, and according to my recollection she was there at least on an average in every two or three weeks two or three times; I do not think her husband came with her; he may possibly once or twice.

Reference has been made before now to a certain settlement that was made in Mr. Ward's office. At the same time there was a claim that Mr. Knowles, as administrator, had against Mr. Ward, and a counter claim of Mr. Ward against the estate of Mr. Thompson, deceased, was settled, and I found the bill of Mr. Ward presented with a memorandum of the settlement with Mr. Ward, made by myself, dated June 23, 1881, which I have no doubt is the date of that settlement; I do not know that it is of very great importance in this case, but as reference has been made to it I wish to fix the date of it. And I will state here, for explanation of some of the Exhibits, that in the accounts filed by Mr. Knowles the money that was collected for rents or the cash that he advanced to Mrs. Downie on account of her distributive share are not included. They were not included because it was thought that Mr. Knowles, as administrator, had nothing to do with the real estate left by Mr. Thompson, and that in collecting the rents he acted merely as agent of those who were to receive them, there being no one else to attend to it, and the cash paid to Mrs. Downie upon her distributive share was not included because it was supposed that the court would not allow in the account any payment made on account of a distributive share unless it was made in pursuance of an order of the court, and that it was made at the risk of the administrator, and this was the

theoretical view of it which I had; I also was informed by Benjamin Van Wagoner that that was the practice, to leave out those items, and he drew up the accounts in accordance with that practice in his office, and I assented to it, regarding it as theoretically correct, although I think now it was not the proper way to do it.

CROSS-EXAMINATION.

By Mr. Stevenson:

Q. Do you think this is the date of the actual settlement in Mr. Ward's office, or the date of a partial settlement that was made prior to that time, June 23rd, 1881? (Referring to a paper.)

A. I do not know of but one interview.

Q. Were you present at the time this has been referred to by Mrs. Downie and Mr. Knowles, when there was some excited talk between them?

A. Yes, I was there.

Q. And you think that was the date?

A. Yes, sir; I think I made the entry the same day, came right over to my office and made the entry.

Q. You say that Mrs. Downie in 1878 called frequently at your office and you talked over the matters with her?

A. Yes, sir; she called very frequently.

Q. That was after the account was filed?

A. Yes, sir.

Q. Was there anything said about the finding of money in the drawer at that time?

A. She mentioned it several times.

Q. What did she say?

A. She mentioned the amount of money found in that drawer in inquiring where the money that had gone into Mr. Knowles' hands had ~~come from.~~ gone to?

Q. What was the first time she said it?

A. I cannot say.

Q. Do you recollect any particular interview?

A. I recollect the position in which she stood at one interview; I was sitting in my chair against the wall, where I usually sit when I am talking and smoking, and she came up and stood in front of me, and in speaking about the different sums I recollect she made gestures and said there was so much in the inventory, so much in the drawer, and in all so much, about $17,000.

Q. Do you know what she stated as the amount in the drawer?

A. According to the best of my recollection the sum was about $5,000.

Q. Did she then state that sum on this occasion that you refer to?

A. I think so.

Q. You are not certain whether she did or not?

A. No; I cannot be positive of that, it is so long ago.

Q. Did you tell her of the discrepancy in the account which you and Mr. Knowles had discovered?

A. I cannot say for a certainty whether I did or not.

Q. Did you tell her the books showed a charge of $4,250?

A. I would like to finish my other answer; I couldn't say for a certainty whether I did tell her about the discrepancy or not, but, as I stated when I was last on the stand, I had a faint impression that I did state it to her, but not sufficient to state it as evidence.

Q. On this occasion when you say she stood before you and made the gestures, did you then tell her of the discrepancy.

A. No.

Q. Why not?

A. The amount that she mentioned never differed materially from the amount that we had in the account; I had no fault to find with it.

Q. Did you not think it was important for her to know as one interested in the estate that there was this discrepancy of $1,000?

A. I did not know of what importance it was to her if it was all accounted for.

Q. Did you purposely abstain from telling her?

A. No, sir; I had no reason to.

Q. In all your conversations this matter did not come up; this matter of the discrepancy?

A. There was nothing said about there being a discrepancy.

Q. When you say you have a faint impression of mentioning it, to what times does that refer?

A. It refers to about the time the discrepancy was discovered. before the filing of the account; I do not state it as a fact

Q. When was it when she stood before you and stated there was so much in the inventory and so much found in the safe?

A. I think that was after the account was filed in 1878; it may have been in 1879, possibly.

Q. What was the reason that she was excited on the subject?

A. She could not understand where the money had all gone to, and she used to speak a good deal about not having got what she was entitled to, and wanted to know why she could not have more money, and so on, and also about the allowance to the children; she complained that they were not allowed sufficient; and so she would make these statements and wanted to know where the money had gone to, and on several occasions I mentioned to her the large payments that had been made; for instance, the payment to her brother of $5,000, and on different mortgages, and, as I stated before, I also sent her up the larger payments by mail; whether she got it or not, I do not know.

Defendant's counsel puts in evidence the order of investment, dated April 7, 1879.

Marked Exhibit 2, Dec. 20, A. W. C.

Also refunding bonds of Annie Downie.

Marked Exhibit 3, Dec. 20, A. W. C.
Also note of $1,000, dated May 16, 1877.
Marked Exhibit 4, Dec. 20, A. W. C.
Also, note of $5,000, dated March, 1877.
Marked Exhibit 5, Dec. 20, A. W. C.

ANNIE DOWNIE, recalled, further testifies as follows:

By Mr. Stevenson:

Q. After you came home from Europe with your husband, Mr. Downie, do you recollect when you got the keys of Mr. Knowles of the safe?

