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J. J. Griffiths, Law Printer, 38 Montgomery St., Jersey City.

N. J. Court of Errors and Appeals.

Dale
v.
Dale.

BRIEF FOR APPELLANT.

Mrs. Dale died May 8, 1880. The will (so-called) was signed April 28, 1880.

She left Paterson for Philadelphia about April 1, 1880. She had been staying with her son Nelson in Paterson, but about that time he broke up housekeeping and went to Newport to live.

Doctor Blundell had been her regular physician in Paterson from July, 1875, during which time she was suffering from the disease with which she died.

His testimony is of more importance necessarily from the facts it contains than that of any other physician—read p. 148–151.

While under his care, and more particularly during the latter part of the time while she was in Paterson, she was easily excited, unable to sleep, had intense headaches, loss of memory, loss of eye-sight, loss of appetite and strength, stammering, ulcerations of the skin, &c., soreness of the throat, and saw everything through syphilitic eyes. She was suffering from tertiary syphilis, and in March, before going to Philadelphia, she had an attack of *coma* which lasted the better part of two days.

Her nervous system had become thoroughly shattered, and all the indications pointed to speedy death.

I invite particular attention to the evidence of Dr. Blundell for her exact condition. He doubted her ability to make a will eleven days before her death—p. 159.

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Her disease and condition were so terrible that the counsel for the proponent at the close of Dr. Atkinson's direct examination, as it seems, anticipating what the cross-examination would develop, gave notice that he would not be responsible for any testimony that might be produced by the caveators—p. 22.

This however, did not intimidate an investigation of the truth. Nelson Dale also in a letter of October 13, 1881,—p. 224, states, "The character of the evidence to be brought out *I know too well*, but I do not hold myself in any way responsible for it."

The fact of her disease and its steady progress from bad to worse, covering a period of over five years, with all its dreadful train of physical and mental ruin, is undoubted. The testimony of Frederick of her condition while at *Teplitz* in 1880, is so natural and apparently truthful, that it should be read—p. 126.

She felt herself to be thoroughly infected from head to foot, and as if everything about her was impregnated with the disease. Dr. Atkinson says that she had arrived at the tertiary stage—p. 30, which is the last.

She also told him (evidently referring to her attack in Paterson, spoken of by Dr. Blundell), that before coming to Philadelphia she was unconscious for a considerable time—p. 30, from the effects of the disease.

She died from *spinal meningitis*—Dr. Atkinson, p. 32.

This tells the tale of her disease and how her mind must have been gradually undermined, and at last completely broken down. It is melancholy to see such a wreck as this.

May 2 or 3, she complained of *great* pain at the base of the brain—p. 36, then in bed. This was only four or five days after the paper was signed, and she

was then evidently in the last stages of the disease, which she had reached by a natural steady and inevitable progression.

I invite a careful reading of the cross-examination of this witness, and although he is not as careful in his statements nor as frank as he ought to have been no one can fail to see about what her condition was, and that it was in accord with what Dr. Blundell states, except that her disease had then advanced to the period of death.

II.

Mrs. Dale left only two children. Her husband died a short time before, without any estate. Her estate was worth about $54,000, not including any expectancy from her mother.

Frederick is absolutely disinherited, and Nelson and his family get all of the estate except $1000 to each of the two children of Frederick, to be paid to them in such instalments and at such times as Nelson with the advice of the executor Daggett may think proper. And Nelson told his aunt Stella (Munson—p. 208) that "Fred's children wouldn't have gotten as much as they did, *if it hadn't been for him.*" Also that "his mother intended to give them $500 apiece, but *he prevailed upon her to give them a $1000.*" Also that "it served him right, and it was just right, that he had to learn a lesson and perhaps this would teach him." He even claims a virtue in the making of the will while showing his hate toward his brother.

He admits his influence over his mother and brags of it.

This almost sole beneficiary, with the feelings he had towards Frederick, is not the man to be trusted by the law in suggesting terms of the will, unless it can be seen that his mother exercised and was capable of exercising a free judgment.

Nelson's relations with his brother were not only unfriendly, but deep seated, bitter and spiteful.

The father died in July, 1879, while Fred was temporarily in Europe. *Charles H. Streiver*, who had been superintendent of the Dale Mill seven years, says—p. 102—while the father was lying in his coffin, requested Nelson to drop all animosities existing between him and his brothers. "*He said never, and I left him.*" Fred had telegraphed from Europe to Streiver to pay expenses of funeral and order flowers —p. 103 (see also telegram, p. 400)—but Nelson refused to have the flowers placed on the coffin or in the hearse. Fred actually paid the funeral expenses. Mrs. Ida Dale, the wife of Fred, was not even asked to be present at the funeral—p. 117—and when Streiver asked Nelson about the carriages for the funeral and whether he had been to see Ida, &c., he answered, "*if she wants to go, she may do so.*"

Elizabeth O'Connor, a servant in Nelson's family, —p. 53, says Mrs. Dale remarked to her one Sunday, that she would like to see Fred as he was her baby, and Elizabeth said to her, "why don't he come to see you." "She said Nelson, nor Mrs. Dale, didn't want him nor his children."

During the last month that Mrs. Dale was in Paterson, Elizabeth says, "Fred called to see her and I was told not to let him upstairs to see his mother"— —p. 55—that Nelson's wife told her that.

Nelson was telegraphed to from Philadelphia about his mother's sickness, and was there about five days before she died—p. 17—but never sent any word to Fred, until May 7, as she died the next day. (See telegram 402.) That dispatch was received in the afternoon of May 7—p. 89—same day. The mother was then dying. Dr. Atkinson told Nelson May 4 or 5 that she could not live long—p. 33, 32. The last attack was May 2 or 3—p. 33, 36.

May 4, he writes a letter to Charles Munson, his uncle—p. 88—that his mother is having another of those *dreadful attacks*, and scarcely know whether she will survive or not. Read that letter, and see how, while his mother is unable to attend to anything, he

tries for his benefit, and as he says, for her to raise money, as though he was already anticipating the control of her property. When he arrived in Philadelphia she was only conscious enough to recognize and speak to him—344—and after May 4 she became unconscious—364.

Neither did Mr. or Mrs. Winters telegraph to Fred.

In writing to his mother from Newport April 15, 1880, he could not help *slur* his brother in telling how he liked Newport. "*I had rather be a stone mason within sight of such grand scenes than receive a good deal more pay in a silk factory in Paterson*"—see page 404, folio 1211. Fred carried on a silk factory in Paterson. It seems that Winters had written to Nelson for the mother April 13, and this letter of April 15 is in answer to that. Nelson asks at the close whether she is not well enough to drop him a line herself and saying, "*You certainly have little to worry or annoy you now.* "To what he refers is clear. He could not help show his hate and keep it before her. Winters' letter is not in the case.

These are the feelings of the man who offers the will for probate. Could hatred be more deep seated or conduct more despicable? Surely he can ask no more consideration than the strictest law may give him, and is required before he can get the benefit of the alleged will to satisfy the Court of the fairness of its execution.

III.

But go farther and see the part he took in its preparation and execution. It seems that there was delay in getting the will from Wallis. Nelson wrote a "*stirring*" letter to him about it—p. 404. There is a postscript to the letter of April 15, stating that since writing it the document came—p. 405. Mr. Wallis' letter enclosing it is on p. 405, dated April 14, 1880. Nelson gives instructions to read Wallis' letter and *get three gentlemen witnesses*, a lawyer or a

physician and a good business man besides Winters. Wallis says "*You do not require any doctor's certificate. You* had better have it executed before some one familiar with such matters." This letter is addressed to Nelson, not to Mrs. Dale. There must have been some conversation with Nelson previously about a doctor's certificate.

The stirring letter to Wallis is not in evidence. The mother answers Nelson (see second *fac simile* letter) and asks about putting Winters in as a third executor—"he could handle Fred," and Daggett and Winters would be strong enough to set things straight if Nelson should die before her. She says also "I am very feeble." Read Nelsons reply—p. 406. He thinks it would make things rather complicated to have three executors at the same time. No change is made. Nelson's influence is seen here. The will was also executed just as Nelson directed. The witnesses were Winters, a physician and a business man. Nelson was willing to put Winters in place of any executor who might die; that would not do much hurt, but to make the change would require alteration, and it is not done.

There is a mystery in regard to this will in connection with one to be drawn by Nelson for himself, which Nelson does not explain. Wallis says that he was to send the will to Philadelphia. Assuming that to be so, Nelson knew all about it. Read letter to his mother—p. 407. The post mark is April 12, 1880. "If Mr. Wallis has sent you the document, please send it to me (registered) *so that I can draw up mine.*" Winters writes letter of April 13 in answer to this; then Nelson writes the *stirring* letter to Wallis. When he receives Wallis' letter of April 14 enclosing the will, he puts a note on Wallis' letter, "I have taken note of the will, and *will not need to see it again in order to draw up mine*"—p. 405. This looks as if there was some bargain or understanding about mutual wills, and as if she had been operated upon under some *specious* promise to deceive her. Ponder

that; what does it mean? He don't explain; he ought to. Look carefully at letter—p. 404: "But *we will have more to do with* by the time it becomes necessary to ship the collection and the furniture." See also statement as to expenditures. See also letter, 406. Also letter to Charles Munson p. 88, in which he acts as though he had control of her property. *(Read.)* He evidently was depending upon her and getting all he could. The *fac simile* letter of Mrs. Dale, referred to, also looks like some underhand or misunderstood movement. Speaking of Daggett and Winters "if those two should be called upon to attend to it *should you die before me*, and they would be strong enough to set things right." See also *third fac simile* of Mrs. Dale. "I can soon put you in the way of having house by exchanging land or something. If I settle you once on a small *track*—it will certainly grow with the place you hold there in society."—Simple-minded woman. It is Nelson's duty to explain. He does not. Already the burden is heavily upon the proponent.

It is said that Mrs. Dale's mind was influenced by a difference about machinery. This is the ostensible reason alleged for the will. Nelson took advantage of that difference, for it was only that, and used it with her against Fred. She had arranged with Fred for him to take the machinery for $20,000. She had bought it at a sheriff's sale of her husband's property and wanted to sell it. Mr. Tuttle had it for sale for her as her attorney at the amount of her judgments, between $19,000 and $20,000, and was instructed to sell it at $20,000—p. 373–4.

The evidence is clear that it was worth no more. It is not easy to tell the exact amount of the difference between her and Fred. It was small. *Nelson made the negotiation for her*—p. 139 folio 416–17. As Fred understood it, she wanted interest on $16,000, from August 1, 1879, to January 1, 1880—p. 140 folio 419, while Fred says he had agreed to pay interest from January 1. Mr. Wallis says she said she wanted

to be compensated for the use of the machinery from August 1 to January 1—p. 299 fol. 896—but thinks it amounted to some $1200. Mr. Wallis advised her she would be unable to insist upon it under the agreement she had already made. The matter, however, was settled by her taking $200, as offered by Fred—see p. 140 fol. 419, p. 300 fol. 898—and interest from January 1.

Fred had paid taxes and interest for her and had given sums of money to his father, and paid money to Nelson, and he says his mother did not demand anything as rental for the machinery—p. 138–9.

This is the only *semblance* of a cause for the injustice of the will. This as we claim was worked up by Nelson, and was the *lever* by which he controlled her. The amount in question *Stella Munson*—p. 208—thinks she stated as $500, and would make *that difference* in her will. This was while she was on a visit to New Haven in January or February before she died. ~~Fred~~ was also there and "*advised her not to yield to Fred's wishes.*" Stella Munson's account of her vagaries and condition of mind shows how easily she could have been influenced. *The fact is here that Nelson was operating upon her*, through the difference about the machinery. Nelson actually managed the transaction as to the machinery. See the *original bill of sale, his handwriting* to schedules, &c., and in all the papers in that matter. His advice and action seemed to be at the bottom of everything in relation to it.

Mrs. Dale was conscious also of the trouble between Fred and Nelson, and as Stella Munson says, "Appeared to suffer mentally from it, whenever she spoke of it"–p. 211. Mrs. Provan, one of proponent's witnesses, p. 250, says, Mrs. Dale *shed tears* over it, but she ssid she had tried to do everything she could to have it otherwise, but it seemed that it was not to be. Miss Inglis another witness for proponent says, "at the time she told me of the will Fred had done her two or three ugly tricks, but she never believed

he could have done this—p. 227, about the machinery, but did not say what she meant by two or three ugly tricks—p. 234. "*It seemed too painful for her to speak about; she lay back in her bed convulsed with sobbing.*" This was two or three weeks after her return from New Haven, and after she had mentioned the will to Miss Inglis. *Now take in that condition of things.* She had mind enough to retain a fancied grievance if encouraged, but her nervous system was shattered, and she was absolutely swallowed up by a delusion and a snare. There she was a wreck and powerless. What matters it whether she said to Wallis that Fred would have cause to regret compelling her to accept any such proposition, or something to that effect—p. 300. She knew enough to recognize the hostility that had been created in her mind, but had not the power to resist it. Undue influence is perfectly consistent with such a condition of mind. The proof of her expressed purpose of revenge upon Fred shows how completely she had become entrapped, and her maternal instincts and affection for the time being smothered.

But it was not always so. In 1876 when the first will was made, it was not so. In Europe not so. See letter, p. 83, "Your affectionate mother, with love;" nor when she comes back to Paterson in the fall of 1879; then she would visit Fred and his wife and children. She left Frederick to go to Nelson about November 1, 1879, p. 115, and said she would come down every two or three days, so that she would be nearly the same as though she was still there—p. 116. Sometime in December she ~~stopped~~ with Fred in New York, wife shopped also spent the evening with his family as pleasantly as he ever saw her, and the next day came there again took dinner, and after that she never came. Read the evidence of Elizabeth O'Connor and see how Mrs. Dale was kept from Fred. See also evidence of Mrs. Leonard after Mrs. Dale's return from Europe, as to her pride for Fred, and how well he had acted towards his father and even Nelson, and the confi-

dence she had in his ability and his willingness to conduct her affairs properly—p. 217-18. She always expressed a desire that Fred should have the machinery—p. 217.

I admit that a person has a right to gratify a revengeful feeling even towards a child, if it is the untrammeled action of the mind, but it is not natural for a mother to disown one of two only children, and particularly for such a trifling cause, as is alleged. The fact that she and a mother, does it, excites to the most careful scrutiny.

Think of such a man as Nelson doing anything like justice towards an only brother, when he undertakes to exert any influence in his mother's will!

Nelson goes with her to Wallis every time on the subject of the will. Mrs. Dale was there twice for that purpose. Nelson was with her at the first interview—p. 311—and that was not the time in escorting Mrs. Dale to the door he met Nelson. That was a second interview—see p. 301, 305. At the first interview Mr. Wallis told her to put her ideas in rough shape on paper and he would prepare the will. This first interview, Mr. Wallis thinks, must have been in February, 1880—p. 301. At that time he was asked if it was necessary to state in the will the names of the children—p. 311 fol. 983. Nelson must have been present then, as he says, p. 354 fol. 1061, "I heard Mr. Wallis once say that people who had no knowledge had such a notion," but he says he "*forget's whether it was to me for her or to her in my presence.*" If he was not present he must have been talking with Wallis about it, in her absence. Nelson came on with his mother from New Haven and judging from Stella Munson's evidence, both were in condition for the preparation of the will.

After the first interview Nelson takes charge of the preparation of the will.

IV.

In order to understand exactly the full measure of Nelson's influence and action, his whole testimony must be read in connection with the drafts of the will. *The burden under the law is upon him under the circumstances* to satisfy the conscience of the Court, that the paper should be admitted to probate. See now his conduct and explanation.

Exhibit X, p. 381, is the first draft, and *it is in Nelson's handwriting.* No one present but Mrs. Dale and himself. After written *he mailed it to Wallis*—p. 340-1. See also how he stammers and how disjointed many of his answers are throughout his whole evidence. As a specimen, see p. 348, Q. 1965; also see the leading character of his direct examination. He says he did not know "*in detail*" what were to be the provisions of the will, fol. 1022, but on cross-examination, fol. 1040 says, "the understanding was that as soon as the machinery matter was disposed of, that she was to draw up her will." He also says fol. 1043, "I knew that from remarks she had made, that she did not intend to leave much of her property to Frederick S. Dale." Then follows

"Q. Remarks made how long before that time?

A. From the time—from about the time the—she—she was discussing the machinery question with my brother." That answer troubled him. This he actually understood previous to the draft he wrote. Read p. 348-9.

According to his own story he suggested $1000 to Fred's children instead of $500, and succeeded in that, fol. 1023. This he says was done from *disinterested motives.* Q. 2019.

This draft Exhibit X, was prepared in her bed room, she on her bed, p. 347. "She had intimated in many ways that she wanted to have me come in at the first opportunity."

Q. Did she say what for?

A. Yes, sir.

Q. Did you anticipate such a request?

A. It was my—she generally asked me to act as her secretary in writing letters.

Q. Did you anticipate the object for which she desired your presence then?

A. Well, I knew that I would—that she required my assistance."

Nelson knew of her intention to deprive Fred of his share before he went into his mother's bed room, fol. 1046, and knew it a month before, fol. 1044.

The direct examination gives no *particulars* of what transpired in that bed room, as it was purely leading, but he gives some on cross-examination.

Examine Exhibit X carefully in connection with Nelson's evdience—p. 351–7, *Read this evidence.*

The memoranda of lots in Exhibit X were evidently taken from the records of a Probate Court in New Haven obtained by Nelson. The date of the record is *February 26, 1880*, p. 392, and Nelson, fol. 1050, commenced to tell that.

Some of Exhibit X is in black ink, some in lighter colored ink, and some in lead pencil. It is clear that the paper was not all written at one time, but that Nelson was at work upon it at different times, although he states it was done in the bed room on the one occasion. He cannot account for the difference in the appearance of the ink, "*unless there were two inkstands in the room.*"—fol. 1055, also fol. 1057.

On pages 355–6 he undertakes to account for the pencil. "*I may have read it over again by myself* and put in those interlineations before mailing it."

See the original exhibit and the importance of this alteration *which he made himself.*

See also p. 355, his answer to Q. 2027, *when* certain other interlineations were made by himself.

"A. I suppose at the same time." These interlineations are material. *Can he make this a matter of guess,* when he is so surrounded with suspicion and bound to clear up all difficulties? Does this satisfy?

See "present and future" interlineation. That was forethought on the part of Nelson, a young man, to take in his prospective children.

Take the interlineation "interest of it for him." That was also a thoughtful provision for Nelson's benefit.

Here are two very important changes.

1. Provision for future children of Nelson.
2. *Interest money* for Nelson.

Does the story of *two inkstands* satisfy the Court of the interlineations in different ink? It looks as if Nelson had pondered over this draft and altered it to suit his own mind. On p. 356, fol. 1066, he speaks of his habit to re-read anything two or three times, to be sure it is correct, and accounts for lead pencil alterations in that way.

Does he satisfactorily explain? Even if she assented to such changes, as she likely would, if Nelson asked her, is that fact not entirely consistent with undue influence? The underscoring of Driscoll avenue, &c., is in pencil—p. 352. Nelson furnished the memoranda from which these names were taken, f. 1150, and in Exhibit X says, "the exact description of those lots are enclosed." This is not produced.

I invite a careful analysis of Exhibit X. Look also at *provision of $1700 a year to Nelson Dale as long as his circumstances require it.* Read that paragraph. It seems like an arrangement for Nelson to have $1700 a year from his mother for the time being, and is in keeping with the idea of *fraud* already referred to.

See in that connection, p. 345. Read Q. 1934–6 and answer. He states the income that he had received at $1679.28 then.

"Q. 1955 Did your mother have full knowledge of your condition and circumstances?

A. Yes, sir.

Q. 1936 And the income from your profession?

A. *So much of it—yes—she did, as to the income only that portion of it, of course, that was received during her lifetime.*"

Can anybody tell what that means? Is there not enough in it however to show that the arrangement whatever it was had something to do with an income for Nelson, from his mother in her lifetime, "*while his circumstances required it*"?

Nelson intends to convey the idea in his examination that Exhibit X was taken from her dictation substantially *in haec verba*, yet at fol. 1047 he says "I began by making memoranda on a separate piece of paper from papers of Mrs. Dale and from her own words."

Up to the time of the new will the will of 1876 was in existence all the time. While Mrs. Dale was abroad it existed, and after the machinery difference it remained unrevoked. *That divided the property equally.* It was a crime morally for a son to assist a feeble, weak and diseased mother to cut off her youngest son and only other child in this way.

In Exhibit X Thomas Nelson Dale, Jr., is the only executor. On page 351 he says, "I think it is probable that she said 'I want to appoint you *as one of my executors.*' "

This draft being ready and sent to Mr. Wallis, he prepares a will (not the one offered for probate) but Exhibt &. It is said to have been prepared from the draft. Wallis did not see Mrs. Dale, after Exhibit X was sent to him. She had seen him but twice before that, fol. 1072. Nelson having already stated that *he mailed Exhibit X* is on p. 356, uncertain whether *he mailed it or took it in person.* He speculates on that and recalls European envelopes, &c.

Exhibit & was sent to Paterson about 10 days or two weeks after Exhibit X was transmitted.

Take now Exhibit & in connection with page 362–3, and follow the alterations of Nelson.

Look at original exhibit. Analyse it. How did Wallis find out in paragraph 5 that the barrels 32 and 33 were in a building in Paterson? Where did the idea of certificate come from? also the delivery of the contents upon the death of the survivor of the parents? See Nelson's hand in making the legacies to Fred's children *payable in such instalments and at such times as Nelson with advice of other executor may think proper.*

Where did the authority come from to tie up the income of Munson property in sub. 3 clause 6, until youngest child of Nelson away in the future as long as period of gestation may last, should reach the age of twenty-one.

As long as he was able to raise children he wanted the income. Very thoughtful.

Why does not the $1700 clause appear in this draft?

On page 359 Nelson says "I went to Mr. Wallis' office several times with Mrs. Dale *and sometimes alone.*"

The second draft gets back to Wallis and *Exhibit D. 2* is at last prepared. The history of that we have given.

Nelson says *he re-mailed* Exhibit & to Mr. Wallis and that Mr. Wallis was instructed *through him* by letter to mail the will to Mrs. Dale, but it or a copy is not produced—p. 363. April 12 he writes to his mother to send the document to him if Wallis has sent it, *so that he can draw up his.* It would seem as if he was to have it to prepare a reciprocal paper of some kind, before execution, but having received it directly from Wallis, he *took then sufficient note of it,* and proceeded to direct how it should be executed.

The more this is examined the more reason is there to believe that there is some mysterious fraud yet unearthed, but which shakes the proponent's case.

I also call attention to the original inventories on loose slips *of the contents of the barrels.* Nelson assisted her in the packing—p. 365–367. "She told me she was marking—packing those barrels and marking them on her memorandum. *Some were for myself and some for my brother,*" yet he gets none. See fol. 1100, where Nelson crossed out the word "*Fred*" and substituted "*Nelson.*" He says it was some misunderstanding of the things—confusion in the barrels or something. Fred was actually confused out of everything.

Nelson went to Newport, took possession of the property there, and whatever he touched he absorbed.

I forgot to call attention to an expression in one of Mrs. Dale's lithographed letters, said, "is her hat on the hat on the back of her head."

V.

The burden of proof under the circumstances of this case is clearly upon the proponent, and he fails I submit to satisfy the Court that the will should be admitted to probate. The Vandeveer will case, 6 C. E. G. 561, was decided upon that ground in this court, see also 1 Jarman, Randolph Ed. notes p. 69–72, Barr and Buttin 1 Curties 637.

The proponent and his family being almost the sole beneficiaries, and he having made the original draft, undue influence is presumed. 1 Jar. note p. 71.

The party benefitted will be obliged to maintain the will beyond reasonable question.

The courts scrutinize closely all wills prepared by persons standing in a fiduciary or confidential relation to a testator, and that principle would apply with greater force to this proponent.

VI.

This brief is made in order to present this aspect of the case distinctly, and is supplementary to that of Judge Barkalow who deals particularly with the question of capacity. To deny probate it is not necessary that Mrs. Dale should be in a state of aberration. Undue influence and mental condition are relative, the power of the former depending upon the weakness or susceptibility of the mind.

Any expression of dislike to Fred may or may not have been the result of free mental action. If under undue influence such an expression would be expected.

It was contrary to her normal judgment and to the condition of her previous life to cut off a child in this way. See evidence of

Chas. H. Kimball, p. 96–7.
Mary F. Kimball, p. 98.
Ida A. Dale, p. 113–114.
F. S. Dale, p. 72, 75–80.

See also will of 1876 in which she equally divides her property, p. 401.

Mrs. David Winters is not produced as a witness.

VII.

The subscribing witnesses were examined out of the state and do not give the paper much support.

Kelly standing alone does not prove it, and had never seen Mrs. Dale before, p. 8.

David Winters is very imperfect on *facts* of execution. He was lead right along, and is the one who was to manage Fred.

Dr, Atkinson says she did not come under his care until after signing the will, p. 29, and if he prescribed before it, as it was afterward stated, it is quite evident that it made no impression upon him.

Respectfully submitted,

J. D. BEDLE.

New Jersey Prerogative Court,

ON APPEAL FROM

PASSAIC ORPHANS' COURT.

In the Matter of the
Propounding of the Last Will and
Testament of
SARAH P. DALE, deceased.

SUPPLEMENTARY BRIEF OF CAVEATOR'S COUNSEL.

It has seemed advisable since the preparation of the original brief of the caveator in this matter, to amplify somewhat the remarks upon Point V of that argument.

The influence to which we refer in that division of our case was so subtle, so circumstantial, and so dependent for its force upon the condition of the mind upon which it operated, that it may assist the inquiry of the Court for us to analyze it more minutely, and to point out in more detail the indications which operate upon our minds in considering the question.

It will be remembered that we have claimed that the mind of Mrs. Dale, at the time of making the will in controversy, was seriously impaired in both its emotional and judicial characteristics by the protracted and singularly distressing ailment of which she was the innocent victim.

It will also be remembered that Mrs. Dale was subject to a distinct delusion as to the value of the machinery which she had sold to Frederick.

Now, the evidence shows that this impaired mind was acted upon in three different though kindred methods:

1. By a constant fostering of this delusion.

2. By a continued encouragement of the mistaken idea that she had been taken advantage of by her son Frederick in his purchase of the machinery.

3. By the continued presentation to her mind of the alleged necessities of Nelson.

And after these influences had thoroughly accomplished their work by producing the requisite state of feeling, a direct control was exercised over the act of giving it expression by—

4. Nelson's supervision of the drafting of the instrument which was to dispose of her property in his own favor.

The application of the first three methods began with Nelson's treatment of his brother in relation to their mother.

Mrs. Dale came to Nelson's house, shortly after a hasty dissension with Frederick, and that house was at once closed against the younger son.

If Nelson Dale had been what he ought to have been, if he had had no designs upon his mother's property, and had been willing to leave her mind to its own operations, he would have avoided this closing of the avenue to reconciliation, and he would, for the sake of his own reputation, have shrunk from even the appearance of secluding his mother from the opportunity of overcoming her slight resentment, which the visits of Frederick would have afforded.

But he was not such as he ought to have been, and so he not only prevented such opportunity but he subjected his brother to the unspoken charge of indifference and neglect. He forced him into an attitude of apparent estrangement.

And yet he must have known well, what a subsequent occurrence clearly shows, that Frederick would have been received by his mother with affection at any time, as he was finally. (See answer to Ques. 119, already cited in our first brief).

Does this conduct argue an intention to leave his enfeebled mother uninfluenced in her emotions, or does it indicate a willingness and a design to increase the estrangement until it should become an operating sentiment?

Nelson's whole conduct towards his brother justifies the conclusion that he cherished this latter object, for his sentiments towards Frederick were clearly hostile.

He had refused him intercourse. At the time of their father's death he had declined *ever* to be reconciled to Frederick (see evidence of Mr. Streiver), and at their father's funeral he had turned his back, in his own house, upon his brother's wife, and had made no provision for her attendance on that occasion.

And, finally, when Mrs. Dale lay in her last illness at Philadelphia, he neglected to send for Frederick until she was insensible—until his work could not be undone.

We are not seeking to blacken Nelson Dale for the sake of doing it, but we are seeking to picture to the Court the man in whose house this will was drawn, by whose hand the very words of it were written, and by whose mind its provisions were instigated. He was his brother's enemy, and their mother was in his hands.

Nor can it be said that we are imputing evil to him overmuch, for Nelson Dale is a dangerous man; dangerous because unscrupulous, and unscrupulous because of overweening selfishness and egotism. His standard of right is his conscience—but his conscience is an undisciplined one; he is one of those dangerous men who do wrong constantly—yet perhaps never consciously *mean* to do wrong. Whatever he wishes is to him right, and his own desires are a sufficient justification to him for compassing his ends. His own wishes rank next after the letter of the ten commandments. As an evidence of the truth of this analysis we refer the Court to that portion of the testimony which shows Nelson Dale, during the pendency of this litigation, barricading himself in his house at Newport to avoid the service of process, and selling the jewels of the estate in defiance of the law.

In seclusion with this man Mrs. Dale passed the last weeks of her suffering life, and made this will.

Now, how did he operate upon her mind?

None can ever tell fully—for he was alone with her, and his examination shows that he will never disclose the whole history of that time. But we can trace his operations somewhat—through the admissions which were forced from him, and through the various exhibits which are in evidence.

We refer the Court now to pages 340 to 367—the evidence of Nelson Dale,—and we call attention in the first instance to that examination as a whole—for the tone of it in its entirety is bad.

And then we point out passages as follows,—not repeating here question and answer—but condensing carefully, and, as the Court will find, accurately and justly.

He says:—

That will is in my handwriting.

I did not know beforehand in detail what its provisions were to be.

The last draft was received by *me* in Newport and mailed to her. My mother had full knowledge of my condition and circumstances. She *had not spoken to me* of her property, and the final disposition of it. (Q. 1948).

I knew *when she sent for me* that she required my assistance in writing her will. (Q. 1955).

The understanding was that as soon as the machinery matter was disposed of she was to draw up her will. (Q. 1958).

I knew from remarks she made that she did *not intend to leave much* of her property to Frederick S. Dale—(Q. 1965 *et seq.*);—knew it about a month—not how much until that morning.

And yet he deliberately went to the room of his mother to draft her will, knowing well the condition of her mind — and aware, on his own showing, that she meant to largely disinherit his brother, now that the *machinery matter* was settled.

He hadn't even the decency to say—If you *will* do this let some one else in all this wide world write the words.

He resumes: I began by making memoranda from papers of Mrs. Dale and her own words. (Q. 1974).

The first conversation was "a discussion as to whether my father had managed her business matters as wisely as he might have done."

This husband and father had been dead a year, but it seems that he had not been fully dissected yet, and it is a fact worthy of observation that his conduct in reference to this very machinery had

always been one of the most prominent subjects of criticism on the part of Nelson. (It appears in evidence that the price of it to Frederick was once *raised* —because $5000 was wanted for Nelson.) Then the special business of the meeting is taken up—after the weakened and excitable mind has been directed to the machinery and its complications, and its imaginary attendant grievances.

He says—I may have substituted a little better English, but in no other sense is it otherwise than a repetition of her words:—

All those interlineations and erasures were made at the same time of re-reading the paper to Mrs. Dale, by her direction; I can't account for the great difference in the appearance of the ink, unless there were two inkstands there. (Q. 1997).

The remark was brought to her knowledge that she must leave a legacy to the children of Frederick to sustain the will. (Q. 2010 to 2020).

And here we cannot help expressing a doubt of the accuracy of the witness when he says that it was not his suggestion that the children's legacy should come out of the last instalment their father was to pay his brother, for the machinery which was disinheriting him.

Mrs. Dale never originated that idea. It must have been suggested to her then, or earlier perhaps —in some of the discussions as to how Fred was to be managed.

No woman ever devised and put in action such an ingenious instrument of pressure. The person who was seeking the last dollar, was the one who conceived this means of securing it.

Then in accounting for a third instrument of writing—a pencil—he is forced to say:

"I may have read it over again by *myself*, and put in those interlineations before mailing it."

While this will was being drawn, he says, his brother may have called two or three times—*but he didn't get in.* (Q. 2031–2032).

"I may have listened to observations from Mr. Wallis about this will."

And then, (Q 2075), he tells us that he has said since that he thought this *was not an unjust distribution*—because, he had spent ten years in the mill, that his profession was not remunerative, and that Fred was in a way to accumulate property.

But he was paid while in the mill.

There is the very conscience we have already described. It was not *unjust* that he should have the entire estate of $52,000 (and as much more when his grandmother should die, if his mother's will could control it); because his brother was likely by his labor to make money with the machinery which he had *bought*, and was to pay Nelson for, even before his children's petty legacy was paid.

He, Nelson, wants to have it—so it is not unjust to give it to him. It was *just* that he should have an assured fortune, because he wanted it—even though Frederick must labor for years, and his children's subsistence must depend upon a life which might end in a month, with the machinery unpaid for, and the legacies void.

He says further—that he knew before in a general way that his mother didn't mean to leave his brother much, but he don't call that the provisions of her will.

And then he closes by telling us that he sold jewels and resisted writs of replevin, *by advice of his counsel.*

What counsel? Certainly not the gentlemen who are conducting this case for him.

He did not need counsel to tell him his duty as a good citizen in the matters referred to. If he had such advice at all, he wanted it, and went where he could get it.

His inquiry was—not, how can I obey the law—but how can I resist and evade it?

This closes our review of the oral evidence of Nelson Dale. He shows himself to have been the instigator, adviser, and amanuensis of this will, disinheriting his brother in his favor—and signed by a woman of weakened mind.

Now let the exhibits speak:

1*st.* Mrs. Dale's letters, Exhibits X 2, X 3, X 4. The handwriting of these papers shows physical disturbance, and mental failure appears in repetitions and omissions, and once in incoherence where she speaks of a hat at the bottom of Ex. 2; and through them all is evident the submission of her mind to the purposes of Nelson.

Next, Nelson's letters to his mother.

Ex. X 5. "I have written a stirring letter to Mr. Wallis, and I think you will receive the document pretty soon now."

And then he tells what it would cost to box and move his scientific collection; and how he is seeking scientific work; and that he would rather be a stone mason in sight of such grand scenes, than receive a good deal more pay in a silk factory in New Jersey.

Postscript. "Since writing the above, and just before mailing mine to Mr. Wallis, the document came. Read his letter and get three gentlemen

witnesses. If you can get a lawyer or a physician, and a good business man, besides Mr. Winters, do so."

Ex. X 7. "It would make things rather complicated to have three executors. I should put Mr. W. as executor to take the place of either of the other executors, in the event of their death. This will answer your object without having so many executors to sign documents and consult each other."

Ex. X 8, *p.* 407:

Dear Mother—If Mr. Wallis has sent you the document, please send it to me, (registered), *so that I can draw up mine.*

Why, whose will are we discussing here? certainly not the uninfluenced testament of Mrs. Dale.

The sole beneficiary under it appears at every stage of the transaction and urges it on continually.

He controls the substance of it; he presses the drafting of it; he mails it for execution; and he hurries the return of it to him,—that he may, as he says, "make his."

What was the compact implied in these words? Was a wavering and reluctant mind soothed and sustained by some promise in behalf of Frederick's children, in case of Frederick's death—or was her struggling sense of right to be appeased in some other way?

We have thus far mainly sought to point out the force of this influence, independently of its special relations; but, it is necessary to a just conclusion that, after measuring it absolutely, we should estimate it relatively. We have considered the force applied, and we must now consider the material to be moulded.

And to accomplish this—without wearying the Court by reiteration, we simply call attention to the entire mass of evidence as to Mrs. Dale's mental and physical condition during her later years, and at the time of this transaction.

The power which would press in vain upon a bar of tempered steel will crush a mass of malleable iron. The influence which would in vain have assailed the natural affection of Mrs. Dale for her younger son, and her sense of justice, in her days of health; may well have worked upon her excited nerves and her disturbed judgment, in those days of physical torment and mental anguish.

It is impossible to over-estimate the power of persistent effort and constant pressure, upon a distracted mind.

Imagine this woman, conditioned as she was, the object of constant small attentions from her elder son, while his brother is excluded from her presence. The solicitude of the one artfully set forth against the apparent indifference of the other. The pretended needs of the one constantly displayed in contrast with the predicted prosperity of the other. A sigh, a lowered tone, a perplexed countenance, presented for her observation one day, a gentle offer of assistance on another, and always a cheerful readiness to act as her amanuensis. A grieved look as day after day passes by, and a smile of approbation when the work is finally undertaken.

And all this time no word from Frederick, while his abilities and fair prospects are the topic of daily conversation.

Her morbid over-estimate of the machinery is encouraged, and the good fortune of the purchaser implied; and so day after day the subject is renewed, until in view of the possibilities of her disease—she yields, and the draft is prepared.

The first step towards the end is taken. Then the draft is sent to counsel, and another step is made.

Then the final copy is sent with urgent directions for its execution, and by this time it has become impossible for the woman to recede. The nerve is wanting, she hasn't the moral force to do so.

Let us return for a moment to an earlier day, the day when Nelson Dale drafted this will; and let us suppose that his mother had directed him to write that her property was to be divided equally between him and Frederick.

Can any one who has read this case believe that he would have sat there and so written; can any one believe that she would have dared to tell him so; or can any one believe that if Nelson Dale had refused to draft in his own favor the instrument he did, that she would have called another hand to do it?

If any further circumstance is necessary to indicate the character of this work, and Nelson Dale's own sense of it, we offer it to the Court by pointing them to page 262, (Q. 1374), where his own wife says she did not know this will was made, nor the contents of it, until after the funeral.

Nelson Dale says that first draft was made in the early part of March—that his mother remained in his house until the 26th or 27th of the month, that he was called to her from his home on the 4th of May, and that she died on the 10th of May; and yet it seems from his wife's testimony that in all that period of two months after this *just* will, as he considers it, was drawn by him, he never told his wife that the future of herself and her children was assured; that he was to have all his mother's property, and all that she could inherit, if she lived.

If this indicates anything—and we think it does,

it indicates a consciousness of an unworthy act—it indicates shame—it indicates fear of his wife's opinion and her possible misgivings. Unless forced to admit his agency—as he would have been by her if he showed his early knowledge of this will, he believed that that agency would never be known: and but for this controversy it never would have been known. This is the meaning of his concealment. And finally, as showing the actual existence of his influence over Mrs. Dale, we refer the Court to the history of the library. (See page 205.)

Nelson, and he alone, forced Mrs. Dale, after her husband's death, to exhaust her funds in compelling Frederick to receive back his father's funeral expenses; and then to take her widow's two hundred dollars out of the library, (which was to be divided between the sons), selecting from it the entire scientific department, upon the appraiser's absurd undervaluations; whereby he placed upon his own shelves works of double that value upon topics which were of no interest to her: and then he inspired and drew this will, which, if sustained, confirms his title to them.

Does the Court believe that Mrs. Dale, embarrased by want of ready money, of her own will subjected Frederick to this compulsion, that she might obtain a library of science; or, does it see in this transaction how complete the influence of Nelson was upon his mother's mind and actions, and how willingly he used it?

She signed the will at last, after again and again having it read to her, (p. 15); whether because she could not understand it, or because she really revolted against it and longed to avoid it, no man now can tell; but she signed it, on the 28th of April,

with that terrible tumor pressing on her brain, and on the 10th of May she died, in the presence of her sons, of whom the younger was kept absent, until her consciousness was gone forever and her act had become final.

Whose will was this?

JOHN S. BARKALOW,
Of Counsel with Caveator.

May, 1882.

New Jersey Court of Errors & Appeals

FREDERICK S. DALE, Appellant, vs. T. NELSON DALE, Respondent.	On Appeal from Prerogative Court

ARGUMENT FOR RESPONDENT.

Sarah P. Dale, an old resident of Paterson, in this State, had two sons, the proponent T. Nelson Dale and the caveator Frederick S. Dale. She had resided in Paterson some fifteen years where her husband had carried on very extensively the business of a silk manufacturer. He had met with reverses in business, and, during his wife's absence in Europe, in the year 1879, had died.

For many years prior to this time, this lady, who was of a most exemplary character, had been suffering from syphilis, contracted many years before, without fault on her part, and she had gone to Europe for the purpose of being cured. She returned to this country about the month of August, 1879, in no way relieved of the disease from which she was suffering. She remained a short time at the residence of her son Frederick, and moved from there to the residence of her son Nelson, both in Paterson, where she remained until the latter part of March, 1880, when she left for a visit to friends in Philadelphia, and died there early in May, 1880, after having been for two or three days insensible. While residing at the house of her son Nelson, she caused a will to be prepared which she executed on the 28th day of April, 1880, at Philadelphia, in the presence of three witnesses, one of whom was her medical attendant.

The will, so prepared and executed, was presented for probate to the Orphans' Court of Passaic County, which Court refused probate on the ground that the paper was not the will of Mrs. Dale, but had been procured by undue and improper influence exerted upon her by her son Nelson, the proponent. Upon appeal from the decree entered upon that decision, the Prerogative Court reversed the decree of the Orphans' Court, and admitted the will to probate. From this decree of the latter Court the caveator has appealed to this Court.

Although the decision of the Orphans' Court was based entirely upon the alleged improper influence of the proponent upon the testatrix, another point was discussed before that Court and will be here, viz., whether the testatrix at the time of the execution of the will, was capable of making one.

There are therefore presented for discussion, two questions, viz.—

First. Was the will executed under undue influence? and

Second. Did the testatrix possess a sufficient testamentary capacity at the time of its execution to authorize its admission to probate?

Taking these in their order, we shall consider—

First. *Was the will the result of undue influence exercised upon the testatrix by or on behalf of her son, T. Nelson Dale?*

This is a subject which has been frequently passed upon by the Courts of this and other States, and if there is one principle of law thoroughly established beyond any question, it is that a will, when attacked upon this ground, must be upheld, unless *affirmative* proof of *facts* is produced showing an improper influence exercised upon the mind of the testator to such an extent as to prevent a free exercise of the testator's will. Evidence tending to show an opportunity for the exercise of such influence is not sufficient; nor is it sufficient to show a decided

change in the testator's ideas or feelings; not that the testator had been isolated from friends, nor that the person alleged to have exercised this improper influence was the one benefitted by the will. All this class of evidence may show an opportunity for or inducement to undue influence, but falls far short of furnishing such *proof* that the Court will refuse to carry out the intentions expressed in the will; because it does not furnish one single *fact* from which the Court can say that undue influence has been proved. It does not furnish any evidence not entirely consistent with the absence of undue influence and at the most raises but a presumption. Upon this point the Courts have spoken with no uncertain voice. We quote from—

In re Humphrey, 11 C. E. G., 513, where the testator had given all his property to one daughter, who was the only relative residing with him at the time of his death, and who had spoken, several times, reproachfully of his other relations.

The Court say: "Whether in any given case there was undue influence must be determined *by the facts;* it is not a *presumption*, but a *conclusion.*"

And also in the State of New York in *Cudney vs. Cudney, 68 N. Y. 148:*

"To invalidate a will upon the ground of undue "influence, there must be *affirmative evidence of the* "*facts* from which such influence is to be inferred. "It is not sufficient to show that a party *benefited* by "a will had the *motive* and *opportunity* to exert such "influence; there must be *evidence that he did exert it,* "and so controlled the actions of the testator, either "by importunities which he could not resist, or by "deception, fraud or other improper means, that the "instrument is not the will of the testator."

Also

Moore vs. Blauvelt, 2 McCart. 367.

The proponent is not then required to brush aside every suspicion of undue influence, but it rests with the caveator to establish *facts* that lead irresistibly

to the conclusion that the will is not the result of the volition of testator, but embodies the will of another—

Boyse vs. Rossborough, 6 H. of L. 51.
Turner v. Hand, 3 Wall, Jr., 113.

This establishes, beyond controversy, what it is necessary for the caveator to prove to establish undue influence.

The only facts bearing upon this point are the following:

Mrs. Dale resided with Nelson at the time this will was prepared (pp. 115, 116). Nelson was her amanuensis in preparing the original draft of the will (p. 341). Nelson made various alterations in that draft (p. 352.) (These alterations, with the draft, are found at p. 381.) Nelson suggested to Mrs. Dale increasing a proposed legacy of $500 to each of the children of Frederick to $1000, and the suggestion was acted upon (p. 341). The will, when prepared, was sent to Nelson and by him forwarded to his mother in Philadelphia (p. 342). By it the large majority of her estate was devised to Nelson and his family, and nothing was devised to Frederick nor his family, except two legacies of $1000 each to his children, and the payment of these legacies was postponed until the final payment of an indebtedness then existing from Frederick to his mother (Exhibit D 2, p. 377). Frederick had on two occasions been denied access to his mother while she was in Nelson's house (p. 85). Mrs. Dale had frequently expressed herself strongly against disinheriting children, and had stated on several occasions that she would contest any will that disinherited her, if it took her last penny (pp. 97, 98, 114). Mrs. Dale had made a former will by which, after making a specific bequest of $5000 in favor of a personal friend, the rest of her property was divided equally between her two sons (Exhibit B 13, p. 401).

These are all the facts from which undue influence

can be even *inferred*. That it falls far short of the proof required is patent.

It seems to be the idea of the caveator, that by stringing together a number of instances, no one of which, taken by itself, would stand for a moment as proof of undue influence or be recognized as such in any Court, he succeeds in proving, by the mass, that which no one of them, when alone, is sufficient to prove of itself.

But even these facts, important as they are to prove undue influence, are fully explained by the evidence.

When these facts are viewed in the light of all the evidence, it is perfectly plain that they do not afford even the shadow of a suspicion of undue influence.

Taking them up in the order of time :

The history of the latter part of Mrs. Dale's life, as disclosed by this evidence, shows that after her husband had become involved in financial difficulties, certain machinery used in the manufacture of silk, was sold out under judgments which she had recovered against the company in which her husband was the moving spirit, and had been bought in by her at sheriff's sale (p. 368). She had given her husband a power of attorney to represent her in the sale or disposition of this machinery before her departure for Europe ; under that power of attorney her husband had made various efforts to sell the machinery, (p. 133), but always unsuccessfully ; he had offered it at one time to his son Frederick for $20,000, so it is said, but afterwards increased the price to $35,000, and Frederick had refused to purchase at this figure (p. 133.) This, or something else which is not disclosed in the evidence, had caused an estrangement between the father and son to such an extent that when Frederick, in the year 1879, left for Europe, his father refused to shake hands with him or to do more than give him a cold good-bye (pp. 123, 124.)

Frederick went to Europe (p. 105 and 132, 134, 136) for the purpose of purchasing this machinery from his mother, the testatrix; she was in Teplitz, Germany. He called upon her there in the spring of 1879, with that object. He remained but a short time and returned to Paris (p. 70). At his mother's request he met her at Bremen, on her return to this country, which she was about to make, although not at all relieved of her malady, for the purpose of concluding this machinery matter with her son (pp. 120, 121). Upon reaching this country she spent some time in her own house, at Newport, and in October, 1879, went to the house of her son Frederick, in Paterson (p. 113), where she remained until about the first of November, when she removed to the house of her son Nelson (p. 115). In November, 1879, she consulted counsel in the city of New York in regard to this machinery (p. 298). Shortly after that time a bill of sale from Mrs. Dale to her son Frederick, was drawn up which contained a provision for the payment by him for the use of the machinery between August, 1879, and the first of January, 1880 (pp. 298, 299). Frederick refused to accede to this request, and, by reason of such refusal, the consummation of the sale of the machinery was postponed from November until the 12th day of February, 1880, when the bill of such sale was executed (p. 409). During that time Frederick had made two attempts to see his mother at Nelson's house, but had been refused admission (p. 85); it does not appear whether these attempts were made before or after the question of making a will had taken definite shape. Pending this dispute Mrs. Dale made a visit to relatives at New Haven, Conn., and Frederick went on to New Haven, and took the bill of sale with him, to induce his mother to sign it. This was before January 1st, 1880, and the papers were not then signed (p. 141). At that time, he arrived one afternoon and left the next, and Mrs. Dale said that he came to induce her to compromise the price with re-

gard to the machinery (p. 215). Afterwards, under the advice of counsel, Mrs. Dale compromised the dispute between herself and her son, in regard to this machinery, very much against her will, stating at the time "that if she must, she supposed she must, but that Fred would have cause to regret compelling her to accept any such proposition" (p. 300.)

Thus we see that the machinery had been a bone of contention in this family from the time of the failure of her husband in business. It had caused an estrangement between father and son; it took Fred to Europe—not, as his evidence would lead one to believe, for the filial purpose of seeing and visiting his mother in her terrible affliction, but for the purpose of inducing her to sell this machinery, and because his father had refused to sell for less than $35,000 (p. 134). The visit was unsuccessful, but it brought this old woman, sick unto death, back to this country, not with the intention of remaining, but solely to settle the question of this machinery, intending to return again to receive the benefit of the treatment she had been under in Germany (pp. 217, 120, 121, 334). It, doubtless, was the continual topic of conversation while she stayed in Fred's house. Of course, what took place there is a sealed book to the proponent, but the fact that, wherever an outside party, be they witnesses on either side, was present at a conversation between the mother and the son, the machinery was the topic, and the only topic, that was introduced, it may be fairly inferred that the old lady was sickened with this machinery controversy until, to rid herself of it, she betook herself to the house of her other son, who was not engaged in the silk business. This is the only explanation, too, of her refusal to see her son Frederick. Although the mother remained with Nelson from the 1st of November, 1879, until the latter part of March, 1880; and although Frederick was in the same city during that whole time, he made but four attempts to see his mother, two of which were unsuc-

cessful—the last one being on the eve of her departure for Philadelphia (pp. 86, 87). We have the evidence of Elizabeth O'Connor that Mrs. Nelson Dale told her not to admit Fred if he called, and we have the evidence of Mrs. Nelson Dale and Miss Inglis that these instructions were given in accordance with the request of the testatrix(pp. 227, 256), with the view of isolating herself from the importunities of her son in regard to this machinery; for this instruction was given while the matter was still in dispute.

She makes a visit to her friends in New Haven, and Fred follows with the machinery contract in his pocket, only for the purpose of inducing her to execute it (p. 215). The trip, too, is unsuccessful. The old lady, wearied by the importunity, estranged from her son, as he had already been estranged from his father, through this cursed machinery; finally, when she can resist no longer, accedes to his demands, but accompanied that accession with an expression showing that it was not her own free act; that she believed herself to have been unjustly treated, and that she harbored resentment for the treatment she had received (p. 300).

That Fred had lost his mother's confidence before any steps were taken in regard to this will, is plain from the testimony. Fred himself says (p. 77) that he had taken care of his mother's property for the last two or three years before she died, *until the early part of 1880*, the time when this machinery contest was drawing to a close; so that in the early part of 1880 the mother's confidence in her son had been so far shaken as to take from his hands the control of her property.

Such is the situation of affairs when the old lady proposes to carry into execution an intention, which she had long had, of making a new will; which intention she had expressed to Fred while in Europe (pp. 72, 73). At this time she was in the house of her son Nelson. The papers in evidence in this case,

between pages 396 and 400, show beyond question that she was unable to do the manual part of writing the memorandum from which her will might be drawn and which she had been instructed to write by the lawyer she had consulted in relation to it (p. 301). It was *necessary*, then, for her to find an amanuensis; her son Nelson was in the house, engaged in no business, and who so proper to call in for that purpose as him? The draft is prepared; Nelson says that the words contained in that draft are substantially the words dictated by the testatrix (pp. 341, 351.) (The draft is found on p. 381) and that the interlineations were made at her suggestion. He is uncontradicted in this statement, and is corroborated by the fact that *none of the interlineations are in favor of the amanuensis.*

Is it at all likely, that one, who would of his own motive, as is charged, alter the terms of a will without the knowledge of the testator, would confine the alterations to matters of no moment to him or his?

This rough draft was sent to the counsel whom Mrs. Dale had selected to draw her will (p. 301); not the attorney of her son, but the attorney of her friend William Ryle. That draft was produced by the counsel to Mrs. Dale while they were *alone* in the counsel's office (p. 301). They went over the paper together; certain notations were made; they conversed for about an hour, *alone*, in regard to it, and from this paper, as the basis, the draft of the will was prepared either in the latter part of February or the first of March, 1880 (p. 302). The draft was sent to Mrs. Dale in Paterson, and received back in due course, by mail, with three alterations (p. 302), one of which was the insertion of the name of an executor which had been omitted, and the other two appear on pages 395 and 396, and although all of them were in the handwriting of Nelson Dale, neither of them increased or affected his interest in the estate.

In the meantime, as appears by the evidence of Miss Inglis, who was an intimate personal friend of Mrs. Dale's, and with her daily while she remained in Paterson, that Mrs. Dale had this draft in her possession, produced it in the presence of Miss Inglis, and explained to her the contents of it (p. 226). She also explained the draft to another friend, Mrs. Provan (p. 240), and then made this significant statement with regard to the will, that "what she had "done was an act of justice, she thought, she was "very sorry for what happened, but the amount of it "was *that she could not trust Mr. Fred.*" The draft was then sent back to counsel, and while it was in the possession of counsel Mrs. Dale made her journey to Philadelphia. This was in accordance with her intention expressed to Elizabeth O'Conner (p. 59). She went to Philadelphia before Nelson left Paterson, and Nelson shortly afterwards went to Newport, R. I. In Philadelphia she resided with the Rev. Mr. Winters and his family, whose wife was an old friend of hers, and where she had been on many occasions before. While she was there the will, as prepared by counsel, was packed away with other papers pending the removal of his office, and he then (p. 303) received a letter from Nelson, urging him to send the *will to his mother*, whose address in Philadelphia he had already received (p. 303). Not finding the address of Mrs. Dale in Philadelphia, which had been left with him, and knowing the address of her son in Newport, the engrossed copy of the will was, on April 14th, 1880, sent to Newport to be forwarded through the son, accompanied with a note (Exhibit X 6 p. 405). This was received by Nelson Dale in due course of mail and forwarded, with the enclosed note, directed to his mother in Philadelphia (p. 342.) It was received by her by mail and read over to her several times by Mr. Winters (p. 15). At her request he obtained two gentlemen to act with him as witnesses to its execution; one of them an entire stranger to Mrs. Dale, and the other the phy-

sician who had been in attendance on her while she was in Philadelphia, both of them strangers to Nelson Dale.

The will was executed before these witnesses on the 28th day of April, 1880, without any remonstrance on the part of Mrs. Dale. About a week afterwards she died.

Thus we have the history of the execution of this will. That it shows a change in her intentions in two respects is only too plain. It disinherits a child and changes altogether the testamentary disposition which she had before made of her estate. If there were no reason proved for this change it might be a *snspicious circumstance*, but it would be very far from authorizing the Court to refuse to admit the will to probate.

Upon this subject the Court say, in *Turner vs. Cheeseman, 2 McC., 243:*

"Great stress has been laid on inequality in the "disposition of the testator's estate, as created by "the codicil and the evidence that the testator had "previously, on several occasions, expressed the "intention of dividing his estate equally among his "children. If we are clear that this is the testator's "codicil, and expresses the will of a sound and dis-"posing mind, we cannot look beyond it for his rea-"sons or his motives for doing what he did. The "right of absolute dominion which every man has "over his own property is sacred and inviolable."

And in *Lynch vs. Clements, 9 C. E. Gr. 431:*

"That the will makes a grossly unequal distribu-"tion of the property among the four children, giving "most of it to one so unworthy, must cause instant "and strong disapproval; but it is hardly needful "to say that the want of wisdom and justice there-"by evinced is not sufficient of itself to make the "will invalid, or to prevent this Court from going on "to carry out its provisions. The testator had a "clear legal right to give all his property to James "to the exclusion of his three other children en-

" tirely, without regard to their respective characters
" or needs, and against natural affection and duty."

Also

Collins vs. Osborn, 7 *Stew. 510.*
Derr vs. Gibbons, 2 *Zab. 117, 153.*

But a reason, and a sufficient reason, has already been given for this change in the mind and feelings of the testatrix, and that is the alienation which has been created between her and her son Frederick through the quarrel over this machinery contract As we have said before, it had alienated from him his father, his brother and himself had quarreled, and now his mother disinherited him. In fact, he is not shown to have been on good terms with a single one of his relatives, and his mother had expressed herself strongly to her counsel, to her friend Miss Inglis, and to her friend Mrs. Provan on this very point (pp. 300, 226, 227, 238).

The question to be decided is not whether the reason for the change was an adequate one in the opinion of the Court or of the counsel; but whether, *in the mind of the testatrix*, it was a sufficient reason to justify her act, and of that we can judge only by what she said.

To have been evidence of undue influence in this case, it must have been communicated to the testatrix by Nelson and have been untrue, neither of which is the fact.

That it had a decided influence on the testatrix is very plain; it had alienated her from her younger son so far that, according to the admission of the caveator, she had withdrawn from him the care of her property. According to the statement of Mrs. Provan and Miss Inglis (pp. 227, 228), she was unable to trust him, and it would be a great stretch of authority for the Court in the face of this evidence, to say that it was not an adequate cause, in her mind, for the act that she did.

There were other causes too, not so powerful, which operated on her mind to produce the result that she reached.

In the first place, she was satisfied before making this will that she was selling the machinery at a grossly inadequate price. She had consulted with her friend William Ryle upon this subject; he had advised her that the property was worth from forty to sixty thousand dollars before she made this will (pp. 332, &c.). Whether it was so or not, makes no difference; she had received that estimate. There is nothing to show but that—indeed, the evidence proves—she relied upon the opinion of Mr. Ryle, because she had called him in to consult in regard to this very subject. Whether he was wrong in his estimate, whether he was capable of making an intelligent estimate, can make no difference. The statement had been made to her—she had no means of disproving it, and it had its effect upon her mind without the intervention of Nelson (pp. 208, 226). If she believed this statement, then it was plain that her son Fred had received from her nearly a half of her estate, and it was true, as she had already said, that the will was but an act of justice (pp. 209, 239, 240).

Another influence operated upon her mind in making this will which did not emanate from Nelson. She believed and stated to Miss Inglis, to Mrs. Provan, and to other friends (pp. 240, 228, 217), that Fred was a man of ability, skillful in business and well able to make his way in the world; that Nelson, on the other hand, was not calculated for a successful business career. The fact is that he always had been more or less dependent upon the family. It does not appear that he ever was able to make a living for himself after he ceased to be connected with the mill; in fact, the evidence shows that at one time Fred was forced to advance money to take care of him, and that his father intended a part of the price of the machinery to go to Nelson's sup-

port. The estate was not large, not more than enough to care for the one who most needed to be cared for, and she expressed herself as having been influenced largely in the disposition she made of it by that consideration.

Here are three reasons all tending in the same direction; can the Court say, can any one say, that they did not control the action of Mrs. Dale in the disposition she made of her property. One alone may not, in our judgment, be an adequate one, but even to us it is easily apparent how the three following each other, could have impressed her mind to such an extent as to have produced the will that she executed. At all events they may alone or together, have been sufficient to convince *her* mind that they were adequate. She so expressed herself to her friends, and it does not lie with the Court to decide for her what she ought to have done under the circumstances.

In re Gillespie, 11 C. E. Gr. 523.

If any or all of these reasons had been pressed upon the attention of Mrs. Dale by Nelson, it would not have amounted to undue influence unless the Court is prepared to announce the doctrine that no one interested in the estate of another can be permitted to argue with or advise him in regard to the testamentary disposition of his property. But it has not been shown that Nelson ever even mentioned these matters or any of them to his mother.

There remains another circumstance. Nelson wrote the draft of this will. That alone is far from being sufficient to raise even a presumption of undue influence. It shows that he had an *opportunity;* but it does not show that he made use of it.

In the words of the Court in *Coffin vs. Coffin, 23 N. Y. 9:*

"The circumstance that the nephew who pre-
" pared the will was appointed one of tne executors,
" and is also a legatee, has been urged upon our

" consideration. Facts of this kind may and do
" often, very justly, excite the suspicion of Courts
" when fraud and undue influence are alleged, but
" it is not a rule or principle in the law of testa-
" ments that the draughtsman of a will cannot be
" an executor, or cannot take a benefit under it; as
" men quite generally appoint some of their kindred
" to be their executors. The choice in the instance
" before us does not seem to be an unnatural one:
" indeed, there would be some difficulty in suggest-
" ing a different choice, in the actual circumstances
" and relations of the testator."

See also

Children's Aid Society vs. Loveridge, 70 N. Y. 38.

So here "there would be some difficulty in suggesting a different choice" of an amanuensis "in the actual circumstances and relations of the testatrix."

She was in the house of her son Nelson; she would not send for Fred, because, as testified to by Miss Inglis, he had worried her to death about the machinery. Who, then, could she call upon to act as her amanuensis except Nelson, the other son, who was there present? Subsequent events show beyond a question, that the idea of influencing his mother in regard to her will, never entered into his head. It is the invariable rule, and we think we are safe in saying that no exception can be pointed out in the books, that where such influence has been attempted the attorney of the influencor has been brought in to draw the will. This was not done, but on the contrary, Mrs. Dale was allowed to go to counsel who had been recommended to her by Mr. Ryle (p. 333) and whom she had consulted herself on other matters. She is permitted to see that counsel and to consult with him in relation to it alone, and apart from her son Nelson. This is incon-

sistent with the idea of attempted influence, unless it can be shown that counsel himself was a party to it and of this there has been no intimation. She is permitted to have the draft constantly with her in the presence of friends in her son's absence, when she had an opportunity to express her real feelings in regard to it. No haste is made in having the will executed. How easily might this have been done while Mrs. Dale was in her son's house at Paterson, if he had desired to exert an influence upon her mind. How natural such an act would have been, and how inconsistent with the idea of undue influence are the facts as they actually occurred. She is permitted—this woman who is claimed to have been of so weak a mind as to be easily turned from her purpose—to leave his roof and go to Philadelphia where he could not reach her, and where she would be under the immediate influence of those whose interests were adverse to this will. If he had desired to influence her he might have taken her to Newport. Surely, if he could influence her to disinherit her own child, he could influence her sufficiently to take her to live with him! But, if she proved obstinate, what was there to prevent his going to Philadelphia, where he might continue the influence he had already established? Instead of this, and instead of remaining in Paterson within easy reach of Philadelphia, he puts an extra two hundred miles between himself and his mother, and leaves her in the hands of persons with whom it is not shown he ever had any communication on the subject of this will, and whose personal interests were adverse to it. Then, by accident, the will itself comes into his hands. How natural would it have been—how impossible any otherwise if he expected to influence her—to take this will to Philadelphia himself and then obtain his mother's signature. He did not do this. He mails the will to Philadelphia, remaining 300 miles away in Newport. He knew then, not only that she was going "to make a will," but just

when she was going to execute it, and there is nothing to show that he communicated in any way with the people who were then surrounding Mrs. Dale, or that they were informed of his wishes or feelings in the matter.

But, it is said, Nelson did not send for Fred when his mother was dying. This raises no presumption of undue influence, for the will had been executed long before, and, so far as that was concerned Fred might have been sent for at any time. It is plain too from the postscript to Nelson's letter of April 19th, (Exhibit X 8, p. 407) that even then he, who is said to have been the author of this will, had no certain knowledge of its contents. If he had, why the request contained in it?

Nor is there anything even suspicious in the request. What so natural as that Nelson should postpone the making of his own will until assured of what he would have to bequeath, and what, if any, provision had been made by his mother for those who were claimants upon his bounty.

Then there is a delay of six weeks between the inception of this will and its final execution; whereas, it has been the universal experience of Courts that, where such an influence had been exerted, the influencor was anxious to strike while the iron was hot, to have the will executed before the testator could pass from under the influence that he had exerted. Then, added to that, is the fact of his remaining in Newport while the will was to be executed, at a distance of 300 miles, with no assurance, if the will was not the free untrammeled will of the testatrix, that she would sign it or that she would not make another one.

There are only one or two other matters of slight importance to be touched upon in relation to the alleged undue influence.

One is that Fred was denied access to his mother. The reason of this is explained; that it was the act of Mrs. Dale herself, and not of the son, is proven

(pp. 227, 256). It is not shown that Frederick was ever denied access to his mother while this will was being prepared; the Orphans' Court state this as a fact in the case; the evidence is to the contrary. Mrs. Dale went to Nelson's house in November, as has been shown. She was attacked by the first coma in March, 1880 (p. 151), and immediately after this, *and while the will was in preparation*, Fred had a long interview with her (pp. 85, 86), alone; he saw her again alone while the will was in preparation (p. 87). He was twice refused access to her, *but there is not a word of evidence to show that either refusal took place while the will was being prepared.*

The testimony is conclusive and convincing that all the exclusions of Fred were before the will had been undertaken.

The evidence of Miss Inglis (p. 227) shows that both refusals to see Fred were while the machinery controversy was still unsettled. The sale of the machinery was concluded February 12th (p. 408). The first interview between Mrs. Dale and her counsel on the subject of the will was later in February (p. 301, 305). But, if not so, the exclusions of Fred were not the act of Nelson but were at her request, and she gave Miss Inglis the reason for them (p. 227).

Thus we have gone over all the facts which can be adduced in support of the claim of undue influence and have shown how inefficient they are to establish such influence, and how thoroughly they are explained in the evidence before the Court.

It is inconceivable, if Mrs. Dale had intended—if it was her will—to divide her property equally between her children, that she, in Philadelphia, with neither of her children near her, should have signed this will when there was no one there to compel her to do so, *and when a mere failure to execute it would produce the equal distribution that she is alleged to have desired.* It is inconceivable, surrounded by those who had no interest in either son—Winters, Kelly and Atkinson—if the will she was about to sign

was the result of coercion, she should, in the absence of him who had coerced her, have meekly signed the document without remonstrance and without calling on those with her for protection, when, as we show, a failure to sign would have produced the end that she is said to have aimed at.

It is much more inconceivable that those with whom she was staying should have influenced her to execute *this* will.

