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Bill of Complaint of Louis S. Weinthal.

Filed April 11, 1925.

IN CHANCERY OF NEW JERSEY.

To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey: **10**

The complainant, Louis S. Weinthal, of the Town of Montclair, Essex County, New Jersey, respectfully shows that:

1. Complainant resides at #150 Claremont Avenue, Montclair, New Jersey, and that he is the Administrator of the Estate of Augusta Phillips, deceased, duly appointed by the Surrogate of Essex County, April 4th, 1924. **20**

2. On or about March 15th, 1924 complainant was requested by Ovidio C. Bianchi, an Attorney at Law of New Jersey and a Master of this Court to undertake the duties of Administrator in said Estate of Augusta Phillips deceased, which complainant agreed to do.

3. Said Ovidio C. Bianchi acting as complainant's Attorney had complainant appointed Administrator of said Estate procuring for complainant the necessary bond from the National Surety Company. Complainant qualified as such Administrator. **30**

4. On or about May 15th, 1924 Ovidio Bianchi as Complainant's Attorney presented to him proofs of claims, among which was a proof of claim of Thirty-three Hundred and Sixty (\$3360.) Dollars of Eva Barend, said claim having been prepared **40**

Bill of Complaint of Louis S. Weinthal.

by said Attorney, and said Bianchi advised complainant that said claim was valid in form and substance and advised complainant to pay the same as a just claim. (A copy of said claim is hereto attached).

10 5. On or before April 4, 1924 said Ovidio C. Bianchi without the knowledge of the complainant entered into an agreement with Eva Barend to collect her alleged claim against the said Estate of Augusta Phillips on a contingent basis whereby said Ovidio C. Bianchi was to have twenty-five per centum of the amount collected.

20 6. On said claim being filed for Thirty-three Hundred and Sixty (\$3360.) Dollars as aforesaid and upon advice of said Ovidio C. Bianchi and without knowledge of the facts as to said agreement and without independent counsel but relying absolutely on his Attorney Ovidio C. Bianchi, complainant paid said claim.

30 7. Complainant is now threatened with litigation on the part of the heir at law who claims that there was a conspiracy between complainant, Ovidio C. Bianchi, Eva Barend and others to defraud Hannah Lubel the only heir at law of Augusta Phillips by preparing a false and fraudulent claim against said Estate and exhausting the assets of said Estate by paying the same.

8. Complainant alleges that he acted in good faith in his handling of the Estate and relied upon the advice of his Attorney as aforesaid.

40 9. In or about the month of January, 1925 said

Bill of Complaint of Louis S. Weinthal.

Hannah Lubel who is the only heir at law of said Augusta Phillips deceased, demanded that the money so paid to Eva Barend and Ovidio C. Bianchi be repaid to the complainant as Administrator, as aforesaid, so that said claimant could then file her claim and the validity of said claim could be determined in suitable proceedings to establish the same and said Eva Barend and Ovidio C. Bianchi agreed to follow this course and to make repayment of the money so received by them. In consideration of said agreement as complainant is informed and believes said Hannah Lubel postponed further steps to enforce her demand. Since that time said Eva Barend and Ovidio C. Bianchi have filed and now refuse to make such refund, thus jeopardizing complainant and his bondsmen in case said claim shall ultimately be determined to be in whole or in part invalid. 10 20

10. Complainant is informed and believes that said fund or the major part thereof is now on deposit in the Bank of Montclair in the joint names of Eva Barend and Charles Barend, her husband. Complainant is informed and believes that Eva Barend is without financial responsibility and has no property out of which a judgment against her could be collected, and that her husband has already changed his residence from New Jersey to Pennsylvania and has a permanent position there and has moved there and is now living there; that said Eva Barend is about to leave the State of New Jersey permanently and is about to rejoin her husband in the State of Pennsylvania or elsewhere; and that she has no property in the State of New Jersey out of which a judgment at law or a decree in a court of equity could be collected. 30 40

Bill of Complaint of Louis S. Weinthal.

11. Complainant has requested said Eva Barend to return said money so paid to her and to take the necessary steps to prove her claim as by law provided and she now refuses to make such repayment.

10 12. Complainant is without remedy in the courts of law and accordingly prays as follows:

(1) That Eva Barend, Charles Barend and Ovidio C. Bianchi who are the defendants to this suit may answer this bill of complaint and each statement therein made.

20 (2) That said Eva Barend and Charles Barend, her husband and Ovidio C. Bianchi may be enjoined and restrained pending final adjudication in a court of law as to the validity of the said claim of said Eva Barend from using or permitting to be used and from withdrawing from the State of New Jersey any part of such money so received by them; and that they be ordered to pay into the hands of the clerk of this court the sum of money so received by them and to abide the result of this suit.

30 (3) That a writ of subpoena may issue commanding said defendants, Eva Barend, Charles Barend and Ovidio C. Bianchi to answer this bill of complaint and to abide by such decree as this court may make in the premises.

40 (4) That pending a final decree herein a restraining order may issue enjoining and restraining said Eva Barend, Charles Barend and Ovidio C. Bianchi from using or permitting to be used or withdrawing from the Bank of Montclair and such other bank or banks as may now have the same on deposit any portion of the moneys so received by them from complainant.

Bill of Complaint of Louis S. Weinthal.

(5) That complainant have such other and further relief as the Court shall think equitable and just.

ROBERT M. BOYD, JR.,
Solicitor and of Counsel with Complainant.

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ESSEX COUNTY SURROGATE'S COURT.

In the Matter

of the

Estate of AUGUSTA PHILLIPS,
Deceased.

Claim

Affidavit.

20

State of New Jersey, }
County of Essex. } ss.:

Eva Barend, being duly sworn according to law on her oath, does depose and say: that she resides at 149 Claremont Avenue, in the Town of Montclair, N. J. and that the above named deceased, Augusta Phillips, resided with and lived with the said deponent for a period of thirteen months and that during the said term the said deceased was ill and the said deponent did board, nurse and take care of the said Augusta Phillips, for the above period of thirteen months.

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Deponent further states that during the said period of thirteen months she was not paid or compensated in any way whatsoever for the board and services rendered by her to the said Augusta Phillips, deceased.

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Affidavit of Louis S. Weinthal.

Deponent further states that a reasonable cost of the said board and nursing is the sum of \$60.00 per week, and that the total amount of the money due to her from the estate of the said Augusta Phillips, deceased, amounts to \$3360.00 the same covering the period of thirteen months at \$60.00 per week.

Deponent further states that the whole sum of \$3360.00 is justly due and owing to her from the said estate of Augusta Phillips, deceased.

EVA BAREND.

Sworn and subscribed before me this
15th day of May, 1924.

Notary Public,
New Jersey.

Affidavit of Louis S. Weinthal.

Filed April 14, 1925.

IN CHANCERY OF NEW JERSEY.

Between	}	On Bill, &c. Affidavit.
LOUIS S. WEINTHAL, as Adminis- trator, &c. of Augusta Phillips, Deceased,		
Complainant, and		
EVA BAREND, CHARLES BAREND and OVIDIO C. BIANCHI, Defendants.		

State of New Jersey, }
County of Essex. } ss.:

Louis S. Weinthal, of the Town of Montclair, Essex County, New Jersey, being duly sworn according to law on his oath deposes and says:

I am the complainant herein. I reside at #150 Claremont Avenue, Montclair, New Jersey, and am the administrator of the Estate of Augusta Phillips, deceased, duly appointed by the Surrogate of Essex County on April 4, 1924.

On or about March 15, 1924, I was requested by Ovidio C. Bianchi, an attorney-at-law of New Jersey, to undertake the duties of administrator in said estate and said Bianchi acting as my attorney made application to the Essex County Surrogate and procured my appointment as such administrator and also procured from the National Surety Company a necessary bond which enabled me to qualify.

On or about May 15, 1924, said Bianchi as my attorney presented to me, among other claims, a proof of claim of Thirty-three Hundred and Sixty

Affidavit of Louis S. Weinthal.

(~~\$~~3360.) Dollars filed by Eva Barend and advised me the said claim was valid in form and substance and advised me to pay the same, as administrator, as a just claim. I had no knowledge at that time that said Bianchi had entered into an agreement with the claimant to collect her alleged claim
 10 against said estate on a contingent basis and have since learned that such an agreement was made between said Bianchi and Eva Barend whereby he was to receive on a contingent basis twenty-five (25%) per cent of the amount collected. If I had known those facts in advance I would not have relied upon said Bianchi's advice since the same was likely to be colored by his own interest in making such collection. I had no other attorney and
 20 relying absolutely on said Bianchi I paid said claim.

The only heir-at-law, as I am informed of said Augusta Phillips, is Hannah Lubel, who is entitled to receive the net personal and real estate. Said Hannah Lubel has now given me notice that she contests said claim and that the same is invalid, false and fraudulent and that she intends to take proceedings forthwith to test the validity of said claim and will except to my account, when made,
 30 showing said claim and the payment therefor. After considerable discussion it was agreed in January, 1925, that the moneys so paid to Eva Barend and Ovidio C. Bianchi would be repaid to complainant so that the claimant could thus file her claim and the validity of her claim could be determined in suitable proceedings to establish the same. Eva Barend and Ovidio C. Bianchi agreed to follow this course and to make repayment of the
 40 money so received by them and made this agree-

Affidavit of Louis S. Weinthal.

ment in order to induce said Hannah Lubel not to start proceedings against them then and there for an alleged conspiracy. In consideration of said agreement, as complainant is informed and believes, said Hannah Lubel postponed further steps in the matter. Complainant has now discovered that said Charles Barend, husband of Eva Barend
 10 was making his plans to leave the State of New Jersey and has since then left the State of New Jersey and has established a residence in Pennsylvania and that the defendants Eva Barend is about to rejoin him there; that she is without financial responsibility and has no property in the State of New Jersey out of which a judgment against her could be collected. She now refuses to return said
 20 money and it is evident to deponent that her purpose in making said agreement in January last was to lull complainant into a sense of security until she could perfect her plans for leaving the State and withdrawing all of her assets from the State. She now flatly refuses to make any such refund this jeopardizing complainant and his bondsman in case her claim should ultimately be determined to be in whole or in part invalid.

Deponent is informed and believes that said fund, or the major part thereof, is now on deposit
 30 in the Bank of Montclair in Montclair, New Jersey, in the joint names of Eva Barend and Charles Barend and that Ovidio C. Bianchi, who, as deponent is informed and believes and as said Bianchi has now admitted to deponent received twenty-five (25%) per cent of the amount of said claim, is a resident of the State of New Jersey and is of financial responsibility.

Unless the defendants, Eva Barend and Charles
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Affidavit of Louis S. Weinthal.

10 Barend can be prevented from withdrawing said fund from the State of New Jersey complainant will be helpless in the premises and will be unable either to bring them before the Court in order to compel them to establish the validity of their claim or to enforce a judgment against them in case their said claim shall be held in whole or in part to be invalid.

20 That said Bianchi and said Eva Barend fraudulently and with intent to mislead complainant withheld from him the fact that said Bianchi was to receive, on a contingent basis, a certain portion of whatever he could collect from the Estate of Augusta Phillips for the benefit of Eva Barend, and that complainant was misled and deceived to his harm by said fraudulent concealment on their part.

30 On April 8th, 1925 I went to the apartment #149 Claremont Avenue, Montclair, N. J., which has been occupied by said Eva Barend and Charles Barend, her husband, and saw that the furniture had been partly moved and the rest packed ready for removal and saw a sign out showing that the apartment is for rent. At that time I had an interview with said Eva Barend which among other things she told me that her husband was about to secure an apartment in Philadelphia and that they intended to leave New Jersey and move to Philadelphia; that he had become superintendent of a Cigar Factory in Philadelphia and that Philadelphia would be their residence from this time on.

LOUIS S. WEINTHAL.

Subscribed and sworn to before me
this 11th day of April, 1925.

40 Chas. H. Wenhold
Notary Public for N. J.

Affidavit of John A. Bennett.

IN CHANCERY OF NEW JERSEY.

Between	}	On Bill, &c. Affidavit.	10
LOUIS S. WEINTHAL, as Adminis- trator, &c. of Augusta Phillips, Deceased,			
Complainant,			
and			
EVA BAREND, CHARLES BAREND and OVIDIO C. BIANCHI, Defendants.			

State of New Jersey, }
County of Essex. } ss.:

John A. Bennett, being duly sworn according to law upon his oath deposes and says: I have been acting with Louis S. Weinthal, the complainant herein, in the negotiations between him and Eva Barend, Charles Barend and Ovidio C. Bianchi, the defendants herein, which began last July or August, relating to claim which had theretofore been paid by Mr. Weinthal as Administrator to Eva Barend on the proof of claim filed by the Estate of Augusta Phillips. I have had numerous discussions and interviews with George T. Cickers, Esq., Counsel for Hannah Lubel, the sole heir at law of Augusta Phillips, deceased, and have had a number of discussions with Eva Barend and Ovidio C. Bianchi in that connection. About October, 1924 Colonel Vickers on behalf of Hannah Lubel notified me on behalf of the complainant herein that Hannah Lubel proposed to contest the validity of the claim filed by said Eva Barend against the Estate of Augusta Phillips and maintained that the

Affidavit of John A. Bennett.

same was a false and fraudulent claim in whole or in part, and notified me on behalf of Mr. Weinthal that Hannah Lubel was about to bring legal proceedings at once to test the validity of said claim unless the money was paid back by Eva Barend and Ovidio C. Bianchi to said Administrator pending the determination of the validity of said Eva Barend's claim. I received the personal promise of Ovidio C. Bianchi on his own behalf and on behalf of Eva Barend that if I could arrange it with Hannah Lubel and her attorney not to take legal proceeding at that time and would procure from Hannah Lubel a stipulation under which Eva Barend should be permitted to prove her claim against the Estate subject to contest by said Hannah Lubel upon due notice money received by said Eva Barend and Ovidio C. Bianchi aggregating \$3360., would be paid back to the Administrator pending such determination. I procured such stipulation from Colonel Vickers signed by Hannah Lubel and forwarded the same to said Bianchi in performance of the agreement and was informed by Mr. Bianchi over the telephone that he had received the stipulation. Neither at that time or any other time did he make objection to the form of it, and I understood that the agreement on their part was to be carried out and that the money was to be repaid to the Administrator, the complainant herein. Later and after the stipulation had been received by said Bianchi he refused on behalf of himself and Eva Barend to pay back the money to the Administrator as agreed and while there have been negotiations and discussions since that time no such payment has ever been made and the defendants have by a series or delays avoided

Affidavit of John A. Bennett.

making such payment in accordance with their agreement. As a result no action has been actually begun by said Hannah Lubel although she intends to bring suit and has already instructed her Attorney to do so and at the present stage the complainant herein is liable to litigation resulting from his action taken in entire good faith in making payment of the said claim upon the advice and representation of said Bianchi.

I am informed by said Colonel Vickers that Hannah Lubel has proofs that Augusta Phillips, now deceased, in her life-time made payments to said Eva Barend for at least a substantial portion of the items included in her claim as filed. No proof of this sort was available to the complainant herein at the time that said complaint was filed nor at the time that it was paid.

On April 7th, 1925 I had another interview with Eva Barend at which time she stated to me that the moneys received by her on said claim amounting to \$2520. were now deposited in the Bank of Montclair, Montclair, N. J., undisturbed, and that she would not draw any part of said fund pending the determination of the validity of her claim as filed, nor until the complainant Louis S. Weinthal, Administrator, &c. was protected and exonerated in the matter.

I have today made inquiry at the Bank of Montclair and have been informed and believe that the balance on deposit to the credit of Eva Barend was not to exceed \$1900. from which it appears that said Eva Barend on April 7th, 1925 misled me for the purpose of further postponing action on the part of complainant, or that in violation and in jeopardy of the complainant she has since that time drawn out about \$600.

On Thursday, April 9th, 1925, I had an interview

Affidavit of John A. Bennett.

with Colonel Vickers representing Hannah Lubel at which time he stated to me that he was preparing his bill against complainant together with Eva Barend, Charles Barend and Ovidio C. Bianchi or some of them for the purpose of establishing a conspiracy on the part of the above named or some of them in connection with the filing and payment of said claim of said Eva Barend and that he would have his bill ready to file today.

JOHN A. BENNETT.

Subscribed and sworn to before me
this 11th day of April, 1925.
Chas. H. Wenhold,
Notary Public for N. J.

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Order to Show Cause with Restraint.

Filed April 14, 1925.

IN CHANCERY OF NEW JERSEY.

Between	}	Order.
LOUIS S. WEINTHAL, as Adminis-		
trator, &c. of Augusta Phillips,		
Deceased,		
		Complainant,
		and
EVA BAREND, CHARLES BAREND	}	
and OVIDIO C. BIANCHI,		
Defendants.		

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This application coming on bill of complainant and affidavit of complainant and of John A. Bennett and it appearing thereby that a claim against the Estate of said Augusta Phillips was paid by complainant out of said estate in reliance upon the advice of the defendant, Ovidio C. Bianchi, who was acting as attorney of complainant; that without the knowledge of complainant said Ovidio C. Bianchi had entered into an agreement with the defendant, Eva Barend to collect her alleged claim against said estate on a contingent basis and that said defendant, Eva Barend, has received the sum of Thirty-three Hundred and Sixty (\$3360.) Dollars from complainant, and that complainant is now threatened with litigation on the part of the heir-at-law who claims that there was a conspiracy between the parties hereto to defraud the only heir-at-law by the payment of a claim alleged to be false and fraudulent and that the parties hereto have heretofore agreed that said sum should be repaid to the complainant by the defendants Ovidio C. Bianchi and Eva Barend so that the validity of

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Order to Show Cause with Restraint.

the claim of the defendant, Eva Barend could be determined in suitable proceedings to establish the same and that the defendants have failed and now refuse to make such refund, thus jeopardizing complainant and his bondsman in case said claim shall ultimately be determined in whole or in part invalid; that the defendant, Eva Barend is without financial responsibility and that her husband has already changed his residence from New Jersey to Pennsylvania and that said Eva Barend is about to leave the State of New Jersey permanently and has no property in the State of New Jersey out of which a judgment at law or a decree of equity could be collected.

NOW, on motion of Robert M. Boyd, Jr., Solicitor and of Counsel with complainant, it is on this 11th day of April, 1925, Ordered as follows:

FIRST: That the defendants, Eva Barend, Charles Barend and Ovidio C. Bianchi, show cause before this Court at Chancery Chambers in the City of Newark, on the 21st day of April, 1925 at ten o'clock in the forenoon why they should not be enjoined and restrained pending final adjudication in a court of law as to the validity of said claim of Eva Barend, from using or permitting to be used and from withdrawing from the State of New Jersey any part of such money so received by them and why they should not be ordered to pay into the hands of the clerk of this court the sum of money so received by them, to abide the result of this suit.

SECOND: Pending the return day of this order to show cause and until this restraint shall be dis-

Order to Show Cause with Restraint.

solved by further order of this Court, said Eva Barend, Charles Barend and Ovidio C. Bianchi, be and hereby are enjoined and restrained from using or permitting to be used or withdrawing from the Bank of Montclair and such other bank or banks as may now have the same on deposit any portion of the moneys so received by them from complainant.

THIRD: That service of a copy of the bill and affidavit thereto annexed herein together with a copy of this order which copies shall be certified by complainant's Solicitor, on or before the 15th day of April, 1925, shall be sufficient.

Respectfully advised

E. R. WALKER, 20
Chancellor.

JAMES F. FIELDER,
Vice Chancellor.

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Order Denying Motion to Dismiss Bill.

Filed May 4, 1925.

IN CHANCERY OF NEW JERSEY.

10 Between
 LOUIS S. WEINTHAL, as Adminis-
 trator, &c. of Augusta Phillips,
 Deceased, Complainant,
 and
 EVA BAREND, CHARLES BAREND
 and OVIDIO C. BIANCHI,
 Defendants.

Order Deny-
 ing Motion to
 Dismiss Bill.

20 This matter coming on to be heard on notice of
 motion to dismiss bill made by Ovidio C. Bianchi,
 Solicitor for Eva Barend and Charles Barend and
 Donahue and O'Brien solicitors for defendant,
 Ovidio C. Bianchi, and after hearing counsel on
 behalf of the defendants,

It Is on this twenty-first day of April, 1925 on
 motion of Robert M. Boyd, Jr., solicitors of com-
 plainant,

30 ORDERED that the motion of defendants to dis-
 miss bill herein be and the same is hereby denied.
 E. R. WALKER,
 C.

Respectfully advised
 ALONZO CHURCH
 V. C.

Order for Restraint.

Filed May 4, 1925.

IN CHANCERY OF NEW JERSEY.

Between
 LOUIS S. WEINTHAL, as Adminis-
 trator, &c. of Augusta Phillips,
 Deceased, Complainant,
 and
 EVA BAREND, CHARLES BAREND
 and OVIDIO C. BIANCHI,
 Defendants.

Order for
 Restraint.

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This matter coming on on bill of complaint and
 affidavits of complainant and of John A. Bennett
 on the return of an order to show cause made the 20
 11th day of April, 1925, addressed to the defend-
 ants, Eva Barend, Charles Barend and Ovidio C.
 Bianchi, why they should not be enjoined and re-
 strained, pending final adjudication in a court of
 law, as to the validity of the claim of Eva Barend
 as set forth in the bill herein, from using or per-
 mitting to be used and from withdrawing from the
 State of New Jersey the monies received by them
 from the complainant herein, and why they should
 not be ordered to pay into the hands of the Clerk
 of this Court the sum of monies so received by
 them to abide the result of this suit; and after
 hearing Robert M. Boyd, Jr. counsel for complain-
 ant and Ovidio C. Bianchi, counsel for the defend-
 ants Barend,

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It Is on this 21st day of April, 1925, Ordered
 that said order to show cause be and the same here-
 by is made absolute and that the restraint thereby
 imposed against said defendants be continued 40

Affidavit of Ovidio C. Bianchi.

pending final adjudication as to the validity of
said claim of Eva Barend.

E. R. WALKER,
C.

Respectfully advised

ALONZO CHURCH

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V. C.

Affidavit of Ovidio C. Bianchi.

Filed May 4, 1925.

IN CHANCERY OF NEW JERSEY.

20	Between LOUIS S. WEINTHAL, as Adminis- trator, &c. of Augusta Phillips, Deceased, Complainant, and EVA BAREND, :CHARLES BAREND and OVIDIO C. BIANCHI, Defendants.	}	On Bill, etc. Affidavit.
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30 State of New Jersey, }
 County of Essex. } ss.:

Ovidio C. Bianchi, of the City of Orange, being
duly sworn, does depose and say:

1. I am one of the defendants named in the
above entitled cause of action and a counsellor-at-
law and a solicitor in Chancery of the State of
New Jersey.

40 2. On or about the first day of November,

Affidavit of Ovidio C. Bianchi.

1923, the above defendants, Eva Barend and
Charles Barend called at my office and produced
a copy of the Will of Augusta Phillips, deceased,
and stated that the original of the said Will was
on file in the Surrogate's Office of the County of
Essex and also informed me that the said Surro-
gate of Essex County had refused to probate the
said Will because of the fact that at the time of
the execution of the Will both of the witnesses to
the said Will were not present at the same time.
I then informed the said defendants that in my
opinion the said ruling was correct but that I
would endeavor to make certain of the same by
going into the matter deeper. My clients then in-
formed me that they had performed and rendered
for a long period of time valuable services to the
deceased by boarding her at their home, by nursing
her and in general taking care of her every want,
and they informed me that the said deceased had
died from the effects of cancer which disease had
been a lingering and painful one, and they further
informed me that the reason that the deceased had
made them the main beneficiaries under the Will
was because of the fact that she had stated to them
that she was going to compensate them for their
work and their efforts and for the money that they
were spending by leaving to the said Eva Barend,
my client and also a cousin of the deceased, and
one of the defendants, a sufficient sum of money
under her Will to compensate her. I then inform-
ed the defendants that if the Will could not be pro-
bated that in my opinion the best thing for them
to do would be to file a claim against the estate,
and they then informed me of a half-sister of the
deceased who had also been named in the Will as

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Affidavit of Ovidio C. Bianchi.

a half-sister, and whom the deceased stated she had not seen for more than twenty years and because of which fact the deceased was not positive or certain of her half-sister's name and who, by the terms of the said Will, had received one dollar. The said half-sister could not be located by the defendants and thereupon I informed them that they as creditors, would have to have some one appointed as administrator.

3. About a month later or as soon as I found it possible, I called at the Surrogate's Office after having prepared a Petition by the defendants as creditors of the estate of Augusta Phillipps, and informed the Surrogate that I desired to have some one appointed as an administrator and he asked me if I had any one to suggest and I told him at that time, that I had no one in particular in mind who I knew would accept it but that I would return in a few days. On my return to my office I sent for my clients and asked them if they had any one to suggest and they gave me the names of two of their friends and neighbors, Solomon S. Weinthal and Louis S. Weinthal, and it was then decided upon to ask Mr. Louis S. Weinthal, if he would accept if he were appointed as administrator of the said estate. A few days later my clients informed me that Mr. Louis S. Weinthal would accept the position of administrator if he were appointed; and I then called at the Surrogate's Office and informed the Surrogate of the fact that Mr. Louis S. Weinthal in my opinion would make a good administrator because he was a man of good reputation in his community and of good financial standing and the Surrogate said that under the circumstan-

Affidavit of Ovidio C. Bianchi.

ces he would appoint Mr. Louis S. Weinthal, and he was on the 4th day of April, 1924 appointed by the Surrogate of the County of Essex, administrator of the said estate of Augusta Phillips. I called at the office of the National Surety Company and had the necessary bond prepared and paid for the fees necessary for the said bond, which amounted to about \$56.00 on a bond of \$16,000.00 the value of the personal estate being about \$8,000.00. I also paid out of my own pocket the sum of \$35.00 for administration fees of the estate which included an Order to Limited Creditors. On or about the 15th day of May, 1925, I prepared a Proof of Claim for the debt of Eva Barend and Charles Barend against the said estate and my clients served the same on Mr. Weinthal, and about two weeks later I was informed by my clients that it had been paid, when they called at my office to pay me my fee for the services rendered to them as per an agreement made between us by which I was to receive 25% of whatever amount was collected on their claim from the estate. The amount of the claim of the creditors was based at about \$60.00 per week which included nursing, board and the general taking care of the said deceased and from the statements made to me by my clients, the same appeared to be very reasonable. Before the appointment of the above administrator, I had several conversations with him with reference to the deceased and he informed me that my client, Eva Barend, had been more like a daughter to the deceased than a stranger or even a cousin, that my client had worked very faithful and was ever diligent in her services and acts to the deceased. About a month or so later I was in-

Affidavit of Ovidio C. Bianchi.

formed that a Mr. John Bennett, an attorney-at-law of this State, and as attorney for Mr. Weinthal had undertaken to file an account and settle up the affairs of the estate and Mr. Bennett inquired of me as to whether I knew the whereabouts of the half-sister of the deceased, and I informed him that

10 I did not and that my clients had no idea of where she might be located. About a month later I received word from an attorney in New York stating that he represented the said half-sister and I immediately communicated with him over the telephone and received her address and other data and gave the same to Mr. Bennett. Shortly thereafter I was informed by Mr. Bennett that one

20 George T. Vickers, an attorney of Jersey City, represented the half-sister and an appointment was made between Mr. Bennett and myself to meet Mr. George T. Vickers at Mr. Bennett's office, and at the said office at the appointed time the three of us met. We talked over matters of the said estate and Mr. George T. Vickers informed me that he would talk the matter over with his client and if the facts were as represented that in so far as he was concerned that no other steps would be taken in the estate, except the filing of the account. I

30 then informed Mr. Bennett as I did at a number of other times to have the administrator file his account and bring the estate to a close as it would be a very simple matter now that the half-sister had been located. Mr. Bennett informed me that he would, but later informed me that Mr. George T. Vickers had stated that his client was not satisfied with the payment as made of the claim of my client, Eva Barend, and that he was going to contest the said claim and Mr. Bennett said he would

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Affidavit of Ovidio C. Bianchi.

not have the administrator file his account because that would place his client in a position of being attacked. I then informed Mr. Bennett that filing the account was the only way to bring about a determination of the validity of the claim and that the claim would then be before the Orphan's Court and there it would be determined as to whether the administrator was justified in paying the same.

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4. On or about the 11th day of April, 1925, I was served with a Bill, Affidavit and Rule to Show Cause in a suit instituted by Louis S. Weinthal as administrator, to compel my clients to pay into the Court of Chancery such moneys as they had received from the estate, and to restrain them from withdrawing their account from the Bank of Montclair or such other bank as they may have any money on deposit in. And in the said Bill it was alleged that Mr. Weinthal relied solely on me in paying the claim of the creditor, Eva Barend. Annexed to the said Bill was an Affidavit made by John Bennett in which the statement was made that I had agreed to return to the estate the moneys collected by my clients. This I did not promise. Mr. Weinthal did not rely upon me and knew all and every bit of service that they had rendered to the deceased, and on the day that he served me, personally, with the Bill of Complaint I asked him as to whether he thought he was justified in paying the said claim and he informed me that he would not have paid the said claim if he had not thought it was just, fair and honest. And he further informed me that he would not even allow his own wife to do what Mrs. Barend had done for the deceased, and that

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Affidavit of Ovidio C. Bianchi.

very few persons or even trained nurses would take care of persons who were suffering from cancer. I asked him why he had filed the said Bill and as to whether he was afraid of what he had done, and he said, "No, I am not afraid I will take the witness stand any time in behalf of Eva Barend and her claim and I know that if the court does not allow her her claim that they will pay back the money to me, as Eva Barend and her husband are honest people and I have all the confidence in them." I then asked him why he had filed the said Bill and why he had not filed his account and he stated that he was simply doing what his lawyer told him he must do. I have informed Mr. John Bennett as attorney for the administrator and the administrator himself, time after time that we wanted the account filed and that my clients were ready and willing to sustain their claim in court, and that my clients were desirous of ending all controversies over the claim by having the administrator file his account in the Orphan's Court as required by law.

Sworn and subscribed to before
me this day of April, 1925.)

Affidavit of Eva Barend.

Filed May 4, 1925.

IN CHANCERY OF NEW JERSEY.

Between	}	On Bill, etc. Affidavit.
LOUIS S. WEINTHAL, as Adminis-		
trator, &c. of Augusta Phillips,		
Deceased,		
	Complainant,	
	and	
EVA BAREND, CHARLES BAREND	}	
and OVIDIO C. BIANCHI,		
Defendants.		

State of New Jersey, {
County of Essex. } ss.:

Eva Barend, being duly sworn, doth depose and say:

1. I am one of the defendants in the above entitled cause of action and reside at No. 149 Claremont Avenue in the Town of Montclair. On the 15th day of March, 1923, Augusta Phillipps, who had been residing and living at my home for about 13 months died, leaving a Will in which I was named as one of the main beneficiaries. During the period that the said Augusta Phillipps stayed at my home I nursed her, boarded her and did everything possible to relieve her from the suffering that she had as the result of a cancer. During the time that she resided with me she did not pay me any board, nor pay anything for my nursing her, paid me nothing for the extra help and care and other expenses that I had to go to in order to help her in her dreadful sickness, and at the time that she drew her Will and for a long time before that, she

Affidavit of Eva Barend.

always said that I need not worry as to any payment that might be due me or for anything that I might do, that she was going to more than compensate me in her Will. I told her that that was perfectly satisfactory to me and that I was willing to do everything possible to help her as I loved her dearly and I was in turn I know, loved by her. After her death the Will was taken by me and my husband to the Surrogate's Office together with the witnesses to the Will and thereafter a number of questions had been asked of the witnesses, I was informed that the said Will could not be probated because both witnesses were not present at the same time at the execution of the Will. I then took the Will to the Law Office of one Charles Hood and he informed me that he would look up the law in the matter and that he would inform me as to what he would do. A few days later I received a letter from Mr. Good stating that if I wanted him to further continue in the matter of the estate that he would require a retainer of \$100. I then went to the Law Office of Ovidio C. Bianchi of Orange, and informed him of the above facts and he stated to me that he thought that the ruling of the Surrogate's Office was correct, and that perhaps my only remedy would be to file a claim as a creditor against the estate. About a month or two later I signed a Petition and other papers submitted to me by O. C. Bianchi, in order to have an administrator appointed. The name of Louis S. Weinthal was suggested as administrator because he was a person that I knew had a good reputation in the Town of Montclair, was a good neighbor and I had know him for a number of years. He is a person of good financial standing, he had a close acquaint-

Affidavit of Eva Barend.

ance with the deceased, Augusta Phillipps, and he had acted as a witness to the first Will made by her, and he had a thorough knowledge of the services rendered by me to her. Some months after Mr. Weinthal had been appointed I was informed by my attorney, Mr. Bianchi, that he had been endeavoring to have Mr. Bennett file an accounting in the said estate and that Mr. Bennett had refused to allow Mr. Weinthal to do so because of the fact that my claim had been attacked. Mr. Bianchi informed me that the only way that the matter of the claim would be tested would be to have an account filed and I asked Mr. Weinthal to do so. Mr. Weinthal told me that he was ready to do so but that Mr. Bennett would not allow him to do it. On or about the 11th day of April, 1925, I was served with various papers in the above entitled cause of action by Mr. Weinthal. My husband and I were both served at the same time. After reading the papers over I asked Mr. Weinthal what he meant by saying in the papers that he thought that he had been fooled into paying the claim and if he thought we were going to leave the State and not pay back any money that we might be ordered to do should our claim fail to stand. Mr. Weinthal replied that he had not said so and that he had simply signed what his lawyer had asked him to sign, and said to me, "I am ready and willing to be a witness for you at any time, I know better than any one what you suffered and what you did in taking care of Mrs. Phillipps. I know that your services are worth every cent that you received and more." I then said to him, "Would you have paid this claim if you had not known it to be a good one?" He replied, "Absolutely not, I knew that you

Affidavit of Eva Barend.

were entitled to the money and that is why I paid you." After that we talked, and both my husband and I endeavored to try to find out from him why he had started the above action and he simply replied each time that it was because his lawyer had told him it was necessary for him to do so. I have
 10 talked the matter over with my attorney, Mr. Bianchi and also had information from other persons on the subject and I have been informed that the only proper method of testing my claim is by the administrator filing his account and then having my claim controverted. I have not been asked or requested by any one to pay back the money received by me on my claim and I am ready and willing to retain the whole or any part of the said claim
 20 should any court at law or equity determine that I am not entitled to the same. A copy of the claim as filed by me with the Administrator is hereunto annexed and made part of this affidavit.

Sworn and subscribed to before me
 this day of April, 1925.

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Answer of Defendant, Ovidio C. Bianchi.

Filed May 6, 1925.

IN CHANCERY OF NEW JERSEY.

Between	}	On Bill, etc. Answer.	10
LOUIS S. WEINTHAL, as Administrator, &c. of Augusta Phillips, Deceased,			
Complainant,			
and			
EVA BAREND, CHARLES BAREND and OVIDIO C. BIANCHI, Defendants.			

The defendant, Ovidio C. Bianchi answering the Bill of Complaint says that:

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1. He admits the allegations contained in paragraph 1.

2. He denies the allegations contained in paragraph 2 and says, that he spoke to the complainant as to what his duties would consist of and the said complainant agreed that if the Surrogate of Essex County would appoint him he would accept the position of administrator.

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3. The allegations contained in paragraph 3 are untrue. The defendant acted and appeared as attorney and proctor for the defendants, Eva Barend and Charles Barend, who were creditors of the estate of Augusta Phillipps, deceased. Defendant suggested the name of the complainant to the Surrogate of Essex County as a fit person for administrator of the estate of Augusta Phillipps, deceased. The defendant acting as attorney for the creditors secured from the National Surety Com-

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Answer of Defendant, Ovidio C. Bianchi.

pany a bond required by the Surrogate of Essex County of \$16,000.00 and paid out of his own personal funds the cost of the said bond, and for which expenses the defendant has filed with the administrator a proper claim under oath.

10 4. Defendant denies the allegations contained in paragraph 4 and alleges that on or about May 15, 1924, the defendants, Charles Barend and Eva Barend presented to the administrator their proofs of claims as creditors, one of which was for the sum of \$3360.00 of Eva Barend, and which proof of claim he prepared, as their attorney.

20 5. Defendant admits that Eva Barend and Charles Barend agreed to pay him 25% of the amount recovered by them on their claim as creditors as against the estate of Augusta Phillipps, deceased, as their attorney.

30 6. Defendant denies the allegations contained in paragraph 6 and says, that the said Louis S. Weinthal, the complainant had personal knowledge of all the facts and allegations set forth in the proof of claim as filed by the defendant, Eva Barend for her services in nursing, boarding and in general taking care of the deceased, Augusta Phillipps, for more than thirteen months previous to her death. The complainant was a neighbor of the defendants, the complainant knew the deceased and complainant relied on his own personal judgment in paying the said claim.

40 7. Defendant denies all of the allegations contained in paragraph 7 and alleges, that defendants, Eva Barend and Charles Barend have never been accused by any of the heirs of Augusta Phillipps,

Answer of Defendant, Ovidio C. Bianchi.

deceased either in writing or verbally of having prepared a false and fraudulent claim against the estate. He further alleges the defendants, Eva Barend and Charles Barend have never received any notice in writing of any nature whatsoever from the heirs of the said estate or any one representing the said estate accusing them or alleging 10 they had in any way attempted to defraud the said estate of any of its assets, nor have they ever been accused of being part of any conspiracy to defraud the said estate.