A. About 18 months after we came home.

Q. During that 18 months did you have the keys in your possession?

A. No, sir.

Q. Were they in the house?

A. No, sir.

Q. During that time did Mr. Knowles have occasion frequently to go to that safe?

A. Yes, sir; he would come up sometimes.

Q. Do you know about your husband having a young man to assist him on his books named Harry Smith?

A. Yes, sir; he had.

Q. Do you know his handwriting?

A. I cannot say for sure.

Q. Do you know whether when that young man was working on the books, the books were at any time removed from the house?

A. Yes, sir; he used to take them to his house?

Q. When did he do the work on them, day or night?

A. Nights.

Q. Do you know when that young man was employed by Mr. Downie; during what period?

A. I cannot say.

Q. How long before Mr. Thompson's death did Mr. Smith cease to do that work?

A. I couldn't say for sure.

Q. Do you know about how long?

A. No; I do not.

Q. Have you seen that book before? [Showing witness E 1, Dec. 20].

A. Yes, I think I have.

Q. What book was that?

A. I think it was one that was at the house; it was my husband's, I think.

Q. Have you seen any other book like that of your husband's?

A. There were some other books?

Q. Do you know where they are now?

A. No, sir.

Q. Have you got any down at your house?

A. No, sir; only just a thin little one; I did not know it was anything.

Q. Don't you know of your husband having a book of that size that was called the ledger?

A. No, sir; I do not know; there were some two or three books there when he died; but I do not know where they are now.

Q. You don't know anything about that?

A. No, sir.

Q. When did you see them last after your husband's death?

A. I couldn't say; I am not sure.

Q. Then you cannot give us any idea about it?

A. I cannot say when I saw them last.

ROBERT DOWNIE, recalled, further testifies as follows:

By Mr. Stevenson:

Q. Do you know where the bunch of keys of the safe was kept after you returned from Europe with Mrs. Downie?

A. I suppose Mr. Knowles carried them.

Q. Do you know when they first came into the house and remained?

A. About 18 months after I first came home, I think.

Q. Who brought them?

A. The first I saw they were in the desk, sticking in the desk drawer, in the key hole.

Q. You do not know who brought them back?

A. No, sir.

Q. After that time, had you seen them in the house after your return from Europe?

A. No, sir.

Q. Had you seen Mr. Knowles with them up to that time?

A. I seen him going to the safe; I never followed him.

Q. How often have you seen him do that during that time?

A. The first two or three months I was in there almost every time.

Q. During that time did he get the keys at any time from Mrs. Downie?

A. I never seen her give them to him; not to my knowledge.

Q. Do you know of Harry Smith working for Mr. Downie?

A. Yes, sir.

Q. On his books?

A. Yes, sir.

Q. When was that?

A. About 1874, I guess; may be 1875; I won't be certain to the year.

Q. How long before Mr. Thompson's death did he quit that work?

A. I guess it must have been nearly two years or two years and a half.

Q. Do you know his handwriting?

A. No, sir; I could not be certain of it; I never paid any attention to the books.

Q. Do you know where he did the work on the books?

A. He used to take them home, I believe.

Q. You know Mr. Thompson's handwriting?

A. Yes, sir.

Q. Is that word "page," on page 71, in his handwriting? [Referring to Ex. 1 of Dec].

A. No, sir.

Q. Are those figures on page 126, in red ink, in Mr. Thompson's handwriting?

A. No, sir.

By the Court:

Q. Where is Mr. Smith now?

A. I do not know; he is out of town, in the oil regions, I believe, the last I heard of him.

CROSS-EXAMINATION.

By Mr. Williams:

Q. You say about 18 months after you returned with Mrs. Downie you saw some keys in the drawer of the desk?

A. Yes, sir.

Q. What keys were they?

A. The keys of both the desk and the safe.

Q. How do you know they were?

A. I have seen them often enough.

Q. Do you know who put them in the desk?

A. No, sir.

Q. Do you know how long they had been there?

A. No, sir.

Q. Do you know where they were from the time you returned until you saw them in the desk?

A. No.

Mr. Stevenson: When I made the examination myself of the safe and desk some two weeks ago, I did not see the particular relevancy of the old accounts of B. Stapleton & Co; I was looking for the book of accounts, etc., and I desire now to produce here whatever books we can find there belonging to B. Stapleton & Co. There are also some large books referred to in which there were only a few entries; I desire to bring the ledger here.

With the exception of that I have nothing further.

The Court: With that exception then the case is closed?

Mr. Stevenson: Yes, sir.

Mr. Hilton: Judge Daggers said in his testimony on page 341, "I would be glad to state, if permitted, people who knew our intimate relations, etc.;" and at the end of the answer he says "He is a most honorable character." Mr. Stevenson moved to strike out the answer. In granting the motion I do not understand that the Court included the last remark.

The Court: No, sir; I do not understand so.

TESTIMONY CLOSED.

Adjourned to Thursday, Dec. 29th, 1881.

EXHIBITS, &c.

EXHIBIT D on part of petitioner.

This exhibit consists of the letters of administration on the estate of Sam Thompson, deceased, granted by the Surrogate of the County of Passaic to Annie Thompson and Allen Knowles, on April 18th, 1877.

EXHIBIT M on part of petitioner.

This exhibit consists of the appointment of appraisers on said estate, dated April 18th, 1877, and the oath of said appraisers made April 23rd, 1877, before said Surrogate.

INVENTORY.

A true and perfect inventory and appraisement of the personal property of Sam Thompson, late of the County of Passaic, deceased, made by Annie Thompson and Allen Knowles, administrators, and Lees Garside and Thomas Crossley, two discreet and judicious persons, this 23rd day of April, A. D. 1877.