The proof shown (p. 401) that she had already made a will by which this very friend, Mrs. Winters, would be entitled to receive a bequest of more than $5000 out of her estate. Is it possible that if this clergyman and his wife were so lost to all sense of duty as to be willing to make themselves parties to a scheme to coerce their friend into the execution of a will which was contrary to her intentions, that at the same time they would be so true to the one they were acting for, as to sacrifice upwards of $5000, which was already secured to them under the prior will? Such villiany, coupled with such disinterestedness, is contrary to human nature. If they had influenced her at all we may be sure that the new will would have contained at least as large a bequest in their favor as the old one, which its execution abrogated, had contained.

Especially so when Winters knew the contents of the old will, he himself having been the one who prepared it.

Undue influence must, in the nature of things, be of two kinds, either by false representations inducing the testator to believe facts that do not exist, or by importunity or fear, such as deprives the testator of the free exercise of his volition.

Of the first there is no evidence in this case. True, Fred says that his mother told him that his father, Nelson and Mrs. Winters were endeavoring to prejudice her against him. This, while he was in Europe. This is not corroborated, and her treatment of him immediately after her return to this country shows

that such influence, if it ever was exercised, had been ineffectual.

As to the second, no case can be found where the influencor, depending upon fear or undue persuasion to accomplish his purpose, ever allowed his victim to go beyond the reach of his immediate presence, until the desired end had been accomplished.

There are several cases reported in the books in this State where wills have been refused probate on the ground of undue influence.

In re Alexander, 12 C. E. Gr. 403:

In this case the testator was of a very low grade of intellect; the sister, in whose favor the will had been made, impressed upon his mind that his other relatives were endeavoring to put him in a lunatic asylum. She told him that if he did not make a will in her favor she would put him in a lunatic asylum. The will was made *in her immediate presence*, and she told others she had *made* him make the will.

In the other case—*Lynch vs. Clements, 9 C. E. Gr. 431*—the son who was preferred held a mortgage upon his father's property: he was alone with his father the day the will was made; it was proved that he fixed the amount of every legacy; he told his mother that he had done wrong in having the will made as he had; he told his sisters that he had made his father make the will as he told him to, and this statement he repeated twice afterwards. The Court found that the testator was afraid of the son's power as the holder of the mortgage on his farm.

In Moore vs. Blauvelt, 2 McCarter 367:

It appears in this case (p. 397) that after the execution of the will complained of, the testatrix was dissatisfied *and sought to destroy it.*

In Harris vs. Vandervier, 6 C. E. Green 561:

In this case the testator was both blind and deaf; he made a will entirely contrary to his expressed intentions in favor of a very distant relative, to the exclusion of those nearest to him in blood. The bene-

ficiary and his lawyer, brought from New York for that purpose, were present; the will was radically different from former ones, and yet the Court would have upheld it *if there was anything to show that the testator knew its contents.* The evidence on this point failed.

In all of these cases, then, we have not presumption, but *facts*, proving the undue influence.

But, it is said, Mrs. Dale was of a low order of intellect; her disease had so preyed upon her mind as to weaken it; not sufficient, perhaps, to deprive her of testamentary capacity, but to such an extent as to render her peculiarly liable to the influence to be exerted upon her by those who were around her.

There is no evidence to prove that fact, and upon that branch of the subject we think we shall be able to convince the Court that no such mental weakness existed. But, for the sake of the argument, conceding that fact; conceding that she was infirm of purpose—that her mind was weakened. If anybody knew that fact, Nelson must have been the man to know it; and, knowing the infirmity of her purpose, and the weakness of her mind, he, if he had desired to influence her actions, would have been the last man to have allowed her to go away from his immediate presence, and under the control of those whose interests were adverse to his. He would have been the last man to have allowed this feeble and vacillating mind a single chance to change from the current of thought in which he had placed it. What assurance would he have had, under the circumstances, that by the time the possessor of this vacillating, infirm mind had reached Philadelphia the impression that he had made upon it would not have been obliterated? What assurance had he that she would ever sign the will which the appellee says he had prepared for her to sign?

The appellant endeavors to bolster up this idea of undue influence by a recital of the affectionate feeling entertained by Mrs. Dale towards her son Fred-

erick. He recites at great length the display of affection at Teplitz. He is careful to introduce every little act of filial duty he has ever performed towards either of his parents—and they are none too many. He brings the witness Leonard all the way from Chicago simply to prove the existence of a confidence and affection in his mother towards himself; he tries to prove that he deserved this affection by reciting the little sacrifices he may have made for both of his parents, and upon this he attempts to base the claim, or draw the inference, that nothing but improper influence could have deprived him of this affection, confidence and esteem of his mother. But he fails to show one single expression of confidence, one single instance of affection, one single expression of esteem towards him from that same mother, after the dispute about this machinery had culminated.

The witnesses, who are produced to speak of these facts, all testify to a period anterior to the time when this dispute had reached its height—anterior to the time when Fred had refused the amount that his mother insisted upon as her right. The Court will look in vain through all the evidence of all of these witnesses, including the evidence of the caveator himself, for a single expression of regard or esteem towards Fred from his mother after this dispute had arisen between them. It is the repetition of the old story in relation to that machinery; the repetition of the fate that clung to it from the beginning. It alienated Fred from the whole family; he wishing to grasp it, they always insisting upon receiving compensation which he was not willing to give. It broke off all friendly intercourse between him and his father, estranged them to the extent that they did not speak to each other, and finally resulted in the same state of affairs between him and his mother.

Before we close this branch of the subject, we will present to the Court two pictures portrayed in the

evidence and ask their careful consideration, namely, the action of these two sons towards their mother, the one in relation to the machinery, the other the will.

Fred follows his mother to Austria to induce her to sell him the machinery (p. 132 to 136.)	Nelson permits his mother to leave him in Paterson and go to Philadelphia with the will unexecuted (p. 342.)
Fred follows his mother to New Haven to persuade her to complete the sale (p. 215.)	Nelson leaves Paterson, not for Philadelphia where his mother is, but for Newport 200 miles further off p. 342.)
His mother leaves Fred's house and refuses to see him because of his importunity in relation to this machinery (p. 227.)	She lives with Nelson and gets him to prepare her will (p. 340.)
She says that she cannot trust Fred 238) and takes from him the care of her property because of his action in regard to the machinery (p. 77,)	
She says, when the bill of sale is signed, that "Fred would have "cause to regret compelling her "to accept such a proposition" (p. 300.)	She says the will is "an act of justice" (p. 240.)

The pictures are in marked contrast. Of course the caveator does not claim that his dealings amounted to undue influence, but, if they did not, how is it possible to so characterize the acts of his brother?

SECOND.

Did the testatrix, at the time of the execution of this will, have testamentary capacity?

Testamentary capacity is defined in the books to be "knowledge of the property to be disposed of and of those who had claims upon the testatrix's bounty."

The question to be decided here is, whether at the time Mrs. Dale made this will—not after it was executed, but at that time—she knew who had claims upon her bounty and what property she possessed.

On this point we have the testimony of the testamentary witnesses, and that is of the highest character.

Andreas vs. Weller, *6 Gr. Chancery 604.*

These witnesses are William J. Kelley, William B. Atkinson and David S. Winters.

Kelley was a gentleman in Philadelphia called in for the purpose of witnessing this will. He had never seen Mrs. Dale before, did not know her, was unable to compare her then present condition with the past, but he dined with her, conversed with her, and discovered no mental infirmity.

Another was the Rev. Mr. Winters ; that old friend who had known her for many years. Had known her in 1877, when a prior will was made and when there was no question as to her capacity.

He was capable of judging. He was capable of comparing her then present condition with the past. She had been in his house for weeks.

He had conversed with her frequently on the subject of the will. (p. 15.) He had seen her at all times and under all circumstances, and he, certainly, was capable of forming an intelligent opinion as to whether there had been a serious mental impairment in her case.

In addition to this, as has been shown before, his interests were in opposition to his will.

The other witness is a doctor in Philadelphia of good reputation, who had attended Mrs. Dale ; had known her before that visit to Philadelphia, whose attention at the time was called to contests over wills, and who had carefully noticed her mental condition ; who knew her disease and had prescribed for it.

And those three witnesses, whose testimony, as we have shown before, is of the highest character, join in saying without any doubt or qualification that she was a perfectly sane woman at the time she signed that document.

On the other hand, the appellee has produced a cloud of witnesses, of whom but three express an opinion even, that the testatrix was of unsound mind, and these three are—Dr. Barthalow, who never saw her except once when she was in *articulo mortis* and insensible: Dr. Blundell, who, after her death, stated to Nelson that, in his opinion, the will would stand; and Elizabeth O'Connor, an ignorant servant girl, who thought she was crazy because on several occasions she saw her with a bladder of ice on her head. And both of the witnesses—O'Connor and Blundell—are hopelessly impeached.

But we cannot decide the questions of mental capacity on opinions. The Court can only pass upon facts.

Stackhouse vs. Wharton. 2 McC. 202.
Sloan vs. Maxwell, 2 Gr. Chancery 563.
Andreas vs. Weller, 2 Gr. Chancery 604.

Not a single one of the witnesses produced on the part of the appellant testify as to a single fact to show want of testamentary capacity, as defined in the books.

To Elizabeth O'Connor she spoke, on several occasions, both of her property and her children (pp. 53, 61, 63, 66, 70, 86, 100, 114), and these statements show that she possessed a full and clear appreciation both of those dependent upon her bounty and of the estate she had to bestow.

And further she told Dr. Blundell that she had been to Mr. Wallis to have her will drawn, showing that she knew what she was about, what she had done, what she was about to do, and that she appreciated it.

But this witness, O'Connor, testifies to two or three circumstances which induced her to believe that Mrs. Dale was crazy. She says that she had ice on her head in a bladder. Well, that is not evidence of mental incapacity. Probably the head ached or she felt feverish. She said that she saw her laughing

without apparent cause. In this she is contradicted by Miss Inglis, who was continually with Mrs. Dale during all the time that O'Connor was there. But, if true, how could O'Connor penetrate Mrs. Dale's mind and find the cause that produced the laughter?

Elizabeth O'Connor also testifies that Mrs. Dale wandered at night, and refers particularly to an occasion when she went up to the room of Mrs. Brown, as Elizabeth puts it, "late at night, after all were in bed, in her night clothing," and wandered round up stairs.

In this she is completely contradicted by Mrs. Brown, who testifies that Mrs. Dale came up there about nine o'clock in the evening, not in her night clothing, and came up because Mrs. Brown was confined to her room by sickness, and she wanted to pay her a friendly visit. She stayed a short time and conversed on ordinary topics, and went down stairs again.

Elizabeth O'Connor says that Mrs. Brown told her Mrs. Dale was going out of her head. Mrs. Brown contradicts that most emphatically.

Elizabeth O'Connor states she thought Mrs. Dale insane because she said that she was about to make a trip to Europe. And that is all true, as is shown by the testimony of Mrs. Munson and Frederick S. Dale.

Elizabeth O'Connor says that Mrs. Dale kissed her good-bye. Mrs. Margaret Dale who was present when Mrs. Dale bade Elizabeth O'Connor good bye, contradicts this most emphatically (p. 260, questions 1357, 1358. 1358½).

Now, Elizabeth O'Connor states, on page 57, that, during the time she was there, Nelson Dale and his wife and his wife's mother could see Mrs. Dale's conduct better than she could.

Nelson Dale, Mrs. Dale and Mrs. Dale's mother all join in contradicting the facts testified to by Elizabeth O'Connor, and in stating that Mrs. Dale was of sound mind, and they proved it by the narration of

certain circumstances which show it beyond all question.

Frederick S. Dale, the caveator, does not dare to say that his mother was of unsound mind.

He testifies to an alleged lack of memory, but that is far from being unsoundness of mind. He testifies that she said that she was going crazy; but he evidently did not believe this, for at Teplitz, in Paterson and in New Haven he importuned her to execute a bill of sale for the machinery to himself, which, if she had not testamentary capacity, would have been an absolute nullity.

Ida Dale, who had known her since August, 1879, testifies only to loss of memory and an occasional repetition of Mrs. Dale's words. That she did not consider her of unsound mind is clear from her evidence on pages 118 and 119.

> "Q. 352. When she expressed her determina-
> "tion to contest such a will if it cost her the
> "last cent that she had, do you think that she
> "intended to do that, and that she possessed the
> "will strong enough to carry out such intention?
> "A. Well, I should judge so from the way she
> "expressed herself. I should think she did
> "possess a sufficiently strong will."

The other witness, Stella Munson, saw her very seldom. She does not say that she thought her of unsound mind. She says that she did not have as good a memory as formerly. She says that she thought her mind was weakened, but she gives no reason for that opinion. She says that she expressed a dislike for various members of the family. We have shown that, as to Fred, the dislike was merited. Possibly it was so as to the others.

And these are all the facts, outside of the opinions of experts, that go to show, even remotely, that Mrs. Dale possessed an unsound mind, or a lack of testamentary capacity.

Now, as to the experts. The appellee has called three, Dr. Johnson, Dr. Bartholow and Dr. Blundell.

Dr. Johnston had been in the practice of medicine the whole of five years. He had never seen Mrs. Dale, and his testimony amounts, simply, to the statement that, in such a disease as that Mrs. Dale suffered from, he would infer a serious mental disturbance existed. He states no case where he has ever observed a mental disturbance in that disease. He cites no medical authority on that subject, but confines himself solely to the opinion fortified by the vast experience of the first five years of a medical practitioner.

The next medical expert is Mr. Bartholow.

Considering the disease with which Mrs. Dale was afflicted, it is somewhat strange that the appellee has failed to put upon the stand, since he was to employ experts, somebody parlicularly, peculiarly expert in that class of disease, somebody having a reputation of peculiar knowledge in the effect and results of that malady. New York City is full of such. The country has many of them whose reputation is world-wide.

He passes them all by ; sends to Philadelphia and brings before the Court a gentleman with a large reputation, a name well known and respected, but not as a specialist in syphilitic diseases ; not for anything he has ever done, or written, in regard to syphilis, or its effects upon the brain ; not an expert in brain diseases and not recognized as authority on brain disease, but a physician with large reputation as an authority on Materia Medica ; a man with a world-wide reputation as to the compounding of drugs, and a man that never saw Mrs. Dale but once, and then, as we have said before, she was insensible, and never again recovered her senses before her death. Under these circumstances he can have known no facts of his own knowledge. He could have observed nothing upon which to base his judgment. Everthing that he knew about the case must, from

the necessities of the situation, have been communicated to him by Dr. Atkinson, the attendant physician, who had observed the patient, had studied the case, had prescribed for her, and who arrived at one conclusion and Dr. Bartholow at directly the opposite conclusion—the one based upon facts—the other based upon—it is difficult to say what. The only possible explanation is that Dr. Atkinson was only a subscribing witness and not paid for his testimony, while Dr. Bartholow was a paid expert coming from Philadelphia to Paterson, hired to prove this very fact, and he must earn his fee.

But even this great Dr. Bartholow, whose mighty reputation as a dispenser of drugs and a roller of pills, was to overawe the proponent and beardown by its own weight the case in favor of the will, is unable to state and does not state a single case in which syphilis has resulted in mental alienation.

He does not refer to a single case in the books and rests entirely upon his great judgment in syphilitic cases, with which, as an army surgeon many years before, during the war, he had become familiar in the wilds of New Mexico. Probably, under these circumstances, he was able to give a great deal of attention and deep study to the subject of these diseases!

There is now left Dr. Blundell, a very respectable physician, in the City of Paterson, who had for many years attended Mrs. Dale. He testifies that Mrs. Dale suffered from photophobia, headache, aphemia, syphalophobia and various other well recognised and well known forms of syphilis in the tertiary stage.

He does not show any peculiar capacity to judge in case of syphilis, but still he gives us the benefit of his wise judgment, that Mrs. Dale was incompetent to make a will. But he tells us (p. 212) that she consulted him on the subject. She told him she was going to make a will, and he never tried to dissuade her from it; nor did he go to her relatives and tell

them that she was going to make a will and that she was incompetent to do so. If he believed her to be incompetent, he could not, honorably, have permitted her to make a will that would not stand, without informing her relatives of his opinion of her case, so that his testimony on this point either shows that he did not believe that she was incompetent, or that he was guilty of a most dishonorable and most unprofessional act.

But even this testimony is deprived of all its weight by the testimony of Nelson Dale. Nelson was naturally anxious, under the circumstances, to know whether the will his mother had made would stand or not.

He testifies as follows, p. 345:

"I called to see him (Dr. Blundell) to acquaint
"him with the circumstances of my mother's
"death. He expressed his confidence in the
"skill of the physicians who attended her, and
"then he asked me when her will was signed
"—before the last attack began—or after it
"had began. I said, 'before,' and he said, then
"the will will stand."

Now, Dr. Blundell is put upon the stand, and does not contradict this testimony (p. 212).

"Q. 963. Did you shortly after Mrs. Dale's
"death, ask Nelson whether her will was execu-
"ted before the attack of sickness that caused
"her death, or anything to that effect?

"A. I have no knowledge of having asked
"him anything of that sort. After Mrs. Dale's
"death, and Nelson's return to Paterson, he
"gave me some of the details of the will, and I
"had made a few inquiries (perfectly natural
"that I should), but if I did, I have no recollec-
"tion of what the questions were.

"964. Did Nelson inform you that the will
"had been executed by Mrs. Dale before the fatal
"attack?

"A. I don't know. I suppose that was the
" understanding — before she became uncon-
" scious.
"Q. 965. Did you thereupon state to him
" this: that in that case her will would stand;
" or anything to that effect?"
"A. No, I *think* not."

It may be that the fact that this learned doctor is the standing family physician of the caveator, may have something to do with the remarkable change in his opinion in regard to Mrs. Dale's capacity to make this will.

On the other side the proponent was required to produce some evidence, or the opinion of some person, to show the unreliability of the opinions expressed by the witnesses above noted. Two witnesses, experts, were called upon his behalf. One was Dr. Edward L. Keys, Professor of Dermathology and Genito Uninary Surgery in Bellevue Medical College, New York; a gentleman who has had a large experience in the treatment of syphilis; who has made it a study, and who has written several books upon the subject which are recognized authorities in this country.

Another was Dr. Theodore R. Varick of Jersey City, a physician of large reputation and large experience in cases of syphilis. Both of these physicians agree in stating, most emphatically, that as between Dr. Bartholow and Dr. Atkinson, very much greater weight is to be given to the evidence of the physician who attended upon Mrs. Dale; who saw her before she had become insensible; than to any opinion of Dr. Bartholow, whose only opportunity of observation was once when the patient was in *articulo mortis*, and that they would accept the opinion of Dr. Atkinson, under the circumstances, rather than a far abler man than he.

And Dr. Varick—as also Dr. Blundell—join in giving Dr. Atkinson a good reputation for general

intelligence, which is further shown by the fact that he is the Secretary of the American Medical Society.

Dr. Varick and Dr. Keyes also concur in saying that no inference of mental incapacity can be drawn from the existence of syphilis, and both verify their opinion, by citations of actual cases which have come within their experience, where syphilis has advanced to its last stage without impairing the mental faculties.

Dr. Varick refers to a case where a lawyer was so much prostrated by the disease as to fall senseless in the street and to be partially paralyzed for a long time, and yet to have gone out and attended to the practice of his profession, without any inconvenience from the disease under which he suffered.

And Dr. Keyes cites not only cases within his own observation, but various cases reported in the books to have come within the observation of other physicians that the greatest physical disorganization of the brain resulting from syphilis had taken place without any mental impairment. In one case, especially, where the brain was almost totally disorganized, its membranes changed into black and ragged shreds, the substance of the brain green for a great depth, a gill of matter drawn from it after death, the bones of the cranium honeycombed and rotten from this disease, and yet the patient suffered nothing but headache, and his mental capacity was not impaired to any appreciable extent. And he, from the cases reported and those within his own knowledge, draws the conclusion that in that respect syphilis is peculiar; that mental impairment cannot be predicated upon cerebral disorganization when that disorganization results from syphilis, but that it would be if it resulted from any other disease; and so, in that respect, syphilis is peculiar and different from all other diseases in that it can produce the greatest physical disorganization of the brain itself without impairing its mental capacity.

It would be impossible to make extracts from the testimony of these physicians that would do them justice, and we can only ask the Court to give a careful perusal and full weight to the testimony they have given.

There is, therefore, no evidence of mental incapacity or weakness. On the contrary there is much evidence of the possession by Mrs. Dale, in spite of the terrible disease from which she suffered, of a sound and robust mind. In Europe she expressed to Fred the intention of making a new will. She carried that intention with her from Europe to America, and there she carried it into execution. In spite of Fred's importunities, so great as to alienate her affections from him, she retained her fixed purpose of not selling that machinery, except upon terms that she deemed just and proper. She carried that intention from Europe to America. She refused to sign the paper that was produced to her, and only receded from it under the advice of counsel, and then with the statement that she would visit her chagrin upon him who had caused it.

In New Haven, in the March before her death, she expressed to Mrs. Munson an intention in regard to her will, which she afterwards carried out (p. 208, question 925.)

She told her friends Miss Inglis and Mrs. Provan how she had disposed of her property; recited to them the principal points of her will; gave intelligent reasons for the disposition she had made; anticipated the shock the disinheriting of one of her children would cause among her friends; expressed herself as ready to meet that and expressed her reasons for the step she had taken, not inadequate and foolish ones, but because the step was one that her judgment taught her was right.

Indeed, it is impossible to read the testimony of these ladies on this subject (pp. 226, 227, 229, 233, 239, 240, 241), and the interview between Mrs. Dale and her counsel, without a conviction that she was

not merely a woman of ordinary strength of mind, but of much more than ordinary mental vigor.

The interview with Mrs. Provan proves not only that she fully appreciated what she was about to do, but that she anticipated the criticism her act would cause, and was willing that it should come, because of her conviction of the righteousness of her act.

Those who knew her best were entirely satisfied as to her mental capacity.

We produce those who were continually in her society; who were her immediate friends for years —Miss Inglis, who saw her daily; Mrs. Provan, who saw her frequently and had known her for a long time, both of whom were interested with her in charitable institutions in Paterson; Mrs. Brown, the mother of her daughter-in-law; Mrs. Nelson Dale, who had lived in the same house with her; and they all join in saying that they had never observed any indications of mental weakness or imbecility in her at all, and at her last interview with Fred she talked to him about her property (p. 86). On the other hand, the witnesses for the appellant who expressed any opinion in regard to her mental condition, outside of the expert witnesses, are those that have seen her but very seldom, and the one upon whom the principal reliance seems to be placed in a drunken Irish woman who is as incapable of judging of the mental condition of any person as any animal that travels the streets. This is inconsistent with any idea of mental imbecility. And, as if to make it beyond any question, this Irish woman, who believed her to be crazy, testifies to conversations, which have already been alluded to, which prove beyond any shadow of a doubt that Mrs. Dale, at that time, had the full appreciation of her children and her property. As those who saw her and knew her join in confirming her mental capacity, as no one, except O'Connor, stated any facts going to show incapacity, all that remains is the existence of the disease and certain alleged delusions.

As to the latter it is only necessary to say that none have been proved. A delusion is a belief founded upon some imagined fact or circumstance. The value put upon this machinery does not amount to one, because she there relied upon the estimate of Wm. Ryle. Neither was her feeling towards her son Frederick a delusion, or the result of a delusion. It was based upon a fact, his refusal to pay for the use of the machinery.

As to the disease with which she was afflicted. If the *necessary* and *inevitable* result of that disease is a weakening or impairment of the intellect, then Mrs. Dale's intellect was weakened and impaired. But the evidence of those most capable of judgment shows that no such conclusion can be drawn from the existence of the disease, And on the other hand the presumption is the other way.

The Court below, while they find that Mrs. Dale was of sound and disposing mind and memory, say that her mind was weakened by this disease.

We submit that there is no fact proven in this case, from beginning to end, upon which that finding can rest; and we submit with confidence, in the light of the testimony of the experts, and in view of their capacity to judge of the effects of this disease, and the reputation they severally enjoy in this line of mental science, there is no inference of mental incapacity to be drawn from the existence of that disorder.

We have now endeavored to cover all the grounds upon which the validity of this will has been attacked. If after all this there remains a doubt in the minds of the Court, the will must be proved, for the law guards so jealously the right of a person to dispose of his property as he sees fit; that only absolute conviction is sufficient to overcome the strong presumption in favor of the validity of the will.

In the words of the Court in Turner vs. Cheeseman, above cited:

"The right to absolute dominion, which every "man has over his own property, is sacred and "inviolable."

No Court should interfere with that right, except on the clearest, most convincing and most unquestionable proof.

The party is not here to defend himself. The law has given him a certain right, and every man should be permitted to go to his last sleep with the assurance that the laws of his country will carry out and put in force the right which they pretend to give him, and that his intentions will not be defeated by any presumption, guess or surmise.

If the testator chooses to make a peculiar will that is his business, and he has the right to do it.

In the words of the Court *in re* Glespine (*11 C. E. Gr., 523*):

"The unreasonableness of his prejudice and "the unfairness of his disposition of his prop- "erty cannot of themselves avail to induce the "Court to repudiate the will. Of the propriety "of what he does he is to be the sole judge, "and the Court is not likely to overturn the dis- "position which he, in the exercise of his own "judgment has seen fit to make of that which is "his own."

WALLIS & EDWARDS,
Proctors for Appellants.

HAMILTON WALLIS,
of Counsel.

INDEX.

PROPONENTS' WITNESSES:

	PAGE
William J. Kelly—Direct,	4
" Cross,	6
David Winters—Direct,	10
" Cross,	13
" Re-direct,	18
William B. Atkinson—Direct,	20
" Cross,	22
" Re-direct,	36
" Re-cross,	37
Henry McDanolds—Direct,	41
Hamilton Wallis—Direct,	43
" Cross,	44
" recalled—Direct,	47
" " "	298
" " Cross,	304
Edward J. Edwards—Direct,	44
Benjamin B. Van Wagoner—Direct,	45
" Cross,	46
Anne Inglis—Direct,	224
" Cross,	229
" Re-direct,	235
" recalled—Direct,	332
" " Cross,	336
" " Re-direct,	338
" " Re-cross,	339
Elizabeth Provan—Direct,	236
" Cross,	241
" Re-direct,	253
" Re-cross,	253

PAGE.

Margaret Dale—Direct, - - - 254
" Cross, - - 263
" Re-direct, - - 268
Margaret Brown—Direct, - - 269
" Cross, - - 272
Theodore R. Varick—Direct, - 277
" Cross, - - 287
" Re-direct - 297
Edward L. Keyes—Direct - - 313
" Cross, - - 323
" Re-direct, - - 330
" Re-cross, - 331
T. Nelson Dale—Direct, - - - 340
" Cross, - - 346

CAVEATOR'S WITNESSES:

Elizabeth O'Conner—Direct, - - 49
" Cross, - - 61
" Re-direct, - 65
" Re-cross, - - 67
Frederick S. Dale—Direct, - - 68
" Direct, continued, - 123
" Cross, - - 131
" Re-direct, - - 145
" Cross, continued, 205
" recalled—Direct, - 369
" " Cross, - 372
Charles H. Kimball—Direct, - - 96
" Cross, - - 97
Mary T. Kimball—Direct, - - 97
" Cross, - - 98
" Re-direct, - - 99
" Cross, - - 111
Charles H. Streiver—Direct, - - 99
" Cross, - - 104
" Re-direct - - 111

PAGE.

Ida A. Dale—Direct - - - 113
" Cross, - - - 118
" Re-Direct, - - - 122
William Blundell—Direct, - - 147
" Cross, - - 155
" Re-direct, - 168
" Re-cross, - - 170
" recalled—Direct, 211
" " Cross, - 211
" " Re-direct, 213
Roberts Bartholow—Direct, - - 172
" Cross, - - 186
" Re-direct, - - 194
" Re-cross, - 195
" Re-re-direct, - 196
Walter B. Johnson—Direct, - - 197
" Cross, - - 201
" Re-direct, - 204
" Re-cross, - - 204
Stella Munson—Direct, - - 207
" Cross, - - - 210
" recalled—Cross, - 214
" " Re-direct, - 215
Esther C. Leonard—Direct, - - 216
" Cross, - - 218
" Re-direct, - 221
James Blundell—Direct, - - 368
Socrates Tuttle—Direct, - - 373
Claude Greppo—Direct, - - - 375

PROPONENTS' EXHIBITS :

D 1, - - - - 48
D 2, - - - - 48
X, - - - - 302
Y, - - - - 302
Z, - - - - 302
&, - - - - 302

PAGE.

X 2, - - - - 345
X 3, - - - - 345
X 4, - - - - 345

CAVEATOR'S EXHIBITS:

B 1, - - - - 83
B 2, - - - - 83
B 3, - - - - 84
B 4, - - - - 84
B 5, - - - - 89
B 6, - - - - 94
B 7, - - - - 111
B 8, - - - - 129
B 9, - - - - 129
B 10, - - - - 130
B 11, - - - - 130
B 12, - - - - 130
B 13, - - - - 215
B 14, - - - - 215
B 15, - - - - 223
X 5, - - - - 365
X 6, - - - - 365
X 7, - - - - 365
X 8, - - - - 365
X 9, - - - - 369
X 10, - - - - 369

Passaic Orphans' Court.

In the Matter of the Propounding of the last Will and Testament of SARAH P. DALE, *deceased.* } *Notice.*

SIR,—Take notice, that on Thursday, the ninth day of September next, at one o'clock in the afternoon, we shall proceed to take the testimony *de bene esse*, to be used on the trial of the above matter, of David Winters, William B. Atkinson and William J. Kelly, witnesses who reside out of the State of New Jersey, and in the State of Pennsylvania, before William Dulles, Jr., Commissioner of Deeds, appointed by the Governor of this State, resident in the said State of Pennsylvania, at his office No. 36 South Third street, in the City of Philadelphia and State of Pennsylvania.

Dated Aug. 26, 1880.

Your obedient servants,
WALLIS & EDWARDS,
Proctors of Proponents.

To GARRET A. HOBART,
Proctor for Caveators.

New Jersey, } *ss.*
Hudson County, }

Edward J. Edwards, being duly sworn on his oath saith, that on Thursday, August 26th, A. D. 1880, at

Paterson City, he served a true copy of the within notice upon Garret A. Hobart, proctor of caveators, by leaving the same at his office with one of his clerks, at the same time informing him of the
4 nature thereof.

E. J. EDWARDS.

Sworn and subscribed to, this }
Aug. 27, 1880, before me, }

JNO. S. NALOR,
Notary Public, N. J.

Passaic Orphans' Court.—In the matter of the propounding of the last will and testament of Sarah P. Dale, dec'd. — Notice of taking testimony *de bene esse*.—Wallis & Edwards, proctors of proponents.

State of Pennsylvania, }
County of Philadelphia, } *ss.*

5 I, William B. Mann, Prothonotary of the Court of Common Pleas of said County, do certify that Wm. L. Nevin, Esquire, before whom the annexed affidavit was made, at the time of so doing a notary public duly commissioned and qualified to administer oaths and affirmations, and to take acknowledgments, &c., and to all whose acts as such full faith and credit are and ought to be given as well in Courts of Judicature as elsewhere, said Court being a Court of Record; and that I am well acquainted with the handwriting of the said Wm. L. Nevin, and verily believe his signature thereto is genuine, and that said affidavit purports to be taken in all respects as required by the laws of the
6 State of Pennsylvania.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court,
[L.S.] this 9th day of Sept., in the year of our Lord one thousand eight hundred and eighty.

WILLIAM B. MANN,
Prothonotary.

Passaic Orphans' Court.

In the Matter of the Propounding of the last Will and Testament of SARAH P. DALE, deceased.

7

State of Pennsylvania, }
City and County of Philadelphia, } *ss.*

William Dulles, Jr., of full age, being duly sworn according to law on his oath says, that he is a resident of the City of Philadelphia, and a commissioner of deeds for the State of New Jersey in said City, duly appointed by the Governor of said State, and duly qualified as such; that he will 8
faithfully, fairly and impartially take the testimony of the witnesses in the above matter, named in the annexed notice.

WM. DULLES, JR.

Subscribed and sworn to before me, a notary public in and for said City and County of Philadelphia, and duly authorized by the laws of the State of Pennsylvania to administer oaths therein, at said City of Philadelphia, this ninth day of September, A. D. 1880.

WM. L. NEVIN,

[L.S.] Notary Public.

Certificate of Prothonotary attached.

9

Passaic Orphans' Court.

In the Matter of propounding the last Will and Testament of SARAH P. DALE, *deceased.*

Depositions of witnesses on the part of the proponents, taken before me, William Dulles, Jr., a commissioner of deeds for the State of New Jersey, residing in the City and County of Philadelphia, at my office, No. 36 South Third st., in said City, on Thursday the 9th day of September, A. D. 1880, at one o'clock, P.M., pursuant to the notice hereto annexed.

Present: Hamilton Wallis, of counsel for proponent, and Absalom B. Woodruff, of counsel for caveator. Counsel for caveator objects to the taking of any evidence in this case in the State of Pennsylvania—

First. Because the Passaic Orphans' Court have refused to grant the privilege of doing so, and there is no legal authority or notice for taking the same.

Second. Because the proof of a will in New Jersey can only be made before a court in which it is propounded for probate.

Third. No foundation has been laid for taking evidence in this matter outside of the State of New Jersey.

WILLIAM J. KELLY, a witness produced on the part of the proponent, being duly sworn according to law, doth depose and says:

Q. What is your name, age, residence and occupation?

A. William J. Kelly, bookseller, thirty-five, Ridley Park, Delaware County, Pennsylvania.

Q. Did you know Sarah P. Dale in her life-time? 13

A. No, sir.

Q. Did you ever see her.

A. Yes, sir.

Q. Where and when?

A. I saw her at the Reverend Mr. Winters' house; I can't remember the month; some time this year; I can't remember when.

A paper writing purporting to be the last will and testament of Sarah P. Dale, bearing date the 28th day of April, in the year 1880, and which is marked for identification, "Exhibit 1 on the part of proponent," is shown to witness.

Q. State whether you saw Sarah P. Dale sign and seal that document? 14

A. I saw Sarah P. Dale sign it; I did not see Sarah P. Dale seal it to my knowledge?

Q. Was the seal on it when she signed it?

A. No, sir; well, I shouldn't say that; I have no knowledge of the seal being on the document; I have knowledge of Sarah P. Dale's signing the document; I can't remember seeing the seal; I can carry the paper and the name and the document here, and remember Sarah P. Dale signing this paper; I paid no attention to whether the seal was there or not.

Q. Did you hear Sarah P. Dale publish and declare that paper to be her last will and testament? 15

Objected to as leading.

A. Not in those terms; I heard her say she was much obliged to me for my trouble, and that is about all; she seemed to express herself as thankful for the trouble I put myself to.

Q. Did she request you to sign it as a witness ?

Objected to as leading.

A. I can't say as I heard her request me ; she brought the paper and handed it to me.

16 Q. What did she say ?

A. I can't remember what she said then.

Q. Who were present at this time ?

A. Reverend David Winters, Mrs. Winters and Doctor Atkinson, and myself and Mrs. Dale.

Q. Did you sign that paper as a witness ?

Objected to, as the witness has already said he signed it, and to ask him whether he did that as a witness, is a leading question.

A. Yes, sir.

Q. In whose presence did you sign it ?

A. In the presence of Mrs. Sarah P. Dale, Doctor Atkinson, Mrs. Winters and Mr. Winters.

Q. And this signing took place upon what day ;
17 the day of the date of that paper ?

Objected to as leading.

A. The day of the date of this paper — the 28th day of April, A.D. 1880.

Q. State whether or no, at the time of signing that paper, Mrs. Sarah P. Dale was of sound and disposing mind and memory, so far as you knew or believe ?

Objected to as leading question.

A. I believe she was.

Cross-examined by Mr. Woodruff :

Q. How far did you live on April 28th, 1880, from the place in which you saw Sarah P. Dale sign Ex-
18 hibit 1 ?

A. I lived at Ridley Park, Delaware County, Pennsylvania ; to the best of my knowledge it is about ten miles.

Q. How did you come to be at the house of Mr. Winters that day ?

A. Went to take dinner with him.
Q. Are you a relative of his or his wife ?
A. No, sir.
Q. How did you come to take dinner with him 19
that day ?
A. Was invited.
Q. By whom ?
A. Mr. Winters.
Q. Where were you when he invited you ?
A. At my place of business.
Q. Where was that ?
A. 1334 Chestnut street.
Q. Had you ever dined with him before ?
A. Yes, sir.
Q. How often ?
A. Once before.
Q. When was that ?
A. I can't remember.
Q. How long before April 28th, 1880 ? 20
A. I can't remember.
Q. Did your families visit ?
A. Yes, sir.
Q. Was your wife there April 28th, 1880 ?
A. No, sir.
Q. Did he invite you to dine with him on April
28th, 1880 ?
A. Yes, sir.
Q. At what time of that day did he invite you ?
A. He did not invite me that day.
Q. What day did he invite you ?
A. I can't remember.
Q. When he invited you did he tell you what he
wanted you for ? 21
A. Yes, sir.
Q. What did he say ?
A. I can't remember.

Q. When he invited you, did he say he was going to try to get Mrs. Dale to make a will, or say anything about her making a will ?

A. As far as I recollect Mr. Winters told me that
22 Mrs. Dale had made her will, and wanted a few friends to be there to sign it.

Q. Did he say at what time of the day she wanted them to sign it ?

A. No, sir.

Q. How many days before April 28th, 1880, was it that he told you this ?

A. Can't remember.

Q. Was it the day before ?

A. I can't remember.

Q. Was it a week before April 28th, 1880, that he told you this ?

A. Can't remember now.

Q. Where were you born and when ?

A. I was born in the city of Dublin, Ireland, the
23 12th of January, to the best of my recollection, 1844.

Q. How long have you been in this country ?

A. Since 1850.

Q. How long have you lived in your present place of residence ?

A. Since the fall of 1878.

Q. Had you ever seen Sarah P. Dale before the day you signed Exhibit 1 ?

A. No.

Q. How long before you signed that paper was it that you first saw her ?

24 A. Probably an hour.

Q. When she handed you that paper was she in bed, or up and dressed ?

A. She was up and dressed and in the parlor of Mr. Winters' house.

Q. Were you in any other room than the parlor that day ?

A. Yes, sir.

Q. What other room?

A. The sitting-room and dining-room.

Q. When you first went there that day, into which room did you first go? 25

A. The parlor.

Q. Who were there when you first got there — in the parlor?

A. I can't remember that there was anybody there.

Q. What time of day did you get there?

A. As far as I recollect, a little after one.

Q. How long after you got there was it that any one else came into the parlor beside yourself?

A. A few minutes.

Q. Who was the first one came in after you?

A. I think Mrs. Winters.

Q. Who next?

A. Mr. Winters. 26

Q. Who next?

A. If I recollect aright, I then saw Mrs. Dale.

Q. Did she and Mr. and Mrs. Winters come from the sitting-room into the parlor?

A. I could not say where they came from.

Q. When did you first see Dr. Atkinson that day?

A. As he came into the house.

Q. How long was that after you first got there?

A. I can't remember.

Q. In what room did you first see the paper, Exhibit 1.

A. In the parlor.

Q. Had you signed your name to it before Dr. Atkinson came? 27

A. No, sir.

Q. When Mr. Winters asked you to come to his house, on April 28th, 1880, did he ask you to come and dine with him?

A. Yes, sir.

Q. Did he mention anything else to you that he wanted you for?

A. He told me Mrs. Dale had made a will, and
28 wanted to have a few friends come and sign it.

Q. Did you ever see the paper you signed, marked Exhibit 1, from the day you signed it until to-day?

A. No, sir.

Q. Could you tell, without reference to the paper, in what month you did sign it?

A. No, sir.

WM. J. KELLY.

Sworn and subscribed September 9th, 1880, before William Dulles, Jr., Commissioner of Deeds for New Jersey,

WM. DULLES, Jr.,

29 [L.S.] Commissioner.

DAVID WINTERS, a witness produced on the part of the proponent, being duly sworn according to law, doth depose and say:

Witness offers to be sworn on the uplifted hand. A. B. Woodruff, for the caveator, objects to the witness being sworn in any other form than is permitted by the laws of New Jersey, and asks the witness:

Q. Are you conscientiously scrupulous of taking an oath?

A. No, sir; I have offered to give my oath.

30 Q. In what form?

A. Either by affirming, or with uplifted hand in the name of Almighty God; I care not in which of these forms specified.

Q. Why do you object to being sworn on the Bible?

A. For the reason which I have just given, I regard it as a species of idolatry.

Q. Idolatry to what idol?

A. The book.

31

Q. Do you not believe in the inspiration of the Bible?

A. I believe it thoroughly.

Q. Why do you object to being sworn upon it?

A. For the reason which I have just stated.

Counsel for caveator objects to this witness being sworn by affirmation, unless he says he is conscientiously scrupulous of taking an oath.

I, David Winters, do swear before Almighty God, the searcher of all hearts, that the testimony which I shall give in the case now pending in the Passaic Orphans' Court of New Jersey, concerning the propounding of the last will and testament of Sarah P. Dale, deceased, shall be the truth, the whole truth and nothing but the truth, and that as I shall answer at the great day.

32

DAVID WINTERS.

Sworn and subscribed before me this 9th day of September, 1880,

WM. DULLES, Jr.,
Commissioner of Deeds, &c.,
for New Jersey.

Q. Please state your name, age, residence and occupation?

A. Name, David Winters; age, thirty-eight years; residence, 1633 Christian street, Philadelphia; occupation, Presbyterian clergyman.

33

Q. Did you know Sarah P. Dale in her lifetime?

A. I did.

Q. Where was she on the 28th day of April, 1880?

A. At 1633 Christian street, Philadelphia, at my residence.

Witness is shown paper marked "Exhibit 1, for identification." State whether or no you saw Sarah P. Dale sign and seal that paper?

A. I fully believe this is the identical paper which
34 I saw her sign.

Q. State whether or no it had a seal upon it when she signed it?

A. To the best of my recollection it had.

Q. State whether or no you heard Sarah P. Dale publish and declare that paper to be her last will and testament?

Objected to as leading.

A. If that means that I saw her sign this document as her last will and testament, I answer, yes.

Q. Who were present at the time she signed that paper as you have testified?

A. There were present five persons, Mrs. Sarah P. Dale the testatrix, my wife Mrs. Winters, Dr. At-
35 kinson, Mr. Kelly and myself.

Q. Who signed the paper besides Mrs. Dale?

A. Three witnesses, namely, Dr. Atkinson, Mr. Kelly and myself.

Q. Were they all present at the time each signed?

Objected to as leading.

A. They were all present.

Q. Who requested you to sign it as a witness?

Objected to as he has not said anybody requested him to sign.

A. Mrs. Sarah P. Dale.

Q. Who, if anybody, requested the other wit-
36 nesses to sign it as witnesses?

Objected to as leading.

A. I requested them at the request of Mrs. Dale.

Q. At the time of the signing of that paper, state whether or no Mrs. Dale was of sound and disposing mind and memory, so far as you know and believe?

A. I fully believe she was.

Q. When and where did she die?

A. She died early in the month of May—I don't remember the date—at my residence.

Cross-examined by Mr. Woodruff: 37

Q. How did Sarah P. Dale happen to be at your house on April 28th, 1880?

A. She was visiting us.

Q. When did she come on that visit?

A. Four weeks before.

Q. Did you or your wife invite her to come?

A. We invited her.

Q. When did she ever have the first talk with you about making a will?

A. In the early part of the year 1877; I think it was 1877; in the early part of the year.

Q. Where did you live then?

A. At 737 South Ninth street, Philadelphia.

Q. Where did you see her then? 38

A. I saw her at 737 South-Ninth street.

Q How long was she with you then?

A. Several days; don't recollect the number.

Q. What conversation did you and she then have about her will?

A. I have no definite recollection of the particulars of the conversation.

Q. Did she tell you then that she had a will made?

A. No, sir.

Q. Did she after that time make a will, previous to this alleged one marked Exhibit 1? 39

A. She did.

Q. To whom did she deliver it?

A. To me.

Q. In whose handwriting was it?

A. My own.

Q. Who were the witnesses to it?

A. I cannot answer positively for both; one of them was Robert R. Stewart, and I think, as nearly as I can recollect, the other was my wife.

Q. What did you do with that will?

40 A. At Mrs. Dale's request I sent her a copy of it to Germany, and the original document I delivered to her son T. Nelson Dale, since her decease.

Q. Did you ever read that will?

A. I did.

Q. Did that will give as much to Frederick S. Dale as to T. Nelson Dale?

Objected to, as attempting to prove the contents of a written instrument by parole.

A. I positively cannot tell you at this date, I cannot remember the details of it, though I wrote it.

Counsel for caveator notifies counsel for T. Nelson Dale to produce in evidence on this examination, the will above mentioned by the witness.

41 Counsel for T. Nelson Dale says he has not got it; will produce it before the Court if properly required to do so.

Q. Do you not remember what your wife got by that will?

A. I do not remember definitely, I think about Five thousand dollars in money, and several valuable articles of jewelry; there were other articles, I can't give you the details of them.

Q. How long before April, 28th, 1880, did Mrs. Dale say anything to you about making another will?

A. I do not recollect whether she said anything

42 to me about it previous to her coming to visit us at the beginning of April, 1880.

Q. After she came there to visit you, what was the first conversation she had with you about it?

A. I simply recollect that soon after she came to my house, she told me she had made her will, and expected soon to sign it.

Q. How long before April 28th, 1880, did she tell you that?

A. She came to my house in the beginning of April, 1880, and soon after coming there, I think 43
the next day after her coming, she mentioned the foregoing fact concerning her will.

Q. Did you read the paper which she said she was going to sign as her will?

A. At her request I did so.

Q. How long was that before April 28th, 1880?

A. About two weeks.

Q. In whose handwriting was that paper?

A. I don't know positively.

Q. By that paper which you then read to her, was anything given to you or to your wife?

A. I did not say I read it to her; I read it at her request.

Q. Well, by that paper, which at her request you 44
read, was the same disposition made of her property as is made by this paper, marked Exhibit 1.

A. I believe that is the paper she signed, if it is, as I believe, I answer yes.

Q. How did you come to read to her a paper dated April 28th, 1880, two weeks before it was dated?

A. I now answer that I read it to her at her request about two weeks before she signed it, which was on April 28th, 1880.

Q. Did you read the paper you read to her, five or six times to her?

A. I do not know how many times I read it to her, as I did not make a note of each reading; I recollect distinctly, however, that I read it a num- 45
ber of times.

Q. Do you mean that you read it a number of times to her?

A. That is what I mean.

Q. Was T. Nelson Dale at your house during her visit to you in April, 1880?

A. No, sir.

Q. While she was at your house on that visit, did
46 you make any memoranda for a will for her?

A. I did not; I had nothing to do with the making of her will.

Q. Did Sarah P. Dale make any disposition of her property in April, 1880, or any part of her property, otherwise than by this paper which purports to be her will?

A. Yes, sir.

Q. Of what property, and what disposition did she make of it?

A. Of a few comparatively invaluable articles of furniture—the few articles referred to—she gave to my wife.

Q. What did she thus give to your wife?

47 A. I don't remember in detail what they were; there were a few articles of parlor furniture, I think some chairs, which she brought to our house; had conveyed there soon after she came there.

Q. Did they come there before April 28th, 1880?

A. They did; they came soon after her coming.

Q. Did she ever give you or your wife anything as an equivalent for the five thousand dollars she gave to your wife by the will you handed to T. Nelson Dale?

A. She never gave us anything in lieu of that?

Q. Where were you the fourth of July last?

A. In Philadelphia, if my memory serves me cor-
48 rectly, and I think it does.

Q. Have you seen T. Nelson Dale since that day?

A. I do not think so; he was in Philadelphia, but I think it was the end of May or June, at our house.

Q. Has he, since April 28th, 1880, requested you to come as a witness to prove the will of Sarah P. Dale, to Paterson?

Question objected to, as incompetent and immaterial.

49

A. He has never requested me to come to Paterson as a witness to that will of Sarah P. Dale.

Q. Would you have come, if he had requested you to do so, and had paid your expenses?

Same objection.

A. I would, if not otherwise occupied so as to prevent my going.

Q. Was Sarah P. Dale, while she was at your house, in April and May, 1880, a very sick and weak woman?

Objected to as immaterial.

A. She was during the last days of her life, as most persons are before their death.

Q. When did you first see the paper marked Exhibit 1?

50

A. About two weeks before the 28th of April, 1880.

Q. Did Mrs. Dale tell you how she got it?

A. Yes, sir.

Q. Did she tell you that it had been sent to her by T. Nelson Dale?

A. She told me that it was sent to her by a lawyer through T. Nelson Dale, and the United States mail.

Q. Did T. Nelson Dale come to Philadelphia before Sarah P. Dale died?

A. He did.

51

Q. Was he there for several days before she died?

A. Nearly five days.

Q. During those days, did he object to having his brother Frederick S. Dale, sent for?

A. No, sir; not in my hearing, in the least.

Q. After this paper, "Exhibit 1," was signed by the parties who signed, what was done with it?

A. It was placed in an envelope and put into a trunk in Mrs. Dale's bedroom at my house.

52 Q. Were there special instructions in writing with that will or paper?

A. I never heard of any.

Q. Did you ever hear Mrs. Dale give any verbal instructions to T. Nelson Dale about the disposition of her property?

Objected to as immaterial.

A. I never heard her say a word to him about it.

Q. When you and Dr. Atkinson and Mr. Kelly signed that paper marked "Exhibit 1," please state all that Mrs. Dale then said?

A. I have no recollection of anything in that immediate connection, except the fact that she desired us to sign our names as witnesses to it, as her

53 last will and testament.

Q. Did she say nothing then about what her executors were to do?

A. I have no recollection of so much as a word in that connection.

Q. What was the disease of which Mrs. Dale died?

A. You will have to ask the physician that question.

Re-direct examination:

Q. Was T. Nelson Dale at your house prior to the time when Mrs. Sarah P. Dale signed this paper, marked "Exhibit 1."

54 A. He had never been in my house until after that date.

Q. Was Frederick S. Dale at your house prior to his mother's death?

A. He was.

Q. How long before?

A. Nearly twenty-four hours.

Q. Had he been notified of his mother's condition ?

A. I understood that his brother T. Nelson Dale had notified him. 55

Answer objected to, as not evidence, only hearsay.

DAVID WINTERS.

Sworn and subscribed before me, William Dulles, Jr., Commissioner of Deeds for New Jersey, this 9th day of September, A. D. 1880. [L.S.]

WM. DULLES, Jr.,
Commissioner for New Jersey.

Examination continued until Friday, September 10th, at twelve o'clock, at the same place.

The paper referred to above, as "Exhibit 1," for identification, was returned to Benjamin B. Van Wagener, from whom it had been received. 56

WM. DULLES, Jr.,
Commissioner for N.J.

Friday, September 10th, A.D. 1880.—Parties met in pursuance of adjournment. Present: Mr. Woodruff for caveator, and Mr. Edwards for proponent, and by agreement of counsel, no testimony having been taken, adjourned until Thursday, September 16th, 1880, at twelve o'clock, M.

WM. DULLES, Jr.,
Commissioner for N.J.

Thursday, September 16th.—Examination continued by consent of proponent and caveator for one week, to Thursday, Sept. 23, 1880, at twelve o'clock, noon. 57

WM. DULLES, Jr.,
Commissioner for N.J.

Thursday, September 23d, 1880.—Examination continued by consent of proponent and caveator, until Friday, September 24th, 1880, at 1 30 P.M.

WM. DULLES, Jr.,
58 Commissioner for N.J.

Friday Sept. 24th, 1880. — Examination continued by consent of caveator and proponent until Saturday, Sept. 25th, 1880, at 10.30 A.M.

WM. DULLES, Jr.,
Commissioner for N. J.

Saturday, Sept. 25, 1880, 10.30 A. M. — Examination continued. Present: Mr. Edwards for proponent, and Mr. Woodruff for caveator.

WILLIAM B. ATKINSON, being duly sworn according to law, deposes and says:

59 Q. What is your name, residence and occupation and age?

A. William B. Atkinson, 1400 Pine street, Philadelphia, am in my forty-ninth year, and am a physician.

Q. Did you know Sarah P. Dale in her lifetime?

A. Yes, sir.

Q. Where was she stopping on the 28th day of April, 1880?

A. At Mr. Winters' residence, Christian street.

Witness shown paper, marked "Exhibit 1," for identification.

60 Q. State whether or no you say Sarah P. Dale sign that paper?

A. I did see her sign that.

Q. Where?

A. In the parlor of Mr. Winters' residence.

Q. Was it sealed?

A. Yes, sir; this little red thing was on, whatever you call that.

Q. Did you hear Sarah P. Dale publish and declare that paper to be her last will and testament?

Objected to. 1st, as leading; 2nd, as involving a legal question; that the proper question in such case is what was said and done at that time, so far as witness remembers. 61

A. I did her say that was her last will and testament—she used those very words.

Q. Who were present at this time?

A. Mr. Winters, his wife, Mr. Kelly, the other witness, Mrs. Dale and myself.

Q. (Exhibit 1, being shown.) Did you sign that paper?

A. I did.

Q. You witnessed the will?

Objected to as illegal and leading.

A. When I say I witnessed the will, I mean that I signed this paper—of course I do not know its contents.

Q. In whose presence did you sign it? 62

A. In the presence of Mr. and Mrs. Winters, Mrs. Dale and this other witness, Mr. Kelly.

Q Did Mrs. Dale request you to sign it as a witness?

A. Mrs. Dale requested me to do so.

Q. Did she request the other witnesses?

A. I can't say.

Q. You mean you do not remember?

Objected to as leading and improperly suggestive.

A. I do not remember.

Q. Who else signed that paper in your presence? 63

A. Mrs. Dale, Mr. Winters, Mr. Kelly.

Q. State whether or no, at the time of signing that paper, Mrs. Sarah P. Dale was of sound and disposing mind and memory, so far as you know and believe?

Objected to so far as the witness's belief is concerned.

A. I regarded her as such.

Cross-examined by Mr. Woodruff :

64 Counsel for proponent states that he has received the alleged will of Sarah P. Dale, as one of the executors named therein, that as required by law and his duty to the legatees, he had presented it for probate, and for the same reason examined all the subscribing witnesses in regard to its execution, and is not responsible for any testimony that may be here produced by the caveator.

Counsel for caveator states that whoever presents a will for probate, or a paper purporting to be a will of any person, has a client who is responsible, if the counsel is not, for all the evidence that may be necessary to ascertain the fact whether such
65 paper is the will of the alleged testator or testatrix.

Cross-examination :

Q. When did you first know Sarah P. Dale ?

A. I haven't—I can't tell you ; I have no remembrance, for I did not make any note of when I was first introduced to her.

Q. Where was she when you first saw her ?

A. At the residence of Mr. Winters.

Q. Do you remember what day of the week it was ?

A. Haven't the slightest idea.

Q. Do you remember what month it was ?

A. No, sir.

Q. What year was it ?

A. Don't remember.

66 Q. Was it the same year in which she died ?

A. Oh, no.

Q. How did you come to be at the house of Mr. Winters the day you first saw Sarah P. Dale there ?

Objected to, first, as irrelevant.

A. Can I make an explanation in any way ?

You can answer the question put in any way you please.

Former question repeated.

A. Can't tell you why I was there on that particular day. 67

Q. Did any one introduce you to her on that day; if so, who did it?

A. I think it was Mrs. Winters.

Q. How long was that before Sarah P. Dale died; state as nearly as you can?

A. Probably one year, perhaps longer.

Q. Did you prescribe for her as a physician upon that day?

Objected to as irrelevant.

A. I did not.

Q. How long did you see her upon that day?

A. Well, as I was chatting indifferently with Mrs. Dale, and Mr. and Mrs. Winters, it may have been an hour or more. 68

Q. When did you next see her?

A. I can't say.

Q. State as nearly as you can?

A. It may have been two or three days, or a week; as a friend of Mr. and Mrs. Winters, I was in the habit of calling on them, taking dinner, spending the evening or a little while, and was always introduced to any of their friends who might be present.

Q. How long did Mrs. Dale stay with them on the occasion when you first saw her; state as nearly as you can?

A. I think she was there a week or two at that time. 69

Q. When next after that do you know of her visiting Mr. and Mrs. Winters again?

A. I think it was two or three months after that.

Q. How long did she remain with them on that second occasion?

A. Probably two or three weeks.

Q. When do you know of her visiting them next, after that second occasion?

A. Have no idea; I met her at their house, with
70 other friends, at irregular intervals.

Q. Do you remember of any occasion, after that second occasion, when Mrs. Dale visited Mr. and Mrs. Winters, before the spring of 1880, on her last visit?

A. I think I do.

Q. When did she visit them next, before her last visit?

A. It appears to me that it was two or three months before; it may not have been so long a time.

Q. Was the paper, marked Exhibit 1, signed by Sarah P. Dale on the day of its date, April 28th, 1880?

A. Will you tell me what the paper, marked Ex-
71 hibit 1, is?

Paper handed witness.

A. It was.

Q. Who inserted the words "twenty-eighth" and "April," in that paper?

A. This witness—Mr. Kelly.

Q. In which room was Mr. Kelly when he inserted those words; in the front parlor, or back parlor, or second story, of Mr. Winters' house?

A. He was in the front parlor.

Q. Had Mr. Winters a dining-room at that time; if so, where was it?

72 A. It was in the back building, on the first floor.

Q. Did the doors from the parlor open into it?

A. No.

Q. Was there an ink-stand on the dining-room table?

A. I hardly think there was?

Q. Where was the ink-stand when you first saw it, from which the ink was got, with which he wrote those words, "Twenty eighth" and "April"?

A. I think I first saw it on a little table, in the front parlor. 73

Q. How did you come to be there that day?

A. I was invited by Mr. Winters, at the request of Mrs. Dale.

Q. Did you consider Mr. Winters' request as a request from Mrs. Dale?

A. He said so.

Q. Was that what you meant this morning when you said Mrs. Dale requested you to sign the will as a witness?

A. No, sir.

Q. Did William J. Kelly sign his name to the will or paper, marked Exhibit 1, at the same time he wrote the words "Twenty eighth" and "April" in it?

A. My impression is that he wrote the date before 74 any signatures of anybody.

Q. What time of day did you get there that day?

A. I got there about half-past twelve; I was invited to dine there.

Q. By whom?

A. Mr. Winters.

Q. Did he, at the same time he invited you to dine, say that Mrs. Dale wanted you to witness her will?

A. He did.

Q. Who was at the house when you arrived at 75 Mr. Winters'?

A. Mrs. Dale, Mr. and Mrs. Winters, Mr. Kelly, and the servants, who were not in the room.

Q. Did you see William J. Kelly sign his name after he had put the words "Twenty eighth" and "April" in the will?

A. I did.

Q. Before you saw him sign his name, state as nearly as you can, what Mrs. Dale had said after you arrived ?

76 A. We were talking about everything, chatting for a long while, we even joked about the idea that at that time several wills were being contested. I don't know anything special else that we were talking about—the current topics of the day.

Q. Is that all that you can remember that was said ?

A. I do not recall anything special.

Q. What was said upon the subject of several wills being contested, and who said it ?

A. I said myself it was the fashion to contest a will ; these are the words as near as I recollect.

Q. How did you come to make that remark ?

A. Because at that time five wills were under
77 contest in Philadelphia.

Q. Whose were they ?

Objected to as irrelevant.

A. The Whittaker will, the will of Dr. William King, the others I do not remember.

Q. Did any one else talk upon that subject except yourself at Mr. Winters' on that occasion ?

A. My impression is that some one, I can't say who, replied, that there would be no occasion to contest the will.

Q. Whose will ?

A. The will we just had witnessed—Mrs. Dale's.

Q. Were these remarks that were made by you
78 with regard to contesting wills, made after you and Mr. Kelly and Mr. Winters had signed your name to Exhibit 1 ?

A. I think Mr. Winters or Mr. Kelly were just signing, I was standing at the time.

Q. Had Mrs. Dale said anything on the subject of wills before Mr. Winters signed his name ?

A. I don't remember that she said anything.

Q. Do you remember that she said anything upon the subject of wills while Mr. Winters was signing his name?

79

A. I don't remember that she did.

Q. Did you have dinner that day immediately after Mr. Winters signed his name?

A. No, sir; we had dinner before.

Q. Did Mrs. Dale sign her name to the paper marked "Exhibit 1," before dinner?

A. The will was not produced in my presence until after dinner, when we went into the front parlor.

Q. Who produced it at that time?

A. I do not remember.

Q. Was anything said on the subject of wills at the dinner table?

A. I heard no remarks about wills at the dinner table.

80

Q. After the will was first produced in the front parlor, after dinner, was anything said or done that you can now remember, except the signing of the paper by Mrs. Dale, Mr. Winters, Mr. Kelly and yourself?

A. I can't remember any special conversation except my joke about the idea of contesting wills.

Q. After you had all signed that paper, do you remember what was said or done about it, or with it; if so, state?

A. I remember nothing about it after we had signed.

Q. How long did you stay there after Mr. Winters had signed it?

81

A. I don't think it exceed half an hour.

Q. Did you and Mr. Edwards, counsel present for the proponent of the will, have a conversation this morning about the signing by Mrs. Dale,

yourself, Mr. Winters and Mr. Kelly, of the paper marked Exhibit 1; if so, please state what it was?

Objected to as irrelevant.

A. Mr. Edwards asked me how long I had been
82 practicing medicine, what was my position in the college, how long I had been secretary of the American Medical Association, what was my specialty, if Mrs. Dale was under my professional care at the time of signing the will; I think that is about all.

Q. Did you tell him whether or not Mrs. Dale was under your professional care at the time of signing the will?

A. I told him that I did not regard her then as my patient.

Q. Did you tell him whether or not you had prescribed for her as a physician?

Objected to on the ground that the information sought can best be obtained by directly
83 questioning the witness in regard to these facts, and that the evidence is irrelevant,

Q. Did you ever prescribe for Sarah P. Dale; and if so, when first?

A. I have no records with me, but if I prescribed for her before the will was signed, it was something of a trivial nature.

Q. Do you not remember whether or not you did prescribe for her before the paper was signed upon April 28th, 1880?

Objected to as irrelevant.

A. I think I did not, because I regarded her as
84 under the care of some one else.

Q. Did you not know before April 28th, 1880, that she was affected with syphilis?

Objected to as incompetent and illegal.

A. I did.

Q. When did you first know that?

Counsel for proponent objects to any testimony in regard to the physical condition of Mrs. Dale before the 28th of April, 1880.

A. It is impossible to give you the date, but it was several months before she came under my care as a physician. 85

Q. How did you become informed, in the first place, that she was affected by it?

A. I am under the impression that either Mr. or Mrs. Winters gave me a hint as to the nature of her disease—she herself told me that I might judge of the character of her disease by the physicians she had employed.

Q. What physicians did she say she had employed?

A. They were specialists in the treatment of syphilis.

Q. If she named them, please give the names she mentioned?

A. Dr. Bumstead of New York, Otis, and Professor Seligman of Europe, Berlin. 86

Q When did she first come under your care as a physician?

A. I can't give the exact date, but about ten days after the signing of the will.

Q. How did you come to see her at that time?

A. She requested Mr. Winters to send for me.

Q. Did you see her then at his house?

A. I did.

Q. Please to state in what physical condition you then found her?

Objected to; counsel for proponent objects to any testimony in regard to the condition of Mrs. Dale any time after the execution of the will. 87

A. She had a severe fever; complained greatly of pain at the base of the brain, and had a tendency to coma or stupor.

Q. From what you then ascertained, how long, in your judgment, had Sarah P. Dale been then affected with syphilis?

Objected to as before.

88 A. I believe that she had been suffering from syphilis for perhaps several years.

Q. Had she then arrived at that stage of it called tertiary?

Objected to as before.

A. She had.

Q. Did she tell you on that occasion that she had, before coming to Philadelphia at that time, been for several hours, and on one occasion as long as eighteen hours, unconscious from the effects of it?

Objected to, as incompetent and irrelevant.

A. She told me something to that effect; I can't say eighteen hours, but it was quite a considerable time she was unconscious.

89 Q. Does syphilis, as a general rule, affect the anterior portion of the brain, before it affects the base of the brain or spinal cord?

A. I decline to answer that question; I am not here as an expert in syphilis.

Objected to, as not proper cross-examination.

Q. Are you a professor in a medical college in Philadelphia?

A. I am not.

Q. Are you a professor in any college or university?

A. I am only a lecturer in Jefferson College.

Q. A lecturer upon what?

90 A. On diseases of children.

Q. How long have you practiced medicine as a physician?

A. Since March, 1853.

Q. When death by syphilis from its affecting the brain is caused, is the final thing which causes immediate death called spinal meningitis?

A. Not always.

Q. It is sometimes, however, is it not?

A. It is.

Q. Does syphilis, after being a long time in a system, produce tumors in the fissures of the brain? 91

Objected to, as not proper cross-examination.

A. It does sometimes.

Q. Are there instances on record in standard medical works, where they have been produced as large as a walnut?

A. There are.

Q. Did Mrs. Dale inform you, while you were treating her as a physician, whereabouts she was when she contracted syphilis?

Objected to, as incompetent and illegal.

A. She did not.

Q. Did she inform you from whom she contracted it? 92

Objected to as before.

A. She did.

Q. Was that her husband?

A. It was.

Q. Did she inform you that on her last return from Europe to the United States, that she started to come in order to get a divorce from him?

Objected to as incompetent.

A. I don't remember her saying anything of the kind.

Q. Does syphilis sometimes produce insanity?

Objected to, as not proper cross-examination.

A. It does.

Q. Does it sometimes render persons subject to delusions, under which they believe their best friends are their worst enemies? 93

Objected to, as not a proper cross-examination and as incompetent.

A. I have never seen such a case.

Q. Did Sarah P. Dale, in your judgment, die of spinal meningitis caused by syphilis?

Objected to, on the ground that anything
94 which took place after the execution of the will is not proper evidence in this connection.