8. Defendant admits the complainant acted in good faith and that all of his handlings of the estate has been that of a just, reliable and honest person.

20 9. Defendant denies all of the allegations alleged in paragraph 9 and alleges, that instead of the allegations set forth being true, that he as attorney for the creditors has repeatedly requested the said administrator and his attorney, John Bennett, to file an accounting in the Orphan's Court of Essex County of the estate of Augusta Phillipps, deceased. The said defendant informed the administrator and John Bennett, his attorney that he would not be responsible for the payment of a second premium on the bond of the administrator, 30 and that there was absolutely no reason why the said estate should not be settled at once as the time within which to file claims had elapsed, and that there was no reason to believe that any other claim would be filed, and that it would be a very simple matter to file an accounting of the said estate as required by all administrators under the law of this State.

Answer of Defendant, Ovidio C. Bianchi.

10. Defendant admits that the defendants Eva Barend and Charles Barend have money on deposit in the Bank of Montclair which are their own personal funds. Defendant denies that the defendants, Eva Barend and Charles Barend are without financial responsibility and says that they are in a position to pay any judgment at any time that might be secured against them. He admits they had moved their residence from Montclair to Philadelphia, only because the defendant, Charles Barend who has held a permanent position with a reliable concern in Jersey City for the past twenty years, has secured a better position in Philadelphia, and further alleges that defendants, Eva Barend and Charles Barend had advised the administrator more than four months previous of their moving, that they were about to move and to take the advice of their attorney and file his account as required by law.

11. Defendant denies the allegations contained in paragraph 11.

12. Defendant denies the allegations contained in paragraph 12 that the complainant is without remedy in the Courts of law and alleges instead, that all of the proper remedies and any remedy that the complainant might have or could have against Eva Barend, Charles Barend or himself, are secured and given to him by the Court of law in this State; and that the proper and legal remedy is for the administrator to continue the said estate in the Orphan's Court and to close the estate in the Orphan's Court as required by law, and if he has been defrauded or paid any claim by mistake then he can recover the same by an action at law

Answer of Defendants, Eva Barend and Charles Barend.

against the defendants, and he further denies that there is any equity in the Bill as filed by the complainant.

Solicitors for defendant, Ovidio C. Bianchi.

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Answer of Defendants, Eva Barend and Charles Barend.

Filed May 6, 1925.

IN CHANCERY OF NEW JERSEY.

Between	}	On Bill, etc. Answer.
LOUIS S. WEINTHAL, as Administrator, &c. of Augusta Phillips, Deceased,		
Complainant,		
and		
EVA BAREND, CHARLES BAREND and OVIDIO C. BIANCHI,		
Defendants.		

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The defendants, Eva Barend and Charles Barend, answering the Bill of Complaint say that:

1. They admit the allegations contained in paragraph 1.

2. They deny the allegations contained in paragraph 2 and say, that they requested the complainant to undertake the duties of administrator of the estate of Augusta Phillips, deceased, and that af-

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Answer of Defendants, Eva Barend and Charles Barend.

10 ter they had spoken to the said complainant the defendant, Ovidio C. Bianchi also spoke to him as to what his duties would consist of, and then the said complainant agreed that if the Surrogate of Essex County would appoint him he would accept the position of administrator.

3. The allegations contained in paragraph 3 are untrue. The defendant, Ovidio C. Bianchi, acted and appeared as attorney and proctor for the defendants, Eva Barend and Charles Barend who were creditors of the estate of Augusta Phillipps, deceased. The said Ovidio C. Bianchi suggested the name of the complainant to the Surrogate of Essex County as a fit person for administrator of the estate of Augusta Phillipps, deceased.

20 The said Ovidio C. Bianchi acting as attorney for the creditors secured from the National Surety Company a bond required by the Surrogate of Essex County of \$16,000.00 and paid out of his own personal funds the cost for the said bond, and for which expenses the said Ovidio C. Bianchi has filed with the administrator a proper claim under oath.

30 4. The defendants deny the allegations contained in paragraph 4 and allege, that on or about May 15, 1924, the defendants, Charles Barend and Eva Barend presented to the administrator their proofs of claims as creditors, one of which was for the sum of \$3360.00 of Eva Barend and which proof of claim had been prepared by Ovidio C. Bianchi as their attorney.

40 5. The defendants, Eva Barend and Charles Barend admit that they had agreed to pay to Ovidio C. Bianchi as their attorney 25% of the amount

Answer of Defendants, Eva Barend and Charles Barend.

recovered by them on their claim as creditors as against the estate of Augusta Phillipps, deceased.

6. The defendants deny the allegations contained in paragraph 6 and say, that the said Louis S. Weinthal, complainant, had personal knowledge of all the facts and allegations set forth in the proof of claim as filed by the defendant, Eva Barend, for her services in nursing, boarding and in general, taking care of the deceased, Augusta Phillipps for more than thirteen months previous to her death. The complainant was a neighbor of the defendants, the complainant knew the deceased and the complainant relied on his own personal judgment in paying the said claim. 10

7. Defendants deny all of the allegations contained in paragraph 7 and allege, that they have never been accused by any of the heirs of Augusta Phillipps deceased, either in writing or verbally of having prepared a false and fraudulent claim against the estate, they have never received any notice in writing of any nature whatsoever from the heirs of the said estate or any one representing the said estate accusing them or alleging they had in any way attempted to defraud the said estate of any of its assets. They further allege that they have never been accused of being part of any conspiracy to defraud the said estate. 20 30

8. Defendants admit that the complainant acted in good faith and that all of his handlings of the said estate has been that of a just, reliable and honest person.

9. Defendants deny all of the allegations alleged in paragraph 9 and allege, that instead of the 40

Answer of Defendants, Eva Barend and Charles Barend.

10 allegations set forth being true that Ovidio C. Bianchi as attorney for the said creditors, has repeatedly requested the administrator and his attorney, John Bennett to file an accounting in the Orphan's Court of Essex County of the estate of Augusta Phillipps. The said Ovidio C. Bianchi informed the administrator and John Bennett his attorney, that he would not be responsible for the payment of a second premium on the bond of the administrator, and that there was absolutely no reason why the said estate should not be settled at once, as the time within which to file claims had elapsed and that there was no reason to believe that any other claim would be filed and that it would be a very simple matter to file an accounting of the said estate as required by all administrators under the law of this State.

20 10. Defendants admit that they have money on deposit in the Bank of Montclair, which are their own personal funds. They deny that they are without financial responsibility and say that they are in a position to pay any judgment at any time that might be secured against them. They admit they have moved their residence from Montclair to Philadelphia, only because the defendant, Charles Barend who has held a permanent position with a reliable concern in Jersey City for the past twenty years, has secured a better position in Philadelphia, and they further allege that they had advised the administrator more than four months previous of their moving that they were about to move and to take the advice of their attorney, Ovidio C. Bianchi that he, the administrator should file his account as required by law.

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Answer of Defendants, Eva Barend and Charles Barend.

11. Defendants deny the allegations contained in paragraph 11.

12. Defendants deny the allegations contained in paragraph 21 that the complainant is without remedy in the Courts of law and allege, that all of the proper remedies and any remedy that the complainant might have or could have against the said Charles Barend and Eva Barend or Ovidio C. Bianchi, are secured and given to him by the Courts of law in this State; and that the proper and legal remedy is for the administrator to continue the said estate in the Orphan's Court and to close the estate in the Orphan's Court as required by law, and if he has been defrauded or paid any claim by mistake then he can recover the same by an action at law, and they further deny that there is any equity in the Bill as filed by the complainant.

Solicitor for Eva Barend
and Charles Barend.

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Filed May 26, 1925.

IN CHANCERY OF NEW JERSEY.

Between
LOUIS S. WEINTHAL, as admr.
10 and
EVA BAREND, CHARLES BAREND,
et al.

On Bill, etc.
Replication.

The replication of the complainant to the answers of the defendants—

20 Complainant joins issue on the answer of the defendants.

ROBERT M. BOYD, JR.,
Solr. for Complainant.

Bill of Complaint of Hannah Lubell.

Filed April 20, 1925.

IN CHANCERY OF NEW JERSEY.

30 *To his Honor Edwin Robert Walker,
Chancellor of the State of New Jersey.*

Complainant, HANNAH LUBELL, of the City,
County and State of New York, respectfully shows:

(1) On or about March 13th, 1923, Augusta Phillips died at the City of Montclair, County of Essex and State of New Jersey, intestate, being a widow, and leaving no children or childrens' children surviving her, and leaving this complainant, a half sister of the deceased, as next of kin, and en-

titled by law to the entire estate of the deceased.

(2) That the death of said Augusta Phillips was unknown to complainant until the summer of the year 1924.

(3) That on or about April 4th, 1924, and before complainant had any knowledge of the death of her said half sister, Louis S. Weinthal of the City of Montclair, New Jersey, was appointed administrator of the Estate of said Augusta Phillips, deceased, by the Surrogate of the County of Essex, State of New Jersey, and duly qualified as such administrator, and entered upon his duties of administering the said Estate.

(4) That for about one year prior to the death of said Augusta Phillips she resided with one Eva Barend, who was distantly related to the deceased, and the deceased during the period of her residence with said Eva Barend was able to be about, travel unaccompanied, and care for herself up to the time of her last illness, occurring about one month prior to her decease, during which period of time she was removed from the home of said Eva Barend and was taken to a hospital. During the period of deceased's residence with said Eva Barend, the deceased required no special nursing attention, but on the contrary was able to and did wait upon and take care of herself, although advanced in years and being for a part of the time a sufferer from a disease which eventually brought about her death.

(5) That for the purpose of administering the Estate of the deceased, one Ovidio C. Bianchi, an attorney and counsellor at law of the State of New Jersey acted as proctor and represented said Louis S. Weinthal as attorney.

Bill of Complaint of Hannah Lubell.

(6) That sometime between April 4th, 1924, and May 10th, 1924, said Ovidio C. Bianchi and said Eva Barend entered into an agreement whereby it was arranged among other things that a claim should be presented by the said Eva Barend against the Estate of said Augusta Phillips, deceased, for services rendered to the deceased during the period of time that the deceased resided with the said Eva Barend and that the said Ovidio C. Bianchi should receive twenty-five per cent of the amount secured from said Estate for his services in preparing said claim, presenting or causing it to be presented to said administrator, and securing payment of the same.

(7) That thereafter, on or about May 10th, 1924, the agreement between said Eva Barend and Ovidio C. Bianchi was carried out by presenting a claim to the administrator of the Estate of said Augusta Phillips for \$3360.00, purporting to be for services at \$60.00 per week for thirteen months, which said claim on or about May 16th, 1924, was paid by said Louis S. Weinthal, as administrator of said Estate to said Eva Barend, and as complainant is informed and verily believes said Eva Barend did, in accordance with the agreement herein referred to, pay over to Ovidio C. Bianchi twenty-five per cent of the amount so recovered.

(8) That Edward H. Hyems, residing in the City, County and State of New York, and being a practicing physician, on or about May 16th, 1924, presented a claim to the administrator of said Estate of Augusta Phillips, deceased, for medical services rendered the deceased from August, 1921 to March 12th, 1923, for the sum of \$1500.00. That

Bill of Complaint of Hannah Lubell.

thereafter said claim of \$1500. was paid to said Dr. Hyems by said administrator out of the funds of said Estate. The complainant is informed and verily believes that said claim is unjust, and not due and owing the said Dr. Hyems for the reason that such services as were rendered by said Dr. Hyems to the deceased, during her lifetime, were gratuitous, and so understood to be by the deceased and said Dr. Hyems.

(9) That the moneys obtained as herein set forth from the Estate of Augusta Phillips, deceased, by said Eva Barend, are now held by her in the Bank of Montclair and the Montclair Savings Bank, banks in the said City of Montclair.

(10) That as complainant is informed and verily believes, said Eva Barend is about to remove from the State of New Jersey, and establish a permanent residence in the State of Pennsylvania.

(11) That no accounting has been filed by said Louis S. Weinthal, as administrator of the Estate of Augusta Phillips, deceased, with the Surrogate of the said County of Essex.

(12) Complainant charges that the agreement entered into between said Eva Barend and Ovidio C. Bianchi was collusive and fraudulent and designed to injure complainant or any other person rightfully entitled to claim, as next of kin, the Estate of said Augusta Phillips, deceased.

(13) Complainant further charges that the said Eva Barend intends to remove out of the jurisdiction of this Court, and from the State of New Jersey, all of her assets including the moneys herein referred to as having been received from, and as

Bill of Complaint of Hannah Lubell.

complainant charges, rightfully belonging to complainant, and to prevent complainant from recovering said moneys rightfully due complainant.

Complainant is without adequate remedy in the Courts of Law and therefore prays:

10 (1) That the said Eva Barend, Ovidio C. Bianchi, Louis S. Weinthal and Edward H. Hyems, who are defendants in this suit, may answer this bill of complaint and each statement therein contained.

(2) That said Eva Barend may be perpetually restrained and enjoined from withdrawing from the Bank of Montclair, and the Montclair Savings Bank the moneys there on deposit to her credit to the extent of \$3360. until a final adjudication in
20 this Court as to the rightful ownership of said sum of money.

(3) That a decree may be made by this Honorable Court requiring the said Ovidio C. Bianchi to account to the administrator of the Estate of said Augusta Phillips, deceased, and to pay over to such administrator any and all sums of money found on such accounting to have been received by him as the proceeds of the agreement between himself
30 and said Eva Barend made as hereinabove set forth.

(4) That a decree be made by this Honorable Court requiring said Edward H. Hyems to account to the administrator of the Estate of said Augusta Phillips, deceased, for all moneys received by said Edward H. Hyems from said Administrator, and that he pay over to said administrator such sum of money as shall be found to have been improperly
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Bill of Complaint of Hannah Lubell.

or illegally obtained by said Edward H. Hyems of and from the Estate of said Augusta Phillips, deceased.

(5) That a Writ of Subpoena may issue out of this Honorable Court directed to said defendants commanding them to answer the Bill of Complaint
10 and each statement therein contained, and to abide by such decree as the Court may make in the premises.

LAZARUS, BRENNER & VICKERS,
Solicitors and of Counsel with Complainant.

State of New Jersey, }
County of Hudson. } ss.:

Hannah Lubell, being duly sworn, according to law, upon her oath deposes and says:
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I am the complainant in the above entitled cause and have read the bill of complaint and the matters and things therein contained are true, and particularly is it true:

(1) That I am a sister of the half blood of Augusta Phillips, who resided in Montclair, in the County of Essex and State of New Jersey, and who died there on or about March 13th, 1923. That said Augusta Phillips and I are daughters born of
30 the same mother, being children of different marriages of said mother. That said Augusta Phillips died a widow without children, and that I am her nearest relative surviving said deceased.

(2) That I was not aware of the death of my said half-sister until after administration had been applied for and granted to Louis S. Weinthal, and until after said Louis S. Weinthal had paid out the
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Bill of Complaint of Hannah Lubell.

claims referred to in said bill of complaint.

10 (3) That my said half-sister was not an invalid during the period of her residence with Eva Barend, incapable of taking care of herself or requiring any special skilled nursing up to the time of her last illness.

(4) I am informed and verily believe that said Eva Barend and one Ovidio C. Bianchi entered into an agreement to present a claim to the administrator of the Estate of Augusta Phillips for services, and that by such agreement said Ovidio C. Bianchi was to receive twenty-five per cent of the amount recovered. That at the same time said Ovidio C. Bianchi was the attorney acting for Louis S. Weinthal as administrator of said Estate.

20 (5) That I am informed and verily believe that said Eva Barend is about to remove from the State of New Jersey and take up her permanent residence in the State of Pennsylvania.

30 (5) That I am informed and verily believe that Dr. Edward H. Hyems rendered such medical service as said Augusta Phillips required gratuitously, as a family friend and in recognition of services previously rendered to said Edward H. Hyems by said Augusta Phillips during her lifetime.

HANNAH LUBELL.

Sworn and subscribed to before me
this 18th day of April, 1925. }

Philip S. Birnbaum
Attorney-at-Law of
New Jersey.

Answer of Defendant, Eva Barend.

Filed June 26, 1925 as of time.

IN CHANCERY OF NEW JERSEY.

Between	}	In Chancery of N. J.	10
HANNAH LUBELL,			
Complainant,			
and			
EVA BAREND, OVIDIO C. BIANCHI,	}	On Bill, etc.	
LOUIS S. WEINTHAL and ED-			
WARD H. HYEMS,			
Defendants.		Answer.	

The defendant, Eva Barend, answering the Bill of Complaint says that:

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1. That to the best of her knowledge and belief the allegations contained in paragraph 1 are true.

2. That defendant has not sufficient knowledge or belief upon which to form a conclusion as to the truthfulness of the allegations contained in paragraph 2.

3. Defendant admits that on or about April 4th, 1924, Louis S. Weinthal of the Town of Montclair was appointed administrator of the Estate of Augusta Phillips, deceased, but she does not know as to whether the complainant had knowledge of the death of Augusta Phillips at the time of the said appointment.

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4. Defendant denies the allegations made in paragraph 4, and says that Augusta Phillips resided with her for a longer period than one year, that she was ill and needed the constant attention

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Answer of Defendant, Eva Barend.

and nursing of the defendant, that she was not able to take care of herself and was a sufferer from an incurable disease and had to be given special food and the most minute attention.

10 5. Defendant denies the allegations contained in paragraph 5, and says that Ovidio C. Bianchi, an attorney and Counsellor-at-Law of this State, acted for the defendant as her attorney and proctor in protecting her in her claim against the estate of the said Augusta Philipps, and that after the said Louis S. Weinthal had been appointed by the Surrogate of Essex County did not act as his attorney, but only asked for the defendant in so far as it was necessary as required by law to having some one appointed as administrator of the estate.

20 6. Defendant denies the allegations contained in paragraph 6 as to the time alleged therein of the making of the agreement between herself and Ovidio C. Bianchi. Defendant alleges that in the latter part of 1923 she employed and retained the said Ovidio C. Bianchi to represent her in her claim against the estate of Augusta Philipps, and that she agreed to pay to the said Ovidio C. Bianchi 25% of the amount recovered by her on her claim,
30 and for his general services in the said matter.

7. Defendant alleges that the allegations contained in paragraph 7 are substantially true with the exception of the fact that the said Ovidio C. Bianchi had to perform and did render a greater amount of services than that simply of presenting a claim to the administrator.

40 8. The defendant in answering paragraph 8 states that she knows of her own knowledge that the defendant Edward H. Hyems, did render med-

Answer of Defendant, Eva Barend.

ical services to the deceased, Augusta Philipps, and defendant knows of her own knowledge that the said Augusta Philipps always intended and did promise to pay the said Edward H. Hyems for his services as her physician.

9. Defendant admits that she has funds on deposit in The Bank of Montclair and The Montclair Savings Bank. 10

10. Defendant alleges that she has been a resident of the State of New Jersey for a long period of years, that her husband Charles Barend is employed by a firm in Jersey City for a period of more than twenty years, and that he has now secured a better position in the City of Philadelphia and that she is now a resident of the State of Pennsylvania in order to be with her husband; and that she has not removed from the State of New Jersey by reason of the institution of any law suit of any nature whatsoever. 20

11. Defendant has been informed that the said Louis S. Weinthal has not filed an accounting with the Surrogate of Essex County as required by law, and that the defendant and her attorney, Ovidio C. Bianchi, have for a great many months and on many occasions requested and demanded of the said Louis S. Weinthal that he file an accounting of the estate. 30

12. Defendant denies the allegations contained in paragraph 12, and says that the agreement made between her and her attorney for the protection and collection of her claim was absolutely honest, just and legal.

13. Defendant denies all of the allegations con- 40

Answer of Defendant, Eva Barend.

tained in paragraph 13, and alleges that she has on deposit in The Bank of Montclair and in The Montclair Savings Bank a sum of money greater than the sum of \$3360.00 received by her for her services to the estate of Augusta Phillipps.

10 14. Defendant denies that the complainant is without adequate remedy in the courts of law.

O. C. BIANCHI,
Solicitor for Defendant, Eva Barend.

Answer of Defendant, Ovidio C. Bianchi.

Filed June 26, 1925 as of time.

20 IN CHANCERY OF NEW JERSEY.

Between

HANNAH LUBELL,

Complainant,

and

EVA BAREND, OVIDIO C. BIANCHI,

LOUIS S. WEINTHAL and ED-

WARD H. HYEMS,

Defendants.

On Bill, etc.
Answer.

The defendant, Ovidio C. Bianchi answering the Bill of Complaint, says that:

1. That to the best of his knowledge and belief the allegations contained in paragraph 1 are true.

2. That defendant has not sufficient knowledge
40 or belief upon which to form a conclusion as to

Answer of Defendant, Ovidio C. Bianchi.

the truthfulness of the allegations contained in paragraph 2.

3. Defendant admits that on or about April 4th, 1924, Louis S. Weinthal of the Town of Montclair was appointed administrator of the Estate of Augusta Phillipps deceased, but he does not know as to whether the complainant had knowledge of the death of Augusta Phillipps at the time of said appointment.

4. Defendant denies the allegations made in paragraph 4, and says that Augusta Phillipps resided with Eva Barend for a longer period than one year, that she was ill and needed the constant attention and nursing of Eva Barend, that she was not able to take care of herself and was a sufferer from an incurable disease and had to be given special food and the most minute attention.

5. Defendant denies the allegations contained in paragraph 5, and says that he appeared for Eva Barend as her attorney and proctor in protecting her in her claim against the estate of the said Augusta Phillipps, and that after the said Louis S. Weinthal had been appointed by the Surrogate of Essex County defendant did not act as his attorney, but only acted for the said Louis S. Weinthal in so far as it was necessary as required by law to having some one appointed as administrator of the estate.

6. Defendant denies the allegations contained in paragraph 6 as to the time alleged therein of the making of the agreement between himself and Eva Barend. Defendant alleges that in the latter part of 1923 he was employed and retained by the defendant, Eva Barend to represent her in her

Answer of Defendant, Ovidio C. Bianchi.

claim against the estate of Augusta Phillips, and that he agreed to accept 25% of the amount recovered by Eva Barend on her claim and for his general services in the said matter.

10 7. Defendant alleges that the allegations contained in paragraph 7 are substantially true with the exception of the fact that he had to perform and did render a greater amount of services than that simply of presenting a claim to the administrator.

20 8. The defendant in answering paragraph 8 states that he was informed and believes that the defendant Edward H. Hyems did render medical services to the deceased, Augusta Phillips and he has been informed that the said Augusta Phillips always intended and did promise to pay the said Edward H. Hyems for his services as her physician.

9. Defendant admits that Eva Barend has funds on deposit in The Bank of Montclair and in the Montclair Savings Bank.

30 10. Defendant alleges that Eva Barend has been a resident of the State of New Jersey for a long period of years, that her husband Charles Barend was employed by a firm in Jersey City for a period of more than twenty years, and that he has now secured a better position in the City of Philadelphia, and that Eva Barend is now a resident of the State of Pennsylvania in order to be with her husband; and that she has not removed from the State of New Jersey by reason of the institution of any law suit of any nature whatsoever.

40 11. Defendant has been informed that the said

Answer of Defendant, Ovidio C. Bianchi.

Louis S. Weinthal has not filed an accounting with the Surrogate of Essex County as required by law, and that defendant and Eva Barend have for a great many months and on many occasions requested and demanded of the said Louis S. Weinthal that he file an accounting of the estate.

12. Defendant denies the allegations contained in paragraph 12, and says that the agreement made between him and Eva Barend for the protection and collection of her claim was absolutely honest, just and legal.

13. Defendant denies all of the allegations contained in paragraph 13, and alleges that Eva Barend has on deposit in The Bank of Montclair and in The Montclair Savings Bank a sum of money greater than the sum of \$3360.00 received by her for her services to the estate of Augusta Phillips.

14. Defendant denies that the complainant is without adequate remedy in the courts of law.

Solicitors for Defendant, Ovidio C. Bianchi.

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Answer of Defendant, Louis S. Weinthal.

Filed April 30, 1925.

IN CHANCERY OF NEW JERSEY.

10	Between HANNAH LUBELL, Complainant, and EVA BAREND, OVIDIO C. BIANCHI, LOUIS S. WEINTHAL and ED- WARD H. HYEMS, Defendants.	} On Bill, &c. } Answer of } Defendant, } Louis S. } Weinthal.
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20 The defendant Louis S. Weinthal, as administrator, etc. of Augusta Phillips, deceased, by Robert M. Boyd, Jr. his solicitor answering the bill of complaint herein alleges as follows:

1. He admits the death of Augusta Phillips as stated. He has no knowledge nor information sufficient to form a belief as to the other allegations in Section 1 of the bill of Complaint.

30 2. He has no knowledge or information sufficient to form a belief as to the allegations of Section 2 of the Complaint.

3. And he admits that he was appointed administrator of the Estate of said Augusta Phillips and duly qualified as such administrator and entered upon his duties of administering said estate. He has no knowledge sufficient to form a belief as to whether the complainant on or before April 4th, 1924, had any knowledge of the death of said Augusta Phillips.

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Answer of Defendant, Louis S. Weinthal.

4. He has no knowledge or information sufficient to form a belief as to the allegations in sections 4, 6, 9 and 12 of the Bill of Complaint.

5. He admits that up to the month of July, 1924, Ovidio C. Bianchi, an attorney and counselor at law of the State of New Jersey, acted as proctor and represented this defendant as attorney, alleged in Section 5 of the Bill of Complaint. 10

6. Referring to the allegations in Section 7 of the Bill of Complaint he admits that the claim of Eva Barend was presented to this defendant as administrator and he is informed and believes but without personal knowledge that the other allegations in said section are true.

7. Referring to the allegations in Section 8 of the Bill of Complaint he admits the payment of the claim of Edward H. Hyems against the Estate of Augusta Phillips. He denies that said claim was unjust and denies that the money was not due and owing said Dr. Hyems and expressly charges that he made the payment in good faith and that the same was justified. 20

8. Referring to the allegations of Section 10 of the Bill he has no personal knowledge as to the intentions of Eva Barend. He admits that he has been informed that she is about to remove from the State of New Jersey. 30

9. Referring to allegations of Section 11, he admits that no accounting has been filed by him as administrator with the Surrogate of Essex County.

10. Referring to the allegations of Section 13 of the Bill of Complaint, he has no personal knowledge of the intentions of said Eva Barend. 40

Answer of Defendant, Louis S. Weinthal.

Further answering said Bill the defendant Weinthal shows as follows:

10 The payments referred to in said bill were made by this defendant in the belief that the claims were just and valid and it was not until after said payments had been made by him that he learned of the existence of the Hannah Lubell herein nor did he know that she was or claimed to be a next of kin of Augusta Phillips, deceased. Upon receiving information of the claim of this complainant he took proper steps to conserve the estate and gave notice to said Eva Barend to repay to him the monies which she had received from said Estate to the end that the validity of her claim might be adjudicated.

20 Defendant further says that said Ovidio C. Bianchi presented to this defendant proofs of claims among which was the proof of claim of said Eva Barend and the proof of claim of said Dr. Edward H. Hyems, said claims having been prepared by said attorney and said Bianchi advised this defendant that said claims were valid in form and substance and advised this defendant to pay the same as just and proper claims against the estate. Said payments were made without any knowledge on the part of this defendant of any agreement between said Bianchi and said Eva Barend to collect her alleged claim against the said Estate of Augusta Phillips and without any knowledge of any agreement between said Ovidio C. Bianchi and any other claimant against said Estate, whereby said Bianchi was to receive any percentage of the amount secured from said Estate.

40 This defendant accordingly prays that a decree may be made by this Honorable Court requiring the said Ovidio C. Bianchi, Eva Barend and Ed-

Answer of Defendant, Louis S. Weinthal.

ward H. Hyems to account to this defendant and to pay over to this defendant any and all sums of money found on such accounting to have been improperly or illegally obtained by them or any of them from said estate.

ROBERT M. BOYD, JR., 10
Solicitor and of Counsel with defendant, Louis S. Weinthal, as administrator &c. of Augusta Phillips.

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Replication.

Filed June 8, 1925.

IN CHANCERY OF NEW JERSEY.

10	Between HANNAH LUBELL Complainant, and EVA BAREND, <i>et als.</i> Defendants.	}	On Bill, etc. Replication.
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20 The replication of the defendant to the answer
 filed by the defendant, Louis S. Weinthal:

The complainant joins issue on the Answer filed
 by said defendant.

LAZARUS, BRENNER and GEORGE T. VICKERS,
 Solicitors for Complainant.

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Order.

Filed March 12, 1926.

IN CHANCERY OF NEW JERSEY.

10	Between LOUIS S. WEINTHAL, as Adminis- trator, &c. of Augusta Phillips, Deceased, Complainant, and EVA BAREND, CHARLES BAREND and OVIDIO C. BIANCHI, Defendants.	}	On Bill, &c. Order.
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20	Between HANNAH LUBELL, Complainant, and EVA BAREND, OVIDIO C. BIANCHI, LOUIS S. WEINTHAL and ED- WARD H. HYEMS, Defendants.	}	On Bill, &c. Order.
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It appears that the above entitled causes arise
 out of the same state of facts and that after the in-
 stitution of the suit wherein Louis S. Weinthal, ad-
 ministrator, is complainant, Hannah Lubell, as
 complainant, instituted the above suit in which she
 appears as complainant, and that all of the parties
 in the first suit are made parties defendant in the
 second suit and that the parties in both suits have
 all consented to the consolidating thereof to the

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Order.

end that they may be tried at the same time in Essex County, and have stipulated that the said suits be consolidated and tried before Honorable Alonzo Church, Vice Chancellor.

Now, on motion of Robert M. Boyd, solicitor for Louis S. Weinthal, it is, on this 11th day of December, 1925, ORDERED that the Order of Reference heretofore made in the suit wherein Hannah Lubell is complainant referring the same to the Honorable John L. Bentley, one of the Vice Chancellors of this Court, and the Order of Reference heretofore made in the suit wherein Louis S. Weinthal, administrator of Augusta Phillips, Deceased, is complainant, referring the same to the Honorable James F. Fielder, one of the Vice Chancellors of this Court be, and they are hereby rescinded, and that both of the above entitled suits be and are hereby consolidated and as consolidated are hereby referred to the Honorable Alonzo Church, one of the Vice Chancellors of this Court, to hear the same for the Chancellor and to report thereon to him and to advise what order or decree should be made therein.

E. R. WALKER,
C.

Filed March 12, 1926.

Designation.

Filed April 20, 1926.

IN CHANCERY OF NEW JERSEY.

Between
LOUIS S. WEINTHAL, as Adminis-
trator, &c. of Augusta Phillips,
Deceased,

Complainant,

and

EVA BAREND, CHARLES BAREND
and OVIDIO C. BIANCHI,
Defendants.

Designation.

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Between

HANNAH LUBELL,

Complainant,

and

EVA BAREND, OVIDIO C. BIANCHI,
LOUIS S. WEINTHAL and ED-
WARD H. HYEMS,
Defendants.

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An Order of Reference having been made bearing date the 11th day of December 1925, referring the matter to Honorable Alonzo Church, one of the Vice Chancellors of this Court, to hear the same for the Chancellor and to report thereon to him and advise what order or decree should be made therein

It is on this 23d day of March, 1926, Ordered, that Wednesday the 28th day of April, 1926, at ten

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Designation.

o'clock in the forenoon of that day, at Chancery Chambers in the City of Newark, be fixed as the time and place for the hearing of the matters referred to me in the above entitled suit.

ALONZO CHURCH,
V. C.

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We consent to the entry of the above Order without notice to us.

O. C. BIANCHI,
Solicitors of Eva Barend and Chas. Barend.

DONOHUE & O'BRIEN,
Solicitors of Ovidio Bianchi.

LAZARUS B. VICKERS,
Solicitor of Hannah Lubell.

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IN CHANCERY OF NEW JERSEY.

April 28th, 1926.

Between
LOUIS S. WEINTHAL, as Adminis-
trator, &c. of Augusta Phillips,
etc.,

Complainant,

and

EVA BAREND, CHARLES BAREND
and OVIDIO C. BIANCHI,
Defendants.

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Between

HANNAH LUBELL,

Complainant,

and

EVA BAREND, OVIDIO C. BIANCHI,
LOUIS S. WEINTHAL and ED-
WARD H. HYEMS,
Defendants.

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Transcript of shorthand notes of testimony taken in the above entitled cause before his Honor, ALONZO CHURCH, Vice Chancellor, at the Chancery Chambers, Newark, New Jersey, in the presence of ROBERT M. BOYD, JR., for LOUIS M. WEINTHAL; GEORGE VICKERS, for Hannah Lubell; JAMES F. X. O'BRIEN, for Ovidio Bianchi.

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Louis S. Weinthal—Direct.

Mr. Boyd: Both sides admit that their pleadings actually admit that Mr. Weinthal, the administrator, my client, acted in good faith, so there is no dispute about that.

10 LOUIS S. WEINTHAL, sworn for the complainant.

Direct-examination by Mr. Boyd:

Q. Mr. Weinthal, you are the complainant herein and administrator of Augusta Phillips? A. Yes, sir.

20 Mr. Boyd: I offer certificate showing the appointment of Louis S. Weinthal as administrator of Augusta Phillips.
(Paper marked Exhibit C-1.)

Q. Mr. Weinthal, I show you an application to the National Surety Company for a bond to be issued to you as administrator and ask you whether that is your signature on the application? A. Yes, sir; it is.

Q. Who witnessed that signature? A. Mr. Bianchi.

30 Q. You know his handwriting, do you? A. Well, it looks like it. I am not positive.

Q. From whom did you receive this application? A. From Mr. Bianchi.

Q. And when you signed it, to whom did you send it? A. Mr. Bianchi.

Mr. Boyd: I offer it.
(Paper marked Exhibit C-2.)

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Louis S. Weinthal—Direct.

Q. One moment. I will ask one more question. I call your attention to the answer at the foot of the first page, reading: "Will you in the performance of your duties in the matter employ an attorney and agree to act as he shall advise? Answer: Yes. If so, give name of attorney and his address. Ovidio C. Bianchi, 243 Main Street, Orange, N. J.," and I ask you whether that was part of the application when you received it from Mr. Bianchi? A. Yes, sir. 10

Mr. Boyd: I offer it in evidence.

Q. Mr. Weinthal, did you afterwards receive some proofs of claim against the estate of Augusta Phillips? A. Yes, sir.

Q. I show you what purports to be a proof of claim filed by Eva Barend for \$3360. and ask you if that was received by you? A. Yes, sir. 20

Q. When you received it did you pay it? A. Yes, sir.

Q. Upon whose advice? A. On the advice of Mr. Bianchi.

Mr. Boyd: I offer it in evidence.
(Paper marked Exhibit C-3.)

Q. You took from Eva Barend a general release, did you? A. Yes, sir. 30

Q. From whom did you receive that? A. Mr. Bianchi.

Mr. Boyd: I offer it.
(Paper marked Exhibit C-4.)

Q. I show you what purports to be a proof of claim signed by Charles Barend against the estate of Augusta Phillips for \$94.95. Did you receive that? A. Yes, sir.

Q. From whom did you receive that? A. Mr. 40

Louis S. Weinthal—Direct.

Bianchi.

Q. Did you pay it? A. Yes, sir.

Q. Upon whose advice? A. Mr. Bianchi's advice.

Q. During that time—

10 The Court: Do you want to offer it?

Mr. Boyd: Yes; I offer it.

(Paper marked Exhibit C-5.)

Q. I show you what purports to be a general release from Charles Barend in your favor and ask you if you received that? A. Yes, sir.

Q. From whom? A. Mr. Bianchi.

Q. During that time, from the time that you applied for your appointment as administrator—

20 The Court: Wait a minute. Do you want to offer it?

Mr. Boyd: Well, yes.

(Paper marked Exhibit C-6.)

Q. From the time that you applied for your appointment as administrator and signed this application for a bond, down to and including the time when you paid this claim, did you have any other attorney besides Ovidio C. Bianchi? A. Up to the
30 time I paid those claims?

Q. Yes. A. No, sir.

Q. During that period, and at the time you paid the claims, did you know that Mr. Bianchi had an arrangement with Eva Barend and Charles Barend by which he was to receive 25 per cent of what he collected on these claims? A. Before he collected it?

40 Q. Did you know that up to the time the payment was made? A. Yes.

Louis S. Weinthal—Direct.

Q. When did you first learn it? A. I learned it in my house.

Q. Well, when was that? A. Well, I can't exactly say the date. My brother and my sister-in-law were present.

Q. Was that after the claims were paid or before? A. After the claims were paid. 10

Q. After? A. Yes.

Q. You wish to correct your testimony, then, that it was before? A. Yes, after the claim was paid.

Q. And how long after? A. Probably a week or so afterwards.

Q. I see. At that time, from whom did you learn this? A. From Mr. Barend?

Q. Did Mr. Bianchi ever tell you that? A. No, sir.

Q. Not at any time? A. No, sir. 20

Mr. Boyd: Now, if the Court please, I think we can stipulate that the money is in the bank up in Montclair, pursuant to the restraining order, so we don't need to go into that.