To purse,	$629 12
To 1 silver watch,	5 00
To range, chairs, tables, benches, clothes-hors, irons, boards, wash tubs, carpets, zink, rocker, coal, wood, crockery, glass, cutlery,	25 00
Extension table, stand, 5 parlor chairs,	20 00

2 lounges, 1 looking-glass, 5 pictures, ingrain carpets,	30 00
Marble stand, book case and contents, 2 pictures and ornaments,	13 00
Iron safe, stove, 3 curtains, stair carpet rods, carpet, oil cloth,	78 50
Stove, chamber suit, bed and beding, toilet set,	28 00
Carpet, cradle, bedstead, bed and bedding,	10 00
Bureau and contents, $5.00; lot stone in quarry and at house, $250,	255 00
1 derrick in quarry, $20.00; lot brick and sewer pipe,	45 00
Lot lumber, $15.00; 3 lumber wagons, $60; 3 carts, $30.00,	105 00
2 stone trucks, 2 derrick ropes, blocks, pumps,	60 00
Ladders, hods, buni, wheelbarrows, $15.00; 2 horse buggy wagon,	135 00
2 setts double, 2 setts single harness, cart harness, 1 saddle,	35 00
Robes, forks, blankets, picks, shovels, hoes, crow-bars and drills.	15 00
1 steam engine and rotery pump, 2 boxes, lot tools,	83 00
Paterson City sewer bond, No. 19, with interest,	508 75
Paterson City sewer bond, No. 20, with interest,	508 75
Passaic City school district bond No. 20, with interest,	515 00
Paterson savings bank book No. 6,506 and interest,	1,120 00
Bond and mortgage Julia and James Thompson, Nov. 13th, 1874, int.,	233 98
Bond and mortgage A. A. Fonda,	1,000 00
Bond and mortgage Adrian Van Houten,	1,500 00
Bond and mortgage William J. Watson,	250 00
1 note Peter I. Sturr, not due,	90 00
1 note P. H. & W. Shields, March 28th, 1877, at seventy days,	150 00

1 note P. H. & W. Shields, March 28th, 1877, at forty days,		150 00
		$7,598 10
To amount brought over,		7,598 10
To 1 note Barlow & Grundy,		285 00
To 1 note Henry G. Ryerson,		54 00
To 1 note J. H. Van Houten & Company,		150 00
To book accounts considered good,		3,468 79
		$11,555 89
To 1 note J. B. Allee, desperate,	$ 35 00	
To 1 note Van Houten & Demarest, desperate,	500 00	
To 1 note John and Hester Jenkins, desperate,	21 20	
To 1 note Z. M. Ward, desperate,	275 00	
Book accounts, desperate,	1,450 23	
	$2,281 43	

ANNIE THOMPSON,
ALLEN KNOWLES, } Administrators.

LEES GARSIDE,
THOMAS CROSSLEY, } Appraisers.

PASSAIC COUNTY, *ss.*

Annie Thompson and Allen Knowles, administrators of Sam Thompson, deceased, being duly sworn, according to law, did depose and say, that the annexed writing contains a true and perfect inventory of all and singular the goods and chattels, rights and credits and effects, which were of the said Sam Thompson, deceased, as far as have come to their knowledge or pos-

session or to the possession of any other person or persons, for their use to their knowledge.

ANNIE THOMPSON,
ALLEN KNOWLES.

Sworn and subscribed at Paterson, in said County, this 23rd day of April, A. D. 1877, before me,

ISAAC VAN WAGONER,
Surrogate of Passaic County.

PASSAIC COUNTY, *ss.*

Lees Garside, one of the appraisers in the annexed inventory named, being duly sworn, according to law, did declare that the goods and chattels, rights and credits and effects, in the said annexed inventory set down and specified, were by him appraised according to their just and true respective rates and values, after the best of his judgment and understanding, and that Thomas Crossley, the other appraiser, whose name is thereto subscribed, was present at the same time with this deponent, and consented to the said valuation and appraisement; and that they appraised all things that were brought to their view for appraisement.

LEES GARSIDE.

Sworn and subscribed at Paterson, in said County, this 23rd day of April, A. D. 1877, before me.

ISAAC VAN WAGONER,
Surrogate of Passaic County.

EXHIBIT D on part of petitioner.

PASSAIC COUNTY ORPHANS' COURT.

SEPTEMBER TERM, 1877.

In the matter of ANNIE THOMPSON, Administratix of SAM. THOMPSON, deceased. } *Order for Removal.*

ANNIE THOMPSON, administratrix of Sam Thompson, deceased, having married one Robert Downie, and the said Annie Thompson and Robert Downie having neglected and refused to give bond to the Ordinary for the faithful execution of the trust: It is this twenty-ninth day of December, in the year eighteen hundred and seventy-seven, ordered that the letters of administration issued to her and Allen Knowles, by the Surrogate of the County of Passaic, of the goods and chattels, rights and credits, which were of the said Sam Thompson, deceased, be revoked in respect to the said Annie Thompson, and that she be removed from office as administratrix as aforesaid: but in respect to the said Allen Knowles the said letters of administration are to remain in full force and virtue the same as if they had been issued to him alone.

JOHN S. BARKALOW, P. J.
P. SANDFORD,
JOHN R. DAGGERS.

EXHIBIT B.

This exhibit consists of the first intermediate account, Allen Knowles as administrator of Sam. Thompson, deceased, filed April 23rd, 1878, and allowed May 13th, 1878.

Charges against administrator,	$17,579.27
Allowances to administrator, including Surrogate's fees and expenses and administrator's commissions,	10,410.86
Balance,	$ 7,168.41

Contains the following item :

"Cash on hand not inventoried, $5,235.31"

EXHIBIT N on part of petitioner.