A. I think she did.

Q. You stated that Mr. and Mrs. Winters gave you a hint that Mrs. Dale was affected with syphilis, do you remember which one, whether it was Mr. or Mrs. Winters?

A. I do not; the information was given in a very guarded manner; of course, as a physician, I saw what they meant.

Q. After Mrs. Dale was under your care as a physician, and before she died, did you see Nelson Dale at the house of Mrs. Winters, or elsewhere?

Objected to, as not a proper cross-examination, and as irrelevant.
95

A. I did see him at Mr. Winters' house.

Q. Did you then tell him his mother could not live long?

Objected to as irrelevant.

A. I did

Q. Did Mrs. Dale have another physician in the City of Philadelphia besides yourself; and if so, who was it?

A. She had Professor Roberts Bartholow.

Q. I am informed that Mrs. Sarah P. Dale died on the 8th day of May, 1880, and the paper purporting to be her will is dated on the 28th day of
96 April; is it correct that she did die on the 8th day of May?

A. I cannot say as to the day, without consulting my books.

Q. As this may be an important matter in this case, will you please consult your books and see how many days before she died Sarah P. Dale was

under your care as a physician, and let us know this afternoon?

A. I will be here this afternoon.

Adjourned at 1.30 P.M., by consent of caveator and proponent, until 2.30 P.M. 97

Examination continued at 2.30 *P.M.*

Q. Have you consulted your books; if so, please state when Mrs. Sarah P. Dale was first under your care as a physician, the day on which she died, and the day on which you told T. Nelson Dale she could not live long?

The latter part of the question, concerning T. Nelson Dale, objected to, as not proper cross-examination, and as immaterial.

A. I find that I prescribed for her first as a physician on the 9th day of April, 1880; she died on the 8th day of May, 1880; I must have told T. Nelson Dale on the 4th or 5th of May. 98

The witness desires to correct the testimony heretofore given by him in the following respects:—referring to question of page 40 of this testimony—From the 9th of April, I prescribed for the disease from which I knew she was a sufferer; I always met her in the parlor on these occasions, when I called on her professionally; she was not confined to bed; that is what I mean to say.

Q. Since you testified this morning, have you looked over your notes of the evidence, taken by the Commissioner in this case, and corrected them this afternoon, and now given what you believe to 99 be the exact facts respecting the matters testified to by you this afternoon?

A. Yes, with this addition, that I was called to see Mrs. Dale, then confined to her bed, about the 2d or 3d of May.

Q. The 28th of April was on Wednesday, the 2d of May was on Sunday : Were you not to see Sarah P. Dale, as a physician, between April 28th, 1880, and Sunday, May 2d, 1880 ?

100 Objected to as immaterial.

A. I was.

Q. Do you recollect on what day after April 28th, 1880, you first saw her as a physician and prescribed for her, if so, please state, and state if she was in bed ?

A. I do not keep notes of my cases except the visits, not what I do for them, but I am sure that she was not in bed when I called, which was in a day or two after April 28th.

Q. Do you remember that on Sunday, May 2d, 1880, T. Nelson Dale was telegraphed to, to come to Philadelphia ?

101 Objected to, on the ground that the question is improperly put, as it may involve an answer by hearsay.

A. I don't know anything about it.

Q. Did you not so understand on that day ?

Objected to for same reason as above.

A. I did not.

Q. Did you not hear from Mr. and Mrs. Winters or Mrs. Sarah P. Dale, before the night of Monday, May 3d, (at which time I understand T. Nelson Dale arrived at Mr. Winters') that T. Nelson Dale had been telegraphed to, to come ?

Objected to for same reason.

A. I remember nothing about it ?

102 Q. When did you first have a consultation with another physician as to the condition of Mrs. Sarah P. Dale ?

A. I had but one consultation, and that was—can't give the exact date, but it was two or three days, perhaps four days, I think it was about the third day before she died.

Q. When you saw her first, after April 28th, was anybody present at the interview you had with her?

Objected to, as not proper cross-examination, because it took place after the execution of the will. 103

A. I think not.

Q. What did she say to you on that occasion?

Objected to for the same reason.

A. I don't remember.

Q. From the 9th of April, 1880, to the day that Sarah P. Dale died, what medicines did you give to her, and in what quantities, and would the kinds you gave in the quantities you gave, have produced either spinal meningitis or death in her?

A. I had been giving her iodide of potassium, in five grain doses, about four times a day, and the bichloride of mercury, about one-forty-eighth ($\frac{1}{48}$) of a grain, four times a day; also, I gave her quinine, 104 two grains, four times a day, that's all; and when she was very much troubled with pain, I gave her bromide of potassium, in twenty grain doses; I had her neck rubbed, or painted rather, with tincture of iodine, and tincture of belladona, equal parts, two or three time times a day. During this time, she, of course, took brandy to keep her up. They would not produce either spinal meningitis or death in her.

Above question and answer objected to, as not a proper cross-examination.

Q. At the consultation which you and the consulting physician had, between April 28th, and the death of Mrs. Dale, on May 8th, 1880, did you and 105 he conclude that she could not live, and did you so inform T. Nelson Dale?

Objected to, on the ground that the question is incompetent, because the other physician should be called as to his conclusion.

A. We did, and at my request the other doctor told Mr. Dale (T. Nelson) that that was our conclusion.

Q. Are you a lecturer in Jefferson College on the
106 diseases of women as well as of children ?

A. I only lecture on diseases of children.

Re-direct.

Q. When you came with Mrs. Dale and the rest of the people from the dining-room into the parlor, before the execution of the will, after you got into the parlor, did Mrs. Dale say to you that that was her last will and testament ?

Objected to: 1st, as leading; 2d; that witness has not said they went from the dining-room directly to the parlor; 3d, as not re-examination.

107 A. She did.

Q. Did Mrs. Dale say this before Kelly signed the will ?

Objected to as no re-examination.

A. She said it before any of us signed.

Q. Up to, and including the day of executing the will, did you notice any mental weakness or signs of insanity about Mrs. Dale ?

A. I did not.

Q. Did you notice her condition very carefully on that date ?

A. Yes, sir.

Q. Had she exhibited any signs of coma up to
108 this time, as far as you know ?

A. I never saw her exhibit any signs of coma.

Q. At what time did she complain of great pain at the base of the brain—what date was that ?

A. As near as I can recollect, about the second or third of May.

Q. Was that about the time she began to sink, or get into her last illness?

Objected to as leading.

A. She was then in bed. 109

Re-cross examination:

Q. Did Mrs. Dale, from the time you first prescribed for her, complain much of headache?

A. She did.

WM. B. ATKINSON, M.D.

Sworn to and subscribed before me, this 25th day of September, A.D. 1880, } L.S.

WM. DULLES, Jr.,
Commissioner of Deeds, &c., for the State of New Jersey, residing in Pennsylvania.

State of Pennsylvania } ss.
City and County of Philadelphia, }

110 I, William Dulles, Jr., a Commissioner of Deeds, &c., for the State of New Jersey, residing in Pennsylvania, within named, do hereby certify and return to the Orphans' Court of Passaic County, New Jersey, that I have duly executed the within commission, in manner and form as is therein and thereby commanded, and that the execution thereof will fully appear by the schedule thereto, and that the witnesses were duly sworn, and subscribed their testimony in my presence, as set forth therein, all which is hereby certified.

Witness my hand and official seal, this twenty-fifth day of September, A.D. 1880.

WM. DULLES, Jr.,

[L.S.] Commissioner of Deeds, &c., for the State of New Jersey, residing in Pennsylvania. 111

Endorsed :

Opened in open Court, Sep. 28, '80, by me, and
112 delivered to a clerk in the Surrogate's office for custody.

JOHN S. BARKALOW, P.J.

Passaic Orphans' Court.

In the matter of Probate of paper writing, purporting to be last will, &c., of Sarah P. Dale, dec'd. } Exhibit D, 1, on part of proponents, Dec. 1, 1880. Isaac Van Wagoner, M.C.C.

Passaic Orphans' Court

In the matter of Probate of paper writing, purporting to be will of Sarah P. Dale, dec'd. } Ex. No. 1, for identification, Dec. 1, 1880. Isaac Van Wagoner, M.C.C.

113

114

Passaic Orphans' Court.

In matter of Probate of } Exhibit D, 1, on part of Proponents.

Endorsed on envelope.

Isaac Van Wagoner,
M C.C.

Rec'd from the Court,
Sept. 28th, 1880.

Philadelphia, Pa.
Sep. 25, 1880,
Registered.

115

1 5c. U.S. Postage Stamp Cancelled.

To the Honorable
Judges of Orphans' Court,
Passaic County,
Paterson,
N. Jersey.

15678

Paterson
New Jersey

5 U.S. Postage Stamps, 10 c. each, Cancelled.

City and County of Philadelphia, *ss.*

I hereby certify that I placed the package in the Central Post Office at Philadelphia, on Saturday, Sep. 25, 1880, at 6.15 P.M. WM. DULLES, Jr. 116

36 So. Third St.
Philada.

WM. J. DULLES, Jr.
(L.S.)
Commissioner
for N.J.

Sealing Wax

Sealing Wax

Sealing Wax

117

Passaic Orphans' Court.

In matter of Probate of paper writing, purporting to be will of Sarah P. Dale, dec'd

Exhibit D, 1, on part of Proponents.

Dec. 1, 1880.

Passaic Orphans' Court.

121

In the Matter of probate of a paper writing purporting to be the last will and testament of SARAH P. DALE, *deceased. Frederick S. Dale, Caveator.*

Examination of witnesses taken in the above matter, before Isaac Van Wagoner, a Master in Chancery of New Jersey, at his office, in the City of Paterson, on Wednesday, the 24th day of November, A.D. 1880, in pursuance of an order of said Court, bearing date the nineteenth day of June, A.D. 1880, in the presence of John Linn and William D. Edwards, proctors and of counsel with the executors named in said paper writing, and Socrates Tuttle, of counsel with caveator. 122

At the request of counsel with caveator, the examination of witnesses is adjourned to Wednesday, the first day of December, 1880, 10 o'clk A.M., at same place.

December 1, 1880.— Examination of witnesses continued in the presence of Messrs. Linn and Wallis of counsel with executors, and A. B. Woodruff of counsel with caveator.

HENRY McDANOLDS, a witness produced on the part of the executors and proponents, being duly sworn according to law, deposeth and saith: 123

Q 1. What office do you occupy?

A. Surrogate of the County of Passaic.

Q 2. When did you take possession of your office?

A. November 12th, 1880.

Q 3. This paper, endorsed last will and testament of Sarah P. Dale, which you have produced here,
124 was obtained by you from whom?

A. From ex-Surrogate Isaac Van Wagoner, my immediate predecessor in the office of Surrogate.

Q 4. From whom did you obtain this paper which is marked Exhibit No. 1, for identification?

A. From ex-Surrogate Isaac Van Wagoner, my immediate predecessor.

Q 5. Were these papers among the papers in your office, which were delivered to you as Surrogate when you took possession of it?

A. They were.

Q 6. Have they been in your custody since, and are they still in your custody?

A. They have been since and are still in my cus-
125 tody.

Q 7. In whose handwriting is the endorsement on this paper marked Exhibit No. 1, signed John S. Barkalow, P.J.?

A. I didn't see it written, and couldn't swear.

Q 8. You are not, then, acquainted sufficiently with the handwriting of Judge Barkalow so that you can swear to it?

A. I am not.

HENRY McDANOLDS.

Sworn to and subscribed
before me December 1st, 1880,

ISAAC VAN WAGONER,
126 Master in Chancery
of New Jersey.

Said paper, purporting to be will of Sarah P. Dale, dec'd, offered for identification by proponents, and marked Exhibit No. 2.

HAMILTON WALLIS, a witness produced on the part of the proponents, being duly sworn according to law, on his oath deposeth and saith :

Q 9. Witness being shown the paper marked Exhibit No. 1, he is asked, What is that? 127

Objected to.

A. So far as my knowledge goes, it is a notice of taking depositions of David Winters, William B. Atkinson and William J. Kelly in this matter, before William Dulles, Junior, Commissioner of New Jersey, for Philadelphia, proof of service of that notice on Garret A. Hobart, Proctor for the caveator herein, the commissioner's oath, the certificate of authority of the officer before whom it was taken, the depositions of David Winters, William J. Kelley, taken in Philadelphia pursuant to said notice.

Q 10. Were you present when those depositions were taken?

A. I was. 128

Q 11. Who appeared on the part of the caveator, if any one?

Objected to.

A. Mr. Absalom B. Woodruff.

Q 12. By whom were these depositions reduced to writing?

A. By the commissioner, William Dulles, Junior.

Q 13. By whom were they signed?

A. Deposition of William J. Kelley was signed by William J. Kelley; deposition of David Winters was signed by David Winters.

Q 14. These papers contain also what purports to be the deposition of William B. Atkinson, were you or not present when his deposition was taken? 129

A. I was not.

Q 15. Who represented the proponents of the will and was present at that time?

A. So far as I know, William D. Edwards, my partner in New Jersey.

Cross-examination :

130 Q 16. You say so far as you know. How do you know who was present ?

A. I know he started for Philadelphia for that purpose.

HAMILTON WALLIS.

Sworn and subscribed before me, December 1, 1880.

ISAAC VAN WAGONER,
Master in Chancery
of New Jersey.

EDWARD J. EDWARDS, a witness produced on the part of the proponents, being duly sworn according to law, on his oath deposeth and saith :

131 Q 17. Look at that notice attached to this Exhibit No. 1. Did you at any time serve that notice upon Mr. Hobart ?

A. I did.

Q 18. When ?

A. On Thursday, August 26th, 1880.

Q 19. How did you serve it ?

A. By leaving it at his office with a person in charge of his office.

Q 20. Do you mean that you left this notice, or a copy, at his office ?

A. A copy.

Q 21. In whose handwriting is this notice ?

A. In the handwriting of Mr. William D. Edwards, of the firm of Wallis & Edwards.

132

E. J. EDWARDS.

Sworn to and subscribed before me, December 1st, 1880.

ISAAC VAN WAGONER,
Master in Chancery
of New Jersey.

BENJAMIN B. VAN WAGONER, a witness produced on the part of the proponents, being duly sworn according to law, on his oath deposeth and saith:

133

Q 22. Were you clerk or assistant in the Surrogate's office of this County, in September and October last?

A. I was.

Q 23. Were you present in Philadelphia at the time these depositions, marked Exhibit No. 1, were taken?

Objected to, as no such depositions are in evidence.

A. Yes, sir.

Q 24. For what purpose was you there?

A. I took a paper that purported to be the last will and testament of Sarah P. Dale, deceased, from here, so that it might be used on that examination.

134

Q 25. Witness being shown paper, marked Exhibit No. 2, he is asked, Is that the paper to which you refer?

A. Yes, sir.

Q 26. Were you present during the taking of these depositions—all of them?

A. I believe I was; I don't think any testimony was taken except when I was present.

Q 27. Who appeared on behalf of the proponents of the will, and who appeared in behalf of the caveator?

Objected to.

A. Part of the time Mr. Hamilton Wallis appeared for the proponents; the remainder of the time Mr. Edwards appeared for the proponents, and Mr. Woodruff appeared for the caveator.

135

Q 28. By whom were these depositions reduced to writing?

A. By Mr. Dulles, the Commissioner.

Q 29. By whom were all of these depositions signed?

A. By William J. Kelley, David Winters and
136 William B. Atkinson.

Q 30. Do you mean that all of these depositions were signed by each one of these witnesses, or that each person signed the deposition by him made?

A. Each witness signed the deposition that he made.

Q 31. In whose presence were these depositions signed?

A. Mr. Kelley signed his depositions in the presence of Mr. Dulles, Mr. Wallis, Mr. Woodruff, Mr. Frederick S. Dale, a Mr. Henry, Mr. Winters and myself, I believe. Mr. Winters signed in the presence, I think, of the same parties, leaving Mr. Kelley out. I am not positive whether Mr. Edwards
137 or Mr. Wallis were there. Dr. Atkinson signed in the presence of Mr. Dulles, Mr. Woodruff, Mr. Frederick S. Dale, Mr. Henry, Mr. Edwards and myself, I believe.

Q 32. After the depositions had been taken, what did you do with the paper marked here Exhibit No. 2?

A. I returned it to the Surrogate's office, in Passaic County.

Q 33. In whose handwriting is the endorsement here on this paper marked Exhibit No. 1?

Objected to.

A. Endorsement signed John S. Barkalow, P.J.,
138 is in John S. Barkalow's handwriting.

Cross-examination.

Q 34. By what authority did you take that paper marked for identification Exhibit No. 2, out of the State of New Jersey and into the State of Pennsylvania?

A. By being ordered to do so by my employer.

Q 35. Who was that?

A. Isaac Van Wagoner, Surrogate of the County of Passaic, at that time.

Q 36. Did you not know before you thus took it out of this State, that the Orphans' Court of the County of Passaic had refused to grant permission to have it taken out of the State? 139

A. I knew the Orphans' Court of the County of Passaic had refused to grant a commission in this matter, but did not know that there was any order forbidding the will to be taken out of the State.

Q 37. What kind of a commission did you know the Orphans' Court of the County of Passaic had refused to grant?

Objected to, as well as the former questions, as being immaterial and irrelevant.

A. A commission to examine certain parties residing in the city of Philadelphia, that were witnesses on a paper writing purporting to be the last will and testament of Sarah P. Dale, deceased. 140

Q 38. Do you mean the paper marked here for identification, Exhibit No. 2?

A. I do.

B. B. VAN WAGONER.

Sworn to and subscribed before me, December 1st, 1880,

ISAAC VAN WAGONER,
Master in Chancery of New Jersey.

HAMILTON WALLIS recalled on the part of the proponents. 141

Q. 39. Do you know where these witnesses, David Winters, William B. Atkinson and William J. Kelley reside, and if so, where?

Objected to.

A. They reside in the city of Philadelphia, in the State of Pennsylvania.

Q 40. Before these depositions were taken, were there any efforts made to procure the attendance
142 of these men as witnesses in this State, and if so, with what result?

Objected to.

A. Efforts were made, with the result that their attendance could not be procured in this State.

HAMILTON WALLIS.

Taken before me,
December 1, 1880,

ISAAC VAN WAGONER,
Master in Chancery of New Jersey.

Counsel for proponents now offers in evidence the depositions taken, and marked Exhibit No. 1, with
143 the envelope in which they are contained, and said papers are marked Exhibit D, 1, on the part of proponents.

Objected to by counsel for caveator as being, 1st. Taken in defiance of the decision of the Orphans' Court of the County of Passaic. 2d. As being taken without lawful authority. 3d. As incompetent evidence at this time, or at any stage of the proceedings in this case.

Counsel for proponents offers in evidence the paper purporting to be the last will and testament of Sarah P. Dale, heretofore marked Exhibit No. 2 for identification, which said paper is marked Ex-
144 hibit D, 2, on part of proponents.

Objected to. 1st. Because it is not proved. 2d. As incompetent evidence.

PROPONENTS REST.

Examination of witnesses adjourned to Wednesday, December 8th, 1880, at ten o'clock, A.M., at same place.

December 8, 1880. — Examination of witnesses continued in the presence of John Linn, of counsel with proponents, and A. B. Woodruff, of counsel with caveator. 145

ELIZABETH O'CONNER, a witness produced on the part of the caveator, being duly sworn according to law, on her oath deposeth and saith.

Q 41. Where do you live at present?

A. 39 Madison street, Paterson, New Jersey.

Q 42. What has been your business for the last four or five years?

A. Living out and working out, wherever I could get it.

Q 43. Did you live with Sarah P. Dale in her lifetime? if so, how long? 146

A. I lived in the one house with her son Nelson Dale and his wife, and she lived with them. I lived with them three months and a little over a week; she only gave me a reference for three months; I have the reference.

Q 44. Did you live there up to the time she went to Philadelphia?

A. Yes, sir.

Q 45 How long after she started to go to Philadelphia was it before you heard of her death?

A. Well, I ain't really sure; to the best of my opinion it was three weeks; I don't think it was four weeks. 147

Q 46. Do you remember what month it was when Mrs. Dale left to go to Philadelphia?

A. I think it was either in April or May—I ain't sure which.

Q 47. From the time that you went there until

the time Mrs. Dale left to go to Philadelphia, tell us in what manner she conducted herself?

Objected to.

A. She was sick, her head; she complained all
148 the time about her head. Well she, the latter part of the time, kept ice on her head. Well, when I used to go up with her breakfast for some time before she went—well, the first time I saw her she frightened me and I did not go right in then, but I knowed and then I went in; well, from that out I never went in again without knocking — I got frightened.

Q 48. Did you speak a moment ago about a bladder of ice?

A. Yes, sir.

Q 49. The examiner has not put down anything of that for the reason, I presume, that you talked so rapidly. Please state slowly what you have to
149 say about that bladder of ice?

A. Well, I never saw one, and I thought she was fairly crazy when I saw her playing with the ice on her head.

Q 50. What kind of a bladder was it?

A. It was a brown one.

Q 51. How large?

A. Well, I should think, having seen a pig's bladder, that it was about that size.

Q 51½. How was the ice put into it?

A. I see Mr. Nelson break it in small pieces and put it in a round hole, tied it with twine.

Q 52. When the ice was thus put into the bladder, what did Mrs. Dale use to do with it?

150 A. Mrs. Dale used to take and put it on to her head. I asked her what did she do that for; she told me she done it because her brain was burning out of her head?

Q 53. How long after you first went there, that you first saw her using a bladder of ice in that way?

A. To the best of my opinion, I was there about two months.

Q 54. Who else was living in the house then besides T. Nelson Dale and his wife and Mrs. Dale and yourself? 151

A. There was Mrs. Brown his mother-in-law, and a nurse.

Q 55. Do you mean Mrs. Brown, the mother of the wife of T. Nelson Dale?

A. Yes, sir.

Q 56. Before you saw Mrs. Dale use the bladder of ice the first time, did she have a doctor attending her?

A. Yes, sir.

Q 57. From that time when you first saw her use the bladder of ice up to the time Sarah P. Dale left for Philadelphia, how frequently did she use the bladder of ice by applying it to her head?

A. Well, I don't know how often she put it to her 152 head, but I carried the ice up to Mr. Nelson, to him. Sometimes he was come for it himself and carried it up stairs.

Q 58. How frequently would the ice be taken up for that purpose?

A. Well, I couldn't really say, but I know he used to come and take it.

Q 59. Was it as often as once a day, for the last month Mrs. Dale was in Paterson?

A Well, I can't say, because many a time he took up the ice, and I would get the bladder, whenever I went up to dress the bed—very often.

Q 60. Would there be ice in it, when you found it in bed? 153

A. Sometimes there was ice, more times there would be water—nothing but water.

Q 61. During the time that you were there, was there any other servant about the house?

A. Yes, there was three girls, but they did not live long—nursery girls.

Q 62. Do you know where any of them are now?

A. No, sir; they all come up from New York.

154 Q 63. During the last two months that you lived with Mrs. Dale, in what way did she act and talk?

Objected to.

A. Well, she talked very queer to me; at one time she would take a fit of laughing, and then she would tell me she was going off travelling; that she had all her clothes packed; that she was going away to travel. I asked her if she would take me with her, to take care of her; she said she would take me, but I didn't understand Germany; she said she would want a German girl when she would go, who would understand Germany; she said she was going to Germany; when Nelson was going away she did not want to go from the house. She
155 asked me if I would stop with her until the time would be up for the rent of the house; and Miss Inglis, she wanted to know if I and Miss Inglis wouldn't stay with her—Miss Inglis was present at the time. Nelson's wife gave me a little woolen sack. Mrs. Dale wanted to buy it from me—Miss Inglis was present at the time. I begin to laugh at her. I said you wouldn't wear that. She said yes; she wanted it as it was warm to travel with. Miss Inglis begin to laugh; and I said no, I don't want to sell it, as I needed it myself. She told me not to tell Mrs. Dale about it—I mean Miss Inglis told me that.

156 Q 64. You say Miss Inglis requested you not to tell Mrs. Dale about it—which Mrs. Dale do you mean?

Objected to.

A. Mrs. Nelson Dale, the one that gave it to me.

Q 65. Proceed now and tell what further acts you observed Mrs. Sarah P. Dale do, which seemed to you queer?

A. Well, she says to me one Sunday, she would like to see her son Fred, as he was her baby; I said to her, why don't he come to see you? she said Nelson nor Mrs. Dale didn't want him or his children.

Q 66. Did you see any cause for laughter at the times when you would see Mrs. Sarah P. Dale break out in fits of laughter? 157

A. Nothing, only telling me she was going to travel.

Q 67. Did you ever see Sarah P. Dale act in such a way in presence of Mrs. Brown as to attract Mrs. Brown's attention and cause her to make remarks?

Objected to.

A. Yes, she used to go up to Mrs. Brown's when she would be in bed at nights, and Mrs. Brown would tell me in the morning that she was crazy.

The last clause of the answer is objected to as incompetent testimony, and is asked to be stricken out by counsel for proponents.

Q 68. Shortly before Sarah P. Dale left Paterson for Philadelphia, did you hear her say anything about T. Nelson Dale and his wife going away and you and Sarah P. Dale staying in Paterson, and if so, what did she say to you about that? 158

Objected to.

A. She told me that Nelson and Mrs. Dale wanted her to go away, that they were really putting her out, and she wanted me to stop with her until the time for the rent would be up; the rent was paid till the last of June; that they were really driving her out of the house, but that she wasn't go along with them, that she was going to Philadelphia. 159

Q 69. Did she tell you where T. Nelson and his wife wanted her to go?

A. Yes; she said Nelson wanted her to go to her own house; she sent some of her trunks with him to her place. She told me she had forty barrels in

the mill of delph, and she had valuable pictures, nicer than the ones she had in her parlor.

Q 70. How long before she went to Philadelphia was it that she told you this ?

160 A. About a month—Nelson moved all the things away and stored them in Broadway.

Q 71. How long before Sarah P. Dale went to Philadelphia was it, that the trunks you have spoken of were sent to her own house ?

A. They went with Mr. Nelson's things — the same time that Nelson moved.

Q 72. Question 71 repeated ?

A. About a day ; I am not sure ; everything was left the room.

Q 73. Did T. Nelson Dale and his family leave the house in Paterson, where Sarah P. Dale was, before she left to go to Philadelphia ?

A. No, sir ; she left first.

161

Q 74. Was there any bedstead in Sarah P. Dale's room, a day or two before she left to go to Philadelphia ?

A. There was nothing but a mattress that she lay on. They took down the bedstead and boxed it up.

Q 75. How long before Sarah P. Dale left Paterson to go to Philadelphia was it that the bedstead on which her bed had been, was taken down and sent away ?

A. About, to the best of my opinion, two or three days. She lay on the mattress for two or three days, with the bedstead taken down and boxed up.

Q 76. Who attended to her during those two or three days ?

162 A. Nelson. I carried her meals the same way.

Q. 77. During the last month you attended to Sarah P. Dale, was she in bed any part of the time, and if so, how much of the time ?

A. Well, she spent the most of the time in her own room in bed.

Q 78. Did any visitors see her during that time ; if so, who were they ?

A. Miss Inglis came to see her ; Fred called to see her, and I was told not to let him up stairs to see his mother. 163

Q 79. When was that ; about how long before she went to Philadelphia ?

A. About a month.

Q 80. Who was it told you not to let Frederick S. Dale up to see his mother, at that time ?

A. Mr. Nelson's wife.

Q 81. Who paid you your wages while you were at T. Nelson Dale's house ?

A. Mrs. Nelson Dale paid me two, and Nelson paid me the last one.

Q 82. Do you know of a doctor from New York being to see Mrs. Sarah P. Dale while she was living at Paterson with T. Nelson Dale.

A. I know when he came up from New York with a doctor—two doctors was there. 164

Q 83. Were there two doctors there from New York at once ?

A. I only seen the one—and her doctor here attended her in Paterson.

Q 84. Was T. Nelson Dale at home when the doctor from New York that you saw there, came ?

A. Yes, he took a carriage and met him at the depot, and brought him in a carriage to the house.

Q 85. How long was that before Sarah P. Dale left Paterson to go to Philadelphia ?

A. Well, to the best of my opinion it was about four weeks.

Q 86. During those four weeks did Sarah P. Dale take any medicines or liquors from glasses or cups ? 165

A. She took liquors from glasses—that is all.

Q 87. During those four weeks, did she take any medicines ?

A. Yes, sir; she got me to make boiled starch; the doctor ordered it; so she put something in it that the doctor ordered, out of a bottle, and it turned black; she told me to take the cup and all and
166 throw it away; she wouldn't take it. About a month or five weeks they wouldn't allow me to wash a cup or a teaspoon that she used in that room at all. I heard Nelson tell her not to let any one wash them only herself—so she washed them all in the bathing room, and she told me she had her own reason for it.

Q 89. Who washed them all in the bathing room?

A. Mrs. Nelson Dale.

Q 90. To who was T. Nelson Dale talking when he said, as you have stated, "Not to let any one wash them only herself," who was he talking to?

A. He was talking to his own wife while I was standing present.

167 Q 91. Who gave to Mrs. Dale the medicines which she did take the last four weeks that she was in Paterson?

A. I never seen any one giving it to her, only Nelson.

Q 92. During the last four weeks that Sarah P. Dale was in Paterson, did you ever see her intoxicated?

Objected to as scandalous.

A. Well, I see her many times stupid in the bed; I couldn't say what it was.

Q 93. During the time that you were living with T. Nelson Dale, did you ever see Sarah P. Dale in
168 an unconscious state; if so, for how long a time have you seen her unconscious at one time?

A. I see her and heard her talking in the bed—talking so that I could understand; I know she wasn't in her right mind, for she was talking what I didn't want to hear; I told Mrs. Brown about it

and Mrs. Brown didn't want to go in there. The next day she was bright enough.

Q 94. Why did not Mrs. Brown want to go in Mrs. Sarah P. Dale's room? 169

Objected to.

A. She told me that she was getting out of her mind—that is what the doctor came up from New York for—she was going out of her mind.

All that Mrs. Brown told the witness is objected to by counsel for proponents.

Q 95. During the last four weeks that you were at the house of T. Nelson Dale, prior to Sarah P. Dale going to Philadelphia, was her conduct such as to enable you to say whether she was in her right mind or not?

Objected to.

A. I said she wasn't in her mind.

Q 96. From what you had observed of her conduct, did you say that before she left Paterson to 170 go to Philadelphia?

Objected to.

A. Oh, yes, four or five weeks before she left the house, and all the nursery girls said it.

Last clause of answer objected to by counsel of proponents.

Q 97. Was the conduct of Sarah P. Dale during the four weeks before she left Paterson to go to Philadelphia such, as T. Nelson Dale, his wife, and his wife's mother, could see as well as you did?

Objected to.

A. Could see more.

Q 98. Do you know how her conduct impressed Mrs. Brown; was it such as to cause Mrs. Brown 171 during those last four weeks, to make any remark about it?

Objected to.

A. Yes; she passed the remark to me; she run

up stairs and we all in bed to Mrs. Brown's room; I slept next room to Mrs. Brown; Mrs. Brown was frightened because she left her in bed when she was down there; she came to my door and shook
172 the handle of it, but I had the door locked.

Q 99. Who ran up stairs to Mrs. Brown's room?

A. Old Mrs. Dale.

Q 100. At what time of night was that?

A. Well, I should think it was about ten o'clock, we had all gone to bed.

Q 101. What did Sarah P. Dale want of Mrs. Brown then?

A. Well, she told me she only wanted to talk with her—she sot talking.

Q 102. How long did she stay in Mrs. Brown's room that night?

A. I couldn't really say how long she did stay, for I went to sleep.

173 Q 103. Upon her conduct that night in Mrs. Brown's room, did Mrs. Brown make any remark the next day to you about the state of Sarah P. Dale's mind?

Objected to.

A. No; she said to me next morning, Mrs. Brown did, if I heard Mrs. Dale up stairs; I said I did; I asked her what took her up that time of night; she told me she wasn't right in her mind; I told her I locked my door.

The answer of the witness, so far as anything said by Mrs. Brown, is objected to by counsel for proponents.

174 Q 104. While you were living with T. Nelson Dale, did you hear any of the inmates of the house, except the nursery girls, express any opinion as to whether Sarah P. Dale was crazy, or not; if so, who spoke?

Objected to.

A. Mrs. Nelson Dale said to me, she thought she was going out of her head, and Mrs. Brown.

Q 105. When did Mrs. Nelson Dale tell you that; about how long before Sarah P. Dale went to Philadelphia? 175

Objected to.

A. To the best of my opinion, about five weeks.

Q 106. When did Mrs. Brown tell you that?

Objected to.

A. Pretty much about the same time.

Q 107. While you were living with T. Nelson Dale, did Sarah P. Dale say anything to you about going to Paris; if so, what did she say?

A. Well, she told me that she was going to travel to Paris, and that she had her clothes packed; she was all the time telling me she was going.

Q 108. When did she tell you she was going to Paris?

A. Well, she told me so often; I can't really tell 176 you how often.

Q 109 Did she say anything about going to Newport; if so, what did she say about that?

A. Well, she asked me would I go to Newport; I told her I wasn't going to go; I wouldn't go; I asked her would she go; she said no, not at present.

Q 110. When did she tell you that?

A. When she asked me to stay, about a week before they went; I asked her, would she go then, and she said no, she would go to Philadelphia; I asked her was Nelson going with you; she said no, that some person would meet her in New York. 177

Q 111. During the last four weeks that Sarah P. Dale was in Paterson, did any one stay in her bedroom with her in the day time; if so, who stayed with her in the day time?

A. Nobody, unless her son Nelson—he was all the time with her—not that I know of.

Q 112. During the day time, if Sarah P. Dale happened to be left alone in her bedroom, during
178 those four weeks, was the door of her room kept locked or unlocked?

A. I couldn't say whether it was locked all the time—sometimes it was locked.

Q 113. When Sarah P. Dale left Paterson to go to Philadelphia, did you bid her good by; if so, state what she said to you, and did, on that occasion?

A. Yes; she shook hands with me, and kissed me, and bid me good by. I told her I was sorry for her going, and I hoped I would soon see her back in Paterson again. She said she never would come back again to Paterson—that she was going away too quick—that was the last words she said to me.

179 Q 114. During the time that you were with T. Nelson Dale's family, how was Sarah P. Dale's appetite—did she eat much?

A. Not a great deal; she only eat a little oaten-meal in the morning and in the evening, the head doctor ordered her oaten meal at night; she told me that he told her to eat it for her brain—that it was good for her brain—that was the head doctor from New York.

Q 115. When Mrs. Sarah P. Dale's trunks were sent to Newport, did she know that they were being sent there?

A. I don't know, sir; she told me that Nelson was going to take them there?

180 Q 116. Do you know what was packed in them?

A. I know some — when I was carrying up her dinner — some was china, the loveliest china I ever saw. Miss Inglis was helping her to pack all her trunks that went down. They were packing over

two weeks, I think. Sarah P. Dale told me to gather up all the old broken delph that was down stairs — that she had had for going on over forty years—old faded dishes. I asked her what she wanted those old 181
broken cups and saucers for; she said she had them over thirty years and the old style was coming back again — that was what she wanted them for. She took all her paint that she had painted all the china with that was packed away. I told her I didn't blame her to have her brain affected when she done such nice painting — she begin to laugh at me, and says, I guess so — she had done enough of painting in her time.

Q 117. Did Sarah P. Dale ever say anything to you about how much of her property she intended to give to her son Frederick S. Dale?

Objected to.

A. No; but I heard her say that whenever she 182
died, her mother willed her so much, and then if she died it would be divided to her nearest heirs.

Q 118. When did she tell you that — how long after you first went there?

A. It was the time she told me all she had in the mill stored away. I asked her why she wanted so much for—why didn't she sell them; she said there was a certain time when she would do that, and that she only had the two children; she said no more to me.

Q 119. Question 118 repeated?

A. I was there about seven weeks, I think, to the best of my opinion.

Q 120. In what capacity were you at T. Nelson Dale's—as a cook, chambermaid, or what? 183

A. General house work; I done the cooking and chamber work—regular house work.

Cross-examination:

Q 121. In a part of your answer to question No.

63, you say, "She told me not to tell Mrs. Dale about it. I mean Miss Inglis told me that"; and then, in question 64, you were asked, "You say Miss Inglis requested you not to tell Mrs. Dale about it,
184 which Mrs. Dale do you mean," — to which you reply,—"Mrs. Nelson Dale."

How do you know that Miss Inglis meant Mrs. Nelson Dale?

Objected to, for the reason that question 63 asks the witness a question about Sarah P. Dale, and the answer to question 64 is an answer about another matter.

The question is further objected to, for the reason that the question misstates what the answer to question 63 was, and the examiner is asked to read the answer to question 63—which is done accordingly.

A. She told me not to tell Mrs. Nelson Dale who
185 give it to me. Miss Inglis and I were the only persons present at that time.

Q 122. What did Miss Inglis tell you not to tell Mrs. Nelson Dale?

A. Well, the way I took it — I thought Miss Inglis thought that she was kind of simple in her talk.

Q 123. In your answer to one of the questions you have said that you thought Mrs. Sarah P. Dale was not in her right mind; will you tell us why you thought so?

A. Well, I know by her looks and actions she was
186 not in her right mind.

Q 124. By what looks and actions do you know that she was not in her right mind?

A. Well, she used to begin to laugh and carry on and tell me she was going to get married, and she told me she was only 55 or 54—I ain't sure which—and a good many little simple words she used to go

over. She seemed to be getting on worse. This was in the first that I noticed it.

Q 125. Do you think that a woman who laughs and says that she is going to get married and acts foolish and simple at times, is not in her right 187
mind ?

A. Yes.

Adj'd to 2 o'cl'k P.M.

2 o'cl'k P.M.

ELIZABETH O'CONNER, on cross-examination, continued:

Q 126. Were you acquainted with Mrs. Sarah P. Dale before you went to live with her ?

A. No, sir.

Q 127. Did you ever see any one use a bladder and ice, before you saw her do it ?

A. No, sir ; that is the reason she frightened me so much. 188

Q 128. Who was her attending physician while you lived with her ?

A. I really forget the doctor's name, but I well know him by sight.

Q 129. Did you ever know her son Frederick to come to her house to visit her more than once, while you were there ?

A. I know he come there, but he wasn't let see her.

Q 130. How often did he come there ?

A. I couldn't really say how often.

Q. 131. Tell how often, as near as you can ?

A. I couldn't really say—I didn't attend the door bell all the time. I was told not to let him in. 189

Q 132. Have you any knowledge of what she came to Mrs. Brown's room for at night, on any occasion, except what you have heard from Mrs. Brown ?

A. No; I heard she was out of her head, and I locked my door.

The last part of the answer is objected to, as not being responsive to the question, by
190 counsel for proponents.

Q 133. Did you think she was out of her head and therefore locked your door for the reasons that you have given before to-day in your testimony?

A. Yes, sir; I thought she was out of her head.

Q 134. When she spoke to you about going to Newport, did you know that she owned a dwelling-house there?

A. She told me she did. It was to her house they went.

Q 135. When she spoke to you about travelling and going to Germany, did you know that she had previously been there, and left with the intention of
191 returning?

A. Well, she didn't say nothing about the return, but that she owned property on that side.

Q 136. What kind of property?

A. I did not ask her.

Q 137. Did you know where she was going—with whom she was going to reside, when she went to Philadelphia?

A. No, sir; she didn't tell me where she was going to reside.

Q 138. I think you stated that you saw her on one occasion, in an unconscious condition, what did you mean by that?

A. Well, I don't know what I can mean by it, unless she had taken a little too much; there was
192 some of it in the tumbler beside her bed.

Q 139. Was she sleeping?

A. Not quite.

Q 140. What was she doing?

A. She was lying in the bed.

Q 141. Were her eyes closed or open?

A. Well, she was kind of stupid looking—talking stupid—not quite closed.

Q 142. What was she saying? 193

A. Well, she told me what the doctor wanted to do when he came to see her—how modest he was.

Q 143. Who was present at this time of which you last speak?

A. Nobody but myself.

Re-direct examination:

Q 144. You said, in answer to question 123, in reference to Sarah P. Dale, that you knew by her looks and actions that she was not in her right mind, and amongst the reasons given by you in answer to question 124, you said she used to begin to laugh. Did she begin to laugh without anything to laugh at? 194

A. Not that I know of.

Q 145. What did she laugh at then?

A. Nothing; only that she explained to me that she was going to get married—that she was 55 years old; she didn't say who she was going to be married to.

Q 146. Did she begin to talk with you about getting married, without anybody having said anything to her about getting married?

Objected to.

A. Not that I know of.

Q 147. What do you mean by that?

A. I never heard any one talking to her about it—she talked it her own self.

Q 148. You said in answer to question 132—"I thought she was out of her head, and I locked my door"—why did you lock your door? 195

A. Well, the nursery girl told me that one that was out of her head was stronger than two being

in their health; that was the reason I locked my door.

Q 149. Question 137 was as follows—"Did you know where she was going, with whom she was
196 going to reside, when she went to Philadelphia"—and your answer was, "No, sir; she didn't tell me, she said she was going."

Did she tell you to what place she was going; if so, to what place did she tell you she was going?

A. She said she was going to Philadelphia to stop with a lady of her acquaintance she always went with when she was young—and she had her own parlor furnished there—this lady she always made her home with when she was in Philadelphia—she had her own parlor furnished there, she said.

Q 150. What did Sarah P. Dale tell you the doctor wanted to do when he came to see her?

197 A. Well, he told that he wanted to be handling her in the bed when he was there, and I thought she wasn't right in her mind then.

Q. 151. Of what doctor was she speaking then?

A. I do not know the doctor's name.

Q 152. Was it one in Paterson, or one in New York?

A. A doctor in Paterson.

Q 153. Was there glass in the hall door of the house of T. Nelson Dale, through which you could see a person outside of the door, when you stood inside of the door?

A. No; I dont think you could see through.

198 Q 154. Where was the room that Sarah P. Dale occupied, downstairs on the first floor, or upstairs on the second floor?

A. She resided one flight up from the front door.

Q 155. Was the inside front door, part of it of glass?

A. Yes, sir.

Q 156. Could you see through it so as to see what person was outside of it, when you stood inside of it ?

A. Yes, by pushing the curtains aside. She always had a curtain on it. 199

Q 157. Who told you not to let Frederick S. Dale in ?

A. Mr. Nelson's wife, Mrs. Dale.

Re-cross examination :

Q 158. What is your age ?

A. I can't real say as to my age, but I think I am fifty years old, I am not over it anyhow.

Q 159. Are you married ?

A. No, sir.

Q 160. You have been married and lost your husband ?

A. Yes.

her
ELIZABETH × O'CONNER. 200
mark

Sworn to and subscribed before me, December 8, 1880.

ISAAC VAN WAGONER,
Master in Chancery,
of New Jersey.

Examination of witnesses adjourned to Tuesday, December 21st, 1880, at 10 o'clock A.M. at same place.

Dec'r. 21, 1880, Counsel (John Linn) for proponents appears, also, counsel for caveator (G. A. Hobart) appears; caveator not ready to proceed 201 with the examination.

Passaic Orphans' Court.

202 *In the Matter of Caveat as to probate of a paper writing purporting to be the last will and testament of* SARAH P. DALE, *deceased.*

Examination of witnesses in the above entitled matter, continued at the office of Isaac Van Wagoner, Master and Examiner in Chancery, on Wednesday, October 5th, 1881, in the presence of John S. Barkalow, of counsel with Frederick S. Dale, caveator, and Wallis & Edwards, of counsel with proponents.

203 FREDERICK S. DALE, a witness produced on the part of the caveator, being duly sworn according to law, on his oath deposeth and saith:

Q 1. What is your name, age, and place of residence?

A. Frederick S. Dale; age 34; residence 63 Prince street, Paterson, New Jersey.

Q 2. What is the name of your parents?

A. My mother's name was Sarah P. Dale; my father's name was Thomas N. Dale.

Q 3. Was either of them married more than once?

A. No, sir.

204 Q 4. Are they both dead?

A. Yes, sir.

Q 5. What children did they leave them surviving?

A. Two children; my brother T. N. Dale, the elder, and myself.

Q 6. Give the ages of yourself and your brother, at the present time?

A. I think my brother's age is 38; myself 34.

Q 7. Had your parents any other child, which lived beyond infancy? 205

A. No, sir.

Q 8. Is your brother married?

A. Yes, sir.

Q 9. How long has he been married?

A. About seven or eight years.

Q 10. Has he children?

A. Yes, sir; three—Sarah, the eldest, about six years old; Norman, next, about four years old, and the youngest, I don't know the name of, is about a year old.

Q 11. Are you married; and if so, how long have you been?

A. Yes; I have been married over six years.

Q 12. Have you children; if so, state their names and ages. 206

A. I have two children; Lulu L., is five years old, and Florence Sheldon is three years old.

Q 13. State briefly where, in relation to home, the early life of yourself and brother was spent.

A. We were both of us home most of the time, until we were young men.

Q 14. After that did T. Nelson Dale live at home at all, and did you?

A. Yes, sir, we both lived at home, until we were married, with the exception of the time my brother went to Europe and I went to Chicago.

Q 15. When did you go to Chicago?

A. April, 1875. 207

Q 16. Were you ever after that a regular member of your father's household.

A. I came back from Chicago in August, 1877, and went to my father's house and remained there until

he went to Europe in January, 1878, when I still remained in the house making it my own home.

Q 17. Were you married then ?

A. Yes, sir.

208 Q 18. When you came back from Chicago, was your mother living at your father's ?

A. No, sir.

Q 19. Where was she ?

A. In Europe.

Q 20. Was Nelson then in Europe ?

A. No, sir.

Q 21. When did you next see your mother ?

A. In July, 1879.

Q 22. Where ?

A. At Teplitz, Bohemia, Austria.

Q 23. Did you live with her there ?

A. No, sir, I went to see her and spent a few days with her.

209 Q 24. Describe your meeting and the details of your visit ?

A. I drove from the depot in a hack to the place where I was told she was boarding, the porter met me at the carriage door, I gave him my card to send up to my mother's room, to see if she would see me ; the answer was brought back to me, that she was at home, I got out of the carriage, stepped into the court-yard, when my mother came running down the stairs and threw herself in my arms.

Counsel for caveator here withdraws the latter part of the question.

210 Counsel for proponents agrees to the withdrawal but claims the right to cross-examine as to those details.

Q 25. How long did you remain at Teplitz ?

A. I think nearly a week.

Q 26. Did your mother converse with you about her health ?

A. She did, sir.

Q 27. What did she say ?

Objected to as incompetent.

A. She told me the nature of the disease that she had and that she was in Europe to get cured of this 211
disease if possible.

Q 28. Did she say whether her illness was bodily or mental, or both ?

A. She told me she was incurable, and that she was losing her mind; that the disease had affected her brain, and that she had been so weak as not to be able to leave her room, weeks at a time, and that at this time she had not been outside of her room or down stairs in some weeks.

Q 29. Did she speak of her memory ?

A. She mentioned that what letters she wrote she never mailed until a few days afterwards, when she would read them over again, and oftentimes destroy them; she would hardly believe that she had written them; that she never mailed a letter 212
without herself or her doctor, or both, reading them over again a few days afterwards; that in speaking she would speak words that had no meaning in the conversation that was then holden; that she was forgetting both her French and German, and would make sentences with the different languages mixed in; that she feared that she would become insane, as the disease had then reached her brain.

Q 30. Did she speak of those who remained at home ?

A. She did.

Q 31. What did she say, if anything, of them in relation to you ? 213

A. She stated that they had been trying, both father, my brother Nelson and Mrs. Winters, to influence her against me, and that she had thought that I would not come to see her, but had gone back to America without seeing her.

New Jersey State Library

Q 32. Did she state her own sentiments?

A. She said she thought if she had not seen me that it might have been the cause of her death, as she had been worrying over my not coming, and
214 she was fearful that I thought that she did not wish to see me, and that she was glad to see me, and had done her more good than all the medicine she could have taken for a week or two, and that the doctor had told her it was the best thing that could have happened for her that I came to see her and did not disappoint her.

Q 33. Did she state her attitude in reference to the influence which she said they had been trying to exercise?

A. She stated that they were acting abominably over there; that if she was only strong enough, she would go out there and straighten them; that they ought to be ashamed of themselves; she
215 thought they must be all crazy; that the time would come when they would all, including herself, would be glad of my assistance, and that they were trying to injure the only one of the family that could assist them, and would, she knew, willingly do so.

Q 34. Did she mention Nelson in that conversation?

A. Yes, sir; she meant both father and Nelson and herself, when she was speaking of the family as a whole.

Q 35. Did she say anything in reference to a will, if so, what?

216 A. She stated that she had made a will before she left for Europe. That Mr. Winters had the will. That it contained a bequest of $5,000 to Mrs. Winters and $5,000 to the Ladies' Hospital Association of Paterson, New Jersey, and that the remainder of her property was divided equally between my

brother Nelson and myself; and that as her estate was very much smaller than she expected it to be, by my father having lost some of her means and his own, that she wanted to change that will as soon as she was able, as she could not afford to give those bequests now. 217

Q 36. When was it first understood in the family that your mother's health had failed?

Witness has just taken a memorandum in his hand, and counsel for proponents objects to his using the same.

Counsel for caveator asks witness, Who made that memorandum? Witness says, I made it from my own recollection and incidents that occurred in my business and other ways, from which I could establish more accurately the month and the year of the departures and arrivals of the different members of the family.

Counsel for proponents here asks witness: Do these facts appear in your books or in any diary in any way? Witness says: Some of them appear in my books, and others in letters and other documents that establish these dates as near as possible. 218

Counsel for caveator directs the witness to answer without memorandum.

A. She went to Florida in February, 1875, it being about two months previous to my going to Chicago. She, however, had been in poor health previous to this, but this was the time when she went to Florida on account of her last sickness.

Q 37. How long did she stay in Florida?

A. I do not know, sir, as I went to Chicago two months after her leaving, and she had not yet returned. 219

Q 38. Did she, subsequently to that, go to Europe; if so, for what?

A. She did, sir ; she went to Europe to consult physicians and to get the best medical treatment that was possible to be found on the continent to be cured of the disease, if possible.

220 Adj'd to 2 o'cl'k, P.M.

2 o'cl'k, P.M.

FREDERICK S. DALE, on direct examination, continued :

Q 39. How long did she remain abroad at that time ?

A. Over two years.

Q 40. When was it that she went ?

A. She went in July in 1877, I think it was.

Q 41. When did she return ?

A. The last part of July, 1879.

Q 42. Was it between July, 1877 and July 1879,
221 that you made the visit to her at Teplitz, which you have already mentioned ?

A. It was.

Q 43. Was it in the earlier or latter part of that period ?

A. About three weeks before she returned.

Q 44. At the conclusion of your visit to Teplitz where did you go ?

A. Direct to Paris, on my way to Liverpool to return home.

Q 45. Did you receive a letter from your mother after you left Teplitz, and before you reached Liver-
222 pool ?

A. I received a despatch first and then a letter.

Q 46. What was the substance of those communications ?

Objected to ; the letter and the despatch will show for themselves ; this evidence is secondary.

A. The despatch asked me if I would change my plans and sail by way of Bremen, she would join me there and sail with me; the letter contained the same information and request, excepting she stated her health would only permit her to travel by rail as 223
far as Bremen.

Q 47. Where is the despatch now, and where is the letter?

A. I believe I have the despatch at home; I have the letter also at home, I believe.

Q 48. Will you produce them before the Master at our next sitting?

A. I will.

Q 49. Did you go by Bremen with your mother?

A. I did, sir.

Q 50. In response to question 35, you said that your mother stated that she had made a will, and that she stated some particulars in reference to it which are contained in your answer to that question 224
—did she give you that information on this journey from Bremen?

A. She repeated the same conversation and stated how she would make the second will.

Q 51. Do you mean to say that she expressed to you an intention to make another will, while you were on that return journey?

A. Yes, sir; she did.

Q 52. What did she say upon that subject?

Counsel for proponents objects to that conversation as incompetent.

A. She stated that she would divide her property equally between my brother Nelson and myself; that the jewels, laces, she should give to my wife, 225
and the more substantial for the equivalent of the same, to my brother's wife, as it would become more useful to her as the wife of a professional man than jewels and laces.

Q 53. Please express a little more clearly what she said about the jewels and laces; do you mean that the disposition of those was to be independent of the division of her property otherwise, between
226 you and Nelson?

A. She wished to remember both of our wives, and thought that if I was successful in business, my wife could better use the jewels and laces, and that she would remember my brother's wife, by its equivalent in value, and the remaining property was to be divided equally between my brother and myself.

Q 54. Did she say what she had in mind as the equivalent of the jewels and laces; I mean what class of articles?

A. She did; she stated that she would leave my brother's wife real estate or money.

Q 55. Did she estimate what would be the equiv-
227 alent in real estate or money, of the jewels and laces?

A. She did not.

Q 56. Have you any knowledge of the approximate value of your mother's jewels and laces?

A. I have no positive knowledge of my own as to the actual value of those jewels and laces?

Q 57. You know the jewels and laces—do you not?

A. Yes, sir; I do.

Q 58. What I desire to know is, whether those articles equalled in value the half of your mother's entire estate, or whether they are of the value of
228 one or two thousand dollars; can you tell me that?

A. I have always supposed them to be worth at least five thousand dollars.

Q 59. When did you and your mother arrive in America, after sailing from Bremen?

A. August 2d, 1879.

Q 60. Who took care of your mother's property during the latter years of her life?

A. I took care of it the last two or three years before she died.

229

Q 61. During part of her last visit abroad?

A. Yes, sir.

Q 62. After her return also; and if so, until when?

A. I took care of her property after her return, until the early part of 1880.

Q 63. To whose house did your mother go, when she first arrived, on that occasion?

A. My brother's house.

Q 64. How long did she stay there?

A. About two or three weeks.

Q 65. Where did she go then?

A. To my house.

Q 66. How long did she stay there?

A. She remained at my house for two or three weeks.

230

Q 67. Where did she go then?

A. She went to Newport with my wife and children.

Q 68. About what month was that?

A. September and October, 1879.

Q 69. When your mother on her arrival went to Nelson's house for two or three weeks, and then went to your house for two or three weeks, did she say anything as to her reasons for so doing; if so, what?

A. She told me that she thought inasmuch as father died in my brother's house, it would look better if she should go there first, and that she thought she must settle Nelson down to knowing what he was about.

231

Q 70. After your mother's return to this country did she ever speak to you again about a will she intended to make?

A. Yes, sir; several times.

Q 71. What did she say ?

A. We were making an arrangement by which that her property would be left intact, and she would have an income for herself, also that——

232 Counsel for caveator here says, that the answer is irresponsive, and he does not desire to continue it.

Q 72. What did she say about a will that she intended to make ?

A. That she wanted to leave the property equally between my brother and myself, but that she thought that his share should be put in trust for him, so that his wife and children would derive some benefit from it, as she thought he was not capable of managing an estate, and that some minister or some professor would get him to invest it in some foolish thing, and he would lose it all.

233 Counsel for proponents objects to the latter part of this answer, commencing at "as she," as incompetent.

Q 73. When was this conversation, as nearly as you can recollect ?

A. At different times and at different places—at my house, in the factory, and also at my brother's house.

Q 74. During the fall of 1879, did you go to New Haven for your mother on business ?

A. Yes, several times.

Q 75. When was the last time ?

234 A. I should think in December.

Q 76. Was an action at law brought against you in the name of Sarah P. Dale, at any time, and if so, when ?

A. There was ; I received a summons the last part of May, 1879.

Q 77. Did your mother ever say anything to you

with reference to that suit; I mean with reference to its being brought, and not in regard to the merits of whatever question there may have been involved in it?

Objected to, as irrelevant and incompetent. 235

A. She was very angry that father, with her power of attorney, should bring a suit against me in her name; and she said it was very disgraceful to have her name appear as suing her own son; she did not care what a child would do, she never would allow her name to be used in a suit against her child.

Examination of witnesses adjourned to Thursday, October 6th, 1881, 10 o'cl'k A. M., at same place.

October 6, 1881.—John S. Barkalow, as counsel for caveator, appeared. No one appeared for proponents. Thereupon the examination of witnesses 236 was adjourned to Tuesday, October 11th, 1881, at 10 o'cl'k A. M., at same place.

October 11th, 1881.—Examination of witnesses continued, in the presence of Mr. Edwards, of counsel with proponents, and John S. Barkalow, of counsel with caveator.

FREDERICK S. DALE, on direct examination, continued:

Q 78. In answer to question 67, speaking of your mother's movements after her return from Europe in 1879, you say: "She went to Newport, with my wife and children." Do you desire to correct that 237 answer?

A. I do; she visited us for a few days after having visited my brother; then my family went to Newport; she went to Cape May; remained there

a week or two; I joined her in New York; went with her to Newport; she staid there with my family, and returned with us.

Q 79. Did she at or about that time suggest to
238 you some arrangements for her return to Europe; if so, what did she say?

A. She did; she told me she wanted to make her will, leaving her property to be divided between my brother and myself equally, and that I should take care of her real estate and other property, sending her a regular income in Europe, and also making some provision for Nelson, and that she had made some inquiries from a few gentlemen in regard to my responsibility and fitness to look after her property, and that she was very much pleased to hear such good reports about me, and that I stood so well in the eyes of her friends; that she had the utmost confidence in me for that purpose.

239 Q 80. In your last examination you spoke of a telegram and letter and said that you would produce them at this sitting, are they here and do you produce them?

A. They are here and I now produce them.

Q 81. Produce the telegram and read it and hand it to the Master?

A. I here produce it and it reads as follows:

Counsel for proponent here objects to the reading of the telegram on account of its authenticity not having been proven.

The telegram is here handed to the Master to be marked, said telegram is marked Exhibit
240 B. 1. for identification on the part of the caveator.

Q 82. What is Exhibit B. 1, where, when and and from whom did you receive it?

A. A telegram that I received at Lyons from my mother, which I received July 11th, 1879. The

telegram was received in Lyons on the 10th, but I didn't get it until the 11th.

Q 83. Read it if you please?

A. Teplitz, July 10th, 1879. Lyons, France. 241
Herr F. S. Dale, I will sail on the 20th July, from Bremen, will be to Bremen 17, Hilton House. I telegraph to Thomas.—S. P. Dale.

Q 84. Now produce the letter and hand it to the Master to be marked?

A. The letter is produced and marked Exhibit B. 2, for identification.

Q 85. What is Exhibit B. 2, and when, where and from whom did you receive it?

A. A letter from my mother to myself, I received it in Paris on my return from Lyons, about July 12th, or 13th, 1879.

Q 86. Did you receive this letter by mail?

A. Yes, sir, I did.

Q 87. In what way did you receive the telegram? 242

A. I found it at my hotel in Lyons, having been left there by a messenger.

The latter part of the answer is objected to by counsel for proponents, as being a mere matter of hearsay.

Q 88. Read the letter?

Counsel for proponents objects to the reading of the letter unless it be shown that it is in the handwriting of Mrs. Dale.

Question 88 withdrawn for the present by counsel for caveator and said counsel says that it is already sworn that the letter is from Mrs. Dale. But he is willing to add proof if counsel desire it, and asks question 89. 243

Q 89. In whose handwriting is that letter, Exhibit B, 2, and whose is the signature?

A. The letter is in my mother's handwriting, and also the signature.

Q 90. Read the letter?

A. "Schonaw Bei,
Teplitz Bohme, Austria,
Hotel Jupiter.

244 Dear Fred:

I will meet you at Bremen on Thursday, 17th, I think, at the Hilton House. If not, or anyway go to the post office for a letter. I can meet you there at the train to get you through with the trunk. If you telegraph and sail on the 20th with you of July, Sunday. A ride of fifty miles from Bremen to Bremen Haven, either the day of sailing or the night previous. Should you receive your trunk you might come here, but it is quite unnecessary. You must not send your trunk again as you would miss the steamer. It is four hours from here to Dresden and I think eight to ten hours from Dresden to Bremen. Nelson in his last letter says,"—(witness here
245 states that he received the letter as he now presents it, with a slip of paper pinned on it, which is not in Mrs. Dale's handwriting, but is in the handwriting of Nelson Dale, and he asks to read it as part of the letter. This request is framed and dictated by his counsel.) "I would prefer to have you both locate somewhere in this country so that I can reach you in case of sickness. I think also that you will not be able to take care of each other, it will break you down to look after father's many wants. If he does go to you, you must employ a courier and nurse combined for him." My mother farther
246 writes: "I shall take comparatively few articles, leave the rest and return soon. I cannot go through with the care and all I have to anywhere in America. Destroy this letter. I telegraphed to Tuttle to cease negotiations. Let Fred remain till the 15th of August. Sarah Dale sails the 20th July. I shall leave

here Wednesday morning and if possible go direct to Bremen and wait you there. I paid the depache— will you take state rooms or shall I, in Dresden or Bremen, will be time enough. Your affectionate mother with love, 247

Sarah P. Dale,,
Schonaw Bei, Teplitz,
Hotel Jupiter, Bohemia."

The telegram marked Exhibit B, 1, and the letter marked Exhibit B, 2, are offered in evidence on the part of the caveator.

Q 91. Is the envelope pinned to the telegram, the one you received it in?

A. It is.

Q 92. Is the envelope pinned to the letter, the one in which you received that?

A. It is.

Q 93. What advantage would your mother's presence give you in regard to your trunks? 248

A. She could talk better German than I could to get through the custom house; and I had some things for my wife in my trunk.

Q 94. What is the telegram which you now hold in your hands?

A. My answer to her telegram which I received in Lyons.

Q 95. Is that your original draft of the answer?

A. It is the message that she received, and is a correct message of what I sent.

Q 96. Read it.

A. "Madam Thomas N. Dale, Hotel Jupiter, Plaz Teplitz, Schonau Boheme, Autriche. St. Chamond, 11th day 7th month, 1879. I would not sail, if I 249 were you, and risk your health; why not wait until I reach there; then I will let you know if necessary for you to come. Send answer to Paris.

Frederick S. Dale."

Said telegram is offered in evidence on the part of the caveator, and is marked Exhibit B, 3.

Q 97. What telegram do you now hold?

250 A. The answer to my telegram that I sent to my mother at St. Chamond.

Q 98. Where, and how did you receive it?

A. It was left at my hotel at Paris.

Q 99. Was there an envelope with it?

A. No, sir; it has the address marked on the back of it.

Q 100. Read the telegram?

A. "Teplitz, 12th day of 7th month; I sail; meet me the 17th, at Bremen, or 21, at Southhampton." No signature.

Said telegram is offered in evidence on the part of the caveator, and is marked Exhibit B, 4.

251 Objected to, as incompetent, and not proved.

Q 101. Did you meet your mother; and if so, where?

A. I met her at Bremen.

Q 102. Did she speak of this last telegram?

A. She did; she told me that she had decided to sail any way.

Q 103. Did your mother, in the fall of 1879, speak to you about the division of her china?

A. She did; she told me that she was packing it, and taking a memorandum of the contents, and that the barrels were so packed as to divide the larger sets of crockery, and that the large dinner set 252 would make a set apiece for my brother and myself, but that the Bohemian glass set, she might give entirely to me, and give Nelson something else instead, as the set was more ornamental than useful.

Q 104. Did your mother go to New York just before Christmas in that year?

A. Yes, sir.

Q 105. With whom?

A. With my wife, and returned to my house with her, took dinner there and spent the evening.

Q 106. Did she tell your wife, in your presence, 253
about her intended division of the china?

A. I think she did.

Q 107. During a month or more, just preceding her leaving Paterson for the last time, where was she staying?

A. At my brother's house.

Q 108. Did you understand that during that time that she was seriously ill?

A. I did, I met Dr. Blundell on the street. He asked me how my mother was, I informed him, I did not know. He then told me that she had been very sick.

What Dr. Blundell told witness is objected to by counsel for proponent as mere hearsay. 254

Q 109. Did you during all that month understand that your mother was ill and seriously ill?

A. I did not before seeing Dr. Blundell.

Q 110. When did you see Dr. Blundell?

A. Sometime about the middle of March to the 20th.

Q 111. Did you often after that, seek to see your mother?

A. Before that, I had called there several times and had been refused to see her. But after having met Dr. Blundell, I went there with the intention of seeing her if possible, and I saw her.

Q 112. How often were you refused admission to 255
your brother's house and access to your mother?

A. Twice that I can positively remember. I think I was refused oftener.

Q 113. Do you remember a day on which you

were informed that the night before your mother was supposed to be dying, at Nelson's house?

A. I can't understand the question?

Q 114. Was there ever an occasion on which your
256 mother was supposed to be dying, at Nelson's house?

A. There was.

Q 115. Were you sent for at that time?

A. No, sir.

Q 116. Where were you living then?

A. In Paterson.

Q 117. Were you in Paterson personally, at the time?

A. I was.

Q 118. Tell us, as nearly as you can, the date of that occasion?

A. Two or three days before I met Dr. Blundell on the street.

Q 119. Did you finally succeed in seeing your
257 mother; and if so, tell as nearly as you can, the time when, and describe the interview?

A. I did; it was two or three hours after meeting Dr. Blundell; I went to Nelson's house; it was about the 20th of March; I went up to her bedroom and saw her; she was laying in bed, and was feeling very weak; she told me that she had had a very bad spell; that they sat up most all night around her bedside, expecting that she would die; that she had been in a comatose condition some 12 or 15 hours or thereabouts; she seemed very much pleased to see me; requested me to shut the door of her bedroom, and talked to me about her real estate and money mat-
258 ters; I was there that evening a little after seven o'clock, and was with her till after eleven o'clock; she told me that she was going to try to go to Philadelphia in a few days—the week following I think—and stated to me the day she proposed to go.

Q 120. When did you see her next?

A. The evening before the day mother had stated she would leave for Philadelphia.

Q 121. What occurred then?

A. I came that evening to find out if she was 259
going to be able to go away the next day; she was still in bed, the mattress on the floor, and she stated she could not go away the next day, and set another day for leaving.

Q 122. Why was the mattress on the floor?