Mr. Vickers: I have no questions.

Cross-examination by Mr. Bianchi:

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Q. Mr. Weinthal, the bond was for \$16,000? A. I believe it was, yes.

Q. And you are a property holder in Montclair? A. Yes, sir.

Q. Have been for a number of years? A. Yes.

Q. And you are retired now? A. Yes.

Q. And previous to your retirement were you in business? A. I was.

Q. For about how many years? A. Twenty five. 40

Louis S. Weinthal—Cross.

Q. And you live in Montclair? A. Yes.

Q. Did you know Mrs. Augusta Phillips before her death? A. I knew her very well.

Q. And did you know the Barends before this appointment? A. Very well.

10 Q. And did you know the relationship between the Barends and Mrs. Phillips? A. Yes.

Q. Did you know at the time that you were paying this claim of Mrs. Eva Barend as to whether she had or had not performed any services to Mrs. Phillips? A. I knew she had.

Q. Had you seen her perform the service? A. Yes.

Q. Do you remember the disease that Mrs. Barend died of?

20 Mr. Vickers: That is objected to on the ground the witness is not qualified.

The Court: I will sustain the objection.

Q. Do you know whether she had a serious illness?

Mr. Vickers: That is objected to on the same ground. She died, so it must have been serious.

30 The Court: Objection sustained.

Q. Did you at the time you paid this claim of Mrs. Eva Barend have full knowledge of the service rendered by her to Mrs. Augusta Phillips? A. I did.

Mr. Boyd: I object to the form of this question.

The Court: Yes.

Mr. Boyd: It is not full knowledge.

40 The Court: Yes.

Louis S. Weinthal—Cross.

Mr. Boyd: Has no knowledge.

The Court: He can testify what service he saw rendered to Mrs. Phillips. That is all he can testify to.

Q. Did you have personal knowledge of the service that Mrs. Barend claimed she performed for Mrs. Phillips as to whether she had actually performed that? 10

Mr. Boyd: I object to the form of that question.

The Court: I will sustain the objection. Judge, you must ask him what service he actually saw performed.

Q. Did you see services performed? A. Well, I used to visit the house quite often, pretty near every day, and Mrs. Phillips was unable to do anything for herself and Mrs. Barend had to do it all. 20

Q. (By the Court.) What did Mrs. Barend do for her? A. Well, they lived there together, they had no maid, you know, or anything, and had to feed her and take care of her in general. She was a big, stout lady and very hard to handle, you know. She couldn't do anything to help herself. Mrs. Barend had to do everything for her. 30

Q. Have you any idea of approximately the amount of time she was sick? A. Well, she was sick, to my knowledge, I guess, about a year and a half, year and a quarter, something like that. I don't exactly know. I want to correct that answer, counsellor, if you please. She was sick, to my knowledge, while she was in Montclair about a year, year and a half. I don't know how long she was sick in New York. 40

Louis S. Weinthal—Cross.

Q. You say she was helpless at that time? A. Oh, yes.

Q. And she was a big woman? A. Oh, she was a very large woman, yes.

Q. Was she bedridden; did she have to stay in bed? A. I don't know anything about that.

10 Q. (By the Court.) When you called on her was she in bed? A. Part of the time in bed and part of the time out of bed.

Cross-examination by Mr. Vickers:

Q. Mr. Weinthal, you knew that during the last year and prior to Mrs. Phillips going to the hospital that she went to New York, didn't you? A. Went to New York?

20 Q. Yes. A. I don't know.

Q. You knew nothing about it; if she did go to New York and go to New York for treatment, you don't know anything about it, do you? A. Well, I knew that at one time she went to a hospital in New York.

Q. Do you know anything about her treatment? A. What they call a radium treatment, something like that.

30 Q. She had radium treatment in New York? A. Yes, so I understand.

Q. And that was throughout the year prior to her going to the hospital, just before her death; isn't that right? A. Well, Colonel, I don't know, because I was away for that—part of that winter, you know.

Q. Well, how long were you away? A. About two months previous to her death.

40 Q. And in what two months? A. I was away January and February.

Louis S. Weinthal—Cross.

Q. And she died March 13th? A. Yes.

Q. Of what year, Mr. Weinthal? A. 1923.

Q. 1923. Well, then, prior to, say, the first of January, 1923, do you know of her going to New York— A. I—

Q. —to visit as well as to receive medical treatment? A. I did not. 10

Q. And do you know anything about her going with relatives of hers out in an automobile? A. No, sir; I do not.

Q. Do you know where Mr. and Mrs. Barend were throughout the summer of 1922? A. No, sir; I do not.

Q. Did you visit the home where Mrs. Phillips lived at any time throughout the summer of 1922? A. 1922? 20

Q. (By the Court.) What? A. Yes.

Q. What month? A. Well, I don't remember what months. They are right around the corner from where I live.

Q. Was their house in such a position that from your house you could see their house? A. No, sir.

Q. It was not. On your direct examination, I understood you to say—(interrupted). A. I could see the rear end of it from our rear end.

Q. From your cross-examination by Judge Bianchi I understood you to say you were almost a daily visitor there. A. I was, while I was home. 30

Q. Then I ask you now whether throughout the summer of 1922 you mean that you were a daily visitor there. A. I don't remember when I was a daily visitor, but I was always a visitor there quite often. I don't know what month it was or when it was. I never kept track of it.

Q. What you mean was that at times you were a daily visitor? A. At times and very often. 40

Q. Very often a daily visitor. Now, do you know whether Mr. and Mrs. Barend both went away on a vacation in the summer of 1922? A. If my memory serves me right, I think they were away for two weeks.

10 Q. What became of Mrs. Phillips while they were away? A. I don't know.

Q. Can you say whether or not she went with them? A. I couldn't answer the question. I don't know.

Q. You can't answer that. By the way, as administrator of this estate were the effects of Mrs. Phillips turned over to you? A. No, sir.

20 Q. Were the accounts, check accounts and bank accounts turned over to you as administrator so that you could make some inquiry as to the condition of the bank account throughout the period that Mrs. Phillips lived with Mr. and Mrs. Barend? A. The only thing that was turned over to me was three bank books and the bank book on the Montclair bank and three banks in New York.

Q. And how about the returned checks? A. Don't know anything about them.

30 Q. Either on the part of Judge Bianchi or on the part of Mrs. Barend or Mr. Barend did anyone ever turn over to you the checks, the return checks for the withdrawals from the bank of Montclair covering that period during which Mrs. Augusta Phillips was a member of the Barend household? A. No, sir.

Q. Have you ever made a demand for them? A. No, sir.

40 Q. So that— Oh, by the way, do you know whether Mrs.— By the way, you were asked on direct-examination whether, throughout this period and up to the time of the paying of these claims,

you had any other attorneys, solicitor or attorney, and you said no. A. No.

Q. How soon after the payment of these claims did you secure another attorney or attorneys, if you did? A. Oh, it might have been a month, probably.

Q. And who did you then secure? A. Mr. Bennett. 10

Q. John Bennett, who is here at this table? A. Yes, sir.

Q. And through him did you make demand on Mr. Bianchi or on Mr. Barend or any of them for vouchers and accounts of the deceased with the various banks? A. No, sir.

Q. From whom did you receive the bank books of Mrs. Phillips? A. I believe Mrs. Barend turned them over to me. 20

Q. To you personally? A. Yes, sir.

Q. And turned over to you the books without statements or return checks; is that right? A. Yes.

Q. I show you four bank books, which have just come from the hands of Mr. Bennett, attorney, and ask you whether those are bank books and whether in the shape in which they are presented to you they were turned over by Mrs. Barend to you at the time to which you have testified? A. Yes, sir. 30

Q. And in the last bank book, which you have just examined, the bank book of the Corn Exchange Bank, Hudson River Branch, on which there were, when the book was handed to you, three or four checks, cancelled checks? A. Yes, sir.

Q. In fact, there were four, and did they come to your hands, these return checks with that bank book from the hands of Mrs. Barend, at the time of which you have testified? A. I don't remember that, counsellor. 40

Louis S. Weinthal—Cross.

Q. Don't remember. Directing your attention once more to the bank book of the Bank of Montclair, the account appearing as beginning December 28, 1921, and ending, according to this bank book, on December 30th, 1922, I ask you whether any
10 vouchers, checks, bank statements or anything else accompanied that book when it was given to you by Mrs. Barend. A. No, sir.

Mr. Vickers: I would like to offer these.
(Four bank books marked Exhibit C-7, C-8, C-9 and C-10.)

Mr. Vickers: I offer four checks.

(Four checks marked Exhibit C-11.)

Mr. Vickers: For the purposes of the record, I would like to identify these books in
20 the case: Bank book of Bank of Montclair marked C-7 beginning with a deposit of fifty dollars on December 28th, 1921, and ending with a deposit on December 30th, 1922, for \$300, various amounts, and having on the other side of the ledger a pencil memorandum of \$178.78 and in the name of Augusta Phillips; Savings Bank book Exhibit C-10,
30 Corn Exchange Bank of New York, beginning with deposit in January 2, 1919, ending with an entry of July 10th, 1924, \$4.77—I guess it is interest—interest, and showing a balance of \$323.09 as of that date, likewise in the name of Augusta Phillips; bank book of the East River Savings Institution, C-9, in the name of Augusta Phillips, beginning with a deposit on January 8, 1913, of \$1,000., ending with an interest item of \$63.55, stamped the year 1924, showing an addition,
40 by way of the addition, withdrawals of

Louis S. Weinthal—Cross.

\$1771.62, the last withdrawal being July 5, 1921; C-8, being a bank book of the Corn Exchange Bank, Hudson River Branch, New York and being the bank book from which the Exhibit C-11 was taken—shown to the witness—first entry, November 4, 1918, deposit \$87.66, ending with a balance deposit
10 as of April 22nd, 1925, of \$83.84.

Q. Mr. Weinthal, do you know how long prior to March 13th, 1923, the date of the death of Mrs. Phillips, she went to the hospital? A. The day she went to the hospital?

Q. How long before the date of her death did she go to the hospital? A. I don't remember.

Q. How long, don't you know about how long she was in the hospital in her last illness? A. She
20 might have been there a month, I guess.

Q. About a month? A. She might have been there a month, three weeks, four weeks, I don't know.

Q. And have you any knowledge as to her attending any social affairs during the time she was living with Mrs. Barend? A. No, sir; I do not.

Q. Do you know anything about her going to a wedding in New York during that time? A. No,
30 sir.

Q. Do you know where her bedroom in the Barend house was? A. When they lived on Willow Street, her room was in the front on the side.

Q. One flight up? A. Second floor, yes.

Q. One flight up. And where did she last live? Was that where she last lived? A. No. That is when she first came to Montclair. The other house she lived, it was a two family house, they all lived on one floor and they had the lower floor. The
40

Louis S. Weinthal—Cross.

landlord had the upper floor.

Q. And, when she lived in the Willow Street house, did you see her downstairs as well as upstairs? A. I have seen her on the porch.

Q. Sitting up? A. Yes, sir.

Q. And around? A. Yes; I used to pass around
10 there pretty near—

Q. Was she out on the street? A. Well, she came out on the street, once or twice she came to my house.

Q. In fact, she was a frequent visitor at your house; isn't that right? A. No; she was not able to walk around there.

Q. She was a great friend of yours? A. She only—

Q. She was a great friend of yours? A. Yes;
20 she was friendly when she was in Montclair. I knew her very well; she was a very fine lady.

Q. Ever been friendly before that? A. No.

Q. Didn't know her? A. No, didn't know her. I knew her before she came to Montclair and as casual visitor at the Barends. I was introduced to her, that is all.

Q. Oh, yes. Was that while her husband was living? A. After he was dead.

Q. After he was dead? A. Yes.
30

Q. You never knew this lady until after she became a widow; is that right? A. Yes; that is right.

Q. Do you recall when it was that you first met her? A. No; I do not.

Q. Can you tell whether it was a year or two years before her death, or more than that? A. It might have been two years before her death.

Q. Do you know how long it was before her husband's death? A. I don't remember that.
40

Louis S. Weinthal—Cross.

Q. Do you remember what time of the year it was she first came to live with the Barends? A. I do not.

Q. Don't know whether it was in the spring or in the fall, do you? A. I can't answer that, because I don't remember.

Q. During her life time did you know anything
10 about her banking affairs? A. Her what?

Q. Her banking affairs. A. No, sir; I did not.

Q. Never discussed money questions with her? A. No, sir.

Q. Never heard money questions discussed between her and the Barends, either Mrs. Barend or Mr. Barend, did you? A. I heard her—a conversation once.

Q. When? A. That was at—I believe, on the
20 porch at Mrs. Rudensy's house. That is—

Q. At whose house? A. No; it was not. It was when they lived at the Willow Street house, she made a remark on the porch there, talking about everything in general, and she said—(interrupted).

Q. You say, "she made a remark". You mean, Mrs. Phillips? A. Yes.

Q. And who was present besides yourself? A. I believe Mrs. Barends was there.

Q. You say you "believe" she was there. A. Well, she was there.
30

Q. Was anybody else there? A. No. Mrs. Phillips, Mrs. Barends and I.

Q. What was said? A. And she said she hadn't seen her sister in twenty years or more, her half sister, and she said she wanted—for the treatment the Barends were giving her, she wanted them to get everything, something to that effect.

Q. You know nothing about Mrs. Barend taking
40

Louis S. Weinthal—Cross.

charge of the financial affairs of Mrs. Phillips, do you? A. No, sir.

Q. Do you know that Mrs. Barend was kind and thoughtful and careful of Mrs. Phillips while Mrs. Phillips was an inmate of that house; is that right? A. Yes.

10 Q. There was a cordial relationship between the two; isn't that so? A. I believe they were cousins.

Q. In fact, it was very cordial? A. Yes.

Q. Do you know whether there was any relationship between them? A. Oh, yes; I know. There was a relationship there.

Q. There was a relationship. And, from your knowledge, obtained from Mrs. Phillips and Mrs. Barend or anyone else, what did you know the relationship to be? A. Cousins.

20 Q. They were cousins. And Mr. Barends was likewise very kind, friendly and attentive to Mrs. Phillips; isn't that so? A. Yes, sir.

Mr. Vickers: That is all.

Cross-examination by Mr. Bianchi:

30 Q. After you were appointed administrator, did you go to the various banks and secure from the vaults certain Liberty bonds? A. Yes, sir.

Q. And was there a representative from the state of New Jersey there? A. Yes, sir.

Q. And did you go to New York and get a certain chattel mortgage that belonged to Mrs. Phillips? A. I didn't get it. I left it there.

Q. But you found it there? A. Yes; the Corn Exchange.

40 Q. And you found Liberty bonds in the vault in Montclair? A. Yes, sir.

Louis S. Weinthal—Redirect.

Q. And you also received the books with various deposits in the bank? A. Yes, sir.

Mr. Bianchi: That is all.

Redirect-examination by Mr. Boyd:

10 Mr. Boyd: Just one more question, if I may, for the sake of completing this: In the first place, the young lady from the Surety Company hands to me back this substitution and I suggested to counsel, if we substitute the photostatic copy and let her have the original.

The Court: Is that all right?

Mr. Bianchi: Yes.

Mr. Boyd: Will you kindly mark that the 20 same as this?

(Copy marked Exhibit C-2.)

Q. For the sake of concluding this, Mr. Weinthal I show you a proof of claim, filed by Dr. Edward E. Hyems against the estate of Augusta Phillips, covering a period from August 21 to March 12, 1923, the amount being \$1500. That was received by you, was it? A. Yes.

Q. And paid? A. Yes, sir. 30

Q. Upon whose advice? A. Upon the advice of Counsellor Bianchi.

Q. And in that connection you knew Dr. Hyems, did you? A. Yes. That is, I knew him by seeing him at the house there.

Q. You have seen him at the house? A. Yes.

Q. Now tell the Court what your personal knowledge was about—so far as you saw him there—about the service rendered by him; that is, how 40

Louis S. Weinthal—Redirect.

often you saw him there and whatever you heard Mrs. Phillips say about that.

10 Mr. Bianchi: Of course, I have no objection to so much of the question as refers to the conversation of Mrs. Phillips or what the relationship of Mrs. Phillips was, but there is objection to the question so far as it relates to the service rendered by the doctor. The witness is not qualified to testify to that.

Mr. Boyd: I offer this.

(Paper marked Exhibit C-12.)

The Court: He can testify as to how often he saw the doctor there. That is all he can testify to.

20 Q. Kindly answer just that much of the question.

Q. (By the Court.) How often did you see the doctor there? A. In order to go to Main Street I had to go by this house every day, in fact, a couple of times a day, and I used to see the doctor there—see his car there, oh, see it two, three or four times a week.

30 Q. And for how long a period? A. Well, I couldn't—I don't know exactly, counsellor, how often, but he came there quite often for a long time.

Q. Well, you can give some idea how long a period. It was not merely during the last few weeks of her lifetime? A. Oh, no; he came there practically—a long time—practically six or seven months, to my knowledge.

40

John A. Bennett—Direct.

JOHN A. BENNETT, sworn for the complainant.

Direct-examination by Mr. Boyd:

Q. Mr. Bennett, you have recently been acting as the attorney for Mr. Louis S. Weinthal, administrator of Augusta Phillips? A. Yes, sir. 10

Q. Tell us, as nearly as you can, when you were first retained. A. As near as I can remember offhand, it was about last August.

Q. After you had been retained by Mr. Weinthal, did you have some conversations with Mr. Bianchi? A. Yes, sir.

Q. On whose behalf did you—or, who did you represent in those conversations? A. I represented Mr. Weinthal.

20 Q. In those conversations state what was said between you with special reference to the checks and vouchers and other papers relating to the estate of Augusta Phillips. A. I don't remember that anything was said there directly to—addressed to Mr. Bianchi about the checks, but Mr. Bianchi was there with Mrs. Barend several times and Mrs. Barend was there alone several times, and I know that I have asked for the checks and the personal property, and at one time, during one of my conversations with either Mr. Bianchi and Mrs. Barend or at some time when Mrs. Barend was there alone with her husband. We had several meetings and this has come up rather suddenly and I can't recall offhand at which meeting the—(interrupt- 30 ed).

Q. When you asked for them, did you receive them? A. No, sir; I did not receive them.

Q. What was said between you and Mr. Bianchi or Mrs. Barend on that subject, if anything? A. 40

John A. Bennett—Cross.

As I remember it, Mrs. Barend said she didn't have the checks and that she had no papers of the estate that had not been turned over to Mr. Weinthal.

Cross-examination by Mr. Vickers:

10 Q. August of what year does that mean, Mr. Bennett? You said, "The last of August". A. Last year, I think.

Q. Last year, 1925? A. 1925.

Mr. Boyd: Wait a minute.

Mr. Bianchi: 1924, it must have been.

Witness: 1924.

Q. 1924 is the correct year, is it? A. Yes, sir.

20 *Cross-examination by Mr. Bianchi:*

Q. When you speak about "personal effects", you mean clothing? A. I mean clothing; I meant the silver ware, dresser covers, little things that would be on a woman's dresser.

Q. Oh. A. Any personal property that she—(interrupted).

30 Q. You knew the bulk—that is, the Liberty Bonds and jewelry had not been touched? A. I didn't mean the large bulk of personal property. I meant the things that a woman naturally has personally, of papers, letters, silver ware, dresser utensils and things of that kind, and clothing.

40 Q. And did Mrs. Barend tell you that she had some various pieces of clothing and things up at the house that belonged to this lady? A. She said she had thrown away the clothing because it was useless. She said she had some small articles of silverware, but no papers or checks.

John A. Bennett—Cross.

Mr. Bianchi: That is right. Thank you.

Examined by Mr. Vickers:

Q. Was anything said about any flat silver— A. Nothing was said—

Q. —table silver, and so forth? A. I don't—I 10 submitted at one time the list of things that I had, Colonel Vickers—I think it may be in the papers there—saying just exactly what we did discuss. If I may be allowed to see that list, I can tell you.

Mr. Vickers: I ask the witness be allowed to refer to his papers.

The Court: All right.

Mr. Boyd: All right. Go around here. I 20 don't know where they are.

Mr. Bianchi: I don't think there is anything of value.

(Witness returns with papers.)

The Court: Now, tell us what you asked for. Let me see that. Do you want to read into the record the things he asked for?

Mr. Vickers: Yes.

Witness: This is an original affidavit of Mrs. Barend herself and this will show the 30 whole thing.

The Court: All right. It is Mrs. Barend's own affidavit.

Mr. Bianchi: I was just going to say that is the situation. We gave to him a list, not he to us.

The Court: Very well.

Q. This was turned over to you by Eva Barend,

John A. Bennett—Cross.

one of the defendants in this case; is that right?
A. This affidavit.

Q. The affidavit. A. The affidavit was drawn by me and dictated by me before Mrs. Barend, who came in and signed it, showing the articles as she told me she had them.

10 Q. And have the articles themselves ever been turned over to you or to the administrator? A. Not that I—never to me and I don't know—I don't think to the administrator.

The Court: Do you want to introduce that?

Mr. Vickers: Yes, I offer it.
(Paper marked Exhibit C-13.)

20 Q. (By Mr. Vickers.) She told at that time that she was ready and willing to deliver them? A. Yes, sir.

Q. In the course of that conversation that you had with Judge Bianchi and Mrs. Barend, either or both Mr. Barend, was any tentative arrangement made or anything said, after Mrs. Lubell came upon the scene, about turning all of the moneys back into the hands of the administrator?

30 Mr. Bianchi: I object to that question on the ground that any conversations that took place toward bringing about a settlement of this matter is immaterial and irrelevant.

The Court: I will allow it. Answer the question.

A. Yes; there was a—an attempt, and, as I understood it, an agreement arrived at to settle this matter by putting all moneys back into the hands of
40

John A. Bennett—Cross.

the administrator with the exception of Dr. Hyems' bill, when we couldn't get ahold of Dr. Hyems—(interrupted).

Q. He is a New Yorker? A. Yes—and to let the matter rest on a proof of claim of an accounting.

Q. And that arrangement—by the way, between whom was that arrangement made, yourself representing the administrator and himself— A. Myself representing the administrator, you representing Mrs. Lubell, and Mr. Bianchi and Mrs. Barend, I don't know whether they were both there or whether it was just Mr. Bianchi representing Mrs. Barend. 10

Q. And that was never consummated? A. That was never consummated.

Q. On the part of Mr. Bianchi and Mrs. Barend? A. No. 20

Cross-examination by Mr. Bianchi:

Q. That was never put in writing, was it? A. Yes.

Q. Was a stipulation ever signed? A. It was signed by Colonel Vickers and forwarded to you and never returned to me.

Q. Yes. I never agreed to it, to the stipulation in writing? A. Not in writing, no, sir. 30

Q. And I told you that, in my opinion, the proper method was to file your accounting and have someone object to it, if they saw fit; is that true? A. Yes, sir.

Q. Did I urge upon you to file an accounting? A. Yes.

Q. Did I prepare papers and tell you that I had prepared papers for an accounting to be filed? A. I don't thing you told me you had prepared papers. 40

Hannah Lubell—Direct.

You urged me to file papers of an accounting.

Q. And at one time you were going to file your account? A. No, sir.

Q. You stated you thought you would prepare for the account? A. I said I would prepare to file an accounting, if we could come to an arrangement.

10

Mr. Boyd: That is our case.

The Court: That is a negotiation looking to a settlement. That is all that is.

Mr. Bianchi: That is it.

Mr. Vickers: Mrs. Lubell.

20 HANNAH LUBELL, sworn for the complainant.

Direct-examination by Mr. Vickers:

Q. Mrs. Lubell, where do you live? A. At the present time?

Q. Yes. A. 2070 Grand Concourse.

Q. Bronx? A. Yes, sir.

Q. And how long have you lived in the Bronx in New York? A. Well, for the last twenty five years or more.

30

Q. And in 1923 where did you live, what address did you live at? A. I lived at 669 E. 165th Street.

Q. And how long had you resided there? A. Well, for almost twelve years, ten years sure.

Q. Had you a telephone there? A. Yes, sir.

Q. Was your name in the telephone book? A. Yes.

Q. And was it in the telephone book under the name of Lubell? A. Under the name Lubell.

40

Hannah Lubell—Direct.

Q. There now in the telephone book? A. There now, yes.

Q. How long have you had a telephone and how long has your name been in the telephone book in New York? A. Well, I should say, to tell the truth, about fifteen years or more.

Q. Fifteen years. By the way, what relation were you to Augusta Phillips? A. A sister. 10

Q. And a sister by the same father and mother or sister of the half blood? A. No; we had one mother.

Q. One mother? A. Yes, sir.

Q. And different fathers; is that right? A. Yes, sir.

Q. And, except for Mrs. Lubell and yourself, were there any other children— 20

The Court: You mean, Mrs. Phillips.

Q. Mrs. Phillips and yourself, were there any other children of this mother? A. Yes; there was one more, but she is dead.

Q. How long ago? A. Well, she is dead now about six years.

Q. Died before Mrs. Phillips died? A. Oh, yes, sir.

Q. And of the marriage of your mother and Mr. Phillips were there any children? A. No, sir. May I understand that again? 30

Q. I am wrong about that. Pardon me. It was the wrong marriage. Married the wrong people. A. Yes.

Q. Of the marriage of your mother— A. Yes.

Q. —and your step father were there any children than Mrs. Phillips? A. No, sir; mother was a widow when she married my father. 40

Hannah Lubell—Direct.

Q. And were you then her—You and Augusta Phillips were the only living children? A. Yes, sir.

Q. And of this second marriage, second marriage of your mother, were there any children? A. Just Augusta Phillips. When my mother got married to my father she was a widow.

10 Q. Augusta Phillips, and she was the only— A. Child.

Q. —child. There were, as far as you know, no children of the marriage of Augusta Phillips to her husband, Mr. Phillips? A. No. There was only the one child.

Mr. Vickers: I suppose there can't be any doubt about that, I mean, that there were no children of that marriage of the Phillips.

20 The Court: Were there any children of the deceased child? You said there was one child that died.

Witness: About six years ago.

Mr. Vickers: No children, your Honor.

Witness: From this mother and father; the same mother and father.

The Court: Did the one that died six years ago have any children?

30 Witness: No, sir; she was not married.

Q. And Augusta Phillips had no children, had she? A. No, sir.

Q. Now, you weren't a visitor at the home or had any contact with your half sister in the latter years of her life, had you? A. That is right.

Q. Did you get in contact with any relatives of Mrs. Barend or Mr. Barend? A. No, sir.

40 Q. Did not. Or with any relatives of Augusta Phillips? A. Oh, he might contradict that. I have met a brother of hers.

Hannah Lubell—Cross.

Q. Brother of whose? A. Brother of Mrs. Barend.

Q. What is the name? A. Very, very often on Nassau Street.

Q. What is the name? A. Moe Schwartz. Mr. Moe Schwartz.

Q. And, by the way, you are a widow, are you not? A. Yes, sir. 10

Cross-examination by Mr. Bianchi:

Q. Let's see, your name was Lobelsky? A. When I first got married and my husband took the "sky" off. Yes.

Q. And you were known as Mrs. Lobelsky? A. At the early part of my married life.

Q. And you are also known as Hannah Faulk Autenrieth? A. Yes; Hannah Faulk was my maiden name and my first name was Autenrieth. 20

Q. And William August Autenrieth is your son? A. Is my son.

Q. And you are not listed in the telephone book either under Lobelsky or Hannah Faulk Autenrieth. A. Well, my name was changed just a year after my marriage and I have been married twelve years. 30

Q. Well, so, from March, 1924, to the present time, have you ever used the name Lobelsky in the telephone book or elsewhere? A. No, sir.

Q. And most of your relatives knew you as Lobelsky, did they not? A. Well, just in the early part of marriage life, say a year after.

(Discussion.)

Mr. Boyd: Solicitor of complainant, Weinthal, offers in evidence a claim of the 40

Hannah Lubell—Cross.

property filed with the administrator on October 17th, 1924, by Eva Barend, claiming certain jewelry alleged to be in the possession of the administrator on the ground that said articles were given to said Eva Barend by said Augusta Phillips previous to her death.

10

The Court: Is that the jewelry that was over in the safe deposit in New York?

Mr. Bianchi: Corn Exchange in New York.

The Court: There is nothing in that claim, then.

Mr. Vickers: I would like to have that book introduced in evidence now. I would like to examine Mr. Weinthal on that point. Of course, we can correct this. I offer it.

20

The Court: But, if the gift was a gift inter vivos, it must be accompanied by actual delivery and possession. We all know that.

Mr. Bianchi: We are willing.

(Paper marked Exhibit C-14.)

Mr. Vickers: It is stipulated that the property covered by this claim was in the safe deposit box, together with the other property of the deceased, in New York at the time of her death and at the time of the appointment of the administrator.

30

Mr. Bianchi: That is correct.

The Court: Then let that go on the record.

Mr. Boyd: We don't know anything about that, but I have no doubt it is so.

The Court: Very well. Let that stand on the record. I can't see how that is transference of possession.

40

Anna Cohn—Direct.

ANNA COHN, sworn for the complainant.

Direct-examination by Mr. Vickers:

Q. Mrs. Cohn, where do you live? A. Woodhaven.

Q. In New York state? A. Yes; in Long Island.

Q. Were you related to Augusta Phillips, who lived in Montclair in 1922, and 1923? A. Yes; counsellor. 10

Q. You were related to her. What was the relationship? A. Cousin.

Q. First cousin? A. First cousin.

Q. Or second? A. First cousin.

Q. First cousin. And did you visit her there when she lived there? A. Yes, sir.

Q. Do you know Mr. and Mrs. Barend, Mrs. Eva Barend and Mr. Charles Barend? A. Well, I know them from when I met them there and I was twice over to the house. 20

Q. Twice over to the house. Go over to visit Mrs. Phillips, did you? A. Yes.

Q. And, when you went over to visit, did you see both Mr. and Mrs. Barend each time when you were there? A. Yes.

Q. And can you tell us about when it was that you went over to visit Mrs. Phillips? A. Well, I went over every other week or three weeks, you know. It is a far distance and I aint a young person any more. I am not so good for traveling. 30

Q. You mean, you didn't go every week, but went every other week or every three weeks, sometimes? A. Yes.

Q. While she lived with the Barends, do you mean? A. Yes.

Q. And did you call Mrs. Phillips "Cousin Gus-sie"? A. Sure. 40

Anna Cohn—Direct.

Q. That is what she was, Gussie. Now, when you went over there to visit, where did you find Cousin Gussie on these visits? A. Well, from the first start, you know, she was walking around, sitting on the porch; then, of course, in the month—I don't know exactly how many months that she
10 was laid up, but when she was very sick they took her to the hospital.

Q. And, from your recollection, about how long before her death did they take her to the hospital? A. Well, I couldn't tell that exactly by the month.

Q. Was it about a month, would you say? A. Oh, I think it was more.

Q. You think it was more. And did you see her in the hospital? A. Yes.

Q. When did you see her and where was the hospital? A. In Orange.
20

Q. In Orange. Did you ever see Cousin Gussie in New York during the time— A. Yes, often.

Q. Just wait half a minute. During the time she was living with Mr. and Mrs. Barend, did you see Cousin Gussie in New York? A. Well, that time she was living herself in New York.

Q. No. I mean after her husband died, after Mr. Phillips died. A. Oh.

Q. And she went to live with Mr. and Mrs. Barend. A. Yes.
30

Q. Did you ever see her at any social function or at any place in New York? A. Yes; I seen her before she moved.

Q. No. Afterwards. Afterwards at some wedding or something did you see her?

Mr. Bianchi: I object as leading.

Mr. Vickers: It is hard to—
40

Anna Cohn—Direct.

Q. Do you know whether she went to the doctor's in New York? A. Yes, that I know, but I don't know exactly the time she went, because my son took her to the doctor.

Q. How did you see her? A. Well, I didn't see her when—(interrupted).

Q. Does your son drive an automobile? A. My son does. 10

Q. Did he ever bring her to your house? A. No; not to my house. She came over to my house when she was by Mr. and Mrs. Barend.

Q. That is what I have been asking you. During the time she was living with Mr. and Mrs. Barend, Cousin Gussie came over to visit you, didn't she? A. Yes.

Q. Who brought her over? A. She came herself. 20

Q. She came herself.

Q. (By the Court.) How many times?

Mr. Vickers: I beg your pardon?

The Court: Ask her how many times.

Mr. Vickers: Yes.

Q. How many times? A. Once.

Q. Yes. A. And then she stood overnight.

Q. Stayed overnight with you. Do you remember about when was that? A. Oh, that I couldn't remember. 30

Q. Well, how long before her death was it, a month or a year? A. Oh, that was a couple of months before her death.

Q. A couple of months before her death. And when you say a "couple", do you mean two or something more than one? A. Oh, yes. I mean maybe four or five or six months.

Q. Oh, yes. When you say "couple" you mean 40

Anna Cohn—Direct.

four or five or six. Did you ever see Cousin Gus-sie doing anything about the house in Mrs. Barend's, when she lived at Mrs. Barend's? A. From the start, you know, she helped her along a little, for instance, peeling potatoes and vegetables, and so on, but later on she didn't.

10 Q. She did not? A. No.

Q. Who else was with you, if anybody, on these visits that you made to the Barend house, when you saw Mrs. Phillips there? A. For—my son and my daughter-in-law were with me.

Q. And what is the son's name? A. Morrel Cohn.

Q. He is not here? A. No.

Q. The daughter-in-law here? A. Yes.

Q. She was with you? A. Yes.

20 Q. On how many occasions was your daughter-in-law with you? A. Always when I went.

Q. She accompanied you, she took you? A. Yes.

Q. Is that right? A. Yes.

Mr. Vickers: That is right.

The Court: Any cross?

Mr. Bianchi: No questions.

Mr. Vickers: Do you know whether Mrs. Barend was a trained nurse or not?

30 Witness: Mrs. Barend, no.

Mr. Bianchi: We don't claim she was a trained nurse, registered trained nurse.

Mr. Vickers: All right.

SADIE COHN, sworn for the complainant.

Direct-examination by Mr. Vickers:

40 Q. You are Mrs. Morrel Cohn, the daughter-in-

Sadie Cohn—Direct.

law of this last witness; is that right? A. That is right.

Q. In her lifetime, did you know Mrs. Augusta Phillips? A. Yes.

Q. Where did you see her, if any place, during the early part of the year 1923 and the year 1922?

10 A. Well, I believe, during the year, the early part of 1922, she was living at home; her husband, I believe, first died in 1922.

Examined by the Court:

Q. Well, after her husband died, did you go to see her? A. Yes.

Q. Where? A. I went to see her at her home, and after she moved to Montclair.

Q. You went to see her in Montclair? A. Yes.

20 Q. How many times? A. Well, I just don't know how many times, probably three or four times all-told.

Examined by Mr. Vickers:

Q. And with whom did you go, if with anybody, when you went to Montclair to see Mrs. Phillips? A. Well, when I went on Sundays, I went with my husband and my mother-in-law, and, I believe, once I went myself during the week.

30 Q. And over what period of time did these visits stretch? A. Well, they might have been every three weeks, they might have been every four weeks. I just can't say definitely.

Q. Can you tell us what part of the year 1922 they covered? A. Well, I really couldn't say, because I don't remember the month, or so, just the month. I went over, I remember that.

Sadie Cohn—Direct.

Q. When you went there, where did you find Mrs. Phillips? A. Well, at the beginning, she was sitting at the table and so on and later on, when she took sick, she was lying in bed.

Q. And did you ever see her doing anything there? A. Well, nothing to speak of, really.

10 Q. Well, suppose you tell us what it was so that we can speak of it or not whether it is indecent.

The Court: Now, don't tax your own witness. What she means is she didn't see her doing very much. (To witness:) What did you see her do?

Witness: No real manual labor work, just maybe doing a few vegetables and so on, like-a-that.

20

Q. In the kitchen? A. In the kitchen.

Q. And, when you say you went over with your husband, did you go there by train or drive in an automobile? A. No; we went there in a machine.

Q. Did you ever see Mrs. Phillips in a machine? A. No.

Q. Did you ever know about her going in a machine, from anything she said to you? A. No.

30

Mr. Bianchi: I object.

The Court: She said no.

Witness: No.

Q. Did you ever see Mrs. Phillips in New York after her husband's death; after Mr. Phillip's death, and after she went to live with Mr. and Mrs. Barend, did you ever see her again? A. There was only one time she came over to my house.

40 Q. And what was that occasion? A. Well, I

Sadie Cohn—Direct.

don't think it was really any occasion. I believe it was of a Friday and she stayed over Saturday and from my house I took her to New York to see my mother and from my mother's house she went home. She was the only—(interrupted).

Q. Where were you living at that time? A. In Long Island. 10

Q. In Long Island? A. In Woodhaven.

Q. And how far away was it from your house to your mother's house? A. Well, my mother lived uptown New York.

Q. And how did you take Mrs. Phillips from your house to your mother's house? A. We went by train.

Q. The Long Island Railroad you mean? A. The Long Island Railroad and subway. 20

Q. And from the Long Island Railroad station how did you go? A. We took the subway.

Q. Subway. And can you fix that time, approximately, when that was? A. Well, I think—that is real hard to say.

Q. Was it summer time, winter time, spring time? A. No; it was in the fall of the year, I believe.

The Court: Fall of 1922, then, that would be. 30

Witness: Fall of 1922, I believe so.