This exhibit consists of the administrator's day book. Contains the following item under date of May 15th, 1877.

"Found in safe drawer, $4,250.00"

EXHIBIT A.

Rec'd Paterson, N. J., April 21, | 77, from Mr. Allen Knowles five hundred dollars being balance due per agreement in purchase of lots Governor St. for Sam Thompson, dec.

RICHARD ROSSITER,
Agent Society U. M.

[DUPLICATE.]

EXHIBIT C.

Cash.	Dr.	Cr.
Page 300.	$ 669.86	$ 632.95
301.	42.57	270.19
302.	7,135.81	4,153.98

303.	190.10	1,811.17
304.	330.08	903.73
305.	387.01	172.83
306.	268.52	798.19
307.	369.	419.14
308.	166.11	1,190.
309.	246.79	194.62
310.	467.13	149 95
	$10.272,98	$10,696.75
	339.08	441.96
	229.76	65.02
	$10,841.82	$11,203.73

EXHIBIT D.

Notes on account of Allen Knowles as administrator of Sam Thompson, deceased, to April 1st, 1878, allowed by the court.

Charges against administrator,	$17,579.27
Allowances, not including commissions and Surrogate's fees,	9,965.34
Balance on hand April 1st, 1878,	$7,613.93

Items of balance on hand, April 1st, 1878.

Cash paid widow ($1,282.47) less rents ($416.00)	$ 866.47
Book accounts not collected marked good,	318.36
Goods inventoried not sold,	155.00
Paterson and Passaic City bonds,	1,500.00
Thompson bond and mortgage, part not collected,	219.98
Fonda bond and mortgage, not collected,	1,000.00

Van Houten bond and mortgage, not collected,	1,500.00
Watson bond and mortgage, not collected,	250.00
Cash on hand,	1,804.12
	$7,613.93

Cash received according to book,	$10,841,82
Cash in Pat. Savings Institution,	1,160.90
Cash on hand according to books,	$12,002.72
Cash paid, do.	11,203.73
Cash on hand according to books,	$798 99
Cash actually on hand about,	$1,825.20
Cash on hand according to books,	798.99
Error,	$1,026,21
Error, brought forward,	1,026.21
Charged in acct. filed as int., S. B. money,	40.90
Balance,	$ 985.31
Cash (supposed amount) found in safe, not inventoried,	4,250.00
Cash not inventoried,	$5,235.31

Cash in 1st Nat'l Bank, April 1, 1878,	731.16
" " 2nd " " " " "	1,004.04
Total,	$1,735.20
	89.80
	$1,825.00

EXHIBIT B.

June 5th, 1878.

Cash on hand belonging to estate,		$1,464.79
Bonds,		1,500.00
Cash paid Annie Downie to date		1,370.24
Total,		$4,335.03
Probably due on Fonda foreclosure case,	$ 50.00	
Probable cost of Van Houten foreclosure case,	200.00	
Unpaid taxes on mortgaged property,	280.00	
Taxes for 1878 on same, estimated,	60.00	
Contingencies,	100.00	690.00
Balance,		$3,645.03
Annie Downie's share of same,		$1,215.01
Allowed for wardrobe of children,		150.00
Allowed for trip to Europe of do,		150.00
Six dollars per week for 60 weeks,		360.00
Total,		$1,875.01
Cash paid Annie Downie to date,		1,370.24
Balance,		$ 504.77
Amt. paid Annie Downie prior to June 5th, 1878,		$1,370.24
Amt. paid Annie Downie as of June 5th, 1878,		500.00
Total,		$1,870.24
Rents collected prior to April 1st, 1878,	$416.00	

Rents collected since April 1st, 1878	71.77	
Total,	$487.77	
Repairs since,	31.98	
Balance,	$455.79	
Annie Downie's share of same,	$151.93	
Allowed do. on account of children,	660.00	811.93
Distributive share of personal estate of A. D.,		$1,058.31

EXHIBIT 3.

Know all men by these presents that I, Annie Downie, wife of Robert Downie, of the City of Paterson, in the County of Passaic and State of New Jersey, am held and firmly bound unto Allen Knowles, of the said city of Paterson, administrator of Sam Thompson, late of the said County of Passaic, deceased, in the sum of twenty-two hundred dollars, lawful money of the United States of America, to be paid to the said Allen Knowles, administrator as aforesaid, his certain attorney, executors, administrators or assigns, to which payment well and truly to be made, I do hereby bind myself, my heirs, executors and administrators, firmly by these presents, sealed with my seal and dated the fifth day of June, in the year of our Lord, one thousand, eight hundred and seventy-eight.

Whereas, the above bounden Annie Downie has received from the above-named Allen Knowles, administrator as aforesaid, the sum of ten hundred and fifty-eight dollars and thirty-one cents, being a part of her

distributive share of the personal estate of the said Sam Thompson, deceased; Now, the condition of the above obligation is, that if any debt or debts, truly owing by the said deceased, shall be hereafter sued for and recovered, or otherwise duly made to appear, which there shall be no other assets to pay, that then and in every such case, if the said Annie Downie shall refund and pay back to the said Allen Knowles, administrator as aforesaid, her ratable part of such debt or debts, and of the costs of suit and charges, by reason of such debt or debts, out of the part or share so as aforesaid received by her, then the above obligation is to be void or else to remain in full force and virtue.

ANNIE DOWNIE. [L. S.]

Sealed and delivered in the presence of

GEO. S. HILTON.

EXHIBIT 5.

$5,000.00.

PATERSON, N. J., March 1st, 1877.