A. Nelson had nearly all the furniture packed up, and was hurrying to get to Newport, and her bedstead had been cased.

Adj'd to 2 o'cl'k, P.M.

2 *o'clk*, *P.M.*

FREDERICK S. DALE, on direct examination, continued: 260

Q 123. When did your mother go to Philadelphia?

A. The last days of March, or the first of April, 1880.

Q 124. At your last interview with her, which you have described, did you tell her that you had been refused admission to her at times?

Objected to, on the ground that he has already stated what took place.

A. I did not.

Q 125. Why not?

Objected to as incompetent.

A. She treated me so pleasantly, and appeared so glad to see me, I thought I would state nothing about it. 261

Q 126. Was your mother, so far as your knowledge of her character extends, morally timid?

Objected to as incompetent.

A. No, sir; she was not; she was a very plain

spoken woman, and would express her opinion at any time very freely.

Q 127. Was it her habit to conceal from persons her true opinion of them?

262 Objected to on the same grounds, and as too indefinite.

A. No, sir.

Q 128. I hand you a letter, and I ask you in whose writing is that letter, and whose is the signature to it?

A. It is my brother Nelson's handwriting and his signature.

Q 129. Read the letter?

A. "1663 Christian street,
Philadelphia, May 4th, 1880

Dear Charlie,—I have just come on to take care of mother, she is having another one of those dreadful attacks, and I scarcely know whether she will
263 survive it or not; I find your two letters of April 23d and 26th, unanswered; I will reply in mother's stead as far as I can; she has spent all her money, and so have we, and must have some more as soon as possible; I would advise raising $500 on the Orchard street, on mortgage; she has $2,900 coming to her on the first of July from Fred, and $500 will more than carry us all through till then, and it will not involve the sale of any property, which is rising in value; mother is not in a condition however to sign any papers at present, but I trust will be in a few days, as soon as she gets through with this attack. Her health has been improving for
264 the last few weeks, ever since she left Paterson, and this is very unexpected to me. As to the Newport matters, as our lease expired in Paterson on the first of May, and as my wife expects to be confined some time in June, we had to go somewhere, so mother sent us to Newport for the summer. The

house needs repapering throughout, and new matting, and nothing can be done about it until after July, when Maggie gets well, and Fred makes his payment on machinery. As to the flagging, I should say 265
that matters take their own course. Please see if you can devise some way of raising the money mother needs, and have the documents here for her to sign as soon as she is well enough to. Mother has a good physician, and Mr. and Mrs. Winters are doing all they can; I watch beside her. Will write again in a few days. Please let Alfred and Frank know; with love to Stella. Yours affectionately.

T. Nelson Dale."

Counsel for proponent gives notice that he will have this letter stricken out as evidence in this cause, on the ground of its immateriality, it being confined to events which happened 266
after the execution of the will in controversy.

Said letter is offered in evidence on the part of the caveator, and is marked Exhibit B, 5.

Objected to on the same grounds.

Q 130. Who is Charlie, to whom that letter is addressed?

A. Charles C. Munson, of New Haven, one of my mother's brothers.

Q 131. About how old is he?

A. About 40 years old.

Q 132. Did you receive a telegram from Philadelphia in the early part of May, and before your mother's death?

A. I did; I received a telegram from my brother 267
Nelson, the afternoon of May 7th, here in Paterson.

Q 133. What was the substance of it?

Objected to, as the telegram is the best evidence.

Question 133 withdrawn for the present.

Q 134. Have you that telegram?

A. I have.

Q 135. Where is it?

268 A. Amongst papers of mine in my office.

Q 136. Can you bring it here?

A. I looked for it, and have not yet found it, but I know I have it, and will bring it here.

Q 137. What was the substance of it?

Objected to as secondary evidence.

A. I fear your mother is dying. Signed T. Nelson Dale.

Q 138. Did you go to Philadelphia; if so, when?

A. I went to Philadelphia by the very first train.

Q 139. What occurred, and what did you see when you got there?

Objected to as immaterial, on the ground
269 that it took place after the execution of the will.

A. I drove immediately to the house, arriving there about seven o'clock in the evening; my brother Nelson met me in the parlor; started to tell me how sick mother had been and was, when he told me I had better go right up stairs, as she might die before I saw her. I went up stairs, found her laying in bed insensible; couldn't recognize any one, and she remained so until her death, the next day in the afternoon, at five o'clock.

Q 140. What physician was in attendance then?

Same objection.

270 A. Her physicians, I believe, had ceased coming, and she breathed so hard and seemed to suffer, that in the morning I sent for Dr. Atkinson, who had attended her.

Q 141. Do you remember anything else occurring there at that time?

Same objection.

A. Yes, sir ; two things especially.

Q 142. State them.

Same objection.

A. One of them : I complained to Mr. Winters as being a clergyman, and to my brother Nelson as professing to be a christian man, for not sending for me until they knew they could hardly expect that I would see my mother alive, and after she had been unconscious for two days at least. The other was a conversation that was held in the hall-way, within a few feet of my mother's bedroom door, in which my brother Nelson asked Dr. Atkinson, in my presence, if there was nothing he could give my mother to relieve her of her apparent suffering. Upon which Dr. Atkinson explained to both of us that mother's disease, at this time, had affected her brain — that the ulcers were pressing on the brain, which was the cause of the comatose condition that she was then in, and that she had felt no pain whatever. 271 272

Q 143. When did your mother die ?

A. May 8th, 1880 ; 5 o'clock in the afternoon.

Q 144. In a previous part of this examination you spoke of a list or inventory of china which your mother packed — which inventory she made herself. Where is that inventory or memorandum as I believe you called it ?

A. My brother Nelson wrote to Mr. James Blundell, the administrator *pendente lite* of my mother's estate — (objection here taken as to the witness stating the contents of the letter) — that he had it, and could send him a list of the articles from this memorandum to save the expense of a new inventory. 273

Q 145. Where is the memorandum now, so far as you know ?

A. In my brother Nelson's possession.

Counsel for caveator here asks the counsel of proponents if he will produce that inventory at some subsequent sitting of the Master in
274 this case.

Counsel for proponents says he will produce it if it exists and he can get it.

Q 146. Do you know where the first will is, of which your mother spoke to you?

A. I do.

Q 147. Where?

A. I heard my brother Nelson state under oath that he had it.

Q 148. Do you know of your brother Nelson saying that your mother dictated to him the will now propounded?

Objected to as incompetent and leading.

A. I have it very strongly in my mind that he so
275 stated.

Q 149. Were you present in Philadelphia before the commissioner for New Jersey on September 9th, 1880, when the examination in these proceedings was begun?

A. I was.

Q 150. Was Nelson Dale there?

A. No, sir.

Q 151. Had there been a day set for the examination a week before?

Objected to, as secondary evidence, as the record shows. The record speaks for itself.

A. I don't remember the dates of the examinations.
276 But I do remember that we met one day to take Dr. Atkinson's testimony, at which was present Mr. Edwards, Judge Woodruff, Mr. Dulles, Mr. B. B. Van Wagoner and myself, and on the arrival of Dr. Atkinson, we adjourned for a week about.

Q 152. At whose request was it adjourned?

A. I requested Dr. Atkinson to urge Mr. Edwards, counsel for my brother, to consent to an adjournment.

Q 153. I hand you a paper and ask you what is that, and by whom is it signed? 277

A. It is a letter — a copy of a letter — signed by John S. Barkalow, written to my brother Nelson.

Q 154. By whose direction was the letter written, of which that is a copy?

A. By my direction.

Q 155. Have you compared the two?

A. Yes, sir, I have, and know this to be an actual copy.

Q 156. What was done with the original?

A. Mr. John S. Barkalow and myself went to the post office, and I saw him mail it.

Q 157. When?

A. To-day, October 11th, 1881.

Q 158. To whom was the letter mailed, addressed? 278

A. To my brother Nelson.

Q 159. Will you read this copy?

Objected to, as incompetent, immaterial, because it is shown that it cannot have been received by the person to whom it has been addressed.

A. Yes, sir.

(Copy.)

"Office of John S. Barkalow,
Counsellor at Law,
1st Nat. Bank Bank Building,
Paterson, N.J. October 11th, '81.

Professor T. N. Dale, 279

Dear Sir:

As I have no longer any expectation of securing an interview with you I make in writing a final renewal of your brother's proposition

for a settlement of the Dale will case. After this week we shall have reached a stage of the case where we shall be obliged to open a line of examination which will be very painful to all concerned.
280 In fact it may be necessary to do so within two or three days. The proposition which, as one of your brother's counsel, I am authorized to make, is simply that to avoid scandal and to spare those who are gone, he will accept one-third of the estate and leave to you the remaining two-thirds. All details to be arranged by your respective lawyers. As a private individual and a former acquaintance, I take the liberty of asking whether you will not do as your brother does, and express a willingness to relinquish a part of what you believe to be your rights for the reason suggested. He believes as firmly that he is entitled to half the estate as you do that you are entitled to all of it. Are you not
281 as capable as he is of waiving a part of your claim rather than prosecute a contest such as this must be? Yrs. truly, John S. Barkalow.

This proposition is to be considered as withdrawn on Octr. 15th inst., unless accepted before that day.

J. S. B."

Q 160. Why did you direct that limitation in the postscript?

Objected to as immaterial.

A. The object of my compromise is to prevent the testimony that has got to come out, if the case continues. After that testimony is out I rely on the justice of my cause.

282 Said copy of said letter is offered in evidence on the part of the caveator, and is marked Exhibit B, 6.

Objected to for the above reasons and because it is an illegal attempt to manufacture evidence.

Q 161. Why was not that letter written sooner?

Objected to as immaterial.

A. An attempt having been made for an interview by John S. Barkalow, by telegraphing, and not succeeding in having the interview granted, this letter was mailed, when plenty of time had expired to answer a previous letter asking for an interview. 283

Counsel of caveator here states that he had not expected to reach the last branch of his examination of this witness so soon, and he finds himself obliged to request counsel of proponents to permit him to recall Mr. Dale at so late a day this week, that there will have been time for an answer to this letter of to-day. If that request is not granted, and he be required to finish Mr. Dale's examination in chief, before relinquishing him he will be obliged to open the very matters, here at least, which he is willing to avoid, and with the permission of the Master, he will ask a moment's conference with the counsel of proponents. 284

FREDERICK S. DALE.

Counsel for proponents consents that the examination of this witness may be suspended, as requested by counsel of caveator, until such time as counsel for caveator sees fit to resume it, and that the examination of other witnesses may be proceeded with in the meantime.

Examination of witnesses adjourned to Wednesday, October 12, 1881, 10.15 o'cl'k A.M., at same place. 285

October 12.—Examination of witnesses continued in the presence of Mr. Edwards, of counsel with proponents, and John S. Barkalow, of counsel with caveator.

CHARLES H. KIMBALL, a witness produced on the part of the caveator, being duly sworn according to law, on his oath deposeth and saith:

Q 162. Where do you reside?

286 A. Paterson, New Jersey, 194 Broadway.

Q 163. How long have you lived in Paterson?

A. Fourteen years.

Q 164. Have you been in business there during the most of that time?

A. During nearly all of that time.

Q 165. Did you know Mrs. Sarah P. Dale, in her lifetime.

A. I did.

Q 166. How long was your acquaintance with her?

A. About twenty years.

Q 167. Did you ever hear Mrs. Sarah P. Dale express herself on the subject of parents disinheriting children?

287

Objected to as incompetent and irrelevant.

A. I have.

Q 168. When about?

A. Upon her return from Europe; I can't remember the date.

Q 169. In what year and in what part of the year?

A. My memory does not serve me on that; I think about—I can't remember.

Q 170. About how long before her death?

A. Well, I am not positive, but I think about a year.

288 Q 171. Who were present at the time?

Same objection as to question 169.

A. My wife, Mrs. Frederick S. Dale; I think they were all.

Q 172. What did Mrs. Sarah P. Dale say on that occasion?

Same objection.

A. The matter of her mother's leaving her property came up; she remarked that she had little expectations in that quarter, and went on to say that she thought a parent had no right to disinherit a child; that she should not certainly do so herself. 289

Cross-examination:

Q 173. Where did this conversation take place?

A. At the house of Frederick S. Dale.

Q 174. Does your answer to the last question asked you by Mr. Barkalow, give the exact words that Mrs. Dale used?

A. Very nearly.

CHAS. H. KIMBALL.

Sworn to and subscribed before me, October 12, 1881,

ISAAC VAN WAGONER,
Master in Chancery of New Jersey. 290

It is here stipulated that proponents' counsel may recall this witness for cross-examination.

MARY T. KIMBALLL, a witness produced on the part of the caveator, being duly sworn according to law, on her oath deposeth and saith:

Q 175. Are you the wife of Charles H. Kimball, the witness who has just been sworn?

A. I am.

Q 176. Did you know Mrs. Sarah P. Dale in her lifetime?

A. I did.

Q 177. How long were you acquainted with her? 291

A. For about 20 years.

Q 178. Did you ever hear Mrs. Sarah P. Dale express herself on the subject of parents disinheriting their children?

A. I have.

Q 179. Who were present at the time?

A. Mrs. Frederick S. Dale, my husband and myself.

292 Q 180. When was it?

A. During September—the September before she died.

Q. 181. What did she say?

Objected to as irrelevant.

A. I can't remember the exact words that she said; she was speaking of her mother disinheriting her, and said that she felt that a parent had no right to disinherit a child; that if her mother disinherited her, she would fight it, if it took the last cent she had; that is all I remember.

Cross-examination.

Q 182. Did this conversation take place shortly
293 after Mrs. Dale's return from Europe?

A. It was sometime after her return; it was while she was visiting at Mr. Frederick S. Dale's.

Q 183. Was she then stopping at their house?

A. She was.

Q 184. Do you know where she went from Mr. Dale's house?

A. I do not.

Q 185. Did you ever see her again after this occasion?

A. I did; several times.

Q 186. Where?

294 A. At Mr. Frederick S. Dale's, and at Mr. Nelson Dale's.

Q 187. Where, and when, did you see her the last time?

A. I can't remember.

Q 188. Can you give us about the time?

A. I called upon her while she was ill, just before she went to Philadelphia; she was in bed ill.

Q 189. Did she ever afterwards allude to this conversation that you have spoken of?

A. She did not.

Q 190. Your family, and that of Mr. and Mrs. Frederick S. Dale, are very intimate, are they not? 295

A. Our families have always been very intimate for over twenty years.

Q 191. With which family have you been the more intimate; Mr. Frederick S. Dale's or Mr. Nelson Dale's?

A. I have been always friendly with both families; I have been more with Mr. Frederick S. Dale's family.

Re-direct.

Q 192. In answer to question 190, you have said, our families have always been very intimate for over twenty years; to whom do you refer by the expression, "our families?" 296

A. Thomas N. Dale's family and our own.

MARY T. KIMBALL.

Sworn to and subscribed before me, October 12, 1881.

ISAAC VAN WAGONER,
Master in Chancery
of New Jersey.

It is here stipulated that proponents' counsel may recall this witness for cross-examination.

CHARLES H. STREIVER, a witness produced on the part of the caveator, being duly sworn according to law, on his oath deposeth and saith: 297

Q 193. Where do you reside?

A. In Paterson.

Q 194. Paterson—in what State?

A. New Jersey.

Q 195. How long have you resided here ?

A. Over seven years.

Q 196. What is your age ?

A. 47.

298 Q 197. What is your occupation ?

A. Superintendent.

Q 198. Where ?

A. At the Dale Mill.

Q 199. How long have you been superintendent at the Dale Mill ?

A. About seven years, with the exception of one month that I was in Europe.

Q 200. Did you know Mrs. Sarah P. Dale in her lifetime ?

A. I did.

Q 201. Did you have a conversation with her at the Dale Mill, after her last return from Europe, in which she spoke of a letter she had received
299 at Teplitz, in reference to Frederick S. Dale visiting her there ?

A. Yes.

Q 202. What did she say on that subject ?

Objected to as incompetent and irrelevant.

A. She told me that she received a letter and that she was shocked at the idea of her son Frederick being instructed before leaving this country to write to her and ask permission to see his mother — a mother that loved Frederick as much as she did Nelson. This was sometime in August, 1879, about 12 o'clock, noon. I was just getting ready to go to my dinner when she came in, asking me whether we
300 were alone. She looked around the office, and not finding anybody, she came out with what I have stated above. I felt very much surprised at her behavior at that time. She went on praising Frederick for what he had done for her during his visit in Europe, and that she was glad that he was get-

ting on as nicely as he did. I broke off the conversation, saying that I had to go for my dinner and had to hurry back. I done this because I felt too little interested in family matters of families to whom I had no relation. For Mrs. Dale's sake, however, I listened to what she had to say, for a lady's sake. 301

Q 203. Where were you when Thomas Nelson Dale died?

A. I was at the office of the Dale Mill.

Q 204. By Thomas Nelson Dale—do you understand me to mean a person who was always called Thomas N. Dale?

A. Yes, sir.

Q 205. Where was Frederick S. Dale, when Thomas N. Dale, his father, died?

A. In Europe.

Q 206. Did you communicate the death to him?

A. I did, to Bremen and to Paris. 302

Q 207. Did you receive a reply from him?

A. I did.

Q 208. Have you that reply?

A. Not with me, but I believe I can bring it.

Q 209. Will you bring it here at some future time when this case is progressing?

A. I will if I can find it.

Q 210. Was it a telegram?

A. Yes.

Q 211. When did you receive it?

A. It was the 19th or 20th of July, 1879.

Q 212. When in reference to Mr. Dale's death?

A. The next day after I sent the despatch to Mr. Frederick S. Dale at Bremen and Paris. 303

Q 213. Did you see Nelson Dale that same day?

A. I did.

Q 214. What passed between you?

Objected to as irrelevant.

A. I met Mr. Nelson Dale, junior, in front of the 1st National Bank, Paterson, New Jersey. If I am not mistaken Mr. Nelson was out of town at the time of his father's death, and this was the first
304 time I had met him. I told him that I had received a telegram from Fred, authorizing me to attend the funeral, buy flowers, and that I should like to know what arrangements he had made with Mr. Hindle, the undertaker, in regard to the funeral of his father. He told me that he had ordered a nice coffin, that he did not believe in making much show at funerals; and I then asked him how many carriages he ordered; he said, two; I said, I don't think that is sufficient, Mr. Nelson; Well, said he, there is one carriage for myself and wife, Mrs. Brown and Miss Inglis. The other carriage is intended for Dr. and Mrs. Winters, Mr. Brown, and some other clergyman—I have forgotten the name—he named the
305 clergyman. Well, I said to him, have you been over to see Ida, the wife of Mr. Frederick S. Dale; don't you think that she wants to go to the funeral as well as myself; he answered, if she wants to go she may do so. This answer vexed me. Our conversation finished with some bad words I had with him.

Q 215. Did you say anything to Nelson Dale about that time in reference to a reconciliation with his brother?

A. I did.

Q 216. When?

A. In front of the 1st National Bank at the time I met him as I have stated.

306 Q 217. State what it was and his reply?

Objected to as irrelevant and immaterial.

A. I requested him to drop all animosities existing between him and his brother Frederick S. Dale, now that his father was lying in the coffin. He said never, and I left him.

Q 218. Did you, as the representative of Mr. Frederick S. Dale, buy flowers for the funeral of his father and send them to the house?

A. I did.

Q 219. What became of them? 307

Objected to as immaterial and irrelevant.

A. Mr. Nelson objected to place them on the coffin, and refused to allow them to be placed in the hearse.

Q 220. You used the expression, our carriage; what do you mean by that?

A. It was the carriage I was riding in to follow the remains here to the depot.

Q 221. Who furnished that carriage?

A. Frederick S. Dale paid for it.

Q 222. Was it a carriage provided with the funeral train?

A. It was provided by my orders on the strength of the telegram that I received from Mr. Frederick 308
S. Dale.

Q 223. Did you offer, as the representative of F. S. Dale, to pay the funeral expenses of his father?

A. I did.

Q 224. Was any reply made to his offer; if so, by whom?

A. By Mr. Hindle the undertaker.

Q 225. Was the money received?

A. Yes, sir; after asking for the bill several times.

Q 226. Was it paid by you for F. S. Dale?

A. Yes.

Q 227. Did you say to Nelson Dale at the bank on the day you have spoken of, anything about the 309
funeral expenses?

A. I did.

Q 228. What?

A. I told him that Mr. Frederick S. Dale tele-

graphed me to see to the funeral, and that I was bound to do so.

Q 229. Did you say to Nelson Dale at the bank on the day you have spoken of, anything about F.
310 S. Dale paying the expenses of the funeral ?

A. I did; I told Nelson that I had been to Mr. Hindle and had showed Mr. Hindle the telegram that I was authorized to see that the corpse of Mr. Thomas N. Dale was properly attended to.

Q 230. Did you say that F. S. Dale would pay his father's funeral expenses ?

A. I did.

Q 231. What did Nelson say in reply ?

A. I do not remember.

Q 232. What was the substance of Nelson's reply ?

A. I don't remember.

Q 233. Did he accept or refuse to allow F. S. Dale to pay the expenses ?

311 A. I did not ask him.

Cross-examination.

Q. 234. Are you now in the employ of Frederick S. Dale ?

A. I am.

Q 235. At the time Frederick S. Dale went to Europe in 1879, do you know what he went for ?

A. Yes.

Q 236. Please tell us ?

A. He went to Europe to buy some machinery.

Q 237. From whom ?

A. Of any machinist in Paris, Lyons or St. Chamond.

312 Q 238. Was this machinery to take the place of machinery then in the mill ?

A. Partly.

Counsel for caveator objects, that these inquiries are not cross-examination, and gives notice that, if prosecuted, that he shall ask

the Court to strike them out before the argument or consideration of the case.

Q 239. Who owned the machinery then in the mill? 313

A. Sarah P. Dale in part; there was some other machinery besides that.

Q 240. Who owned the machinery that Frederick S. Dale went abroad to replace?

A. His mother, Sarah P. Dale.

Same objection by counsel of caveator as last above.

Q 241. At the time Frederick S. Dale went to Europe in 1879, was he on good terms with his father?

Objected to as not cross-examination and as irrelevant.

A. I cannot say that he was on bad terms with his father. 314

Q 242. During the earlier part of 1879, before Frederick S. Dale went to Europe, you saw a good deal of his father and of him, did you not?

A. Yes, sir.

Q 243. In connection with the business of the mill?

A. Yes, sir.

Adj'd to 2 o'cl'k P.M.

2 o'cl'k P. M.

CHARLES H. STREIVER, on cross-examination, continued:

Q 244. Who was then running the mill?

A. Frederick S. Dale. 315

Q 245. Did his father have any connection with the mill at that time?

A. He did not; he made regular visits every day to the office and took pleasure in looking over the works at the mill morning and afternoon; he had

his desk as usual, his former desk, and attended to his private business there.

Q 246. Did he have charge of the machinery in the mill for his wife?

316 A. Not that I am informed.

Q 247. Did you at that time have anything to do with the books of the mill and the payment of money?

A. Yes, sir.

Q 248. Who paid the rent of the machinery usually?

Counsel for caveator objects because this is not cross-examination and irrelevant.

A. There was no rent paid at that time.

Q 249. Was Nelson at this time employed in the mill or connected with it?

A. No, sir.

Q 250. Was he then living in Paterson; the time
317 I refer to was just before Frederick S. Dale's departure for Europe and afterwards?

A. No.

Q 251. Was he living in Paterson at the time of your interview in front of the bank?

A. His family was living here; he was absent, out of town.

Q 252. At whose house did Thomas Nelson Dale die?

A. At T. Nelson, jr's, sir; I believe that T. N. Dale, sr., rented the house.

Q 253. And boarded with his son there?

318 A. Yes.

Q 254. How long before his death had he lived with his son Nelson?

A. About five months.

Q 255. During that time he was sick more or less?

A. I cannot say he was sick, he was ailing; he was most of the time around, coming to the mill.

Q 256. On what terms were Nelson and his father?

A. On pretty good terms; not, however, on such terms as I would wish to see father and son living.

Q 257. During the time you lived in Paterson was young Nelson ever engaged in the mill as superintendent or otherwise? 319

A. Not that I know of.

Q 258. Who was on the more friendly terms with his father, Nelson or Frederick, just before Frederick departed for Europe?

A. Both were on the level with their father; one day he would find fault to me with one; another day he would find fault with the other.

Q 259. Had Frederick, just before his departure for Europe, had a misunderstanding with his father in relation to the machinery in the mill?

A. Not any more than at all times; that was the bone of contention.

Q 260. How long had they been contending about 320 that?

A. Ever since the Dale Manufacturing Company ceased to manufacture.

Objected to as not cross-examination and irrelevant. The objection to extend to all questions of the same character.

Q 261. About when did the Dale Manufacturing Company cease operations?

A. In 1877.

Q 262. Who succeeded the Company in the mill?

Objected to as being in no sense cross-examination; and counsel of caveator gives notice that if this line of inquiry is prosecuted now, 321 he will move to have it stricken out before argument or consideration of the case.

A. The concern was wound up and stopped manufacturing.

Q 263. When did you first enter the employ of the Dale family, or any member of it?

A. About three years ago; about three years and a half I should think.

322 Q 264. Then you have never been engaged in the employment of any other of the Dales except Frederick S.?

A. Frederick S. Dale only.

CHAS. H. STREIVER.

It is agreed by counsel that the examination shall stop to-day at request of proponent's counsel, at 2.55 P.M., upon condition that caveator may examine witnesses during November 1st, if they choose, being one day beyond the rule in the case.

Examination of witnesses adjourned to Friday,
323 October 14th, 1881, 10.15 o'clk A.M. at same place.

October 14, 1881.

Examination of witnesses continued in the presence of the respective counsel, Wallis & Linn on the part of proponents, and John S. Barkalow for caveator.

CHARLES H. STREIVER, on cross-examination continued.

Q 265. You say, Mr. Streiver, that you are the superintendent of the Dale Mill; by whom have you been employed during the last six or seven years?

324 A. For the last three years by Frederick S. Dale. Four years before that by A. Soleliac & Sons.

Q 266. You testified to a certain conversation between you and Sarah P. Dale, when did that conversation take place?

A. Soon after her arrival from Europe.

Q 267. When was that?

A. That was either the latter part of July or the beginning of August in 1879.

Q 268. How long had you known Mrs. Sarah P. 325
Dale before that time?

A. Four years.

Q 269. Had you known her intimately?

A. No.

Q 270. Did you speak to her when you met her on the street?

A. I never met her on the street.

Q 271. Had you ever had any conversation with her before the one that you have spoken of?

A. Yes, sir.

Q 272. How often?

A. That I can't tell; I don't know; I don't remember.

Q 273. Were these conversations that you had 326
with her before, on business matters?

A. No.

Q 274. On what subjects were they?

A. About her travels, and ailing and sickness; that is about all.

Q 275. Had you seen her before this conversation that you have testified to, after her return from Europe?

A. I had seen her the first Sunday after she arrived from Europe?

Q 276. Where?

A. On Broadway, in the City of Paterson.

Q 277. Did you speak to her?

A. Yes, sir.

Q 278. When she came to the mill, at the time 327
you testify to in your direct examination, did she state to you what business she had come on?

A. That was not necessary, as I knew what business she came on?

Q 279. Question 278 repeated?

A. She did not.

Q 280. Had you sent for her?

A. No, sir.

328 Q 281. Did she come there by appointment with anybody?

A. No, sir.

Q 282. How did you know on what business she had come?

A. I saw the business that she transacted.

Q 283. Did this conversation take place with you when she first came in the mill?

A. No, sir.

Q 284. What had she done before she had this conversation?

A. She was looking after some household goods she had stored there in the mill.

Q 285. Did you see her, when she was looking for her household goods?

329

A. I don't remember seeing her that very day when I had that conversation.

Q 286. How then did you know she was at the mill looking for the household goods?

A. I generally escorted her up stairs, where the household goods were; I seen her working there previous to that day.

Q 287. Did you escort her up stairs that day?

A. I did.

Q 288. What brought about the conversation you have testified to?

A. Well, I was very much surprised when she

330 asked me if we were alone in the office, and she asked me to sit down, she had something to tell me.

Q 289. What did she say after she asked you to sit down?

A. She said that she was shocked at the idea to give her son Frederick, the son that she loved as

much as Nelson, instructions to ask permission of her to come and see her.

Q 290. Did you make any answer to it?

A. The only answer I gave her was that I had no time to listen to her any longer, as my time was up to go to dinner. 331

Q. 291. Well, what did she say then?

A. I left her in the office.

Q. 292. Did you make any memorandum of this conversation?

A. No; I wish I had.

Re-direct examination.

Q 293. In answer to question 260, which was: "How long had they been contending about that;" you said: "Ever since the Dale Manufacturing Company ceased to manufacture;" were you in the employment of any of the Dales, at that time?

A. No. 332

Q 294. Will you produce the telegram from Mr. Frederick S. Dale, of which you have testified in your principal examination?

A. Yes; and I here produce it.

Said telegram is offered in evidence on the part of the caveator, and is marked Exhibit B, 7.

Objected to, as irrelevant and immaterial.

CHARLES H. STREIVER.

Sworn to October 12, 1881, and subscribed before me, October 14, 1881.

ISAAC VAN WAGONER, 333
Master in Chancery
of New Jersey.

MARY T. KIMBALL, on cross examination:

Q 295. At the time of the conversation with Mrs. Sarah P. Dale, that you have testified to, was Mrs. Dale's mother living?

A. She was.

334 Q 296. Had she disinherited Mrs. Sarah P Dale?

A. Not that I know of.

Q 297. Had she made any will?

A. I don't know; not that I know of.

Q 298. Did she own any property?

A. Not that I know of.

Q 299. Did Mrs. Sarah P. Dale say that her mother had disinherited her?

A. No.

Q 300. Did she say that her mother had made a will?

A. She did not.

Q 301. Did she say anything about her mother's will?

335 A. No.

Q 302. Do you remember how this conversation that you have testified to, originated?

A. We were speaking of family matters, and as well as I can remember, she spoke of her mother, saying that she felt that her mother might disinherit her, and if she did, she would fight it, if it took the last cent that she had.

Q 303. Was she not on good terms with her mother?

A. I can't tell; I don't know.

Q 304. She did not say then, whether she was or not?

336 A. No.

Q 305. Did she give any reason why she feared that her mother might disinherit her?

A. Not that I remember.

Q 306. About what family matters had the prior conversation been held?

A. She was speaking of her mother's health; I don't remember anything else in particular.

Q 307. What took place after this conversation which you have related? 337

A. I can't remember anything.

Q 308. Did you continue with Mrs. Dale?

A. I finished our call, and left a few minutes after.

Q 309. What did you converse about during the remainder of your call?

A. I can't remember.

Q 310. Did you take any memorandum of this particular conversation?

A. I did not.

MARY T. KIMBALL.

Taken before me, October 14, 1881.

ISAAC VAN WAGONER, 338
Master in Chancery
of New Jersey.

IDA A. DALE, a witness produced on the part of the caveator, being duly sworn according to law, on her oath deposeth and saith:

Q 311. Are you the wife of Frederick S. Dale?

A. I am.

Q 312. Where do you live, and how long have you lived there?

A. At 63 Prince street, Paterson, New Jersey, I have lived there about four years.

Q 313. Was the late Sarah P. Dale visiting at your house, in October, 1879? 339

A. Yes.

Q 314. Did she say anything to you during that visit about her china?

Objected to as immaterial.

A. She did.

Q 315. What was it?

Same objection.

A. She spoke of the painted dinner set, and said it
340 was large enough to be divided and make a good set for each family — meaning Nelson and Frederick's.

Q 316. Did she say anything at the same time, or subsequently, about certain lace flounces?

A. Yes; she said there was two lace flounces—one for Maggie, Nelson's wife, and one for me.

Q 317. Did she say anything on the subject of disinheriting children?

Objected to as immaterial.

A. Yes; she spoke of her mother and said she was afraid that her mother might disinherit her, and if she did, she would fight it, if it took her last cent; she thought it was very wrong for a parent
341 to disinherit a child, and she should never do it, no matter what they did.

Q 318. Did she make this same statement in substance to you more than once?

Same objection.

A. She did.

Q 319. Did Mrs. Sarah P. Dale ever speak to you about the condition of her memory; if so, what did she say?

Objected to as immaterial.

A. She has; she said that she couldn't depend upon her memory; I have heard her say that a number
342 of times.

Q 320. Did she speak of it in reference to letters written by her?

Same objection.

A. Not exactly in reference to her memory, but she has said that she couldn't control her mind; that when she was in Europe and writing a letter

to this country she very seldom sent it until the day after writing, and sometimes she would read a letter the day after she had written it, and said if she didn't know her own handwriting she couldn't believe that she had written it, and sometimes she 343
went so far and get her physician to read them over for her and see if they were all right.

Q 321. Did Mrs Dale, in conversations with you, repeat herself?

Same objection.

A. Occasionally I have heard her tell the same story twice or three times during the day, not remembering that she had told it to me before.

Q 322. Did Mrs. Dale ever say anything to you about a letter to accompany her will?

Objected to as incompetent.

A. She was speaking of making her will, and said she didn't know about numerous small bequests that she would like to make; she didn't like to put 344
so much in the will itself because it would make such a lengthy document, and she wouldn't like everything made public, as it might be if she put it in the will, and I suggested to her that she should write a letter as an accompaniment to the will; she thought it was a very good idea, and said she should act upon it.

Q 323. About when was this conversation?

A. Some time in October, 1879.

Q 324. Were all the conversations you have narrated about that time?

A. No; some were in August, 1879, during another visit.

Q 325. Did Mrs. Dale leave your house to make a 345
visit at Nelson's, in the latter part of October, 1879?

A. The latter part of October or the first of November, I don't remember which.

Q 326. Was anything said when she left about her calling at your house, while at Nelson's?

A. Yes; she said she was leaving our house to make a visit at Nelson's, because Nelson didn't like it—because she had made us a longer visit than she had him. Those were her exact words. She said
346 she should come down every two or three days, so that it would be nearly the same as though she was still there, and she asked me to make arrangements with a friend of mine in regard to coming down and taking a few lessons in painting from her.

Q 327. Did she come down to visit you, as she said she would?

A. No, she did not; I didn't see her again until, I think, sometime in December; I met her in the depot on my way to New York; she seemed very glad to see me, asked where I was going during the day, and arranged to meet me at lunch, which she did. After lunch she engaged a carriage; we drove around and shopped together until night,
347 when we came home; took a carriage at the depot and she said she would drive around to the house with me. She did so, and came in and finally dismissed the hack, telling the driver to call for her about ten. She spent the evening with us and was as pleasant as I ever saw her. The next day she came around and spent the day—took dinner with us—and that was the last time I ever saw her.

Q 328. State, as exactly as you can, when this was?

A. It was sometime in December, 1879, for I was going to New York to buy christmas presents.

Q 329. Do you know when Mrs. Dale went to
348 New Haven after that?

A. No; I don't know.

Q 330. Do you remember the time of Mr. Thomas N. Dale's death?

A. Yes, I remember.

Q 331. Where were you living?

A. 63 Prince street, Paterson.

Q 332. Where did he die?

A. At Nelson's house on Broadway. I don't remember the number.

Q 333. Both in Paterson? 349

A. Yes.

Q 334. How long after his death were you informed of it for the first?

A. Within an hour.

Q 335. By whom.

A. Through a note sent by Dr. Blundell.

Q 336. Was the fact made known to you by any of the family?

A. It was not.

Q 337. Were you asked to be present at the funeral?

A. I was not.

Q 338. Did you receive notification from any of the family, of when the funeral was to be? 350

A. I did not.

Q 339. Did you call at the house before the funeral?

A. Yes, as soon as I heard of the death I called there, and found Nelson away from home. I offered my services to Nelson's wife and any money if she needed it, and she refused both, said she would do nothing until Nelson came home.

Q 340. Did you go to the funeral?

A. Yes.

Q 341. Who received you at the house?

A. The undertaker was the only one who came forward.

Q 342. Was Nelson there? 351

A. Yes, I met him in the hall as I went in.

Q 343. What passed between you, if anything?

Objected to.

A. Nothing. He didn't speak to me or recognize me in any way.

Cross-examination.

Q 344. Can you tell, Mrs. Dale, how the conversation in reference to disinheriting children originated?

A. I can't tell precisely, we were speaking of her
352 mother and brothers, and the conversation led to that end.

Q 345. Was she not upon friendly terms with her mother and brothers?

A. I think she had some slight trouble with her mother, I don't know exactly what.

Q 346. Then you understood from her that by reason of some disagreement that she had had with her mother, that she was apprehensive that her mother might, in making her will, disinherit her?

A. Yes, I understood that.

Q 347. Had her mother much property to dispose of by will?

353 A. Yes; considerable.

Q 348. As much, or more, than Mrs. Dale herself had?

A. Probably more.

Q 349. How were brothers situated with regard to property?

A. They each have some of their own.

Q 350. As much, or more, than Mrs. Dale herself had?

A. Well, I think they had the same from their father's and mother's property.

Counsel for caveator objects to these last questions and answers, because it is not shown that the witness has positive knowledge of the
354 amounts of the fortunes of the Munson family.

Q 351. Mrs. Dale had considerable feeling on this subject of being cut off by her mother; had she not?

A. Yes, she had; she spoke of it frequently.

Q 352. When she expressed her determination to

contest such a will, if it cost her last cent that she had, do you think that she intended to do that, and that she possessed the will strong enough to carry out such intention?

355 Objected to, as incompetent, on the ground that the witness is not shown, nor claimed to be an expert in the analysis of mental qualities.

A. Well, I should judge so from the way she expressed herself; I think she did possess a sufficiently strong will; though some people say one thing and do another.

Q 353. Was she a strong-minded woman, or a weak-minded?

Objected to.

A. I don't think her mind was as strong the latter years as it had been formerly.

Q 354. She had been what you call, then, a strong-minded woman in former years?

356 A. Well, that depends upon what you mean by strong-minded; there are two definitions to strong-minded.

Q 355. When she determined to do anything, was she easily swerved from her purpose?

A. Well, I know of several instances in which she was.

Q 356. What were those instances?

A. Why, they were of small importance, in regard to visiting at different places, or receiving visitors, she was induced to change her mind.

Q 357. How was it with her in regard to matters of business; was she, or not, easily changed in her purpose?

357 A. I had no business relations with her; so I can't tell.

Q 358. Have you any knowledge of the business relations which she had with others, and which might throw light upon this question?

A. No personal knowledge.

Q 359. The last time you saw her, I think you said, was in December, 1879; how near did she continue to reside to you, from that time until she died?

358 A. She was then living about a mile, I should judge, from our house; she left there some time two or three months after that, I think; I am not positive about that; I can't recollect.

Q 360. How much time did she spend at your house, or did you spend in her society, there or elsewhere, after she returned from Europe in July or August, 1879?

A. About two months altogether.

Q 361. You said that she sometimes repeated herself, that is, related the same incident twice on the same day, without apparently noticing the fact that she had done so; have you ever known other persons to do the same thing?

359 A. I have noticed two other people doing the same thing—two old people.

Q 362. You do not know then, that with some people of strong minds, it is quite a common thing to do that?

A. I was not aware of the fact.

Q 363. Do you know what was the cause of Mrs Dale's return from Europe?

A. I think she came in regard to business matters.

Q 364. Business with whom?

A. Well, I think with her husband and son, and perhaps others.

360 Q. 365. Hadn't her husband died before she returned from Europe?

A. I think she received the news of his death on the evening before setting sail.

Q 366. With which son?

A. Frederick S. Dale, my husband.

Q 367. Do you know what business matters she had with your husband?

A. In regard to the machinery.

Q 368. What machinery?

A. Well, a plant of machinery in the Dale Mill, owned by Mrs. Dale.

Q 369. Do you know what that business was? 361

A. Well, there were negotiations pending in regard to the purchase of the machinery by Frederick S. Dale.

Counsel for caveator objects to this line of examination, as incompetent and calculated to draw out hearsay testimony.

Q 370. Did those negotiations result in the purchase of that machinery by Mr. Dale?

A. They did.

Q 371. Do you know whether those negotiations resulted satisfactorily to Mrs. Sarah P. Dale?

Objected to.

A. I never heard Mrs. Sarah P. Dale speak on the subject. 362

Q 372. Question 371 repeated?

Objected to, on the ground that the witness has answered already in full.

A. Well I shall answer it the same way. I never heard her speak in regard to it.

Q 373 Did you ever hear your husband speak about it?

Objected to as incompetent and illegal testimony.

A. Well I presume I have heard him speak of it.

Q 374. Did he say whether or no his mother was satisfied with the result of those negotiations?

Objected to on the grounds already stated and because all of this line of inquiry is incompetent, as it is not cross-examination. 363

Adj'd to 2 o'cl'k P.M.

2 *o'cl'k P. M.*

IDA A. DALE, on cross-examination, continued:

A. Well, I have never heard him say whether she
364 was satisfied or not.

Q 375. Have you ever heard anybody say whether she was satisfied or not?

A. I never have.

Q 376. Did not Mrs. Sarah P. Dale expect to return to Europe?

A. I believe she intended to.

Q 377. Do you know whether for the last few years of the life of Mr. Thomas N. Dale, deceased, the relations existing between him and your husband were friendly or otherwise?

A. They were friendly until a very short time before his death.

Q 378. How long before his death did they cease
365 to be friendly?

A. Perhaps three months before.

Q. 379. From the time of the breach of friendly relations between your husband and his father, did your husband ever go to his father's house?

A. He did once.

Q 380. Did his father ever come to his house?

A. No, he did not.

Q 381. How long had you known Mrs. Sarah P. Dale before her death?

A. I was not intimately acquainted with her before her return from Europe in August 1879.

Re-direct examination:

366

Q 382. That was the first you ever met her after your marriage, was it not?

A. No, I had seen her two days in the spring of 1876.

IDA. A. DALE.

Sworn to and subscribed before me, October 14, 1881.

ISAAC VAN WAGONER,
Master in Chancery,
of New Jersey.

367

FREDERICK S. DALE, on direct examination, continued:

Caveator's counsel calls for the inventory heretofore asked for and offers the same in evidence.

Q 383. From December 1879, until after your mother's death, was there variance between your family and Nelson's, such that you did not exchange visits?

A. There was.

Q 384. When you called upon your mother at Teplitz, why did you send up your card? 368

A. Because my father had told me that she would most likely not receive me, and that I had better write and ask her permission to call on her.

Q 385. Did you call upon your father before going to Europe in 1879?

A. I did.

Q 386. What occurred?

Objected to as irrelevant and incompetent.

A. I knew my father did not care to speak with me or see me, as we were on unfriendly terms. The day before I sailed for Europe I went to the house, and as the girl opened the door my father was coming down the stairs inside the house, and I met 369 him face to face. I told him that I was to sail the next day and I wished to bid him good by, that I thought it was my duty as a son to do so, that I might never see him alive again, and that I had performed my duty, and it was for him to refuse to

see me if he so wished. We walked in the parlor; it was at this time that the conversation was held, in which he informed me I must ask permission from my mother before I should call on her: he
370 then started to talk about our troubles between us. I told him that I did not wish and did not come to quarrel with him, but to show him proper respect as my father and bid him good by; I then arose and left, he refusing to shake hands with me, and when I went out of the hall door he turned his back on me, merely saying the words, good by, with his back to me.

Q 387. In what month was that?

A. The first or second days of June.

Q 388. When did he die?

A. July 18th, 1879, I believe.

Q 389. Did Nelson Dale ever attend your father while he was ill at your house and with your con-
371 sent?

A. He did, sir; I sent for my brother Nelson when my father was taken sick in my house; at least he refused to leave his room, and told Mrs. Leonard, who was then visiting us, that he did not wish to see me or any of my family; I immediately telegraphed to my brother Nelson and got him to remain in my house to look after my father, and he and Mrs. Leonard and one of the servants were the only ones who entered his room and helped take care of him; at this time I gave my brother Nelson money to purchase medicines or anything
372 else that would help to make him comfortable, and one night that my brother had to be absent I got an acquaintance of mine to be with him.

Q 390. Who is Mrs. Winters?

A. She was a Miss Norris, whom my mother met somewheres in the country sketching. She invited her to her house in Paterson to spend four or five

weeks with her, and she remained four or five years. She afterwards married the Reverend Mr. Winters.

Q 391. Did Dr. Atkinson ever see your mother while she was visiting at Cape May?

A. I think he did on her way from Philadelphia, 373
there or back.

Q 392. Why did you ask an adjournment of a week, at one of the early meetings for examination in this case at Philadelphia?

A. Because we had then got to the point where the nature of the disease my mother died with would come out in the testimony, and I had not up to that very day even told any of my counsel of the nature of that testimony, and I was in hopes to meet my brother there and that we possibly could settle the case, and I spoke to Dr. Atkinson, got him to agree with me that this testimony should not come out if it possibly could be avoided, and got him to urge the adjournment so that I could make 374
another attempt with my brother to an amicable settlement and save name of my parents.

Q 393. Describe the situation and occurrences at Philadelphia, on May 8th, 1880, at the time your mother died?

All this examination is objected to as irrelevant and incompetent.

A. I made arrangements and had a carriage standing at the door night and day, for the 24 hours that I was there before she died, to get medical assistance or anything that might help and save my mother. It was objected to by my brother on account of the unnecessary expense. I told him that I should pay for it myself, and so kept it. I 375
also found that he had not kept her brothers duly informed of her condition and telegraphed that night and the following day, several times to each and all her anxious friends and relations, which I

also paid for as he did not seem to approve of it and had not done so before I came. During the 24 hours that I was there she was liable to die at any moment. I sat up next to her bedside all the time, both
376 day and night. He, my brother, went to bed at night, and the next day attended his meals regularly, talked with his friends down stairs, and part of the time when he was in the room read the daily papers. In fact was out of the room a great deal of the time.

Q 394. Was your mother insensible from the time you got there until the time she died?

A. She was.

Q 395. What have you ever observed in your mother in the nature of what some call syphilitic mania. I mean, what facts of the class which others even than physicians can perceive?

Objected to because witness is not an expert.

A. One of her principal topics of conversation with
377 me in private was about syphilis, from the time she first told me that she was affected with it, which was the second day on my arrival at Teplitz in July, 1879, until one of the last interviews I had with her in March, 1880; she would speak as if everything around her was impregnated with it, paper, tumblers, wash bowls, hair brushes—in fact, anything she handled; she also was thinking that her face or nose was sinking, or that her forehead and ears was either showing it or would show it, and would speak of how she would look in a short time. In seeing people on the street or on the cars or elsewhere, the slightest mark on their faces, she would state imme-
378 diately, was syphilis; even sometimes to children that she would see on the street, she would state that their blood was impregnated with it from their parents. She would not allow my children to kiss her, even prevented them from taking her hand, and would very readily state of any body's ailments in general that they had syphilis.

Q 396. You have stated that your mother, in the summer of 1879, spoke of putting your brother Nelson's share of her property in trust for him. What circumstances in your brother's life ever came to her knowledge which could lead to such an intention? 379

Objected to as irrelevant and incompetent, and because it would only be giving the opinion of the witness.

A. About eight years ago, while my brother was at Oberlin College, he threw his satchel out of the window, walked out of the house, leaving letters behind him with directions to send his clothe home, as he had no further use for them, and disappeared; we did not hear from him for three or four weeks, when he sent a letter to a friend of his in Chicago, enclosing a dollar and fifty-six cents, mostly in postage stamps, telling him, as he owed him two dollars and a half, he sent this on account, and hoped he would trust him for the rest. This letter was written in Omaha, Nebraska. I had been, in the meantime, looking for him in Chicago, and a circuit of 20 miles around; advertising him and posting his picture, photograph, with a description of him. I went to Omaha, and as I got there received a despatch stating he had been found in a town called Schuyler, on the Union Pacific road in Nebraska. I went there with a physician, and brought him back to Omaha. When I found him he was partially sane; did not seem to think he had done anything unusual; he was nearly a skeleton, having lost over 40 pounds in weight from his accustomed weight of about 130; he had been walking on the railroad track from a little outside of Omaha to Schuyler; had gone without food or water for seven days, with the exception of a cracker and a raw ear 380 381

of corn, which he had eat the fifth day about. He stated he proposed to go and preach to the Indians, and that he was making penance to the Lord for his sins, by abstaining from food and drink. He
382 remained in Omaha, under care of the physician, until his mind was somewhat settled, and then came East with his mother, and was under the care of physicians, as they said for affection of the mind; and his mind generally has never been considered by any of the family, including my mother, in such a state that a similar occurrence might not be brought on again.

Q 397. Is there any other circumstance, particularly relating to business, which might sustain such an intention in your mother's mind?

A. There was a very marked circumstance that all the family heard of, including my mother, in regard to a proposition which was made to him at
383 a college in Missouri, in the winter of 1878, or the spring of 1879. He came back from there and said that the college had offered to give him a professorship, with a salary of $1,500 a year, if he would get his father and his friends to subscribe the sum of $30,000 to endow the chair; and he came back very much pleased with the offer, and was very much disappointed that his father and his friends did not subscribe the money, and that they did not approve of such an arrangement on those terms.

Q 398. What would an investment of $30,000 produce at that time?

384 A. I think the legal rate of interest in Missouri was ten per cent. at this time.

Counsel for proponents consents that the counsel of caveator may produce any letters or papers, and offer the same in evidence, at any time previous to the close of the testimony, notwithstanding it be out of time, subject to all legal objections.

FREDERICK S. DALE.

Examination of witnesses adjourned to Saturday, October 15th, 1881, at 10¼ o'clock, A.M.

October 15, 1881.—Examination of witnesses continued in the presence of John Linn of counsel with proponent, and John S. Barkalow, of counsel with caveator. 385

FREDERICK S. DALE on direct examination continued:

Counsel for caveator offers a telegram marked Exhibit B, 8, for identification.

Q 399. What is Exhibit B, 8?

A. A telegram I received from my brother Nelson in Philadelphia, stating that my mother was dying.

Q 400. State the date of it?

A. Philadelphia, May 7, 1880, received at Paterson at 1.22 in the afternoon.

Said telegram is offered in evidence on the part of the caveator. 386

Objected to as immaterial.

Q 401. Look at that paper—what is it?

A. It is a telegram from my brother Nelson to Garret A. Hobart, my counsel, in answer to an attempt made by him on my behalf to settle the case, when I got the adjournment in Philadelphia before Dr. Atkinson was examined.

Q 402. Read it?

A. Newport, Rhode Island, September 15th, 1880. To Garret A. Hobart, Paterson, New Jersey. Yours received. Wallis will answer. Signed, T. Nelson Dale.

Said telegram is offered in evidence on the part of the caveator, and is marked Exhibit B, 9. 387

Objected to as immaterial.

Q 403. Look at that paper—what is it?

A. It is a telegram from Hamilton Wallis to G. A. Hobart containing the answer that my brother Nelson speaks of in his telegram to Mr. Hobart.

Q 404. Read it?

388 A. New York, September 15, 1880. To G. A. Hobart. Dale telegraphs, hold firm without regard to publicity. He does not authorize adjournment. No settlement possible; would adjourn testimony a week if more convenient for you. Signed, Hamilton Wallis.

Said telegram is offered in evidence on the part of the caveator and is marked Exhibit B, 10.

Same objection.

The letter being handed witness, he is asked:

Q 405. Whose is the handwriting and signature of that letter?

389 A. My mother's handwriting and signature.

Said letter is offered in evidence on the part of the caveator and is marked Exhibit B, 11.

Same objection.

Q 406. Read the 3d, 4th and 5th lines of the last page of Exhibit B, 11?

A. "It will occupy his mind and help to balance it, I hope."

Caveator's counsel offers a postscript to a letter which is now handed to him, and asks:

Q 407. Whose is the handwriting and signature to that postscript?

A. It is my mother's handwriting and signed

390 simply, your affectionate mother.

Q 408. What is the date of the letter?

A. Arco, March 25th, 1878.

Said postscript is offered in evidence on the part of the caveator and is marked Exhibit B, 12.

Same objection.

Q 409. Read it?

A. "My eyes are so inflamed I am in a dark room; I have had ice on my head for four days and 391
nights, and now I am a little better, but too weak to sit up. Nelson's last is received. Your father takes very, very little nourishment. Affectionate mother. Love to all."

Q 410. What is the date of Exhibit B, 11.

A. I received that letter in May, 1876, at Chicago.

Witness states that Exhibit B, 12, is a letter written by his father from Arco to him in Paterson.

Q 411. State of what your mother's estate consists and the value of each of the different classes of property of which it is composed?

A. It consists of a chattel mortgage on my machinery for $16,000, upon which I have paid $6,000 392
and interest to James Blundell, admininistrator *pendente lite* of my mother's estate; jewels and laces value of about $5,000; crockery, pictures, bronzes and objects of art, $5,000; real estate in New Haven, about $20,000; cottage and lots in Newport, $16,000, upon which there is $8,000 mortgage.

Cross examination:

Q 412. What is your business or occupation?

A. Silk manufacturer.

Q 413. How long have you been engaged in that business?

A. A little over three years in business for my- 393
self.

Q 414. What amount of capital have you employed?

A. $10,000.

Q 415. How much of this is your own and how much borrowed?

A. All of this is my own, invested in machinery.

Q 416. Of whom did you purchase this machinery?

A. The last time of Sarah P. Dale, my mother.

394 Q 417. When did you make this purchase of her?

A. In July, 1879.

Q 418. Where were you when you bargained with her for it?

A. Teplitz, Austria.

Q 419. What did you agree to give her for it?

A. The price that I have been authorized to sell it for, $20,000.

Q 420. Is that the price which you paid her for it?

A. Yes, sir.

Q 421. Did you at any time offer her any larger price for it?

A. No, sir.

Q 422. When had you been authorized to sell it for $20,000?

395 A. In 1878, in the spring.

Q 423. Was that authorization by letter or verbally?

A. It was by my father, who had her power of attorney, both verbally and in writing.

Q 424. Did your mother desire of you to pay her a larger price than $20,000?

A. No, sir, she did not.

Q 425. Never?

A. No, sir.

Q 426. Your father had a power of attorney from her authorizing him to make sale of this machinery?

396 A. He had a power of attorney upon which he sold a mortgage of hers in the city of Paterson; I never saw the power of attorney.

Q 427. Why do you say that he had a power of attorney from her?

A. Because I knew that he brought suits in her name with his power of attorney.

Q 428. Did he tell you that he had a power of attorney from your mother authorizing him to make sale of this property or transact any other business for her?

A. He did, sir. 397

Q 429. You did not doubt that he had such power?

A. No, sir.

Q 430. Why did you not purchase this machinery of him rather than go to Europe and make a contract directly with your mother?

A. Because he wanted to charge me more than he had offered it to others, and more than he told me I could sell it for.

Q 431. How much did he demand for it of you?

A. $35,000.

Q 432. While at Teplitz did you complete the bargain with your mother for it, and was it reduced to writing?

A. It was a verbal agreement between my mother and myself that I should not buy the machinery in Europe; I intended to, and should consider this a sale by her to me. 398

Q 433. When, and where, was the sale finally consummated, and the purchase money paid or secured?

A. February 16, 1880, at Hamilton Wallis' office, in New York.

Q 434. Did you tell your mother what your father had demanded of you for the property?

A. I did.

Q 435. Before she had agreed to sell it to you for $20,000? 399

A. Yes, sir.

Q 436. What did she say to you with regard to the price demanded by him?

A. She said father was crazy, and that the first

thing he would know he would have a whole lot of old machinery on his hands, that he couldn't sell, and that it was better to sell it to me now than to let me buy new in Europe, and then I couldn't buy the
400 old even if I should want to as I would not have any money, and she would lose the $20,000; that this machinery was levied on by her from the Dale Manufacturing Company, to secure that sum which they owed her; and all she wanted was to get her money back.

Q 437. Did you concur in her views, and think they manifested strong good sense and broad business capacity?

Objected to, as tending to place the witness in a position where he may be obliged to adopt words selected by others, or to seem to deny more perhaps than he means to deny.

A. I concurred in her views; it would not take
401 strong good sense, nor broad business capacity, to decide a simple question like the sale of old machinery, when there were no other purchasers.

Q 438. To whom had your father offered this property for a less amount than he demanded of you?

A. To all and any of the silk manufacturers in this country, and at public auction.

Q 439. Why did you not buy at public auction?

A. I didn't have any money.

Q 440. Did you go to Europe with a view to the purchase of machinery there?

A. I did, sir.

402 Q 441. Could you purchase there without money?

A. No, sir.

Q 442. Did you try to purchase this property here, of your father, for $20,000.

A. I did.

Q 443. And he absolutely refused to sell it to you for that price?

A. He did.

Q 444. What was the lowest price that he offered to sell to any other for?

A. $20,000.

403

Q 445. Was that to be for cash?

A. Either cash; or part cash and rest secured.

Q 446. Would he not sell to you for $20,000, cash or part cash, and such security as he demanded from others?

A. He would not.

Q 447. Why not?

A. I don't know what his thoughts were.

Q 448. What did you suppose to be the reason that he demanded more from you than of any one else?

Objected to as incompetent.

A. He wanted to make all he could out of me.

Q 449. Is that the only reason which you supposed influenced his mind?

404

A. I don't know what influenced his mind.

Q 450. Question 449 repeated.

A. I don't know what influenced his mind.

Q 451. Did you, or did you not, suppose that any other reason than the one you have stated, influenced his mind, in making this demand of you?

A. I supposed, if I was willing to pay more than any one else for this machinery, he was willing to take it.

Q 452. Had this machinery been offered for sale at auction?

A. It was, sir.

Q 453. Was any bid made for it?

405

A. Yes, sir; $13,000—$12,000 or $13,000.

Q 454. Was it announced then publicly that a bid of $20,000 would be accepted?

A. It was so understood; it was not publicly an-

nounced at the sale; this auction sale was by the Sheriff, upon a judgment in favor of my mother against the Dale Manufacturing Company, amounting with interest to some $18,000 or $19,000; the
406 sale was delayed for over two months, and all silk manufacturers had notice of such sale, and was offered at private sale by the creditors; at the Sheriff's sale there was a bid by a stranger for between $12,000 and $13,000, and the property was over bid by Mrs. Dale's agent, and bought in for her.

Q 455. Do you know what was the original cost of this property?

A. I don't know actually, but I understood in the neighborhood of $70,000 to $80,000, some eight or ten years before; the machinery consisted of some little throwing machinery, and the rest braiding machinery.

Q 456. Before you saw your mother at Teplitz,
407 had you examined and priced, in Europe, such machinery as you desired, similar to that that your mother owned?

A. Some of it.

Q 457. Was it your intention to purchase then elsewhere, if you had not at that time made this purchase of your mother?

A. It was.

Q 458 What would you have been obliged to pay elsewhere for new machinery of this character?

A. About $45,000, if I should have bought the exact duplicate of this plant of machinery.

Q 459. Had you been using this machinery before
408 you purchased it; and if so, for how long a time?

A. Yes, I had; a part of it since the spring of 1878.

Q 460. Had you rented it of your mother?

A. No, sir.

Q 461. By what right or authority had you so used it?

A. I was taking care of it and keeping it in running order to prevent it depreciating in value, as agent for my mother.

Q 462. During this time you were carrying on the silk manufacturing business on your own account? 409

A. Yes, I was.

Q 463. How long had the unfriendly relations between yourself and your father existed prior to his death?

A. A little over three months.

Q 464. What was the cause which produced such relations?

A. My refusal to purchase the machinery at his price, which was then reduced from $35,000 to $25,000.

Adj'd to 2 o'cl'k P.M.

2 o'cl'k P. M.

410

Examination of witnesses adjourned to Monday, October 17th, 1881, 10¼ o'clock, A.M., at same place.

October 17, 1881.—Examination of witness continued in the presence of John Linn, of counsel with proponents, and John S. Barkalow, of counsel with caveator.

FREDERICK S. DALE, on cross-examination, continued:

Q 465. Did your mother ever hesitate about carrying out the verbal agreement you made with her at Teplitz for the purchase of this machinery?

A. She did not. 411

Q 466. Why was it delayed until February, 1880, before being finally accomplished?

A. She did not know exactly how to have the bill of sale drawn up.

Q 467. Was that the only reason for delay?

A. Yes, sir, it was.

Q 468. Did she consult any counsel in reference to it; and if so, when?

412 A. She did not consult counsel until she had decided in what manner the machinery was to be sold; she, however, consulted Mr. Enoch Ketchum, and she followed his advice.

Q 469. Did you ever pay her anything for the use of the machinery, which you had had before you purchased it?

A. I paid a sum of money on account of purchase previous to her return from Europe. That account was not allowed by my father, as her attorney, and he merely gave me a receipt for the same as a rental.

Q 470. What was the amount thus paid? When was it paid, and to whom was it paid?

413 A. I paid out over $2,000 for her taxes and interest and sums of money which I gave my father. This was paid at different times from the time I used the machinery until May or June, 1879. I also paid during the same time to my brother Nelson different sums of money, amounting to over $1,500.

Q 471. These sums were all paid before you had purchased the property or agreed to, and therefore were not paid on account of purchase money, is not that so?

A. These sums were all paid before I had agreed to purchase the machinery from my mother.

414 Q 472. Do you mean to say, then, that these sums were or were not paid on account of the purchase money of this machinery?

A. I paid these sums of money, most of them of my own accord, and supposed that my father, on his return from Europe in the winter of 1878, would allow them as money paid on account of purchase

of this machinery; and after his return from Europe I paid different sums, which undoubtedly were towards the purchase of this machinery.

Q 473. Did your mother, after her return from Europe, insist that these payments should be credited to you on account of rental of the machinery ? 415

A. She did not.

Q 474. Was she willing to allow them as payments made on account of the purchase money ?

A. I did not ask her, and they were not credited to me as such.

Q 475. Did she know that you had made these payments ?

A. She did.

Q 476. Did she demand anything of you as rental for the use of the machinery ?

A. She did not.

Q 477. Did you have any dispute or disagreement with her as to the amount that should be paid for its use ? 416

A. We never did.

Q 478. Did you have any dispute or disagreement with her with regard to any other matter relating to this machinery ?

A. Yes, sir; we had a disagreement.

Q 479. What was that disagreement about ?

Objected to.

A. About some interest.

Q 480. Interest upon what ?

A. I wrote a letter at my brother's request, stating on what terms I would buy the machinery. He answered it, stating my terms were accepted. These terms were that all sums of money paid out from 417 August 1st, 1879 to date of letter, which was about November, 1879, should be credited me on the $4,000 in cash, which I was to pay in different sums as might be wanted, up to January 1st, 1880. The

balance due of $16,000 was to remain on mortgage, paying interest from the first day of January, 1880, on the remaining sum unpaid of $16,000. My mother, after receiving some $3,000 on this agree-
418 ment, wanted interest on the $4,000 in cash paid —interest from August 1st, 1879 to January 1st, 1880. That is all.

Q 481. Are we to understand you then that this disagreement with your mother was in reference to interest upon the sum of $4,000 from August 1st, 1879 to January 1st, 1880?

A. Witness says: I should have stated in my last answer that my mother wanted the interest on the $16,000 and not on the $4,000, and the disagreement was with reference to the interest on the $16,000.

Q 482. How did you settle that matter?

A. In the last part of January, 1880, I offered my
419 mother $200 bonus, if she would sign a bill of sale, as I had paid out then nearly $3,500 on account, as she had refused to sign the papers. I paid her the $200 bonus in February, 1880, and I got my bill of sale.

Q 483. Then she wanted interest on $16,000 for the past six months, and you, instead of paying that amount, paid her $200?

A. No, sir; she wanted interest from the first of August, 1879 to the first of January, 1880, which was contrary to my agreement. I had agreed to pay her interest from January 1st, which I did, when I received my papers on February 16. I paid interest at that time from January 1st, and gave
420 her besides the bonus of $200.

Q 484. Was she well satisfied with this settlement?

A. I don't know. I did not see her at that time. She must have been, as Mr. Hamilton Wallis want-

ed to know, if I was willing to renew my offer of the $200 bonus that I had made her, on condition that she would sign the papers the last part of January, 1880?

421 Q 485. Did your mother ever speak to you about this settlement afterwards?

A. I don't think she ever did. In fact I am very sure she didn't.

Q 486. Was it made between you and her personally, or through the intervention of a third party?

A. Mr. Wallis notified Mr. Hobart, my counsel, that the papers were at his office, ready for my signature. It was, I believe, at this time that I was asked if I would renew my offer of $200 bonus.

Q 487. Were the papers to have been executed and exchanged on the first of January, 1880, and was the delay occasioned by this disagreement about interest?

422 A. The papers were drawn up a little while previous to January first, 1880, according to my offer of purchase in every particular. These were the papers I took to New Haven with me the latter part of January to have my mother sign. After that they were changed by Mr. Wallis, and the delay from January 1st or a little while before to February 16th was caused by this interest matter. The delay from August 1st to the drawing up of these papers in December was caused by the reasons I gave in a previous answer.

Q 488. Did you ever have any dispute or disagreement with your mother about any other matter?

A. No, sir.

423 Q 489. How long of unfriendly relations existed between yourself and your brother?

A. I have never been unfriendly to my brother. The last time I saw him to speak to was after my mother's will was read. I have met him only once

since then, and he did not recognize me. I have never been unfriendly to him, quite the reverse.

Q 490. Do you mean to say that friendly relations, such as usually exist between members of the
424 same family, existed between yourself and your brother up to the time of your mother's death?

A. My house and my purse has always been open to him, even to the day my mother died. What his feelings are, I do not know. I would say further, our wives are not on intimate terms, therefore what intimacy there has been is merely between ourselves.

Q 491. What is your brother's business or occupation?

A. I understand he has been employed in the office of the Geological Survey, now stationed at Newport, Rhode Island.

Q 492. When you met your mother at Teplitz,
425 did you ask permission to see her in any other way than by simply sending your card to her room?

A. No, sir.

Q 493. Did you know or suspect what was the cause of your mother's illness before she informed you at that place?

A. I did not.

Q 494. Did she tell you how long she had been afflicted with that disease?