Q. Do you mean the fall of the year before her death? A. Yes.

The Court: That would be 1922.

Mr. Vickers: 1922, your Honor, yes.

Witness: 1922.

Q. And did you ever see her at any family wedding in New York? A. No. 40

Sadie Cohn—Direct.

Q. Do you remember the time that she went into the hospital in Orange, her last illness? A. I don't remember the time, no, but I know I visited her at the hospital.

Q. Do you remember the occasion of her going there? A. No; after she was there, we were informed she was in the hospital.

Q. She was in the hospital? A. Yes.

Q. Can you give us any idea how long that was before her death? A. No; I can't say definitely. It might have been a month; it might have been five weeks. I can't say definitely how long she was in the hospital.

Mr. Bianchi: No questions.

The Court: That is all, madam.

20

JOHN A. BARBEN, sworn for the complainant.

Direct-examination by Mr. Vickers:

Q. What is your occupation? A. Assistant cashier, Bank of Montclair.

Q. And are you here under a subpoena duces tecum to produce certain records of the bank of the account of Augusta Phillips, deceased? A. I am.

Q. Have you produced them? A. I have.

Q. Are these the bank records dealing with this account of Augusta Phillips of 149 Clairmont Avenue, and the second one being 30 North Willow Street, Montclair? A. They are.

Q. And do these accounts, which you have produced, show the deposits and withdrawals of that account from the dates indicated and covering the period indicated by the account? A. Yes, sir.

40

John A. Barben—Direct.

Q. In addition to that, what record, if any, of the bank have you as to what was done with the return checks covering these withdrawals? A. Statements showing whether or not statements were delivered, statements with vouchers over our counter or mailed.

Q. And what does that record show with respect to the vouchers? A. Do you want it in detail?

Q. Yes. Suppose you read it in the record, if there is no objection. A. On February 17, 1922, a statement as of the close of business of February 7 of the same year was delivered to Mrs. Eva Barend, signed in that name. On August 7, a statement as of March 20th of 1922 was delivered to Mrs. Phillips, her own signature appearing. On August 7th a statement as of that date was mailed and acknowledged on August 16th the same year.

Q. (By the Court.) To whom was it mailed? A. It was mailed to Mrs. Phillips at 30 North Willow Street. A change of address was made later. On December 12th, 1922, a statement was mailed and not acknowledged. That statement was mailed to a different address, 149 Clairmont Avenue; and on February 17th, 1923, a statement with vouchers as of the close of business of February 3rd was delivered to Mr. Louis Barend at our counter.

Q. And that concludes the record as to the return vouchers; is that right? A. Yes, sir.

Mr. Vickers: I would like to offer this record of the delivery of the statements in evidence.

Mr. Bianchi: No objection.

(Paper marked Exhibit C-15.)

Mr. Vickers: As to the Exhibit C-15 I invite your Honor's attention to a comparison

40

John A. Barben—Cross.

of signatures between that and the Exhibit C-13, the signatures of Eva Barend, C-13, being admitted as an affidavit signature by Eva Barend.

The Court: Yes, I see. (To Witness)
Do you know Mrs. Barend?

10 Witness: Only by sight. I met her once.

Q. Is Mrs. Barend in the court room? Is this the lady to whom you refer? A. Yes, sir.

Q. (By the Court.) Well, did you see her sign that receipt? A. I did not.

Mr. Vickers: I offer in evidence the bank statements.

20 The Court: It will be received.
(Two statements marked Exhibit C-16.)

Cross-examination by Mr. Bianchi:

Q. These were all long before her death, to the best of your knowledge? A. Yes.

30 The Court: The deeds are here, 1922—February, 1922, and August, 1922. February, 1923, was a month before her death, wasn't it?

Mr. Bianchi: Yes, she died in March, 1923.

The Court: Well, we can get that.

Mr. Bianchi: That speaks for itself.

The Court: Yes.

Mr. Vickers: That is the case for the complainant, Hannah Lubell.

40 The Court: Well, now, what is the defense?

Charles Barend—Direct.

CHARLES BAREND, sworn for the defendant.

Direct-examination by Mr. Bianchi:

Q. You are the husband of Eva Barend? A. Yes, sir.

Q. And did you know Augusta Phillips before her death? A. Yes, sir. 10

Q. Did she stay at your home? A. Yes.

Q. From when to when? A. From September, 1921, until October, 1922.

Q. And then what became of her? A. She had to go to the hospital.

Q. What hospital? A. St. Mary's in Orange, New Jersey.

Q. How long was she at the hospital? A. From —(interrupted). 20

The Court: About a month.

Mr. Bianchi: Pardon me, your Honor.

A. Five months, from October to March.

Q. Was she there at the time of her death? A. Yes, sir.

Q. From the time she left her home to the time of her death she was at the hospital? A. From the time she left my home, yes, sir.

Q. And when she was at your home was she well or ill? A. Ill. 30

Q. And do you know the disease she was suffering from? A. Yes, sir.

Mr. Vickers: That is objected to on the ground the witness is not qualified to testify.

The Court: Yes, I don't suppose—It is very plain to us all, I think, that she was suffering from cancer; otherwise she wouldn't have had radium treatment. 40

Charles Barend—Direct.

Mr. Vickers: I think that is so.

Mr. Bianchi: I will admit that is so.

Mr. Vickers: And so will I.

Q. Was she very sick, or how was she? A. Very sick, indeed, yes.

10 Q. And who took care of her? A. Mrs. Barend, and at times had to have somebody to help Mrs. Barend.

Q. Now, what did Mrs. Barend do for her? A. Everything possible that anybody could do to help her.

Q. But try to give more detail. A. For instance, Mrs. Phillips required treatment.

Q. What kind of treatment? A. Well, inwardly.

20 Q. What do you mean by that? A. Well, she had to—they had to use inward treatment for her and give her injections for some treatment that the doctor prescribed; Mrs. Barend had to use a syringe.

Q. The rectum? A. Yes.

Mr. Vickers: Objected to unless this witness speaks of his own knowledge. If he does, I don't object to it.

30 Q. Did you see your wife treat her? A. Well, I didn't see her outright.

The Court: Well, then, do not testify to it.

Mr. Bianchi: All right.

Q. What else—What did you see her do? A. Mrs. Barend, while she was confined in bed, had to wait on her, cook for her, actually feed her, take
40 general care of her.

Charles Barend—Direct.

Q. Who did the bathing, do you know? A. Who did what?

Q. Did she receive a bath? A. No; Mrs. Barend had to bathe her at times, too.

Q. Did you receive any compensation from Mrs. Phillips for that? I mean, did she pay while she was in the house? A. No, sir. 10

Q. Were there conversations between Mrs. Barend and Mrs. Phillips that you heard concerning payment? A. Yes, sir.

Q. What was said? A. She oft times, not once, but a dozen times, impressed it upon Mrs. Barend.

Mr. Vickers: I object to the impression.

The Court: Yes.

Q. State what did she say. A. She said to Mrs. Barend a number of times not to worry, that she would compensate her in a lump. 20

Q. How? A. That she intended to leave all she had to her, or most of it.

Q. By what manner of paper? A. By a will.

Q. Do you know whether a will was made to that effect? A. Well, the will was made, yes, sir.

Q. How many wills? A. Two.

Q. What was the first one? A. The first one was a will witnessed by Mr. Louis Weinthal. 30

Mr. Vickers: Objected to, the witness testifying to the contents of a paper that is not in evidence and which would speak for itself if it were in evidence.

The Court: Sustain the objection.

Q. You haven't that first will, have you? A. No, sir; it was destroyed by Mrs. Phillips. 40

Charles Barend—Direct.

Q. You have the second will? A. Well, we have a copy of it.

Q. The second will was offered for probation? A. The second will was offered for probation; yes, sir.

Q. Did Mrs. Phillips pay any of your household expenses during her sickness? A. No, sir.

10 Q. Did you have to have any special food for her? A. Yes, sir.

Q. And did you follow the doctor's instructions in giving her food and taking care of her? A. Yes, sir.

Q. Do you know anything about this question of jewelry? Do you know the jewelry that Mrs. Phillips had? A. I know of it; yes, sir.

20 Q. And do you know whatever happened between your wife and her on this question, if anything? A. Yes, sir.

Q. Tell us what you heard said? A. That she gave it to Mrs. Barend for a gift, told her to take it, that she was going to leave it to her anyhow and she might as well take it. Mrs. Barend took it and, I should judge, a week or ten days afterwards she gave it to her back, telling her that she didn't want to keep it around the house, to take it and put it in the vault with the rest of her stuff.

30 Q. At the hospital was there any offer made by Mrs. Phillips of any kind to you about turning over this estate before her death? Tell us what took place. A. Yes, sir.

Q. Where? A. St. Mary's Hospital in Orange, New Jersey.

40 Q. What took place there? A. I went over to see her one evening and she told me to go out and get a lawyer. I asked her for what purpose. She said, "I want to turn everything I have got over to you. You and your wife are the only two that care

Charles Barend—Direct.

anything about me and I want to turn everything I got over to you," and I refused to do it.

Q. Did she ever tell you for how long a period she had not seen her sister or step-sister? A. Yes, sir.

Q. For how long? A. If I remember rightly, about twenty years, eighteen to twenty years.

Q. Do you know whether Mrs. Phillips ever received any mail from her sister at your home? A. Never at my home, no, sir.

Q. Any telephone calls from her? A. No, sir.

Q. Did you know Mrs. Lubell yourself? A. Well, I did know her; I met her on several occasions a good many years ago.

Q. You know her as Mrs. Autenreith? A. Mrs. Autenreith, yes, sir.

Q. And Lobelsky? A. Well, I hadn't seen her after she became Mrs. Lobelsky. I hadn't seen Mrs. Autenreith in a number of years.

Q. You knew her as Mrs. Autenreith? A. I knew her as Mrs. Autenreith. I wouldn't have known her if I met her.

Q. When Mrs. Phillips was at the hospital did your wife go there to visit her? A. Yes, sir; quite often.

Q. How about you? A. Me? Every night, Sundays included.

Q. You went there? A. Yes, sir.

Q. To the hospital? A. To the hospital.

Q. Did you bring her any dishes or anything? A. Yes; I had two vacuum bottles that I trotted between Montclair and Orange over there, got taking her little delicacies that she didn't get in the hospital, and special foods for her, such as soups.

Q. And how many months all-told was Mrs. Phillips at your home? A. About thirteen months.

Charles Barend—Cross.

Mr. Bianchi: That is all. Cross examine.

Cross-examination by Mr. Vickers:

Q. You say she was at your home about thirteen months? A. Thirteen months, yes, sir.

10 Q. Can you fix the date when she arrived there?
A. Well, September, the early part of September, I believe around the first of September or second, something like that, 1921.

Q. And on what date did she go to the hospital?
A. Well, I couldn't say the exact date, sir; she went in October.

Q. You don't remember whether it was the first of October or the latter part of October, do you?
A. I can't say, sir.

20 Q. Oh. Where did you spend your vacation in 1922? A. My vacation?

Q. Yes. A. Where, 1922? We were away for, I think, ten days.

The Court: That is not the question.

Witness: I can't just remember now where we were.

30 Q. Do you mean to say you can't remember— A. One minute, please.

Q. —where in the summer of 1922 you spent your vacation—can't remember that; is that what you say? A. One minute, now, let me think. 1922. Oh, yes, we went to New York state up to Highlands, New York.

Q. And when did you go? A. I think it was in August, for ten days.

40 Q. Well, do you know whether it was in August or September? A. August, I believe.

Charles Barend—Cross.

Q. Do you know what part of the month of August? A. I think it was the first week, I think—first week in August.

Q. First week in August? A. Yes, sir.

Q. And what happened to Mrs. Phillips during the time that you were on your vacation? A. We had a practical nurse to take care of her. 10

Q. Who was it? A. I just can't recall her name. I don't know her name. I can't just recall her name now.

Q. Had you known her before she came to the house? A. No, sir.

Q. Who secured her? A. Mrs. Barend, I believe.

Q. Don't you know? A. Sir?

Q. Don't you know who secured her? A. Mrs. Barend.

20 Q. Did you have anything to do with Mrs. Barend's financial affairs? A. Mrs. Barend's financial

Q. Do you know whether or not Mrs. Phillips— A. Did I have anything to do with her financial affairs?

Q. Yes. A. Not in an official capacity; no, sir.

Q. No. In any capacity. A. No; any more than cash a check for her occasionally, loan her money.

30 Q. And what happened to the checks that Mrs. Phillips drew on the Bank of Monclair? A. What happened to them?

Q. Yes. A. I don't know, sir.

Q. Who is Louis Barend? A. My son.

Q. Do you know anything about his going to Montclair to withdraw checks from that—

The Court: Here it is.

Q. —on that bank? A. No, sir; I do not.

40 Q. I show you Exhibit C-15 and ask you whether 40

Charles Barend—Cross.

you know that to be your son's signature? A. Yes; it looks like it.

Q. I call your attention to the same exhibit and to the name "Eva Barend". Do you know whose signature that is? A. Yes, sir.

Q. Did you have—(interrupted)

10 Q. (By the Court.) Is that your wife's signature? A. That is my wife's signature, yes, sir.

Q. I call your attention to the signature of Augusta Phillips there. Do you know whether that is hers? A. Yes; it looks like her signature, too.

Q. It looks like her signature? A. Yes; yes, sir.

Q. Do you know anything about your son, Louis, going to the Bank of Montclair in February, 1923, and getting the return checks of Mrs. Phillips' account in that bank? A. Well, I don't know but that Mrs. Phillips might have sent him to the bank.

20 Q. I didn't ask you that. A. No, sir; I don't know anything about it.

Q. You don't know about it. A. Personally I know nothing about it.

Q. And where did Mrs. Phillips keep her effects, while she was living with you, her personal effects?

A. Her personal effects? Such as what?

Q. Anything.

30 The Court: Silverware, we will say.

Witness: Oh, she had—(interrupted).

The Court: Where did she keep that?

Witness: In the chest; a chest she had there.

Q. And where was the chest? A. In her bedroom.

Q. And was that there at the time she went to the hospital? A. Yes, sir.

40

Charles Barend—Cross.

Q. And was it there at the time of her death? A. Yes, sir.

Q. And, after her death, did you make an inspection of that chest? A. After her death, after we read the will, yes, sir.

Q. And what did you do with the things that were in the chest? A. They are still there, sir.

10

Q. Everything? A. Everything intact as Mrs. Phillips left it.

Q. Have you gone through the chest to see what was there? A. Have we gone through it?

Q. Have you, not we. A. Oh, have I? Any more than the way I said when the will was read and I haven't touched that chest since.

Q. Have you gone through— A. No, sir; I have not.

Q. Have you gone through the chest, have you inspected the contents of it? A. I inspected it when I told you, yes.

20

Q. Then you do know after Mrs. Phillips' death what was in the chest, don't you? A. Partly, yes, I know.

Q. Did you find any checks there? A. No, sir.

Q. Did Mrs. Phillips have any other place to keep effects or belongings of hers, that you know of, in your house? A. Not that I know of.

30

Q. Not that you know of? A. No, sir.

Q. Only this chest? A. Only this chest.

Q. Did she have a bureau? A. There was a bureau in her room.

Q. And did she have any effects in the bureau? A. Not that I know of.

Q. Nothing? A. Nothing that I know of.

Q. Just empty? A. Oh, no, it was not empty.

Q. Well, what was in it? A. Some old clothing, night gowns and stuff of that kind.

40

Charles Barend—Cross.

Q. Was there a writing desk or table in the room that Mrs. Phillips occupied? A. Well, it was a bureau and desk combined.

Q. Combined? A. Yes, sir.

Q. In that desk did Mrs. Phillips have any effects? A. No, sir.

10 Q. The desk part of the bureau? A. No, sir.

Q. Nothing? A. Nothing at all.

Q. You looked there, did you? A. Yes; I saw it.

Q. Did the administrators, or anybody for the administrator, ever ask you for any vouchers or accounts or anything of the kind of Mrs. Phillips after her death? A. No, sir.

Q. Did not? A. No, sir; they asked for Mr. Bennett; I believe, he asked—

20 *Examined by the Court:*

Q. What did Mr. Bennett ask you? A. Sir?

Q. What did Mr. Bennett ask you for? A. Mr. Bennett asked Mrs. Barend—

Q. (By Mr. Vickers.) Were you there?

Q. No. A. —for a list of silverware.

Q. No. Don't testify to that. What did he ask you for? A. Well, Mr. Bennett never asked me for anything, personally.

30

The Court: All right. That is all we want to know.

Examined by Mr. Vickers:

Q. This paper writing, that you have called a will, was that read in the presence of relatives of the deceased? A. Yes, sir.

Q. By whom was it read? A. By me.

40

Charles Barend—Cross.

Q. At that time did you have a check or checks and make any comment in the presence of those who were there regarding these checks, they being checks of Mrs. Phillips? A. I had one check and Mrs.—(interrupted).

Q. What did you say about it? A. Eh?

Q. What did you say about it? A. I said, here 10 was a check that Mrs. Phillips had paid me money that she owed me, I had never cashed it yet.

Q. Did you at that time say, "Here is a check and this is the evidence that she owes me money."

A. No, sir.

Q. Or words to that effect? A. No, sir.

Q. (By the Court.) How much was the check for? A. If I remember rightly, it was fifty dollars.

Q. Where is it? A. I believe Mr. Weinthal has it. 20

Q. I show you a check drawn on the Bank of Montclair to the order of Charles Barend and ask you whether that is the paper to which you have just referred? A. That is the paper; yes, sir.

Q. That is dated November 11, 1922. A. Yes, sir.

Q. Will you tell this Court why you retained that in your possession from November 11th, 1922, until after the death of Mrs. Phillips? A. That— 30 why I retained it? Well, I had loaned Mrs. Phillips the fifty dollars and she paid me and, as a matter of fact, that check I had mislaid it and I recovered it amongst some papers that I had of my own.

Q. Well, now—

Examined by the Court:

Q. Did I understand you to say that she paid 40

Charles Barend—Cross.

you by other means than that check? A. She paid me by other means? No, sir; she did not.

Q. She paid you by that check? A. That was in payment by that check, yes, sir.

Examined by Mr. Vickers:

10

Q. And where was this check delivered to you by Mrs. Phillips? A. Where was it delivered?

Q. Yes. A. I believe she delivered it to me in my home.

Q. In your home? A. If I remember rightly; I am not certain.

Q. Yes. A. I am not certain, sir.

20

Q. Well, then, I ask you again, why did you keep it from that time and not cash it between that time and the date of the death? A. Well, I tell you, sir, I had mislaid it.

Q. You mislaid it? A. Yes, sir.

Q. Then at the time you procured this will that—or this paper purporting to be the will, from what place did you get that paper? A. What paper?

Q. The paper that you call the will. Where did you get that? A. Why, that was in the—One minute. Let me think now—It was in the chest.

30

Q. Isn't it a fact that this check was there, too? A. No, sir.

Q. And that you brought the two out together and at the same time of the reading of the will from the same place and with the will you produced, found this check, and then read it? A. No, sir.

Q. Isn't that so? A. I didn't find the check there. I had put the check there.

Q. In the chest? A. Yes, sir; when I recovered it.

40

Q. You mean, you put it back in Mrs. Phillips'

Charles Barend—Cross.

chest? A. I—When I—Put it back? Yes, sir; I did.

Q. Well, where did you get it from at that time? A. What, the check?

Q. Yes. A. I am telling you, I found it amongst some old papers of my own that I had put away. I had mislaid it.

10

Q. And the same time you found the will you say you found this check among some old papers that you had put away, papers of your own; is that right? A. I beg your pardon. I didn't say any such thing.

Q. All right. I am trying to find out.

Examined by the Court:

Q. In the first place, where did you find the checks? A. I found the check, sir, among some papers that I had in my own closet.

20

Q. Yes. And when did you find the check? A. Oh, I found the check, probably, a week after Mrs. Phillips had died.

Q. Very well. And what did you do with it when you found it? A. Why, when I opened that chest, I put it back with that—with the will there, intending not to cash it.

30

Q. And then, when you took the will out of the chest, you took the check out with it? A. Yes, I did. I took it out with it, yes, I did, because—

Examined by Mr. Vickers:

Q. Then it is a fact, is it not, Mr. Barend, that at the time you produced this so-called will from the chest you did take out this check and at the reading of the will you held it up and commented

40

Charles Barend—Cross.

upon it to those that were present at the reading?
A. No, sir, I didn't have it; no, sir; emphatically
no, I did not; emphatically no.

Q. At the time you produced the will for reading
from the chest of Mrs. Phillips, you likewise pro-
duced this check; is that right? A. I took it from
10 there with the will, because I had put the check
there myself. That will was not put there by Mrs.
Phillips.

Q. And you say you had put this check there
about ten days after Mrs. Phillips death? A. Well,
I don't remember exactly as to the amount of days,
but thereabouts, or so. I don't remember the ex-
act amount of days.

Q. After her death? A. Yes.

Q. Now, when was it that the will was read with
20 respect to the date of her death? A. The will was
read, probably a week or so after Mrs. Phillips had
died.

Q. Don't you remember when it was? A. I don't
remember the exact date, no, sir. She died March
13th and probably on a Sunday—probably two or
three weeks after, I can't remember the exact date;
no, sir.

Q. Who were the persons present during the
30 reading of this will? A. Who were the persons?
A. Mr. Cohn, Mr. and Mrs. Morrell Cohn, Mr.
Schwartz, Martha and Emma Brown and Mrs. Bar-
end and myself.

Q. And were these persons there by appointment
or casually there at the time of the reading of the
will? A. No, sir; I notified them that there was
a will and the will was going to be read and I want-
ed them present and requested them to be present.

Q. How did you give that notification, in writing
40

Charles Barend—Cross.

or verbally? A. Well, I called Mr. Cohn on the
phone, I believe.

Q. Which Mr. Cohn? A. Mr. Morrel Cohn.

Mr. Bianchi: Oh, I object to that. I think
it is immaterial. They got there.

The Court: I do not think it is material, 10
Colonel. They got there somehow.

Mr. Bianchi: They were there.

Witness: They were there through being
notified by me.

Mr. Vickers: It was a question of time;
that was all I wanted.

The Court: Well, if you think it is im-
portant.

Mr. Vickers: No.

20

Q. Do you know whether or not Mrs. Phillips
went to New York for treatment during the time
that she was at your house? A. Yes, sir.

Q. And up to what time did she go to New York?
A. Oh, I can't say exactly, but she got in such a
state that she couldn't—impossible for her to go.

Q. Well, then, up to the time she went to the hos-
pital, she did go to New York for radium treat-
ments, is that right? A. She was in a hospital in
New York. 30

Q. How long? A. Well, on two occasions.

Q. For what length of time during those occa-
sions? A. Once for two days and one time for a
week.

Q. And when was that, which time, if you can
fix the time? A. I can't exactly fix the time she
was in the Cancer Hospital in New York, I can't
exactly fix the time.

Q. Well, can you fix it within a month or two 40

Charles Barend—Cross.

months or three months or four months? A. I can't say offhanded and I don't care to make any statement that I don't know what I am saying.

Q. Well, do you know how she got to New York? A. Yes, sir.

Q. Mr. Morrel Cohn took her there in a machine? 10 A. On one occasion.

Q. On any other occasion that you know of how did she get there? A. Why, Mrs. Barend and myself with the aid of a taxi cab took her there.

Q. To the— A. To the hospital.

Q. From Montclair? A. To the hospital in a taxi cab, yes, sir.

Q. From Montclair to the hospital? A. From Montclair to the hospital.

Q. When was that, now? A. I can't exactly state the date, sir. 20

Q. Do you know of her going to Long Island at any time while she was in your household? A. Yes; yes, sir.

Q. How often? A. One time.

Q. When was that? A. I don't—I can't recall that date exactly, either.

Q. Who paid the hospital bills? A. Mrs. Phillips.

Q. Do you know whether she paid by check or not? A. I can't say. 30

Q. She paid her own hospital bills. While— A. I paid one bill.

Q. I beg your pardon? A. I paid one hospital bill, the last bill after she died, I paid that. The amount that was due to the hospital I paid.

Q. Is that the item of ninety five— A. That is in there; yes, sir.

Q. \$44.95. A. I believe so, I believe so.

Q. Well, you put in a claim to the administrator 40

Charles Barend—Cross.

for ninety four dollars, I think, and some—\$94.95; is that right? A. I believe that is the amount.

Q. And the bill to which you refer is this bill which I show you, St. Mary's Hospital, for \$44.95. A. \$44.95, yes, sir.

Q. And the other fifty dollars is that check? A. That check. 10

Q. Covering that check in question, is that right? A. Yes; that is right.

Q. Your wife and Mrs. Phillips were the only persons who lived in your household, or did your son live with you? A. My son lived with me.

Q. And, during the time that Mrs. Phillips lived with you, had you any servant or person to assist in running the household? A. Did I have any?

Q. Yes. A. Well, I had—Well, like I stated, when we were away on our vacation I had a nurse taking care of Mrs. Phillips, but after Mrs. Phillips was taken to the hospital my wife collapsed and I had to have a woman to take care of Mrs. Barend. 20

Q. (By the Court.) You had no maid or servant? A. No, sir; no maid, no, sir. No maid, couldn't afford it.

Q. So Mrs. Barend did all of the work in the household, including taking care of Mrs. Phillips, during the time that Mrs. Phillips was a member of your household? A. Mrs. Barend, my son and myself, sir. 30

The Court: He has also said that they had a nurse.

Mr. Vickers: During this time?

The Court: Well, no, he didn't confine it to this time.

Mr. Vickers: Well, is this—

Charles Barend—Cross.

Examined by the Court:

Q. How long did you have a nurse there, how many weeks? A. Well, we—Let me ask—understand the question.

10 Q. How long did you have a nurse there? A. What?

Q. To take care of Mrs. Phillips? A. Oh, to take care of Mrs. Phillips?

Q. Yes. A. We had a nurse there while we were away on our vacation.

Q. How many weeks? A. About ten days or two weeks.

Q. And you never had a nurse any other time? A. No, sir.

20 *Examined by Mr. Vickers:*

Q. Except for going to New York to the hospital and this one occasion when you say Mrs. Phillips went to Long Island, while she lived in your home, Mrs. Phillips was unable to go out alone; is that right? A. Well, she could go out alone, she could go out in a manner alone; she was helpless, she could get on the porch; she was like any woman would be in that condition.

30 Q. Did she go away from the porch excepting the times that you have referred to; did she visit the neighbors, so far as you know; did she go shopping, or anything like that? A. No; she didn't go shopping; she couldn't go shopping.

Q. So far as you know, did she have any business affairs to attend to? A. Not that I know of.

40 Q. Do you know anything about her expenditures? In connection with that, I call your attention to these accounts, C-16, and show you that

Charles Barend—Cross.

there appear here among the disbursements, and at fairly regular intervals, items of \$65. withdrawn therefrom up to a time when the amount appears to be divided and they are \$22.50. Do you know of any— A. I don't know anything about that.

Q. Don't know about that, nothing at all? A. No; absolutely nothing about her private affairs, 10 as far as that is concerned.

Q. You say you cashed checks for Mrs. Phillips. When you did cash checks, were they drawn to cash or your order? A. Cash—drawn to my own order, made out to me personally.

Q. When Mrs. Phillips died, did you make any effort yourself to find Mrs. Lubell? A. Did I make any effort? I had a counsellor for that purpose, sir.

Q. Did you make any effort? A. Did I? No, 20 sir; I didn't personally, no.

Q. You knew that she was known by the name of Lubell as well as by the name of Lobelsky and Autenreith, didn't you? A. No, sir; I did not. I don't know what she was known as.

Q. Never knew that? A. Never knew that.

Q. Never knew—(interrupted). A. Her own sister didn't know it, whether it was Lobelsky or Bell or what. I know Mrs. Lobelsky, as I understand her name is, as Mrs. Autenreith. 30

The Court: I think we better adjourn for luncheon and come back at two o'clock.

Noon Recess

Q. Mr. Barend, I show you a paper writing and ask you whether that is the paper—copy of the pa- 40

Charles Barend—Cross.

per which you read on this occasion that has been referred to as the reading of the will.

Mr. Bianchi: I have the original here.

The Court: Let us have the original.

Mr. Vickers: All right.

10

Q. Supplementing my question by showing you the original, do you have to read it all through to find out if that is the paper? A. That is the paper, yes.

Q. Now, then, when you read that paper you knew that Hannah Lubell was known as Lubell, didn't you? A. Well, I didn't know. I knew it from this paper.

Q. From this paper? A. Yes.

20

Q. So that, within a week or two or three weeks after the death of Mrs. Phillips, you knew that Hannah Lubell was known by the name of Lubell; is that right? A. That she was known by the name of Lubell?

Q. Yes, that that— A. It states there "Lubell" or "Lobelsky".

Q. Can you answer my question? A. I didn't know whether she was known by the name of Lubell or Lobelsky.

30

Q. Can you answer my question? A. I didn't know whether she was known by the name of Lubell or Lobelsky.

Q. You knew—

Q. (By the Court.) You knew that she was known by either Lubell or Lobelsky? A. Yes; yes, sir; either one.

40

Q. I think you have stated that this paper writing is in the handwriting of Augusta Phillips; is that right? A. I believe it is.

Charles Barend—Cross.

Q. And that portion of it which refers to her "now Lubell or Lobelsky" is in the handwriting of Augusta Phillips? A. I believe so.

The Court: Do you want to offer it?

Mr. Vickers: No, your Honor.

Q. Did you—

10

The Court: I think it better be offered.

Mr. Vickers: All right, sir.

(Paper marked C-17.)

Q. Did you inform the administrator or this Judge Bianchi or Mr. Bennett of the fact that the sister of the half blood of Mrs. Phillips was known or designated by the name of Lubell? A. Did I what, sir?

20

Q. Did you inform— A. Yes, sir.

Q. —any of the persons named, Judge Bianchi or the administrator or Mr. Bennett or the administrator that this lady, Hannah, the half blood sister, was known by the name of Lubell? A. Right. I informed Judge Bianchi.

Q. You did. A. Yes.

Q. And you have testified that you knew Mrs. Lubell by the name of Autenreith; is that right? A. Yes, sir.

30

Q. During her former marriage or former widowhood; is that right? A. I knew her as Autenreith, when I knew her last, yes, sir—when I saw her last.

Q. Did you know then that she lived in the Bronx? A. No, sir.

Q. Did you know where she lived, when you knew her by the name of Autenreith? A. By the name of Autenreith—Did I know where she lived, when I knew her by the name of Autenreith?

40

Charles Barend—Cross.

Q. That is what I asked. A. Yes, sir.

Q. Where did she then live? A. In Brooklyn, I believe, Brooklyn, New York.

Q. You personally never made any effort except to tell Judge Bianchi about Mrs. Lubell or Lobelsky for the purpose of locating this sister of the half blood, did you? A. I put that in the hands of Judge Bianchi, yes.

Examined by the Court:

Q. And you did nothing else except to put it in his hands? A. Well, I inquired from one of the others—from one or the other of the family where she was.

Q. Did you do anything else except tell Judge Bianchi? A. Did I do anything else?

Q. Yes. A. Outside of inquiring, sir?

Q. Say yes or no. A. Yes— No, I didn't do anything else, if that is what you want.

Examined by Mr. Vickers:

Q. Did you know the other relatives of Mrs. Phillips, other than the sister of the half blood, Mrs. Lubell? A. Cousins, yes, sir.

Q. And were they the persons whom you have named as having been notified by you and being present at the reading of this will? A. Yes, sir.

Q. How long before Mrs. Phillips went to the hospital was she confined to her bed? A. Well, off and on, before she went to the hospital, I would say, about a solid year, from eight months to twelve months, yes.

Q. When you say, "off and on", we are all confined to our beds off and on. I mean as an invalid,

Charles Barend—Cross.

perpetually, was she at any time confined to her bed, day and night, and unable to get up? A. Yes, sir.

Q. For how long a period of time, prior to being removed to the hospital was that? A. Probably four or five months.

Q. Four or five months? A. Yes, sir.

Q. And did she have to be lifted out of bed for the purpose of bathing her? A. She had to be helped; yes, sir.

Q. And during all that period of time she was unable to leave the house; is that right? A. Yes, sir.

Q. And you are sure of that, are you? A. Pretty sure of it.

Q. Can you explain how it was that on or before August 15, 1922, she signed her name to this card, which is Exhibit C-15, in Montclair? A. Can I explain?

Q. Yes. At the bank. A. I cannot explain.

Q. Cannot explain it? A. No, sir.

Q. In light of the fact that it has been testified to that that is her signature and made at the bank, do you want to qualify the last testimony which you have given, that she was bedridden and unable to leave the house for a period of several months before October before she went to the hospital? Do you want to qualify that testimony now? A. I do not—I don't exactly understand what you mean.

Q. All right. I withdraw the question. A. It is not—

The Court: Give me that. (To witness:) You have said that this lady, Augusta Phillips, was bedridden for about five or six months before she went to the hospital; is that right?

Charles Barend—Redirect.

Witness: Around that, yes.

Examined by the Court:

Q. Yes. Now, there is testimony that on August 2nd, 1922, she went to the bank and signed a paper.

10 A. Well, I don't know anything about that, your Honor. I don't know about what paper she signed.

Q. Well, how do you know she was bedridden for all those months? A. Well, she was at my home.

Q. And she was not able to get up or go out at all; is that it? A. She was not able to get up or go out.

Mr. Vickers: No further questions.

Redirect-examination by Mr. Bianchi:

20 Q. Where do you live now? A. Philadelphia.

Q. You have been there since this suit started, haven't you? A. Since the suit started, yes, sir.

EVA BAREND, sworn for the defendant.

Direct-examination by Mr. Bianchi:

30 Q. You are Mrs. Barend, the wife of Charles Barend? A. Yes.

Q. And you now live in Philadelphia? A. Yes, sir.

Q. And you did live in Montclair? A. Yes, sir.

Q. Do you remember when Mrs. Augusta Phillips came to your home? A. Yes, sir.

Q. About what—(interrupted). A. The first of September, 1921.

40 Q. 1921. And what relation is she to you? A. Cousin, first cousin.

Eva Barend—Direct.

Q. And how long did she stay with you, Mrs. Barend? A. Thirteen months.

Q. Then where did she go to? A. What is that?

Q. Then where did she go to at that time? A. She went to the hospital.

Q. In where, in Orange? A. In Orange.

Q. And how long was she at the hospital? A. 10 She was there about five months.

Q. Did she die at the hospital? A. At the hospital.

Q. What was her physical condition while she was at your home? A. She was sick when she came to my house.

Q. And how long did she continue? A. Very sick the first week she came to my house; she was sick all the time she was with me.

Q. And did you do anything for her while she was sick? A. I certainly did. I took complete care of her. 20

Q. And what did you do in taking care of her? A. I nursed her, cooked for her, done everything in my power that I could.

Q. And how old a woman was she? A. She was fifty nine.

Q. Fifty nine. And physically was she large or small in size? A. Very, very heavy woman. 30

Q. What was the nature of her disease? A. Cancer.

Mr. Vickers: That is objected to.

The Court: We have already admitted it, I think.

Mr. Bianchi: I want to show what she did for her.

The Court: You can show that. I think before luncheon we all admitted it was—

Mr. Bianchi: Cancer. 40

Eva Barend—Direct.

The Court: The poor woman had cancer.

Q. And in your treatment,—as a result of this disease, what happened to her? A. She came to my house and wasn't able to do a thing.

Q. What treatment did you have to give her?
10 What did you have to do? A. I had to bathe her, wash her, feed her, everything that she needed, every attention that she needed, and I done that continually for thirteen months.

Examined by the Court:

Q. Did you do anything else except bathe—(interrupted).

20 Mr. Bianchi: Treatment.

Q. —bathe and wash her. Did you give her any other treatment? A. Well, feed her and cook for her.

Q. Well, what else did you do? A. I don't know what you mean.

Q. Well, I am asking you if you did anything else. What else did you do besides bathe? A. I dressed her, took her in and out of bed, helped her in and out of the bed, washed her, give her medicine.
30

Q. Anything else? A. I had to feed her and take care of her in every way. She was utterly helpless.

Examined by Mr. Bianchi:

Q. Well, now, did you have a doctor? A. I certainly did.

Q. Did he recommend any treatment to her? A.
40 What is that?

Eva Barend—Direct.

Q. Did he recommend any treatment to her? A. Yes, sir.

Q. What did you have to do as a result of what he recommended? A. She had to go to New York for radium treatment.

Q. What did you do at the home for her? A. I had to take—

Q. What did you do? Did you give her any kind of injection? A. I certainly did.
10

Mr. Vickers: That is objected to as leading. Counsel knows that is what the Court is after.

The Court: Objection sustained.

Q. Tell us what you did. What sort of treatment did you give her? A. I had to give her inward treatments. I don't know whether I am supposed to tell here the things I did for her.
20

Q. Of course you are. A. I had to douche and do everything I could for her, care for her altogether.

Q. What kind of treatment did you give her? A. Injections. Everything the doctor told me—prescribed for her, I had to do for her. There was nobody else there to do but I; I had nobody else to help me.

Q. Tell us in detail just the injections or whatever you gave her. You have to do that. A. I had to douche her.
30

The Court: She said douche; we know what it is.