Thirty days after date I promise to pay to the order of Benjamin A. Stapleton the sum of five thousand dollars, at the First National Bank, value received.

(Signature cut out.)

Paid April 16th, 1877.

EXHIBIT 4.

$1,000.00.

PATERSON, N. J., May 16th, 1877.

Six months after date we promise to pay to the order

of B. A. Stapleton, at the First National Bank, ten hundred dollars, value received, with interest at 7 per cent.

(Signatures cut out.)

PASSAIC ORPHANS' COURT.

In the matter of the application by petition of ANNIE DOWNIE to open two intermediate accounts of ALLEN KNOWLES, Administrator of Sam Thompson, deceased.	Decree.

Annie Downie, formerly Annie Thompson, widow of Sam Thompson, deceased, having applied to this court by petition, praying that the two intermediate accounts filed by Allen Knowles, administrator of Sam Thompson, deceased, and allowed by this court, may be opened and corrected, and that said Allen Knowles may be compelled to file a final account, charging himself with a larger sum than stated in said two intermediate accounts, and that said petitioner have further and other relief upon the matters set forth in the said petition, and the said petitioner and said administrator having presented their evidence respectively to the court, and the court having heard and considered the argument of Eugene Stevenson, counsel for the petitioner, and George S. Hilton and Henry A. Williams, of counsel for said administrator, and the court being evenly divided on the questions of fact and law presented by said petition and evidence, one judge of said court being of opinion that said petitioner was entitled to relief and the other judge of said court being of opinion that she was not entitled to relief.

It is on this twelfth day of January, A. D. 1883, ordered, adjudged and decreed that the prayer of said petition be denied and said petition be dismissed.

A. B. WOODRUFF, *Pres't Judge.*
HENRY P. SIMMONS.

PASSAIC ORPHANS' COURT.

In the matter of the application of ANNIE DOWNIE, by petition, to open the accounts of ALLEN KNOWLES, administrator of Sam Thompson, deceased, and for other relief.	Appeal.

Annie Downie, formerly Annie Thompson, widow of Sam Thompson, deceased, appeals to the New Jersey Prerogative Court from so much of the order and decree of the Passaic County Orphans' Court, made in the above stated matter, dated on the twelfth day of January, A. D., 1883, as denies the prayer of the petition of said Annie Downie, and from so much thereof as dismisses said petition.

EUGENE STEVENSON,
Proctor for Appellant.

I conceive that there is good cause for appeal in the above-stated matter.

J. W. GRIGGS,
Counsel for Appellant.

NEW JERSEY PREROGATIVE COURT.

Between ANNIE DOWNIE, *Appellant,* and ALLEN KNOWLES, Administrator, *Respondent.*	On petition to Open Accounts and for Relief. Petition of Appeal.

To the Honorable the Prerogative Court of the State of New Jersey:

The humble petition of Annie Downie, the appellant in the above-stated matter, respectfully shows that your petitioner finds herself aggrieved by a decree and order made in the above-stated matter by the Passaic County Orphans' Court, bearing date the twelfth day of January, A. D., 1883, in this respect, to-wit:

That the said decree and order denies the prayer of the petition of this appellant, the petitioner below, and dismisses said petition.

And your petitioner further shows that the said decree was made in a proceeding instituted by this petitioner in said Orphans' Court to have two intermediate accounts of said Allen Knowles charged with a larger sum of money than he had therein charged himself with, the said decree being made upon petition rule to show cause and the testimony taken thereunder.

And your petitioner humbly appeals from the said decree and order upon the ground that the same is erroneous, for that the said prayer of said petition should have been granted by said Orphans' Court and the relief therein prayed for allowed, and that said petition should not have been dismissed.

Your petitioner therefore prays that the said order and decree of the said Orphans' Court may be reversed, set aside and for nothing holden, and that your peti-

tioner may have such further and other relief in the premises as to this honorable Court may seem meet.

EUGENE STEVENSON,
Proctor and Counsel of Appellant.

NEW JERSEY PREROGATIVE COURT.

Between ANNIE DOWNIE, *Appellant,* and ALLEN KNOWLES, Administrator, *Respondent.*	On Appeal— Answer.

The answer of the above-named respondent to the petition of appeal of the above-named appellant.

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits that a decree and order, bearing date the twelfth day of January, last past, was made by the Passaic County Orphans' Court, in the cause for that purpose mentioned in the said petition, as is therein stated; but, as to the substance and form thereof, this respondent prays to refer thereto, when the same shall be produced. And this respondent is advised and believes that the said decree and order is not erroneous, but is agreeable to law and equity, and prays that the same may be affirmed, with costs to be adjudged to this respondent.

GEO. S. HILTON,
Solicitor and Counsel of Respondent.

PREROGATIVE COURT.

MAY TERM, 1883.

Between

ANNIE DOWNIE,

Appellant,

and

ALLEN KNOWLES, Administrator,

Respondent.

On appeal from the decree of the Orphans' Court of Passaic County.

MR. E. STEVENSON for appellant.

MR. G. S. HILTON and MR. H. A. WILLIAMS for respondent.