A. She did.

Q 495. What did she say in reference to that?

A. From the time she was first married.

Q 496. How many years had that been?
426

A. January 6th, 1840, she was married.

Q 497. What knowledge have you ever had of the disease with which she was afflicted either as to its symptoms, characteristics or consequences?

Counsel for caveator objects to this question on the ground:

1st. That it is not cross examination, the witness having expressed no opinion on that subject.

2d. On the ground that he is not an expert, and counsel asks the ruling of the Master, or 427
on failing thereof, he desires that the question may be certified to the Orphans' Court for its direction before an answer is required.

Adj'd to 1½ o'cl'k P.M.

1½ o'cl'k P.M.

FREDERICK S. DALE, on cross examination, continued:

Counsel for caveator having his attention called to question 395, withdraws his objection to question 497.

A. None whatever, and if you have a reference to my answer to question 395, I would state that I mentioned to a physician the symptoms which my 428
mother had, which I referred to in answer to that question, and he told me that they were the symptoms of syphilitic mania, and for that reason, when asked the question, I gave the facts that came under my personal knowledge.

Q 498. To what physician did you mention these symptoms and when?

A. Dr. Johnson, of Paterson, since this contest was begun, also Dr. Blundell.

Q 499. You are the caveator in this case, are you not?

A. Yes, sir.

Q 500. Did you understand when you filed this caveat what were the grounds upon which it was 429
done?

A. Yes, sir.

Q 501. What were they?

Objected to, as the record is the proper evidence.

A. Undue influence, or want of testamentary capacity, or both.

Q 502. Undue influence by whom?

A. Undue influence by my brother, and possibly
430 by others.

Q 503. In your answer to question No. 393, you said: I made arrangements and had a carriage standing at the door night and day for the 24 hours that I was there before she died to get medical assistance or anything that might help or save my mother. Did you suppose that the statement of that fact would throw any light upon the question of undue influence or want of testamentary capacity of your mother?

A. I employ counsel who take charge of this contest on my behalf; I am here to answer such questions as may be put to me; I gave the facts spoken of in answer to a question by my counsel.

431 Q 504. In your answer to the same question, you say: It was objected to by my brother on account of the unnecessary expense; I told him I should pay for it myself, and so kept it. Did you think that a material fact to be stated in your testimony?

A. It was one of the incidents that occurred when I was there.

Q 505. After your brother had the attack of which you testified, and which occurred some eight years ago, where did he go to reside upon returning home?

A. He did not return home, but made his home in a physician's house—Dr. Brown, in New York, so that he could be under medical treatment all the
432 time.

Q 506. How long did he remain with Dr. Brown?

A. He remained there until he was married; some six months or a year.

Q 507. Did he marry Dr. Brown's daughter?

A. He did.

At request of counsel of proponent, counsel for caveator says he will produce and put in evidence the answer of Nelson Dale, to a letter of Judge Barkalow, written on October 11, 1881, which letter has been previously put in evidence by the caveator. 433

Re-direct examination.

Q 508. In answer to question 424, which is: "Did your mother desire of you to pay her a larger price than $20,000," you said: "No, sir, she did not;" do you desire to say anything in reference to that answer?

A. She did not want any more for the machinery; she only wanted more interest than we had agreed upon.

Q 509. In answer to question 451, which is: "Did you, or did you not, suppose that any other reason than the one you have stated, influenced his mind in making this demand of you;" you said: "I supposed, if I was willing to pay more than any one else for this machinery, he was willing to take it;" do you desire to say anything in reference to that answer? 434

A. When he offered it to me for $35,000, and then $30,000, he did not state what he proposed to do with the money; but in his offer of $25,000, he said he proposed to give Nelson $5,000 of it.

Q 510. In your answer to question 470, you say that you paid your brother Nelson different sums of money, amounting to $1,500; how did you come to do that? 435

A. When my father went to Europe, he gave me some $300, and told me that was all he could spare, and that I should divide it with my brother; that we would have to do the best we could; soon after

that, if not at that time, he was out of employment, and he had nothing to support himself and family on, so I gave him this sum of $1,500, at different times.

436 Q 511. Why do you, in your answer to question 483, speak of the $200 as bonus?

A. At that time I was about purchasing some $5,000 worth of raw stock on credit; I was also about to sign a lease for my New York office, as well as to enter into partnership for my New York business; and it was important for me to know if I was going to have title of this machinery before making these different business arrangements; and I offered this $200 as a bonus, for the sake of getting the papers signed at that time.

Q 512. Did you tell your mother then, that you were circumstanced as you have just described?

A. I did, sir; and that I was short of stock to
437 cover the machinery, and could not purchase without the having title.

Counsel for caveator offers a copy of the letter of Frederick S. Dale, stating the terms on which he would purchase the machinery, and also the letter of T. Nelson Dale accepting his offer.

FREDERICK S. DALE.

Examination of witnesses adjourned to Wednesday, October 19th, 1881, at 10¼ o'clk A.M.

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438 *Paterson, N.J., Wednesday, October* 19, 1881.

Examination of witnesses continued, in the presence of Messrs. Wallis & Linn, on the part of proponents, and John S. Barkalow, on the part of the caveator.

The caveator's counsel calls for a will, said to be in the possession of Nelson Dale, executed by Mrs. Sarah P. Dale previous to the instrument in controversy here.

439

It is produced by the counsel of proponents, together with the inventory, both being originals.

WILLIAM BLUNDELL, a witness produced on the part of the caveator, being duly sworn according to law, on his oath deposeth and saith:

Q 513. State your name, residence, and profession?

A. William Blundell, Paterson, New Jersey, physician.

Q 514. Of what school of medicine are you, and how long have you practiced?

A. I belong to the regular school of medicine, and have practiced over twenty years.

440

Q 515. Do you know Dr. Bartholow, of Philadelphia?

A. Very well, by reputation.

Q 516. What is his standing in the profession?

A. Excellent.

Q 517. What appointments does he hold, if any?

A. He holds a professorship in one of the Philadelphia schools of medicine, is also a distinguished writer on medical subjects.

Q 518. What has he written upon medical subjects?

A. General medicine, and more particularly upon the action of medicines.

Q 519. Were you the medical attendant of the late Mrs. Sarah P. Dale; and if so, how long?

441

A. I was called to see Mrs. Dale, in the month of July, 1875, and was her medical attendant during her residence in Paterson, after that date.

Q 520. Until when?

A. Until the latter part of March, 1880, I think.

Q 521. The latter part of March, in the year in which she died?

A. Yes.

442 Q 522. When she was away from Paterson, did she correspond with you, as her physician?

A. She did, for a while.

Q 523. When you were first called to see Mrs. Dale, in 1875, in what condition did you find her?

A. I found her in bed, very weak; loss of appetite; digestion poor; skin dry and hot; complaining of headaches, and unable to take any nourishment; had no appetite—no desire for her food.

Q 524. At your second interview, what occurred, and what did she tell you; state fully?

A. During my first visit her husband was present in the room, and I enquired about her condition; and on my second visit she asked me if I
443 was sure that I understood what her trouble was, and then told me that she had been under treatment by Dr. Bumstead, of New York, professor of venereal diseases in one of the colleges of New York, and that she was suffering from syphilis.

Q 525. What occurred, other than what she said?

A. She exhibited to me certain scars upon the arms and legs, and also upon the face.

Q 526. In your opinion, what were those the scars of?

A. The scars of syphilis; she also at that time had some ulcerations of the throat.

Q 527. For what did you treat her, from your
444 second interview, until your last?

A. Syphilis and debility.

Q 528. Were her symptoms, as they developed, and considered together, characteristic of syphilis only?

A. They were.

Q 529. Was that her disease?

A. It was.

Q 530. State what form of it she had?

A. I think at that time she was suffering from 445
tertiary syphilis.

Q 531. When did you last see her professionally?

A. In March, 1880.

Q 532. Was her disorder then so far advanced as to be a possible cause of death, by May, 1880?

A. Yes.

Q 533. If death occurred from that cause, on May 8, 1880, what were the probable attending circumstances?

A. Cerebral, brain lesions, due to syphilis.

Q 534. What would be the more obvious external effects of such lesions, and death by such lesions?

A. Coma would be one of the prominent symptoms before death? 446

Q 535. Probably terminating in death?

A. Oh, yes, to produce death.

Q 536. What were her symptoms while under your care?

A. While under my care her symptoms bore the appearance and impress of deep ulcerations of the skin and mucous membrane, the soreness of the throat, recurring at different times, loss of appetite and strength, nervous irritability, unable to sleep, severe paroxysmal headaches, loss of memory.

Q 537. Did she suffer headache; if so, of what character?

A. Her headaches were intense, so that she would clasp her hands to her head, and exclaim that she was frantic with them. 447

Q 538. Did their intensity continue during their entire duration?

A. They were paroxysmal; they were not constant; there was always a deal of disturbance—more or less disturbance, about the head.

Q 539. Was the period of intensity as long as the period during which she suffered headache, or did their intensity last a portion of that time only?

A. It lasted a portion of that time; it was not
448 constantly severe.

Q 540. Did she suffer cartilaginous eruption of the nose?

A. I think she did; she also had severe rheumatic pains, general pains of the body, rheumatic.

Q 541. I have understood you to say that the eruptions were recurrent?

A. The eruptions? The ulcerations?

Q 542. Yes?

A. Yes, sir. They were somewhat amenable to treatment, would yield, and then others would appear.

Q 543. Did Mrs. Dale suffer from syphilophobia?

A. I think she did.

449 Q 544. Did she experience aphasia?

A. Yes, to a certain degree she did.

Q 545. Did she experience photophobia?

A. Very slightly; that is, if she were exposed to a strong light she would turn her head away from it and shut her eyes as if she were suffering from one of her headaches; she preferred her room as a rule to be darkened somewhat?

Q 546. Had she iritis?

A. She suffered from some affection of the eye. I am not clear about that—I have forgotten; complained of loss of sight.

Q 547. Was the ear affected?

450 A. The external portions of the ear were affected from ulcerations; had ulcerations upon the ear—quite an extensive one upon one of them.

Q 548. I have understood you to say that she suffered from coma?

A. Yes, she suffered from coma.

Q 549. Can you characterize her headaches by any technical or any semi-technical term?

A. I think that the headaches were probably of a congestive character.

Q 550. Would those headaches be properly described as syphilitic neuralgic headache? 451

A. I always thought the headaches were dependent upon the syphilitic poison.

Q 551. Was there or not general disturbance of the nervous system?

A. Yes, there was.

Q 552. Did you attend Mrs. Dale during a coma in March, 1880?

A. I did.

Q 553. How long did it last?

A. I think the better part of two days.

Q 554. Did she recover from that coma without paralysis?

A. She did.

Q 555. Did she have paralysis at all while under your treatment? 452

A. She did not.

Q 556. Or under your observation?

A. She did not.

Q 557. Did that coma yield to treatment, and if so to treatment of what character?

A. It yielded to anti-syphilitic treatment.

Q 558. Would such an attack from any other cause have yielded to the treatment used on that occasion?

A. I cannot say positively.

Q 559. What was your treatment?

A. Iodide of potassium. 453

Q 560. Why would any other attack like that, but proceeding from another cause, not have yielded to iodide of potassium without paralysis?

A. I do not know that it would not. I do not know that an attack like that from any other cause

would not have yielded to that treatment. We know that in these syphilitic troubles of a cerebral character it often does yield to that sort of treatment.

454 Q 561. If an apoplectic patient be recovered by the use of large doses of iodide of potassium, would he not in almost every case suffer from paralysis?

A. I think he would suffer more or less from paralysis in most cases of apoplexy.

Q 562. Did you ever propose a personal examination of Mrs. Dale, or was it necessary?

A. No, sir, I did not.

Q 563. Was her headache less intense toward the last, during your attendance as her physician?

A. No, they continued.

Q 564. My question was not, did they continue, but were they less intense toward the latter part of your treatment?

455 A. I think they were about the ordinary character.

Q 565. My question was not as to their character, but was it less intense toward the last of your treatment?

A. No.

Q 566. Was it relieved by pressure?

A. I do not know that they were; she had a favorite way of holding her hands to her head.

Q 567. It was not relieved by pressure, as a prescription from you?

A. No.

Q 568. Did you ever take the temperature of her head?

456 A. No.

Q 569. Was her headache remittent?

A. Yes.

Q 570. What was the condition of Mrs. Dale's mind, in your judgment, during February and March, 1880?

Question objected to.

A. She was irritable.

Q 571. Answer more fully, if you please?

A. Easily excited, unable to sleep; there was a loss of memory. 457

Q 572. Is somnolency, presenting the appearance of the somnolency of drunkenness, one of the characteristics of pachymeningitis?

Objected to.

A. Yes.

Q 573. Was Mrs. Dale a temperate person?

A. She was.

Q 574. State, if you please, more of the leading indications of insanity?

Question objected to.

A. Changed condition from former self, perverted feelings, defective formation of ideas, discordant action either alone or separately, which unfits the individual for his due social relation. 458

Q 575. Regarding the case of Mrs. Dale as you know it from 1875 to March, 1880, with the history she gave you of it, and assuming that she died on May 8, 1880, in a state of coma which had lasted three days, could she, in your judgment, have been of sound mind on April 28, 1880, ten days before her death?

A. I cannot answer that question positively, but I should very much doubt if she were in perfectly sound mind.

Q 576. What is a gumma?

A. Gumma is a neoplasm, which is a morbid growth.

Q 577. Will it produce pressure on the brain? 459

A. Yes; or in the brain either.

Q 578. What is the effect upon it of iodide of potassium?

A. Well, sometimes it dissolves it, helps to absorb it.

Q 579. Is it by that action that recovery from syphilitic gumma, without paralysis, is produced?

A. By the effect of the medicine.

Q 580. By the absorbing action of the iodide of
460 potassium?

A. Yes; that is the theory of its action.

Q 581. Did Mrs. Dale ever express to you her sentiments in regard to her relations; if so, state when, and what she said?

Question objected to.

A. Well, when she returned from Europe in 1880, in August, 1879, her son Frederick had been over and brought her with him, brought her home, and she told me that everything he had told her in regard to business matters and his relations with his father, were true to the letter.

Q 582. What were her expressed sentiments with regard to her relations generally?

Question objected to.
461

A. Intense dislike.

Q 583. Towards all of them?

A. Every one of them—all who were here.

Q 584. Including Nelson Dale?

A. Yes.

Q 585. Did anything ever occur in your presence, with Nelson Dale's child, indicating such sentiment?

Question objected to.

A. She usually, she always expressed a fondness for his eldest child, his little girl; one morning when I was there the little child playfully walked
462 into her room, and she put her out rather roughly, I thought, and hurriedly.

Q 586. Did Mrs. Dale, while under your treatment for syphilitic disorder, object, either occasionally or constantly, to taking specific syphilitic medicines, or undergo specific syphilitic treatment?

A. No, she did not; but very frequently her system was in that condition that she could not bear using any specific syphilitic treatment, and syphilitic treatment was necessarily suspended and tonics were given. Mrs. Dale had taken a great deal of 463
medicine before I saw her.

Q 587. Would or would not her disorder develop more rapidly if the treatment were interrupted, than if the treatment were continuous?

A. Sometimes syphilitic patients do pretty well on treatment that is not particularly anti-syphilitic treatment; taking care of their general health, proper rest, appetite improved and stronger. I would like to say here that Dr. Bumstead, previously to my having seen her and treated her, pronounced her case unequivocally one of syphilis, and that the physicians whom she consulted upon the other side, including distinguished professors at Vienna, also were of the same opinion.

Q 588. Would treatment, even as pronounced as 464
that which you administered, tend to retard the development of gummata?

A. I think it would, sir.

Cross-examination by Mr. Wallis:

Q 589. Doctor, in your observation of Mrs. Dale, while you attended her as a physician, was she in your judgment at any time incapable, mentally, appreciating what property she was entitled to?

A. Do you mean all of her property.

Q 590. Well, generally?

A. She always had—it seemed to me—she had large ideas of what was her due; she though she 465
ought to have a large inheritance from her mother, but doubted if she would get it, and thought her mother was very wrong in withholding anything from her.

Q 591. Did she have any difficulty in understanding and appreciating the property she actually had?

A. I think she had an exaggerated idea of her
466 property—of the value of it.

Q 592. From what do you draw that conclusion?

A. From this, that she thought that the property at Newport should bring a much larger sum than in the judgment of some others it either would or ought to bring, and also the property she had in New Haven, she thought she ought to get a high rent from it, and doubted if she would.

Q 593. She understood perfectly she had property in Newport and New Haven?

A. Yes, sir.

Q 594. And she understood that she might get other property?

A. Yes, sir.

467 Q 595. Was she fully capable of understanding who her relations were?

A. Yes, sir.

Q 596. By blood?

A. Yes, sir.

Q 597. What claims they had upon her?

Question objected to.

A. I think she did, what natural claims they had upon her.

Q 598. When was the last time you saw her?

A. I think it was in March, 1880, just previous to her departure for Philadelphia.

Q 599. What was her general condition at that time?

468 A. She seemed to be, just after this attack of coma of which I have spoken, which is a loss of sense and motion, she seemed even weaker than usual, and, as she expressed it, "felt wretchedly."

Q 600. She could express herself?

A. Yes, sir.

Q 601. Did she express her intentions as to her future movements?

A. Yes, sir. 469

Q 602. What did she say she intended to do?

A. She thought of going to Philadelphia, and then to Newport for a while, and after that of taking up her residence in New Haven.

Q 603. Did she say where she was going to in Philadelphia?

A. To a Rev. Mr. Winters, whose wife was an intimate friend of hers.

Q 604. And after that what?

A. After that I think she had an intention of returning to Europe.

Q. 605. You say she suffered from loss of memory; to what extent did that go?

A. To a considerable extent; she would want to relate something that had occurred, and would hesitate, and would say, "I can't, my memory is so bad," even thought her memory was growing worse. 470

Q 606. You have seen persons in good health whose memory was bad?

A. Yes, sir.

Q 607. She recognized the fact that her memory was bad?

A. Yes, sir.

Q 608. You say she had syphilophobia; will you explain that?

A. She saw everything through syphilitic eyes; if she heard of persons being ill she wondered if they had the same trouble as herself; everything, she thought, was tainted with syphilis. 471

Q 609. That was an abnormal condition of mind?

A. I think so, from syphilis.

Q 610. Did it interfere with her transaction of business?

A. I do not know what business she did transact, or how she transacted business.

Q 611. Would it interfere with her transaction of business?

472 A. I do not know: some know better than I do.

Q 612. You have known persons subject to mental delusions transact business successfully?

Question objected to.

A. Oh yes, who were insane only on one subject.

Q 613. You say she experienced aphasia?

A. She would frequently want the use of a certain word and could not get it, and sometimes would miscall things, but after a while would correct herself again.

Q 614. Was that to such an extent as to be noticeable to one not acquainted with her condition?

A. Perhaps I should not have noticed it unless I was acquainted with her condition.

473 Q 615. That would not interfere, to the extent to which it had gone in her case, with her transaction of business?

A. I cannot say whether it would or not; it would depend upon the particular character of the business, I suppose.

Q 616. Would it interfere with her appreciation of property of which she was possessed?

A. I do not know that it would.

Q 617. Would it interfere with her appreciation of those who had natural claims upon her bounty?

A. I don't know that that particular failing would.

474 Q. 618. Upon her recovery from the first attack of coma, what was her condition?

A. Her mental condition was about the same as previous to the coma, except, as I say, she was weakly and was able to take even less food than she did before, and not able to take any exercise or make any exertion.

Q 619. When did that attack occur?

A. I think it was the latter part of February or the first of March, 1880, about that time—yes, 1880, the same year in which she died.

Q 620. Now, you say you should doubt her capacity to make a will on the twenty-eighth of April? 475

A. I think that question was put to me, "eleven days before her death."

Q. 621. You say you doubt her ability to make a will eleven days before her death.

A. Yes.

Q 622. Do you know how long before her death she suffered coma, the last attack?

A. I do not from any official source, I believe she lay in a coma three days, at least I have heard so.

Q 623. And upon that understanding you base your estimate?

A. Yes, sir.

Q 624. Now, if a reputable physician, who had seen Mrs. Dale on several occasions, conversed with her, spent hours in her company, had attended her as her physician, and prescribed for her disease, and understood what was the matter with her, was present with her at the time she executed this will, and who saw her execute it, who had dined with her just before the will was executed, and had conversed with her, should state that up to and including the day of executing her will, he noticed neither any mental weakness nor signs of insanity about Mrs. Dale, would that resolve your doubt? 476

A. Well, it would depend a good deal upon his ability to detect mental weakness or aberration, and had he known Mrs. Dale longer he might have noticed some change in her feelings, in her mental workings, yes, even a good deal. 477

Q 626. How long an acquaintance with Mrs. Dale would it require to qualify a physician to speak understandingly on that subject?

A. I don't know, sir.

Q 627. Give us your opinion on that subject?

A. Well, I should think an acquaintance of all of six months; I do not say that a physician un-
478 der the circumstances of which you speak would not be able to judge; I have a great deal of respect for the opinions of physicians.

Q 628. If this physician's attention had been particularly called to her mental condition at the time of which I speak, would that have added to it?

A. Yes, sir; it would add a great deal to his opinion.

Q 629. If that were the fact, and he should state that he saw no signs of mental weakness or insanity, would that resolve your doubt?

A. No; I should want to know the standing—the attainments of the physician himself; I presume
479 she had good medical attendance—the best in the city perhaps; this is expert testimony, however.

Mr. Barkalow—I object to all these questions.

Q 630. How do you know the physician to whom I refer?

A. I only know him by hearing him mentioned—Dr. Atkinson, of Philadelphia, whose reputation is certainly excellent?

Q 631. Well, if Dr. Atkinson—Dr. William B. Atkinson—is the physician to whom I referred, and he is; if he should testify that he had known Mrs. Dale upwards of six months; that he had attended her as a physician, with a full knowledge of the disease with which she was afflicted; that he had
480 conversed with her just before she executed this will; that he had examined her mental condition; if he should testify that he had noticed no mental weakness, nor any signs of insanity about her; would that resolve your doubts?

A. Well, I myself having known Mrs. Dale, and her weak condition, and her nervous irritability, and judging from her general condition and loss of nerve power, and these severe headaches she had experienced, notwithstanding the opinion of a man so eminent as the one to whom you refer, I should be very much inclined to have an opinion of my own. 481

Q 632. Doctor, what do you mean by the phrase, "in perfectly sound mind?"

A. I mean when all her mental actions were in accord one with another.

Q 633. You do not mean then to be understood as stating, that in your judgment she was incompetent at that time to make a will?

A. Well, from the fact—(a pause) she might make a will; but I suppose you mean, make a will properly. 482

Q 634. Well, now, answer the question, please?

A. I don't really know whether she was or not; I can't say.

Q 635. Now, I ask you, whether in your opinion she was competent or incompetent to make a will?

A. Well, the principal reason why I should think she was not—while she was here she took a dislike for all her relations, and that I thought was a sign of weakness.

Q 636. That dislike extended to all except Fred?

A. It extended to all alike.

Q 637. To all except Fred?

A. To all alike; to every one of them; that would be the principal reason; and another reason would be, that from the history of the case, Mrs. Dale did suffer from syphilitic affection of the brain, either from gummatous deposit or lesion of the brain, or thickening or congestion, due to syphilis; and that as syphilis tends, unless arrested, 483

as a rule, from bad to worse, I should rather think that these changes previous to death had been progressive, and that probably at the time—ten days before death—she might have been so affected by
484 these syphilitic changes, as not to have been in perfectly sound mind.

Q 638. Have you had an extensive experience, or otherwise, Doctor, in cases of this character?

A. No; I can't say that it has been extensive; my practice is a general practice, and I have seen considerable of syphilis in its different manifestations.

Q 639. Constitutional syphilis?

A. Yes, sir.

Q 640. Would you suppose it possible that a patient suffering from constitutional syphilis had passed into a state of coma attended with paralysis and had been restored, that patient could transact
485 the ordinary business of life afterward?

A. Yes, I believe that.

Q 641. The paralysis is of more gravity than the mere coma, isn't it?

A. No, I don't think it is.

Q 642. What does it result from?

A. Paralysis usually results from change of brain-structure from syphilis.

Q 643. What does coma result from?

A. From the same thing.

Q 644. Have you ever known a case where paralysis resulted without coma?

A. Yes, sir.

486 Q 645. Which has the more gravity?

A. Coma.

Q 646. Coma, complicated by paralysis?

A. Coma, complicated by paralysis; yes, sir.

Q 647. Then, in your judgment, a patient affected by coma, complicated by paralysis, might recover and transact ordinary business afterwards?

A. I have never known such cases.

Q 648. You would not be astonished at such a case?

A. No; because syphilis affects some with paralysis and others not; we don't know why. 487

Q 649. But where coma and paralysis are both present the disease has certainly affected the brain?

A. Yes, sir; some are more amenable to treatment than others; some will bear treatment.

Q 650. Still, you would not consider it impossible by any means for a patient suffering from both these complications to recover sufficiently to carry on the ordinary business of life?

A. No, I should not.

Q 651. Do you know that Mrs. Dale had lesions of the brain?

A. I do not, except I judged she had from such symptoms as I saw and from the general course of her disease, believing as I fully do, that she was 488 suffering from syphilis, and from the termination of the case I believe her trouble was due to syphilis.

Q 652. Is it not possible for a patient to die from syphilis without any discoverable lesions of the brain?

A. Yes.

Q 653. To have passed into a state of coma without such lesions having been discovered?

A. It is possible that she might have suffered from some intercurrent affection.

Q 654. So that the mere fact that she suffered from syphilis and suffered from coma is not evidence that she suffered from any lesions of the brain.

A. Not positive; but I believe she was — 489

Q 655. So that your evidence on this point resolves itself into a mere matter of opinion, without any positive knowledge on the subject?

A. That is all.

Q 656. And all the symptoms that attended upon her case may have co-existed without lesions of the brain?

A. I do not believe they did.

490 Q 657. They might have?

A. I think they might; yes, sir.

Q 658. Haven't you stated heretofore, that if this will in dispute was executed by Mrs. Dale before the last attack of coma, that you believed her capable of making it, or an opinion to that effect?

A. I may have said that she may possibly have been in a condition to make it; but not just as you have stated it.

Q 659. Haven't you stated, that if Mrs. Dale executed this will just before this last attack of coma, the will would stand?

A. You are taking me into a realm I know nothing about—whether the will would stand; I know
491 nothing about law.

Q 660. Haven't you stated?

A. Not just that way, without qualifications.

Q 661. Haven't you stated that to Nelson Dale?

A. If I have, it has been without knowledge of the length of time the coma lasted, and other circumstances.

Q 662. Did you not state to him, that if the will was signed before this attack of coma of Mrs. Dale, the will would stand?

A. I don't know; I don't remember to have had any conversation with Mr. Dale with regard to the will; I may have made some passing remark on the subject; I do not remember to have had any
492 conversation with Mr. Nelson Dale on that subject; when I was attending the family there was a good deal of dissension among the different members of it, one way or another, and my office was a purely medical one, and I tried to keep clear of family

troubles, or of expressing opinions as to their matters as they were coming in, one or another; as to having any conversation about the will, either with Nelson Dale or Frederick Dale, I don't think I ever did myself, at all. 493

Q 653 *a*. Between what members of the family were these dissensions?

A. Between Frederick and his brother, and Mr. Dale and Fred.

Q 654 *a*. How long had the dissensions between Mr. Dale and Fred continued?

A. I don't know—they were, I noticed them during Mr. Dale's sickness, which I think was when he was living in Prince street, at the old residence, the present residence of Frederick Dale; he was ill there after his return from Europe; I think it must have been in 1878—the fall of 1878; I made no particular note of attendance upon each member of the family, and cannot give you the exact dates. 494

Q 655 *a*. There were dissensions between Frederick Dale and his father shortly after the return of the father from Europe?

A. Oh yes.

Q 656 *a*. That, you think was in the fall of 1878?

A. I think so.

Q 657 *a*. At the time you say Mrs. Dale put Nelson's child out of the room roughly and hurriedly, were you attending her professionally?

A. Yes, sir; it was during a professional visit: I should not have noticed that little incident except that she always acted differently toward the child; I don't attach very much importance to that, however, except to Judge Barkalow's question. 495

Q 658 *a*. Did you ever hear Mrs. Dale make any statement in regard to the relations between herself and her son Frederick S., just before she went to Philadelphia, or shortly before she went to Philadelphia?

A. Well, it was in a business way—oh, yes—it was in a business way; she said the difficulty arose from the sale of the machinery; she thought it was worth a great deal more, and wanted a great
496 deal more than Fred was willing to pay her for it, but she never expressed to me any intention as to what she might do with her property in the will.

Q 659 *a*. Did she ever characterize or speak in any way of her son Frederick's treatment of her in regard to that machinery; and if so, what did she say?

A. Well, it was in that way, she thought he ought to have paid more for it.

Q 660 *a*. Can you recall anything else she said in respect to that matter?

A. Well, as I told you before, I did not pay much attention to these family jars as they occurred, and my memory is not very fresh as to just
497 what she said; she told me just after returning from Europe, that all Fred had told her was true in regard to his father and the business matters here; and when the sale of the machinery was brought about, all her feelings toward Fred seemed to be changed, and instead of affection, it seemed to be one of hate.

Q 661 *a*. Can you recall anything else she said?

A. No; it was only in that general way; I cannot particularize.

Q 662 *a*. Did she ever tell you Fred had refused to pay her what he had agreed to, for the machinery?

498 A. Yes, there seemed to be a misunderstanding in regard to that; she had insisted that he was to pay a certain price, and he wanted to deduct from that certain price moneys already advanced since he had had charge of the machinery; that seemed to be the bone of contention between them as nearly as I could make it out.

Q 663. And did she tell you she had been compelled to make this reduction?

A. That she had been compelled to make this reduction?

Q 664. Yes? 499

A. No, it was the other way, the reduction was on the other side; that she had expected to sell the machinery for a certain price, that Fred wanted to make a deduction for moneys advanced to Mr. and Mrs. Dale; I think Fred had had the use of the machinery for some months before the agreement to sell was made.

Q 665. And she was compelled to allow the deduction that Fred insisted upon?

A. I don't know what she was compelled to do.

Q 666. She did do it?

A. I do not know; I do not know what the price was, or what she was compelled to do; they did agree at last upon a price, but how much it was, or how much less than the original price I do not 500 know; I remember something being said about twenty thousand dollars.

Q 667. Do you now attend the family of Frederick S. Dale professionally?

A. I do.

By Mr. Linn:

Q 668. You have suggested a doubt, Doctor, I think, as to the capacity of Mrs. Dale to legally execute a will?

A. Ten days before her death, that is, seven days before the coma.

Q 669. Yes. To what would you look for evi- 501 dence of that condition of mind?

A. To the disease; the tendeney of the disease at that stage is to destruction, and to the formation of new tissue, and as I had already seen evidences of

syphilis of the brain in some one or other of its forms, which particular one I cannot be positive of, and knowing that the tendency of this disease is from bad to worse, and from the mode of her death,
502 and that she died from syphilis, I believe these progressive changes would affect her mind.

Q 670. Would not the best evidence of the condition of her mind be her words and actions?

A. There is no other way of forming a conclusion.

Q 671. Then a person who was with her at the time would be better competent to judge of her mental condition?

A. Well, yes, I should think they would; of course, these questions about her last condition to me are merely hypothetical; I was not there to see her.

503 *Re-direct, by Mr. Barkalow:*

Q 672. You have said that her words and actions would be the only evidence of her condition of mind?

A. The chief.

Q 673. Would not the symptoms of her disorder to a medical eye throw light upon her words and actions?

A. Yes.

Q. 674. You have said that a person present during her last days would be a better judge of her condition than one who was not; does not that depend to some extent upon whom the person is?

A. Well I should say it does, or it would, to
504 answer your question.

Q 675. Did Mrs. Dale's aphasia extend to the degree of constantly substituting any given word for another given word?

A. No, that was occasional; that was not a prominent and constant symptom.

Q 676. Do you know anything of the degree of Dr. Atkinson's personal intimacy with the Dale family?

A. I do not.

Q 677. Or his relations with them in any way? 505

A. I do not know.

Q. 678. Or of how far his mind may be subject to unconscious bias?

A. I do not.

Q. 679. As between paralysis alone and coma alone, which is worse?

A. Well, it is a hard question to answer, because both may be dependent upon the same cause, that is, syphilitic lesion of the brain.

Q 680. You have stated, as I understand, that the symptoms which you have mentioned might exist without syphilitic lesion. Do you wish to explain that answer?

A. Yes, certainly I do, if it was the understanding that the coma and paralysis were principally 506 syphilitic; I want to be understood, and I think that was the direct answer to Mr. Wallis's question, that coma and paralysis might occur in other diseases than syphilis.

Q 681. Did I understand you to say that these symptoms might exist without interfering with the mental functions?

A. What? coma and paralysis?

Q 682. Yes, syphilitic coma and paralysis?

A. Why, no, I do not think that syphilitic coma and paralysis could exist without interfering with the mental functions, or any other coma, or coma from any other cause. 507

Q 683. Any opinion that you may have expressd with regard to Mrs. Dale's mental condition would be modified by a full knowledge of all the circumstances, would it not.

A. Yes. I might say that I never knew until recently, when Mrs. Dale made or signed this will. I knew that at one of her interviews with me, previously to her departure I think, she told me she
508 had been to Mr. Wallis's office to see about a will.

Q 684. Where such lesions as have been spoken of in the brain occur without affecting the mental faculties, if ever, is it in the early stage of syphilitic disorder?

A. Sometimes we find nervous syphilis, but more to a limited degree, in the early stages of syphilis, but they are usually found in the latter stages, and nearly always.

Q 685. Do they, if occuring in the early stages—coma and paralysis, or any other brain symptom—produce lesion?

A. No, it is in the latter stages that the lesions are found.

509 Q 686. Is the existence of syphilic brain symptoms without lesions doubted by many physicians.

A. I do not know whether it is doubted or not, unless you are referring to a supposed congestive affection of the meninges or covering of the brain.

Re-cross by Mr. Wallis.

Q 687. May not both coma and paralysis exist without any appreciable brain lesion?

A. Yes.

Q 688. May not death result from syphilis without any brain lesion?

A. I have already answered that. Yes.

Q 689. You say that during the continuance of
510 coma the mental faculties are affected, are they permanently so, or only during the continuance of the coma?

A. During the continuance of the attack of coma.

Q 690. You say that your opinion—any opinion

you may have expressed in regard to Mrs. Dale's capacity to make a will, has been modified by a fuller knowledge of the circumstances?

A. No, if I ever had any conversation with either Frederick or Nelson Dale—they are six of one and half a dozen of the other to me—if I have expressed an opinion to either of them, it has always been my rule to express an opinion that might not affect either of them to the other,—it has been only during casual conversation. It has been only recently that I knew of the duration of Mrs. Dale's illness, or that she had made a will. 511

Q 691. What knowledge of the circumstances attending the execution of this will have you heard?

A. The time at which the will was signed previous to her death, and the duration of the coma.

Q 692. How long was the will signed previous to her death?

A. Ten days, I have understood. 512

Q 693. And the coma lasted how long?

A. Three days, I have heard.

Q 694. You have spoken of photophobia, what is that?

A. Intolerance of light and sound.

Q 695. What is the cause of that?

A. The usual cause of it is brain disturbance.

Q 696. Caused by weakness of the eye?

A. Caused by weakness of the brain — of the meninges or covering of the brain; it is one of the early symptoms.

Q 697. Would it be accompanied by ravenitis?

A. Yes.

Q 698. That is not an affection of the brain? 513

A. It is a substance in close connection with the brain.

Q 699. Would it be accompanied by iritis?

A. Yes.

Q 700. That is not an affection of the brain?

A. It is a substance in close relation to the brain.

Q 701. Is not all tissue of the body in close relation to the brain?

514 A. Yes, sir, but it don't always affect the brain.

Q 702. That's all?

WM. BLUNDELL.

Sworn to, October 19, 1881, and subscribed before me, October 29th, 1881,

ISAAC VAN WAGONER,
Master in Chancery
of New Jersey.

ROBERTS BARTHOLOW, a witness produced on the part of the caveator, being duly sworn according to law, on his oath deposeth and saith.

515 *Direct examination by Mr. Barkalow:*

Q 703. Please state your name, residence, profession, and professional office, if any?

A. My name is Roberts Bartholow, Philadelphia, physician by profession, Doctor of Medicine, Doctor of Laws and Professor of Materia Medica and Therapeutics in Jefferson Medical College, Philadelphia.

Q 704. Have you made syphilitic diseases a special study?

A. I have had large opportunities, having served eight years in the regular army, and for a consider-
516 able period in New Mexico, where those diseases are more prevalent and more virulent than anywhere outside of Portugal, in the world; at my morning clinic I have had as many as one hundred and twenty cases—sick callers besides.

Q 705. Were you called into consultation in the case of Mrs. Sarah P. Dale, in May, 1880?

A. I saw Mrs. Dale in consultation with Dr.

Atkinson of Philadelphia, on the 7th day of May, 1880.

Q 706. Was Dr. Atkinson her attending physician?

A. He was in attendance, and informed me he had been for some time. 517

Q 707. Did he give you a particular account of the case and of his treatment?

A. Yes, he entered into a full account of the case as I had enquired.

Q 708. Did you examine the patient?

A. I made a careful examination.

Q 709. Please state fully her condition?

Question objected to.

A. She was lying in bed in a state of unconciousness, breathing heavily, almost stertorously; could not be aroused; I made efforts to induce her to open her eyes, to make some exclamation, she could not be aroused at all; her condition therefore was one of complete unconsciousness—a comatose state—as we say technically; there was some elevation of temperature; her pulse was somewhat accelerated. 518

Q 710. What was her disease?

A. Her disease was supposed to be syphiloma of the brain—syphilitic disease of the brain.

Q 711. What are gummata of the dura?

A. They are syphilitic deposits from the dura matter—the outer membrane of the brain.

Q 712. What are the pons and the medulla?

A. They are two important centres at the base of the brain, over which pass the fibres and cords from the brain—from the hemispheres of the brain pass it down to form the spinal cord. 519

Q 713. What are neoplasms?

A. Neoplasm is a term that signifies a tumor—a new formation, a growth.

Q 714. Will that cause some pressure, and will that pressure produce suffusion of the brain?

A. A neoplasm, situated to produce pressure upon the brain, will, of course, affect it; besides that, they affect the blood supply to the brain; that would affect it also.

520 Q 715. Will such pressure sometimes cause induration?

A. By exciting inflammatory action, yes; more frequently excite a softening, an atrophy, a wasting.

Q 716. Does either softening or induration, or both, injure the mental faculties?

A. Yes; they injure the mental faculties directly, when the softening or induration is in that part of the brain—the seat of the mental powers, and indirectly through the altered circulation.

Q 717. May gummata exist at the same time in different portions of the brain?

A. Very usually do so, as I have ascertained by
521 post mortem examinations; in well marked cases the favorite seat is in the middle fosse of the skull, at the base, where are situated the pons and the medulla.

Q 718. Would the injury to the brain power be greater if several gummata existed than if there were only one?

A. Yes, the damage would likely be in proportion to the number.

Q 719. How many membranes are there of the brain?

A. Three: the dura mater, the pia mater and arachnoid, the hard mother and the pious mother.

Q. 720. Are they all subject to syphilitic affec-
522 tion of a chronic inflammatory character?

A. They are all, but the dura mater is the special seat of syphiloma of the brain.

Q 721. And the most likely?

A. Oh, unquestionably the most likely, that also.

Q 722. What is such chronic inflammatory affection called?

A. Due to syphilis?

Q 723. Yes?

523

A. It is called syphiloma of the brain; that is the general term applied to it when they are not definite, also know as gummata, syphilic tumors, et cetera.

Q 724. What is pachymeningitis?

A. That is inflammation of the dura mater; there are several varieties of pachymeningitis.

Q 725. It is then one result of syphilic disease of the brain?

A. There is a syphilic pachymeningitis.

Q 726. Are there other syphilitic affections of the membranes of the brain?

A. Yes, especially of the pia mater, the vessels of the pia mater.

Q 27. What is the effect of pachymeningitis upon the brain? 524

A. That depends upon the extent and amount of the effusion accompanying it, or exudation. Pachymeningitis is always a serious disorder, and affects the tissues of the brain directly at the point where the exudations occur, and indirectly through the circulation.

Q 728. May it entirely destroy the membranes?

A. So far as their functions are concerned they are not destroyed in the sense that they entirely disappear, but their office or their functions are impaired.

Q 729. Are these effects characteristic of the tertiary stage of syphilis? 525

A. It is usual at that period, it is certain that they do not appear during the primary stage, but it is no doubt true that they occur during the secondary as well as during the tertiary stage; there is no well marked difference between those two stages.

Q 730. May this condition exist for years with increasing structural change ending in death.

A. Oh yes, there is no doubt about that.

Q 731. Death as the result of pressure?

526 A. Of the structural change which takes place in the membranes and the brain itself; gummatous masses are often deposited in the substance of the brain itself at the same time that they grow on the membrane, that is now a well recognized fact.

Q 732. Will such affection impair the mental faculties, and to what extent?

A. Well, the various forms of the powers of the mind are damaged in syphilis, syphilic disorder of the brain; there are various forms of mental disorder due to syphilis, disorders both in the moral and in the intellectual or reflective faculties.

Q 733. Please state some of the symptoms of syphilic affection of the brain?

527 A. The disorder usually begins by more or less persistent headache, most frequently nocturnal in character, disorders in vision, difficulty in locomotion, and various kinds of mental disorders, usually or frequently of a delusionary character, that is to say, mental troubles characterized by delusions.

Q 734. Is coma one of the symptoms?

A. Coma comes on toward the end of the case, with the increase, of course, of the damage done to the brain, and is a symptom—unless measures are taken to relieve it—which precedes death, or immediately precedes death, or by a short period.

Q 735. What is the character of the headache ac-
528 companying this disease or symptom?

A. Usually very severe, more severe at night—largely nocturnal, as we say.

Q 736. Is it remittent?

A. Yes, it is variable in intensity, usually more severe at night; it may disappear at times entirely, or it may remit, or may be light.

Q 737. Its intensity then is not co-existent with its entire duration?

A. No.

Q 738. Is the disease accompanied by burning sensations in the brain or head?

529 A. Well, there are a variety of instances of that kind, burning sensation of the head and brain is common.

Q 739. Is photophobia one of its characteristics or symptoms?

A. That is particularly common, because of gummata at the base.

Q 740. Is slight aphasia one of its characteristics?

A. Yes; that is more particularly the case when the gummata occupy a position in the left hemisphere of the brain?

Q 741. Is there anything more to say in regard to the coma characteristic of this disorder?

530 A. The coma may be contracted and even relieved by the application of remedies; the coma may be variable somewhat, and immediately precede dissolution after a period; I have known cases where the coma has been relieved by proper remedies; but the importance of that symptom depends upon the amount of damage done to the brain, and the relief which remedies will give depends upon the same thing.

Q 742. How long before reaching the development which causes death will gumma or pachymeningitis affect the mental powers?

531 A. Well, the mental powers may not be affected for several years in that way; that would depend, or course, upon treatment; there are some among the mental powers which will be relieved by treatment, and then it will recur again, for it is a characteristic of syphilis of the brain, that it will recur again, even after the best and most careful treat-

ment of the disease; hence mental symptoms, caused by syphilis of the brain, may extend over a number of years.

Q 743. Should treatment, to be successful, be
532 continuous?

A. Yes, it ought to be continuous, or very nearly so; certainly. That answer is based upon the fact I have just now stated, that the particular quality of that disorder is the tendency to recur from time to time, and even in spite of treatment.

Q 744. Will the progress or recurrence of the disease and its symptoms, governed largely by the constancy with which the treatment is followed?

A. Oh, unquestionably, unquestionably.

Q 745. What is a proper treatment, Dr. Bartholow?

A. Well, of the secondary stage, mercury in some form; in the tertiary, iodides, or a combination of
533 the two—iodide of potassium especially; then an external application of mercurials, in the form of inunctions or fumigation, and then the means proper to maintain the general health and improve the bodily condition, consisting frequently of oidide of iron, cod liver oil, and remedies of that kind.

Q 746. Should the iodides be used in large doses?

A. When the case is urgent, it may be absolutely necessary—the very largest doses are not only required but extremely well borne.

Q 747. What are the largest doses that are given?

A. The largest may be said to be two drachms; I gave an ounce on one occasion, it was an accident, but relieved the patient of a severe case of
534 headache; the druggist put up an ounce for a drachm, and the patient took it, with some surprise.

Q 748. Do you know what Mrs. Dale had been receiving?

A. I understood from the physician in attendance that remedies usual in such cases had been given.

Q 749. Iodide, in what doses?

A. In large doses, I understood.

Q 750. Do you recollect how large?

A. I cannot give the particular dose. 535

Q 751. May syphilis produce occlusion of a vessel in the brain, and thus impair the mind?

A. That is one of the forms which syphilis takes, deposits in the walls, encroaching upon the lumen of the vessel, the blood coagulates, produces what is known as thrombus, and stops the circulation, or a number of vessels may be affected by minute deposits which interfere with the nutrition of the brain; the syphilitic cachexia produces what is called atheronia of the vessels of the brain and the body generally.

Q 752. May occlusion be produced also by thickening?

A. By deposits which encroach upon the lumen.

Q 753. Will gumma of the brain cause nervous 536 affections which will terminate in syphilitic insanity?

A. Yes; gumma of the brain, by gradually interfering with the walls of the gray matter, and with the blood supply through the vessels, will bring about the insanity which is known as syphilitic insanity.

Q 754. Does syphilis affect the blood supply?

A. Unquestionably.

Q 755. Does it thicken the walls of the arteries at the base of the brain, sometimes?

A. Yes; the arteries are encroached upon some- 537 times; I examined a case in which there was an aneurismal swelling of the principal vessel at the base of the brain—the basilar artery; in this case death was caused by a syphilitic disease limited to the fourth of an inch of the vessel, and mental perversion had existed in that case for many

months; I examined the brain with very great care, and that was the sole lesion that could be discovered.

Q 756. Is such thickening especially injurious at
538 the base of the brain?

A. Yes; because the largest arteries are situated there.

Q 757. Would the want of sufficient blood supply cause a softening?

A. That is the cause of one form of softening.

Q 758. Would such softening impair the mental faculties?

A. Yes.

Q 759. Are brain diseases a manifestation of syphilis?

A. They are manifestations of so-called tertiary form.

Q 760. Is a node a frequent form of the manifes-
539 tation of the disorder?

A. Yes, that is quite frequent.

Q 761. Does a node on the external table of the skull produce pressure upon the brain?

A. Yes.

Q 762. Is the brain more directly affected in syphilis than the spinal cord?

A. Rather more frequently, yes; I should say decidedly more frequent in my observation.

Q 763. Does syphilis of long standing impair the forces, mental, moral and physical, of the sufferer?

A. Yes, there is no doubt about that.

Q 764. Suppose that the patient suffering from
540 syphilis, experienced as a consequence of it, in the month of March, a coma, which lasted forty-eight hours, and on the eighth of May succeeding another, which lasted three days, ending in death, what would be your opinion of that patient's mental condition during the interval?

A. It is most probable that there was more or less mental impairment in the interval.

Q 765. Can coma of the brain from syphilis reach full development as late as fifteen, twenty or fifty years after infection ? 541

A. There is no fixed period ; I have known cases myself after a number of years.

Q 766. Is there not a case in the books in which it is stated to have reached its development fifty years after infection ?

A. Yes.

Q 767. Are there not tables in the books giving the extreme period of development in average cases as from five to fifteen and from five to twenty years ?

A. Yes ; there are tables of that kind, and there are isolated cases, numerous cases.

Q 768. Books of respectable authority ?

A. Yes, sir ; and there are numerous isolated cases have been reported. 542

Q 769. Will any syphilitic lesion on the inner surface of the cranium or vertebra excite inflammation of the membrane and finally lead to structural changes in the brain ?

A. Unquestionably, if allowed to proceed to the full development.

Q 770. Is not sub-acute meningitis among the prominent and constant nervous phenomena of syphilis ?

A. I should state that that is one of the conditions which accompanies visceral syphilis ; that is, syphilis of the internal organs.

Q 771. Have not cases occurred in syphilitic affections where there has been almost total destruction of the interior hemispheres, and yet the only nervous symptom was intense pain in the head ? 543

A. I do not know of such a case of my own knowledge.

Q 772. Do you know of such recorded ?

A. I know of cases recorded in which extensive
544 gummata have existed in the hemisphere in which pronounced pain was the principal symptom ?

Q 773. Is not a basilar lesion on the basil surface more serious in its effects than one of the surface ?

A. Yes, for two reasons: one, because there are the principal vessels, and the other is that the nervous trunks pass off there over the base.

Q 774. Is mild nocturnal delirium one of the symptoms of syphilis ?

A. Yes ; it is one of the symptoms of syphilis affecting the brain.

Q 775. When syphilis has caused meningitis does it render the patient suspicious and quarrelsome ?

A. Very apt, indeed, to affect the moral faculties,
545 or affective faculties, and to give rise to mania or delusion of suspicion.

Q 776. Does such a patient laugh or cry, on slight provocation, or none ?

A. Those are symptoms which accompany various kinds of mental disorders, syphilitic insanity as well as the other forms.

Q 777. In cachexia of the tertiary stage of syphilis in women, are there two forms ?

A. Two forms of the cachexia ; there is the condition known as anæmia, or the combined state of chlorosis and anæmia, very closely allied ; and then there is the condition which is called asthenia, that is, bodily weakness without anæmia ; now, those
546 conditions may co-exist.

Q 778. Is chloro-anæmia accompanied by pallor ?

A. Yes ; chloro-anæmia is accompanied by pallor —not necessarily asthenia.

Q 779. Does asthenia present the evidences of anæmia in the countenance ?

A. It does not, unless the two co-exist.

Q 780. Is there any description of pain recognized by the medical profession as equal to that resulting from a localized syphilitic hyperplasia of the dura mater? 547

A. No pain more severe when such hyperplasia causes pressure upon the fifth nerve, the great nerve of the head and face, causing the pain known as tic douloureux.

Q 781. Does basilar occlusion produce at times symptoms like the somnolency of drunkenness?

A. Yes; in syphilitic deposits at the base of the brain they have an attaxic gait, strongly resembling that of a drunken man.

Q 782. Does not a brain once organically diseased at the base, mean a mind impaired for ever?

A. That depends upon the character, extent and amount of the disease—that depends upon the character and extent of the disease. 548

Q 783. Is the fact that coma, such as described, yielded rapidly to iodide of potassium, evidence of its syphilitic origin?

A. Yes; there can be no doubt about that?

Q 784. Will worry and trouble increase the mental injury in this disorder?

A. Yes.

Q 785. Is it likely that a patient who suffered from syphilitic coma, lasting three days, and resulting in death, would have been in sound mental condition seven days before the beginning of said coma? 549

A. It is not probable.

Q 786. Will you state some of the ordinary indications of insanity?

A. Well, you know the lawyers maintain that a delusion is necessary to constitute insanity; doctors believe persons can be insane without any delusion;

but in common language delusion is an evidence of mental perversion; if a person has a strong delusion, that is a true delusion which the mind cannot correct, that is evidence of insanity; the insane are
550 apt to have delusions which may be far from their usual mental condition; a refined, modest woman, for instance, is apt when insane to become licentious; then, if a man or woman, not inclined previously to lasciviousness, should suddenly or gradually become so—if a man or woman should in any way depart from their previous mental habits or inclinations, or betray evidence of such desire—every person is consistent with himself or herself; a man may be eccentric and not insane, for his inconsistency may be from habit,—those persons whose acts are not consistent with their previous characteristics are probably insane; the existence of such a delusion as I have just spoken of is evidence; if
551 a person has a delusion or an illusion, such as he cannot correct, he is certainly insane; insanity may be in the intellectual, and it may be in the moral faculties, constituting moral insanity or intellectual insanity; lawyers do not admit the existence of moral insanity; the doctors and medical profession have no doubt about the existence of moral insanity.

Q 787. Suppose the case of a person who in 1873, had syphilitic eruption of the face, who was treated for syphilis constantly thereafter growing worse year by year, who in 1876, had scars of syphilitic source on her leg, who in 1879, declared that her
552 memory was defective, that a day after writing a letter she was unable to say what she had written, and who consequently had her letters read for her by her physican before she mailed them, and sometimes kept them for a week or two, who was worried by many losses and by variance with her husband, whose husband died in her absence in 1879, who

suffered from photophobia and syphilobia, who experienced in 1880 mild nocturnal delirium, shown by aimlessly going to other bed-rooms in the middle of the night, who experienced dislike for all her relations, including her elder son, who complained of 553
the burning of her brain and constantly kept ice on her head, who laughed without cause constantly, who having been always a refined and delicate woman, in March, 1880, laughed and jested with her maid-servant concerning her doctor, saying that he was too modest and would not handle her person, who experienced a coma of forty-eight hours in March, 1880, which yielded rapidly to iodide of potassium, who though perfectly temperate was often found on her bed in an apparent drunken stupor, who on April 28, 1880, signed a paper giving all she had except two small legacies to her elder son, of whom she had said a few months before that his half of her estate ought to be put in
trust, and who died ten days after, on May 8, 1880, 554
in a coma which had lasted three days; what do you say as to the mental condition of such a person ten days before her death?

Mr. Wallis—I object to the question, as incompetent, and because the facts recited have not been proved in this case.

A. Her mental condition at that time most probably was not sound; in other words, she must have been more or less insane.

Q 788. Suppose that, in addition to the symptoms recited in the supposed case, intense pain be added, what would be your answer?

A. That would increase the probability of mental derangement. 555

Q 789. Upon the supposed case, with the addition of intense headache, what do you say as to the mental condition of such a person, thirty days before her death?

A. It is most probable that during the whole period embraced that the mental condition was not that of health, or sound, or was not normal.

Q 790. During the whole period embraced ?

556 A. Embraced in the question.

Recess until two o'clock.

Upon reassembling the examination was resumed. Present, as before. Direct examination continued by Mr. Barkalow.

Q 791. In response to the hypothetical question asked, you replied that the mental degeneration proceeded during the whole interval I have stated; please state more particularly what interval you mean ?

A. I mean the interval from the first attack of coma up to the time of the final coma.

557 Q 792. It has been testified that during that period iodide of potassium was administered in five grain doses: were they sufficient to produce any appreciable effect on the progress of the disorder ?

A. Not likely in an old case like that; it is more probable that those small doses would be without effect.

Q 793. Is it possible that there should be a case of brain syphilis in the later stages without brain lesion ?

A. I should say not; the lesions in the tertiary stage of the disease are usually very pronounced, and in my experience are very obvious.

Cross-examination by Mr. Wallis :

558

Q 794. Do you know Dr. William B. Atkinson of Philadelphia ?

A. Yes, I know Dr. Atkinson.

Q 795. What is his general reputation as a physician ?

A. It is very good; he is not one of the first-class men, but his position is very good.

Q 796. Do you understand his treatment of Mrs. Dale?

559

A. I had a general sketch of it from him.

Q 797. Was it correct?

A. I think in the main, that was my impression at the time.

Q 798. How often did you see Mrs. Dale?

A. Once.

Q 799. And never saw her before or after?

A. Never before or after, that I know of.

Q 800. Do you think Dr. Atkinson is a man capable of judging of the mental condition of a patient whom he had treated for some time?

A. Well, I do not wish to express myself unfavorably as to Dr. Atkinson, of course, but he is not a man whose attention has been devoted to mental dieases, and he cannot, therefore, be regarded as an

560

authority, and I would say that I wish to be understood as declaring that Dr. Atkinson has a very respectable position as a physician. He is not an authority on mental diseases.

Q 801. Would he be capable of judging generally of the mental condition of a patient?

A. That involves such nice discrimination, that I should say not.

Q 802. Would he be capable of judging whether or not a patient would be capable of understanding as to who her relations were?

A. He is able to understand as to whether a

561

patient is capable of judging who her relations were in that connection.

Q 803. Is he capable of judging whether a patient is able to dispose of her property?

A. If his attention was called to that matter, and from his knowledge of the patient, he might.

Q 804. He is a man of ordinary judgment?

A. Yes; but in order to understand whether a man understands about the disposition of his property or not, he must know of what the property consists, whether the party is able to understand
562 about its disposition.

Q 805. Could not he be able to judge whether a patient whom he was attending was of sufficient mental vigor to dispose of property belonging to such individual?

A. He could not unless he made special inquiries; to appreciate the mental condition of the patient he must not only be a doctor, but able to judge of mental diseases, and unless his attention is directed to them so that he has some knowledge of them, he cannot judge of them any more than any other individual.

Q 806. Then any judgment as to a person's mental calibre which one might have, would not be
563 sufficient, in your judgment, to judge whether a person was able to dispose of property or not?

A. If a doctor knows what are the possessions of an individual, and that individual talks to him in regard to them, of course if he be a man of ordinary sense and ordinary memory, he could tell whether the mind of the person corresponded with the subject of the property, if he knew he had given place for it.

Q 807. There is nothing, then, except specific inquiries as to a person's property to enable another to judge whether that person has mental capacity sufficient to understand and know the property he
564 or she possesses?

A. It may be a matter of inference; I may infer from conversation with a person that he or she may know all about his property—that may be a matter of inference; it cannot be a matter of knowledge unless the person understands all about the property,

and then compared his knowledge with the knowledge of the patient.

Q 808. Do you think Dr. Atkinson was a man capable of forming such inference?

A. Yes, sir; within the limits I state; assuming 565
he had sufficient conversation.

Q 809. Do you know how long Mrs. Dale had suffered from this disease?

A. I do not know the number of years; I only know that she had suffered from it for several years; I only judge from the information I had.

Q 810. Was any post-mortem examination made on Mrs. Dale?

A. Not that I know of; I was not present if any were made?

Q 811. You say that coma, resulting from syphilitic affection, may be transient and often relieved; what is the condition of the patient after the coma is relieved?

A. It depends upon the condition of the lesions; 566
the lesions depending upon the coma may be wholly relieved or partially relieved; one can then only judge as to the extent of the lesions.

Q 812. Is coma always produced by lesions of the brain?

A. No; it may be produced by various causes; coma may be produced by a narcotic poison; there the brain is affected by the poison; no change in its structure necessarily takes place.

Q 813. Do I understand you to say that syphiloma cannot exist and result in death without lesions of the brain?

A. Oh, no; syphiloma of the brain cannot exist 567
and produce death without lesions of the brain.

Q 814. Is that the generally received doctrine on that subject?

A. Oh, yes; there can be no doubt about that.

Q 815. Is it a necessary result of syphilis, that a patient suffering from it must be of unsound mind?

A. No; not a necessary result.

Q 816. Is it not possible that a patient who had
568 been suffering from syphilitic coma, lasting three days, and which ended in death; is it not possible that such a patient might be of sound mind seven days prior to the attack resulting in death?

A. I should say it is possible, but not probable.

Q 817. You have been asked whether in the case of a patient who in March had suffered coma as a result of syphilis, for forty-eight hours, and again on May 8, had another attack of coma lasting three days and resulting in death, whether there would not be mental impairment in such a case; I ask you now whether it is certain there should be mental impairment in such case?

A. I did not say it is certain, only in a high degree
569 probable.

Q 818. You have been asked a long question, stated as a supposititous case, and your answer was that in such a case the mental condition in that case most probably was not sound; I ask you whether it is impossible in such a case that the person should be of sound mind?

A. I should say, if the supposititous case was as described, it is impossible that the mind should not be unsound.

Q 819. What do you mean by unsound mind?

A. I would understand a mind incapable of transacting the ordinary affairs of life, I should say in testamentary capacity, for instance.

570 Q 820. Of what does testamentary capacity consist?

A. A proper recognition of the property to be devised, a proper and just conception of the nature of the property to be devised, and a proper appreciation of the parties to whom it should be devised.

Q 821. And you think in the case given to you that such a condition existed from the time of the first attack of coma?

A. I said that it was in a high degree probable that such was the case. 571

Q 822. What is your judgment on the subject?

A. My belief is that such a person would not be in a proper condition.

Q 823. From the time of the first coma?

A. Yes, sir.

Q 824. And in your judgment, during the whole interval, the patient was not of such sufficient mental capacity to make a will.

A. That is my opinion.

Q. 825. According to the definition you have just given of mental capacity to make a will?

A. Yes, sir.

Q 826. Of course, if you had seen the patient at the time this will was executed, you would be better able to judge of her capacity to make a will than you are now? 572

A. Oh, of course I would.

Q 827. If you had seen her a number of times before you would be better able to judge?

A. Yes, sir.

Q 828. A person of ordinary intelligence who had seen her on several occasions some months previous to this time and at this time would be better able to judge?

A. It would depend altogether on the nature of the person; a person of very order of intelligence would be unable to judge in such a case unless his attention had been directed to mental perversions. It is really remarkable the character of the mistakes persons of a high order of intelligence make in such cases; they cannot form a judgment; they judge of simple ordinary matters of the day. A 573

person may be wholly lacking of a sound mind and be able to carry on conversation of that kind.

Q 829. Would not a person of ordinary intelligence who had seen the person under inquiry at in-
574 tervals of several months, and who conversed with her at the time, and who was attending her, be better able to judge of the mental condition of that person than one who had seen her but once, and who formed his judgment of her from inferences from circumstances that occurred at that time?

A. Oh, that of course.

Q 830. Doctor, we will take this case: a person suffering from the disease spoken of, some three or four months previous to the execution of her will, visits her counsel at a distance of some fourteen miles from home, instructs him generally as to the manner in which she wishes her property disposed of, a will is drawn in accordance with those instruc-
575 tions, it is sent to her at a distance, it is read over to her three or four separate times, it is accompanied with directions as to the manner of its execution, and the number of witnesses required; she requests that the witnesses be sent for, and they are sent for, and she executes that will; Whether, under all the circumstances I have stated, in your opinion such a person would be of unsound mind and not possessed of sufficient testamentary capacity to make a will, and the will was so executed ten or eleven days before her death?

A. I would form a conclusion from the terms in which the will was expressed; for instance, if such
576 a person had been under the influence of anger, hatred, delusion or hatred toward any member of the family, and the terms of the will were inconsistent with her previous life and conduct, I should regard it then as strongly presumptive of mental derangement; if, however, there was nothing irregular

in the terms of the will, if it was entirely consistent with her previous life and character, then I should regard it as probably indicative of mental soundness.

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Q 831. Suppose such a person entertained the belief that an individual who had claims upon her bounty had wronged her, had driven a hard bargain with her, and that such a belief had more or less foundation, and that she expressed to her counsel an intention to cause that individual to be sorry for the act he had done, and afterwards made a will in which that individual was disinherited, would you consider that evidence of mental soundness or unsoundness?

A. My opinion, as I said before, would be determined by the fact whether that was a delusion. If her judgment as to the person mentioned was entirely sound and consistent, then her action would be regarded as consistent evidence of healthy action. 578
But if her action were the result of delusion, then it would be evidence of mental unsoundness.

Q 832. Haven't you ever known of an instance of persons of perfectly sound mind contracting a dislike toward others, apparently without cause, even in their own family?

A. When the principal of a family, previously to devising his property, and without any apparent cause, takes up a prejudice against a member of to whom the property should be devised, it is strong evidence of mental unsoundness, especially when the individual is of advanced age, or a man who 579
has suffered from disease.

Q 833. You regard that as evidence of mental unsoundness?

A. I regard that as evidence of mental unsoundness; that fact is strongly indicative of mental unsoundness and incapacity to judge of the person to

whom the property should go, and therefore indicating mental unsoundness of the man.

Q 834. And in your judgment such a prejudice, although the cause of it might exist—provided that
580 cause was not an adequate one—might be regarded as evidence of mental unsoundness?

A. Under the circumstances I have mentioned, where the person is of advanced age, or has suffered from previous disease, because the action is inconsistent—a departure from the previous action.

Q 835. Who is to decide whether such action is normal or abnormal?

A. I take it the mental expert is to judge.

Q 836 Even if the medical expert has never seen the person?

A. I take it that the medical expert has knowledge of the subject.

Q 837. Even although the medical expert may
581 not have known the person?

A. His judgment may be all the clearer from that fact.

Q 838. Even though the medical expert has no knowledge of the main bent of the person's mind?

A. I assume that the medical expert must know all about that.

Q 839. In what way?

A. Must know the whole history of the case—her mental bent.

Q 840. By information?

A. Yes; acquired information it must be—but accurate and complete.

Q 841. Do you know anything of the mental
582 history of Mrs. Sarah P. Dale?

A. Only the medical history.

Q 842. Do you know anything of the bent of her mind—her mental history?

A. Only as brought out in this case?

Re-direct by Mr. Barkalow:

Q 843. Suppose that in the instance cited there

were but a single interview between the individual and her counsel, and instructions were afterwards sent by mail or otherwise, would not the force of her instructions be weakened ?

A. Yes, under the circumstances. 583

Q 844. What do you suppose would be the mental condition of the person supposed in my hypothetical question, during the month before the first coma in March, 1880 ?

A. My judgment is that the person during that period could not have been in a state of mental sanity.

Q 845. During the month before ?

A. Yes, sir.

Re-cross by Mr. Wallis :

Q 846. In your judgment, would it be possible for a patient suffering from syphilitic coma and paralysis combined, after recovery from that symptom of the disease, to resume the practice of a profession successfully ? 584

A. After syphilitic disease?

Q 847. Syphilitic disease leading to coma and paralysis ?

A. Yes, that is possible.

Q 848. Is it probable ?

A. A good deal depends upon the age of the individual ; if young, if undertaken promptly, if all the lesions were removed, then it is possible, indeed probable—quite probable. On the other hand, if a patient be advanced in life, if the treatment were tardy and the lesions had not been removed, then recovery would not be adequate, and would be almost impossible. 585

Q 849. If the paralysis had not been treated fully, so that the person could not walk properly, is that evidence of unsoundness ?