Witness: Three or four times a day, to lift her out of bed.

Q. As a result of giving her those douches and
40

Eva Barend—Direct.

treatments, injections, what happened? A. I had to sponge her and had to do everything I could for her.

Q. As a result of giving her the injections—(interrupted). A. She became worse from day to day.

Q. Yes.

10 The Court: That is an unfortunate result of her attentions.

Witness: Yes, it is. Her disease was getting the best of her. I done the best I could with the doctors care.

Q. What did that disease leave in the house? A. That disease put me in the doctor's care myself.

Q. Not you, the house itself, the air. A. It created a terrible odor and put me in danger—my
20 whole family in danger.

Q. Were there any extraordinary odors in the house as the result of the treatment? A. There certainly was, all the time she was with me.

Q. We don't know about those things. Won't you please tell me? A. Every time I treated her I had to run out of the room, I got sick and vomitted—deathly—myself.

Q. How so? A. From the treatment I gave her,
30 from taking care of her, from washing her, and all these injections.

Q. When you gave her these treatments, what was the result, if anything? A. They helped her for the time being.

Q. You say they made you sick? A. Made me deathly sick.

Q. How did they make you sick? A. Because there was a dreadful odor attached to it and it endangered my whole family, myself and my boy.

40 Q. Did you have to give her any special food?

Eva Barend—Direct.

A. Special food. I had to cook special things for her, special diet.

Q. Did you have to take care of her during the day or just—(interrupted). A. All day and part of the night—mostly all night.

Q. Now, you say she went to New York sometimes? A. She only went there for two treatments
10 —radium.

Q. Radium treatments? A. The rest I took care of her myself.

Q. Do you know how she got to the bank or if the bank came to her to sign some papers? A. No; I don't.

Q. How long was she in bed, Mrs. Barend? A. She was in bed for about six months steady, on her back.

Q. What? A. She was on her back for six
20 months, in my house in bed.

Q. Then, when she went to the hospital, did she stay in bed there, do you know? A. In the hospital? Yes.

Q. Did you pay the expenses at the hospital or did she pay them herself? A. Paid for herself.

Q. While she was with you, did she pay any expenses? A. No, sir.

Q. Were there any other conversations by her
30 relative to the payment or what she was going to compensate you for your keeping her, and so forth? A. She told me that she was going to make a will leaving everything to me, that she didn't want to pay me anything, she would leave everything in bulk; she would compensate me that way.

Q. And did she give you a will—make a will? A. She certainly did.

Q. And this is the will that your husband just read or looked at? A. Yes.
40

Eva Barend—Direct.

Q. From the time that she came to your home to the time she went away, did she ever pay you any money for taking care of her? A. No, sir.

Q. Did you have any other help in the house to help you with her? A. To help? No. I just had a woman come in to help do the washing, that was
10 all. Otherwise I took complete care of her.

Q. Did you go away on a vacation at one time for about eight or ten days? A. Ten days.

The Court: Strike it out.

Mr. Vickers: Pardon me. Isn't that very leading?

Mr. Bianchi: I want to get it over with.

The Court: I know. That is—(interrupt-
ed).

20

Q. Did you go on a vacation? A. We went out for ten days.

Q. And where was Mrs. Phillips during that time? A. She was at my home and I engaged a woman, at least, the doctor sent one to me, a practical nurse.

Q. That was Dr. Hyems? A. Yes, sir.

Q. How often did the doctor come to your home?
A. Three and four times a week.
30

Q. Now, you filed a claim for some jewelry? A. Yes, sir.

Q. What were the circumstances surrounding that? A. Before Mrs. Phillips went to the hospital she gave me a pair of earrings and a ring, a gold watch and chain, told me, "Eva, these are yours; I want you to have them, nobody else." I had these earrings and jewelry for two weeks. When she went to the hospital, I told her I didn't want them
40 around the house, to put them in the safe deposit

Eva Barend—Direct.

vault with her other things. I gave them back to her and told her to keep them with the other things, which she did.

Q. Are these the same things that are mentioned in this will? A. Yes, sir.

Q. You put in a claim for thirteen months for a period of—you put in a claim to the administrator for a period of thirteen months for nursing and taking care of Mrs. Phillips. A. Yes, sir. 10

Q. Amounting to sixty dollars a week, or about \$3360. A. Yes, sir.

Q. Total sum. And you were paid that sum? A. Yes.

Q. By the administrator? A. Yes, sir.

The Court: Let me see the will, please.

Mr. Bianchi: Yes, your Honor. 20

Q. Did you also give Mr. Bennett a list of certain articles that you found at your home? A. Yes, sir.

Q. And have you still those? A. I still have them, yes.

Q. (Continuing.) Articles intact? A. Yes, sir.

Q. And ready to deliver them to anyone that wants them? A. Yes, sir. 30

Q. Have you ever refused to deliver them to anyone? A. No; I have not.

Q. Did you ever find any checks amongst the papers of Mrs. Phillips? A. No, sir.

Q. Cancelled checks of any kind? A. No, sir.

Cross-examination by Mr. Vickers:

Q. Did you look for the checks, Mrs. Barend? A. What is that? 40

Eva Barend—Cross.

Q. Did you look for the checks? A. Yes, sir; several times.

Q. When? A. What is that?

Q. When? A. I didn't look for any checks, because I didn't know there were any checks there.

10 Q. You mean, you didn't know that she ever had any checks. Is that what you mean? A. What is that?

Q. You didn't know? A. Yes, sir; I knew she had a check account.

Q. Well, did you know she had any checks? A. Well, I can't say.

Q. You mean, you can't say that you know or you can't remember that she had any? Which do you mean?

20 Mr. Bianchi: Pardon me. I think the question ought to be clearer. What would, cancelled checks?

Mr. Vickers: Yes, cancelled checks.

Witness: Checks.

Q. Do you mean that you don't know whether she had any cancelled checks or not? A. Oh, yes; they came back from the bank.

Q. They came back from the bank? A. Yes, sir.

30 Q. Did you look for those after her death? A. No, sir; I did not.

Q. Why not? A. Because I didn't think it was necessary.

Q. Well, didn't Mr. Bennett ask you for them? A. Well, there wasn't any to give.

Q. (By the Court.) Did he ask you for them? A. No, sir.

40 Q. How did you come to go to the bank of Montclair on or about February 17th, 1922, and get the cancelled vouchers and bank statements of Mrs.

Eva Barend—Cross.

Phillips' account and sign this card? (Handing witness card.) A. I don't believe I signed that at the bank.

Q. What is that? A. I don't believe I signed that at the bank.

Q. You don't believe you signed that at the bank. What is your recollection? A. Just a moment until 10 I see.

The Court: Now, be careful in your answer.

Witness: I guess I must have, yes, sir, and she sent me there, she wasn't able to go. Yes, I was there at the bank.

Q. You remember now, do you? A. Yes, sir.

Q. Now, supposing you tell this Court just the 20 circumstances under which you signed that card at the bank? A. Well, Mrs. Phillips was not able to go and I guess I must have gone there to sign it.

Q. Are you guessing you went there to sign it? A. My signature is there. I guess I have been there.

Q. Madam, except for the fact that you are now confronted by your signature on this card, have you any recollection of the circumstances in signing that card or going to the Bank of Montclair? A. I 30 really have not.

Q. You have not. Have you any recollection of having received any cancelled checks from the Bank of Montclair? A. I don't think I have.

Q. Have you any knowledge as to how your son, Louis, came to go to the bank and sign this card and receive the cancelled vouchers from the Bank of Montclair out of the account of Mrs. Phillips? A. My boy, Louis, was in the habit of doing her 40 errands for Mrs. Phillips, he was a child running

Eva Barend—Cross.

back and forth and probably he did; that I know nothing about.

Q. Know nothing about? A. Yes.

Q. You know nothing about how he came to go to this Bank? A. No.

Q. All right. Now, for how long a time after
10 Mrs. Phillips came to your house to live was she able to get around and leave the house? A. A very short time.

Q. How long? A. Couple of months, probably.

Q. A couple of months. And you say she came there on the 1st of September, 1921? A. Yes.

Q. Is that right? A. Yes.

Q. So that, according to your testimony, at no time during the year 1922 was she able to leave the house; is that right? A. No; she was just out on
20 the porch, back and forth.

Q. To leave the house. A. Not to leave the house; no, sir.

Q. That is accurate, isn't it?

The Court: She couldn't leave the house, she said.

A. She was just in the house, back and forth on the porch.
30

Q. Now, then, I call your attention to this Exhibit C-15 and ask you whether you recognize that as Mrs. Phillips' signature on that exhibit? A. It looks like it.

Q. Well— A. It is.

Q. It is. Can you explain how, on or about August 7th, 1922, this lady at the Bank of Montclair signed this card? A. That might have been during the time I was away, the ten days I was
40 away. I know nothing about it.

Eva Barend—Cross.

Q. It might have been during the time you were away on a vacation; is that right? A. Yes, sir.

Q. Now, then, you didn't keep this lady confined to your house, did you; you didn't prevent her from going out, did you? A. I didn't do that, but she wasn't able to go, while I was there.

Q. The question is, did you do anything to com-
10 pel her to remain there? A. No, sir.

Q. You didn't prevent her from going out? A. No, sir; I did not.

Q. Now, can you fix the time when it was that you were there? A. In August.

Q. In August? A. Yes, sir.

Q. Can you fix the time closer than that during the month? A. I couldn't give you the exact date.

Q. Your husband at that time had a two weeks' vacation; isn't that so? A. Ten days.
20

Q. Didn't he get two weeks vacation? A. I think it is ten days.

Q. Now, then, supposing you think a little carefully.

Mr. Bianchi: She has answered the question.

Mr. Vickers: Supposing she has. It is cross examination.

The Court: Yes; he is entitled to an answer.
30

Q. He then worked—

The Court: Wait a minute. You asked her to think a little, to see whether it was either two weeks or ten days. (To witness:) Now, which do you think it was?

Witness: I believe it was ten days. I am not positive.
40

Eva Barend—Cross.

Q. (By the Court.) You are not positive. It might have been two weeks? A. It might have been two weeks. I know it was ten days. Sometimes he had ten days and sometimes he had two weeks.

10 Q. What was the name of this practical nurse, as you called her, who was engaged for Mrs. Phillips, while you were away? A. Why, she was sent from Dr. Hyems. I really—(interrupted).

Q. What was her name, Madam? A. I think her name was Siebert.

Q. Siebert? A. Yes, sir.

Q. She came there while you still were there; isn't that right? A. What is that?

20 Q. She came there while you were there? A. She came in the evening and I went right off.

Q. Did you see that she was made acquainted with Mrs.— A. Yes, sir.

Q. —Phillips. Do you know what the arrangements were between Mrs. Phillips and the nurse as to whether the nurse was paid, whether or not—(interrupted). A. She must have been paid by Mrs. Phillips.

Q. Do you know? A. What is that?

30 Q. Do you know, I am asking you? A. Well, I—Do I know?

Q. Yes. A. Yes; she was paid by Mrs. Phillips.

Examined by the Court:

Q. How do you know that? A. What say?

Q. How do you know that? A. I suppose—

Q. You don't know who paid her. You didn't pay her, did you? A. No, sir.

40 Q. You didn't see Mrs. Phillips pay her, did you? A. No, sir; I did not.

Eva Barend—Cross.

Q. Then the answer is that you don't know who paid her. A. (No answer).

Examined by Mr. Vickers:

Q. Isn't it a fact that on or about the 25th day of August Mrs. Phillips drew a check for \$45.00 to pay this practical nurse for two weeks of service and that you received that check and had it in your possession as a return check from the Bank of Montclair; isn't that a fact? A. No, sir. 10

Q. It is not a fact, is it? A. No, sir.

Q. Did you find any papers belonging to Mrs. Phillips, after her death, among her effects? A. Nothing; no papers or anything else.

Q. No papers whatever? A. No. 20

Q. Is that right? A. Yes, sir.

Q. No letters? A. No, sir.

Q. Nothing? A. There was no letters.

Q. Of her marriage to her deceased husband? A. No, sir.

Q. Nothing at all of that kind? A. No, sir.

Examined by the Court:

Q. Did you go through the cedar chest? A. Yes, sir. 30

Q. Thoroughly? A. Yes, sir.

Q. When did you go through? A. After she died, just before the will was read, about a week, I think.

Examined by Mr. Vickers:

Q. Did you find the will at the time you went there? A. Yes, sir.

Q. You found it? A. Yes, sir.

Q. Did you find anything with the will? A. No. 40

Eva Barend—Cross.

papers; just the bank books.

Q. Just the bank books? A. Yes, sir.

Q. No return checks? A. No, sir.

Q. No return checks? A. No, sir.

Q. Just the bank books. Did you look at the bank books? A. What is that?

10 Q. Did you look at the bank books? A. I think I did.

Q. Did you open them to see whether there was any—whether there were any papers contained in them? A. There were not any papers in them.

Q. No papers there? A. No, sir.

Q. And on your examination of the cedar chest you are certain that there were no return checks? A. No, sir.

20 Q. At the Bank of Montclair or any other bank at that time? A. Certainly.

Q. You are sure of it? A. I am sure of it.

Q. Did you first examine that cedar chest or did your husband first examine it, if you know? A. Well, I think we both examined it at the same time.

Q. Together; is that right? A. I think so.

30 Q. Did you examine this desk, that has been referred to, which was a combination desk and bureau, or something of the kind? A. Just a little table. He called it a desk. It was a table.

Q. Did you examine it, whatever you call it? A. Yes, sir.

Q. Did it have any compartments? A. No, sir.

Q. Or a drawer of any kind in it? A. No, sir.

Q. No drawer of any kind? A. It has no—it is a table. It is not a desk. There were no compartments in there.

Q. And no place to put anything away now? A. No, sir.

40 Q. Was there any other place in the room, in her

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room, where papers or bank books or personal belongings of that nature could be put away? A. No, sir; everything was in the chest.

Q. Everything was in the chest? A. Yes, sir.

Q. That is right, is it? A. Yes, sir.

Q. I show you a bank book of the Corn Exchange Bank. Do you recognize that? It is Exhibit C-8. 10 A. Yes, sir.

Q. Do you recognize it? A. Yes, sir.

Q. Was it in just that situation when you found it in the cedar chest? A. Yes, sir.

Q. Where did these checks come from? They are C-11? A. I really couldn't tell you. I never seen these checks.

Q. Never saw them?

Q. (By the Court.) There weren't in the book? 20 A. What is that?

Q. They weren't in the book when you found them? A. No, sir; there weren't any checks in there.

Q. While Mrs. Phillips was with you, did she transact any business? A. With me, no, sir.

Q. Any time. Did she tend to any outside business? A. Not that I know of. Oh, personal things for herself, I don't know.

Q. What kind of personal things? What did she buy while she was with you? A. I really can't tell you because I don't know. 30

Q. Well, you say that for almost a year of that time she was helpless, bedridden, on her back; isn't that right? A. Yes, sir. Some underwear. Her own things, like that.

Q. Bought her underwear? A. Yes, sir.

Q. Now, I call your attention to these bank statements of the Montclair Bank, first, beginning here with January is a check of \$65. 40

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Mr. Bianchi: I object to this as not cross examination of my witness.

The Court: I will allow it.

Q. And, again in February, an item of \$65., and, again in March, an item of \$65., and, again in April, an item of \$65., and, again in June, an item of \$65., and a second item in June of \$65., and an item in July of \$65. Can you in any way explain—have you any knowledge as to what those items were for?
A. I really don't—

Q. Don't know anything about that? A. The only thing I can say, I paid up my rent and in case she gave me a check I gave—sometimes she did give me a check, when I gave her my money, because she had a checking account and I didn't, if that is what this sixty five dollars was. That is the only thing I can account for.

Examined by the Court:

Q. Each month? A. Yes, sir.

Q. Each month? A. Yes; sometimes I paid my rent by check and sometimes I paid it in cash and she gave me and I gave her my money; she gave me a check for it and I would pay her that check.

Q. And you think that sixty five dollars—you gave her the sixty five and she gave you a check for sixty five? A. Yes; that is the only thing I can account for that.

Q. And had you any bank account of your own? A. No, sir; no check account.

Q. So you gave her sixty five dollars in cash and the sixty five dollars on those papers represent your rent? A. Yes, sir.

Q. Or check for your rent? A. Yes, sir.

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The Court: Yes. All right.

Witness: I gave her my money for it.

Examined by Mr. Vickers:

Q. And was that the amount of your rent at the time? A. Yes, sir; at one place I lived, the last place we lived.

Q. The last place that you lived; is that right? A. Yes, sir.

Q. And what is the number of that? A. 149 Clairmont Avenue.

Q. 149 Clairmont Avenue? A. Yes, sir.

Q. And what was the number of the place where you lived before you moved to Clairmont Avenue? A. 30 North Willow Street.

Q. Also in Montclair? A. Yes.

Q. And what was the amount of your rent there? A. I believe that was the same, sixty.

Q. Think it over. A. Sixty dollars.

Q. Sixty? A. Yes, sir.

Q. When did you move to Clairmont Avenue first off, what year? A. 1922.

Q. Now, then, once more I call your attention to this same sheet—of Exhibit C-16 and the same items I called your attention to before and likewise call your attention to the fact that this is for the year 1921. Now, in the light of that information, can you give an explanation as to these sixty five dollar items when your rent was then sixty dollars? A. Sixty five I said, not sixty. You misunderstood me. Sixty five, I said, in both places.

Q. Didn't you say sixty dollars just now? A. Sixty five.

Q. Now, then, Madam, once more: What was

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your rent in Willow Avenue— Is it Willow Place?
A. Willow Street.

Q. Willow Street. What was your rent there?

A. Sixty five.

Q. It was sixty five, was it? A. Yes, sir.

Q. And it was likewise sixty five— A. Yes, sir.

10 Q. —at the last address? A. Yes, sir.

Q. In Montclair. That is right, is it, now? A.
Yes, sir.

Q. Have you any rent receipts in your possession? A. No, sir.

Q. Did you ever ask Mrs. Phillips to let you have those checks so that they would be rent receipts for you? A. No, sir.

Q. To whose order were the checks drawn? A. I didn't take—what is that?

20 Q. To whose order were the checks drawn? A.
For myself.

Q. To your order? A. Yes, sir.

Q. Did you endorse them over to your landlord?
A. I don't know whether it was mine or Mr. Barend's.

Q. What? A. I can't remember that.

Q. Well, you used checks, did you, to pay your rent? A. At times, yes, I did.

30 Q. And those that you got from her—

Examined by the Court:

Q. Wait a minute. What do you mean, "at times"? A. I didn't always pay it by check. I paid by check sometimes and sometimes I paid by cash.

Q. And when you paid by cash it was always Mrs. Phillips' check? A. What is that?

40 Q. Mrs. Phillips' check, was it? A. It was given

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to me, I believe, the check made out to me. I don't remember. I would hate to say anything I don't remember and I can't remember that.

The Court: All right.

Examined by Mr. Vickers:

10

Q. Mrs. Barend, so that we get this straight now, do you say that when, for the purpose of paying rent, you got a check from Mrs. Phillips that that check was drawn to your order for sixty five dollars; is that right? A. I believe it was, I am not sure. I don't want to commit myself to something I don't know and can't remember. I think they were. I am not sure.

Q. You think they were? A. I am not sure.

20

Q. And did you ever see any of those checks after they went through the bank and were returned vouchers? A. I don't remember.

Q. You don't remember? A. No, sir.

Q. Did Mrs. Phillips each month give you such a check as has been referred to regularly or in the interval sometimes did you pay cash? A. I paid cash.

The Court: The statement there shows that it was quite regular.

30

Mr. Vickers: Oh, yes, there is no doubt about that.

The Court: In one month apparently it was skipped and so there were checks in the same month, but it goes right straight on.

Mr. Vickers: Yes, your Honor.

The Court: Well, I understand that. And those, according to the witness, were checks given in return for cash. Are there any de-

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posits that were paid, corresponding deposits of cash?

Mr. Vickers: Yes, sir; there are deposits, your Honor.

10 The Court: Well, now, in fairness to the witness, you ought to bring that out. Is the cash sixty five dollars deposited every month?

Mr. Vickers: My attention is just called to testimony here—I want to correct a statement which I made to this witness in the form of a question, that these dates are for the year 1921. I notice that the paper is so headed, but in the deposit item I notice that there is 1922, January there, and I don't want to mislead either the Court or the witness.

20

The Court: What I want to know is, are there deposits of sixty five dollars to balance those checks?

Mr. Vickers: Yes, sir. I am going to examine the witness now on that.

Q. Did you ever make any bank deposits for Mrs. Phillips in the Bank of Montclair? A. I don't think so.

30

Q. You don't think so? A. No, sir; but my boy did occasionally.

Q. Your boy did occasionally? A. Yes; if she was not able to go to the bank, my boy used to do odd errands for her.

Mr. Vickers: Perhaps I better ask your Honor to examine that exhibit with respect to the deposit. I think your Honor can tell better than the witness.

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The Court: Well, you were able to pick out the checks?

Mr. Vickers: Yes. Well, the deposits show here. Of course, there is one sixty five dollar item and that is as near as I can find out, the only sixty five dollar item or combination of sixty five and any deposits. I don't want to—(interrupted).

10

Mr. Bianchi: They got the cash back.

The Court: Now, wait a minute, wait a minute. There is only one deposit of sixty five dollars. Now, then, is this the only—Now, wait a minute. There is only one deposit of sixty five dollars.

Mr. Vickers: Or—if I may say—or any other figure combination of sixty five.

20

The Court: That is right.

Q. Now, Mrs. Barend, you have said that at least on one occasion Mrs. Phillips told you that she would make a will leaving everything to you. Is that right? A. That is what she said; yes, sir.

Q. And that was addressed to you personally and not in company with anybody else; is that right? A. There are witnesses here that will bear me out on that.

30

Q. I am not asking you that. A. She said it to me.

Q. To you personally? A. Yes, sir.

Q. And when she said "you" that meant singular, you, personally; is that right? A. Yes, sir.

Q. And you have known Mrs. Phillips for some time, haven't you? A. Yes; all my life.

Q. All your life? A. Yes, sir.

Q. And when did you first know the contents of

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this will that she made? A. Why, she told me that while she was in bed.

Q. In bed where? A. At my home.

Q. In your home? A. Before she went to the hospital.

10 *Examined by the Court:*

Q. Do you know when this will was made? What was the date of it? A. Why, I believe the will was made at the time I was away for ten days.

Q. Well, in August? A. Yes, sir.

Q. August, 1923? A. Yes, sir.

Mr. Bianchi: August, 1922.

20 Witness: I mean 1922, your Honor. You see, there is no date on this will.

Mr. Vickers: Of course, the original will is dated August 22nd, 1922. I assume that is—the endorsement is not—

The Court: Well, yes, I see there is nothing in the body of it. It doesn't say, "In witness whereof", or anything. There is, no doubt, on the will itself.

Mr. Vickers: Yes, your Honor.

30 The Court: Then this is not a true copy.

Mr. Vickers: It is along before eight, where it is marked eight.

The Court: Oh, yes: "I nominate, constitute and appoint Charles Barend of 149 Clairmont Avenue, Montclair, as one of the executrixes of this, my last will and testament, on August 22, 1922." Well, is that supposed to be the date of the will?

Mr. Vickers: Yes, I think so.

40 Mr. Bianchi: I think so, your Honor.

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Mr. Vickers: I think that is so because it is also endorsed. I will ask this witness.

Examined by the Court:

Q. When did Mrs. Phillips give you this jewelry? A. Before she went to the hospital. 10

Q. Yes. Well, when was that? A. I believe that was in July.

Q. July? A. Yes, sir.

Q. 1922? A. Yes.

Q. Well, are you sure about that? A. Yes, sir.

The Court: Now, in July of 1922 this jewelry was given and this will was made in August 1922. Let that appear on the record. 20

Examined by Mr. Vickers:

Q. And, by the way, Mrs. Barend, the date August 22nd, 1922, is also in the handwriting of Augusta Phillips, is it not? A. Yes, sir.

Q. On the back of the will, referring to the back of the original will, endorsement. A. The time you have referred to.

Q. When Mrs. Phillips lived at your home, told you she had made a will, did she tell you of the provisions in that will? A. No, sir. 30

Q. Didn't she? A. Now, she told me she was going to compensate me for everything I had done for her and she didn't say any amount, stipulate any amount.

Q. Did she say she had made a will? A. Yes, sir.

Q. And didn't tell you any provisions of it? A. She told me that she would compensate me for what I had done. 40

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Q. What? She would compensate you for what you had done? A. Yes.

Q. She didn't say then, did she, that she had left everything to you? Did she? A. She said she left everything that she had to me.

Q. That is what I want to find out. A. Jewelry.

10 Q. Is that right? A. Yes; jewelry.

Q. Jewelry and everything? A. Yes, sir.

Q. That is right? A. Yes, sir.

Q. That is what she said, then, after she had made the will, according to her story, to you? A. Yes.

Q. In the month of August, 1922; is that right? A. Yes, sir.

Q. You are not now referring to a previous will which has been spoken of and which was torn up? A. No, sir.

Q. With regard to this jewelry—(interrupted).

The Court: Well, don't discuss that. I am not interested.

Mr. Vickers: On the question of credibility, your Honor; there is a point I want to question the credibility.

The Court: All right.

30 Q. You have said you had the jewelry in your possession, that you gave it back to her and told her that you wanted her to put it in the safe deposit box in New York; is that right? A. Yes, sir.

Q. You knew it had been there, didn't you? A. What is that?

Q. You knew it had been there in the safe deposit box? A. I don't know where she had it. I think she had it in the safe deposit; yes, sir.

40 Q. You did know it, didn't you? A. Yes, sir.

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Q. All right. And you knew she had it in the safe deposit box in New York, didn't you? A. No; she had it home in her chest.

Q. She had it home in the chest? A. Not in the chest; wore it on herself, and she gave it to me and I had it for two weeks.

Q. Is it a fact, then, that you did suggest to her that she put it in the safe deposit box? A. I told her when I went away, yes, to put it away, I didn't want it around the house.

Q. Will you listen to my question carefully, please? Is it a fact that you did suggest to her that she put it in the safe deposit box? A. Yes, sir.

Q. Very sure of that? A. Yes, sir.

Q. Although she had had it in the cedar chest when she gave it to you? A. She didn't have it in the cedar chest.

Q. She did not? A. No, sir.

Q. Where did she have it? A. She had it on herself; she carried it in a little bag.

Q. Do you know how the jewelry got to the safe deposit box in New York? A. I do not.

Q. You do not? A. She must have taken it there herself.

Q. And she must have taken it? A. I don't know.

The Court: She said "she must have"—

Witness: No; I don't know whether she took it there herself. I don't know what she—(interrupted).

The Court: The answer is "She must have taken it there herself."

Witness: No, sir; I didn't—

The Court: Yes, you did. That is what you said. In any event, she doesn't know

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how it got back into the New York safe deposit box. That is true, isn't it?

Witness: I was away for—

The Court: Is it true that you don't know how it got back in New York—

Witness: No, sir.

10 The Court: She doesn't know.

Q. Now, Mrs. Barend, in answer to the Vice Chancellor's question you just now said, "I told her to put it back in the chest." You again said that, didn't you? A. No, sir; no chest.

Q. Didn't you just say that now?

The Court: She didn't say that.

Mr. Vickers: May I refer to the record?

20 The Court: Yes.

(The following questions and answers were read as follows: "Question: She said she must have—Answer: No; I don't know whether she took it there herself. I don't know what she— Question: The answer is 'She must have taken it there herself.' Answer: No, sir; I didn't— Question: Yes, you did. That is what you said. In any event, she doesn't know how it got back into the New York safe deposit box. That is true, isn't it? Answer: I was away for— Question: Is it true you don't know how it got back in the New York— A. No, sir.

30

The Court: She doesn't know."

Witness: I didn't say that, positively not.

Q. At the time she gave you the jewelry, you say she was bedridden in your home; isn't that so? A.

40 Yes, sir.

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Q. No doubt about that, is there? A. No, sir.

Q. And for how long a period before that time do you now say that she had been bedridden and unable to leave her room?

Mr. Bianchi: Pardon me. She didn't say she was unable to leave her room. She said 10 she was down on the porch.

Mr. Vickers: No, no.

The Court: Let her answer the questions. How long before she gave you the jewelry was she unable to leave the house?

Mr. Vickers: The room, your Honor.

Witness: The room?

Examined by the Court:

Q. Yes. A. She didn't leave the room for about 20 six weeks.

Q. Before she gave you the jewelry—All we want is the truth. You have testified that this lady gave you this jewelry in July, 1922. A. I believe it was.

Q. Yes. Well, that is settled. Now, how long before July, 1922, was she unable to leave her room? A. A couple of months.

Q. Couple of months? A. That would make it May. It might have been April, possibly; I can't 30 remember exactly.

Q. She couldn't leave her room from May, 1922? A. No, sir.

The Court: Well, now, that is what you want to know, isn't it?

Examined by Mr. Vickers:

Q. Was Mrs. Phillips a large woman? A. Very 40 large; weighed over two hundred pounds.

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Q. How much? A. Over two hundred pounds.

Q. And when you say you lifted her out of the bed, do you mean that you actually lifted her entire weight? A. Yes, sir.

Q. Without any assistance from her? A. I certainly did.

10 Q. That is what you mean? A. Yes, sir.

Q. And you did that many— A. Yes, sir.

Q. —times a day? A. Yes, sir.

Q. Many times a day. And, when you lifted her out of bed, to where did you take her? A. Just put her on the side of the chair alongside of the bed.

Q. And she was unable to give you any assistance then in that— A. Hardly any.

20 Q. Listen, please. —in that performance of taking her out of bed, lifting her out and putting her on to the— A. No, sir.

Q. —chair, she was unable to give you any assistance at all; is that right? A. Yes, sir.

Q. And that was throughout the entire period she was bedridden; is that right? A. Yes, sir.

Q. Many months? A. Yes.

Q. Is that right? A. Yes.

Examined by the Court:

30 Q. How much do you weigh? A. I was a great deal heavier then.

Q. How much did you weigh at that time? A. I weighed a hundred and forty five pounds. I have been sick since then. I had a breakdown right after that.

Examined by Mr. Vickers:

40 Q. Was Mrs. Phillips paralyzed, do you know, in

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any way in the use of her hands, arms or fingers? A. No, sir.

Q. Was not. Was she paralyzed so far as the use of her legs were concerned? A. No, sir.

Q. No. And these treatments that you have referred to as douches, were they administered by means of a rubber bag? A. Yes, sir. 10

The Court: Well, now, I don't think it is necessary to go into that. What they really were were enemas.

Witness: Yes, sir.

Mr. Vickers: I don't think so. I don't know. I think it was a vaginal douche. I don't know. I thought so. That is all.

Q. You say you prepared special food. What food did you prepare? A. Little delicacies I thought she would like, such as little salads and things like that, extra fruits and things like that; little delicacies that she cared for. 20

Q. Is that in addition to her meals? A. What is that? Yes, sir.

Q. In addition to her meals? A. Yes.

Q. The other part of her meals she ate, the same as you and your husband and son? A. No, indeed she didn't; she had everything separate. 30

Q. Had everything separate? A. Yes, sir.

Q. What did you prepare for her? A. Well, soups and roast chicken, things like that, salads.

Q. Didn't you eat soups? A. Yes, sir.

Q. Didn't you eat roasts? A. I did extra cooking for her because I know a person as sick as she was—I done everything in my power to try to please her.

Q. And do you know who took care of Mrs. Phil- 40

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lips' expenses while she was in the hospital? A. She had her own account she took care of herself while she was in the hospital.

Q. She always took care of herself, did she? A. While she was at the hospital, my husband went there every night and I went there.

10 Q. Did she take her check book to the hospital? A. Yes, sir.

Q. She did? A. Yes, sir.

Q. Where is the check book now? A. I don't know.

Q. Didn't you go to the hospital and take her from there and get her effects? A. My husband did.

Q. Your husband did, did he? A. Yes, sir.

20 Q. You were not there? A. I was sick at the time.

Q. You were not at the hospital; is that right? A. I was sick at the time.

Q. And you have never seen Mrs. Phillips' check book? A. I have no check book.

Q. You have never seen Mrs. Phillips' check book since her death, have you? A. No, sir.

Q. She had a check book, didn't she? A. I don't know. I guess she must have had one.

30 Q. You said she took it to the hospital with her. A. She paid her bills there. I don't know. I was sick at the time; I was a run down wreck myself. I guess my counsel ought to be able to answer that.

Q. Well, if you can't answer it, then, just say so. It appears from the bank statement that up to the ninth of March, being a few days before her death, there were withdrawals from her account. Can you tell this Court whether or not this lady was able and did transact her own business, sign her checks

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Eva Barend—Cross.

and so forth, up to a period so close to her death?

A. I don't know; I can't say.

Q. You don't know? A. No, sir.

Examined by the Court:

Q. You didn't transact her business for her? A. 10 No, sir; I did not.

Q. You didn't present checks for her to sign herself? A. No, sir.

The Court: Well, the inference then must be that she prepared the checks herself.

Examined by Mr. Vickers:

Q. And for these months in 1923, beginning with 20 January 4th, there are, according to this account, many deposits in small amounts in this bank. Have you any knowledge at all how those deposits got into the bank? A. My boy used to take them there occasionally.

Q. Your boy used to take them there occasionally? A. He used to run errands.

Q. Is your boy here in Court? A. No, sir; he is not.

Q. How old is he? A. He is sixteen. 30

Q. Sixteen? A. Yes, sir.

Q. Do you know what did come back from the hospital after Mrs. Phillips died so far as the personal possessions are concerned? A. I gave them all away, her clothes. I didn't want them.

Q. Did you know what came back? A. Just her personal clothes.

Q. Just clothes? A. Clothes.

Q. Nothing else, so far as you ever saw? A. No, 40 sir.

Eva Barend—Cross.

Cross-examination by Mr. Boyd:

Q. Let me ask you a few questions, Mrs. Barend. What was the last time, so far as you know, that Mrs. Phillips was strong enough to go to New York? A. Why, that was when she had a radium treatment.

10 Q. About when was that? A. That was during—that was when she first came to me. I can't say just when that was.

Q. Well, take it— A. She had two or three treatments.

Q. —from the month of May, 1922, up to the time that she went to the hospital in July, 1922, she was in a condition where she was practically bedridden, except that you lifted her out? A. Yes, sir.

20 Q. During that time and up to the time that she went to the hospital, was she in a condition where she could possibly, without your knowing it, have gotten up, dressed, gone out of the house and gone to New York? A. Outside of the time that I was not there, I don't know no, sir.

Q. Well, I am only talking of the time from May, 1922, until she went to the hospital in July.

30 The Court: She went to the hospital in October.

Mr. Boyd: She testified July—

The Court: No; she did not. She testified the jewelry was given to her in July.

Mr. Boyd: In July.

The Court: She went to the hospital in October.

Q. You said that you had the jewelry for two

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Lena Rudensey—Direct.

weeks before Mrs. Phillips went to the hospital; is that right?

The Court: I do not think it is necessary to cross examine on the jewelry.

Mr. Boyd: All right.

Cross-examination by Mr. Bianchi:

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Q. Were you taken ill after she went to the hospital? A. I certainly was. I was a complete wreck the week she left my house and went to the hospital, I was a complete wreck.

Q. Have you practically been ill since then? A. Yes, sir; I have.

Q. And were you all right before she came there? A. I was; yes, sir.

20

LENA RUDENSEY, sworn for the defendant.

Direct-examination by Mr. Bianchi:

Q. What is your name? A. Mrs. Rudensey.

Q. And were you a landlord—landlady, rather? A. Yes, sir.

Q. Of what premises? A. Of house 149 Clairmont Avenue.

Q. And during that time did you receive rent from Mrs. Barend or Mr. Barend? A. Yes, sir.

Q. And what was the amount of their rent? A. Sixty five dollars.

Q. And do you know if you ever received any checks? A. Well, my husband used to take care of that and take care of the rentals.

Q. Did Mrs. Barend ever hand any checks over to you? A. At the store, at my husband's store.

Q. Do you know the amounts of the checks?

30

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Solomon S. Weinthal—Direct.

Mr. Vickers: That is objected to.

The Court: Objection sustained.

A. The rent was sixty five dollars.

Q. (By the Court.) And it was paid to your husband? A. Yes, sir.

10

The Court: Well, now, she can't testify to that.

Mr. Bianchi: I had a conversation with her. I thought it was just the other way, pardon me.

Q. You knew Mrs. Phillips? A. I knew her very well.

Q. And do you know what her physical condition was at the time that Mrs. Barend—(interrupted).

A. Well, she was sick.

Q. Do you know how sick? A. Well, sick enough that Mrs. Barend had to care for her.

Q. And where was she, in bed, out, or where? A. Well, most of the time, she was in bed, but at times she would try to get out, but she couldn't.

Q. Was she a small woman or big woman? A. Heavy woman, very heavy woman.

Q. Do you know that Mrs. Barend took care of her? A. I know that she did.

Q. What did you see her do? A. Well, she cared for her as a nurse would.

Q. Well, did you come in her house? What floor did you live on. A. I used to visit Mrs. Phillips, make a visit every day to see how she was, and Mrs. Barend took care of her.