THE ORDINARY:—Sam Thompson, late of Paterson, in this State, died on the 9th of April, 1877, leaving a widow and three infant children. On the 18th of the same month letters of administration of his estate were granted to his widow, the appellant, and Allen Knowles, the respondent. They filed an inventory of the estate on the twenty-third of the same month. In July of the same year the appellant was married to Robert Downie, and on or about the 28th of December following she was removed from her office of administrator on her failure to give bonds as required by the statute because of her remarriage. At the term of April, 1878, the respondent filed his intermediate account, which was allowed at the same term, and at the April term, 1880, he filed another intermediate account,

which was also allowed. The inventory amounted to $11,558.89. It contained but one item of cash, stated as "Purse, $692.12." In the first intermediate account the respondent charged himself with "Cash on hand not inventoried, $5,235.31," and in the second he charged himself with the balance appearing against him on the settlement of the first account. On the 18th of November, 1881, the appellant filed her petition in the Orphans' Court, alleging that the charge of the amount of cash not inventoried was incorrect, and stating that it represented cash found in the safe of the intestate and not inventoried, and that the true amount with which the respondent ought to have charged himself was $7,555, instead of $5,235.31, and praying that he might be required to charge himself with the amount of $2,319.68, the difference between the two sums. The matter was heard by the Orphans' Court at considerable length on testimony, and the prayer of the petition was denied and the petition dismissed. From the decree declaring the judgment of the court in the matter this appeal is brought.

As will have been seen, the question between the parties is as to the amount of money which was found in the safe and not inventoried. The only witnesses to the finding of the money and the counting of it are the parties to this litigation. To this they both agree, but differ as to the time when the money was found and the amount; the appellant alleging that the money was found on the day on which the appraisement was made, and before the appraisers came, and the respondent that it was not found until about a month after that occasion, and on the 14th of May. The appellant testifies that on the morning the inventory was made the respondent came to her house about 8 o'clock and requested her to come down stairs if she was able to do so (she was then sick abed), to open the safe; that she arose and her nurse dressed her, and the respondent and the nurse brought her down stairs where the safe

was, and that she then gave the respondent the keys of the safe, and he opened the drawer and took out $7,555. She says he laid the money on her lap when he took it out of the safe; that some of it was rolled up and some lay out flat just as it would come from the bank; that after she received it in her lap the respondent went and got a newspaper from under the lounge cushion and wrapped all the money up in the paper and put four india rubber straps around it and two across it and told her to take it up-stairs into her bed-room, and that he said if the money got to the Orphans' Court they would scatter it all away, and he thought that her husband meant the money for her. She says she put the money in her pocket, according to his advice, and took it away with her to her bed-room; that after she had got into her bed the respondent and she counted over the money on the bed where she was lying, and there were $7,055 of it, he having left $500 of the money in the safe; that he made it up into a package again and laid the package under her pillow and then went to the quarry at Haledon with Mr. Garside, one of the appraisers; that before he went to the quarry he removed the package from the bed, being apprehensive lest the nurse should see it, and placed it under the bureau in the room, where it remained until after the inventory was taken, and that in the afternoon he came again into her room and counted the money, and then took it down, and, as she supposed, put it in the safe. She swears that he counted over the bills and laid them on the bed, and that she counted them too with him; that there were $4,000 in rolls as he got it from the safe; that she thinks that when the respondent took the money down to put it into the safe, as she supposed, he made figures stating the amount on a small piece of brown paper with a pencil, and said to her "I have put it here—the amount—on this piece of paper; I will take this down and put it in the safe with the money." She swears that when the money was counted on the

bed there were $7,055 of it, $500 having been left by the respondent in the safe because he said it would not look right to take all the money out of the safe. She swears positively as to the amount of money which was found in the drawer—that there were $4,000 in bills in rolls, and $3,555 in bills in flat packages. The bills appear to have been of large denominations, and according to the testimony on the subject it would appear that in bulk they would have made a package not too large to be carried, as she swears she carried it in her pocket from the safe to her bed-room up-stairs. The respondent on the other hand, while he admits the finding of the money in the drawer in the safe, and that it was not inventoried, denies the truth of the entire statement of the appellant, not only as to the time of the finding, but as to the amount and the circumstances. He says that the drawer in which the money was found was one which could not be opened because of the loss of the key; that the key was not found until about the middle of May, and when it was found he and the appellant went to the safe together and opened the drawer with the key and found the money; that they counted it twice over; that the first time they differed as to the amount, and that it was counted again and they agreed that the amount was, as he thought, $4,250; that he entered the amount immediately on finding the money, in his day-book, and it appears to have been entered under the date of the 14th of May. The entry is in red ink, and is in addition to and below another one of the same date in black ink. The latter entry is an entry of a payment made of a bill on account of the estate. He says the reason why the entry of the amount found in the safe was made in red ink was that he was somewhat agitated about finding the money and not having put it in the inventory, and he says he might have dipped his pen in the wrong ink bottle, and that he does not know of any other reason why the entry is in red ink. He swears positively, however, that he

made the entry in the day-book at the very time when the money was found, which he says was on the fourteenth of May. He produces also an entry made in his diary under the same date, which he says was made at the same time. That entry is as follows: "Found the key of safe drawer and in the same." The amount found is not stated in the diary. In the ledger the charge in the day-book is posted by interlining at the top of the page the entry "Found in safe drawer, $4,250" between charges of May 16th and 17th, 1877. The amount is also entered at the top of each of the two following pages. There is nothing in the case to discredit the appellant's testimony except the respondent's flat denial, and the fact that she with him swore to the inventory. As to this latter objection to her testimony the fact that she was wholly unacquainted with business and especially with the settlement of estates and what was required of her as administratrix, is to be taken into account, and it is not strange therefore that she should, under the circumstances as she details them, have made the oath to the inventory notwithstanding the fact that, if her story be true, about $7,000 of cash were withheld from the inventory; and it does not appear that she was in anywise aware that there was anything reprehensible in withholding the money from the inventory; but on the other hand, according to her testimony, she relied and acted upon the advice of the respondent, trusting to his knowledge of what was right and proper to be done in such matters, as to which she was wholly ignorant. As against the statement of the respondent in regard to the amount of money found in the safe, stands the fact that by his own admissions the entry in his book was erroneous, nearly $1,000 less than it ought to have been. It appears that his attorney on making up his first account discovered that according to the bank books, which showed the money on deposit belonging to the estate, the respondent had nearly $1,000 more in his