A. No, sir ; such persons might carry on the ordi-

nary business of life. I do not wish to be understood as saying that they are incapable of transacting the ordinary transactions of life—but they are mentally not sound—far from it; they are emotional, incapable of judging properly.

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Q 850. A liability to be influenced to tears; is that an evidence of insanity?

A. In those cases, a ready inclination to tears.

Further re-direct by Mr. Barkalow:

Q 851. What do you consider the probable condition of mind of the person considered in my hypothetical question, during the second month before the first coma; in other words, the first coma occurring in March, I mean to ask, what would you consider the condition of that person's mind to have been, in January or February?

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A. My answer to that would depend upon single certain acts occurring in the person afflicted —the change from modesty to salacity — (interruption).

Q 852. Suppose the remark supposed in the hypothetical question, which touches upon the change from modesty to wantonness; supposing that to have occurred in March, after the first coma, what then would be your opinion as to her condition in the preceding January?

A. The indications in such a case are, that the mental perversity has been coming on slowly, and it is difficult to fix the time, but some considerable time anterior.

Q 853. Some three or four months anterior?

588

A. I think so; highly probable.

Q 854. Anterior to the change described, you mean?

A. Yes; that indicates the perversion.

Q 855. That's all, Doctor.

WALTER B. JOHNSON, a witness produced on the part of the caveator, being duly sworn, on his oath deposeth and saith :

589

Direct examination by Mr. Barkalow :

Q 856. Will you state your name, residence and profession ?

A. Name, Walter B. Johnson, practising physician, 197 Market street, Paterson, New Jersey.

Q 857. Have you ever been connected professionally with any hospital ; if so, where ?

A. I was for eighteen months house surgeon at the Charity Hospital, at Blackwell's Island, which is the largest venereal hospital in the country, where we were continually treating patients subject to or having syphilitic affections, and subsequently, after death, in such cases made post-mortem examinations ; I have also been connected 590
with several hospitals — Chambers street, Manhattan Hospital, New York.

Q 858. Were you acquainted with the professional reputation of Dr. Bartholow, who has just been sworn ?

A. I was when a student; I used a book written by him, which was considered a very good book, and is used not only in Western and Pennsylvania, but in New York medical colleges very largely, and I have always considered the Doctor a very great authority, and especially on diseases of the mind and mental system, and also on medicine and therapeutics. 591

Q 859. Is he held as an eminent man in the minds of his professional associates and the profession ?

A. He is one of the principal lecturers of Jefferson Medical College, one of the largest medical colleges in the country, and his record as a physician is an extremely good one.

Q 860. Do you know anything of Dr. Bumstead?

A. He is now dead; he wrote one of the best books on venereal diseases that is before the profession, and he was considered by the professional
592 gentlemen of this and other countries—as we can see by references in books—as a very eminent man.

Q 861. Is one of the authors of the book known as "Bumstead and Taylor on Venereal Diseases?"

A. He is *the* author; it is pretty well understood that Taylor only revised the book.

Q 862. How many cases of syphilitic diseases have come under your observation clinically?

A. 200 to 500.

Q 863. How many pathologically?

A. Fifty to seventy-five.

Q 864. Explain the difference between the two?

A. Clinically means treating the patient at the bedside or in the hospital, and pathalogically means
593 dissection of the bodies of those who died of syphilitic trouble.

Q 865. Is pachymeningitis an attendant upon brain syphilis?

A. It is an attendant upon brain syphilis.

Q 866. How often does it occur in that case?

A. I think it is pretty generally attendant.

Q 867. Did you ever see any case of that kind where it was not?

A. I never remembered a case where there was not some adhesion to the dura mater, which indicates pachymeningitis.

Q 868. Is pachymeningitis a disease that increases
594 generally?

A. Pachymeningitis, if not treated properly, it will increase.

Q 869. In pachymeningitis there is what is called thickening, or deposit?

A. There is gummous deposit.

Q 870. What is the use of iodide of potassium, in such cases?

A. It is an absorbent; we know that patients treated with iodides are relieved of the pressure caused by such gumma; the reason we know that 595
is, that we can see that in cases where the gummas have formed under the skin they disappear under that treatment.

Q 871. Give us your observations of the treatment?

A. Iodide of potassium in the tertiary stage of syphilis is the universal remedy; it is given in very large doses; from twenty grains to two drachms; it acts rapidly and removes such symptoms as appear, that is, removes the symptoms which are due to pressure, although it does not prevent the destruction of the parts in which the pressure symptoms are removed.

Q 872. Have you heard Dr. Blundell's evidence 596
to-day, as to the symptoms of Mrs. Sarah P. Dale?

A. I have.

Q 873. Would any other disease than brain syphilis, producing those symptoms, yield to iodide of potassium, at the stage of coma, without subsequent paralysis?

A. I do not think so.

Q 874. Is photophobia, within your observation, a frequent symptom of brain syphilis?

A. It is a frequent symptom of brain syphilis, and of brain lesion generally, or rather of lesion at the base of the brain.

Q 875. Have you heard the evidence given to- 597
day by Dr. Bartholow?

A. Yes, sir.

Q 876. In view of the very considerable observation which you have had of brain syphilis in your hospital attendance, I ask you in regard to that

evidence, whether it coincides with the result of your own observation?

A. My ideas agree in every part with Dr. Bartholow, and my investigations have formed the ideas
598 which I hold in the matter.

Q 877. Regarding the case of Mrs. Dale, as you have heard it testified to by Dr. Blundell, and the history which she gave him of it; and assuming that she died on the eighth of May, 1880, in a state of coma which had lasted three days: could she in your judgment have been of sound mind on April twenty-eighth, ten days before her death?

A. In my judgment in that case such structural changes had occurred in the brain of Mrs. Dale, as would have made an unsound mental condition at that date, April 28.

Q 878. And for how long previously, in your judgment?

599 A. From the history of this case, and from the treatment of the case which I have gained from the affidavit of Dr. Atkinson and other sources, I should say that the treatment she had received had not controlled the lesion, and that the lesion had existed for a period of—this is only probability—for a period that may have extended from the first of January, at least, to the time of her death.

Q 879. Does your experience of the treatment of this disease show you that the treatment in the case of Mrs. Dale was very insufficient?

A. The treatment as sworn to in the testimony of Dr. Atkinson, consisted of five grain doses four times a day, of iodide of potassium, which I con-
600 sider entirely insufficient to produce any effect on the lesions which must have existed.

Q. 880. What is the largest dose of iodide of potassium which you have ever prescribed for this condition of brain syphilis?

A. Seven hundred and twenty grains a day, in three doses.

Q 881. Did the patient sustain it ?

A. Yes, sir; made a rapid recovery from paralysis. 601

Q 882. Five grains, then, is a very light dose ?

A. Five-grain doses in so late a case would be considered very insufficient, and in fact useless.

Cross-examination by Mr. Wallis :

Q 883. You say you read a book by Dr. Bartholow—on what subject was it ?

A. On the administration of drugs.

Q 884. Materia medica ?

A. Yes, sir.

Q 885. Of what is he professor in Jefferson Medical College ?

A. Materia Medica. I would like to say that he has also written books on mental diseases. 602

Q 886. What books has he written on mental diseases ?

A. I forget the exact title of it now ; it appeared some few years ago ; it was on diseases of the nervous system ; that was when he was in Cincinnati, Ohio, but I remember having read such a book. I haven't it in my possession now.

Q 887. What is your knowledge as to his experience in brain diseases ?

A. My knowledge is entirely, I might say, from the book, and from the respect in which the profession hold the gentleman. 603

Q 888. His connection with Jefferson Medical College has nothing to do with brain diseases ?

A. No, sir.

Q 889. Do you know what structural changes had occurred in Mrs. Dale's brain ?

A. Do I know ?

Q 890. Yes ?

A. I know this—that in late brain syphilis structural changes do occur; I know that they are attended with such symptoms as I have been informed Mrs. Dale had, and I deem it probable from such
604 knowledge, or from such information—I suppose you might call that knowledge—that she was in that state that she had structural changes.

Q 891. Have you ever heard of a case of death from constitutional syphilis without brain lesion?

A. No, sir.

Q 892. In your opinion could such a thing exist?

A. I have never heard of such a case; I don't believe, unless there was some other thing such as syphilitic pneumonia, that the patient would die?

Q 893. Without brain lesion?

A. Without brain lesion; I might modify that in this way—I recollect now a case in which a man had extensive ulcerations of the thigh, which de-
605 stroyed the femoral artery, and the man died from hemorrhage; of course, the cause of his death in that case was the ulcer.

Q 894. Have you ever seen Mrs. Dale?

A. Never saw her, no.

Q 895. How long have you been practising as a physician?

A. I have been graduated about five years, but my private practice has been only a little over a year; the interval of the time I spent in hospitals?

Q 896. Doctor, if you had known Mrs. Dale for some time before her death, if you had attended her
606 professionally with a full knowledge of her disease and her then condition—if you had seen her, conversed with her, on the day of the execution of her will, on general topics, and in regard to that will, would you have considered yourself competent to form an opinion as to her mental condition, as to soundness or unsoundness?

A. Well, I think that would have depended very much on how much of the circumstances I was acquainted with—what I mean is, the entire circumstances of her previous history and character; is that what you mean?

607

Q 897. What circumstances do you mean?

A. Well, for instance, if I knew she was going to sign a will, I should want to consider before giving an opinion in the matter what her mental condition was, how she felt, what symptoms of mental disorder she had had, how long she had had such symptoms, and, in fact, know all the circumstances of her transactions in general.

Q 898. In other words, you would not have consented to become a witness to the execution of a will unless you believed her to be of sound mind?

A. I do not say that; I say that I would not form a judgment as to her soundness of mind without knowing the facts, and if I then concluded she was of sound mind, then I would commence to consider the question of being a witness; I would have to make up my mind in that matter.

608

Q 899. If you did not think she was of sound mind, you would not?

A. If I did not think she was sound I would say so, after it was brought out in evidence, the whole particulars.

Q 900. You would not sign a will if you did not think she was of sound mind?

A. You see, that is rather a peculiar question; I can't say exactly as to that.

Q 901. I ask you, if you had been acquainted with this person for some months, had seen her on different occasions, had conversed with her, attended her as a physician, knew what was the trouble, knew what were the symptoms of her disease, had prescribed for her, and was then her attending physician?

609

A. And knew every relation about her family, then I would.

Q 902. But take my question first?

A. Not unless I knew her relations to her family.

610 Q 903. Then, in your opinion, her relations would have to be compared?

A. Yes, they would, in a measure.

Re-direct by Mr. Barkalow:

Q 904. How long were you stationed at that hospital?

A. About eighteen months; it was a monograph I saw of Dr. Bartholow's, and it was some time during my hospital experience, two or three years ago, and I therefore do not want to place any importance on that as relating to Dr. Bartholow's standing.

611 *Re-cross by Mr. Wallis.*

Q 905. How large a book was it?

A. Well I dont know, it was about fifty pages, such as we have for our transactions of societies.

W. B. JOHNSON, M.D.

Sworn to, October 19, 1881, and subscribed before me, October 28th, 1881,

ISAAC VAN WAGONER,
Master in Chancery
of New Jersey.

612 It is agreed by counsel that the signature of Dr. Bartholow to his evidence this day taken, be waived.

The further examination of witnesses was then adjourned until Wednesday, October 26 inst., at ten o'clock, A.M., at same place.

October 26th, 1881. Examination of witnesses continued in the presence of John Linn, of counsel with proponents, and John S. Barkalow, of counsel with caveator.

613

FREDERICK S. DALE, on cross-examination, continued:

Q 906. Upon your examination in chief, you testified, that you yourself paid the undertaker's bill for your father's funeral; have you since been repaid that bill?

A. I have, sir.

Q 907. By whom?

A. I would like to make this explanation with regard to this matter: my father left but a couple of hundred dollars and a library, at his death; the library was to be divided between my brother and myself; the rest of his estate was to go to my mother; she insisted after his death that I should 614
charge her with the expenses of his funeral; and by so doing, she claimed the $200 allowed to the widow out of the library; this was not told me at the time; so that on the one hand I was refunded the money advanced for my father's funeral, and had to pay my proportion of it out of my share of the library; so that I do not consider I really was refunded that amount.

Q 908. What was done with the library?

A. It is still in the hands of the administrator *pendente lite* of Sarah P. Dale's estate; my mother having filed in the Surrogate's office the inventory 615
of the $200 worth she claims as her own; this transaction of the refunding of the funeral expenses was done some five months after her return.

Q 909. Did your father leave any will?

A. He did, sir.

Q 910. Who was executor or executrix thereof?

A. My mother was the sole executrix thereof, or was to be.

Q 911. Did she prove the will?

A. She did; she began to act; she filed an in-
616 ventory.

Q 912. Then the library of your father has not yet been disposed of at all?

A. It has not.

Q 913. Why do you say that you had to pay out of your share of your father's library, the bill for funeral expenses?

A. Because there was no necessity of paying, or repaying I should say, me for what I had advanced; and after doing so, the excuse was given that there was no money left, and she took the best part of the library.

Q 914. Do you know what your father's library was fairly worth, what it would probably have
617 brought at sale by auction?

A. The appraisers put a valuation on it of between $500 and $600, I think.

Q 915. Did your father leave any other unpaid debts besides his funeral expenses?

A. He left no debts of any kind.

Q 916. Do you know what have been the expenses of the settlement of his estate, so far as it has been settled?

A. I don't think there has been any expenses, for there has nothing been done; I might add, the fees of the Surrogate.

FREDERICK S. DALE.

618

Sworn to, October 5, 1881, and subscribed before me, October 26th, 1881.

ISAAC VAN WAGONER,
Master in Chancery
of New Jersey.

Examination of witnesses adjourned to Thursday, October 27, 1881, 1.45 P.M., at the same place.

October 27, 1881. Examination of witnesses continued in the presence of Hamilton Wallis, of counsel with proponent, and John S. Barkalow, of counsel with caveator. 619

STELLA MUNSON, a witness produced on the part of the caveator, being duly sworn according to law, on her oath deposeth and saith:

Q 917. What is your name and place of residence and your husband's name?

A. Stella Munson, residence New Haven, Connecticut; my husband's name is Charles C. Munson.

Q 918. Was the late Sarah P. Dale a sister of your husband?

A. Yes, sir.

Q 919. Do you recollect a visit which she made to New Haven at your mother-in-law's house in January and February of the year in which she died? 620

A. I do.

Q 920. Were you living there at that time?

A. I was.

Q 921. Who composed the family?

A. My mother-in-law, Mr. Charles Munson her brother-in-law, my husband, my three children.

Q 922. Please state the age and present condition of your mother-in-law?

A. She is 78 years old, and now confined to her bed.

Q 923. Please state the age of Mr. Charles Munson and of your children? 621

A. Mr. Charles Munson is in the neighborhood of 80 years of age; ages of my children respectively 8 years, 6 years and 4 years.

Q 924. Did Mrs. Dale during that visit speak of a dispute with her son Fred, about the price of some machinery?

A. She did.

622 Q 925. What did she say?

A. She wished Fred to give her a certain amount which he refused, and which brought forth a remark something like this: That he would gain nothing by it, for she would make that difference, that much difference, when she made her will.

Q 926. What was the amount of which she spoke?

A. I think the amount in question was $500.

Q 927. Did Nelson say anything about that $500 to her?

A. He did.

Q 928. What did he say?

A. He advised her not to yield to Fred's wishes.

Q 929. After Mrs. Dale's death did Nelson make
623 any remark in your hearing about her will?

Objected to.

A. He did.

Q 930. What was it?

A. He said that Fred's children wouldn't have gotten as much as they did, if it hadn't been for him.

Q 931. Is that all he said?

A. No, he explained a little further. He said, so far as I can remember, that his mother intended to give them $500 a-piece, but he prevailed upon her to give them a $1,000.

Q 932. Did he say anything about the will in reference to Fred?

624 A. He did; he said that it served him right, so far as I can remember, he said so, and it was just and right that he had to learn a lesson, a lesson, and perhaps this would teach him.

Q 933. Did Mrs. Dale during that visit say anything about Nelson, in connection with a picture?

Objected to.

A. She did; she was indignant with him in regard to the amount she wanted, and which he thought was too much. She said that she didn't consider him capable of judging, so far as I can now remember, of the value of anything, and that he had no idea of the value of money. 625

Q 934. About that time did Nelson write to her for money, and if so, what did she say?

A. He did; she said she didn't think she would send him any. She would let him suffer for a while and then perhaps he would know something of the value of money.

Q 935. Did Mrs. Dale ever speak to you of the condition of her memory, at that time?

A. Yes, in reference to something she had to remember, she said she could not trust herself; her memory was not as good as it was once.

Q 936. Did Mrs. Dale, during that visit, exhibit a dislike for light? 626

A. Yes, frequently; for instance, when some one was calling, she would say she couldn't bear the light; she wanted the blinds closed; and we frequently had to shade the gas and turn the lights down.

Q 937. Did she complain of pains in the head?

A. She did.

Q 938. What, if any, were her express sentiments towards all her family?

Objected to.

A. She expressed her indignation against Nelson as well as Fred, and said that she did not do as she felt, but as her judgment and conscience dictated. 627

Q 939. Did she speak of others of her family?

A. She spoke of her grandchildren, brothers and sisters.

Q 940. Did Mrs. Dale express a general liking or disliking of all her family?

A. She did and she didn't.

Q 941. Please explain?

A. She said she thought, at one time I remember she was speaking of Nelson, and she made this re-
628 mark, Nelson is so nice, isn't he nice; that was one of the favorable remarks she made in regard to her family; I don't like to go into the particulars of the family; she liked some, and she disliked some, at times.

Q 942. What was Mrs. Dale's mental condition during that visit, in January and February, 1880?

Objected to, as incompetent and immaterial.

A. I thought it was more or less affected by sickness.

Q 943. Do you mean that it was weakened?

Objected to as leading.

A. Yes.

Q 944. Do I rightly understand, from some of
629 your previous answers, that Mrs. Dale, at one time or another during that visit, disliked in turn both of her sons and others of her family?

Objected to as incompetent.

A. Yes.

Q 945. And that she expressed such dislike?

Same objection.

A. Dislike, or indignation, that would be perhaps more applicable, if I understand it.

Cross-examination:

Q 946. Do you know what induced Mrs. Dale to
630 make this visit at her mother's house that you have spoken of?

A. I think it was to see all the family and make a pleasant visit.

Q 947. Did she appear to have a pleasant visit?

A. Aside from the trouble from Nelson and Fred.

Q 948. Aside from that trouble she did?

A. Yes, I was so told afterwards, by a friend of hers, that it was one of the pleasantest she had had.

Q 949. Did she appear to enjoy herself during the visit?

A. Part of the time. 631

Q 950. On what occasion did she appear not to enjoy herself?

A. At the time that she was sick, when her head troubled her, and this trouble with Fred and Nelson —she appeared to suffer mentally from it, whenever she spoke of it.

Q 951. Was she on affectionate terms with her mother?

A. No, sir.

Q 952. With her brothers?

A. Not altogether.

Q 953. With any member of the family?

A. Yes, sir.

Q 954. With whom? 632

A. She was with me, and with her other sisters-in-law, so far as I knew.

Q 955. Did the other sisters-in-law reside with her mother?

A. They did not at this time.

WILLIAM BLUNDELL recalled on the part of the caveator.

Q 956. You have said in your evidence heretofore given, that Mrs. Dale in 1875 told you that she had syphilitic disorder, and had been under treatment for it. For how long previous to that did you understand that she had been under such treatment?

A. I think about two years. 633

Cross-examination.

Q 957. Did Mrs. Dale, after her last serious illness in this city, ask you whether you considered her competent to make a will?

A. Never.

Q 958. Did you ever tell any one that she had so asked you?

A. No, sir.

634 Q 959. Did she ever speak to you in relation to making a will?

A. Something was said in a general way about making a will.

Q 960. When was this said?

A. I think it was after she had been to New Haven.

Q 961. What was said?

A. That she had been to Mr. Wallis' office, either to make a will or talk to him about making a will; there was very little said to me on the will subject.

Q 962. Have you stated all that you can remember on that subject?

A. I have.

635 Q 963. Did you shortly after Mrs. Dale's death ask Nelson whether her will was executed before the attack of sickness that caused her death, or anything to that effect?

Objected to, as not cross-examination, and because, if persevered in now, the caveator will be unable to offer the witness now on the stand for cross-examination, if it shall happen that proponents do not finish their cross-examination by the time contemplated, and also because it was agreed that Dr. Blundell should be re-called for the single matter contained in single question No. 956.

Counsel for proponents says he has no knowl-

636 edge of such agreement.

A. I have no knowledge of having asked him anything of that sort; after Mrs. Dale's death, and Nelson's return to Paterson, he gave me some of the details of the will, and I have made a few inquiries;

perfectly natural that I should; but if I did, I have no recollection of what the questions were.

Q 964. Did Nelson inform you that the will had been executed by Mrs. Dale before the fatal attack?

Objected to, on the ground that this whole subject has already been traversed by the proponent on his regular cross-examination of this witness, and for the other reasons already stated; and the caveator gives notice that he shall apply to the Orphans' Court, at its next sitting, to strike out this cross-examination before the closing or the argument of the consideration of the case. 637

A. I don't know; I suppose that was the understanding; before she became unconscious.

Q 965. Did you thereupon state to him that in that case her will would stand, or anything to that effect?

Same objection as last. 638

A. No; I think not.

Re-direct examination:

Q 966. Can you say more positively whether you stated to Nelson Dale in the case supposed in the last question, that her will would stand?

Objected to as incompetent.

A. No; nothing more positive than I have already stated.

Q 967. Have you ever met Dr. Atkinson of Philadelphia?

A. No.

Q 968. Did you ever hear of him before Mrs. Dale went to Philadelphia? 639

A. Yes.

Q 969. How long before?

A. I shall have to answer that in this way: I think Dr. Atkinson is secretary of the American

Medical Association, and when I heard that Dr. Atkinson had attended Mrs. Dale, I supposed it was he—the secretary; in that way I have heard of him and that way only.

640 WM. BLUNDELL.

Taken before me,
October 27, 1881.

ISAAC VAN WAGONER,
Master in Chancery
of New Jersey.

STELLA MUNSON recalled on cross-examination.

Q 970. Did your sisters-in-law reside in New Haven at the time of Mrs. Dale's visit?

A. Yes, they did.

Q 971. What was the trouble you have spoken of, between Nelson and his mother, at this time?

A. It was in regard to the sale of a picture. She
641 valued it at a certain price, and Nelson didn't think it worth that price. I think that Mrs. Dale expressed herself as anxious for the price which she required in order to help Nelson.

Q 972. What picture was it?

A. To the best of my memory it was a picture of Napoleon?

Q 973. Had it then been sold?

A. It had not.

Q 974. What was the trouble you have spoken of between Fred and his mother at this time?

A. I think in regard to the machinery—the sale of it.

Q 975. Was Fred at your house during Mrs. Dale's
642 visit there?

A. He was.

Q 976. Was Mrs. Dale sick at the time he was there?

A. She was; she wasn't sick in bed. She was sick more or less all the time she was there.

Q 977. How long did Fred stay?

A. I think he came in the afternoon or evening, and stayed until the next evening.

Q 978. Do you know what he came for? 643

A. I did not when he first came; I did afterwards.

Q 979. What was it?

Objected to, unless the witness states that it came within her own knowledge, and not by hearsay.

A. Mrs. Dale told me afterwards, to have her compromise the price with regard to the machinery. That is so far as I remember.

Q 980. Did Mrs. Dale ever say anything to you, or in your presence, in regard to her will, other than what you have already stated?

A. Not that I remember.

Re-direct examination:

Q 981. In your answer to question 945 you say, 644
"dislike or indignation, that would perhaps be more applicable if I understand it." Do you mean that answer to indicate, yes?

Objected to as incompetent.

A. I mean yes.

STELLA MUNSON.

Sworn to and subscribed before me, October 27, 1881.

ISAAC VAN WAGONER,
Master in Chancery
of New Jersey.

645

A paper writing, signed Sarah P. Dale, dated January 24, 1876, is offered in evidence on the part of the caveator, and is marked Exhibit B, 13.

Counsel for caveator offers an inventory of her goods and chattels made by Sarah P. Dale

in her lifetime, and supposed to have been made between August, 1879, and the time of her death, and prepared in her handwriting, and which is marked Exhibit B, 14.

646 Examination of witnesses adjourned to Friday, October 28th, 1881, 2 o'cl'k P.M., at same place.

October 28th, 1881. Examination of witnesses continued in the presence of John Linn, of counsel with proponents, and John S. Barkalow, of counsel with caveator.

ESTHER C. LEONARD, a witness produced on the part of the caveator, being duly sworn according to law, on her oath deposeth and saith:

Q 982. What is your name, your husband's name, and place of residence?

A. My name is Mrs. Esther C. Leonard, my hus-
647 band's name was Orville Leonard, and my place of residence is Chicago, Illinois.

Q. 983. Are you a widow?

A. I am, sir.

Q 984. Did you know the late Sarah P. Dale in her lifetime?

A. I did.

Q 985. About when did you last see her and where?

A. In August, 1879, at her son Frederick's house at Paterson, New Jersey.

Q 986. How long were you and she there to-
648 gether?

A. She came from Europe, I think, about the first of August, and I saw her several times during that month.

Q 987. Did she, at any of those times, speak to you of the relations between Frederick and his father?

A. She did.

Q 988. What did she say?

A. She said she was surprised that Mr. Dale should treat Frederick, Fred as she called him, as 649
he did in regard to business and removal of boxes and things from the house — trunks I should have said instead of boxes. It never should have been done if she had been there.

Q 989. Did she say anything at that time about Fred himself; if so, what?

A. She did. She said that Mr. Dale and herself had reason to be proud of Fred for the manner in which he had carried on the business, adding if it had not been for Fred she did not know what their condition would have been, or her son Nelson, as Fred had been his support for the last year.

Q 990. Whose support?

A. Nelson's support. 650

Q 991. Did she say anything further on the subject of her son Frederick?

A. She did. She said it was her intention to return to Germany; if she done so she should leave her business affairs with Fred, as he was in condition to advance money, if necessary—adding that she had entire confidence in Fred's ability and willingness to conduct her affairs properly.

Q 992. Did she say anything about Frederick in relation to the machinery in the mill?

A. She expressed her desire that Fred should have it?

Q 993. Did she say anything about her son Fred- 651
erick in relation to taxes upon her property?

A. Yes, sir, she did.

Q 994. What did she say?

A. She said Fred had advanced several hundred dollars to pay taxes upon that property.

Q 995. Did she say anything as to Frederick's financial ability to do this?

A. She did. She said she had entire confidence in his ability and willingness to conduct her affairs.

Q 996. Did she say anything of Nelson in this respect?

652 A. She did; she said he had the first offer of the machinery, but that he was not capable, and she feared he would never be, of conducting any business?

Q 997. In conversing with you on these occasions, did Mrs. Dale repeat the same remark frequently?

A. She did; so much so that I spoke to my friends about it when I returned home.

Q 998. Do you recollect how frequently, or within what period she would do so?

A. During the conversation of perhaps two hours or more.

Q 999. How often during that time would she repeat the same remark?

653 A. Well as often as three or four times.

Q. 1000. Did she repeat her remarks, when she did repeat them, argumentatively, or as if she was making them for the first time?

A. She repeated them as if for the first time.

Cross-examination.

Q 1001. Are you a particular intimate friend of the family of Mr. Frederick S. Dale?

A. I am.

Q 1002. Have you visited his family since you were here in 1879?

654 A. I have not.

Q 1003. Have you corresponded with any member of his family by letter since that time?

A. I have.

Q 1004. With whom?

A. Mrs. Dale.

Q 1005. With her only?

A. I have had only one letter since 1879 from Mr. Dale, and that was with regard to his wife's being sick.

Q 1006. With the exception of this one letter then your correspondence has been with Mrs. Dale alone? 655

A. It has.

Q 1007. Have you had any correspondence with her in relation to your proposed testimony in this case?

A. I have not; I wrote one letter.

Q 1008. When did you come from Chicago here on your present visit?

A. I reached here this morning; I have been intending to be here for the last two months.

Q 1009. Did you understand before you left home that you would be called upon when here to give your testimony in this case? 656

A. I did not know but that I should.

Q 1010. Had you had any intimation that you might be so called upon?

A. I had if I had reached here earlier; I thought the whole thing was over.

Q 1011. From whom did you receive such intimations?

A. From Mrs. Dale.

Q 1012. What did she say or write to you in regard to it?

A. She asked me, if it was necessary, would I be willing to give my testimony, if I had anything in regard to the matter.

Q 1013. Before you came here on your present visit had you ever stated to any one what you could testify with regard to this case? 657

A. I had in part.

Q 1014. When and to whom?

A. About a week ago, to Mrs. Dale.

Q 1015 What did you then state to her?

Objected to.

A. I can't give you word for word.

658 Q 1016. Please state as near as you can what you then wrote to Mrs. Dale?

A. Well, I presume I expressed my surprise that this trouble should come up after Mrs. Sarah P. Dale's expressing herself so fully in Fred's praise; I then said I should be very happy to give my testimony if necessary.

Q 1017. Was that substantially all that you then wrote to her in reference to this matter?

A. It was.

Q 1018. Did Mrs. Dale, in her letter to you, make any statement of what she or her husband desired to prove by you?

A. She did not.

659 Q 1019. What reason had she or he to suppose that you could give any material testimony in this case?

A. No reason only that I was a member of their family during a part of Mrs. Sarah P. Dale's visit to their house.

Q 1020. On how many different occasions were these conversations with Mrs. Sarah P. Dale, of which you have testified, held?

A I don't know that I can tell how many; just as often as every opportunity she had; she seemed desirous of expressing herself with regard to Fred.

Q 1021. Were these conversations had when you and she were alone?

660 A. They were.

Q 1022. Did Mrs. Dale express to you the idea which she entertained that her son Frederick was a capable, thrifty, business man, and her son Nelson had no capacity for the ordinary business affairs of life?

A. She did.

Q 1023. Did she express to you the idea that her son Frederick had made money and would continue to do so, but that Nelson had not or would not? 661

A. She did.

Q 1024. When, after these conversations took place, was your attention first called to them?

A. I don't understand that question.

Q 1025. When, after these conversations took place, did any one first inquire of you what you had heard her say at that time?

A. Never any one until my arrival this morning in Paterson.

Q 1026. Did you at the time when these conversations were held, or soon thereafter, make any memorandum of them?

A. I did not.

Q 1027. Can you at this time give the precise language used by Mrs. Dale in these conversations, or do you only give the impression left upon your mind after a lapse of two years? 662

A. I cannot give the exact words she used, but it impressed me very deeply as coming from his mother.

Q 1028. Why did they impress you very deeply?

A. I presume it was because she expressed herself so differently in regard to her two sons.

Q 1029. Was this difference which she expressed in reference to anything else than the business capacity of her sons.

A. It was in regard to their business capacity? 663

Re-direct examination:

Q 1030. Did Mrs. Dale also express the idea that Nelson would be unable to keep or take care of money or property if he had it?

Objected to as leading.

A. She said that Nelson never knew the value of money, and she didn't know as he ever would.

Q 1031. Were you intending to come here if you had not been sent for in this case; if so, when did
664 you intend to come?

A. I was intending to come here; it was my intention to spend the winter with Mr. and Mrs. Dale; I have been intending to come for the last six months, but I have been detained at home.

Q 1032. Did I rightly understand you to mean in your answer to question 1022 that Mrs. Dale thought her son Nelson incapable of making a living?

A. She did not say that.

Q 1033. You did not mean then, I suppose, to say, as you appear to do, that she expressed that idea?

A. No.

Q 1034. Did I rightly understand you to mean,
665 in your answer to question 1023, that Mrs. Dale thought that her son Frederick was already rich?

A. She expressed no such opinion to me.

Q 1035. You did not mean then, I suppose, to say, as you appeared to do, from the form of the question, that she expressed that idea?

A. No, she did not.

ESTHER C. LEONARD.

Sworn to and subscribed before me, October 28, 1881,

ISAAC VAN WAGONER,
Master in Chancery
of New Jersey.

666 It is here stipulated between counsel that the caveator may offer in evidence, subject to all legal objections, any letters, papers or other documents, provided they are offered before the closing of the proponents' case, unless they should be such as to come in properly as rebuttting testimony.

Examination of witnesses adjourned to Monday, the 31st day of October, 1881, at 11 o'clk A.M., at same place.

Examination of witnesses continued in the presence of Mr. Edwards, of counsel with proponents, and John S. Barkalow, of counsel with caveator. 667

Counsel for caveator here offers an envelope containing papers marked on envelope, Balance of inventory of contents of barrels, &c., and is marked Exhibit B, 15.

The following letter is here produced by counsel for caveator on request of counsel for proponents:

Newport, R. I., Oct 13, 1881.

John S. Barkalow, Esq.

Dear Sir,

Your letter of Oct. 11 has just reached me after a brief absence from home. I have never received a direct proposition in regard to the settlement of the Dale will case, and never such a proposition as is contained in your letter, so that I cannot see in what sense your proposition can be called a renewal. I cannot understand your proposition in any other sense than an effort on the part of my brother to be bought, and I cannot be a party to any such sale or purchase. I have offered my mother's will for probate because it was my duty to do so, and I was advised that I should be guilty of a very serious offense if I concealed the will or took any other course in relation to it. Having offered it, I conceive it to be my duty to continue this controversy until the question as to the validity of my mother's will is decided in the only way in which it can be finally decided. I have not sought a contest with my brother, and am very sorry that any 668 669

such has risen, but do not see that it is, in any sense my fault, or that I can in any way control it. The character of the evidence to be brought out I know too well, but I do not hold myself in any way
670 responsible for it. I have but performed my duty in the premises. If my brother thinks that one-half of the estate, or any other portion, is worth more to him than the good name of his parents, I can only regret that he values their reputation and memory at so small a price. The contest is not of my seeking; but as my brother has seen fit to commence it, I can only submit, perform my duty as I believe it to be, and leave my brother to act as he shall see fit.

Yours respectfully,

T. NELSON DALE.

P.S. I have sent a copy of this letter to my counsel.
671

T. N. D.

CAVEATOR HERE RESTS.

Examination of witnesses adjourned to Monday, November 7th, 1881, at 10 o'cl'k A.M., at the same place.

November 7th.—Examination of witnesses continued in the presence of Wallis & Edwards, of counsel with proponents, and John S. Barkalow, of counsel with caveator.
672

ANNE INGLIS, a witness produced on the part of the proponents, being duly sworn according to law, on her oath deposeth and saith?

Q 1036. What is your name?

A. Anne Inglis.

Q 1037. Where do you reside?

A. 181 Ellison street, Paterson, New Jersey.

Q 1038. Did you know Mrs. Sarah P. Dale, in her lifetime? 673

A. Yes.

Q 1039. How long had you known her?

A. Many years.

Q 1040. Can you say how many?

A. Since she came to reside in Paterson; I cannot remember the date.

Q 1041. Was that shortly after her marriage?

A. Oh, no; many years after her marriage.

Q 1042. Was it as much as 20 years ago?

A. No.

Q 1043. Ten?

A. I can't tell.

Q 1044. Five?

A. It is more than five. 674

Q 1045. Did you know her intimately?

A. Yes.

Q 1046. How often did you see her while she was in Paterson?

A. Almost every day.

Q 1047. Was she in the habit of conversing with you about herself and her affairs?

A. Yes.

Q 1048. Did you know the disease with which she was afflicted?

A. I knew what she thought it was; what she told me it was.

Q 1049. Was it the same disease that is generally considered to have caused her death? 675

Objected to.

A. That I cannot tell.

Q 1050. When did you last see Mrs. Dale?

A. I parted with her at the train on her leaving for Philadelphia.

Q 1051. Had you before that time seen her frequently?

A. Yes.

Q 1052. Since when?

676 A. Since her return from Europe.

Q 1053. How frequently had you seen her since her return?

A. Almost every day.

Q 1054. Did she, before her departure for Philadelphia, ever show you a written paper?

A. Yes.

Q 1055. Did she tell you what it was?

A. Yes.

Q 1056. What did she say in relation to it?

A. That it was her will.

Q 1057. Where did she say it had come from?

A. New York.

Q 1058. Did she tell you who had sent it to her;

677 and, if so, who did she say had done so?

A. Yes; she told me who had sent it; she said her lawyer in New York.

Q 1059. When was this?

A. After her return from New Haven.

Q 1060. Where was it that she told you this?

A. In her room, in Broadway, Paterson.

Q 1061. Who were present?

A. No one but myself.

Q 1062. Did you read this paper?

A. No.

Q 1663. Did Mrs. Dale say anything to you in relation to its contents; and, if so, what did she say?

678 A. Yes; she told me she had made over her property to her son Nelson; that Fred must remember that what he took from her now he couldn't have when she was gone; that she had given $2,000 to his little ones, by the advice of her lawyer—to

his two children, I think, so as to prevent the will from being broken.

Q 1064. Did she ever say anything to you in relation to Fred's treatment of her; and, if so, what did she say? 679

A. Yes; at the time she told me of the will, Fred had done her two or three ugly tricks; but she never believed he could have done this.

Q 1065. Did she tell you what she meant by "this;" and, if so, what did she say?

A. She didn't tell me in words; but it was with regard to the arrangements about the machinery.

The last part of the answer is objected to.

Q 1066. Do you know whether, after Mrs. Dale's return from Europe, she expressed any wish in relation to Fred's visiting her?

A. After she returned from New Haven, she refused to see him once or twice.

Q 1067. To whom did she express this refusal? 680

A. To myself.

Q 1068. What was the occasion of it?

A. It was with regard to the arranging of the machinery—the arranging of their business.

Q 1069. Had Fred called at the house?

A. Yes.

Q 1070. When she learned that fact, what did she say?

A. She told me that she sent word that she could not see him then; afterwards she did see him.

Q 1071. Did she tell you anything in relation to this interview; and, if so, what? 681

A. She told me she was different to him. Perhaps I should say she told me she received him coldly.

Q 1072. What, if anything, did she say in relation to the subject of conversation during this interview?

A. I cannot remember.

Q 1073. Did she ever, after her return from Europe, say anything to you in regard to Fred's business capacity, and if so, what did she say?

682 A. Yes. That he had a great business capacity.

Q 1074. You may state what, if any reason, Mrs. Dale gave to you at or about the time she showed you her will, for making the disposition of her property that she told you she had made?

A. It was with regard to the arrangements about the machinery with her son. There was an arrangement made with Mr. Thomas N. Dale, her husband, as I understood it, that she was asked to sign. Mr. Fred went over to Europe to see his mother and prevented the signing. Mrs. Dale returned——

Counsel for caveator objects to the answer up to this point as being hearsay evidence.

and wished to make the arrangement with her son
683 Fred, as he, Fred, wished it. Mr. Fred got a paper drawn up and Mrs. Dale accepted it, but wished to show it to a friend first. That friend advised her to have it written out by another lawyer—not changing the terms of it, only making it more secure in its payments for her. This was the beginning of disagreements between them. That is all I have to say.

Q 1075. Did she tell you who this friend was?

A. Yes.

Q 1076. Who did she tell you it was?

A. Mr. William Ryle.

Q 1077. Did you assist Mrs. Dale in her prepara-
684 tions before she went to Philadelphia?

A. Yes.

Q 1078. What did you do for her?

A. Merely helped her to pack and arrange her trunks.

Q 1079. At that time did she say anything to you

in relation to her property, and if so, state what she said?

A. Her property was so varied, I cannot answer that correctly.

Q 1080. Did she state to you of what her property consisted? 685

A. Yes.

Q 1081. Can you state generally what she said?

A. Her machinery in the mill, her property in New Haven, consisting of houses and lots, her property in Newport and her personal property, her furniture and clothing, and what might yet be left to her from her mother's estate.

Q 1082. Did you ever notice in your conversations with Mrs. Dale that her memory was defective?

A. No, never. She had a remarkable memory.

Q 1083. In the course of your long acquaintance with her, did you notice any failing or weakening of her mental powers? 686

A. No; only her physical powers.

Q 1084. Did she ever experience, so far as your observation extended, any difficulty in expressing her ideas in words?

A. No; only as we all do forget a word now and then, and I used to attribute that to her wonderful knowledge of the different languages; while she was in Germany she spoke entirely German, and would now and then hesitate for her word in English.

Q 1085. Did you, during your whole acquaintance with her, ever notice any evidence of mental alienation? 687

A. No.

Cross-examination:

Q 1086. Did Mrs. Dale come to reside in Paterson about the time that the Dale Mill, so called, went into operation?

A. No; she came after it was in operation.

Q 1087. Can you remember about how long after?

A. I could not say exactly how many years.

688 Q 1088. At the time of her death, you had known Mrs. Dale about ten years, had you not?

A. Yes.

Q 1089. Did you ever reside in a house with her?

A. Yes.

Q 1090. When, where and how long?

A. At different times during those 10 years; I have travelled with her and lived in Broadway with her night and day, many times during those ten years.

Q 1091. You were never a regular member of her household, were you?

A. No.

Q 1092. When was it that you last resided with
689 her in Broadway in Paterson?

A. Just before her departure for Philadelphia.

Q 1093. In whose family did you and she then reside?

A. In her son Nelson's family.

Q 1094. How long were you a resident there at that time?

A. About a fortnight at a time.

Q 1095. You live and keep house with your brother in Paterson, do you not?

A. Yes.

Q 1096. Please say how you came to reside with Mrs. Dale, in the family of Nelson Dale, just before Mrs. Dale's departure for Philadelphia?

690 A. Mr. Nelson and his family were absent.

Q 1097. Was this the fortnight immediately preceding her departure?

A. No.

Q 1098. How long before was it?

A. I could not tell the exact time.

Q 1099. Did Mrs. Dale experience any profound stupor during your visit?

A. No. 691

Q 1100. Was she confined to her bed during any part of that visit of yours?

A. No.

Q 1101. Was Mrs. Dale engaged during that time in packing her china?

A. No.

Q 1102. Please try to recollect how long before her departure this was—or how long after her return from New Haven?

A. It was before she went to New Haven, and shortly after her return from Europe.

Q 1103. At least six months, then, before her death, was it not?

A. Yes, I think about that; I cannot say exactly. 692

Q 1104. Did you ever reside in the same house with Mrs. Dale, after that?

A. No.

Q 1105. In whose house was Mrs. Dale living when she finally left Paterson.

A. In her son Nelson's.

Q. 1106. Who composed the family?

A. Mr. Nelson and his wife and children, and his mother-in-law Mrs. Brown, and his mother.

Q 1107. Were you intimate with all of them?

A. Yes.

Q 1108. Were you a frequent caller at the house?

A. Yes. 693

Q 1109. When Mrs. Dale told you that her will had come from New York—by whom did she say it was brought to her?

A. She did not tell me.

Q 1110. Did she say who was the lawyer who sent it to her?

A. Yes ; Mr. Wallis.

Q 1111. Did she say when she had seen him, if at all ?

A. She told me she saw him on her return from
694 New Haven—that was one of the times.

Q 1112. Did she say she had seen him more than once about her will ?

A. She never told me she had seen him expressly about the will.

Q 1113. What do you mean in answer to question 1111, when you say, "that was one of the times"?

A. It was the time I remember most distinctly.

Q 1114. Do you remember, then, indistinctly, that she told you that she had seen her lawyer in reference to her will at other times ?

Objected to, on the ground that the witness has not stated that Mrs. Dale ever told her that she seen her lawyer in relation to her will ?

695 A. I don't remember indistinctly even that she had not told me that she saw her lawyer expressly for her will ?

Q 1115. I have not asked whether Mrs. Dale ever said that she saw a lawyer expressly for her will. I understood you to say or intimate that Mrs. Dale said she had seen a lawyer about her will ; please say whether that is so ?

A. In showing me her will and telling me of its provisions, she told me, by her lawyer's advice she had made that bequest to Fred's children.

Q 1116. Is that all that she said about a lawyer in connection with her will ?

696 A. She told me her lawyer had written it.

Q 1117. Is that all she said about a lawyer in connection with her will ?

A. Yes.

Q 1118. How long after Mrs. Dale's return from New Haven was it that this conversation about her will took place ?

A. It may be two or three weeks, I cannot remember.

Q 1119. Did Mrs. Dale read the paper to you?

A. Not all of it, merely the first few lines.

Q 1120. How much of it did there seem to be? 697

A. It was quite a large paper, I couldn't tell how much.

Q 1121. Where did she take it from?

A. From a reticule that she had other papers in?

Q 1122. How did she come to take it out?

A. She wished to tell me of it, I suppose.

Q 1123. Had you been talking of her business before?

A. I suppose so.

Q 1124. What were the few lines which she read?

A. It was the first part declaring that this was the will of Sarah P. Dale—mentioning the lots and property and children, that she bestowed upon her son Nelson. Then she closed it up and put in her 698 reticule.

Q 1125. Was it signed?

A. No.

Q 1126. Did she read the part pertaining to the signature?

A. No.

Q 1127. Was there a seal on it?

A. I cannot tell.

Q 1128. Do you know whether it was dated?

A. I cannot tell.

Q 1129 Did Mrs. Dale say how long she had had it?

A. No.

Q 1130. Did she say what Nelson thought about 699 it?

A. No.

Q 1131. Did she say to whom else she had shown it?

A. No.

New Jersey State Library

Q 1132. Did she in that conversation, say how much she thought Fred took from her, as you say she expressed it ?

A. She merely said Fred takes his share now and
700 he can't have it when I am gone.

Q 1133. Question 1132 repeated ?

A. She mentioned no sum.

Q 1134. In answer to question 1064 you have said "at the time she told me of the will Fred had done her two or three ugly tricks, but she never believed he could have done this." Do you mean by that part of the answer which ends with the word tricks, that Mrs. Dale said that to you ?

A. Yes.

Q 1135. Did she tell you what she meant by two or three ugly tricks ?

A. No; it seemed too painful for her to speak about; she lay back in her bed convulsed with
701 sobbing.

Q 1136. When was this conversation ?

A. It was two or three weeks after her return from New Haven; I cannot exactly answer how long.

Q 1137. How long after this was it that she told you that she had seen Fred ?

A. A few weeks, I think.

Q 1138. Did she mention the subject of their conversation, during that interview ?

A. No; not that I remember.

Q 1139. In response to question 1074, you speak of proposed arrangements of Mr. Thomas N. Dale, and of papers to have been signed ; in that answer
702 do you tell us only what Mrs. Dale told you ?

A. Yes.

Q 1140. When was it that you assisted Mrs. Dale in packing ?

A. Before her departure for Philadelphia—immediately before.

Q 1141. How long had Nelson Dale lived in Paterson, at the time of his mother's death?

A. I don't know exactly how long — two or three years; I cannot tell how long. 703

Q 1142. How long had she lived in his house, before she died?

A. I cannot tell; six or seven months it must have been; she was about eleven months in this country before her death; she was part of the time with her son Fred.

Q 1143. Can you say, Miss Inglis, when it was that Mrs. Dale left Paterson finally?

A. It was about the beginning of April, I think, or the end of March.

Q 1144. You never saw her again, I understood you to say?

A. No.

Examination of witnesses adjourned to Wednesday, November 9th, 1881, at 10¼ o'clk A.M., at same place. 704

November 9, 1881.—Examination of witnesses continued in the presence of Mr. Edwards, of counsel with proponents, and John S. Barkalow, of counsel with caveator.

ANNE INGLIS, on cross-examination, continued:

CAVEATOR RESTS.

Q. 1145. You said that Mrs. Dale showed you the draft of the will two or three weeks after her return from New Haven; is that date correct, so far as you remember? 705

A. It is—(witness says she wishes to make a correction): — She didn't show me the will, she merely took it out of her reticule and read two or three lines of it.

Q 1146. Had you ever heard a will or any part of a will read before that time ?

A. No.

706 Counsel for proponents here says, that is all we have to examine Miss Inglis at present; we may recall her for examination in chief.

Counsel for caveator demands of the proponents that they shall examine the witness in full while she is upon the stand, and states that he shall object to the recall of the witness at any future time for principal examination, and shall insist that her future testimony, if she shall be recalled, shall be strictly confined to rebuttal of matter not already traversed by her.

PROPONENTS REST.

ANNE INGLIS.

707 Sworn to November 7, 1881, and subscribed to before me, November 9th, 1881.

ISAAC VAN WAGONER,
Master in Chancery
of New Jersey.

ELIZABETH PROVAN, a witness produced on the part of the proponents, being duly sworn according to law, on her oath deposeth and saith :

Direct examination by Mr. Edwards :

708 Q 1147. What is your name and place of residence ?

A. Elizabeth Provan, 59 Prince street, Paterson.

Q 1148. Are you a widow, Mrs. Provan ?

A. Yes, sir.

Q 1149. Did you know the late Sarah P. Dale ?

A. I did.

Q 1150. When did you first become acquainted with her?

A. As near as I can recollect, about eight or nine years since I became acquainted with her.

Q 1151. Where did she live when you first became acquainted with her?

A. She was a neighbor of ours, living next door to where I live at present.

Q 1152. In the house now occupied by Frederick Dale?

A. Yes, sir.

Q 1153. Do you remember a conversation between Mrs. Dale and yourself, before her departure to Europe, in relation to the troubles between Fred and his father; if so, state it as nearly as you can.

Question objected to.

A. Well, she told me there had been some trouble, but not the nature of the trouble.

Q 1154. Did she say how long that trouble had lasted?

A. Well, I think she said for some time.

Q 1155. Did she specify any time?

A. No, sir; she did not.

Q 1156. Do you remember the time Mrs. Dale returned from Europe?

A. The last time she returned from Europe?

Q 1157. Yes?

A. Yes, sir.

Q 1158. Where did she go to live then?

A. I think she went with Mr. Fred; but I am not sure about that; whether she went to Mr. Nelson's or not, I am sure I could not say.

Q 1159. After her return from Europe, did you ever have any conversations with Mrs. Dale in relation to the machinery contract, or the machinery itself, that was then being used by her son Frederick; and, if so, state it.

Question objected to.

A. Well, she told me that there had been—that Mr. Fred had bought the machinery—(a pause)—now, I cannot tell you whether this was the first
712 time or not—but that he had bought the machinery, and had wronged her in the buying of it—in the sale of it, or in the buying of it, in some way.

Q 1160. Well, did she state her feelings in relation to that sale?

A. Well, she felt very badly about it; she thought she had trusted to Mr. Fred, and she felt very badly that he had betrayed her trust in the matter; she expressed herself in that way.

Q 1161. Did she ever say anything else to you in relation to it?

A. I do not remember anything else that was said in regard to the machinery at that time.

Q 1162. Did she ever say anything to you, at any other time, in relation to the machinery?
713 A. I cannot recollect, just now, whether she did or not.

Q 1163. When and where did you see Mrs. Dale, the last time?

A. At the house of Mr. Nelson Dale, in Broadway.

Q 1164. When?

A. When?

Q 1165. Yes?

A. About three days before her leaving the city for Philadelphia.

Q 1166. About what time in the year was that;
714 or do you remember?

A. I do not remember what time; I have a very bad memory for dates; but I think it was very near the first of May or April, if I am not mistaken; I cannot be certain as to that—as to the time of the year at all; I did not take particular notice.

Q 1167. Did Mrs. Dale say anything to you at that time in relation to her will ; and if so, what ?

A. Not at that time, but at a previous conversation she did.

Q 1168. When did that previous conversation take place ? 715

A. About three weeks before she left for Philadelphia she sent for me, saying she was going away and would like to see me; when I went she was very ill, lying in bed in her room.

Q 1169. Well, what did she say to you ?

A. Well, she spoke concerning the will; we talked upon a great many things, and among some of them the will was mentioned.

Q 1170. What did she say about it ?

A. She told me the contents of the will, pretty near, as near as she could.

Q 1171. What did she say the contents were ?

A. The principal part of it was that she had left all she possessed to Nelson and his children. 716

Q 1172. Anything else ?

A. I do not particularly remember anything else.

Q 1173. What did you say to her then ?

A. Well, after she had been telling me about the will, I sat still for a few minutes, she asked me why I was silent about it (a pause)——

Q 1174. Well ?

A. And I remarked to her that I — I asked her about the justness of making the will that way, and she said she supposed she would receive condemnation from on account of that will, but that Mr. Fred was a smart business man, and he had an opportunity of making a living that Nelson had not — 717 that what she was doing was for the best — in providing for those who could not provide for themselves.

Q 1175. Did she say anything about a bequest to Fred's children ; and if so, what ?

A. I remarked to her that Mr. Fred might break that will, by her not mentioning him in the will, and she said she had made provision for that by leaving one thousand dollars to each of his children, to be
718 paid at Nelson's discretion.

Q 1176. Did she say anything about Fred's action in relation to the machinery, at that time; and if so, what?

Question objected to as leading, and withdrawn.

Q 1177. Was anything else said at that interview?

A. Well, there was a great deal said, but nothing bearing upon the case that I can remember particularly.

Q 1178. Was anything said in relation to Fred's action toward her; and if so, what?

A. Well, in conversation with her, I asked her if it would not be better to try to make up this matter
719 between her children, and she said she had tried very hard to do so, she loved them both; what she had done was an act of justice, she thought; she was very sorry for what had happened, but the amount of it was that she could not trust Mr. Fred.

Q 1179. During this conversation did she say anything in relation to Fred's business capacity, and if so, what?

A. Well, she said he was a smart business man, and would make his way in the world, and the advantages he had got in getting the machinery would help him to do so, or something to that effect; those may not have been her very words, but something to that effect.

720 Q 1180. Mrs. Provan, during these conversations with Mrs. Dale, did her memory seem to be impaired?

A. I did not think so at the time.

Q 1181. Did she seem bright?

A. She seemed remarkably bright and clear about the will, and about other things; we were speaking of the hospital work, of the workings in the hospital; I was associated with her in the hospital work, and 721
I thought she was remarkably bright and clear about it, and regretted she had to leave the work, made suggestions about what she thought ought to be done, seemed to me to be remarkably bright and clear in all she said; she was a remarkable woman in that way.

Q 1182. Were you surprised to hear of any question being raised as to her mental capacity?

A. I was.

Q 1183. In the conversation you had with Mrs. Dale just prior to her departure for Philadelphia, was anything then said in relation to the will?

A. Well, I think she told me it had not been signed at that time, or there was something more 722
to do to it, I don't know what, and I laughingly said, "You will perhaps make another before it is too late."

Q 1184. What did she then say?

A. She shook her head, did not answer me.

Q 1185. Where did this conversation take place?

A. At Mr. Nelson's house in Broadway.

Cross-examination by Mr. Barkalow:

Q 1186. Mrs Provan, did you know of the fact of Mrs. Dale going to New Haven that winter?

A. Yes, sir; I knew she told me she was going; I don't know that she really went.

Q 1187. Do you remember when she returned— 723
the fact of her return?

A. From New Haven?

Q 1188. Yes?

A. I can't remember now.

Q 1189. I did not ask you when it was; I asked you whether you remembered the fact of her return?

A. I remember of seeing her after she returned.

Q 1190. You remember there was a time when she returned?

A. Yes, sir.

724 Q 1191. About how long was that, to the best of your recollection, before she went to Philadelphia?

A. I could not remember that, sir.

Q 1192. Please observe that my question is—about how long, to the best of your recollection—you must have some mind upon the subject?

A. I remember of seeing her after she had returned, but I really cannot say when it was, what time of the year, or how long it was before she went away; I never gave it any thought

Q 1193. Can you remember, or not, whether it was after the Christmas holidays, when she returned from New Haven?

A. No, sir; I think not; I think it was before; it
725 was either after coming back from New Haven or Newport, but I think it was after coming from Newport; she went to New Haven and Newport at the same time; Mr. Fred and his family were there at the time.

Q 1194. How frequently did you see Mrs. Dale, between the fall before she died, and the time of her leaving Paterson finally?

A. I think about four times.

Q 1195. And I understand you one of those conversations was three days before she left Paterson, and another was three weeks before she left Paterson?

726 A. Yes, sir.

Q 1196. When was the occasion previous to those two, as well as you can recollect—a long time before?

A. Not so very long.

Q 1197. About how long?

A. I should say about two or three weeks, but I

am not certain as to the dates; I cannot remember anything about that; I could not be certain as to the date.

Q 1198. Then your fourth interview; how long was that before the one of which you have just spoken? 727

A. That was when Mr. Fred and his mother had just arrived from Europe.

Q 1199. Then do I understand you, as well as you can recollect at present, you saw Mrs. Dale and her son Fred after she had returned from Europe; then you saw her four weeks before; then three weeks; and then your final interview was three days before she left for Philadelphia?

A. Yes, sir: about that.

Q 1200. On the occasion on which you saw her about three weeks before she left for Philadelphia, I understand you to say that she was ill?

A. She was lying in bed when I went to see her; I was taken to her room. 728

Q 1201. Did she seem very ill?

A. No, sir, she did not seem very ill; she was unable to rise.

Q 1202. What appliances of the sick room, if any, were about her?

A. Well, Nelson came in two or three times while I was there and gave her medicine.

Q 1203. Was Nelson in constant attendance?

A. He and his wife.

Q 1204. Did Mrs. Dale have ice on her head?

A. No, sir.

Q 1205. Did Mrs. Dale tell you of any extreme attack she had had? 729

A. No, sir; she had been very ill before I went. After I went she seemed bright and clear — did not express any pain while I was there.

Q 1206. Did she speak of any coma or sleeplessness while you were there?

A. No, sir; she did not.

Q 1207. Do you know whether she had experienced a profound and dangerous stupor before that interview with her?

730 A. No, sir, I do not; she did not say anything about it.

Q 1208. I ask, do you know?

A. No, sir; I do not.

Q 1208½. Do you know whether she experienced any such attack after that, before leaving Paterson?

A. I donot think she did, or I should have heard of it.

Q 1209. Were you not informed at any time previous to Mrs Dale's leaving for Philadelphia, that she had been in great danger and lay in a profound stupor?

A. No, sir; I did not hear that, sir.

Q 1210. You did not hear of any such thing?

A. No, sir.

Q 1211. Were you an intimate friend of Mrs. Dale?

731 A. Well, we were very intimate while we were neighbors, but I did not see her as often after she returned from Europe.

Q 1212. Were you neighbors in Prince street?

A. Yes, sir.

Q 1213. And when Mrs. Dale last lived in Paterson, she lived in Broadway, did she not?

A. Yes, sir; after her return from Europe.

Q 1214. Your house is perhaps as much as half a mile from the house in which she last lived—Nelson Dale's?

A. Well, I should judge pretty near that.

Q 1215. Did you ever see Mrs. Dale after that last time—three days before she left for Philadelphia?

732 A. No, sir; I had to leave the city, and did not see her again.

Q 1216. She was then expecting to leave for Philadelphia?

A. She was; and had all her arrangements made for leaving.

Q 1217. I understand you that on that occasion she spoke to you of trouble there had been between her husband and her son Fred?

A. Yes, sir.

733

Q 1218. Before her return from Europe?

A. Yes, sir.

Q 1219. Do I understand you rightly, that she spoke of it at this last interview, three days before leaving for Philadelphia?

A. Not that there had been trouble before going to Europe, but there was trouble before his death.

Q 1220. Did she go into particulars of that difficulty?

A. No, sir.

Q 1221. At which of her interviews with her, during the spring of 1880, did Mrs. Dale converse with you about the machinery?

A. It was this time I visited her three weeks before she left; that was the time she sent for me and I went.

734

Q 1222. In what did she profess herself injured by her son Fred?

A. That he had taken advantage of her in some way; I could not tell what; she did not say how.

Q 1223. Did she say to what extent?

A. She did not.

Q 1224. Did she go into particulars at all at that time?

A. She told me it would cut off her income quite some.

Q 1225. Anything else?

A. I cannot exactly tell what she did say.

Q 1226. Did she express no measure in money of the difficulty?

735

A. She did not that I remember.

Q 1227. Did Mrs. Dale ever tell you that Frederick had managed her affairs while she was in Europe—had managed them well?

A. I do not think she ever said anything about that; I do not remember her speaking about it.

Q 1228. Has not Mrs. Dale expressed to you her confidence in her son Frederick, at different times?

A. After her return from Europe she did; she said he had been very kind to her, and would do
736 all in his power to assist her at that time; and when she sent for me to tell me the contrary, I was very much surprised.

Q 1229. When she returned from Europe did she not also tell you that efforts had been made by Mr. Thomas N. Dale and by Nelson Dale or by one or the other of them, to set her against Fred?

A. No, sir, she did not—(a pause)—excuse me, she said Mr. Dale, not mentioning Mr. Nelson Dale at all, in regard to that.

Q 1230. She did say, then, that Mr. Dale had sought to set her against Fred?

A. She did.

Q 1231. Did she say that he had done so in con-
737 junction with anybody else?

A. She did not.

Q 1232. Did she say that she had resisted the efforts of Mr. Dale?

A. Yes, sir, she did, she told me she had.

Q 1233. Did Mrs. Dale say anything to you about her difficulty in writing letters that she experienced while abroad?

A. Difficulty in writing letters?

Q 1234. In corresponding to her satisfaction?

A. With Mr. Dale?

Q 1235. With anybody?

A. No, sir.

738 Q 1236. Did she mention to you that she found difficulty in remembering afterwards, letters she had written?

A. She did not.

Q 1237. She said nothing on that subject?

A. No.

Q 1238. In your principal examination, when you first spoke, referring to the interview three days before she went to Philadelphia, you testified that she said nothing then about the will?

A. I wish to correct that—nothing in general, 739
only in just speaking—(interruption)—

Q 1239. Only what you subsequently told us?

A. Yes sir; I meant about that, that this conversation in regard to the will did not occur at that time, it occurred three weeks previously.

Q. 1240. Will you state more particularly the physical condition of Mrs. Dale when she sent for you three weeks before she left?

A. Well, she seemed to be very ill.

Q 1241. Particularize, if you please?

A. Had been in bed some days, I understood.

Q 1242. Was she attended by any physician at that time?

A. I think she was, but what physician I could 740
not tell.

Q 1243. How long were you there?

A. I was there from a little after one o'clock, until dark.

Q 1244. How often were medicines administered to her during that period?

A. I think about twice, two or three different times; once she requested me to ask Nelson, I think, to give her some medicine, and she took it in her hand herself—dropped it in a spoon.

Q 1245. Do you know what was given her?

A. I do not.

Q 1246. Did she tell you how long she had been confined to her room? 741

A. Well, no; she did not say how long she had been confined to her bed; but she was in bed almost every day, or lying down.

Q 1247. Was she on the bed, or in bed?

A. She was lying on the bed.

Q 1248. Dressed—was she?

A. Yes, sir.

Q 1249. Did she have with her, as far as you
742 know, this will she spoke of?

A. I could not say as to that; but she said the part of the room she was in was so dark she could not read it, she would tell me; so by that I judged she had it with her.

Q 1250. Did she take it out?

A. No, sir.

Q 1251. Did she read it?

A. No, sir.

Q 1252. What did she say?

A. She did not read it; she told me the principal parts of it.

Q 1253. Tell me exactly what Mrs. Dale said to you, as to the contents of that will, and all about it?

743 A. She spoke about leaving her property to Mr. Nelson.

Q 1254. Did she tell you who drew the will?

A. Yes, sir; a firm in New York.

Q 1255. What firm, do you remember?

A. I could not be positive as to their names.

Q 1256. Did she say when she directed it to be drawn?

A. She spoke of it coming back from the office; I think she said she went there and had it drawn.

Q 1257. She told you she had it drawn there?

A. Yes, sir.

Q 1258. How did she get it from there?

A. She did not say.

744 Q 1259. Did she tell you at the time she conversed with you, that it was completed?

A. I think she said it was not signed.

Q 1260. Did she say it was completed otherwise?

A. She did not—I think not.

Q 1261. And all you can recollect she told you was that she left all her property to Nelson and his children?

A. Yes, sir; and in general conversation about it, I asked her if she thought it was just, and she said, as I said before, she might receive some condemnation for doing so, but what she had done was for the best, she thought, in providing for those who could not provide for themselves. 745

Q 1262. In reference to the contents of the will, I want to ask you again if all you can remember is that she told you she had left all her property to Nelson and his children?

A. Yes, sir.

Q 1263. That is all you can remember?

A. Yes, sir.

Q 1264. Did she say whether or not there was anything else in the will she did not mention?

A. No, I do not think she told me anything else, I won't be positive, but I think she told me there were a few little articles that were left to friends, that is, some small articles she had given to some of her acquaintances, but I am not positive as to that. 746

Q 1265. You are not positive as to that?

A. She did in one conversation, but I am not positive as to whether it was then or not.

Q 1266. Are you positive she told you so in some conversation?

A. Yes, sir.

Q 1267. After her return from New Haven?

A. Yes, sir.

Q 1268. You say you and she that afternoon spoke of many other things; were they such as related at all to her family affairs, or to her will, or to the questions involved in this case? 747

A. I do not think they were; I do not think they were of any consequence in this case at all.

Q 1269. Did you ask her whether she could not make up matters between her children, or between her and her children; which did you say?

A. It was mentioned before, the family matters,
748 settling those differences between all parties; I felt she had no feeling in the matter much, only that she felt that her children ought not to be at enmity with each other, and, in fact, she shed tears over it, but she said she had tried to do everything she could to have it otherwise, but it seemed that it was not to be.

Q 1270. Did Mrs. Dale say anything to you at that or any other time about a certain picture he sold for her?

Objected to as not proper cross-examination.

A. Well, I cannot remember—I remember something about that, too, but I cannot remember just
749 what it was.

Q 1271. Don't you remember her expressing her disapprobation at Nelson's conduct in relation to that picture?

Objected to.

A. No, sir, I don't remember her expressing anything in that way.

Q 1272. She told you of it?

A. Not of the fact of his selling a picture.

Q 1273. What did she tell you, if she did not tell you of his selling it?

A. I remember her telling something of a picture —I think it was at the time of the hospital fair—in the art gallery; I think there was a picture brought
750 from New York and placed in that gallery, perhaps that is what I remember in regard to that picture.