Q. Were you there in the same building? A. Yes; we lived upstairs.

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Q. It was a two family house? A. Yes.

Lena Rudensey—Cross.

Mr. Bianchi: That is all.

Cross-examination by Mr. Vickers:

Q. Mrs. Rudensey, what time did Mrs. Phillips come to the house of Mrs. Barend? A. Well, at the time they moved in our house, she wasn't a bit well.

10

Q. What time did she come there? A. Well, in May.

Q. May? A. May.

Q. May, 1922? A. Well, I don't remember the year, but it was in May.

Q. Well, how long did Mrs. Phillips live in your house? A. Why, she lived in our house until she went to the hospital.

Q. How long was it, a month or six months, one year or two years? A. Oh, she was there quite a time.

20

Q. Well, how long, Madam? A. I don't remember.

Q. Can't you tell us whether it was one month or six months? A. Oh, longer than that.

Q. How long? A. Well, they came in May and she was sick all along until—I think the following year in September or October she was taken to the hospital and from that time on until March she was at the hospital and she died there.

30

Q. Did you ever see Mrs. Phillips go out in an automobile? A. I have not; no.

Q. Never saw her go out in an automobile. Did you ever see her go out in a taxi cab? A. No; but, at the time they took her to the hospital, we helped her down to go in the taxi cab to the hospital.

Q. That is the only time that you ever saw her go in a taxi cab? A. Yes, sir; the only time.

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Lena Rudensey—Cross.

Q. You never saw her go in any other kind of a pleasure automobile? A. She was too sick for that.

Q. Did you ever see her on the street at all? A. Well, sometimes she would try, she would attempt to take a walk, when she first came to the house, but she couldn't. She would probably walk a block
10 or so and then come back.

Q. And you saw her do that? A. Yes, at first, when they first came to the house.

Q. And saw her do that on more than one occasion? A. Well, no. When they first moved in, she would try to do it. She didn't want to get in bed, if she could possibly help it, but she was too sick, and then, after they were there a while, then she was confined to the bed.

Q. If you went in each day to see her, can you tell us for how long a period, in your opinion, she was confined to the bed so that she couldn't get out of the bed? A. Well, in the morning, I would go down in the morning to see how she was. She was in bed. And then towards noon she would try to get out and then in the afternoon she would go back to bed again.
20

Q. Yes. And for how long a time was that that you observed that? A. Well, that was all along until she had—until later on she got very sick and was confined to bed all the time and then taken to the hospital.
30

Q. Now, tell us for how long a period before she went to the hospital was she confined to the bed. Can you tell us that? A. Well, I don't know. I suppose, a couple of months.

Q. Couple of months. And, during those couple of months, were you there daily? A. I saw her every day.
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Q. Every day. And, when you say a "couple of

Lena Rudensey—Cross.

months", do you mean two months? A. No; I mean about five or six months.

Q. And seeing her daily through those five or six months before she went to the hospital? A. Yes, sir.

Q. You say that she was unable to get out of her bed and go out of the house; is that right? A. Why not, when she often came there?
10

Q. No, no. During those five or six months, I am talking about, before she went to the hospital. A. She was unable to get out of the bed.

Q. She was unable to get out of the bed? A. Yes.

Q. Unable to leave the house at all? A. Yes.

Q. No doubt about that at all in your mind, is there? A. Well, I was there. I used to see—(interrupted).
20

Q. I say, there is no doubt in your mind about that? A. No.

Q. By the way, you say you are the landlord, or is your husband the landlord? A. Well, my husband is the landlord.

Q. Oh, your husband is the landlord. And he made the rent arrangement? A. Well—

The Court: Well—

Q. He made the arrangements with Mr. and Mrs. Barend; is that right? A. Yes.
30

The Court: Yes, she said that.

Witness: And I was present at the time Mrs. Phillips handed the jewelry to Mrs. Barend. I was there.

The Court: Yes. All right.

Mr. Bianchi: I was going to say, your Honor, that, in my opinion, because of the fact of that jewelry—irrespective of the fact it was given to her, evidently went back of
40

Lena Rudensey—Cross.

the law. The question of whether it was really a gift, I am going to abandon that. I think the law is against us on that question.

10 The Court: All right. Then it will be understood the claim to the jewelry is abandoned.

Mr. Bianchi: I think the law is against us.

The Court: Yes. I think so, too.

Mr. Vickers: I move that the testimony by this witness respecting the rent arrangement be stricken from the record on the ground, clearly, that she has failed to show she knows the amount of the rent.

20 The Court: I will allow it to stand. She says the rent is sixty five dollars a month. That is all she knows.

Mr. Vickers: She testified she was the landlord.

Witness: My husband. My husband is the landlord.

Mr. Vickers: On cross examination she testified that the arrangement was made with the husband.

30 The Court: All right. I understand. I will let the testimony stand as it is.

SOLOMON S. WEINTHAL, sworn for the defendant.

Direct-examination by Mr. Bianchi:

40 Q. Were you the landlord of Mr. Barend and Mrs. Barend at any time? A. Yes, sir.

Solomon S. Weinthal—Direct.

Q. Where? A. Number 30 North Willow Street.

Q. Do you know the amount of rent that they paid there? A. Sixty five dollars a month.

Q. During the period that they stayed—were living at your home was Mrs. Phillips there? A. She came there on September 1st or 2nd, I believe.

Q. (By the Court). How long did she stay there? A. She stayed there until they moved away. 10

Q. (By the Court.) When was that? A. The following May.

Q. Sixty five dollars a month? A. Yes, sir.

Q. And do you know whether you got cash or checks or how it was paid at different times? A. Well, very often I received a check from—with the endorsement on the bottom of it of— 20

Q. Phillips? A. Mrs. Phillips for sixty five dollars and endorsed by Barend.

Q. Do you know how sick Mrs. Phillips was? What did you see? Tell us. A. Well, I went in quite often; we had a twin house, right next to one another.

Q. Double house? A. Double house. And, of course, my wife and I used to go over there in the afternoon and sometimes in the evening—I have nothing else to do—used to go in there and occasionally speak with the old lady and find out how she feels, and so forth, and found her a very sick woman, after she got there, very sick. She used to tell me her troubles, a good deal of her troubles in a way with her former—with her husband, and so forth. 30

Q. Did you see Mrs. Barend whether she did anything for her? A. What is that, sir?

Q. Did Mrs. Barend do anything for her, take care of her? A. No, I didn't see that, no more than 40

Solomon S. Weinthal—Cross.

sometimes serve her with something to eat or drink there while she was sitting up.

Q. Well, who took care of her while she was sick?

The Court: No. He said all he saw was that she was served with something, with food or drink. 10

Q. Do you know if anybody took care of her? A. Mrs. Barend took care of her.

Mr. Vickers: Of course, that is objected to as a conclusion.

The Court: Yes. I will sustain the objection.

20 *Cross-examination by Mr. Vickers:*

Q. Mr. Weinthal, up to the time that Mrs. Phillips went to the hospital, you were a regular caller there; is that right? A. No, sir; I was not.

The Court: This was at the first place. Then they moved from the first and second place.

Mr. Vickers: Your Honor is right.

30 Q. After she left your house, did you ever see her again? A. Well, on several occasions I called on them when they moved over to Clairmont Avenue to see her and she then was in bed when I called.

Q. She was then in bed? A. Yes.

Q. Do you remember when you last saw her; can you state the month? A. I don't know. I think the last time I saw her was in the month of September. I was going away in September. 40

Amelia S. Weinthal—Direct.

Q. September— A. September of 1922.

Q. In the year 1922? A. Yes, sir.

Q. And she was then in bed? A. Yes; I think it was September.

Q. And you saw her in her bedroom? A. Yes, sir.

Q. And, I suppose, Mrs. Weinthal was with you? 10 A. My wife?

Q. Yes. A. Yes, sir; she was with me.

AMELIA S. WEINTHAL, sworn for the defendant.

Direct-examination by Mr. Bianchi:

Q. Now, Mrs. Weinthal, did you know Mrs. Phillips? A. Yes, sir. Mrs. Phillips— 20

Q. Where did you see her? A. Mrs. Phillips moved to Montclair, I guess it was the first or second of September, and they lived next door to us. Then Mrs. Phillips was not a sick woman—but, well, she lived in Montclair about a month when she started to get sick and then she got very sick.

Q. And then what happened? A. And then what happened? Well, Mrs. Phillips, she went to New York for treatment and then one day she came back, after she was to New York for treatment, and I come to see her and was up in the room with her and she says, "Well, Mrs. Weinthal," she says, "you know I am a very sick woman, and," she says, "I have a step sister I haven't seen for over twenty years—" 30

The Court: Now, this is not responsive.

Q. No. We don't want to know what she said 40

Amelia S. Weinthal—Direct.

to you. Who took care of her while she was sick?

A. Mrs. Barend.

Q. (By the Court.) Well, do you know that? A. Well, I lived next door.

The Court: All right.

10

Q. Is that the only reason? A. No; that is not the only reason.

Q. How? A. I come in and see Mrs. Barend taking care of her.

Q. What did she do? A. Well, gave her to eat.

Q. You see, we don't know. A. Well, it was— Well, she gave her to eat, and I seen her bathe her and I seen Mrs. Barend wash her and take care of her, as you do with anybody who is sick.

20

Q. Do you know whether Mrs. Barend became sick from taking care of Mrs. Phillips? A. Yes; she did get sick; she got run down from it.

Q. While she was at your home, I mean. A. No; not then; later on; her husband, now, lived next door to us, was our neighbor—

30

Q. Were you there when these treatments were given to her at any time? A. No. Then she lived in the other house, when she got real sick. She started with radium treatments at our place, then when she got real ill, they lived on Clairmont Avenue, see?

Mr. Bianchi: That is all.

The Court: Is that all?

Mr. Bianchi: We have several witnesses, but they are just the same as this, will be corroboration, that is all.

The Court: I don't think it is necessary, if it is cumulative. What do you want to do,

40

Amelia S. Weinthal—Direct.

file memorandums? The jewelry claim has been abandoned.

Mr. Bianchi: Yes, your Honor. I think the law is against us on that. I think there is no doubt about it.

The Court: Perhaps you had better file memorandums.

10

Let it be noted on the record that the bill of complaint alleges that Bianchi entered into an agreement with Barend to collect her claim against the Phillips' estate, Bianchi to have twenty-five per cent. of the amount collected; and that this agreement was admitted in the answers, and also was admitted in open court.

20

30

40

Exhibit C-2.

O K Taylor

Capital and Surplus over \$10,000,000

NATIONAL SURETY COMPANY

115 Broadway, New York

NOTICE Agents' acts not binding on Company
unless within agents' written limits of authority.

10

APPLICATION FOR BOND OF

Administrator, Temporary Administrator, Administrator with Will Annexed, Executor, Guardian, Guardian *ad litem*, Special Guardian, Committee of Incompetent Person, Conservator, Curator, Trustee, Receiver, Assignee, Trustee in Bankruptcy, etc. etc.

20

The undersigned hereby request NATIONAL SURETY COMPANY to be come Surety on bond as administrator in amount of \$16,000.—, and if the Company shall execute said bond the undersigned agree to pay \$58.00 premium upon execution of said bond, and \$38.67 annually thereafter in advance, until the Company shall be furnished with conclusive written legal evidence of its discharge from liability thereunder.

30

1. Full name of applicant Louis S. Weinthal
Age 67 Years.

2. (a) Lineage or birth: (viz: American, English, French, German, Irish, Negro, etc) German

(b) If not born in the United States, how long have you lived in the United States? U. S. A.

(c) If a foreigner, have you been naturalized?

40

3. Business address 150 Claremont Av. Montclair, N. J.

Exhibit C-2.

4. Daily occupation or employment Retired

5. Residence address 150 Claremont Av. Montclair. Married Yes.

6. Give YOUR OWN financial statement, in detail.

ASSETS.

Cash in Bank of Montclair Bank \$2500.—

Real estate, the title to which is in MY
NAME.

10

A 150 Claremont Ave. Montclair \$15,000.—

Stocks and bonds (market value) consisting of:

Liberty Bonds \$1500.—

Total Assets, \$19,000.00

\$19,000.00

20

LIABILITIES.

Money Borrowed on Notes None

Accounts payable None

Mortgages on real estate scheduled opposite

A None c

B c

C c

Other liabilities (in detail) c

Total Liabilities \$ c None 30

7. Are you endorser, or have you become surety for any person or corporation No.

If so, in what amount, and for whom c

8. Give names and addresses of FIVE persons for reference.

Michael Long; Chief Police, Newark.

John Kent; Contractor; 157 Claremont Ave., Montclair.

40

Exhibit C-2.

Thomas Curtis; Contractor; Montclair.

Morris Cohen; Hardware; Montclair.

9. Has application for this bond made to any other Company? No. If so, state why not executed c

10. Do you succeed another fiduciary in the management of this Estate? No. If so, give reason for your appointment and name and address of former fiduciary c

Have you given bond for this estate before? No. If so, give names and addresses of former sureties and reason for new bond c

11. Are you indebted to the Estate? No. If so, give full particulars c

12. Is the Estate indebted to you? No. If so, give full particulars c

13. Will you, in the performance of your duties in the matter, employ an Attorney, and agree to act as he shall advise? Yes. If so, give name of Attorney, and his address, Ovidio C. Bianchi, 243 Main St., Orange, N. J.

14. Proceeding filed in Court of Surrogate, Essex County, State of New Jersey.

15. Give the date of your appointment 3/15, 1924.

30 Describe fully all the Assets and Liabilities of the Estate.

Liberty Bonds about—estimated value \$4000.—

Location of Real Estate; None. Description c

Value c Mortgage c Income c

18. Liabilities of the Estate, with names and addresses of Creditors:

Name of Creditor: Dr. Edward Hyemes, Address New York City. Nature of Debt: Doctor. Amount, \$1500.

40

Exhibit C-2.

Name of Creditor: Meyer Co., Address New York City. Nature of Debt: Undertaker. Amount, \$850.

19. Give names and addresses of persons or corporations now in possession of any of the personal property; also the nature and amount and state when same will be delivered to you Safe Deposit Vault in Bank of Montclair, N. J. 10

20. Does the estate own an unincorporated business, or any interest therein? No. If so, describe it and state whether you will conduct such business c c

21. Will your administration require investment of trust funds? No. If so, will you secure an order of Court to protect yourself and your surety in making such investment? Yes. 20

22. How often will you be required to render your accounts, and by whom will they be audited? At once. When will you be required to render your final account? As soon as convenient.

23. Are you connected by blood or marriage with the infant, incompetent person, or beneficiary of trust? No. If so, in what way? c

To be answered by Administrator, Temporary Administrator, Administrator with Will Annexed, or Executor. 30

24. Give name of Decedent Augusta Phillips.

25. Give time and place of death March 13, 1923

26. Did decedent leave a will- Yes. If so, attach a copy of it. Refused Probation.

27. Who are the next of kin, legatees or heirs at law? Give full names, ages, degree of relationship to decedent, residence addresses, and state your own relationship, if any. 40

Exhibit C-2.

Eva Barend; over age; cousin; 149 Claremont Ave., Montclair, N. J.

Martha Brown; over age; cousin; 555 Eastern Parkway, Brooklyn, N. Y.

Emma Katsky; over age; cousin; 555 Eastern Parkway, Brooklyn, N. Y.

10 Gustav Brown; over age; cousin; 555 Eastern Parkway, Brooklyn, N. Y.

Max G. Schwartz; over age; cousin; 876 W. 180th St., Brooklyn, N. Y.

Moses R. Schwartz; over age; half-sister; 876 W. 180th St., Brooklyn, N. Y.

Hannah Falk Autenrieth; over age; half-nephew; address unknown.

William A. Autenrieth.

20 28. Give name of infant, incompetent person, or beneficiary of trust. None.

29. Give name of Insolvent or Bankrupt.

30. Give nature and place of business.

31. Give name and address of Referee in Bankruptcy.

32. What is to be done with the assets coming into your hands?

30 THIS AGREEMENT made between the undersigned (hereinafter called the Indemnitor), and the NATIONAL SURETY COMPANY (hereinafter called the Company),

WITNESSETH:

40 WHEREAS, the Company has executed or is about to execute or procure the execution thereof for the Indemnitor, the bond described in the foregoing application which application is hereby referred to and made a part of this agreement.

Exhibit C-2.

NOW, THEREFORE, in consideration of the execution or procurement of the execution of such bond and the sum of One Dollar paid to the Indemnitor by the Company, the Indemnitor covenants and agrees with the Company as follows:

1. That the Indemnitor will pay to the Company, or its duly authorized Agent, the premium agreed 10 in said application to be paid.

2. That the Indemnitor will immediately furnish to the Company an inventory of the estate to be administered upon, and will at all times furnish to the Company all material information and knowledge which the Indemnitor may acquire concerning such estate, and will, whenever requested by the Company, make written reports, in form required by the Company, of the condition of the estate, and the Indemnitor's administration thereof, and will, at all reasonable times, give to the Company's authorized representative full and free access to all books, records and accounts concerning such estate for the purpose of auditing and verifying the same, and does hereby authorize and empower any person or persons, firms or corporations having the custody of any such books, records or accounts, or any money or other property belonging to said estate, to exhibit the same to such representative for examination and to answer any pertinent questions relating thereto, and to certify to the possession thereof. That the Indemnitor will keep true and accurate accounts of his trust, which shall at all times be open for free and uninterrupted inspection and examination by the Company or its authorized representative, and will duly advertise for claims in the manner provided by law. 20 30

3. That the Indemnitor will immediately upon 40

Exhibit C-2.

the execution of this instrument, deposit in the custody of the Company, or in a safe or double-locked box in the.....Safe Deposit Company, all assets of the estate in the Indemnitor's possession or control capable of being so deposited, of every kind or nature whatsoever, *except* 10 *money*, so that they can be withdrawn only with the consent of the Company, and will hereafter, whenever the Indemnitor shall become possessed of any other such assets, deposit same in like manner, and will not sell, exchange, convert into cash, nor in any manner dispose of said assets, or any of them, without an order of the court therefor, or the written consent of the Company. In the event of a sale of any of the securities belonging to said estate, said Indemnitor agrees to deposit the proceeds thereof in the manner hereinafter specified, 20 with respect to the deposit of money belonging to said estate.

4. That the Indemnitor will immediately upon the execution of this instrument, deposit in the.... Trust Company, or in such other legal banking depository as the Indemnitor may select and the Company shall in writing assent to, *all moneys* belonging to said estate as shall be in 30 the possession or control of the Indemnitor, and that thereafter, immediately upon the receipt of any moneys belonging to said estate, will deposit the same in said trust company or other banking depository so selected and assented to. That the Indemnitor will not withdraw any of the sums so deposited, except upon check signed by said Indemnitor in his fiduciary capacity, and bearing the written consent of the Company to payment thereof. That the Indemnitor will immediately give no- 40

Exhibit C-2.

tice to the Company of any deposit made as aforesaid; it being understood and agreed that the consent of the Company to the deposit of any money elsewhere than in said depository may be revoked at any time upon written notice to the Indemnitor, in which event all such moneys shall at once be deposited in such depository as may be agreed upon 10 by the parties hereto in the manner aforesaid.

5. That the Indemnitor will, at all times, indemnify and keep indemnified the Company, and save it harmless from and against all claims, demands, liabilities, costs, charges and expenses of every kind and nature which it shall at any time sustain or incur and as well from all orders and decrees against it by reason or in consequence of having executed said bond, and will pay over, reimburse 20 and make good to the Company, its successors and assigns, all sums and amounts of money to meet every claim, demand, liability, cost, charge, expense, suit, order or decree against it by reason of the execution of the bond applied for, and before the Company shall be required to pay thereunder. Counsel and attorney's fees, whether incurred under retainer or salary, or any other expense incurred by the Company at any time, in any litigation, investigation, collection of premiums due on this 30 bond or in seeking its discharge as surety shall be deemed a proper charge or expense within the meaning of the preceding sentence, and the Company is hereby authorized to prove such costs or expenses in any action or proceedings against the Indemnitor and include the same in any judgment or decree which may be recovered against said Indemnitor, and the Company may bring as many actions hereupon as there are defaults, the recovery of 40

Exhibit C-2.

each judgment not to be a bar to the recovery of any other judgment.

6. That the vouchers or other proper evidence of payment by the Company in discharge of any liability under said bond shall be prima facie evidence against the Indemnitor of the fact and
10 amount of the Indemnitor's liability to the Company.

7. That the Indemnitor will immediately notify the Company, at its principal offices in the City of New York, of the making of any demand, or the giving of any notice, or the commencement of any proceeding to fix any liability which the Company may be called upon to discharge, by reason of the execution of said bond.

8. That the Indemnitor will, on request of the
20 Company, procure the Company's discharge from liability under said bond, and the Company shall, at its option, have the right to the use of the Indemnitor's name, and to all rights and privileges of the Indemnitor, and, at any time, shall have the right to be discharged from liability for the further default of the Indemnitor, and to require the Indemnitor to account and give new surety or sureties.

9. That the acceptance of this agreement, and of
30 the Indemnitor's agreement to pay premiums for the execution of said bond or the acceptance at any time by the Company of other security, shall not in any way abridge or limit the right of the company to be subrogated to any right or remedy, or limit any right or remedy, which the Company might otherwise have, acquire, exercise or enforce, and the Company shall have every right and remedy
40 which an individual surety acting without compensation would have.

E.C.15

DAY
MONTHLY—BI-MONTHLY—QUARTERLY

Mrs Augusta Phillips

Receipt of Statements, and cancelled vouchers for
above account, acknowledged on the following dates:

Feb 17 1922	2/7	<i>Er Barend</i>
AUG 7 - 1922	3/2	
AUG 7 - 1922		<i>Augusta Phillips</i>
AUG 16 1922		
SEP 27 1922		
FEB 17 1923	2/3	<i>Louis Barend</i>

~~30 no. Willow St.~~

149 Claremont Ave.

Montclair, N.J.

AUG 16 1922

I request that statement and cancelled vouchers
be ready for delivery monthly bi-monthly quarterly
on the _____ day of the month.

a

BANK OF MONTCLAIR
MONTCLAIR, N. J.

by C16

NAME _____

ADDRESS

MRS. AUGUSTA PHILLIPS,
30 NORTH WILLOW STREET,
MONTCLAIR, N. J.

MADE BY BAKER-VAWTER CO.

OLD BALANCE	DATE	CHECKS IN DETAIL	DATE	DEPOSITS	DATE	NEW BALANCE
		BALANCE BROUGHT FORWARD	1921			
3 500.00			DEC 28	50.00	DEC 28	500.00*
3 139.4			JAN 5	65.00	JAN 5	313.94*
248.94			JAN 5	198.94	JAN 6	248.94*
331.88			JAN 6	82.94	JAN 6	331.88*
311.88			JAN 18		JAN 18	311.88*
308.88			JAN 19		JAN 19	308.88*
298.88			JAN 27		JAN 27	298.88*
296.88			FEB 3		FEB 3	296.88*
271.88			FEB 7		FEB 7	271.88*
306.88			FEB 7	12.00	FEB 7	306.88*
241.88			FEB 8	35.00	FEB 8	241.88*
232.90			FEB 11		FEB 11	232.90*
231.68			FEB 23		FEB 23	231.68*
306.68			MAR 6	140.00	MAR 6	371.68*
301.68			MAR 7		MAR 7	306.68*
311.68			MAR 16		MAR 16	301.68*
309.68			MAR 18	10.00	MAR 18	311.68*
344.68			MAR 28		MAR 28	309.68*
279.68			APR 8	35.00	APR 8	344.68*
277.24			APR 12		APR 12	279.68*
252.24			APR 13		APR 13	277.24*
197.34			APR 18		APR 18	252.24*
144.21			MAY 3		MAY 3	197.24*
220.62			MAY 8		MAY 8	158.39*
155.62			MAY 9		MAY 9	144.21*
185.62			MAY 12		MAY 12	140.62*
173.62			MAY 13	80.00	MAY 13	220.62*
178.62			JUN 3		JUN 3	155.62*
251.62			JUN 8	30.00	JUN 8	185.62*
175.62			JUN 19		JUN 19	173.62*
162.47			JUN 19	80.00	JUN 19	251.62*
150.62			JUN 23		JUN 23	178.62*
146.96			JUL 5		JUL 5	185.62*
246.96			JUL 10		JUL 10	173.62*
115.68			JUL 13		JUL 13	162.47*
			JUL 15		JUL 15	150.62*
			JUL 17		JUL 17	146.96*
			JUL 29	100.00	JUL 29	246.96*
			AUG 4		AUG 4	176.96*
			AUG 15		AUG 15	168.46*
			AUG 17		AUG 17	158.46*
			AUG 19		AUG 19	148.46*

NAME

MRS. AUGUSTA PHILLIPS.

ADDRESS

30 NORTH WILLOW STREET.

MONTCLAIR, N. J.

MADE BY BAKER-VANTER CO.

OLD BALANCE	DATE	CHECKS IN DETAIL	DATE	DEPOSITS	DATE	NEW BALANCE
		BALANCE BROUGHT FORWARD ☒			AUG 25	148.46
148.46	AUG 25	45.00-			AUG 25	103.46*
103.46	AUG 25	5.00-			AUG 25	88.46*
88.46	SEP 1	2.25-			SEP 1	86.21*
86.21	SEP 2	5.00-			SEP 2	81.21*
81.21	SEP 5	5.00-			SEP 5	76.21*
76.21	SEP 7	8.98-	SEP 6	241.18	SEP 6	317.39*
317.39	SEP 22	65.00-	SEP 7		SEP 7	308.41*
308.41	OCT 4	22.50-	SEP 22		SEP 22	243.41*
243.41	OCT 5	65.00-	OCT 4		OCT 4	220.91*
220.91	OCT 6	3.66-	OCT 5	55.00	OCT 5	210.91*
210.91	OCT 11	22.50-	OCT 6		OCT 6	207.25*
207.25	OCT 18	22.50-	OCT 11		OCT 11	184.75*
184.75	OCT 25	22.50-	OCT 18		OCT 18	162.25*
162.25	OCT 27	5.50-	OCT 25		OCT 25	139.75*
139.75	NOV 3	22.50-	OCT 27	300.00	OCT 27	432.25*
432.25	NOV 13	145.00-	NOV 3		NOV 3	409.75*
287.25	NOV 15	22.50-	NOV 13		NOV 13	204.25*
204.25	NOV 24	22.50-	NOV 15		NOV 15	181.75*
176.75	NOV 24	5.00-	NOV 24		NOV 16	176.75*
154.25	NOV 25	5.00-	NOV 24		NOV 24	154.25*
149.25	DEC 4	22.50-	NOV 25		NOV 24	149.25*
121.75	DEC 6	5.00-	DEC 4		NOV 25	144.25*
94.25	DEC 12	5.00-	DEC 6		DEC 4	121.75*
46.75	DEC 15	2.50-	DEC 12		DEC 6	94.25*
44.25	DEC 28	5.00-	DEC 15		DEC 12	46.75*
39.25			DEC 28		DEC 15	44.25*
			DEC 30	300.00	DEC 28	39.25*
					DEC 30	339.25*
						1923
					JAN 4	337.25*
					JAN 5	314.75*
					JAN 6	292.25*
					JAN 8	242.25*
					JAN 10	240.25*
					JAN 13	217.75*
					JAN 25	192.50*
					JAN 25	167.50*
					JAN 26	165.50*
					JAN 31	143.00*
					FEB 3	141.00*
					FEB 6	116.00*
					FEB 7	114.78*
					FEB 10	112.78*
					FEB 14	90.28*

SHEET NO. _____

BANK OF MONTCLAIR
MONTCLAIR, N. J.

NAME

MRS. AUGUSTA PHILLIPS.

ADDRESS

149 CLAREMONT AVE.,

MONTCLAIR, N. J.

MADE BY BAKER-VAWTER CO.

OLD BALANCE	DATE	CHECKS IN DETAIL	DATE	DEPOSITS	DATE	NEW BALANCE
		BALANCE BROUGHT FORWARD ☒				
.003	FEB 15	2.50-		102	FEB 15	90.28
87.78	FEB 17	5.00-			FEB 18	87.78*
82.78	FEB 21	22.50-			FEB 17	82.78*
60.28	FEB 23	10.00-			FEB 21	60.28*
50.28	MAR 1	3.00-			FEB 23	50.28*
47.28	MAR 3	22.50-			MAR 1	47.28*
24.78	MAR 9	22.50-			MAR 3	24.78*
					MAR 9	2.28*
					APR 2 6/23	1.70 w

Exhibit C-2.

10. The Indemnitor hereby affirms that the foregoing declarations made and answers given are the truth without reservation, and are made for the purpose of inducing the Company to become surety or to procure suretyship, or both, on the bond applied for herein.

IN WITNESS WHEREOF, the Indemnitor has
duly executed this instrument, this 15 day of
March, 1924, at Montclair, State of N. J.
Signed in the presence of
Ovidio Bianchi. Louis S. Weinthal.

State of New Jersey, {
County of Essex. } ss.:

On the 15 day of March, 1924, before me personally appeared Louis S. Weinthal, to me known, and known to me to be the individual described in and who executed the foregoing instrument, and duly acknowledged to me that he executed the same.

Ovidio Bianchi,
M. C. C., N. J.

Exhibit C-17.**IN THE NAME OF GOD, AMEN.**

I, Augusta Phillipps, of 149 Claremont Ave Montclair N. J. Being of Sound Mind, Memory and Understanding, do make and publish this my last Will and Testament in manner following, that
 10 is to say:

Considering the uncertainty of this life do make ordain publish and declare this to be my last will, and Testament:

1st After all my just and lawful debt are paid as soon as practicable, after my demise, I give, and bequeth unto my setp-sister Hannah Falk, Autner-ieth, now Lubel or Lubelsky and to her son William August Autenrieth or any other heirs of hers or his the sum of \$00./100. One Dollar each, this I specify as both were very ungratefull to me, and my late hsuband
 20

Second I also bequeth to the heirs of Emile Cohn the sum of \$500.00/100. (Five Hundred dollars) each, Anna Cohn 3910 Fulton St. Byn Morrel Cohn 3910 Fulton St Brooklyn N. Y.

Leo Cohn address unknown Aaron Cohn address unknown of New York

Third To our dear friend Dr. Ed. E. Hyems of
 30 540 West 136th St New York city, I bequeth the sum of Five Hundred Dollars \$500.00/100 being the wish of my late husband, for his gratefullness: To Florrie Hyems & mother my best set of linens table in my ceder chest.

Fourth Eva Barend my devoted cousin of 149 Claremont ave Monclair New Jersey, I bequeath all my personal belongings, my Diamond earrings and ring now in the Vault of Corn exchange Bank Hudson river Branch 72nd St. Col. Ave.
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Exhibit C-17.

To her husband Charles Barend, my husband watch and chain

I also bequeth to Eva Barend my liberty and Victory bonds now in the Vault of the Bank of Montclair N. J. to the ammount of 4000.00/100 (Four thousand Dollors.)

Fifth to Moses. R. Schwartz of 140 Walnut St. Montclair I bequeth the sum of \$500.00/100 (Five Hundred Dollors) he can devide among his children or keep for his-self. 10

Sixth I bequeth the sum of \$300.00/100 Three Hundred dollors for a perpetual fund to keep the graves, & 1/4 of the plot in first class condition this money to be deposited in Corn exchange Bank 72nd St. Columbis ave. Mont. Carmel association to send bills to them where prompt payment will be received Plot No. is 236 Section B. 20

Seventh. Likewise I nominate, constitute and appoint Dr. Ed. E. Hyems of 540 W. 136th St. New York City one of the Exeutrix of this my last will and testament.

Should Dr. Hyems not survive me then in that event, I nominate and constatute my cousin Martha Brown of 555 Eastern Parkway N. Y.

Likewise I nominate, constitute and appoint Charles Barend of 149 Claremont Ave Montclair N. J. as one of the Executrix of this my last will and testement on August 22/1922. 30

Eight: In the Bank of Montclair, Safe deposit Vault No. 695 I have Victory, Liberty, bonds and bank book. In Corn Exchange Bank Hudson River Branch 72nd St. Col Ave. I have Bank book of Greenwich Saving Bank husband watch & chain, my diamond ring & earrings, all my Silver I bequeth to Eva Barend 40

Exhibit C-17.

I hope and beg my wishes will be carried my way

AUGUSTA PHILLIPPS

10 Sign Signed, Sealed, Published and Declared by the said Testator as and for my last will and testament in our presence who in their presence and at request and in the presence of each other have hereunto subscribed our names as witnesses.

WILLIAM RUDENSKY
SAM TOLKOWSKY.

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Stipulation.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

LOUIS S. WEINTHAL, as Administrator, &c. of Augusta Phillips, Deceased,
Complainant-Appellee,

and

EVA BAREND, CHARLES BAREND and OVIDIO C. BIANCHI,
Defendants-Appellants.

10

Between

HANNAH LUBELL,
Complainant-Appellee,
and

EVA BAREND, OVIDIO C. BIANCHI, LOUIS S. WEINTHAL and EDWARD H. HYEMS,
Defendants-Appellants.

On Appeal from Court of Chancery.
Stipulation.

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It is Hereby Stipulated by and between the respective counsel in the above entitled cause that to save expense and to keep the record from becoming unduly bulky that Exhibits C-1-3-4-5-6-7-8-9-10-11-12-13 and 14 need not be printed at length in the State of Case and that the following statements show the nature and contents of such exhibits:

Exhibit C-1 is a certificate of appointment of

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Stipulation.

Louis S. Weinthal as Administrator of the Estate of Augusta Phillips.

Exhibit C-3 is a proof of claim drawn by defendant, Bianchi, and filed by Eva Barend for Three Thousand Three Hundred and Sixty (\$3,360) Dollars for board, nursing, etc. alleged to have been rendered by her to Augusta Phillips.

Exhibit C-4 is a Release drawn by defendant, Bianchi, and obtained by the administrator of the estate of Augusta Phillips from Eva Barend.

Exhibit C-5 is a proof of claim drawn by defendant, Bianchi, of Charles Barend for Ninety Four Dollars and Ninety Five (\$94.95) Cents alleged to be due him from Augusta Phillips, and which claim was filed with Louis S. Weinthal, administrator of the estate of Augusta Phillips.

Exhibit C-6 is a Release drawn by defendant, Bianchi, obtained by Louis S. Weinthal, administrator of Augusta Phillips, from Charles Barend.

Exhibits C-7, 8, 9, 10 and 11 are four bank books and four checks, the details of which are fully stated in the transcript of the record as part of the testimony adduced at the hearing on April 28, 1926.

Exhibit C-12 is a proof of claim drawn by Defendant, Bianchi, of Doctor Hyems against the estate of Augusta Phillips.

Exhibit C-13 is an affidavit of Eva Barend given to John A. Bennett, which set forth a list of the personal effects of Augusta Phillips which were left to the knowledge of Eva Barend.

Exhibit C-14 is a claim of property drawn by defendant, Bianchi, filed by Eva Barend with the administrator of the estate of Augusta Phillips,

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Stipulation.

claiming certain jewelry left by the said Augusta Phillips.

And it is further Stipulated that there need not be printed in the record, and it is admitted that John A. Bennett was substituted for Robert M. Boyd as solicitor for complainant, Louis S. Weinthal on February 9, 1927, and that Donohue & O'Brien were substituted for O. C. Bianchi as solicitors for the Barends on August 22, 1927.

JOHN A. BENNETT,
Solicitor for Louis S. Weinthal, Administrator.

GEORGE T. VICKERS,
Solicitor for Hannah Lubell.

DONOHUE & O'BRIEN,
Solicitors for Defendants, Eva Barend,
Charles Barend and O. C. Bianchi.

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Opinion.

Filed Sept. 16, 1926.

Docket 58—100.

IN CHANCERY OF NEW JERSEY.

10	Between HANNAH LUBELL, Complainant, and EVA BAREND, OVIDIO C. BIANCHI, and others. Defendants.	}	On Bill, etc. Opinion.
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20 ROBERT M. BOYD, JR., for Bank of Montclair.

OVIDIO BIANCHI, *pro se*.

LAZARUS, BRENNER & VICKERS, for complainant.

CHURCH, V. C.:

Augusta Phillips, who had been living with a relative, Eva Barend and her husband, died on March 13, 1923, in a hospital in Orange, New Jersey. She left a will in and by which the defendant, Eva Barend, was made chief beneficiary, and a half sister, Hannah Lubell, was left a legacy of one dollar. She was mentioned in this will by her maiden name, and by her two married names. She has resided in New York City for many years and is listed in the telephone book. This will was offered for probate by Eva Barend but was rejected because of faulty execution. Thereafter one Louis Weinthal was appointed administrator of the estate at the instance of Ovidio Bianchi, Esq. who

Opinion.

had theretofore acted for defendant, Barend. The application for the bond was witnessed and acknowledged by Bianchi. In the item setting forth the names of the creditors only those of the undertaker and doctor appear. There is no mention of any claim of Eva Barend, although more than a year had elapsed since Mrs. Phillips' death. I do not believe there was any real effort to locate Hannah Lubell, the sister, specifically mentioned in the will and who might easily have been found and who was entitled to administration. After this Bianchi agreed to collect for Barend a claim for services rendered amounting to \$3360.00 practically all that was left of the estate, he to receive twenty-five per cent of the claim for his services. Bianchi then went to the administrator whose attorney he was, and persuaded him to allow and pay the claim. I am satisfied that the administrator acted honestly throughout the entire matter and did not know that Bianchi was acting for Barend as well as for him. These facts were proved at the hearing and are not contradicted. Before the money was actually paid Hannah Lubell applied to this court for relief and an injunction was issued preventing the payment of this money until final hearing, and it is now on deposit in the Montclair Bank subject to the order of this court.