hands than was shown by his account, and the only explanation which the respondent could offer for the discrepancy was that there must have been a mistake in the counting of the money when it was taken from the safe. The respondent testifies, it will be seen, that when the money was taken from the safe it was twice counted over by him and the appellant; that on the first count they differed as to the total amount, but that on the second they agreed, and that the amount so agreed upon was $4,250. In his intermediate account he charged himself with $5,235.31, instead of $4,250 only. It appears then, according to his own admissions, that his statement in his books that the amount of money found in the safe was only $4,250 was an error. Nor does his testimony on the subject of the entries made in his books appear to be worthy of confidence. Though on his direct examination he swears that he made the entry in his day-book at the time the money was found, on the cross-examination he says he cannot tell when the entry was made nor about what time; that he cannot tell within a month, and he admits that it was not made on the day when the money was found. It is evident that the entries of the $4,250 in the ledger were all made after the 20th day of August, 1877. This is apparent from the footings of the columns at the head of which they appear. It is also extremely noteworthy that part of each one of those entries—the first two figures, (42) in each—are written over erasure, and it appears by a close examination of the first of those entries that part of it is written over an entry which has been erased of a sum which seems to have begun with the figure 7. (Ledger, p 62.) The testimony of the respondent in regard to the entries is so contradictory and the entries themselves are of such a suspicious character as not only to render them wholly unworthy of credit, but to deprive his denial of the truth of the appellant's statement of all weight. In this connection it should be remarked that the respondent, af-

ter the filing of the inventory, made inquiry of Judge Daggers, who was one of the sureties on the administration bond, as to what ought to be done by an administrator in reference to money found by him after the making of the inventory, and received instructions from Judge Daggers on that subject. He did not state the amount that he found, nor did he indeed state that he had found any money since the making of the inventory. In his entry in his diary he made no mention, as before stated, of the amount found in the safe. It appears strange that he should have omitted to insert in the memorandum in his diary the important fact what the amount of money was which was found in the safe and should have contented himself with merely entering the fact of the finding of the key. And further, to show the unreliability of his testimony in reference to the entry in the day book, he says that it means that $4,250 was the amount of the money that was found in the safe, as near as he could recollect, when he put it down. It is impossible to conclude that this administrator has rendered a satisfactory account of the money found by him in the safe, whether found at the one time or the other. It is laid down that where a trustee has kept his accounts in a negligent way, or has kept no account whatever of his receipts, all presumptions should be strongly against him and obscurity and doubts should not operate to his advantage but adversely. Blauvelt v. Ackerman, 8 C. E. Gr., 495. And again, that trustees are bound to keep clear and accurate accounts and in case doubts or obscurities arise from their failure to do so they should be resolved against the trustees, and if the accounts of a trustee become lost, through his carelessness, he should be required to bear any injurious consequences arising from their loss, and that the law imposes the duty of keeping accounts on trustees for the protection of their *cestuis que trust*, and a trustee will not be permitted to defeat this salutary purpose by his carelessness. Gaston's Trust, 8 Stew. Eq., 60; affirmed

on appeal, Id. 348. Where, as in this case, the trustee's accounts are not only untrustworthy but of a most suspicious character, there is all the more reason for holding that the presumptions are against him. It is obvious that the testimony introduced in this case on the part of the respondent, in support of his general reputation for truth and veracity, honest dealing and good standing in the community, was entirely incompetent. It may be remarked that there was no attempt on the part of the appellant to show the contrary.

Judged by the rules of human conduct, applicable to such matters, the respondent has made himself singularly liable to adverse conclusions. An administrator who, after he has made his inventory, finds a large amount of money with which he knows he is chargeable, would ordinarily, if desirous of dealing fairly with the estate, not only make no concealment of the fact or of the amount found but would make haste to make both known at the earliest moment and take pains, as well in justice to the estate, as for his own protection, to establish the amount of his liability; and he would at least, in his accounts, make such entries as not only would not invite suspicion and discredit but would secure to him the benefit of the presumptions which the court is always ready to extend for the protection of the honest and careful trustee. Had the respondent called in some disinterested person to assist him in counting the money, or to verify the result of his count, or if he had stated to Judge Daggers the fact that he had found the money and what the amount was, or even if he had truly entered the amount in his books and kept his accounts in such a way as not to provoke distrust, the case would have stood more favorably for him. But not only are his entries suspicious; they are admitted to be incorrect. He admits that the amount stated there by himself is too little by nearly $1,000, and he can only account for it by the suggestion that the error must have arisen from mistake in counting the money when it was taken

from the safe. And yet he swears that he then counted the money twice over, both times with the aid of the appellant. It seems highly improbable that, under the circumstances as he states them, he could have made such a mistake. The appellant testifies positively, and her testimony appears to be credible. There is nothing to contradict it but the flat denial of the respondent, while there is very much to corroborate her.

The decree appealed from will be reversed, with directions to the court below to charge the respondent in his accounts with the difference between the amount accounted for and the amount found according to the appellant's testimony, with interest thereon after the expiration of one year from the beginning of the administration. The respondent must pay the costs both in the court below and in this court.

NEW JERSEY PREROGATIVE COURT.

Between ANNIE DOWNIE, *Appellant,* and ALLEN KNOWLES, administrator of Sam Thompson, deceased, *Respondent.*	On appeal from decree of Passaic Orphans' Court.