Q 1274. What was there about it?

A. I think she was not pleased at its being brought here.

Q 1275. Wasn't she displeased?

A. She was not at all pleased at its being brought here.

Q 1276. Did not she say so? 751

A. Well, she wasn't pleased at its being brought from New York.

Q 1277. Wasn't she displeased at Nelson's conduct or agency in the matter?

Objected to.

A. Nelson's name was never mentioned in the matter; it was Thomas N. Dale.

Q 1278. I still ask you my question—whether she was not displeased at Nelson's conduct in the matter. I don't ask you whether his name was mentioned or indicated in some way; I ask you whether you haven't it in your knowledge that she was displeased at Nelson's conduct in the matter?

Question objected to unless confined to one of those four interviews. 752

A. She was certainly not pleased at its being brought here, but she mentioned Mr. Thomas N. Dale's name in connection with the affair.

Q 1279. Your answers are always of the same character, and they do not answer my question; I am indifferent how you answer it, but I repeat it: is it not in your mind and in your knowledge that Mrs. Dale was displeased at the conduct of Nelson Dale in that matter?

A. She was not as far as I could judge.

Q 1280. How long before Mrs. Dale's death was that picture brought to Paterson?

Question objected to as being improper cross-examination. 753

A. Well, it was the year previous to her death in December.

Q 1281. Was it returned to New York, do you know, after?

A. I could not say.

Q 1282. Did you ever see Mrs. Dale when she was confined to her bed in Nelson's house?

A. Only on that occasion, and then she was not
754 confined to her bed really.

Q 1283. Did you ever see Mrs. Dale when she was confined to her bed in Nelson's house.

A. No, sir.

Q 1284. Did Mrs Dale make a visit to Fred's house after her return from Europe?

A. Yes, sir.

Q 1285. Do you recollect when she left there?

A. I do not; she made a call at our house the day before she left, but I think it was three or four weeks that she was there, but I am not positive as to the time.

Q 1286. Do you know of whom the household consisted at the time you visited Mrs. Dale at Nel-
755 son's, just previous to her going to Philadelphia—who constituted the family?

A. Well, as far as I knew, Mr. and Mrs. Nelson Dale and her mother and the children, and the help; I don't think there was anybody else, that I remember of.

Q 1287. Do you remember how long Mrs. Dale had been in Europe when she returned that last time?

A. I could not say.

Q 1288. Can't you give us some idea, whether it was a month or a year?

A. I think it was a year.

756 Q 1289. Do you think it was as much as two years?

A. No, I don't think it was.

Q 1290. Is your husband living?

A. No, sir.

Q 1291. You have grown up children, have you not?

A. No, sir ; I have no children.

Q 1292. I suppose it is fair to ask you whether you have reached middle age ?

A. Yes, sir.

Q 1293. You have had children ? 757

A. No, sir.

Re-direct by Mr. Edwards :

Q 1294. Do you remember what time of the year it was that Mrs. Dale visited Newport ?

A. Well, it was in the fall ?

Q 1295. Shortly after her return from Europe ?

A. I don't think she went right after she came back—I think it was some time.

Q 1296. How long after that was it that she visited New Haven ?

A. Well, I think, if I remember aright, it was the same time ; after she had visited New Haven she went to Newport.

Q 1297. Do you remember about what time that 758 fair was held ?

A. In December.

Q 1298. In what year ?

A 1879—1878 or 1879, I think.

Q 1299. Was Mrs. Dale in this country at that time—at the time of that fair ?

A. She was not.

Re-cross by Mr. Barkalow :

Q 1300. How long after the fair itself, was it, then, that she spoke to you of her displeasure at the picture having been displayed there ?

A. After her return from Europe here, but I can't 759 remember what time, but the first interview I had with her after her return from Europe she spoke of it.

Q 1301. Mrs. Provan what is your age ?

A. Forty-four in April.

Q 1302. That's all, Mrs. Provau.

Counsel for caveator objects to proceeding further until Mrs. Provau's testimony is made a
760 finality by her signature.

Counsel for proponents states that they are willing to adjourn the case at this stage so that the stenographic notes may be written up and Mrs. Provan may sign her testimony.

Adjourned to Thursday, November 17, 1881, at 10¼ o'clock, A.M., at the same place.

ELIZABETH PROVAN.

Sworn to, November 9, 1881, and subscribed before me, November 11, 1881.

ISAAC VAN WAGONER,
Master in Chancery
761 of New Jersey.

Examination continued at the office of George W. Cassedy, Esq., No. 1 Exchange Place, Jersey City, this seventeenth day of November, A.D. 1881, pursuant to notice, in the presence of Mr. Wallis, counsel of proponents, and Mr. Barkalow, counsel of caveator.

MARGARET DALE, a witness produced on the part of the proponents, being duly sworn according to law, on her oath deposeth and saith:

762

Direct examination by Mr. Wallis:

Q 1307. What is your name?

A. Margaret Dale.

Q. 1308. And your residence?

A. Newport, Rhode Island.

Q 1309. You are the wife of T. Nelson Dale, the proponent in this matter?

A. Yes, sir. 763

Q 1310. Did you know Mrs. Sarah P. Dale in her lifetime?

A. Yes, sir.

Q 1311. How long had you known her before she died?

A. Since the year 1874 — (a pause) — I think I made a mistake — it was in 1873. She was in my father's care at that time. I did not know her as well as in 1874. I came into the family at the close of 1874.

Q 1312. Do you remember the time Mrs. Sarah P. Dale left your house in Paterson to go to Philadelphia the last time?

A. Yes, sir. 764

Q 1313. How long before that time had she resided with you?

A. She left Paterson in April, I think April 5; I think we left Paterson April 5. She came back from New Haven the first week in February. She had been with us pretty much all the time with the exception of a few days.

Q 1314. How often did you see Mrs. Dale while she resided in your house?

A. Some three or four times a day; when she was able to come down stairs of course she was with us all the time.

Q 1315. What time was she unable to come down stairs? 765

A. When she had those very severe headaches she was confined to her bed; we saw her then quite a number of times a day.

Q 1316. Do you know Mr. Frederick S. Dale?

A. Yes, sir.

Q 1317. Do you know one Elizabeth O'Conner?

A. Yes, sir.

Q 1318. Did she live with you while Mrs. Dale resided with you in Paterson?

766 A. Yes, sir.

Q 1319. In what capacity?

A. Cook.

Q 1320. Were there other servants in the family?

A. Yes, sir, one.

Q 1321. What were the duties of that other servant?

A. She assisted with the children, and did up stairs work—bedroom work.

Q 1322. Did Elizabeth O'Conner do any of the up stairs work?

A. If Susan was out she did. Sometimes she took Mrs. Dale's meals up.

Q 1323. Do you remember directing Elizabeth O'Conner at any time during Mrs. Dale's last residence at your house not to admit Mr. Frederick S.

767 Dale to the house?

A. Yes, sir; Mrs. Dale told me if Frederick called to see her, she did not wish to see him, she did not feel able.

Q 1324. It was in obedience to that direction of Mrs. Dale's that you told Elizabeth O'Conner?

A. Yes, sir, but the girl always went to Mrs. Dale's room independent of that, and she declined to see him except the last time before her departure for Philadelphia.

Q 1325. How did she come to see him on that occasion?

768 A. I went up to the room that time myself and said "mamma, will you see Fred," and she said "I suppose so."

Q 1326. How frequently did Frederick S. Dale call to see his mother before this?

A. I think four or five times, he called about once a week, Sabbath evenings as a general thing.

Q 1327. Do you know whether during Mrs. Dale's residence at your house she had or expressed an intention of traveling?

A. Of traveling?

Q 1328. Yes? 769

A. She was going to return to Europe—those were her intentions—in the following fall.

Q 1329. Do you know whether she had made any preparations to that end?

A. She did not make any preparations that I know of. She was trying to get her business in shape so that she could leave—that was her idea.

Q 1330. Do you know Mrs. Brown who was residing with you in your family, at the time Mrs. Dale was there?

A. My mother?

Q 1331. That is your mother?

A. Yes, sir.

Q 1332. How long was she living in that house while Mrs. Dale was there? 770

A. All the time. She made her home with us.

Q 1333. Do you remember an occasion when Mrs. Dale went to Mrs. Brown's room at night?

A. Yes, sir, she went many times.

Q 1334. What time in the night?

A. Any time after supper; I could not tell exactly the hour; the evenings that she did come up to my mother's room, I was with my mother; we were always together.

Q 1335. Do you know of her going up there after she had retired?

A. After my mother had retired?

Q 1336. Yes? 771

A. No; I know what you refer to; my mother had been sick, and confined to her bed for days, and Mother Dale came up a few times while she was in bed.

Q 1337. Was Mrs. Dale clothed when she came up?

A. Yes, sir; always.

Q 1338. Do you ever remember her coming up
772 not clothed—in her night dress?

A. No, sir; never.

Q 1339. How late in the night did these visits occur?

A. At any time after seven.

Q 1340 And would last up to what time?

A. Never after ten.

Q 1341. What was the occasion of Mrs. Dale visiting your mother?

A. She loved to visit mother; my mother's room was on the top floor; Mrs. Dale's on the lower floor; they loved to talk together at the table.

Q 1342. Did Mrs. Dale, to your knowledge, ever go to your mother's room, after your mother had
773 retired?

A. No, sir.

Q 1343. Or after the family had retired?

A. No, sir; not to my knowledge; my mother was in bed a few days; don't know whether you call that retired or not; she was in bed sometimes when Mrs. Dale called or came in.

Q 1345. Do you remember ever stating to Elizabeth O'Conner, that you thought Mrs. Sarah P. Dale was going out of her head?

A. No, sir; she made that remark to me, though.

Q 1346. She did?

A. Yes, sir.

Q 1347. On what occasion?

774 A. I forget on what occasion; mother was laughing with her, joking with Elizabeth about something; Elizabeth came down after mother was sick, and said: "I think Mrs. Dale is crazy—don't you think so Mrs. Dale;" I said, "No, and you don't

think so;" she only said it for fun, and then went away; you know this Elizabeth O'Conner drank, Mr. Wallis.

Q 1348. This Elizabeth O'Conner did drink? 775

A. Yes, sir.

Q 1349. Was she ever intoxicated while in your house?

A. Yes, sir.

Q 1350. During the last month of Mrs. Dale's residence in your house, was she confined to her room?

A. Yes, sir.

Q 1351. What time?

A. Pretty much all the time.

Q 1352. Who stayed with her?

A. Who stayed with her?

Q 1353. Yes?

A. Nobody stayed with her; as a family we were in and about the room; my room was adjoining hers; she did not require any one to stay with her. 776

Q 1354. How often, on an average, were in her room, during the last month?

A. Many times, Mr. Wallis; I could not tell you how many times; I always went in when the meals were taken to her, to see that she was comfortable; so did my mother; so did the second girl; so did Nelson; we were always attentive.

Q 1355. Was the door of Mrs. Dale's room ever locked, while she was in it?

A. Not in the day time; I don't know whether she locked it at night or not; not during her last sickness the door was not locked. 777

Q 1356. So that during the last month of Mrs. Dale's stay with you, the door was not locked?

A. No, sir; when she was suffering very much with her head, the door was left open; Nelson and I used to go in to see if she wanted anything.

Q 1357. Did you see Mrs. Dale when she left your house for Philadelphia?

A. Yes, sir; went to the carriage door with her.

778 Q 1358. Did she kiss Elizabeth O'Conner good bye?

A. No, sir; she shook hands with Elizabeth, who had come to the door to bid her good bye.

Q 1358½. Did she say to Elizabeth O'Conner, she would never come back to Paterson—she was going away altogether—or anything to that effect?

A. Not in my presence; she simply said good bye to Elizabeth in the hall; I don't think she said anything to Elizabeth except in the hall, when she was going to say good bye.

Q 1359. Do you remember any particular occasion on which Elizabeth O'Conner was intoxicated in your house; if so, please state the circumstances?

779 A. She was intoxicated twice; so much so that she was not able to finish her work in the evening; she ran out while we were at our tea, and said she was going to post a letter; when she came back she was not able to finish her dishes; my mother and I told her she had better go to her room; I would not have kept her at that time, only she was very accommodating and kind, waiting on Mrs. Dale, and all of us.

Q 1360. Did Mrs. Dale, while residing with you, ever say anything to you in relation to her will, or the disposition of her property?

780 A. Only on one occasion.

Q 1361. What did she say then?

A. She said she would give Fred—her son's—children something, but he— She did not finish what she would have liked to have said; she did not wish to express her feelings.

Q 1362. How long was that before Mrs. Dale went to Philadelphia?

A. I do not know, Mr. Wallis; it was some time after she returned from New Haven; she was well at the time when she spoke. 781

Q 1363. Did Mrs. Dale ever tell you what took place at her last interview with her son Fred?

A. She did not tell me, no, sir; only she said he had grieved her very much and wounded her feelings very much in regard to some conversation they had had in New Haven, said he had acted towards her as he did towards his wife—that's all.

Q 1364. Did Mrs. Dale ever make any remark to you in regard to the business capacity of her son Fred?

A. She made a remark once to my mother, in my presence, while we were in the room together, she guessed he would get along in the world, he would get along. 782

Q 1365. Before Mrs. Dale came to your house on this last occasion where had she been staying?

A. When she came from Newport she had been with Fred, visiting Newport; I really forget whether she came to Fred's house or came to our house from Newport.

Q 1366. When she first came to your house did she make any remark about the way she had been treated while at Fred's house? if so, please state what it was?

A. After she returned from Fred's house?

Q 1367. Yes?

A. She stayed at our house first a few days and then went to Fred's house. 783

Q 1368. After she came from Fred's house?

A. Yes, sir, she complained that she did not feel at home; she was left at home a great deal in the evenings, and did not like it.

Q 1369. While Mrs. Dale was at your house on this last occasion what was her general disposition, bright or otherwise?

A. Quite bright, just as bright as she usually
784 was.

Q 1370. Did you ever notice any failure of memory on her part?

A. No, I never did; she was very bright, very keen.

Q 1371. Did you ever notice an inability in her to catch the word she wanted to use in speaking, or hesitation in speaking?

A. I never noticed any deficiency in that respect.

Q 1372. What was her general disposition? was she easily led, or was she opinionated?

A. Very opinionated, very decided.

Q 1373. Did you know when Mrs. Dale made her will?

785 A. No, sir.

Q 1374. Had you heard anything from any source about her making a will?

A. No, sir, did not know it was made, or the contents of it, until after her funeral.

Q 1375. Had you ever had any intimation from any source other than you have already testified to, as to any of the contents of that will?

A. No.

Q. 1376. Did you ever while Mrs. Dale was residing in your house see any signs of mental weakness in her?

A. No, sir.

Q 1377. Was she able to carry on conversation?

786 A. Yes, sir.

Q 1378. Did she ever speak anything about her property?

A. No more than she would like to get it in a settled state, so that she could leave for Europe in

the fall; never talked much to me about her property.

Q 1379. Was Mrs. Dale during her residence with you, to your knowledge, connected with any public institution in Paterson? 787

A. Connected with the Ladies' Hospital, was president of it, I believe, for the first few years; I think she resigned before she went to Europe the last time.

Q 1380. Did she continue her connection with it?

A. After her return?

Q 1381. Yes?

A. Well, I am not sure; she felt interested in it.

Q 1382. Ever speak about it in your presence?

A. Oh yes, sir.

Q 1383. Ever hear her speak about the management of it?

A. No, I never did, except with Miss Inglis; I have heard Miss Inglis and her speak about how nicely things were running. 788

Q 1384. From the time of your first acquaintance with Mrs. Dale to the time of her departure for Philadelphia, did you see any evidences of mental decay in her?

A. Never; I didn't.

Q 1385. Was there any perceptible change—perceptible to you—in the character or strength of her mind during that period?

A. No.

Q 1386. That is all, I believe.

Cross-examination by Mr. Barkalow: 789

Q 1387. How often did Mrs. Dale suffer from headaches while at your house in the spring of 1880?

A. In the spring of 1880?

Q 1388. Yes, the time you have spoken of?

A. It was the spring she died, of course?

Q 1389. Yes, I refer to that same time?

A. Think she had three; she had one very severe headache; that was the last headache at our house,
790 that was the severest she had.

Q 1390. Did she under that last headache fall into a state of coma or stupor?

A. I think she was unconscious.

Q 1391. For how long?

A. I don't know as you would call it unconsciousness; I don't know what you would call it.

Q 1392. Call it stupor?

A. Not exactly; it was unnatural.

Q 1393. How long did she continue in that unnatural state?

A. From one to two hours.

Q 1394. Do you remember an occasion on which Mrs. Dale was in a state of stupor more or less pro-
791 found, which lasted from twenty-four to forty-eight hours?

A. Never, never to my knowledge, that never happened.

Q 1395. You are sure of that?

A. Yes, sir.

Q 1396. How long would she remain in bed when she had those severe headaches?

A. I don't know as I ever counted the days.

Q 1397. I don't mean as exactly as that; I mean only your best remembrance of it?

A. I think I have seen her in bed two full days.

Q 1398. That is what I wanted to know, whether
792 it was a matter of an hour or two?

A. Yes, she felt weak after her headaches.

Q 1399. When Elizabeth O'Conner said to you that Mrs. Dale had been talking about something, and she thought she was going out of her head, as you say the thing occurred, did she say what Mrs. Dale had been joking about?

A. No, sir, she did not; she said Mrs. Dale was exceedingly lively; she said to me, naming me, "If Mrs. Dale has many more of these headaches she would go crazy." 793

Q 1400. What did you reply, Mrs. Dale?

A. I said I hoped not—something of that kind.

Q 1401. Did you never observe yourself in Mrs. Dale an undue and unnatural jocularity?

A. No, sir, she was just the same the last week at our house in that respect as the first week I met her.

Q 1402. Did you ever during your acquaintance with Mrs. Dale observe an unnatural or undue jocularity and levity?

A. No.

Q 1403. Do I understand rightly that your testimony has been to this effect, and in these words, that "Mrs. Dale said she would give Fred's children something, but"—and that she then stopped speaking? 794

A. "But he"—and she did not finish what she wanted to say.

Q 1404. Such additions as were made, then, to your previous answer, were simply intended as statements of what you thought were the intentions of her mind, but you did not mean that she used any further words?

A. No, sir; she did not express——

Q 1405. Was Mrs. Dale under medical care while she was at your house, during the spring of 1880?

A. Yes, sir.

Q 1406. Constant medical care? 795

A. Not constant.

Q 1407. Frequent?

A. Only when she had these severe attacks.

Q 1408. Did you know, during that visit, that she had a will under contemplation?

A. I knew she was thinking of making one.

Q 1409. I understand you to say that she never spoke to you in regard to it?

A. No, sir.

796 Q 1410. Do you know whether she spoke to your husband about it?

A. I presume she did—he can tell better about that.

Q 1411. Hasn't he told you that she did?

A. Yes, sir; she often spoke about it, but he always said: "wait, mother, don't trouble about that;" she often spoke to him; she was anxious to get it off her mind.

Q 1412. Frequently?

A. I don't know how often.

Q 1413. Were you aware of the transmission of papers from Mrs. Dale to some lawyer out of Paterson; Mr. Wallis, or any other lawyer?

797 A. I have often seen papers in envelopes of Mr. Wallis.

Q 1414. From the post office?

A. I don't know how they were brought.

Q 1415. Do you know whether Mr. Nelson Dale brought them?

A. I don't know.

Q 1416. Do you know of her returning them to the post office, through Mr. Nelson Dale?

A. No, sir; I don't know anything about that.

Q 1417. Did you yourself see much of Mrs. Dale during that visit?

A. What visit?

798 Q 1418. The one we have spoken of, the only one we have spoken of, the spring of 1880?

A. I saw her a great many times every day; I saw her always before retiring.

Q 1419. Were you in the habit of having long and confidential conversations?

A. No, sir; I don't think we ever had one confidential conversation; Mrs. Dale never talked with me about her business; the only remark she ever made to me in relation to her will was the remark I have told you.

799

Q 1420. Did Mrs. Dale take medicines during the whole of her visit to your house, in the spring of 1880?

A. All the time, do you mean? she took it whenever she required it.

Q 1421. She required it a good deal of the time, didn't she?

A. When these headaches came on, that is all I know of, there were a great many days when she felt well and strong.

Q 1422. You do not know that she was required to take medicines every day?

A. No, she did not.

Q 1423. Do you know who gave her medicines generally?

800

A. She took them herself generally, during her last headaches she had to have them fixed for her.

Q 1424. How often did you see Mrs. Sarah P. Dale after your first acquaintance with her, and after her return from Europe in 1879. State generally about how often?

A. 1879?

Q 1425. Yes, that was the last time she came from Europe?

A. How often did I see her?

Q 1426. Did you see her very often?

A. While she was at my house?

Q 1427. I mean before that, did you have any previous acquaintance with Mrs. Dale before 1880?

801

A. Intimate acquaintance before 1880?

Q 1428. Yes?

A. I was intimate with her, of course.

Q 1429. Where were you married?

A. In New York.

Q 1430. When?

A. At the close of 1874.

802 Q 1431. Where did you go to live then?

A. Paterson.

Q 1432. How long did you live in Paterson?

A. I think it was two years.

Q 1433. Was Mrs. Dale living there at that time?

A. Not all the time.

Q 1434. How much of the time?

A. I cannot tell you.

Q 1435. About how much of that time?

A. She went to Europe.

Q 1436. Did you reside in the same house?

A. No.

Q 1437. Did you and she form any particular intimacy during that time?

803 A. No; she was very motherly with me, and attentive in many ways.

Q 1438. Then where did you move to from Paterson?

A. To Poughkeepsie one year; my husband was at Vassar College; then returned to Paterson and began housekeeping.

Q 1439. What year was that?

A. We stayed one year in Poughkeepsie; we came down that spring; Mr. Dale died in July; Mrs. Dale retnrned the latter part of July.

Q 1440. Then from about the fall of 1876 until Mrs. Dale returned from Europe, you did not see her at all?

804 A. No, sir; she was abroad, wasn't she; of course I could not see her.

Re-direct by Mr. Wallis:

Q 1441. Mrs. Dale, you say you knew that Mrs. Sarah P. Dale was thinking of making a will, how did you know that?

A. Well, she said she was going to make one some day.

Q 1442. That's all.

It is agreed by counsel that the signature of this witness to her testimony is waived. 805

Recess from 11.40 A.M. until 1.30 P.M.

MARGARET BROWN, a witness produced on the part of the proponents, being duly sworn according to law, on her oath deposeth and saith.

Direct examination by Mr. Wallis :

Q 1143. What is your name, Mrs. Brown ?

A. Margaret Brown.

Q 1444. And your residence ?

A. Two hundred and twenty-four West Thirty-ninth street.

Q 1445. In the city of New York ?

806

A. Yes, sir.

Q 1446. Are you the mother of Mrs. Nelson Dale, the last witness ?

A. Yes, sir.

Q 1447. In the spring of 1880, where did you reside ?

A. With Mrs. Nelson Dale.

Q 1448. Where—in what town ?

A. We lived in Paterson then.

Q 1449. Did you know Mrs. Sarah P. Dale ?

A. Very well, sir.

Q 1450. Did she reside in the same house ?

A. In the same house.

Q 1451. How long was she there while you were 807 there ?

A. She came there in the summer and went to Philadelphia in the spring ; I was there about the same time.

Q 1452. Did you know Elizabeth O'Conner?

A. The servant of Mrs. Dale?

Q 1453. Yes?

A. Yes, sir; I think I did.

808 Q 1454. And she lived in the same house at the same time you were there?

A. Yes.

Q 1455. Elizabeth O'Conner has testified in this case, as follows, in answer to questions 93 and 94: "I did not see her" — meaning Mrs. Sarah P. Dale —"and heard her talking in the bed, talking so that I could understand. I knew she was in her room, because she was talking what I did not want to hear. I told Mrs. Brown about it, and Mrs. Brown did not want to go in there"; the next day she— meaning Mrs. Dale—"was bright enough." She was then asked: "Why did not Mrs. Brown want to go into Sarah P. Dale's room?"—and she answered—

809 "She told me she" — referring to yourself — "that she thought she"—meaning Mrs. Dale—"was getting out of her mind, that is what the Doctor came over from New York for. She was getting out of her mind." Can you state whether that circumstance ever took place?

A. No, sir.

Q 1456. Did you ever tell Elizabeth O'Conner that Mrs. Dale was getting out of her mind?

A. No, sir — I never thought so; I should not have been likely to have told her so, if I ever thought so.

Q 1457. Did you ever tell Elizabeth O'Conner that the Doctor came up from New York because Mrs.

810 Dale was getting out of her mind?

A. No, sir.

Q 1458. Is it a fact, or not, that at any time while you lived at Mrs. Dale's, Mrs. Dale the elder ran up to your room after all the family were in bed?

A. No, sir; she wasn't able to at any time, but she never did that.

Q 1459. Did she ever come up to your room?

A. On one occasion she came up to my room about nine o'clock, or a little after, maybe. 811

Q 1460. Was she undressed?

A. I could not say whether she was undressed.

Q 1461. At that time when Mrs. Dale came to your room about nine o'clock in the evening, was she dressed, or was she in her night clothing?

A. I could not say; Mrs. Dale was a most particular person; she was never in the habit of coming to my room or about the house at this hour of the night, but I was very sick, and she came up to see how I was?

Q 1462. What did she say when she came to your room?

A. I said, "Mrs. Dale, isn't this too much for you?" She said, "Oh, no, I came to see how you were." I had been in the habit of going to see her when she was in a condition to be seen; on this occasion I did not go, and she came to see me; the stairs were very long. She was not in the habit of coming to my room at night. 812

Q 1463. Were you frightened at her visit?

A. Frightened, oh no, sir, no occasion to be frightened.

Q 1464. Did you shake the handle of the door of Elizabeth O'Conner's room at that visit, or after the visit?

A. Oh no, sir, I was not very fond of talking to servants. 813

Q 1465. Did Mrs. Dale shake the handle of the door of Elizabeth O'Conner's room?

A. I don't know about that, sir; Elizabeth might have been frightened, she was a very excitable woman, very superstitious.

Q 1466. Did you the next morning, ask Elizabeth

if she had heard Mrs. Dale upstairs the night before?

A. I may have done so, I forget, I could not say about that.

814 Q 1467. And in answer to a question from Elizabeth O'Conner did you say that Mrs. Dale was up in your room because she was not right in her mind?

A. Oh, I never thought of such a thing, I never saw any evidence of it.

Q 1468. Did you say so to Elizabeth O'Conner?

A. No, sir.

Q 1469. Did you tell Elizabeth O'Conner that you had locked your door?

A. No. sir.

Q 1470. Did you at any time lock your door?

A. I never locked my door.

Q 1471. Did you ever state to Elizabeth O'Conner that you thought that Mrs. Dale was going out of her head?

815 A. No, sir, I never had the thought in my head she was, and it isn't likely that I should tell a servant such things.

Q 1472. Did you ever know Elizabeth O'Conner to be intoxicated?

A. Yes, sir, many a time.

Q 1473. While she was in Mrs. Dale's employ?

A. Yes, sir, have gone to the kitchen to try to persuade her to go upstairs, to go to bed before Mr. Dale went down and forced her.

Q 1474. How often did that occur?

A. Two or three different times.

816 Q 1475. That's all.

Cross-examination by Mr. Barkalow:

Q 1476. How long was Elizabeth O'Conner there, Mrs. Brown, as a servant?

A. I think she was there all winter.

Q 1477. How many times, Mrs. Brown, did you see her intoxicated?

A. Well, I should not think she ever went out but she came home the worse for liquor, but on two or three different occasions she ought to have gone right to her room without making a noise down stairs. 817

Q 1478. How often did you see her intoxicated?

A. Two or three times.

Q 1479. That is what I asked?

A. Two or three times.

Q 1480. Do you recollect positively, whether or not Mrs. Dale was in her night-dress that evening when she came in your room about nine o'clock, as you think it was?

A. I can't say as to that, but I have no idea of such a thing as of her coming in her night-dress.

Q 1481. But have you any idea whether she was or not, can you say positively whether she was in *deshabille*? 818

A. No, sir, but I have no idea, she was such a particular person.

Q 1482. Then you have no positive recollection, and only form an opinion from your knowledge of her habits?

A. Yes, sir.

Q 1483. You have no positive recollection?

A. No, sir.

Q 1484. Who was this physician who came from New York?

A. Dr. Otis.

Q 1485. Do you know why he came?

A. I never made any inquiries about that. 819

Q 1486. I ask you whether you knew?

A. I suppose for consultation.

Q 1487. Do you know for what?

A. It was in regard to her general state of health.

Q 1488. What was the subject of the consultation, do you know?

A. I don't know that, at the time I was myself sick in my room.

820 Q 1489. What was the matter with Mrs. Dale?

A. That I could not say, sir.

Q 1490. Did she suffer severe headaches?

A. She had headaches occasionally.

Q 1491. Can you tell us some of her other symptoms?

A. No, sir, I cannot.

Q 1492. How then can you say Dr. Otis did not come about her getting out of her mind?

A. I did not suppose he came to consult about her mind.

Q 1493. I have understood you to say that you did not know what he was called in for?

A. I supposed it was as to her present state of
821 health, but as to the state of her head I didn't know anything about that; I never heard.

Q 1494. But do you know what Dr. Otis was called for?

A. I don't know anything more, sir, than I have stated.

Q 1495. Then let me understand clearly: You don't know for what Dr. Otis was called to see Mrs. Dale?

A. I do not; no, sir.

Q 1496. Do you recollect any occasion, Mrs. Brown, upon which Mrs. Dale suffered from a stupor which the physician called coma, and which lasted from twenty-four to forty-eight hours, while she was
822 at the house of her son Nelson?

A. I remember of her being ill at the time, but I made no inquiry—(interruption)——

Q 1497. I did not ask that, whether you remember such an occasion?

A. Do I remember an occasion? She was sick several times.

Q 1498. (Question No. 1496 repeated). Do you recollect any occasion, Mrs. Brown, upon which Mrs. 823
Dale suffered from a stupor which the physician called coma, and which lasted from twenty-four to forty-eight hours, while she was at the house of her son Nelson?

A. I remember the time she was ill so long, but I never heard the disease being named in that way.

Q 1499. Do you remember any occasion upon which, as a matter of fact, Mrs. Dale lay in a condition of stupor for over twenty-four hours?

A. I remember the time she was very ill for a certain length of time. I could not give the certain length of time, sir; that I could not remember.

Q 1500. I do not want to annoy you, Mrs. Brown, but I would like that question to be answered. Do 824
you remember any occasion upon which Mrs. Dale lay in a condition of stupor for twenty-four hours or more; you know what stupor is?

A. I understand it, sir; I remember the time you speak of.

Q 1501. Then you do know of such a stupor as I have described?

A. I have heard of her being very ill, and as I said before, I was confined to my room, and was not present on any such occasion.

Q 1502. You were not present on any such occasion?

A. Never—wasn't able to be?

Q 1503. Were you informed at the time that she 825
was in such a stupor?

A. Not for that length of time; never, sir.

Q 1504. How long were you informed she was in a stupor?

A. I could not remember that, sir; I was very ill myself, and can't remember.

Q 1505. Were you ill yourself?

A. I was very ill and confined to my room ; that was the evening Mrs. Dale came to my room particularly on that very occasion.

Q. 1506. Were you confined to your room on the
826 occasion of this illness I have asked you about, of Mrs. Dale ?

A. I think I was, sir—confined to my room, on that time, yes, sir—confined to my bed, not allowed to be on my feet, by my physician.

Q 1507. Mrs. Brown, how do you recollect the hour at which Mrs. Dale came to your room on the occasion you have spoken of ?

A. Because it was unusual for her to come up stairs after dark, at night, sir.

Q 1508. Do you feel certain as to the hour ?

A. Yes, sir, I feel certain ; I had gone to bed, but I hadn't slept, and she came in and I said, "Oh, Mrs. Dale, isn't this too much for you to come up
827 the long stairs," and she said, "I thought I must come up and see you before going to bed."

Q 1509. Mrs. Brown, you spoke of Elizabeth O'Conner being in Mrs. Dale's employ ; you meant Mrs. Nelson Dale, didn't you ?

A. Oh, certainly.

Q 1510. Were you at Mrs. Sarah P. Dale's before she went to Europe the last time ?

A. I don't think so ; no sir ; I wasn't there.

Q 1511. Were you acquainted with her household —do you know who composed her household previous to her going to Europe ?

A. What is that, sir ?

828 Q 1512. Did not Elizabeth O'Conner live as a servant with Mrs. Sarah P. Dale before she went to Europe ?

A. I believe she lived with Mr. Fred Dale.

Q 1513. Was Mrs. Sarah P. Dale living at Fred Dale's, at the time Elizabeth O'Conner was employed there, do you know ?

A. That I don't know anything about; I was never at Mr. Fred Dale's house.

Q 1514. Was there not one night during that last visit of Mrs. Dale at Nelson's, when the whole family sat up with her all night, in consequence of her dangerous condition? 829

A. No, sir; I never heard of such a thing.

Q 1515. That's all.

It is agreed by counsel that the signature of this witness to her testimony is waived.

Adjourned until to-morrow at 10 A.M., at the same place.

Examination of witnesses continued at the office of George W. Cassedy, Esq., No. 1 Exchange Place, Jersey City, this eighteenth day of November, A.D. 1881, in the presence of Mr. Wallis, counsel of proponents, and Mr. Barkalow, counsel of caveator.

THEODORE R. VARICK, a witness produced on the part of the proponents, being duly sworn according to law, on his oath deposeth and saith. 830

Direct examination by Mr. Wallis:

Q 1516. What is your name?

A. Theodore R. Varick.

Q 1517. And your residence?

A. Jersey City.

Q 1518. Are you a Doctor of Medicine?

A. I am.

Q 1519. Graduate of what School?

A. University of New York.

Q 1520. When did you graduate?

A. 1846. 831

Q 1521. Have been practicing medicine ever since?

A. I have.

Q 1522. Any particular branch?

A. No particular branch, at least, I am not a specialist in any branch.

Q 1523. Where is your practice?

A. Jersey City.

Q 1524. Where has your practice been principally?

A. The first two or three years in the City of
832 New York, since 1848 in Jersey City.

Q 1525. Have you in the course of practice had any experience in the disease called syphilis?

A. I have.

Q 1526. To what extent?

A. Well, that is a question hard to answer, because it is a relative question; about the average I suppose, private as well as hospital.

Q 1527. Have you been connected with a hospital?

A. I have.

Q 1528. What hospital?

A. I am connected with the Jersey City Charity Hospital, and with St. Francis' Hospital in Jersey
833 City.

Q 1529. How long have you been connected with those hospitals?

A. I have been connected with the Jersey City Charity Hospital since 1869, and with St. Francis' Hospital since 1870 or '71.

Q 1530. Has your experience extended to what is called tertiary syphilis?

A. Yes, sir.

Q 1531. What is the general rule as to the effect of that disease upon the mind?

A. Well, there are exceptional cases where the mind becomes affected.

Q 1532. What is the general rule in regard to it?

834 A. No rule about it, only that the mind is less apt to be affected than any other function of the body, if you choose to call it a function; we have, as a rule more paralytic affections than affections of the mind in that case, or in other words, paralytic affections are more common.

Q 1533. What is the general opinion in the profession as to the probability of tertiary syphilis affecting the mind of the patient?

A. Well, that is rather an obscure question. 835

Q 1534. Is it the general judgment of the profession, judging from experience, that in a case of tertiary syphilis the mind of the patient is probably affected by the disease?

A. There is no probability about it; it is a very unusual thing; at least it is not a common thing by any means; in fact, I may say it is a very uncommon thing.

Q 1535. Now, Doctor, I propose to ask you a question which has been asked before, question No. 787?—(interruption.)

Witness—Before going any further, I might remark, if it be in order, in reference to the answer to the last question: what I mean to say, we may have very extensive organic changes, structural changes, 836 the result of disease, involving the bones of the skull, the membranes of the brain, as well as the tegumentary system, the skin, without any affection of the mind.

Q 1536. I read to the witness question 787: "Suppose the case of a person who, in 1873, had syphilitic eruption of the face, who was treated for syphilis constantly thereafter, growing worse year by year, who, in 1876, had scars of syphilitic sores on her leg; who, in 1879, declared that her memory was defective, that a day after writing a letter she was unable to say what she had written, and who consequently had her letters read by her physician 837 before mailing them; who was worried by money losses and by variance with her husband; whose husband died in her absence in 1879; who suffered from photophobia and syphilophobia; who experienced, in 1880, mild nocturnal delirium, shown

by aimlessly going to other rooms in the middle of the night; who experienced dislike for all her relations, including her elder son; who complained of the burning of her brain, and constantly kept ice
838 on it; who laughed without cause constantly; who, having been always a refined and delicate woman, in March, 1880, laughed and jested with her maid-servant concerning her doctor, saying he was too modest and would not handle her person; who experienced a coma of forty-eight hours in March, 1880, which yielded rapidly to iodide of potassium; who, though always temperate, was often found on her bed in an apparent drunken stupor; who, on April 28, 1880, signed a paper giving all she had except two small legacies to her elder son, of whom she had said a few months before, that his half of the estate ought to be put in trust, and who died ten days after, on May 8, 1880, in a coma which
839 had lasted three days; what would you say as to the mental condition of such a person ten days before her death?

A. I would say it was purely a matter of conjecture; no man on the face of the earth could testify positively as to her mental condition at that time.

Q 1537. Could a person who had seen her but once, and that while she was in a state of total unconsciousness, speak with any more certainty as to her mental condition at the time indicated in this question, than one who had not seen her at all?

A. That is, whether you refer to professional men?

840 Q 1538. Yes?

A. No.

Q 1539. Now, if in addition to the hypothetical question just put to you, these facts existed: that in such a case as is stated in that question, a physician of ordinary skill and discernment had been in at-

tendance and had prescribed for the patient on the 9th day of April preceding her death, with a full knowledge of the disease with which she was afflicted, and had seen her between that day and the twenty-eighth of that month, and on the latter day, 841
the 28th of April, had seen her execute a will, to which he was a subscribing witness; whose attention had been called on that day to contests over wills, and who had been called in on this occasion expressly to witness the execution of such a will, and who should testify under oath, that at the time of such execution such patient was of sound and disposing mind and memory so far as he knew; who stated that he had carefully noticed her condition on the latter day, and testifies further, that up to and including the date of the execution of the will, he noticed no mental weakness or signs of insanity upon the testatrix; what, in your opinion, was the mental condition of that person at the time 842
she executed her will, April 28, 1880?

Question objected to, because it asks the expert a question based upon the conduct of others than the patient, and not upon the symptoms and condition of the patient, and it is, therefore, incompetent.

A. Based upon the opinion of the attending physician, who I understand was Dr. Atkinson, I should say she was of sound mind; Dr. Atkinson's reputation is first-rate.

Q 1540. Now, if in the case that has been presented to you, covered above in those questions, the fact should be that the intimate personal friends of the person referred to should say that they never 843
noticed any mental weakness or lapse of memory in such person, but that, on the contrary, she possessed, in their opinion, an excellent memory, would that fact affect your judgment as to such person's mental capacity, and in what way?

A. That would affect my opinion, that she was of sound mind.

Q 1541. Do you mean by that that it would confirm, or strengthen or weaken, your opinion that she
844 was of sound mind?

A. It would strengthen, of course.

Q 1542. Now if in the case I have referred to, the nocturnal delirium referred to consisted in a visit to her daughter-in-law's mother's room, who was then sick in bed, about nine o'clock in the evening, and a conversation in regard to the health of the sick person and on ordinary topics, without evidence to her companion of mental unsoundness, would that fact affect your opinion as to the mental condition of such person, and to what extent?

A. Certainly; I don't see any evidence of insanity there.

Q 1543. Would it weaken or strengthen your
845 opinion as to the mental unsoundness?

A. It is an indication; there is no evidence of mental unsoundness in that case.

Q 1544. I am referring to the hypothetical case put to you and Dr. Bartholow, where one of the symptoms stated was that, in 1880, the patient experienced mild nocturnal delirium, shown by aimlessly going to other rooms in the middle of the night, and the question that I just put to you explains what that "mild nocturnal delirium," so called, was; with that explanation of the character of the nocturnal delirium referred to, is your opinion as to the mental soundness of the patient referred to strengthened or weakened?

846 A. I fail to see any symptoms of nocturnal delirium whatever; the bare fact of the person's getting out of bed to go to another room is no evidence of nocturnal delirium; I see cases of that kind happen every night.

Q 1545. There is another element in this hypothetical question to which I wish to call your atttention. It states that on April 28, 1880, the patient signed a paper giving all she had except two small legacies, to her elder son, of whom she had said a few months before, that his half of her estate ought to be put in trust; if, in addition to that fact, it appeared that such person had before the execution of the will said in regard to her younger son whom she had disinherited by the will, that he was a smart business man, and would make his way in the world, and that certain business advantages which he had already obtained from her would enable him to do so, and that he had opportunities of making money which the elder son had not, and that what she, the testatrix was doing, was for the best, in providing for those who could not provide for themselves—would such a fact modify your opinion in regard to the mental capacity of the person making that will, and if so, would your judgment as to her mental soundness be strengthened or weakened? 847 848

Question objected to.

A. I should say that she had a very level head.

Q 1546. Now, referring to the same statement contained in the hypothetical question: If such a person as the testatrix, and such a person as is stated in the hypothetical question, had, after the provisions of her will had been determined upon, but before it was executed, said that she supposed she would receive condemnation from some on account of that will, but that what she had done was an act or justice, she thought,—would that statement modify your judgment in regard to her mental capacity, and if so, would it strengthen or weaken your opinion that she was mentally sound? 849

A. That is certainly no evidence of insanity.

Q 1547. Is it any evidence to the contrary?

A. Yes, most decidedly.

Q 1548. Now, if in addition to the facts already stated, and still referring to the same clause in the hypothetical question: If such a person, before the
850 execution of that will, had, in her opinion, been wronged by the son she disinherited in a business transaction, and if she had expressed an opinion that such son could not be trusted,—would that fact modify your opinion in regard to her mental soundness, and if so, would it strengthen or weaken it?

A. There is no evidence of any aberration of mind in those remarks.

Q 1549. Is there any evidence of aberration of mind in her executing such a will, in view of those facts?

A. No, sir.

Q 1550. Would such facts, in your opinion, be an element showing mental soundness?

A. I should so consider it.

851 Q 1551. If it should appear that the person under consideration had determined upon the terms of her will about a month prior to its execution, and if, without reference to the paper itself, she had accurately related its principal contents to intimate friends, would that be an evidence of mental soundness, in your opinion?

A. To be sure.

Q 1552. Have you, in your experience, had cases of syphilis in which coma was one of the symptoms?

A. I have.

852 Q 1553. And you say you have never had a case in which there existed mental impairment?

A. Never; never been a case in my individual practice of insanity directly traceable to syphilis, in any form or shape.

Q 1554. Have you ever had a case in which coma and paralysis existed?

A. Yes, sir.

Q 1555. Can you give us a statement of that case and the mental condition of the person who suffered from it?

A. I can recollect one case now, fresh in my memory. I think it was in 1877, a gentleman—he is a lawyer—who was under treatment for constitutional syphilis, I think by Professor Sturgis of New York, and on his way home he lost consciousness, fell upon the street, broke his eye glasses, cut his nose. The loss of consciousness was of short duration—how long, I cannot say, because he had recovered consciousness when I saw him, but he had hemiplegia, ptosis, and his speech was affected, difficulty of articulation, but his mind, however, was never affected in the least, remaining perfectly clear, and before he had recovered nearly from his paralysis, he went to his office and transacted law business. 853

Q 1556. In a syphilitic case, is coma a necessary result of syphiloma? 854

A. Not at all.

Q 1557. Or of gummata?

A. No, sir.

Q 1558. Is there any way of deciding with any certainty from external symptoms existing in the syphilitic patient?

A. No; it is presumptive where we have a number of symptoms indicating syphilitic affection of the brain, but there is no way of determining, other than the post mortem examination.

Q 1559. Can all these symptoms exist without the existence of either syphiloma or gummata? 855

A. We may have a condition existing which is called sine materia, meaning by that these symptoms exist without there being any appreciable organic change in the nerve tissues, even microscopic changes, although that doctrine was disputed once.

I think it is pretty generally admitted now that that condition does exist.

Q 1560. Could a physician form any intelligent judgment as to the mental condition of a patient
856 whom he had seen but once in his life, and that when she was comatose, and from which condition she never recovered, and died on the next day,—could any physician under such circumstances form an intelligent judgment as to the mental condition of such a patient ten days before he saw her?

A. He could not, except from the statements of others; he could not from his own observation.

Q 1561. Do you know Dr. Roberts Bartholow, of Philadelphia?

A. I know him by reputation; saw him at Paterson the other day.

Q 1562. Has he a reputation among the profession?

857 A. Yes, sir.

Q 1563. As an expert in syphilitic diseases?

A. I never heard of him as an expert in syphilitic diseases.

Q 1564. What is his specialty?

A. His specialty is materia medica and therapeutics; that is his professorship in Jefferson Medical College, Philadelphia.

Q 1565. Do you know Dr. William B. Atkinson, of Philadelphia?

A. I know him by reputation.

Q 1566. What is his reputation in the profession?

A. Good; first-rate.

Q 1567. Has he the reputation of a physican of
858 large experience, or otherwise?

A. His reputation is as good as any I know of in Philadelphia. I am not aware of his being connected with any college, or that he has a reputation as a writer or author, but he is a man who filled the posi-

tion of Secretary of the American Medical Association, which is a sufficient guarantee of his reputation; he could not hold that position otherwise.

Q 1568. Has he the reputation of being a man of ordinary ability? 859

A. Yes, sir.

Q 1569. Ordinary skill in his profession?

A. So far as I know, yes, sir; he is a man very much respected by all who know him.

Q 1570. Do you know Dr. Edward L. Keyes of New York?

A. I know him by reputation and sight; I never met him personally.

Q 1571. Is he recognised in the profession as an authority on syphilitic diseases?

A. Yes, sir.

Q 1572. That's all.

Cross-examination by Mr. Barkalow: 860

Q 1573. Is Dr. Bartholow known as an expert in brain diseases?

A. I never heard of his reputation as an expert on that subject.

Q 1574. Is Dr. Keyes known as an expert on brain diseases?

A. Not that I know of.

Q 1575. Referring to the case of a lawyer who experienced a seizure in the City of New York in 1877, I ask you, did you see him during that seizure?

A. I saw him; he had recovered from the unconsciousness, but he was under my professional care 861 until he recovered from his paralysis.

Q 1576. Was his case one of apoplexy?

A. Well, it is hard to answer that question, what the particular cause of the loss of unconsciousness was; it may have been occasioned by the presence of gummata on the brain, it might have been

caused by thickening of the pericranium, perhaps, interfering with the circulation of the brain; the cause of loss of consciousness may arise from cerebral anæmia, as well as from cerebral repletion or
862 congestion, or fullness of the vessels.

Q 1577. If the unconsciousness had been caused by gumma, would it not have lasted longer?

A. It might not necessarily, because it may be produced by an over excitement or hurry; it occurred coming off a ferry-boat in the middle of a crowd, and excitement of the circulation where the lumen of the vessels is encroached upon would produce irregularity or inequality in the circulation of the brain; it may be that unconsciousness is produced from that cause.

Q 1578. Independently of the gumma?

A. Independently of the gumma.

Q 1579. Would such unconsciousness as you have
863 last indicated be followed by paralysis?

A. It might.

Q 1580. Would it probably?

A. The gumma might exist, of course, we have no diagnosis of the existence of gumma in the brain without autopsy—seeing them.

Q 1581. Suppose that the short unconsciousness resulted from the specific excitement so as to be produced as you have intimated, that it might be, independently of the action of the gumma, would it be followed by paralysis?

A. It may be, in addition to that, there may be some little effusion, some extravasation; we may
864 have concussion of the brain, where the patient is unconscious for the time being, reaction comes on, he recovers consciousness, and after a time symptoms of coma and paralysis follow, in that case it is due to a rupture of some small vessel.

Q 1582. How old was this gentleman?

A. I think he was about thirty-five—somewheres along there.

Q 1583. Do you know whether he had ever had had attacks of the same kind before?

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A. That was the first attack he had had, he said that subsequently to me in talking.

Q 1584. Did you ever know of his having another attack?

A. I heard through relatives that he had had an attack again.

Q 1585. How long after?

A. I can't tell, I think about a year.

Q 1586. How long did you treat him on that occasion?

A. About a month.

Q 1587. Did you ever see him after that?

A. Yes.

Q 1588. How long was it that you last saw him?

866

A. I can't tell you.

Q 1589. Give us some idea?

A. Within a few months.

Q 1590. Did you see him within six months after the seizure?

A. I can't tell you, I think so, off and on.

Q 1591. Then all you know is that he was not deranged within six months?

A. Yes.

Q 1592. How long was his convalescence?

A. What do you mean by his convalescence?

Q 1593. I mean just what I say, is it not a fixed term in medicine?

A. I can't answer you how long his convalescence 867 was.

Q 1594. How long was it till he passed from under your care?

A. I attended him about a month or six weeks.

Q 1595. What was your treatment of him?

A. Iodide of potassium.

Q 1596. In what doses?

A. Big doses; I think I got as high as a drachm three times a day; I know he got big doses.

868 Q 1597. Did I understand you, or not, to say that this person in New York recovered without any paralysis?

A. He recovered from his paralysis.

Q 1598. He had paralysis?

A. Yes, sir.

Q 1599. And recovered from the paralysis.

A. Oh, yes.

Q 1600. You have no knowledge except from information from others that he had another coma?

A. I was told by a sister that he had another attack out in Oswego.

Q 1601. May not structural changes of the brain progress very slowly?

869 A. Yes, sir.

Q 1602. Whether produced by gummata or other causes?

A. Yes.

Q 1603. You have testified that it is not a general rule that mental disorder proceeds from tertiary syphilis, I understood you; how, if a gumma exist upon the dura or any part of the base of the brain, would not the mental faculties necessarily be affected then?

A. No, sir, not necessarily; may have nervous affection of the brain.

870 Q 1605. Not necessarily, then, even upon the basilar surface?

A. No.

Q 1605. Do I understand you to hold, as your opinion, that structural changes involving the bones of the skull and the membranes of the brain, and the tegumentary system, may exist without mental de-

rangement ; or do I understand you to mean that structural changes involving any one of them ?

A. I mean the whole of them. I testified that they may involve the bones of the skull, the peri-cranium, the dura mater, the skin. 871

Q 1606. I did not understand you from your answer whether you meant that all those affections might exist together and without mental derangement ?

A. Yes, sir.

Q 1607. And brain changes ?

A. Also, the pia mater—the pus formed between the membranes.

Q 1608. Then structural change may, in your opinion, occur, involving the bones of the skull, the membranes of the brain, the tegumentary system, pus may form and be deposited, and the brain tissue may be affected, and yet no mental disorder of necessity may exist, is that so ? 872

A. That's about it ; yes, sir.

Q 1609. Is not the mind much more likely to be affected by lesion of the posterior than of the anterior portion of the brain ?

A. Well, that is going into a subject that is a little in the dark and by no means settled ; we have the various functions assigned theoretically to the various portions of the brain, but many of these things have not been established ; in aphasia, for instance, it depends, it is pretty conclutively settled, on a disorder of the third convolusion of the left hemisphere of the brain, and also, if I recollect aright, by researches, involving the island of reil.

Q 1610. Is it not stated distinctly in medical 873 books of authority that lesions upon the anterior portion of the brain are much less likely to produce mental alienation than lesions upon the posterior ?

A. I am not prepared to answer that question, it

is a matter I have not given any attention to—the special location; it is a matter of hypothesis entirely.

Q 1611. It is not so stated in Bumstead and Tay-
874 lor on venereal.

A. I have not seen it; the new edition is out, published within a short time; I have not seen it.

Q 1612. Do you happen to have read Dowse on syphilitic mental affections?

A. No, I have not seen it.

Q 1613. In reference to question 787, which is the hypothetical question put by the caveator's counsel you say, "I would say it was purely a matter of conjecture; no man on the face of the earth could testify positively as to her condition at that time," what would be the probabilities as to her mental condition?

A. Ten days before her death?

875 Q 1614. Under the hypothetical question?

A. You have reference to the opinion of Dr. Bartholow, given at the time he—(interruption).

Q 1615. No, I have reference to the long hypothetical question Mr. Wallis put to you, "that no man could tell positively what her mental condition could be." I now ask you what her mental condition would probably be under the circumstances given?

A. I don't think any man could give a reliable opinion as to the mental condition of the patient without having seen her before; I don't think any probability could be based upon the diagnosis of the case, because the explosion sometimes takes place
876 very suddenly.

Q 1616. Then you have no opinion as to the probable mental condition of the person whose case is described?

A. I do not think anybody could form an opinion without having seen the case at the time.

Q 1617. Could not the physician who had one interview with the patient approach more nearly to the condition of the patient than one who had not seen her at all?

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A. I doubt very much if he could.

Q 1618. Could not the physician who had had one observation of the patient, and who had received a history of the case from the attending physician, approach more nearly than one who had not?

A. It would be merely by process of conjecture, not having seen her ten days before the time.

Q 1619. Could not he approach more nearly than the one who had not?

A. I do not think he could, without having had observation.

Q 1620. Then you think observation of the patient in that condition would go for nothing?

A. It would go for very little, merely seeing the patient while comatose; that would not give any knowledge of the case, except from hearsay.

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Q 1621. Could not a physician called into consultation, and who observed the patient under the responsibility of such a call, and who had a history of the case given to him by his associate who called him in, form a better opinion on that subject than one who had never seen the patient at all?

A. The mere fact—(interruption).

Q 1622. I would like a categorical answer?

A. I am trying to answer it: I will answer it as intelligibly as I can; what I mean to say is this, that the mere fact that a physician seeing the patient lying there moribund, in a comatose condition, would not give him a better opportunity to judge what her condition was ten days anterior to that period than a person who did not see her and had this statement given to him.

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Q 1623. Then you mean to say that in the sup-

posed case the observation of a skilled physician adds nothing to his ability to judge of the case?

A. No, I didn't say that.

Q 1624. (Question repeated). Then you mean to
880 say that in the supposed case the observation of a skilled physician adds nothing to his ability to judge of the case?

A. It was stated that under the circumstances—that he saw her while in a comatose condition, in articulo mortis, and my answer was, that seeing her under those circumstances—(interruption).

Q 1625. No; she was not in articulo mortis?

A. Well, comatose, then; the physician would no more be capable of forming a judgment of her mental condition ten days antecedent to that—wouldn't give any clue to her antecedent condition.

Q 1626. I desire to have the question answered as a whole; and I ask you again: whether, in
881 the case supposed, a skilled physician, who, in addition to having had a full history of the case from the associate who had called him in consultation, had also personal observation of the patient, would gain nothing in his means of judging, by the fact of that observation?

A. He would gain nothing by seeing her under the circumstances of this case, as described.

Q 1627. In reference to the attending physician in such a case, would not the value of his opinion, as to the mental condition of the testator, depend largely upon his own knowledge of what constitutes a sound mind?

882 A. Of course.

Q 1628. Isn't the same true of a subscribing witness?

A. Precisely.

Q 1629. Suppose the case of a person who died from syphilitic gumma of the dura and pons; isn't

it possible that the mental condition of that person, one week or ten days before her death, might be very different from what it was thirty or forty days before her death?

Question objected to as incompetent, and because there is no evidence that this person under consideration did die from the causes stated. 883

A. I think it is possible.

Q 1630. Is it not probable?

Question objected to, for the same reasons as the preceding.

A. I don't think it probable, but it is possible.

Q 1631. Doctor, will you tell us briefly, what ptosis is?

A. Ptosis is dropping of the eye-lid—paralysis of the third pair of nerves.

Q 1632. Is it characteristic of general paralysis?

A. Yes; it is characteristic generally of some brain trouble. 884

Q 1633. Various brain troubles?

A. Yes, sir.

Q 1634. Does it occur in apoplexy?

A. It may; though not necessarily; more likely to have mydriasis.

Q 1635. Was the peculiarity of utterance in the gentleman, to which you referred, accompanied by aphasia?

A. No, sir; not by aphasia; merely difficulty in articulation.

Q 1636. Suppose a profound coma yields to large doses of iodide of potassium, without paralysis, what would be your conclusions, as a physician, as to the cause of that coma? 885

A. Well, it is a common thing to give iodide of potassium in syphilitic troubles; but there are other brain troubles in which we give iodide of potassium

in large doses with excellent results, in cases of cerebro-spinal meningitis, independently of syphilitic troubles or contamination.

Q 1637. Would the patient, in such cases, recover
886 without paralysis?

A. Well, they do, as a rule, in most cases.

Q 1638. And suppose a profound coma, which yielded to large doses of potassium, without paralysis in a case of syphilis; what would be your conclusion as to the probable cause of the coma, if you were able to form one?

A. That is a hard question to answer, because, as I stated before, there are a variety of circumstances that might occasion it.

Q 1639. Would you not be apt to conclude that there were gumma present somewhere?

A. No; as I said before, anything interfering with the circulation of the brain, under certain cir-
887 cumstances might produce coma.

Q 1640. Might it not proceed from occlusion of the vessels?

A. Occlusion or narrowing of the lumen of the vessels, or the calibre of the vessels.

Q 1641. Doctor, will you give me a few words of explanation as to the affection which you have described as sine materia?

A. Well, it is applied to a condition of patients who die from constitutional syphilis, in which there is no evidence of the presence of gummata, or any osteophites, or any organic change whatever.

Q 1642. Does not death, if it occur in sine materia, occur in the primary changes of syphilis, and not in
888 the tertiary?

A. That is the theory; but it is disputed that such a thing can exist; Virchow is disposed to deny the existence of it at all; but Ricord, and some other chap there—I think it is Rokiatanske—contend

that it does exist, but that it is removed—the deposits are removed—by treatment prior to death taking place, that they must have existed at some time or other.

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Q 1643. And depart without lesion?

A. Yes, sir, there is no case on record in which death occurred during the course of treatment in which the symptoms were marked in which there were any other organic lesions discoverable, so that it is pretty generally received doctrine among syphilographers that syphilis sine materia has an existence.

Q 1644. And isn't it also received that it has an existence, if it do have one, only in the earlier stages of the disease?

A. Of course, the earlier the stages the less are the chances of organic changes.

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Re-direct by Mr. Wallis:

Q 1645. Don't the existence of paralysis and coma in a syphilitic patient show greater brain disturbance than the existence of coma alone?

A. It would show a more permanent change; coma may exist, and paralysis remain after it; we do not discover the paralysis with any degree of certainty, although it is presumptive in a state of coma, it is only when the state of coma passes off where paralysis does exist, that we are able to settle it definitely.

Q 1646. And the paralysis, you say, would show a greater structural change?

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A. Yes, or profound impression of the disease, if we admit the sine materia doctrine, we have no structural change.

Q 1647. Now in the case of a skilled physician who saw this patient in a comatose condition, and who based his judgment upon the history of the case

given by the physician who called him in, in consultation, which of the two, the physician called in in consultation, or the physician who called him in, would be better able to judge of the case?

892 A. The physician who called him in.

It is stipulated that the signature of the witness to this testimony is waived.

HAMILTON WALLIS, a witness produced on the part of the proponents, being recalled, on his oath deposeth and saith:

Direct examination by Mr. Edwards:

Q 1648. Mr. Wallis, will you tell us of the preparation of the last will and testament of Sarah P. Dale, that has been offered in evidence?

A. The first communication I had with Mrs. Dale in any way arose in regard to the transfer of certain machinery from herself to Frederick S. Dale. Mr.
893 William Ryle, a client of mine, one day—it must have been in the early fall, I think, of 1879—came into my office with a paper, which contained a transfer of certain machinery in the Dale Mill, in Paterson, from Mrs. Dale to Frederick S. Dale, on certain terms; the terms of that paper were not legal; it was bad, because it provided for a usurious rate of interest on part of the consideration money to remain unpaid; I told Mr. Ryle that fact, and the next recollection I have in relation to it is that Mrs. Dale, with her son Nelson, called upon me in my office, 120 Broadway, New York, some time about the first
894 of November, 1879, it may have been a little before that; I explained to her the situation of affairs, and she told me what she wanted done; I advised her that she could not make any safe agreement by which she would receive more than the legal rate of interest, and suggested a bill of sale of the personal property to her son Frederick, and his bond

back secured by chattel mortgage on the property; she then stated to me generally the situation of affairs, and if my memory serves me aright, that the property was to be sold for Twenty thousand dollars; that her son was to be credited with certain advances made to her before that on account of the purchase money, and that the balance to be secured by this bond and mortgage was to bear interest from the first day of January then next, and to be payable in instalments of Two thousand dollars every six months; and either on that occasion, or the next, I don't know which, she produced me a memorandum in writing, which, I think, was signed by Frederick S. Dale, or with his name, at all events it contained generally the terms on which this transfer was to be made; Mrs. Dale then told me that her son had had the use of the machinery for some time; also, that the interest on the money—the purchase money—did not commence to run until the first of next January, and that she should want to be compensated for the use of the machinery from the first of August until the first of January; my recollection is, that I then drew the requisite papers, and that they were sent to Paterson, to Mrs. Dale; that afterward—some time afterward—her son Frederick S. Dale, with Mr. Hobart—I think in the meantime I had had some correspondence with Mr. Hobart on the subject—called to see me, and objection was made to this compensation for the use of the machinery from August to January; I think it amounted to some Twelve hundred dollars, or somewhere in that neighborhood, and this memorandum was referred to—the written memorandum that I have spoken of—and that contained no provision for any such compensation; my recollection is, that I then told Mr. Dale that under that agreement his mother would be unable to insist upon it; at the next in-

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terview I had with Mrs. Dale—it was at the same place, at my office, I explained the situation.

By Mr. Barkalow:

898 Q 1649. Can you give us the date, Mr. Wallis?

A. It was the first half of November, it must have been the first part of November, 1879, I explained the situation, she expressed herself as very much dissatisfied; I told her that I would not advise her to enter into any contest in relation to the matter, that a contest would only result in tying up the machinery so that it would produce to her no income and that all contests were uncertain in their results, and that under the circumstances I would advise her to accept her son's proposition, which was in the nature of a compromise, to allow her two or three hundred dollars for the use of the machinery; she stated that if she must, she supposed she must, but
899 that Fred would have cause to regret compelling her to accept any such proposition, or something to that effect—I am not pretending to give her words; the papers were prepared, and I find by reference to my books that the chattel mortgage was engrossed and the bill of sale was engrossed on the twelfth of November; after that a change was made in the bill of sale. Mrs. Dale had given me a Sheriff's certificate of sale of certain machinery in question, as containing the items of the property to be sold. She afterwards either gave or sent to me another Sheriff's certificate of sale of certain other machinery, the greater part of which if not all of it, was to be included in the bill of sale, and the bill of sale
900 was changed for the purpose of including that other property. That was between the middle of November, 1879, and the first part of February, 1880, I cannot fix the date of it, and after that the papers were executed as they were drawn, by both parties, as amended.

Sometime—it must have been in the month of February, 1880, Mrs. Dale called upon me in relation to her will, she wanted me to draw her will for her, and I told her if she would put her ideas in shape, in rough shape on paper, so that I could 901
understand it, I would prepare the will and send it to her.

I think it was on that occasion that she asked me if it was necessary to state in her will the names of all her children, and I told her that there was an antiquated notion that that was necessary, but that in fact it was not necessary.

I then received this paper, which I produce; whether it was sent to me by mail or not I am not certain, but I incline to think that it was not.

I have no recollection on the subject, but from the manner in which the paper has been folded I am satisfied that it was brought to me and not sent by mail.

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Mrs. Dale called upon me afterwards; when I arrived at my office in the morning I found her in my private room alone; my best recollection is that at that time she produced this paper, that is, the same one; it may have been I had received it before; at all events, this paper was there present; I went over the paper with Mrs. Dale, and made certain changes in pencil or annotations in pencil, which are on the paper now; we had a conversation there about an hour, and after the conversation was over I escorted her to the outer door, and met her son Nelson in the outer office.

From this paper and certain others I prepared the draft of the will. 903

The question arose during that conversation whether the property in New Haven, which passed under her father's will, and which she seemed to consider as hers, whether she really had a title to

it, or whether it was tied up by the trust so that the title would pass by operation of law to her heirs if she died before her mother; I requested her to obtain for me a copy of her father's will before I
904 proceeded to draw her will, and she sent me one, which I have here, also, copy of certain partition proceedings in New Haven, Connecticut, which I here produce from these documents, which I will now offer in evidence separately.

Papers offered in evidence and marked Exhibit X, Exhibit Y, and Exhibit Z, respectively.

Mr. Barkalow.—I object to the admission of Exhibit X, also to Exhibits Y and Z.

Witness—(continuing).—From those papers, or from the information contained in those papers, I prepared a draft of the will; that was sometime in the month of March, either the latter part
905 of February, or the early part of March, 1880, which draft I have in my mind; I prepared a pencil draft, and this is a copy, made by a copyist in my office, from that pencil draft; this I sent to Mrs. Dale, in Paterson, and received it back by mail, I think, with two alterations, or with three alterations—the one on the first page, the one on the third page, and the insertion of the name of an executor which had been left blank on the last page; no, I find one other, on the next to the last page; I offer this paper in evidence.

Objected to.

Received, and marked Exhibit &.

Witness—(continuing)—About the same time that
906 I received that paper, I received directions to send the will engrossed to Mrs. Dale, in Philadelphia, giving the street and number, where she was to be addressed.