The evidence in this case convinces me that Eva Barend, in conjunction with Bianchi, when she found the Phillips' will was void, deliberately attempted to secure the assets by fraud. She had the will in her possession, specifically naming Hannah Lubell, and could easily have communicated with her, had she so desired. The bank account of Mrs. Phillips shows payments of sixty-five dollars per

Opinion.

month to Mrs. Barend or her husband throughout practically the entire time Mrs. Phillips resided with them. Their statement that they gave cash for these checks is unbelievable. They are, with one exception, no deposits of sixty-five dollars in the account. When Mrs. Phillips went to the hospital, payments of \$22.50 per week appear in the account, until four days before her death. The bank balance constantly decreased from the time Mrs. Phillips went to live with the Barends until her death, and was active throughout that time. All Mrs. Phillips' personal effects, except some valuables in a safe deposit box, were in the home and under the control of the Barends. The Barends, however, declare that there are no return vouchers and no check books in their possession, and they never had any. The record of the Bank of Montclair shows that the first withdrawal of Mrs. Phillips' return vouchers, February 17, 1922, was signed for by Eva Barend, and that the last withdrawal of vouchers from the bank made February 17, 1923, only a few days before the death of Mrs. Phillips, was signed for by Mrs. Barend's son, Louis. The testimony, in my opinion clearly shows that Eva Barend set out to get the entire estate of an old and ill relative. When the will Mrs. Phillips made leaving everything to her was found to be void, in spite of the fact that she had been paid to take care of Mrs. Phillips, she determined by means of a false claim and the destruction of vouchers, to get the bulk of the small estate in any event. In my opinion, she is not entitled to anything. She was paid for what she did, and, moreover, the testimony shows that she comes into the court with hands far from clean.

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Opinion.

How far Mr. Bianchi was cognizant of the facts last above mentioned, I do not know. I do believe, however, that it was highly unethical for him to act as counsel for an administrator and then, acting for a claimant against the administrator, persuade him to pay a claim of very doubtful validity, of which he himself expected to receive twenty-five per cent. Moreover, I believe he could easily have located Mrs. Lubell, had he so desired, as the will was specific in the mention of her.

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I will advise a decree disallowing *in toto* the claims of Barend and Bianchi, directing the money be paid to the administrator; declaring Mrs. Lubell to be the heir-at-law and next of kin of Augusta Phillips, and that the physician's bill be paid.

The case of Weinthal v. Barend involved the same issues was consolidated with this case, and my conclusions in this case apply to both.

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Decree.

Filed Dec. 9, 1926.

IN CHANCERY OF NEW JERSEY.

10	Between LOUIS S. WEINTHAL, as Adminis- trator, &c. of Augusta Phillips, Deceased,	}	Complainant, and EVA BAREND, CHARLES BAREND and OVIDIO C. BIANCHI, Defendants.	On Bill, &c. Decree.
20	Between HANNAH LUBELL, Complainant, and EVA BAREND, OVIDIO C. BIANCHI, LOUIS S. WEINTHAL and ED- WARD H. HYEMS, Defendants.	}		On Bill, &c. Decree.

30 These causes, involving the same facts and the same causes of action, having been consolidated, and coming on to be heard in the presence of Robert M. Boyd, Jr., solicitor for Louis S. Weinthal, George T. Vickers, Esq., of Lazarus, Brenner and Vickers, solicitors for Hannah Lubell, complainant, and of Donohue and O'Brien, solicitors for Ovidio C. Bianchi, and of Ovidio C. Bianchi, solicitor for

40 Eva Barend and Charles Barend, Defendants, and

Decree.

the court having examined the pleadings, and having taken proofs orally and in open court and heard and considered the argument of counsel thereon;

And it appearing to the satisfaction of the Court that Augusta Phillips, (a relative of the defendant Eva Barend); having died intestate, Louis S. Weinthal was duly appointed administrator of the goods and chattels of the said Augusta Phillips; that thereafter the defendant Eva Barend presented a claim for Three Thousand Three Hundred Sixty (\$3360.) Dollars for alleged board and nursing of the deceased to the said administrator; and that said claim was false and fraudulent, and was known by the said Eva Barend to be false and fraudulent;

And it further appearing to the satisfaction of the Court that the defendant Ovidio C. Bianchi, who was then acting as Proctor for the said administrator, and without the knowledge of the said administrator, had entered into an agreement with the defendant Eva Barend to collect her alleged claim against the Estate of the said Augusta Phillips, deceased, on a contingent basis whereby the said Ovidio C. Bianchi was to be paid twenty-five per cent of the amount so collected, and presented the said alleged claim of, and in behalf of, the said Eva Barend to the said Louis S. Weinthal, as administrator, as aforesaid, and as such Proctor of said Administrator did advise him that the said claim was valid in form and a just claim, and advised him to pay the same; and thereupon the said administrator acting in good faith, and without knowledge of the agreement between the defendants Bianchi and Eva Barend, paid the said Eva Barend the sum of Three Thousand Three Hundred

Decree.

Sixty (\$3360.) Dollars in satisfaction of the said claim;

And it further appearing to the satisfaction of the Court that the said Bianchi has received from and has been paid the sum of Eight Hundred Forty (\$840.) Dollars by the defendant Eva Barend, this
 10 sum being twenty-five per cent of the sum paid to the said Eva Barend by the administrator;

And it further appearing to the satisfaction of the Court that the said Louis S. Weinthal, as administrator as aforesaid, upon being informed of the existence of an heir and next of kin of the said Augusta Phillips, deceased, acted in good faith in instituting his suit to enjoin the removal of the moneys so paid by him from the State of New Jersey, pending a legal adjudication upon the merits
 20 of the alleged claim of the said Eva Barend;

And it further appearing to the satisfaction of the Court that Edward Hyems, physician, did render professional services, as a physician, to the said Augusta Phillips;

And it further appearing to the satisfaction of the Court that the Complainant Hannah Lubell is a half-sister of the said Augusta Phillips, deceased;

And it further appearing to the satisfaction of
 30 the Court that Louis S. Weinthal and Hannah Lubell, complainants in said respective suits, are entitled to relief;

It is on this 3rd day of Dec. 1926, ORDERED, ADJUDGED AND DECREED that the said claims of the said Eva Barend and the said Ovidio C. Bianchi be and they are hereby disallowed in toto, and that the said Eva Barend and Ovidio C. Bianchi be and are hereby ordered and directed to
 40 repay to the said Louis S. Weinthal, as administrator of the goods and chattels of Augusta Phillips,

Decree.

deceased, said sum of Three Thousand Three Hundred Sixty (\$3360.) Dollars, the amount received by them from the said administrator upon the said fraudulent claim of the said Eva Barend, together with interest from the fifteenth day of May, 1924, the date when such payment was made upon said fraudulent claim by the said Louis S. Weinthal,
 10 as administrator, as aforesaid, and that the said Eva Barend be and is hereby enjoined from withdrawing moneys from the Bank of Montclair and from The Montclair Savings Bank there on deposit to her credit until she has repaid the said sum to the said Louis S. Weinthal, as administrator, as aforesaid;

And it is further Orderd, Adjudged and Decreed that the claim of Edward Hyems, physician,
 20 heretofore paid, be allowed.

And it is further ordered, adjudged and decreed that Hannah Lubell is the heir at law and next of kin of the deceased, Augusta Phillips;

And it is further ordered, adjudged and decreed that all personal property of Augusta Phillips, deceased, remaining in the possession of Eva Barend be forthwith turned over and delivered by her to Louis S. Weinthal, administrator of the goods and
 30 chattels of Augusta Phillips.

And it is further ordered, adjudged and decreed that a counsel fee of Two Hundred (\$200.00) Dollars be allowed to Robert M. Boyd, Jr., Counsel for Louis S. Weinthal, Administrator, together with costs of this suit to be taxed and to be paid primarily by the defendants Eva Barend and Ovidio C. Bianchi, and that he have leave to issue execution therefor;

And it is further ordered, adjudged and decreed
 40

Decree.

that a counsel fee of Two Hundred (\$200.00) Dollars be allowed to George T. Vickers, Counsel for Hannah Lubell, Complainant, together with costs of this suit to be taxed and to be paid primarily by the defendants Eva Barend and Ovidio C. Bianchi, and that he have leave to issue execution therefor;

10 And it is further ordered, adjudged and decreed that the Proctor of the Administrator have leave to apply for counsel fee for his services to the estate herein and otherwise upon the final accounting of the administration of the goods and chattels of the said Augusta Phillips, deceased.

And it is further ordered, adjudged and decreed that the Bank of Montclair pay to Louis S. Weinthal, Administrator of the goods and chattels of Augusta Phillips, deceased, the sum of Two Thousand and Twenty-four Dollars and 86/100 (\$2024.86) with accrued interest now on deposit to the credit of Charles or Eva Barend; and that the Montclair Savings Bank pay to said administrator the sum of Nine Hundred Ninety-eight Dollars and 23/100 (998.23) with accrued interest, now on deposit to the credit of Charles or Eva Barend; and that certified copies of this order and decree presented to said Bank of Montclair and Montclair Savings Bank by said administrator, shall be the warrant and authority for said Bank of Montclair and Montclair Savings Bank, so paying said money respectively to said administrator.

Respectfully advised,

ALONZO CHURCH,
V. C.

E. R. WALKER
C

40 A true Copy
Thomas Barber.

Notice of Appeal.

Filed Aug. 20, 1927.

IN CHANCERY OF NEW JERSEY.

Between
LOUIS S. WEINTHAL, as Administrator, &c. of Augusta Phillips, etc.,
Complainant,
10

and

EVA BAREND, CHARLES BAREND
and OVIDIO C. BIANCHI,
Defendants.

On Bill, etc.
Notice of
Appeal.

Between
HANNAH LUBELL,
Complainant,
20

and

EVA BAREND, OVIDIO C. BIANCHI,
LOUIS S. WEINTHAL and EDWARD H. HYEMS,
Defendants.

On Bill, etc.
Notice of
Appeal.

30 The defendants, Eva Barend, Charles Barend, and Ovidio C. Bianchi hereby appeal from the final decree made by his Honor Edwin Robert Walker, Chancellor, on the advice of Honorable Alonzo Church, Vice Chancellor, in the above entitled causes on December 3, 1926 and from the whole and

Notice of Appeal.

every part thereof, to the Court of Errors and Appeals in the Last Resort in all causes.

Dated August 19, 1927.

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DONOHUE & O'BRIEN,
Solicitors for and of Counsel
with Defts. Eva Barend, Charles
Barend and Ovidio C. Bianchi.

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

JAMES F. X. O'BRIEN,
Of Counsel with Defendants.

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Petition of Appeal.

Filed Aug. 20, 1927.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

LOUIS S. WEINTHAL, as Adminis-
trator, &c. of Augusta Phillips,
Deceased,

Complainant-Appellee,

and

EVA BAREND, CHARLES BAREND
and OVIDIO C. BIANCHI,
Defendants-Appellants.

10

On Appeal
from Court
of Chancery.

Petition of
Appeal.

20

Between

HANNAH LUBELL,
Complainant-Appellee,
and

EVA BAREND, OVIDIO C. BIANCHI,
LOUIS S. WEINTHAL and ED-
WARD H. HYEMS,
Defendants-Appellants.

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On Appeal
from Court
of Chancery.
Petition of
Appeal.

*To the Honorable, the Court of Errors and Appeals
in the Last Resort in all Causes.*

The petition of Eva Barend, Charles Barend and
Ovidio C. Bianchi, the Appellants in the above en-
titled cause respectfully show that the petitioners
find themselves aggrieved by a final decree made in
the Court of Chancery by his Honor, Edwin Robert
Walker, Chancellor of the State of New Jersey,

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Petition of Appeal.

bearing date of December 3, 1926, in two certain causes in the said Court of Chancery, one, wherein, Louis S. Weinthal, Administrator of the Estate of Augusta Phillips, Deceased, was Complainant and Eva Barend, Charles Barend and Ovidio C. Bianchi, Defendants; and the other wherein Hannah Lubell was Complainant and Eva Barend, Ovidio C. Bianchi, Louis S. Weinthal and Edward H. Hyems were Defendants, and which causes were consolidated and tried as one and the above mentioned decree rendered therein, to which decree petitioners complain in this respect, to wit:

That the said decree adjudges that the claims of the said Eva Barend and Ovidio C. Bianchi be and they are hereby disallowed in toto.

And in that the said decree order Eva Barend and Ovidio C. Bianchi to repay to Louis S. Weinthal, Administrator, Three Thousand Three Hundred and Sixty (\$3,360.) Dollars.

And in that the said decree orders and directs Eva Barend to turn over and deliver to Louis S. Weinthal, Administrator, all the goods and chattels of Augusta Phillips remaining in her possession.

And in that the said decree orders and decrees that a counsel fee of Two Hundred (\$200) Dollars be allowed to Robert M. Boyd, Jr. Counsel for Louis S. Weinthal, together with costs of suit to be taxed, which fees and costs were to be primarily paid by the defendants, Eva Barend and Ovidio C. Bianchi.

And in that the said decree orders and decrees that a counsel fee of Two Hundred (\$200) Dollars be allowed to George T. Vickers, counsel for Hannah Lubell, together with costs of suit to be taxed, which counsel fee and costs are to be paid primarily

Petition of Appeal.

by the defendants, Eva Barend and Ovidio C. Bianchi.

And in that the said decree orders the Bank of Montclair to pay to Louis S. Weinthal, Administrator, Two Thousand and Twenty Four Dollars and Eighty Six (\$2,024.86) Cents with accrued interest on deposit to the credit of Charles or Eva Barend.

And in that the said decree order the Monclair Savings Bank to pay to Louis S. Weinthal, Administrator, the sum of Nine Hundred and Ninety Eight Dollars and Twenty Three Cents (\$998.23) with accrued interest now on deposit to the credit of Charles or Eva Barend.

And in that the said decree adjudges that the claim of Eva Barend was fraudulent and that the money she obtained thereunder was fraudulently obtained.

And in that the said decree adjudges that Eva Barend deliberately attempted to secure the assets of the estate of Augusta Phillips by fraud.

And in that the said decree adjudges that Eva Barend had been paid for the work she did.

And petitioners appeal from the decree of the Chancellor which decrees as aforesaid on the ground that the same is erroneous in that the Chancellor should have dismissed the Bills of Complaint against the defendants, Eva Barend, Charles Barend and Ovidio C. Bianchi and should have rendered a decree denying the relief sought in said Bills of Complaint, and petitioners appeal for the following reasons:

1. That there was no evidence to support the Chancellor's finding that the claim of Eva Barend was a fraudulent one and was fraudulently prosecuted by her.

Petition of Appeal.

2. That the finding of the Chancellor that Eva Barend's claim was fraudulent and that the moneys she received thereunder were fraudulently obtained is contrary to the weight of the evidence.

3. That the Chancellor erred in refusing to dismiss the Bills of Complaint against the defendants,
10 Eva Barend, Charles Barend and Ovidio C. Bianchi.

4. That the Chancellor erred in disallowing the claims of Eva Barend and Ovidio C. Bianchi and in ordering them to repay the Three Thousand Three Hundred and Sixty (\$3,360) Dollars plus interest.

5. That the Chancellor erred in allowing a Two Hundred (\$200) Dollars counsel fee and costs to George T. Vickers, counsel for Hannah Lubell.
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6. That the Chancellor erred in allowing a Two Hundred (\$200) Dollars counsel fee and taxed costs to Robert M. Boyd, Jr. counsel for Louis S. Weinthal, Administrator.

7. That the Chancellor erred in ordering the Bank of Montclair and the Montclair Savings Bank to pay to Louis S. Weinthal, Administrator, the amounts deposited there to the credit of Charles or Eva Barend.

8. That the Chancellor erred in holding that Eva Barend deliberately attempted to secure the assets of the estate of Augusta Phillips by fraud.
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9. That the Chancellor erred in holding that Ovidio C. Bianchi acted improperly as counsel for the administrator and for a claimant having a claim against the estate of Augusta Phillips.

10. That the Chancellor erred in holding that Eva Barend had been paid by Augusta Phillips in her lifetime for the work done for the said Augusta
40 Phillips.

Petition of Appeal.

11. That the Chancellor erred in holding that the Bank of Montclair bank statement of Phillips' account showed payments to Eva Barend for work done by her for Augusta Phillips.

12. That the Chancellor erred in not finding under the testimony that the claim of Eva Barend was a fair and just claim and that she was entitled to keep the Three Thousand Three Hundred and Sixty (\$3,360) Dollars paid to her by the administrator of the estate of Augusta Phillips for the work done under said claim.
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Petitioners, therefore, pray that the said decree of the Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioners may have such other relief in the premises as to this Court shall seem proper.
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DONOHUE & O'BRIEN,
Solicitors for Appellants, Eva Barend,
Charles Barend and Ovidio C. Bianchi.

JAMES F. X. O'BRIEN,
Of Counsel with Appellants, Eva Barend,
Charles Barend and Ovidio C. Bianchi.

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Answer to Petition of Appeal of Louis S. Weinthal, as Administrator, &c.

Filed Sept. 15, 1927.

NEW JERSEY COURT OF ERRORS AND APPEALS.

10	Between LOUIS S. WEINTHAL, as Administrator, &c. of Augusta Phillips, Deceased, Complainant-Appellee, and EVA BAREND, CHARLES BAREND and OVIDIO C. BIANCHI, Defendant-Appellant.	On Appeal from Court of Chancery. Answer to Petition of Appeal of Louis S. Weinthal, as administrator, &c.
20	Between HANNAH LUBELL, Complainant-Appellee, and EVA BAREND, OVIDIO C. BIANCHI, LOUIS S. WEINTHAL and EDWARD H. HYEMS, Defendant-Appellant.	On appeal from Court of Chancery. Answer to Petition of Appeal of Louis S. Weinthal, as administrator, &c.
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The answer of Louis S. Weinthal, as administrator, &c., of Augusta Phillips, Deceased, one of the above named appellee, to the petition of Eva Barend, Charles Barend and Ovidio C. Bianchi, the above named appellants.

40 This appellee, not admitting the truth of all or any of the matters in the said petition of appeal

Answer to Petition of Appeal of Louis S. Weinthal, as Administrator, &c.

contained, for answer thereto nevertheless admits that a decree was, on the Third day of December, Nineteen Hundred and Twenty Six, made and entered in the Court of Chancery of New Jersey, in the above entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said decree, this appellee begs leave to refer thereto when the same shall be produced.

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

JOHN A. BENNETT,
Solicitor for and of Counsel with
Louis S. Weinthal, as administrator, &c.

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Answer to Petition of Appeal of Hannah Lubell.

Filed November 10, 1927.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between
10 LOUIS S. WEINTHAL, as Adminis-
 trator, &c. of Augusta Phillips,
 Deceased,
 Complainant-Appellee,
 and
 EVA BAREND, CHARLES BAREND
 and OVIDIO C. BIANCHI,
 Defendant-Appellant.

On Appeal
 from Court
 of Chancery.
 Answer to
 Petition of
 Appeal of
 Hannah
 Lubell.

20 Between
 HANNAH LUBELL,
 Complainant-Appellee,
 and
 EVA BAREND, OVIDIO C. BIANCHI,
 LOUIS S. WEINTHAL and ED-
 WARD H. HYEMS,
30 Defendant-Appellant.

On appeal
 from Court
 of Chancery.
 Answer to
 Petition of
 Appeal of
 Hannah
 Lubell.

The answer of Hannah Lubell, above named Ap-
 pellee, to the petition of Eva Barend, Charles Bar-
 end and Ovidio C. Bianchi, the above named appel-
 lants.

This appellee, not admitting the truth of all or
 any of the matters in the said petition of appeal
 contained, for answer thereto nevertheless admits
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Answer to Petition of Appeal of Hannah Lubell.

that a decree was, on the third day of December,
 Nineteen hundred and twenty-six, made and enter-
 ed in the Court of Chancery of New Jersey, in the
 above entitled cause, for the purposes in said peti-
 tion mentioned and as therein set forth; but as to
 the substance and form of said decree, this appellee
 begs leave to refer thereto when the same shall be
 produced. **10**

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

GEORGE T. VICKERS,
 Solicitor for and of
 Counsel with Hannah Lubell,
 Complainant-Appellee. **20**

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New Jersey Court of Errors and Appeals

Between
LOUIS S. WEINTHAL, as Adminis-
trator, &c. of Augusta Phillips,
Deceased,
Complainant-Appellee,
and
EVA BAREND, CHARLES BAREND
and OVIDIO C. BIANCHI,
Defendants-Appellants.

On Appeal
from Court
of Chancery.

Between
HANNAH LUBELL,
Complainant-Appellee,
and
EVA BAREND, OVIDIO C. BIANCHI,
LOUIS S. WEINTHAL and ED-
WARD H. HYEMS,
Defendants-Appellants.

BRIEF OF DEFENDANTS-APPELLANTS.

Statement of Facts.

This case comes before the Court on an appeal from a decree made by the Chancellor of New Jersey upon the advice of the Honorable Alonzo Church, Vice Chancellor, by which the defendant appellants were ordered to pay to Louis S. Wein-

thal, administrator of the estate of Augusta Phillips, Three Thousand Three Hundred and Sixty (\$3,360.) Dollars together with interest from May 15, 1924 and costs and counsel fees.

The facts of the case are these:

On March 13, 1923, Augusta Phillips, residing in Montclair, New Jersey, died. After her death, an attempt was made to probate a will which is set forth in the State of the Case at page 178 as Exhibit C-17, in which the bulk of her estate was left to Eva Barend, with whom she had lived for thirteen months almost next preceding her death and by whom she was boarded and nursed during that time. This will was never probated because of faulty execution as was found by the Vice Chancellor in his opinion.

Thereafter, in March, 1924, the defendant, Ovidio C. Bianchi, was requested by the defendants, Barends, to undertake the collection of a claim for nursing and board against the estate of Augusta Phillips covering the services of the defendants, Barends, during the thirteen months Augusta Phillips had lived with them. In pursuance of this, the defendant, Bianchi, as is set forth in his affidavit (State of the Case, p. 22 and 23,) undertook to have a responsible person named administrator of Augusta Phillips' estate so that the claim of the Barends might be presented, and, upon the name of Louis S. Weinthal, a retired business man of Montclair, being suggested by Mrs. Barend, Mr. Bianchi took the necessary steps to have him appointed administrator which was done on April 4, 1923.

Thereafter, in May, 1923, a claim was presented by Eva Barend for Three Thousand Three Hundred and Sixty (\$3,360) Dollars covering board and nursing for a period of fifty six weeks at Sixty (\$60) Dollars per week, and this claim was paid

by the administrator. After paying this claim, a relative of the deceased, one Hannah Lubell, appeared upon the scene and through her attorney threatened the administrator with trouble, and the administrator filed a bill against the Barends and Bianchi seeking a return of the Three Thousand Three Hundred and Sixty (\$3,360) Dollars, and alleging as a ground for relief the fact that Bianchi had advised payment of this claim to the administrator without the administrator knowing that he represented Mrs. Barend and therefore that he did not act with independent advice and that the money should be repaid because the claim was unjust and paid solely upon Bianchi's advice.

After this bill was filed by Weinthal, the administrator, Hannah Lubell, the half sister of Augusta Phillips, who had shortly before appeared on the scene, filed a bill, the tenor of which alleges an agreement between Barend, Bianchi and the administrator for the payment of the Barend claim and alleging that there was collusion and fraud in connection therewith. These charges were met by the answers of the defendants, and a hearing had of the consolidated cases on April 28, 1926. At the hearing no testimony showing fraud was introduced and the basis of each bill as filed was practically abandoned, and the Vice Chancellor hearing the case evidently decided it upon the theory that payment had been made during the lifetime of Augusta Phillips of the Barend claim and that therefore her attempt to secure payment after the death of Phillips was fraudulent. This was without any direct or satisfying testimony to support any such inference or conclusion and a decree to the effect was signed. The error alleged is generally that there is no evidence adduced to support the findings of the Vice Chancellor.

Grounds of Appeal.

Defendants appellants appeal from the whole and every part of the decree of the chancellor on the ground that it is erroneous in that:

1. That there was no evidence to support the Chancellor's finding that the claim of Eva Barend was a fraudulent one and was fraudulently prosecuted by her.
2. That the finding of the Chancellor that Eva Barend's claim was fraudulent and that the moneys she received thereunder were fraudulently obtained is contrary to the weight of the evidence.
3. That the Chancellor erred in refusing to dismiss the Bills of Complaint against the defendants, Eva Barend, Charles Barend and Ovidio C. Bianchi.
4. That the Chancellor erred in disallowing the claims of Eva Barend and Ovidio C. Bianchi and in ordering them to repay the Three Thousand Three Hundred and Sixty (\$3,360) Dollars plus interest.
5. That the Chancellor erred in allowing a Two Hundred (\$200) Dollars counsel fee and costs to George T. Vickers, counsel for Hannah Lubell.
6. That the Chancellor erred in allowing a Two Hundred (\$200) Dollars counsel fee and taxed costs to Robert M. Boyd, Jr. counsel for Louis S. Weinthal, Administrator.
7. That the Chancellor erred in ordering the Bank of Montclair and the Montclair Savings Bank to pay to Louis S. Weinthal, Administrator, the amounts deposited there to the credit of Charles or Eva Barend.

8. That the Chancellor erred in holding that Eva Barend deliberately attempted to secure the assets of the estate of Augusta Phillips by fraud.

9. That the Chancellor erred in holding that Ovidio C. Bianchi acted improperly as counsel for the administrator and for a claimant having a claim against the estate of Augusta Phillips.

10. That the Chancellor erred in holding that Eva Barend had been paid by Augusta Phillips in her lifetime for the work done for the said Augusta Phillips.

11. That the Chancellor erred in holding that the Bank of Montclair bank statement of Phillips' account showed payments to Eva Barend for work done by her for Augusta Phillips.

12. That the Chancellor erred in not finding under the testimony that the claim of Eva Barend was a fair and just claim and that she was entitled to keep the Three Thousand Three Hundred and Sixty (\$3,360) Dollars paid to her by the administrator of the estate of Augusta Phillips for the work done under said claim.

ARGUMENT ON LAW AND FACTS.

POINT I.

The only possible basis, after the hearing of the case upon which the Vice-Chancellor could have found fraud, was that the claim had been paid in the lifetime of Augusta Phillips.

There are several theories under which the claim of Barend might have been attacked.

The first, which was the basis of the bill filed by Louis S. Weinthal, administrator, was that he had paid the claim upon the advice of Bianchi and that was the sole basis for his payment of the claim and not knowing that Bianchi represented Barend, he actually paid a claim which was fraudulent upon the advice of a person representing the claimant. This basis is untenable in view of the testimony of Louis S. Weinthal, who admitted (State of the Case pages 68 and 69) that he knew of the many and difficult services performed by Mrs. Barend for Mrs. Phillips and (State of Case page 68, l. 30) that he paid the claim of Mrs. Barend with full knowledge of the services rendered by her to Mrs. Phillips.

In view of this testimony, the allegation in his bill that he paid it solely on the advice of Bianchi is not borne out and it appears from his testimony that he paid it because he knew what she had done.

It is further important to note here that Bianchi, in securing the appointment of Weinthal, merely acted as any attorney for a person having a claim against an estate in which no one came forth to act as administrator, to wit, by having the Surrogate appoint some responsible person to whom the claim could be presented.

The second possible theory in which fraud might exist is that the claimant, Barend, through her attorney, had an ignorant and gullible person appointed administrator of the deceased's estate, which person would do whatever he was told without questioning the reasons therefor. That Louis S. Weinthal was not any such dummy administrator can readily be seen by his testimony (State of Case page 67, l. 32) that he has been a property owner in Montclair for a number of years; that he was in business for twenty five years prior to his retirement and that he was a neighbor of the Barends and Phillips and knew both well, and knew the services performed by Barend for Mrs. Phillips. The character of his testimony shows that he is a man of business experience and intelligence above the ordinary.

A third possible theory in which fraud might exist is that the administrator, Louis S. Weinthal, the Barends and Bianchi fraudulently and collusively conspired to bring about the payment of a fraudulent claim against the estate of Augusta Phillips, and this is the theory which seems to be indicated by the bill of complaint filed by Hannah Lubell. That this was not the case was admitted by all the parties to the suit at the beginning of the hearing before the Vice Chancellor, when Mr. Boyd stated that both sides admit that Mr. Weinthal, the administrator, acted in good faith and this was found to be the case by the Vice Chancellor in that part of his opinion (State of Case p. 185, l. 21) wherein he stated that he was satisfied that the administrator acted honestly throughout the entire matter.

With all of the above evidence theories of fraud excluded by the evidence itself, there remained but two ways in which the Barend claim could be fraudulent.

The first remaining way that the claim could be fraudulent was that it had no basis in fact; that the services alleged to have been performed by Barend for Phillips never were performed, and, the second remaining way that the services had been performed but that payment had been made for them by Mrs. Phillips during her lifetime. This latter was evidently adopted by the Court as the basis for his findings of fraud.

The testimony in the case shows the extent and type of the services rendered by the Barends for Mrs. Phillips. Mr. Barend testified that Augusta Phillips was at his home from September 1921 until the end of October, 1922 when she was taken to the hospital and that she remained at the hospital until March when she died (State of Case p. 101, l. 10), that Mrs. Phillips was suffering from cancer (State of Case p. 101, l. 37) and that she was confined to her bed and Mrs. Barend had to wait on her, cook for her, feed her, bathe her, (State of Case p. 102, l. 37 to p. 103, l. 11) and that while they were away for ten days in August, 1922, they had a nurse come in to take care of her (State of Case p. 101, l. 8).

Eva Barend testified (State of Case p. 124 and 125) that Mrs. Phillips, her first cousin, came to live with her the first of September, 1921 and was with her for thirteen months until she went to the hospital; that she was sick when she came to the house and remained sick all the time she was there; that she took complete care of her, nursed her, cooked for her and (State of Case page 126, l. 10) and that she bathed her and gave her every necessary attention and treatment and (l. 25) that she had to dress her and help her in and out of bed when she got up and (State of Case p. 127, l. 25) that she did everything for Mrs. Phillips that the doc-

tor told her to do. Mrs. Barend described (State of Case p. 128, l. 16) the horrible condition with which she had to put up when treating Mrs. Phillips, the odor and extreme unpleasantness of the stage of Mrs. Phillips' cancer and (State of Case p. 128 l. 26) how she would have to go out of the room after treating Mrs. Phillips and at such times very often vomited herself because of the terrible and disgusting disease from which Mrs. Phillips suffered.

She also testified (State of Case p. 129, l. 1) that she had to cook special food for her and that she took care of her days and nights and that the care took a great deal of her night time, that as a result of her strenuous care of Mrs. Phillips she herself had to go under the doctor's care (State of Case p. 128, l. 17) and that she had a break-down after Mrs. Phillips left for the hospital and never recovered from that (State of Case p. 152, l. 30).

Mrs. Barend's testimony was corroborated in parts by that of Lena Rudensey (State of Case p. 157 to 162) and that of Solomon S. Weinthal (State of Case p. 162 to 165) and Amelia S. Weinthal (State of Case p. 165 to 167), and had the Court so desired, other witnesses were present to corroborate this testimony as is shown by the proffer (State of Case p. 166, l. 35) but not only did the witnesses for the defendants testify to the services rendered by Mrs. Barend to Mrs. Phillips but Louis S. Weinthal, the administrator and a party complainant and who was a neighbor of the Barends and Mrs. Phillips testified (State of Case p. 68, l. 10) that when he paid the claim of Mrs. Barend he knew she had performed services for Mrs. Phillips and had seen her perform the services, and in his testimony on page 68 of the State of the Case testified in some little detail to these services; that

Mrs. Phillips was a big lady, hard to handles, and could not do anything to help herself; that Mrs. Barend did everything for her for about a year and a quarter and (State of Case p. 70, l. 1) that Mrs. Phillips was helpless at the time.

None of this testimony of services rendered was contradicted, and there stands on the record the clear proof that for thirteen months the Barends boarded Mrs. Phillips and that Mrs. Barend acted as a practical night and day nurse for her, not only cooking and making special things for her, but following the doctor's orders and treating her according to his prescription.

Mrs. Phillips' disease was, as is clearly shown by the testimony, malignant cancer and the care of her under these circumstances required not only hard but heavy work which few nurses trained or practical care to handle at any price. The claim of Mrs. Barend of Sixty (\$60) Dollars a week for her board and for acting as practical night and day nurse under the particular circumstances of this case was a fair and just one.

The Vice Chancellor could not help but find that Mrs. Barend performed the services above mentioned and that leaves as the only basis on which he might lay fraud, the claim that arose during the hearing that she had been paid for these services in the lifetime of Mrs. Phillips and which claim will be taken up and discussed under the next point.

POINT II.

There is no evidence to justify the Vice-Chancellor's finding that Mrs. Barend had been paid by Mrs. Phillips in her lifetime for the services rendered and that her claim for payment after the death of Mrs. Phillips was therefore fraudulent.

It is noteworthy that in neither the bill filed by Weinthal, administrator, nor in the bill filed by Hannah Lubell, is any claim made that Mrs. Barend received payment for her services during the lifetime of Augusta Phillips.

When questioned (State of Case p. 103, l. 7-8) Charles Barend testified that Mrs. Phillips did not pay for her board or nursing in her lifetime when she lived with them and further (l. 20) that she said to Mrs. Barend many times that she would compensate her in a lump sum and he testified (State of Case p. 104, l. 8) that Mrs. Phillips did not pay any of the household expenses during her sickness.

Mrs. Barend testified (State of Case p. 129, l. 33) that Mrs. Phillips did not pay her anything and that she told her that she was going to compensate her by leaving everything to her, and that in that way she would be paid for her services, and testified (State of Case p. 131, l. 9) that by reason of the fact that the will leaving the bulk of the estate to her could not be proved due to faulty execution, she put in her claim for the board and nursing for the thirteen months that she rendered the same.

As against this direct testimony of Mr. and Mrs. Barend that they had not received payment, the complainant introduced the bank statement of Mrs.

Phillips which was marked Exhibit C-16 and which is set forth in the State of the Case in photostatic copies immediately preceding page 177 of the State of the Case.

This statement covers a period from December, 1921 through March 9, 1923 and Mrs. Barend was asked on cross-examination to explain the Sixty Five (\$65) Dollars item which appeared in the statement as a check drawn for Sixty Five (\$65) Dollars in each of the months of January, February, March, April and again in June, July, August, September, and October, 1922. The statement does not show any check for Sixty Five (\$65) Dollars drawn in December, 1921, nor in May, 1922, nor in November or December, 1922, nor in January, February or March, 1923. The item of Sixty Five (\$65) Dollars appearing in the bank statement thus is shown as having been drawn in nine of the months covered by the statement and as not drawn in the other seven months covered by the statement, and it is therefore clear that this Sixty Five (\$65) Dollars item was not drawn during all of the time Augusta Phillips lived with the Barends.

On cross-examination (State of Case p. 140) Mrs. Barend testified that sometimes Mrs. Phillips would give her a check to pay her rent, in which case she would give her the Sixty Five (\$65) Dollars cash and that she had no check account of her own and that this was the only way she could explain any possible connection she might have with the Sixty Five (\$65) Dollars item appearing in the bank statement. This explanation was uncontradicted and it was brought out by the Court (State of Case p. 145, l. 1 to 12) that in the month of January, 1922, there was a deposit of Sixty Five (\$65) Dollars which was made the day before the Sixty Five (\$65) Dollars check item is dated as having been received in the bank, and this item corroborates

the testimony of Mrs. Barend that she gave cash for this Sixty Five (\$65) Dollars item whenever she got a check from Mrs. Phillips with which to pay the rent.

The Vice Chancellor in his opinion (State of Case p. 186, l. 1) says that Mrs. Barend's statement that she gave cash for the checks is unbelievable and follows this with a statement which is probably his reason that there are, with one exception, no deposits of Sixty Five (\$65) Dollars shown by the statement.

The learned Vice Chancellor overlooked the fact that Mrs. Phillips very likely kept and spent a part of the cash received in payment of these checks with which to buy little odds and ends and little necessities or luxuries, and as testified to by Eva Barend, (State of Case p. 139, l. 28) that very often she purchased little things for Mrs. Phillips.