This cause having been brought to a hearing on an appeal from an order and decree of the Orphans' Court of Passaic County, and Eugene Stevenson, of counsel with the appellant, and George S. Hilton and Henry A. Williams, of counsel with the respondent, having been heard and the question brought up by said appeal having been duly considered;

It is, on this 18th day of February, A. D. eighteen hundred and eighty-four, on motion of Eugene Stevenson, proctor for the appellant, ordered, adjudged and decreed that the said order and decree of said Orphans' Court, made on the twelfth day of January, A. D. eighteen hundred and eighty-three, which adjudged that the prayer of the petitioner should be denied and that the said petition should be dismissed, be and the same is hereby in all things reversed, set aside and for nothing holden, with costs of appellant, both in this Court and in the said Orphans' Court, to be paid by respondent.

And it is further ordered, adjudged and decreed that the said appellant is entitled to relief upon her said petition, and that the said respondent should be charged in his accounts with the sum of eighteen hundred and nineteen dollars and sixty-nine cents, and interest thereon from April 18th, A. D. eighteen hundred and seventy-eight, the said sum being the difference between five thousand two hundred and thirty-five dollars and thirty-one cents, the amount accounted for in the first intermediate account of said respondent as "Cash on hand not inventoried," and the amount for which he should have accounted according to the testimony of the appellant.

And it is further ordered that the record and proceedings be remitted to the said Orphans' Court to the end that the decree may be carried into execution, and that the said Orphans' Court do charge the respondent in his accounts with the said sum of one thousand eight hundred and nineteen dollars and sixty-nine cents, together with the interest as above set forth.

THEODORE RUNYON, O.

NEW JERSEY PREROGATIVE COURT.

Between ANNIE DOWNIE, *Appellant*, and ALLEN KNOWLES, administrator of Sam Thompson, deceased. *Respondent.*	On appeal from decree of Passaic Orphans' Court.

The respondent hereby appeals from the decree and order made in this Court, in the above stated cause, on the 18th day of February, A. D. eighteen hundred and eighty-four, and from the whole and every part thereof, to the Court of Errors and Appeals, in the last resort in all causes,

Dated February 27th, 1884.

GEO. S. HILTON,

Proctor for and of Counsel with Respondent.

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

GEO. S. HILTON,

Of Counsel with Respondent.

NEW JERSEY COURT OF ERRORS AND APPEALS.

ALLEN KNOWLES, administrator of Sam Thompson, deceased, *Appellant*, and ANNIE DOWNIE, *Respondent.*	Petition of Appeal.

The humble petition of Allen Knowles, administrator of Sam Thompson, deceased, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by a decree and order made in the Prerogative Court by his honor Theodore Runyon, Ordinary of New Jersey, bearing date the 18th day of February, eighteen hundred and eighty-four, wherein the said Annie Downie was appellant and your petitioner was respondent, in this respect, to wit: That the said decree and order ordered, adjudged and decreed that the order and decree of the Orphans' Court of Passaic County, made on the twelfth day of January, eighteen hundred and eighty-three, which adjudged that the prayer of the petitioner therein mentioned should be denied and that the petition of said petitioner should be dismissed, be and the same is thereby in all things reversed, set aside and for nothing holden, with costs of appellant both in said Prerogative Court and in said Orphans' Court to be paid by respondent, and that the said decree and order of said Ordinary further ordered, adjudged and decreed that the said appellant therein named is entitled to relief upon her said petition, and that the said respondent therein named should be charged in his accounts with the sum of eighteen hundred and nineteen dollars and sixty-nine cents, and interest thereon from April 18th, eighteen hundred and seventy-eight, the said sum being the difference between five thousand, two hundred and thirty-five dollars and

thirty-one cents, the amount accounted for in the first intermediate account of said respondent as "Cash on hand not inventoried" and the amount for which he should have accounted according to the testimony of the appellant; and that the said decree and order of said Ordinary further ordered that the record and proceedings be remitted to the said Orphans' Court to the end that the said decree may be carried into effect, and that the said Orphans' Court do charge the respondent in his accounts with the said sum of eighteen hundred and nineteen dollars and sixty-nine cents, together with the interest as above set forth. And your petitioner humbly appeals from the said decree and order made by said Ordinary and from the whole and every part thereof, on the ground that the same is erroneous, for that the said order and decree of said Orphans' Court in said decree and order of said Ordinary mentioned, which adjudged as aforesaid, should not have been reversed, set aside and for nothing holden, but that the same should have been affirmed, and also for that the appellant in said decree and order mentioned is not entitled to any relief upon her said petition; and the respondent in said decree and order mentioned should not be charged in his accounts with the said sum of eighteen hundred and nineteen dollars and sixty-nine cents in said decree and order mentioned, or any part thereof. Your petitioner therefore prays that the said decree and order of said Ordinary may be in the particulars aforesaid and wholly reversed set aside, and for nothing holden, and that your petitioner may have such relief in the premises as to this honorable Court shall seem meet.

Dated March 4th, 1884.

GEO. S. HILTON,

Solicitor for and of Counsel with Appellant.

NEW JERSEY COURT OF ERRORS AND APPEALS.

ALLEN KNOWLES, administrator of Sam Thompson, deceased, *Appellant*, and ANNIE DOWNIE, *Respondent.*	Answer to Petition of Appeal.

The answer of the above named respondent to the petition of appeal of the above named appellant.

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto says and admits that a decree was made and entered in the Prerogative Court on the date and of the purport mentioned in said petition, but as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced, and she is advised and believes that the said decree is just and equitable, and prays that the same may be affirmed with costs to be adjudged to this respondent.

STEVENSON & RYLE,

Solicitors for Respondent.

EUGENE STEVENSON,

Of Counsel.