The statement does show a number of deposits which might be that part of the Sixty Five (\$65) Dollars left after Mrs. Phillips spent a part of it or might be the accumulation of several months remainders of the Sixty Five (\$65) Dollars paid in exchange for the check. These items range from the Sixty Five (\$65) Dollars item in January to a Thirty Five (\$35) Dollars item in February, to an item of One Hundred and Forty (\$140) Dollars in March, which might likely include the Sixty Five (\$65) Dollars cash paid, to a Thirty Five (\$35) Dollars item in April, and several items in July and September which might well include the Sixty Five (\$65) Dollars cash, and to a Fifty Five (\$55) Dollars item in October which might well be the balance of the Sixty Five (\$65) Dollars after spending a little of it. The fact that Mrs. Phillips was practically a bed-ridden woman or at least a house-confined woman for the greater part of the time, would explain why deposits were

not made the same day she received the Sixty Five (\$65) Dollars cash from Mrs. Barend. The bank statement at best is an indefinite affair and certainly the Court should interpret it so as to agree with testimony already adduced rather than to throw out that testimony and work with the aid of the imagination something out of an indefinite and inconclusive statement of a bank which can not show to whom the checks were drawn or by whom they were cashed. All of this argument with reference to the bank statement is made in answer to the Vice Chancellor's findings in his opinion that these Sixty Five (\$65) Dollars items show payment by Mrs. Phillips to Mrs. Barend for all of the services rendered to her.

May we urge to this Court the fact that while Mrs. Barend admitted that sometimes she took this Sixty Five (\$65) Dollars check and paid Sixty Five (\$65) Dollars in cash for it, the mere fact that the bank statement shows a Sixty Five (\$65) Dollars item for nine months is no proof that Mrs. Barend got these checks.

The learned Vice Chancellor drew the inference that she got these checks and then on top of that inference piled another inference deducted from the first one that these checks were made in payment of the services rendered by Barend to Phillips, and this second inference based on the first one was drawn despite the otherwise uncontradicted testimony of Mr. and Mrs. Barend that they never received any compensation for the board and nursing and despite Mrs. Barend's explanation of some of the Sixty Five Dollars items.

In this connection an attempt was made to show that Mrs. Barend received and either lost or destroyed the vouchers or cancelled checks of Augusta Phillips, and in the Vice Chancellor's opinion he states that the withdrawal of statement and vouch-

ers showed a withdrawal signed by Eva Barend of February 17, 1922 and one signed by Louis Barend, her son, February 13, 1923, and finds in his opinion (State of the Case p. 186, l. 35) that she destroyed these vouchers. Again his findings are in direct contradiction to the testimony in the case.

Mr. Bennett testified (State of Case p. 80, l. 1) that Mrs. Barend had told him that she did not have any checks and that she turned over all the papers she found to Mr. Weinthal, the administrator, and Mrs. Barend testified (State of Case p. 131, l. 32) that she never found any checks or cancelled checks among the papers of Mrs. Phillips and stated (State of Case p. 133, l. 25) that she had no recollection of calling for the cancelled vouchers on February 17, 1922 but that her signature was on the card and she guessed she must have gone and she explained the signature of Louis Barend on the withdrawal slip of statement and vouchers (State of Case p. 155, l. 20) that her boy, Louis, used to run errands occasionally for Mrs. Phillips, and when questioned by the Court (State of Case pages 137 and 138) she testified that she did not find any returned checks among the effects of Mrs. Phillips. The mere fact that she got the vouchers for Mrs. Phillips could not sustain the Court's findings that she got, found and destroyed all of Mrs. Phillips' cancelled checks, especially in view of the fact that Mrs. Phillips was in the hospital after she left their place for five months where she brought some of her effects and undoubtedly her check book and her checks as shown by Charles Barend's testimony on cross-examination (State of Case p. 116, about l. 25) that she paid her own bills while at the hospital.

On top of the weakness and indefiniteness of such proof on which the Vice Chancellor found payment

and fraud, it is on its face ridiculous to believe that Sixty Five (\$65) Dollars a month would be paid and accepted as compensation for boarding a bed-ridden woman and caring for her while suffering with the dreadful disease of malignant cancer.

The testimony of the Barends is corroborated by the fact that Mrs. Phillips left a will, Exhibit C-17, page 178 of the State of the Case, in which she made Mrs. Barend her chief beneficiary, and this corroborates Mrs. Barend's testimony that Mrs. Phillips had told her she would be compensated in a lump sum by what was left to her in the will.

Charles Barend testified (State of the Case p. 104, l. 35) that Mrs. Phillips had told him she wanted to turn everything over to Mr. and Mrs. Barend because they were the only ones who had cared for her and that her half sister or step sister, Mrs. Lubell, had not seen her or gone to see her for eighteen or twenty years.

When due to a technical defect, the will could not be proved, Mrs. Barend quite properly made a claim then for her board and nursing. The very fact that Mrs. Phillips made the will with Mrs. Barend as her chief beneficiary is indicative of the fact that she meant this to be the compensation she had promised Mrs. Barend for her devotion and her board and nursing.

POINT III.

By the decree of the Chancellor on the advice of Vice Chancellor Church, the defendant, Bianchi, is ordered with the defendants, Barends, to pay to Louis S. Weinthal, Administrator, Three Thousand Three Hundred and Sixty (\$3,360) Dollars, and the evidence can not support any such provision in the decree.

It appears from the testimony that the defendant, Bianchi, acted for the Barends in their attempt to secure payment of the claim and that he received for his services a sum equal to twenty-five per cent of the amount received or a little over Eight Hundred (\$800) Dollars.

In his opinion in the case, the Vice Chancellor did not find that the defendant, Bianchi, was guilty of any fraud and it is therefore without any basis that he ordered him to pay Three Thousand Three Hundred and Sixty (\$3,360) Dollars making him, under the decree, just as much liable for the payment of this sum as the defendant, Eva Barend. By reason of this decree, the defendant, Bianchi, was forced, without any finding against him which would justify any action against him, to pay the Three Thousand Three Hundred and Sixty (\$3,360) Dollars and was also made liable for the costs and counsel fees allowed. There was no justification for this whatever in any phase of the case. The only allegation made against him was that he represented Mrs. Barend in presenting a claim to an administrator whom he had had appointed. As pointed out before, all that he did in this case was to have the Surrogate appoint some responsible person administrator, and in the application for bond, inasmuch as he was having Weinthal appointed administrator, Bianchi's name was set down as attor-

ney, but it can clearly be seen that in bringing about the appointment of Weinthal, he was merely acting for Barend so that there might be someone to whom he could present the claim.

It is also alleged that he did not locate the complainant, Hannah Lubell, the half sister of Mrs. Phillips, whom Mrs. Phillips had not seen for twenty years, according to the testimony of Louis Weinthal, (State of Case p. 77, l. 33).

Hannah Lubell testified (State of Case p. 86, l. 30) that she lived in New York City and was in the phone book under the name of "LUBELL." She was better known to the Barends under the name of Autenrieth, but the Vice Chancellor in his opinion said in effect that she might have been found by looking her up in the phone book, but we would call to this Court's attention the fact that had she used the will, which mentions the name of Lubell (State of the Case p. 78, l. 17) and looked in the phone book, she would have looked under LUBEL and as the Court well knows would never have found LUBELL which would be separated by many, many pages in a New York Telephone directory.

The decree of the Vice Chancellor also ordered the Bank of Montclair to pay Two Thousand and Twenty Four Dollars and Eighty Six (\$2,024.86) Cents, deposited to the credit of the Barends, to Louis S. Weinthal, administrator, although the Bank was not made a party defendant, and without any justification by the same decree, the defendant, Bianchi, was ordered to pay Three Thousand Three Hundred and Sixty (\$3,360) Dollars plus costs and a Four Hundred (\$400) Dollars counsel fee, by which decree he would be forced to pay to Louis S. Weinthal, approximately Four Thousand Four Hundred (\$4,400) Dollars, being personally liable for all over the amount the Barends had in the bank, they having moved to Philadelphia. No act

of Bianchi's has been shown and there is nothing in the Vice Chancellor's opinion to justify such a decree against him. If any decree in the case in favor of the complainants could be sustained, it could only be as against the defendants, Barends.

Bianchi also represented Dr. Hyems in his claim against the estate and drew his proof of claim (State of the Case p. 182, l. 29), and this clearly shows that he was acting for the creditors and not for the administrator of the estate.

Conclusion.

It is respectfully submitted in conclusion that there is no evidence in the case to justify the Vice Chancellor's findings of fraud as set forth in his opinion and that the inferences he drew to the effect that Mrs. Barend had been paid for the services she rendered to Mrs. Phillips by Mrs. Phillips in her lifetime were not in any degree confirmed by the evidence.

It is urged that the decree in this case is erroneous in all respects and that in determining whether or not the complainants had established their case of fraud, the learned Vice Chancellor did not follow the rule laid down by Vice Chancellor Bentley in *Kelso vs. Kelso*, 123 Atlantic 250, in which it was stated that clear proof is required to establish fraud. There was no clear proof of fraud in the case at bar. In fact, there was no proof of it at all and any findings of fraud can be based only upon inferences in no way justified by the evidence.

It is, therefore, respectfully submitted that this Court shall reverse the decree of the Court of Chancery and instruct that Court to enter a decree dismissing the bills of complaint.

Respectfully submitted,

DONOHUE & O'BRIEN,
Solicitors for Appellants.

JAMES F. X. O'BRIEN,
Of Counsel with Appellants.

New Jersey Court of Errors and Appeals

Between

LOUIS S. WEINTHAL, as administrator, &c. of Augusta Phillips, deceased,
Complainant-Appellee,

and

EVA BAREND, CHARLES BAREND
and OVIDIO C. BIANCHI,
Defendants-Appellants.

*On Appeal
from Court
of Chancery.*

Between

HANNAH LUBELL,
Complainant-Appellee,

and

EVA BAREND, OVIDIO C. BIANCHI, LOUIS S. WEINTHAL and
EDWARD H. HYEMS,
Defendants-Appellants.

**BRIEF OF COMPLAINANT-APPELLEE,
LOUIS S. WEINTHAL, as Administrator, Etc.**

Statement of Facts.

The statement of facts of the defendants-appellants is controverted by the complainant-appellee, Louis S. Weinthal, who says the case comes before this Court on an appeal from the decree made by the Chancellor of New Jersey as advised by the Honorable Alonzo Church, Vice-Chancellor, which decree orders the defendants-appellants to pay to Louis S. Weinthal,

administrator of the estate of Augusta Phillips, deceased, the sum of \$3,360.00 together with interest from May 15, 1924, besides costs and counsel fees.

The said decedent, Augusta Phillips, died March 15, 1923, a resident of New Jersey, testate. Her will offered for probate was refused because witnesses to said will testified that they were not present at the same time.

Louis S. Weinthal, complainant-appellee, was appointed administrator of the goods and chattels of the decedent by the Surrogate of Essex County at the instigation of and upon the request of Ovidio C. Bianchi, defendant-appellant. The said Bianchi acted as attorney for the said administrator until some time in August, 1924. In March, 1924, said administrator applied through Ovidio C. Bianchi for an administrator's bond to the National Surety Company. The bond application was received by the administrator from said Bianchi and was signed by the administrator and returned to Bianchi who witnessed the signature, took the acknowledgment of the administrator and forwarded the same to the Surety Company. Said application contained a query, numbered 13 in the application, which query and answer are as follows:

"Will you, in the performance of your duties in the matter, appoint an attorney, and agree to act as he shall advise? Yes. If so, give the name of attorney and his address, Ovidio C. Bianchi, 243 Main Street, Orange, New Jersey."

The query and answer were part of the application when received by the said administrator from the said Bianchi (State of Case, Louis S. Weinthal, direct, p. 65, ll. 1-13).

Said administrator received a proof of claim for board and nursing against the estate of the said decedent filed by Eva Barend, defendant-appellant, in the amount of \$3,360.00. Said proof of claim was prepared by Bianchi and was paid by the said administrator on advice of the said Bianchi as his attorney. The said administrator took from the said Eva Barend, defendant-appellant, a general release, which release was prepared by the said Bianchi and received from the said Bianchi duly executed.

From the time of the appointment of said administrator to the time of the payment of this claim, the said administrator had no other attorney than the said Bianchi. In August after the payment of said claim said administrator requested John A. Bennett of Montclair to act as his attorney for him as administrator for said estate. The said Bennett, as attorney for the administrator, communicated with Eva Barend, defendant-appellant, and demanded all the papers belonging to the estate including checks and vouchers. The said Eva Barend claimed that she knew nothing of any papers, vouchers or checks in her possessions. Said Bennett advised said Bianchi and said Eva Barend that the moneys should be paid back to the administrator and suit be brought by the claimant to establish her claim.

At this time Hannah Lubell, complainant-appellee, appeared and claimed to be the heir at law and entitled to the estate. The said John A. Bennett then pressed the said Eva Barend and Bianchi to pay the money back to the administrator and a conference was had with them and Colonel George T. Vickers, attorney for the heir Lubell, complainant-appellee. It was agreed that the money be turned back to the administrator.

The agreement was reduced to writing and signed by George T. Vickers and forwarded to Ovidio C. Bianchi but never signed by Bianchi.

After the payment of the said claim to Eva Barend, said administrator obtained knowledge of a certain contingent agreement between the said Eva Barend and the said Bianchi whereby the said Bianchi was to receive twenty-five per cent. of the amount of said claim as his attorney's fees for collecting the same. This information was not divulged to him by Bianchi until after he had discovered it from Charles Barend, defendant-appellant.

Said administrator, threatened by litigation by said Lubell, learning that the said Barends were leaving the State of New Jersey, finding himself and his bondsman jeopardized, believing the said Barends were without financial responsibility and knowing that a substantial part of the moneys paid to the said defendants-appellants being on deposit in banks in the State of New Jersey, said administrator filed his bill of complaint herein April 11, 1925, and obtained a restraining order restraining the defendants-appellants from withdrawing said moneys from banks until final hearing of this cause. The said Lubell filed her bill of complaint herein May 26, 1925. The said Barends did remove from this State.

At the final hearing of the cause it was shown that the decedent had been under the control of the Barends prior to her death and that certain papers, checks and vouchers had disappeared. It was also shown that a demand had been made upon the Barends to produce these papers, checks and vouchers, and although a knowledge of them was denied, it was admitted, however, by the

Barends that certain checks for \$65.00 were received. It was denied that these were in payment for services rendered but alleged that they were paid for cash received. This the Honorable Vice-Chancellor found was untrue.

ARGUMENT ON LAW AND FACTS.

The complainant-appellee calls to the attention of this Honorable Court the fact that this appeal is only an appeal from part of the decree, and that from the following portions of the decree there has been no appeal:

"And it is further Ordered, Adjudged and Decree that the claim of Edward Hyems, physician, heretofore paid, be allowed.

"And it is further Ordered, Adjudged and Decreed that Hannah Lubell is the heir at law and next of kin of the deceased, Augusta Phillips;

"And it is further Ordered, Adjudged and Decreed that all personal property of Augusta Phillips, deceased, remaining in the possession of Eva Barend be forthwith turned over and delivered by her to Louis S. Weinthal, administrator of the goods and chattels of Augusta Phillips." (State of Case, p. 191, ll. 18-30.)

"And it is further Ordered, Adjudged and Decreed that the proctor of the administrator have leave to apply for counsel fee for his services to the estate herein and otherwise upon the final accounting of the administration of the goods and chattels of the said Augusta Phillips, deceased." (State of Case, p. 192, ll. 10-15.)

The defendants-appellants having failed to argue any of the grounds of appeal excepting three set up in their brief, the complainant-appellee, Louis S. Weinthal, assumes that all other grounds of appeal than those argued have been abandoned by the defendants-appellants.

POINT I.

Whereas defendants-appellants say, "The only possible basis, after the hearing of the case upon which the Vice-Chancellor could have found fraud, was that the claim had been paid in the lifetime of Augusta Phillips," this complainant-appellee says in answer to the first theory propounded by the defendants-appellants it must be noted that Ovidio C. Bianchi had the administrator appointed and prepared an application for an administrator's bond which application set forth that the administrator would employ an attorney and Ovidio C. Bianchi was the administrator's attorney (State of Case, p. 64, l. 22, to p. 65, l. 13; State of Case, p. 170, Exhibit C. 2, l. 20); that the administrator paid the claim upon the advice of Bianchi (State of Case, p. 65, l. 24); that the said Bianchi had a contingent agreement with the claimant, that the said Bianchi was to receive twenty-five per cent. of the amount collected on the claim (State of Case, p. 32, l. 17; p. 36, l. 38); that until after the payment of the claim the administrator had no knowledge of this agreement (State of Case, p. 66, l. 32, to p. 67, l. 21); that during this time till after the claim was paid, the administrator had no other attorney besides Ovidio C. Bianchi (State of Case, p. 66, l. 24).

It is on the basis of the above facts, all of which were proved and stand uncontroverted on the record, that the administrator brought his bill. In this cause the agreement between Bianchi and the claimant was not disclosed to the administrator and the case falls completely within the line of cases on constructive fraud.

The fiduciary relationship which exists between attorney and client is such that when the occa-

sion arises which makes it necessary to scrutinize such a relationship, the law interposes a burden upon the attorney of establishing the perfect fairness, adequacy and equity of the transactions, and in absence of the attorney meeting this burden of proof, the courts of equity treat a transaction between such attorney and client as a case of constructive fraud on the part of the attorney.

Condit v. Blackwell, 22 New Jersey Equity 481;

Dunn v. Dunn, 42 New Jersey Equity 431;

Sternberger v. Young, 73 New Jersey Equity 586;

Nagle v. McCoy, 94 New Jersey Equity 790;

Raimondi v. Bianchi, 5 Advanced Reports 422.

The administrator's bill does not set forth that it was paid solely upon advice of Bianchi, but sets forth that it was paid upon advice of Bianchi without knowledge of the facts of the contingent agreement and without independent counsel but relying absolutely upon Bianchi as his attorney (State of Case, p. 2, l. 18).

Bianchi did not act in the manner required of an attorney for a person having a claim against an estate in which no one came forth, because, after the administrator was appointed by the surrogate, he acted for the said administrator without divulging the facts of the contingent agreement. He advised the administrator to pay the claim which was adverse to the estate and in which he had an interest.

The second theory propounded by the defendants-appellants may be well disregarded as without weight, for there is no inference nor is it

claimed either by the administrator or the heir that the administrator is an ignorant or gullible person. He is admittedly a man of business experience and intelligence and as an administrator of an estate would not have paid this claim had he known the fact of the contingent agreement between the claimant and Bianchi or the other facts which were brought out at the final hearing. This is clearly shown by the fact that upon learning of the contingent agreement he took steps to recover the money paid.

The third theory propounded by the defendants-appellants seems to indicate that the admission by the heir (State of Case, p. 64, l. 1) that Mr. Weinthal, the administrator, acted in good faith, which admission was made in open court in the presence of the heir, was an abandonment of the claim of the heir that the Barends and Bianchi acted fraudulently and collusively and conspired to bring about the payment of the claim in a fraudulent manner. The bill of complaint of the heir, Lubell, does not charge the administrator with being a party to the collusive and fraudulent and designed injury to the complainant (State of Case, p. 43, l. 29), and, therefore, the admission at the opening of the case does not in any way affect the status of Eva Barend and Ovidio C. Bianchi, who were so charged.

The fourth theory propounded by the defendants-appellants was that the Court might have found fraud by finding that no services were performed by the Barends. This point is without merit except insofar as it clearly concedes that the Court had proper jurisdiction to pass on the question of whether or not the claim had been paid or services rendered. The administrator

filed his bill solely to obtain the money which had been fraudulently obtained from him under the first theory propounded by the defendants-appellants as hereinbefore answered. His interest in obtaining that money was to insure its payment to the person or persons properly entitled thereto. His reason for opposing the appeal is in order to keep the estate from being devastated by further litigation. The administrator knows and has admitted in his testimony that Eva Barend rendered services to the decedent in her lifetime. The administrator agrees with the defendants-appellants insofar as they admit that the basis on which the learned Vice-Chancellor found fraud includes the finding on the proofs taken that Mrs. Barend had been paid for the services rendered in the lifetime of Mrs. Phillips, which claim is discussed under Point II.

POINT II.

Whereas the defendants-appellants say, "**There is no evidence to justify the Vice-Chancellor's finding that Mrs. Barend had been paid by Mrs. Phillips in her lifetime for the services rendered and that her claim for payment after the death of Mrs. Phillips was, therefore, fraudulent,**" as to this point complainant-appellee says:

It is true that neither of the bills alleged directly that Mrs. Barend had received payment for her services during the lifetime of Augusta Phillips; nevertheless, the defendants-appellants attempted to prove the services rendered to the decedent in her lifetime and denied that Mrs. Barend had ever received compensation therefor (State of Case, p. 103, ll. 7-8; State of Case, p. 129, l. 28; p. 130, ll. 1-3).

The issue having been raised by the defendants-appellants, it was met by the complainant-appellee, Lubell, in the following manner:

There had been introduced into evidence without objection a receipt card of the Bank of Montclair (State of Case, p. 99, l. 38), which exhibit is fully set forth opposite page 176, showing that certain vouchers and cancelled checks were delivered to Mrs. Barend February 17, 1922, to Mrs. Phillips August 7, 1922, to Louis Barend, son of Mrs. Barend, February 17, 1923 (State of Case, p. 99, ll. 12-32). There was also introduced into evidence without objection the statement of the said bank showing in detail the payment of each check and the amount of each deposit made to the account (State of Case, p. 100, l. 20; State of Case, Exhibit C. 16 in full, opposite p. 177).

It was shown also that a demand had been made by John A. Bennett, the then attorney of Louis Weinthal, on Mrs. Barend for cancelled checks and vouchers (State of Case, p. 81, l. 19, to p. 82, l. 3). Mrs. Barend denied then that she had any vouchers or cancelled checks and still denies it. The testimony of Mr. Bennett was substantiated by Mr. Barend (State of Case, p. 110, ll. 13-24). This bank statement, Exhibit C. 16, shows payments from the account of Augusta Phillips of \$65.00 each month from January, 1922, until November, 1922, with the exception of May, in which month a payment of \$55.00 was made. The bank statement also shows that with the exception of this \$65.00 payment no payment of any other amount was regularly made and that there were no payments during that period in excess of the \$65.00. Mr. Barend testified that he did not know anything about the \$65.00 payments (State of Case, p. 118, l. 38,

to p. 119, l. 11). He also testified that he had nothing to do with her financial affairs except to cash a check for her occasionally or loan her money (State of Case, p. 107, ll. 23-39).

Mrs. Barend denied ever finding any checks or vouchers, although she looked for them (State of Case, p. 131, l. 33, to p. 132, l. 33). When asked whether Mr. Bennett had asked her for them, she first said that there were none to give and then that he never asked her for them (State of Case, p. 132, ll. 33-37). When confronted by Exhibit C. 15, she at first denied that she had signed the card (State of Case, p. 132, l. 37, to p. 133, l. 11), but when warned by the Court to be careful in her answer, she said that Mrs. Phillips sent her there, Mrs. Phillips not being able to go (State of Case, p. 133, ll. 10-18). When asked if Mrs. Phillips attended to outside business, she did not know except that Mrs. Phillips had bought personal things for herself. When asked to specify what the personal things were, she testified as to the purchase of some underwear, but she could not think of anything else (State of Case, p. 139, ll. 24-38). When confronted by the \$65.00 items shown in Exhibit C. 16, she testified that sometimes Mrs. Phillips did give her a check for \$65.00 and that she gave \$65.00 in cash to Mrs. Phillips and used the check to pay her rent, because she did not have a checking account (State of Case, p. 139, l. 38, to p. 141, l. 5). She then testified that the rent at Willow street was \$60.00 and at Claremont avenue was \$60.00.

When attention was called to the fact that these checks were for \$65.00, she claimed then that she had said \$65.00 in both places and not \$60.00 (State of Case, p. 141, ll. 9-39). She did not know whether these checks were made to

her order or to the order of her husband, and she said that sometimes she used them to pay the rent but not always. She further testified that she did not make any deposits for Mrs. Phillips, but that her son, Louis, did occasionally. She testified that Mrs. Phillips took her check book to the hospital (State of Case, p. 154, l. 10) and that her husband brought it back (State of Case, p. 154, ll. 15-18). It was, therefore, distinctly proved that some vouchers, check books and accounts came into the hands of Eva and Charles Barend in spite of their denial of that fact. Mrs. Barend also testified that Mrs. Phillips came to her home the 1st of September, 1921 (State of Case, p. 124, l. 37); that she stayed at the house thirteen months until she went to the hospital (State of Case, p. 125, ll. 1-13). She testified that Mrs. Phillips was in bed for a period of six months (State of Case, p. 129, ll. 17-22); that during the entire year of 1922 she was unable to leave the house except to go on the porch (State of Case, p. 134, ll. 17-30); that she was unable to leave her room from May, 1922 (State of Case, p. 151, l. 32). There was a great deal of other testimony to the same effect.

The testimony of Charles and Eva Barend shows that they had the exclusive care of Mrs. Phillips during the time she was with them; that Mrs. Barend did everything for her; that she was practically under the absolute control and observation of Mr. and Mrs. Barend for the year 1922 except during a period of ten days in August, 1922 (State of Case, p. 135, l. 19), at which time she was under the control of a practical nurse, hired by Mrs. Barend but paid for by Mrs. Phillips (State of Case, p. 136, ll. 22-31).

The complainant's case shows that Mrs. Phillips called at the Bank of Montclair for a statement August 7, 1922 (State of Case, p. 99, ll. 15-20); that on August 7th a statement as of that date was mailed to Augusta Phillips, who acknowledged the same August 16th that year; that it was mailed to 30 North Willow street (State of Case, p. 99, ll. 19-25).

Anna Cohn testified that Mrs. Phillips came to visit her and stayed overnight some four, five or six months prior to her death (State of Case, p. 93, ll. 15-39). Sadie Cohn testified that Mrs. Phillips came to her house and stayed overnight in the fall of 1922 and that Sadie Cohn took her to her mother's house from Woodhaven, Long Island, to uptown New York by means of the Long Island Railway and subway (State of Case, p. 96, l. 34, to p. 97, l. 38).

In view of the testimony to which reference has heretofore been made regarding the bank statement and the \$65.00 items therein contained, the testimony of Solomon Weinthal, the first landlord of the Barends, shows that very often his rent was paid by check for \$65.00 of Mrs. Phillips from the Barends, endorsed by Barend (State of Case, p. 163, ll. 1-26).

Complainant-appellee calls this Honorable Court's attention to the following points of the evidence:

First—The bank statement shows that the account was started December 8, 1921, and continued to March 9, 1923; that it shows a \$65.00 item paid out of this account each month except May, 1922, during that period in which Mrs. Phillips resided with the Barends; that the testimony of the Barends is, at first, that they

never were paid for services by Mrs. Phillips, then that they were paid occasionally \$65.00, for which they gave Mrs. Phillips cash. Mrs. Barend says that this was done occasionally. Solomon Weinthal's testimony shows that he was very often paid by Mrs. Phillips' check for \$65.00. The testimony further shows that Mr. Weinthal was their landlord during the period shown by the bank statement from December 28, 1921, to May, 1922. During that period only four of these checks for \$65.00 could have been given. The testimony further shows that from October, 1922, until March, 1923, the date of the death, Mrs. Phillips was in the Orange hospital and that she paid her own expenses there. The bank statement shows that during this period, instead of the regular monthly payments of \$65.00, regular weekly payments of \$22.50 were made from this account. Deposits are shown by the bank statement. The only testimony as to the expenses of Mrs. Phillips during her stay with the Barends was for underwear. The defendants-appellants argue that the difference between the cash paid to Mrs. Phillips and the amounts of the deposits can be reconciled by the fact that she bought little necessities, etc. It is interesting to note that the deposits over the nine months' period of this account during which Mrs. Phillips resided with the Barends and was under their control, amount to \$1,148.06 and during the five months' period she was in the hospital, \$655.00. It has been maintained by the Barends that she was entirely bedridden from May, 1922, until the time of her death. It has been testified by the Barends that from the 1st of January, 1922, to the time she was bedridden, she could not leave the house. It may be inferred her expenses at the hospital, therefore, amounted

to about \$97.00 a month, while her expenses at the Barends amounted to \$65.00 a month. Her deposits during the period she was with the Barends amounted to approximately \$128.00 a month, while her deposits while she was at the hospital amounted approximately to \$130.00 a month. If her expenses at the hospital were about \$97.00 a month, it would seem to be reasonable that if she was staying at the Barends without any expense and receiving \$65.00 each time she drew a \$65.00 check that her average deposits would have then exceeded her average deposits at the hospital, where she was paying about \$97.00 a month for maintenance and care.

Second—It was shown that the Barends received the \$65.00 a month. The Barends claim that they paid back this \$65.00 in cash. The question of fact was then raised as to whether or not these cash repayments had been made. It was a question of fact for the Vice-Chancellor to decide on the evidence, and he has decided that the payments to the Barends were for care and maintenance and were not repaid to Mrs. Phillips. In considering this question of fact no doubt the Vice-Chancellor took into consideration the following testimony of Mrs. Barend:

Question Have you any rent receipts in your possession? Answer: No, sir.

Question: Did you ever ask Mrs. Phillips to let you have those checks so that they would be receipts for you? Answer: No, sir (State of Case, p. 142, ll. 12-17).

It is evident that Mrs. Barend was not in the habit of asking for rent receipts whether she paid by cash or check. It would therefore seem that there was no real motive for using checks the one time and giving cash another.

The Vice-Chancellor had also an opportunity to observe the witnesses and his finding of fact should not be disturbed.

Third—The Barends' testimony throughout the case was in itself contradictory and hesitant. A few instances of the contradictory testimony are as follows:

When Mr. Barend was asked if a certain check was in a chest, he said it was not (State of Case, p. 112, l. 30). When asked, if when he took the will out of the chest, did he not take the check out, he admitted that he did (State of Case, p. 113, l. 31). When asked again whether he produced the will and check from the chest, he said he did not (State of Case, p. 113, l. 3 to p. 114, l. 3). He then testified that he took it from the chest with the will because he had put it there himself (State of Case, p. 114, l. 9). He testified in reference to whether he knew the name of the heir as Lubell as well as Lubelsky and Autenreith, he said he did not (State of Case, p. 119, l. 22). In answer to an inquiry by the Court, he admitted he knew that she was known by Lubell or Lubelsky, either one (State of Case, p. 120, l. 35). Mrs. Barend testified, when asked if she had looked for checks, that she had several times (State of Case, p. 132, l. 1). On line four of the same page she testified that she did not look for any checks and did not know there were any checks. On the same page, in answer to the same question, she testified that she did not look because she did not think it was necessary. Then she says that there were none to give in answer to the inquiry of Mr. Bennett for them. Then when asked by the Court whether or not Mr. Bennett had asked her for them, she said no. When

asked whether she knew whether Mrs. Phillips had any cancelled checks, she said she knew that they came back from the bank. She was asked whether she had signed a certain card marked Exhibit C. 15. First she said she did, then that she did not, then that she did and later that she did not know or have any recollection of signing it (State of Case, p. 133). The testimony as to whether the rent was \$60.00 or \$65.00 has been heretofore discussed and needs no further comment. In reference to certain jewelry to which Mrs. Barend made a claim and in open court abandoned the claim, she testified that she thought Mrs. Phillips kept this jewelry in a safe deposit box. Later she testified that she knew she kept it in a safe deposit box (State of Case, p. 148, ll. 37-40). She then testified that Mrs. Phillips had it home in her chest (State of Case, p. 149, ll. 1-12). Then she testified that Mrs. Phillips had carried it around in a little bag on herself (State of Case, p. 149, l. 23). In connection with this claim for jewelry, Mrs. Barend testified that she had had the jewelry for about two weeks and when Mrs. Phillips went to the hospital she asked her to put it back in the safe deposit box with her other things, which Mrs. Phillips did, and that Mrs. Barend gave it back to her (State of Case, p. 130, l. 32, to p. 131, l. 5). Later she testified that Mrs. Phillips gave her the jewelry in July, 1922 (State of Case, p. 147, ll. 9-17). It might be commented upon here that by Mrs. Barend's testimony Mrs. Phillips was bedridden from May until October, when she went to the hospital. Therefore, it would not have been possible for her to go to the safe deposit box, where the jewelry was later found. The above instances are but a few of the many contradictions in the Barends' testi-

mony. Due to this contradictory testimony the question of weight to be placed on this testimony is within the discretion of the Vice-Chancellor.

Fourth—It was shown as a fact that certain checks or cancelled vouchers and a check book actually came into the possession of the Barends and that they were material evidence to this case. It is proper, therefore, to presume from their failure to produce them at the hearing, that they were adverse to the interest of the Barends.

Eckel v. Eckel, 49 New Jersey Equity 587.

Fifth—It was shown as a fact that certain checks or cancelled vouchers came into the possession of Louis Barend, the son of the Barends; that their son was about thirteen years of age at the time; that he ran errands for Mrs. Phillips and among other things made deposits in the bank for her. He was not produced at the hearing although he lived with his mother and father. Because of the failure to produce him at the hearing to clear up those matters which he might so easily have cleared up by his testimony, such as the disposition of the vouchers and the substance of the deposits, those matters must be resolved against the defendants-appellants.

Johnston v. McKinna, 76 New Jersey Equity ~~272~~ 217

Affirmed 77 New Jersey Equity 555.

POINT III.

Whereas the defendants-appellants say, "By the decree of the Chancellor on the advice of Vice-Chancellor Church, the defendant, Bianchi, is ordered with the defendants, Barends, to pay to Louis S. Weinthal, administrator, three thousand three hundred and sixty (\$3,360) dollars, and the evidence cannot support any such provision in the decree," as to this point complainant-appellant says:

The learned Vice-Chancellor in his opinion says "The evidence in this case convinces me that Eva Barend, in conjunction with Bianchi, when she found the Phillips will was void, deliberately attempted to secure the assets by fraud" (State of Case, p. 185, ll. 32-35).

The decree itself does not expressly charge Bianchi with fraud, but there again the Court sets forth in full a finding of fact (State of Case, p. 189, l. 19 to p. 190, l. 12) which facts constitute constructive fraud as argued by this complainant-appellee under Point I in this brief and which falls within the cases therein cited.

In answer to the argument of the defendants-appellants that all Bianchi did was to have an administrator appointed, it is obvious that he did more, that he had an administrator appointed and acted for that administrator as an attorney while at the same time he represented an adverse claimant under a contingent arrangement; that he concealed this fact from his client, the administrator, and advised his client, the administrator, to pay a claim of doubtful validity, as more fully set forth by this complainant-appellee under Point I herein.

In answer to the argument raised by the defendants-appellants that in the New York City phone book the name Lubel and the name Lubell would be separated by many, many pages, the complainant-appellee says that there is no substantiating proof of this in the case, but in order that the Court may have the facts properly before it, an examination of the New York telephone directory for Manhattan and the Bronx dated October, 1924, discloses that all the Lubels, Lubells, Lubelskis and Lubelskys are on page 663; that there are three persons by the name of Lubel; that there are twenty-three persons by the name of Lubell; that there is one person by the name of Lubelski; and that there are seven persons by the name of Lubelsky; that there are about one hundred and ten names in each one of the four columns of the directory. Furthermore, it is called to the attention of this Court that defendant Bianchi did not testify as to what efforts he made to locate the heir Lubell, and he was present in the court room during the hearing of the cause and could so have testified had he made an effort.

In answer to the defendants-appellants' argument that the decree ordered the Bank of Montclair and the Montclair Savings Bank to pay certain moneys which were deposited with the said banks, this complainant-appellee says that the banks have paid the moneys in accordance with the decree and that the time for the banks to have appealed from this decree has expired, and that they have filed no appeal. The defendant Bianchi has not been injured in any way by the decree directing the said banks to pay the moneys or by the payment of the moneys, and not being injured, he has no grounds upon which to base his appeal. Furthermore, the defendant Bianchi

has accepted the benefit derived by the banks' paying the money and has only paid the balance over and above the amount paid by the banks, and has accepted upon making that payment of that amount over and above the amount paid by the bank, a satisfaction of the decree. Therefore, the Court should find that this part of the decree in no way affects the defendant Bianchi. He has suffered no injury and has not been aggrieved by this part of the decree and therefore has no right of appeal therefrom. It must be shown affirmatively how the person appealing is aggrieved before the Appellate Court will grant him relief. *Black v. Kirgan*, 15 New Jersey Law 45. 3 *Corpus Juris*, p. 635, section 494. Furthermore as the banks have paid the money in their hands and defendant Bianchi has paid the balance of the decree, there is now nothing upon which a judgment of reversal could operate and this appeal must therefore be dismissed. *Coryell v. Holcombe*, 9 New Jersey Equity 650.

Again at the bottom of page 18 and page 19 in the defendants-appellants' brief it is argued that no act of defendant Bianchi has been shown that would justify the decree, and again the complainant-appellee says that the evidence shows that defendant Bianchi was guilty of constructive fraud as argued in this brief under Point I. It is also called to the attention of this Court that the usual rule applies, that joint tortfeasors in fraud cases are jointly and severally liable. 27 *Corpus Juris*, page 27, section 142.

The defendants-appellants' arguments that the fact that Bianchi represented Dr. Hyems in his claim is evidence or clearly shows that he was acting for the creditor and not the administrator of the estate is without weight. It was impossible to get personal service upon Dr. Hyems,

who is without the jurisdiction of the courts of New Jersey, to bring him before its courts as a defendant, and Ovidio C. Bianchi did not take the stand. The complainant-appellee, Lubell, therefore, was unable to prove whether or not an arrangement similar to that in the Barend claim existed between Bianchi and Dr. Hyems.

The decree herein should be affirmed.

Respectfully submitted,

JOHN A. BENNETT,
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with Complainant-Appellee,
Louis S. Weinthal, as Admin-
istrator, etc.