About that time I moved my office from 120

Broadway, Equitable Building, to 48 Wall street, where I am now; we actually commenced to move, I am very positive, on the 24th of March, or about that time, it was just a week before the first of April, 1880. 907

The will was engrossed, but the engrossed copy, which is the paper in evidence already—the paper put in evidence the first day—the will offered for probate—was packed away with other documents in the office for removal; I received a letter from Nelson Dale, which I cannot find, stating that his mother was anxious for her will, and wanting me to send it to her; I found the engrossed copy, but could not find the address of Mrs. Dale, in Philadelphia; I knew the address of her son in Newport, and I therefore sent the will to him for him to forward it to his mother; the next time I saw it was when it was produced by Frederick S. Dale and Nelson Dale, after their mother's death. 908

In all these interviews I had with Mrs. Dale—and there were several of them—I failed to notice any sign of mental weakness or mental disturbance; she certainly appreciated fully her rights in regard to that machinery, and understood and told me what she wanted done with it; she also stated to me generally the other property she possessed; she also knew the names of her children, who they were, and impressed me as being a woman of very excellent and sound sense; I had no idea that anything was the matter with her, and did not until after her death.

I think she stated to me, two or three times, that she did not expect to live long. 909

I never transacted any business for Nelson Dale, until I propounded this will for probate; never knew him until he was brought into my office by Mrs. Dale herself, so far as I can recollect; that is all, Judge.

Cross-examination by Mr. Barkalow :

Q 1650. How did you send those papers to Paterson, that you first drew ?

A. I sent them by mail.

910 Q 1651. Directed to whom ?

A. I won't be positive about that, but my strong recollection is that they were directed to Sarah P. Dale.

Q 1652. Are you sure you did not direct them to Nelson Dale ?

A. No, I won't be sure I did not send to Nelson Dale, but my recollection is that it was otherwise.

Q 1653. What was the sum in dispute which was compromised at two or three hundred dollars ?

A. About twelve hundred dollars, I think, it was the value of the use of the machinery from, I think, the first of August to certainly up to the first of January, 1880.

911 Q 1654. Are you sure it was not interest upon the purchase money simply ?

A. I am certain that it was not.

Q 1655. Upon what was the claim for the use of the machinery based ?

A. Simply that the agreement was to be carried out as from the first of January, 1880, the interest was to commence from that date, and that Frederick Dale having had the use of the machinery before that time ought to pay for that use.

Q 1656. Was it thought that the use of the machinery was worth more than the interest on the amount for which it was to be sold ?

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A. I can't say definitely, that is my recollection of the amount, that's all.

Q 1657. Where was it that Mrs. Dale called upon you in February, 1880 ?

A. At my office, 120 Broadway, New York City, Equitable Building, on the third floor in the rear.

Q 1658. You have said that Mrs. Dale called once after that, can you state when, approximately?

A. It must have been in the neighborhood of the first of March, I only state these dates from the 913
entries in the books in my office, made by myself at the time, and I arrive at the date from the fact that I have an entry in my books on February 9, 1880, for re-drawing bill of sale to Frederick S. Dale, and the next entry is the twentieth March, in the same year, drawing and engrossing last will and testament of Sarah P. Dale; judging from those two entries it must have been between those two dates somewhere; I cannot place it closer than that.

Q 1659. Did you ever see Mrs. Dale again?

A. I don't think I did; I have no recollection of ever seeing her.

Q 1660. When you met Nelson Dale in your front office while escorting his mother from the other room, was that the first interview you had ever had 914
with him?

A. Oh no.

Q 1661. You have said later on in your testimony that you never knew him until she brought him?

A. Oh, that must have been not quite a year before?

Q 1662. Was that occasion when he was in the front office the first you saw of him after this will had been spoken of by his mother to you?

A. That I won't be certain of; I have no recollection on that subject.

Q 1663. Did you converse with him in reference 915
to this will?

A. I don't think I did; I have no recollection of it; I may have done so, however, in the presence of his mother; I did not on that occasion.

Q 1664. Was he not at two or three of your interviews with his mother?

A. I think he was.

Q 1665. Did he not take part in the discussion as to the title to the New Haven property?

A. That is very possible; I have no recollection
916 on the subject.

Q 1666. Did you see him in reference to this will apart from his mother at any time?

A. I have no recollection of seeing him apart from his mother although I may have done so.

Q 1667. Do you remember or not whether Nelson Dale brought you messages from her, or took messages from you to her in reference to this matter.

A. That I have no recollection of, although I should judge not, for I don't think any messages passed between us in reference to that will further than that paper, X, and the return of the draft of the will, which was returned by him, and, I think, was accompanied by a letter from Nelson Dale.

Q 1668. You have produced and offered a paper
917 which has been marked Exhibit &, containing four alterations, in whose handwriting are they?

A. The alterations? I only state as to the best of my belief, that one I said on the third page; the alteration on the first page is made in the handwriting of Nelson Dale, I believe; the interlineation made on top of the second page is in my handwriting; the writing in the margin on the third page is, I believe, in Nelson Dale's handwriting; the pencil interlineation on the fourth page is in my handwriting, and the writing in the margin, I believe, is in Nelson Dale's handwriting; the writing
918 on the margin of the last page is all in my handwriting; the first interlineation on the last page in ink is all in my handwriting, the two interlineations in pencil are in my handwriting, and the writing, "David L. Daggett, New Haven, Conn." I don't know whose handwriting it is in.

Q 1669. At what place was this letter dated in

which Nelson Dale said his mother was anxious for her will?

A. That was from Newport, I think; I am not certain.

Q 1670. When you say that you never transacted any business for Nelson Dale until this will was offered for probate, I don't understand you to mean that you never had any interviews with him? 919

A. Oh no.

Q 1671. But that he was never a client of yours?

A. He was never a client of mine.

Q 1672. Do you recollect when you first became acquainted with him?

A. No, I have no distinct recollection, but I think it was about the month of October, October, 1879.

Q 1673. Were you aware of any defective physical health of Mrs. Dale?

A. No, I was not, further than what I gathered from remarks she made that she would not live long. 920

Q 1674. Did Mrs. Dale speak to you about renting the property in New Haven of hers?

A. I have no recollection.

Q 1675. I mean about the rental of property in New Haven?

A. I have no recollection of her doing so.

Q 1676. Did she make any declarations as to her attitude towards the family?

A. No direct ones.

Q 1677. How long was your first interview with Mrs. Dale, Mr. Wallis?

A. I have no present recollection on the subject; probably in the neighborhood of half an hour. 921

Q 1678. Do you remember or not whether she told you she was then on her way from New Haven?

A. I do not.

Q 1679. Did the second interview occur in New York, in your office also?

A. All the interviews occurred in my office there.

Q 1680. Do you recollect whether she came down
922 specially for that or was on her way elsewhere?

A. That I do not know anything about.

Q 1681. You have spoken of Nelson and Mrs. Dale coming to your office in November, in consequence of which interview a bill of sale and bond and chattel mortgage were drawn, being the first?

A. Yes, it was in October or November, I should judge from my books.

Q 1682. Was it not a contract that was drawn at that time?

A. I have no recollection of drawing a contract, there is no charge for it, I don't think it was.

Q 1683. I mean contract instead of bond and chattel mortgage.

923 A. I don't think it was; there was a contract drawn by Mr. Hobart, as I understood.

Q 1684. Mr. Wallis, wasn't a letter from Frederick Dale concerning this matter received by you previous to the drawing of the bill of sale and the chattel mortgage?

A. That is very possible, although I have no recollection, I have an impression that I received letters either from Mr. Dale or Mr. Hobart, I don't remember which, in relation to this matter; in fact, I am satisfied now that I carried on a correspondence with Mr. Hobart consisting of at least two letters.

Q 1685. Mr. Wallis, let me state this matter as we understand it, simply to inquire of you and to
924 refresh our memory and yours, isn't it the case that in the first instance a bill of sale was drawn, conveying certain machinery to Frederick S. Dale, that it was then discovered that there was other machinery which was included in the purchase, and

that another bill of sale was drawn covering that machinery; that those two were taken from your office, and, as we see, taken to Mrs. Dale, who was dissatisfied by that time with the terms of the contract, and who took them to your office and stated her objections, namely, the objection which you have mentioned here, as being the difficulty in the papers between her and Fred?

925

A. No, there were two bills of sale drawn, as I stated before, in my direct examination, the first bill of sale was drawn from a sheriff's certificate of sale, containing all the property that was recited in that paper, and afterwards another sheriff's certificate of sale was brought, and the second bill of sale was drawn, which included both.

Q 1686. Are you sure that another bill of sale was drawn which included both, or did it merely include additional property?

926

A. It included the additional machinery, yes.

Q 1687. Do you remember that this second bill of sale included the machinery included in the first bill of sale, or what was in both, or was there another bill of sale which only included the second lot of machinery?

A. I won't be positive about that; I know it included the second lot; as to the rest of the question, what occurred with Mrs. Dale, I don't know; but it may be, it is very possible, that when she brought back the papers that she stated the objections to these papers.

Q 1688. Do you recollect what time of the day that interview occurred?

927

A. I couldn't say.

Q 1689. Was it on your first arrival at your office?

A. I am not sure about that.

Q 1690. Was not the correspondence with Mr. Hobart after the completion of the second bill of sale?

A. It is possible.

Q 1691. I wish you would tax your recollection, Mr. Wallis, to decide whether there was anything more demanded by Mrs. Dale than interest upon the
928 amount of the purchase money, from August to January?

A. My recollection is that there was, my recollection is that it was not a question of interest at all, that it was a question of the use of the machinery, but I may be mistaken; I know there was something demanded that she refused to acquiesce in.

Q 1692. Was not the machinery sold, Mr. Wallis, as of the first of August, and three thousand dollars paid on it?

A. That is not my recollection at all.

Q 1693. Do you remember receiving a letter from Mr. Dale?

A. I do remember receiving a paper.

929 Q 1694. And you drew the bill of sale in accordance with the terms of that paper?

A. I drew the bill of sale in accordance with the terms of that paper, and in moving my office a good many papers went "where the woodbine twineth."

Q 1695. Was not the only change from the proposition of Fred S. Dale's letter that was made in that bill of sale, the addition of the sum of two hundred dollars to the price, which Frederick S. Dale called "bonus," and which you entered as "rent"?

A. If that is the right sum, that is the only change made in the paper from the proposition I
930 received and the paper as finally carried out; I won't be certain about the amount.

Q 1696. Did you say that you never saw that will again until it was produced by Fred and Nelson?

A. That is my recollection of it.

Q 1697. Do you mean to say that Fred and Nelson produced the will?

A. I mean to say that they offered the will.

Q 1698. Do you mean to say now that Frederick Dale produced that will to you? 931

A. Certainly not, I don't mean to say that; my recollection is that the will was produced in my office while they were both present there.

Q 1699. That it was produced while they were both present?

A. That is my recollection of it.

Q 1700. By whom?

A. By Nelson.

Q 1701. Are you sure that Mrs. Dale saw you twice in reference to that will?

A. That is my very strong impression; I know she saw me once, and I feel very certain that she saw me twice.

Q 1702. Who was with her at the first interview with you? 932

A. Nelson Dale.

Q 1703. At the first?

A. I think he was.

Q 1704. Can't you tell us how long she was with you then?

A. No, I can't.

Q 1705. Is that the time you say you had a conversation of an hour with her?

A. No.

Q 1706. Is that the time you escorted her to the door and met Nelson?

A. No.

Q 1707. What did occur at that first interview? 933

A. My recollection is that I was merely informed that she wished to make a will, and I told her to make a draft of her disposition of her property in writing, and that question was asked about naming all the children.

Q 1708. And then she went away?

A. Yes, sir.

Q 1709. And then you subsequently received a paper from her?

934 A. Yes, sir.

Q 1710. And then you received that last paper from her?

A. My recollection is that that last paper was brought to me from her.

Q 1711. How far apart should you place these interviews, from your best recollection?

A. That is almost impossible to say; I can say with certainty that the first interview was before the first of November, 1879.

Q 1712. I mean with reference to the will?

A. I can say with certainty that the last interview was between the ninth of February and the twentieth of March, 1880, and, according to my best

935 recollection, the other one was between the twentieth of November, 1879, and the ninth of February, 1880.

Q 1713. The first interview about the will, you mean?

A. Yes, sir, about the will; I may be wrong about those; I speak from entries in my books.

Q 1714. The interviews are not entered there, as I understand you?

A. No, sir.

Q 1715. You only conjecture from the entries as to the dates of the interviews?

A. Yes, sir, but I know from the entries that the last interviews took place before the twentieth of

936 March.

Q 1716. Your entries, as I understand you, are entries of payments?

A. No, of charges.

Q 1717. Of charges?

A. Yes, sir.

Q 1718. Which may have been entered at any reasonable time subsequent to the service?

A. Possibly, but my custom is to enter it at the conclusion of the service.

937

Q 1719. Do you enter it while the matter is in progress?

A. Not until the matter is done.

Q 1720. That is all.

Recess from 12.45 A.M. until 1.30 P.M.

Q 1721. Mr. Wallis, in whose handwriting is that Exhibit X?

A. That Exhibit X is in the handwriting—except the pencil memorandum in it—is all in the handwriting of Nelson Dale; the pencil memorandum, I believe, is in my handwriting.

EDWARD L. KEYES, a witness produced on the part of the proponents, being duly sworn according to law, on his oath deposeth and saith:

938

Direct examination by Mr. Wallis:

Q 1722. What is your name?

A. Edward L. Keyes.

Q 1723. And your residence?

A. No. 1 Park Avenue, New York City.

Q 1724. Your profession?

A. Doctor of Medicine.

Q 1725. How long have you been a doctor of medicine?

A. Sixteen years, about fifteen or sixteen years—sixteen years.

939

Q 1726. Are you a graduate of any medical institution?

A. Medical Department University of City of New York.

Q 1727. Are you connected with any medical Institution?

A. Bellevue Medical College.

Q 1728. In what capacity?

A. Professor of dermatology and genito-urinary surgery.

940 Q 1729. Are you experienced in cases of syphilis?

A. Yes.

Q 1730. To what extent?

A. Constantly—more than anything else—probably the last sixteen years—great deal—constantly—last sixteen years.

Q 1731. You have written works on syphilis?

A. Yes, three.

Q 1732. What are they called?

A. Van Buren & Keyes on the Genito-Urinary Diseases and Syphilis, I wrote all the syphilis; "Tonic Treatment of Syphilis," and the third one was "The Venereal Diseases."

Q 1733. I propose to ask you a question which
941 has been propounded to other physicians in this case, and ask your opinion upon it; I repeat question 787: "Suppose the case of a person who, in 1873, had syphilitic eruption on the face; who was treated for syphilis constantly thereafter, growing worse year by year; who, in 1876, had scars of syphylitic sores on her leg; who, in 1879, declared that her memory was defective, that a day after writing a letter she was unable to say what she had written, and who consequently had her letters read by her physician before mailing them; who was worried by money losses and by variance with her husband; whose husband died in her absence in
942 1879; who suffered from photophobia and syphilophobia; who experienced, in 1880, mild nocturnal delirium, shown by aimlessly going to other rooms in the middle of the night; who experienced dislike for all her relations, including her elder son; who complained of the burning of her brain, and

constantly kept ice on it; who laughed without cause constantly; who, having been always a refined and delicate woman, in March, 1880, laughed and jested with her maid-servant concerning her doctor, saying he was too modest and would not 943
handle her person; who experienced a coma of forty-eight hours in March, 1880, which yielded rapidly to iodide of potassium; who, though perfectly temperate, was often found on her bed in an apparent drunken stupor; who, on April 28, 1880, signed a paper giving all she had except two small legacies to her elder son, of whom she had said a few months before, that his half of the estate ought to be put in trust; and who died ten days after, on May 8, 1880, in a coma which had lasted three days. What would you say as to the mental condition of such a person ten days before her death?" If, in such a case, a physician of ordinary skill and discernment had been in attendance and had
944
prescribed for the patient on the ninth of April with a full knowledge of the disease with which she was afflicted, had seen her between that day and the twenty-eighth of that month, and on the latter date had seen her execute a will; whose attention had been called on that day to contests over wills, and who had been called in on this occasion expressly to witness the execution of such will, and who should testify under oath that, at the time of such execution, such patient was of sound and disposing mind and memory so far as he knew; who had carefully noted her condition on the latter day, and testifies that up to and including the day of executing the will, he noticed no mental weakness or signs of 945
insanity about the testatrix; what, in your opinion, was the mental condition of that person at the time she executed her will, April 28, 1880?

A. That is all supposed to be true?

Q 1734. That is all supposed to be true.

A. In that case I should think her intellect was impaired, or feeble, but that she was competent to do what she did do, basing that opinion particularly
946 upon the observation of the physician whose attention was called to the fact, and who at that time must have been capable of forming a judgment from such facts and circumstances as he had become acquainted with between the dates you mention.

Q 1735. Now, without the opinion of that physician, does it follow as a necessary consequence that the patient, suffering as is supposed in this question, was of unsound mind?

A. Not at all; I should like to add there, not at all, particularly if the cause of her mental aberrations or vagaries was due to syphilis, that would modify my opinion, the fact that syphilis was the cause of it in all her alleged mental irregularities or
947 perversions, that would be evidence that she was much more sound than if those vagaries had been produced without syphilis as a cause.

Q 1736. Now suppose that this suppositious case that has been read to you, was modified to this extent: that the intimate personal friends referred to in it should say that they never noticed any weakness or mental lapse of memory in the person; but that on the contrary, she possessed an excellent memory; would that fact modify your opinion as to such person's mental condition; and, if so, in what direction?

A. It would be a set-off to the other statement; it would still leave me relying mainly on the judgment of the doctor at the time, rather than upon
948 the statements of friends or enemies.

Q 1737. Now, if the nocturnal delirium, spoken of in this question, consisted in a visit to her daughter-in-law's mother's room, at a time when she was sick in bed, and at nine o'clock in the evening, and

there holding a conversation upon ordinary topics, and inquiring about the condition of the sick person's health, without showing any evidence to her companion of mental unsoundness; would that fact 949
affect your judgment?

A. Precisely as the former did; no more, no less.

Q 1738. That is, you mean it would be an off-set to so much of that question as states that nocturnal delirium was one of the evidences—one of the symptoms—of her mental condition?

A. Yes; precisely.

Q 1739. If such a person, before the execution of her will, had said concerning her younger son, whom she had disinherited, that he was a smart business man, and would make his way in the world, and that certain business advantages which he had already obtained from her would help him to do so, and that he had opportunities to make a 950
living that the other son had not, and that what she was doing was for the best, in providing for those who could not provide for themselves; would such a state of mind, in your opinion, be an off-set to any evidence of mental unsoundness which should be predicated upon the fact of her disinheriting this younger son?

Question objected to.

A. It would appear to me to be a sufficient off-set.

Q 1740. If such a person, after the conditions of her will had been determined upon, but before it was executed, should have said that she supposed she would receive condemnation from some for the execution of such will, but what she had 951
done was an act of justice, she thought; would such a state of mind be evidence upon the mental condition of such patient; and, if so, in what direction?

A. That statement would have more weight with me than any others thus far made.

Q 1741. In what direction?

A. In determining the ability of this person to act in accordance with that statement, and her soundness in doing so.

952 Q 1742. Now, if such person, previous to the execution of this will, had, in her opinion, been wronged by the son she disinherited, in a business transaction, and if she had expressed an opinion that such son could not be trusted; would that fact have weight in arriving at the mental condition of such person?

A. Yes.

Q 1743. In what direction?

A. The same as the last.

Q 1744. Now, if such person, suffering as the suppositious case supposes she was, had, after the will had been drawn, but before it was executed, and without reference to it, related accurately a
953 good part of its contents to a third person; would that be evidence of mental soundness?

A. In so far as memory and intention were concerned, certainly it would.

Q 1745. Would it be possible, doctor, in your opinion, for a skilled physician seeing a patient in a state of insensibility from syphilis, from which she never recovered, and seeing her only once; would it be possible for such a person to form an accurate judgment of that patient's mental condition, ten days before he saw her?

A. Absolutely impossible.

Q 1746. Is insensibility or coma in syphilis a ne-
954 cessary result of syphiloma?

A. No.

Q 1747. Is there any way, short of an actual examination, of determining with certainty whether a person who dies from syphilitic disease has been afflicted with syphiloma or gummata in the brain?

A. No.

Q 1748. All the symptoms of this complexion may be produced by other causes?

A. Yes; other causes due to syphilis.

Q 1749. Such as what? 955

A. Such as congestive changes in the cerebral substance, and arterial thickening due to syphilitic disease, by means of which the cerebral substance may be temporarily or permanently deprived of blood in certain portions.

Q 1750. Is paralysis in a syphilitic patient evidence of a greater brain disturbance than mere insensibility?

A. No — brain disturbance? I do not know what that means; if you would say brain lesion——

Q 1751. Brain lesion, then?

A. Not at all.

Q 1752. Is it or is it not a fact that all physical symptoms arising out of syphilis can exist without any brain trouble? 956

A. That's another question. I don't know what you mean.

Q 1753. Without intellectual disturbance?

A. Yes; all known lesions of the brain, so far as I know, due to syphilis, may exist without intellectual disturbance; and I might add, intellectual disturbance may exist, and after death no lesions of the brain be found when syphilis is the cause.

Q 1754. Is there any necessary connection, in your opinion, between any kind of physical lesions in the brain, or symptoms of them, and mental incapacity of the patient?

A. No; there is no necessary connection. 957

Q 1755. Have you, in your professional experience, known cases of brain lesion without intellectual impotency?

A. Yes.

Q 1756, Can you state some?

A. I have known patients to be paralyzed, and perfectly capable, mentally, of conducting business and managing it themselves, and getting along in
958 life as well as anybody else, as far as I could perceive. I have known patients unable to talk, and still perfectly capable of going about managing their own business, and apparently perfectly sound as far as judgment and the action of their brain and the relation of ordinary circumstances was concerned. I have known patients absolutely well to be stricken with paralysis at a given moment in broad day-light, when attending to some business, without loss of consciousness or any mental aberration, and to continue with consciousness and mental ability and capacity indefinitely thereafter. I have known patients without any paralysis or any physical symptom due to syphilis, to lose their intellect, to
959 lose their brain capacity and power, and I don't think there is a necessary connection at all,—necessary connection between the physical symptom and a physical lesion due to syphilis, and intellectual capacity as a necessary accompaniment of this lesion, or of these symptoms.

Q 1757. Are there cases on record in the books of serious brain lesion and intellectual capacity, coexisting in the same person?

A. Intellectual incapacity?

Q 1758. No, intellectual capacity?

A. Yes.

Q 1759. Can you state any cases?

A. I have several cases that I understood, if the
960 Court please—that I might not remember them, so I copied them down, and I will read them off and give them to the reporter—(reads).—"Case of Botal —obs. 3. Gustave Lagnean fils: 'Maladies Syphilitiques du Systeme Nerveux,' Paris, 1860. The only

nervous symptoms were headache and some trouble with vision. Post-mortem, a thoroughly disorganized brain—corruptum et cerebrum et nervi optici."

"Case of Duhamel and Legrand — obs. 97. Lagnean fils. Headache, worse at night, was the only nervous symptom. Post-mortem, extensive changes in the bone, membranes and anterior cerebral lobes of the brain." 961

"Case of Gama—obs. 87. Lagnean fils. Severe pain in the head was absolutely the only nervous symptom, and patient died, having preserved the use of all his movements and of his intellectual faculties. Post-mortem, the frontal bone was found inflamed and perforated in many points; beneath these points the membranes of the brain were corroded and pus was found escaping from the holes, an incision into the membranes of the brain allowed a gill of pus to escape, the pia mater was putrid and the whole surface of the brain greenish black for a depth of two or three lines, part of the left hemisphere was putrid and the lobes all softened, the cerebellum was diseased but to a less extent. 962

"Modern Cases—Cabral.—London Lancet, Jan. 10, 1874 (quoted from Journ. de Sociedade des Sciencias Med. da Lisbon). A man with syphilis had pain in the forehead and cold abscesses, no intellectual troubles; a tumor as big as a hen's egg was found in his brain after death surrounded by softened brain substance.

"Bonberger—(Virchow's Archives, May, 1874, p. 285). Extensive brain lesions, and severe symptoms ending in death, but no pain; severe symptoms due to syphilis, but due to no obvious brain lesion that an autopsy could demonstrate. Very many of these on record — Rodet (Gaz. Med. de Lyon, 1858); Zambaco, 73. Observation (des Affections Nerveuses Syphilitiques). Folin (Rollet's Text Book 963

on Syphilis, p. 913). Gjor, observation 60. Gros & Lancereaux, one of Ricord's patients (Gros and Lancereaux, obs. 86), and a second (obs. 78, Gros and lancereaux), and a third, who died with all the
964 symptoms of softening, but yet, upon post mortem examination, no lesion of the brain or envelopes could be found (Gros and Lancereaux, p. 13). Tamousky (Aphasie Syphilitique, Paris, 1870), has another case, and many more might be cited.

"Doubtless there was a lesion in many of these cases in the arterial system of the brain, but it was not sought for or suspected in former days, and, therefore, was overlooked.

"Conclusion.—There is no necessary constancy of relation in syphilis between brain lesions and brain symptoms, and the existence of physical lesions and physical symptoms does not necessitate the existence of intellectual symptoms, nor of any
965 nervous symptom, not even pain, therefore, it is impossible to conclude in a given case that, if there was coma and intellectual eccentricity, there was on that account any lack of mental soundness touching ordinary matters." (Signed) "E. L. Keyes."

Q 1760. Syphilis, then, in those respects differs from other diseases.

A. I do not know enough of other mental diseases to say, but I should judge so; I have seen very little of mental diseases except in cases of syphilis.

Q 1761. As between two physicians, one of whom
966 attended a syphilitic patient, prescribed for her, had his attention called to her mental condition, and at the time of the execution of the will in dispute, saw her execute it, and one who had seen her but once, at a time when she was insensible, from which insensibility she never recovered, whose judgment as

to her mental condition would, in your opinion, be nearest to the truth?

A. That of the former.

Cross-examination by Mr. Barkalow:

967

Q 1762. You have stated, Dr. Keyes, that there is no necessary connection between brain syphilis and mental alienation; mental alienation is a possible consequence of brain syphilis, is it not?

A. Certainly.

Q 1763. Is it not also a probable consequence?

A. In my experience, less probable than physical symptoms.

Q 1764. Supposing the syphilis to have manifested itself at the base of the brain, is not mental alienation more likely than if it were manifested in the anterior portion of the brain?

A. I think not, so far as I know, I believe not.

Q 1765. Is it not so stated in many of the books on that subject?

968

A. Upon mental alienation?

Q 1766. I cannot say whether mental alienation or syphilis—that the brain syphilis manifesting itself at the base of the brain is more likely to affect the mental faculties than if manifested in the anterior portion of the brain?

A. I think it is exactly the reverse, I have always believed, been taught and observed precisely the reverse; I have never heard of such a statement; I will look it up; I am very much surprised.

Q 1767. Are not gummata one of the manifestations of syphilis?

A. Yes.

969

Q 1768. Suppose gummata exist upon the dura mater, are they not a possible cause of mental alienation?

A. Yes.

Q 1769. Does not syphilis sometimes produce occlusion of the vessels?

A. Yes.

Q 1770. May not that occlusion become a cause
970 of mental alienation?

A. Yes.

Q 1771. By diminishing the blood supply?

A. Yes.

Q 1772. You have alluded to a number of cases in which there have been extreme physical manifestations of syphilis without mental alienation, also to cases in which there has been very little physical manifestation, isn't it the fact, however, that those cases are highly exceptional?

A. Yes.

Q 1773. Suppose a patient experienced coma lasting forty-eight hours, from which she is delivered by doses of iodide of potassium, without paralysis,
971 what would be your conclusion as to the cause of that coma?

A. That it was due to congestion or to arterial occlusion, and not to gumma probably.

Q 1774. Such circumstances might be characteristic of symptoms produced by gumma?

A. Oh, that might probably be produced by gumma, or clot, arterial disturbance of some sort, regulating itself shortly after.

Q 1775. In considering the effects of tertiary syphilis upon the mental powers, would not the age of the syphilitic and the duration of the disorder be taken—be passed upon?

A. The duration of the disorder not at all; the
972 age of the patient probably, in that mental acumen and ability are supposed to decline certainly after sixty. (I believe there is nobody sixty here!)

Q 1776. Would not the mental powers of a person past middle age be more likely to be affected

under those circumstances than those of persons in youth or manhood?

A. I think not, under sixty.

Q 1777. You think the chances would be equal with persons running from twenty-five to sixty? 973

A. About, I should judge.

Q 1778. Would not the general robustness, or the reverse, of the person under consideration, affect the question?

A. Mental capacity? No, I think not.

Q 1779. Would not the general nervous condition of the patient?

A. The general nervous condition of the patient would affect his expression — affect the way he showed it—or she—but not probably its intensity.

Q 1780. Does not brain affection of other than a purely paralyitic or syphilitic origin exhibit itself oftener and more readily in the emotional state of the character, than the other qualities? 974

A. Yes, very much.

Q 1781. Is it not very frequently the case, that of patients who have suffered paralysis and have recovered from it, after their paralysis are yet alive to its manifestation?

A. Yes.

Q 1782. Are not their likings and dislikings apt to be unduly intensified?

A. Yes.

Q 1783. Will not that susceptibility have its effect in distorting the judgment?

A. It depends entirely upon the strength of the judgment of the individual. I cannot state in the 975 given case.

Q 1784. It is a minus quantity?

A. I am not positive about that.

Q 1785. The case has been submitted of a skilled physician having one observation of the patient who was at the time in a profound coma, and doubt

has been expressed as to his ability to form any opinion of the mental condition of that patient ten days before his observation of her; suppose that observation took place in the course of a medical con-
976 sultation, and that the history of the case be given to that physician, that skilled physician, by the associate who called him in, would not his judgment be rendered more worthy of respect by that fact?

A. It would.

Q 1786. Would it not be possible for him then to pronounce a judgment which should have weight?

A. Yes.

Q 1787. Is coma a comparatively frequent result of syphilitic disorder?

A. It is not relatively high; it does not stand relatively high of brain trouble.

Q 1788. It is a trouble; illness of the brain; a symptom?

A. Yes.

977 Q 1789. Do I understand that, as your opinion expressed here, that the brain may actually suffer lesion, and yet be sound mentally, intellectually?

A. Mental and intellectual capacity may be apparently perfect, so far as records go, and syhpilitic lesion may be found after death; and not only that, but in Bellevue Hospital, I have recently heard of a case, which I did not see, where the patient died of some other disease, and had no mental, intellectual or other brain disturbance, and who after death was found to have abscess of the brain, showing that there are cases where the brain may be more
978 or less disturbed, and give no evidence of lesions.

Q 1790. You say it may be apparent; but does not that mean the fact that there may be an imperfection, which is only waiting the time when it may be betrayed?

A. Certainly.

Q 1791. It is not absolutely perfect?

A. I do not think any person is absolutely perfect in brain.

Q 1792. Do I understand you to say that a brain which has suffered actual lesion may be absolutely unimpaired intellectually?

979

A. So far as evidences are concerned, disclosed from the intellect, yes.

Q 1793. Do you mean by that that there would not be in it a defect which some possible concatenation of circumstances might betray?

A. I think it possible; I would like to go on record in this way: that in my experience with syphilis of the brain, the physical symptoms and the mental symptoms have been very highly marked as a rule in matters of judgment and ordinary intelligence, and the capacity of the patient to discern facts, and see them in their true light, has been comparatively little impaired; whence it follows, which I gave as a rule, that because there were physical symptoms, there is no need to infer necessary intellectual symptoms.

980

Q 1794. Do you in your observations, Dr. Keyes, mean to include the case of lesions at the base of the brain also?

A. Yes, this cause of gamas, had the whole cerebellum, which is the base, involved, and he is stated by the observer to have died in the full possession of all his faculties.

Q 1795. Dr. Keyes, are not many, if not most of these unusual cases that you have cited reported from a time when the knowledge of this subject was not as thorough as it is now?

A. Yes, when lesions were not so well understood, but still, the lesions in these cases were very obvious and were reported, and it is probable that men a hundred years ago could judge with intelligence as well as we can now—perhaps better.

981

Q 1796. Could they judge of the injury sustained?

A. Well, they find plenty of injury and no loss sustained, so the shoe is on the other foot.

Q 1797. In speaking of the comparative judgment
982 of a physician who observed as against one who received a communication only, and the physician who attended and the one who consulted only, you assume in your answer that other things are equal with relation to the two men, I presume, that they are of equal ability and equal knowledge?

A. Not necessarily—I think it would require less ability to pronounce accurately upon a personal examination in the flesh than to pronounce accurately upon the same person's condition from hearsay after, I should say fifty per cent. less ability would give as good an opinion, I should judge.

Q 1798. Suppose the opinion of one man be the opinion of the physician who had attended the
983 patient for a period, he himself being a man of ordinary ability and of ordinary discernment only—suppose the opinion of the other man be that of a physician of decided eminence, who had received his account of the patient from this person first considered, and who had viewed the patient once himself, in that case, to whose opinion would you give greater weight?

A. I should give the greater weight to that of the ordinarily intelligent physician who had observed the patient, unless the extraordinarily intelligent physician who had not observed the patient could give good reasons to the contrary—not couched in general terms, not generalizing, but specifying why
984 he did it.

Q 1799. And would you not assume that ability sufficient to pass upon mental condition implied ability sufficient also to communicate his opinion to the consulting physician?

A. I should judge so.

Q 1800. That is, would not the consulting physicians have had enough to pass upon?

A. He would have to give specific reasons, facts, for differing from the conclusion of the physician who had attended in the flesh. 985

Q 1801. Let us suppose once more, that the physician first named had been in attendance for a very short time, and that a very infrequent attendance?

A. What time do you mean?

Q 1802. Well, who had prescribed two or three times, who had known the person as an ordinary acquaintance for six months, who had been consulted by her or for her for not over two weeks, and had prescribed for her once or twice?

A. And the other?

Q 1803. And the other, a physician, claimed to be a physician of eminence, called in by him as a consulting physician, to whom he made known all that he knew or had observed, and who also observed her in a final coma, and who made attempts to arouse yon patient? 986

A. I should think it extraordinary that these physicians could have arrived at different conclusions, and I should decline to decide between them.

Q 1804. Are you acquainted with Dr. Bartholow by reputation?

A. Yes, sir, personally and by reputation?

Q 1805. He is a man of eminence in his profession, is he not.

A. As a therapeutist and as a writer upon therapeutics.

Q 1806. Is he not distinguished upon mental alienation? 987

A. I was not aware that he was considered as an authority or quoted as an authority except upon therapeutics or the science of drugs, upon which he is quoted, experimental pharmacology and all that.

Q 1807. Assuming a case of brain syphilis attended by gumma of the dura, would five-grain doses of iodide of potassium retard to any appreciable extent the progress of the disease?

988 A. Probably not.

Q 1808. Most physicians would prescribe larger doses than that, would they not, under those circumstances?

A. Yes, sir.

Q. 1809. Very much larger?

A. Yes, sir.

Q 1810. Take the case of a patient who had suffered coma of this character lasting forty-eight hours, and subsequently passed under the care of a physician who was made aware of that, if you found he had confined his treatment of that case to five-grain doses, would it affect your judgment of his ability?

989 A. It would depend entirely upon his judgment; if he was a homeopath that would be enough, or if he found that iodide of potassium affected her stomach, that is too general a question to be answered, because every physician might treat differently.

Re-direct by Mr. Wallis:

Q 1811. Suppose, as between the two physicians, the one who attended the patient, and the other who was called in in consultation, that the subject of the mental condition of the patient was not the subject of that consultation, then who would be enabled to judge with most authority of the condition?

990 A. The former.

Q 1812. The physician who had attended the patient?

A. Yes, sir.

Q 1813. Do you understand that the posterior

portion of the brain and the base of the brain mean the same thing?

A. No, sir.

Q 1814. Is mental alienation the rule or the exception in syphilitic cases? 991

A. It is the exception; most everybody has syphilis; they have it in all the "first families."

Q 1815. Even in cases of tertiary syphilis?

A. Even in cases of tertiary syphilis it is exceptional.

Q 1816. Is it largely the exception?

A. It is largely the exception in my experience.

Re-cross by Mr. Barkalow:

Q 1817. Are gummata upon the posterior portion of the brain more likely to produce mental alienation than upon the anterior portion?

A. I think not. 992

Q 1818. Upon the base of the brain?

A. I think not. I should think, if you want what I believe, that the central or middle lobe above the top central lobe, was the most dangerous place, intelligentially.

Q 1819. Suppose that the five grain doses of iodide of potassium were exhibited during the second coma which has been described, wouldn't that be considered, would you consider that, irresolute treatment?

A. Yes.

It is agreed that the signature of this witness to his testimony be waived.

993

Adjourned until to-morrow morning, at ten o'clock, at Mr. Van Wagoner's office, at Paterson.

Examination of witnesses continued, at the office of Isaac Van Wagoner, at Paterson, this nineteenth day of November, A.D. 1881, in the presence of

Messrs. Edwards and John Linn, counsel of proponent, and Mr. Barkalow, counsel of caveator.

ANNE INGLIS, being recalled, on the part of
994 the proponent, "for the purpose of asking her a few questions which were omitted in the first examination."

The caveator objects to the recall of Miss Inglis, upon the ground that her examination was closed when she left the stand.

The witness on her oath deposeth and saith.

Direct examination by Mr. Linn:

Q 1820. Were you present at a conversation had between Mrs. Dale and Mr. Ryle, sometime after her return from Europe?

A. Yes.

995 Q 1821. Do you recollect what time it was?

A. It was after she had returned up to Broadway to live, after she left her son Fred's house, and Mr. Nelson was absent and his family; I can't place it any nearer than that.

Q 1822. Where was it?

A. It was in Broadway; in Mr. Nelson's house in Broadway.

Q 1823. Where was Mr. Nelson at that time?

A. I think he was with his family at Newport.

Q 1824. Will you now please state just what was said by Mrs. Dale and Mr. Ryle, in this conver-
996 sation?

A. Mrs. Dale sent for Mr. Ryle, and he called that evening, and she wished to take his advice with regard to this pending arrangement with her son Fred, about the machinery, the price of it; Mrs. Dale showed Mr. Ryle a paper that had been drawn up that her son Fred had asked her to sign;

Mr. Ryle took it and read it, and he said: "Mrs. Dale, do you mean to say that you are willing to let all that machinery go for twenty thousand dollars?" "Why," said he, "that's absurd," and he 997
stated a value that was very much above it, above that, and Mrs. Dale said: "Mr. Ryle, I am not making an arrangement with a business man, I am making an arrangement with my son; this was his own proposition to me; he told me this amount he could pay, and it would pay him to pay this, this twenty thousand dollars."

Q 1825. What value did Mr. Ryle put upon it?

Question objected to.

A. I am not altogether certain; I should say, at least forty thousand dollars, if it was not sixty; I can't remember exactly.

Q 1826. Just tell us what was said, as near as you can?

A. He said there was machinery in that mill 998
worth all that; then, said he, "Mrs. Dale, if you don't wish my advice in this matter, then, of course, you must take your own plan about it." She said she wished simply to see with regard to whether this paper was correctly drawn, so that the payments could be correctly made; it was not as to the amount of the machinery that she wished his advice in it, merely with regard to the legal status of the paper, and he read it over, and he said, "Well, this is no paper at all, Mrs. Dale." He seemed to look upon it with quite contempt as a legal paper, and he said, "If you will allow me, I will take this paper to my lawyer in New York, and I shall get it 999
properly drawn up with the price that you have stated here, with this price for the machinery;" and she agreed to it, and she said, "Very well, Mr. Ryle, that is all I wanted you to do for me." Mr. Ryle also said, "Send Fred to me, and I will

have a talk over with him on this matter," and after that I left the room.

Q 1827. During this conversation did she say
1000 anything to Mr. Ryle about the price which her husband had put upon the property?

A. Yes, she said this twenty thousand dollars she was willing to accept it from her son for the machinery, that that was the original price her husband had arranged with her son, but afterwards he had changed it, I think, five thousand dollars, so that the price was twenty-five thousand instead of twenty, and that had made the difficulty between father and son, and she had come home from Europe, hoping to arrange the matter with her son Fred, to make peace between them; she was quite willing to give him the machinery at Fred's price?

1001 Answer objected to by caveator.

Cross-examination by Mr. Barkalow:

Q 1828. Did Mrs. Dale say that, if she sold him that machinery for twenty thousand dollars as agreed upon, she should charge him twenty thousand more in her will?

A. No, she spoke nothing about her will.

Q 1829. Do you know, Miss Inglis, whether Mr. Ryle ever saw that machinery?

A. I don't know; he spoke as if he had seen it, but he did not say so.

Q 1830. That is why I wanted to know; he did
1002 not say so?

A. No.

Q 1831. I understood you to fix this conversation at the period that Mrs. Dale returned from Newport?

A. From Europe.

Q 1832. Very soon after her return from Europe?

A. No, it was after her leaving; she stayed some time with her son Fred, and then went up to Broadway, and it was then.

Q 1833. It was somewhere in the fall of 1879, wasn't it, before the holidays? 1003

A. Oh yes, before the holidays; I am so miserable at remembering.

Q 1834. How long was this conversation?

A. How long?

Q 1835. Of what duration, between Mrs. Dale and Mr. Ryle?

A. Well, it was quite a long time that evening, but I left the room; I wasn't present during the whole of it.

Q 1836. How much of it occurred while you were present?

A. That I have given.

Q 1837. Just what you have said?

A. That is all. 1004

Q 1838. You were present no longer than it took to say what you have described?

A. Yes, that is what I mean to say.

Q 1839. About how long were they in all conversing about this matter,—as much as an hour?

A. Not quite an hour, if I recollect aright.

Q 1840. And of all that conversation you give just what you have mentioned?

A. I was not present an hour; I was not present in the room.

Q 1841. Were you seated while you were there?

A. Yes, seated.

Q 1842. How long did it take to say this you have said here? 1005

A. Well, I cannot tell you now; it took him a little time to read the paper, and we had a little conversation about it; I should think about ten minutes.

Q 1843. Did you take part in the conversation?

A. Not with regard to the business part; when he came into the room I took a little part, and when he began to talk business I was only a
1006 listener.

Q 1844. And you left just as you took a fancy to leave?

A. Yes.

Q 1845. You did not feel that you were at liberty to take part in the conversation if you chose?

A. Yes, Mrs. Dale requested me to remain.

Q 1846. She made the request as an act of politeness, not as a witness, merely as a friend?

A. Yes, sir, merely as a friend.

Q 1847. Mr. Ryle is now dead, is he not, Miss Inglis?

A. Yes.

1007 Q 1848. Miss Inglis, I am sorry to have to ask you the next question I do, but I am going to ask it. Did Mr. Ryle seem to you that evening to be in a condition for the careful transaction of business?

A. Oh yes, perfectly that evening, he was himself.

Q 1849. That is your opinion?

A. Yes—yes.

Q 1850. What time in the evening was he there?

A. I think it was eight o'clock.

Q 1851. What time did he leave?

A. Well, I don't know how long he remained—about an hour, or betwixt from—(a pause)—it might not be that he remained so long.

Q 1852. What time did you leave?

1008 A. I was living there with Mrs. Dale; I was residing there.

Q. 1853. Did you see Mr. Frederick S. Dale come there shortly after Mr. Ryle left?

A. Mr. Ryle had not left when Fred came; Mr. Ryle was there when Frederick came.

Q 1854. Did Mr. Ryle remain after Frederick came?

A. Yes.

Q 1855. Were you present? 1009

A. No.

Q 1856. You did not hear Fred say anything to his mother or to Mr. Ryle?

A. No, sir.

Q 1857. Did Mr. Ryle, while you were present, say anything to Mrs. Dale in reference to the propriety of making a charge for interest upon the purchase money of the machinery?

A. Oh no, not when I was present.

Q 1858. Did Mr. Ryle, while you were present, say anything as to his opinion that the instrument proposed would not be capable of enforcement at law because it provided usurious interest?

A. No, sir. 1010

Q 1859. Did Mr. Ryle, while you were there, say anything about his own sentiments with regard to the gentleman who drew the instrument?

A. No, not at all; I dont know if he knew who drew the instrument: he did not say anything about it; I knew who drew the instrument.

Q 1860. Did Mr. Ryle, while you were there, make any remarks on the subject of the wear and tear of machinery?

A. No.

Q 1861. You were acquainted with Mr. Ryle in his lifetime?

A. Yes, sir.

Q 1862. Do you know anything of his business 1011 qualifications?

A. I have always understood he was a very thorough business man.

Q 1863. Haven't you also understood that he was an extremely close man at bargains?

A. Yes, I have been told so.

Q 1864. That was his reputation?

A. That was his reputation.

Mr. Linn—Is that material?

1012 *Mr. Barkalow*—That is all I want to ask about it.

Q 1865. I understand you to say, Miss Inglis, that Mr. Dale came home to make peace between her husband and her son Frederick?

A. Yes, she has often said so to me.

Q 1866. Don't you know that Mrs. Dale came home to get a divorce from her husband?

A. No, I don't know.

Q 1867. Didn't she tell you so?

A. No, never told me so.

Q 1868. Hasn't she intimated that to you?

A. No.

Q 1869 Who has?

A. Nobody.

1013 Q 1870. That's all.

Re-direct by Mr. Linn:

Q 1871. Where did Mr. Ryle live?

A. Mr. Ryle lived just in Broadway.

Q 1872. In Paterson?

A. In Paterson.

Q 1873. What was his business?

A. He had a silk house in New York.

Q 1874. Was he a silk manufacturer?

A. No; a buyer of silk; a buyer and seller of silk, I understood; importer, I rather should say, of silk.

Q 1875. Do you know whether he was ever en-

1014 gaged in the manufacture of silk himself?

A. I don't know.

Q 1876. Do you know whether he was ever interested in the manufacture of silk himself, or in any factory?

A. Unless he has had engagements with any factory to supply them with silk, I don't know.

Q 1877. How long had you been acquainted with Mrs. Dale before her death?

A. I had been acquainted nearly since she came to Paterson—I knew her almost——

Q 1878. Were you intimate with her? 1015

A. Very.

Q 1879. During any part of her life had she ever a habit of laughing immoderately, or without any apparent cause?

A. Oh no, never.

Q 1880. Was there ever any change that you observed in her manner in that respect, from the first time you knew her until the time of her death?

A. No.

Q 1881. That's all.

Re-cross by Mr. Barkalow:

Q 1882. How often during the last month, or during the last two months, that Mrs. Dale was in 1016
Paterson, did you see her?

A. I saw her almost every day.

Q 1883. For two months?

A. I can't remember fully; I have the impression I saw her almost every day, when she was in Paterson; she was out of it now and then, making a visit to New Haven; of course I saw her; she sent for me almost as soon as she came home; she always sent for me; I saw her almost every day.

Q 1884. That is your impression?

A. Yes.

Q. 1885. For how long a time did you see her on those occasions?

A. Sometimes an hour, sometimes two hours, 1017
sometimes——I was never short of an hour, sometimes longer, whole afternoons.

Q 1886. That is all, Miss Inglis.

It is agreed that the signature of the witness to her testimony is waived.

T. NELSON DALE, the proponent, being called as a witness in his own behalf, is duly sworn according to law.

1018 Adjourned to November 28, 1881, at 10 A.M., at the same place.

Examination of witnesses continued, this twenty-eighth day of November, A.D. 1881, at the same place, in the presence of Mr. John Linn of counsel for proponent, and Mr. Barkalow, of counsel for caveator.

T. NELSON DALE, a witness produced on the part of the proponent, called at the last sitting, and then duly sworn according to law, on his oath deposeth and saith:

1019

Direct examination by Mr. Linn:

Q 1887. Where do you reside?

A. In Newport, Rhode Island.

Q 1888. You are the son of Sarah P. Dale, and one of the devisees mentioned in her will?

A. Yes, sir.

Q 1889. (Being shown paper marked Exhibit X.) What is that paper?

A. It is the first draft or memorandum of the will of Sarah P. Dale.

Q 1890. In whose handwriting is it?

A. In my own.

Q 1891. Where was it made?

A. At 229 Broadway, Paterson, New Jersey.

1020 Q 1892. Was she residing there at that time?

A. Yes.

Q 1893. When was it made?

A. It was made either—I will take that back; it was made in the early part of March, 1880.

Q 1894. By whose direction was it made?

A. By the direction of Sarah P. Dale.

Q 1895. Who were present at the time it was made? 1021

A. No one but myself and Sarah P. Dale.

Q 1896. By whose request was it made?

A. At her request.

Q 1897. For what purpose?

A. To be sent to her counsel, Mr. Wallis.

Q 1898. Do you know whether prior to that time she had consulted with Mr. Wallis in reference to making her will?

A. She had seen Mr. Wallis twice, I think, but I was not present when she consulted in regard—I did not hear her consult him in regard to her will.

Q 1899. After this had been written, what was done with it?

A. I mailed it to Mr. Wallis.

Q 1900. By whose request? 1022

A. The request of Sarah P. Dale.

Q 1901. Did you in any manner attempt to influence your mother in making a disposition of her property by will in your favor?

A. No, I did not.

Q 1902. Did you ever suggest to her that she should do so?

A. No, I did not.

Q 1903. Did you know, before she dictated the contents of this paper, Exhibit X, what were to be the provisions of her will?

A. Not in detail.

Q 1904. Did you make any suggestions to her in regard to any provision in her will? 1023

A. I did.

Q 1905. What suggestion did you make?

A. First: that instead of giving five hundred dollars each to the children of Frederick S. Dale,

that she should leave them one thousand each; Second: that her executors should both—should be required to pay interest from the time—one year after her death—until the payment of those sums to
1024 the children.

Q 1906. Did she, or not, adopt those suggestions?

A. She did.

Q 1907. Did you make any other suggestion to her in reference to any other provision of her will?

A. I did not.

Q 1908. Do you know how she received the draft of the will which had been prepared for her by Mr. Wallis, after it had been engrossed and ready for execution—I mean the last draft?

A. Yes; it was received by me in Newport, Rhode Island, by mail, on the fifteenth of April, and remailed at once to her.

Q 1909. Where was she then?

1025 A. At 1633 Christian street, Philadelphia.

Q 1910. Look at these papers and see what they are?

A. Those are three letters written by Sarah P. Dale to me at Newport, Rhode Island.

Q 1911. Written from what place?

A. From Philadelphia.

Q 1912. Under what date?

A. There are no dates written upon them, but I know when I received them.

Q 1913. When did you receive them?

A. I received them during the month of April, 1880.

1026 Q 1914. Can you tell what time during the month?

A. The first part—these two (marked for identification Exhibit X, 2, and Exhibit 3); I received some after the fifteenth of April. I would like to look at them—(examining them)—very soon after the fifteenth of April, 1880; this one (marked for

Identification Exhibit X, 4,) I received later in the same month.

Q 1915. Do you recollect about what time your mother went to Philadelphia that spring?

A. She went to Philadelphia on the twenty-sixth or twenty-seventh of March. 1027

Q 1916. When did you see her first after she went there?

A. I would like to—— before answering that I have a dispatch which I received from Mr. Winters which would enable me to fix that date exactly.

Q 1917. Look at the dispatch?

A. (Examining paper). On the fourth of May.

Q 1918. Why did you visit her just at that time?

A. I received a dispatch from Mr. Winters, at whose house she was staying, on the third of May, saying she was worse, and asking me to come on.

Q 1919. How long did you remain there on that occasion?

A. Until the day of her funeral. 1028

Q 1920. When did that take place?

A. I think about the tenth of May—the tenth or eleventh.

Q 1921. Where did you stay during the time you were there on that occasion?

A. At Mr. Winters' house.

Q 1922. Was your brother there any part of the time?

A. Yes; he was during the last day or so of her life.

Q 1923. When did he arrive? Tell as near as you can; if you don't get it exactly right, it is not a vital thing? 1029

A. She died at six o'clock in the evening, and he arrived the day before, I think.

Q 1924. Had any word been sent to him of her condition?

A. I telegraphed him.

Q 1925. In what condition did you find her when you arrived; was she conscious, or was she in a comatose condition?

1030 A. She was conscious enough to recognize me, and to speak to me.

Q 1926. During the time that your brother was there, where did you and he respectively remain, and what were you doing?

A. We remained in the room where she was until she died, with the exception of meal-time, when we went, each of us in turn, and took our meals down stairs.

Q 1927. Were you engaged during the time in reading newspapers?

A. I was not, unless my memory greatly deceives me.

1031 Q 1928. Were you reading anything in the room where she was; and if so, what?

A. Yes; I read portions of Professor Gray's lectures before the New Haven Theological Seminary, and a portion of Bushnell's "Nature and the Supernatural."

Q 1929. Was it possible for you to do anything more in administering to her necessities, or relieve her sufferings, during the time than you did do.

A. No, sir; it was impossible.

Q 1930. Did you protest against or object to your brother keeping a carriage at the door, on account of the expense of it?

A. No, sir.

Q 1931. What is your occupation or profession?

1032 A. I am a geologist, either a field geologist or an instructor of geology.

Q 1932. How long have you been so engaged?

A. Since the summer of 1877.

Q 1933. Is that occupation a lucrative one or not?

A. It has not been so in my case.

Q 1934. About what has been your annual income, from your profession, since that time?

A. I will have to answer that in a little indefinite way: I have been actively engaged since that time for the space of a year and a half, during which I have received for my services sixteen hundred and seventy-nine dollars and twenty-eight cents, beside my board for myself during four months. 1033

Q 1935. Did your mother have full knowledge of your condition and circumstances?

A. Yes, sir.

Q 1936. And the income from your profession?

A. So much of it—yes—she did, as to the income only that portion of it, of course, that was received during her lifetime.

Q. 1937 Do you recollect having any conversation with Dr. Blundell in reference to the capacity of your mother to make a will, and if so, when did it take place? 1034

A. I did have such a conversation, and it took place either the day, or the day after the funeral.

Q 1938. What was said?

A. I called to see him to acquaint him with the circumstances of my mother's death; he expressed his confidence in the skill of the physicians who attended her, and then asked me when her will was signed, before the last attack began, or after it had begun, I said "before"; he said, "then the will will stand."

Mr. Linn—We offer in evidence these three letters which have been marked as Exhibit X, 2, Exhibit X, 3, and Exhibit X, 4. 1035

Q. 1939. In whose handwriting are these letters which have just been offered in evidence?

A. In the writing of Sarah P. Dale.

Cross-examination by Mr. Barkalow:

Q 1940. What was Mrs Dale's age when she died,
1036 Mr. Dale?

A. Fifty-four, about.

Q 1941. Do you recollect when Mrs. Dale came from New Haven the last time?

A. On the fifth of February, 1880.

Q 1942. Did she suffer a coma at your house before going to Philadelphia?

A. Yes, at least I don't know the technical term for it, she was in a dozy condition—had a serious attack, or condition it may be.

Q 1943. I mean, do you remember one attack more pronounced than any others, if there were more than one?

A. Yes, sir.

Q 1944. Can you tell about when that was?
1037

A. I think about ten days after her return from Philadelphia, the attack began.

Q 1945. You don't mean ten days after her return from Philadelphia.

A. I meant to say ten days after she returned from New Haven, which was on the fifth of February.

Q 1946. When was it, Mr. Dale, that you made this paper, Exhibit X, at the direction, as you inform us, of Mrs. Dale?

A. It was early in March, I have answered that question once before, haven't I?

Q 1947. She had then been at your house about a
1038 month, had she not?

A. Since her return from New Haven, yes, she had been there five weeks.

Q 1948. Yes; had you and she during that month spoken of her property and her final disposition of it?

A. No, sir.

Q 1949. Where were you when you prepared this manuscript, Exhibit X.?

A. In her bedroom.

Q 1950. Was it in the daytime or in the evening?

A. It was in the forenoon. 1039

Q 1951. Was Mrs. Dale sitting up, or was she in her bed?

A. I think she was on her bed.

Q 1952. Did she send for you?

A. She did not explicitly ask me to come in there at that particular time, but she intimated in many ways that she wanted to have me come in at the first convenient opportunity.

Q 1953. Did she say what for?

A. Yes, sir.

Q 1954. Did you anticipate such a request?

A. It was my—she generally asked me to act as her secretary in writing letters.

Q 1955. Did you anticipate the object for which she desired your presence then? 1040

A. Well, I knew that I would—that she required my assistance.

Q 1956. In what?

A. In the mere mechanical part of writing.

Q 1957. Writing what?

A. I mean the will.

Q 1958. How did you know it was the will she was likely to call for your assistance about, that day?

A. The understanding was that—I cannot give the exact words in which it was expresssd by her, or the exact time when it was expressed; the understand was, that as soon as the machinery matter 1041 was disposed of that she was to draw up her will.

Q 1959. Then she did refer to her will, in previous conversations with you?

A. In so far she did, but we had no conversation, what I should call conversation, about the will.

Q 1960. From what, then, did you derive your understanding that she was about to make one?

A. From her long expressed intention to make one.

1042 Q 1961. And do I understand that when she expressed her intentions, it was your habit to make no response?

A. Yes.

Q 1962. When she did express those intentions, did she speak of them in detail?

A. No.

Q 1963. Did she state in substance what they were?

A. No,

Q 1964. Then, if I understand you, on those occasions when you went into her room, you knew you were to be of assistance to her in preparing direc-
1043 tions for her will?

A. Yes.

Q 1965. But that you did not know to any extent whatever what the substance of that will was to be; is that so?

A. I will have to answer that, modifying it: I knew that from remarks she had made, that she did not intend to leave much of her property to Frederick S. Dale.

Q 1966. Remarks made how long before that time?

A. From the time—from about the time the—she—she was discussing the machinery question with my brother.

Q 1967. I asked for dates, Mr. Dale,—from about
1044 how long before this time that you prepared her will, was it that you had any understanding from her, that she did not mean to leave much of her property to Frederick S. Dale?

A. About a month.

Q 1968. How much did she intimate that she did intend to leave to him, if any?

A. She never said.

Q 1969. Did she intimate that it was her intention to deprive him of all share whatever in her estate? 1045

A. She never said anything about it until she — until that morning.

Q 1970. Then I must ask again: how did you learn her intentions during that month?

A. You asked me how much she intended to leave, wasn't it?

Q 1971. I did, but I subsequently asked you a more definite question—when she expressed her intention to deprive him of all share of her estate?

A. She never expressed such intention until she dictated her will.

Q 1972. Then we come back, as I understand it, to this declaration, when you went into her room on the morning when you first took her instructions for her will, you know she intended to deprive your 1046 brother of a share of his interest in her estate, but that you did not know how much she intended to deprive him of; is that true?

A. Yes.

Q 1973. What was first said when you went into her room?

A. I can't remember the first words that passed between us.

Q 1974. I meant to ask, upon this subject, of course?

A. I will have to answer what may not be considered an exact answer to the question, in order to get at it; I began by making memoranda on a sepa- 1047 rate piece of paper, from papers of Mrs. Dale's, and from her own words.

Q 1975. Will you let me interrupt you there; I would like to know the first observation that was

made which indicated that this was to be a business interview, and not a mere conversation upon indifferent topics?

A. Well, I don't remember the first observation
1048 in reference to the dictation of the will; that is the only thing I remember in reference to the will.

Q 1976. Was there any such expression from Mrs. Dale as this—I want you to do some writing for me; I want to talk to you about business, or, I want some assistance?

A. No, sir.

Q 1977. Was the business part of your interview entered upon immediately after your entrance?

A. No, sir.

Q 1978. Was there conversation preceding it?

A. Yes.

Q 1979. Do you recollect about what?

1049 A. Yes.

Q 1980. What was it about?

A. We had a discussion as to whether my father had managed her business matters as wisely as he might have done.

Q 1981. And from that you proceeded to the business of the will?

A. Yes, sir—that was a digression really—that conversation was a digression from the business of the will.

Q 1982. But it did act as an introduction, as a matter of fact?

A. Yes.

Q 1983. Whose is the phraseology of Exhibit X?

A. The phraseology is that of Mrs. Dale.

1050 Q 1984. Are you sure of that?

A. Yes, sir, with one exception—that the names of these lots in New Haven were taken from the memoranda that I—

Q. 1985. I will ask further as to that; the first line

of Exhibit X—"I appoint T. Nelson Dale, junior, one of my executors;" do I understand rightly that that was taken down exactly as dictated by Mrs. Dale on that occasion?

1051

A. Yes.

Q 1986. Then she sought to throw a degree of formality over this document, did she? Now, Mr. Dale, did she say, "I want to appoint you as my executor," or did she say, "I appoint T. Nelson Dale, junior, as my executor?"

A. I think it is probable that she said, "I want to appoint you as one of my executors."

Q 1987. The interview was usually conversational?

A. Mrs. Dale dictated in a steady stream the provisions of the will, and I may have, where she used such a word as "you," put in my own name instead; that is the only liberty I took as her secretary.

1052

Q. 1988. Otherwise, you mean, it was a strict dictation?

A. Yes, sir.

Q 1989. For instance, the word "bequeath" I observe to be used at the opening of the second clause, was that Mrs. Dale's word?

A. I can't say exactly.

Q 1990. She may have said "give"?

A. She may have said "give."

Q 1991. Then it is not a strict repetition of words?

A. I may have substituted what I considered a little better English, but in no other sense.

1053

Q 1992. Or you may have substituted what you may have considered as a more legal term?

A. I am not supposed to know anything about legal terms; I can't remember as to that.

Q 1993. I observe in Exhibit X the words "Or-

chard street," "Dixwell avenue," "Prospect street," "High street," "Foote street," to be underscored; when was that underscoring made?

A. I don't remember.

1054 Q 1994. It is underscored in lead pencil; does that assist your recollection?

A. No, I don't remember.

Q. 1995. I observe further down upon the page, interlined, the words "remain unused and" in what appears to be a different ink, and on the next line the word "whenever," interlined, which also appears to be in a different ink, and in the same previously used for interlineation; and also I observe that there is added to the following line the words "it shall seem wise to give them to him," in the same ink used in the previous interlineations; when were they made, and by whom?

A. They were made, I think, at the same time,

1055 in re-reading the paper to Mrs. Dale.

Q 1996. Made by you?

A. Made by me at her direction.

Q 1997. How do you account for the great difference in the appearance of the ink, if they were made at the same time?

A. Unless there were two inkstands there, I don't remember; I know, however, that those—the substance matter of those interlineations were Mrs. Dale's own suggestions.

Q 1998. Upon consultation with you?

A. No, her own ideas.

Q 1999. Upon consultation with you at the time?

1056 A. I don't remember a consultation upon those points.

Q 2000. Do you remember a discussion?

A. No.

Q 2001. Do you remember expressing an opinion with regard to them?

A. The only opinion which I expressed or suggestion which I made was in reference to the thousand dollars instead of five hundred.

Q 2002. I am speaking of these interlineations?

A. I don't remember.

1057

Q 2003. Don't you remember expressing yourself with regard to them at all?

A. No, sir, I think they were Mrs. Dale's own suggestions when I re-read them at the time.

Q 2004. And you sat silent and interlined them in this different ink, as I understand you?

A. I cannot account for the different ink unless there were two different inkstands in the room, which is quite possible.

Q 2005. Next in this Exhibit X I find mentioned a bequest to the children of Frederick S. Dale of the sum of one thousand dollars each; I understand you to say that that was made one thousand instead of five hundred upon your suggestion; when was that suggestion made—at the time—at that time?

1058

A. At the time the dictation took place.

Q 2006. Then the original dictation was not a thousand dollars?

A. When she spoke of five hundred, I interrupted her and suggested that it be made a thousand.

Q 2007. Before writing it down?

A. Yes, sir, and she accepted the suggestion.

Q 2008. Why did she leave them anything, do you know?

A. I heard her say that she had no reason for doing otherwise.

Q 2009. Is that all you heard her say on that subject?

1059

A. Yes, that is all I heard her say.

Q 2010. Didn't you hear her say there and then, or at some other time, that she left a legacy to those children because Mr. Wallis had advised her to do so to secure the sustaining of the will?

A. No, sir, I never heard her say so.

Q 2011. Don't you know that that was the fact?

A. I heard one of the witnesses testify the other day to that effect.

1060 Q 2012. Independently of what that witness testified to, don't you know that that was the fact?

A. She may have had some such notion, but I don't know; I don't think that the will was made under that—with that notion.

Q 2013. Don't you know that she said so?

A. No, excepting what I heard the witness testify to the other day.

Q 2014. Wasn't she, as a matter of fact, advised so, to your knowledge, by her counsel?

A. No, she was not.

Q 2015. Weren't you advised so?

A. No, sir.

1061 Q 2016. Didn't you ever hear that idea suggested until you heard it the other day on the stand?

A. I heard Mr. Wallis once say that people who had no knowledge had such a notion.

Q 2017. Did you hear him say that to her?

A. I forget whether it was to me for her, or to her in my presence.

Q 2018. The remark was brought to her knowledge, that you know, don't you?

A. Yes, sir.

Q 2019. Why did you propose a thousand instead of five hundred?

A. From disinterested motives.

Q 2020. Was it from the same motives and at the same suggestion that that legacy in Exhibit X was
1062 proposed to be paid out of the last payment that the father of those children should make upon the machinery in his mill?

A. That that last payment—that in regard to the last payment was not at my suggestion whatever—at all, I should say.

Q 2021. You took that down without making any suggestions as to that?

A. Yes, sir.

Q 2022. Are you sure, Mr. Dale, that this Exhibit X was not made before the early part of March? 1063

A. It may have been the last day of February; it was so near the early part of March that that date is approximately correct.

Q 2023. On the second page of Exhibit X I find added, in a different ink, these words, "or from other property at the discretion of my executor." Whose suggestion was that?

A. Not at mine.

Q 2024. Do you remember whose it was?

A. It was dictated.

Q 2025. By whom?

A. Mrs. Dale.

Q. Below that, interlined in lead pencil, I find the words, "present or future," on the next line so interlined, the contraction "Jr.," and on the line below that, interlined, the words in brackets, "interest of it for him," whose interlineation is that? 1064

A. Those three are my own writing.

Q 2027. Made when?

A. I suppose at the same time.

Q 2028. On the second line below that I observe something has been written in pencil and then crossed out in pencil, and then again towards the bottom of the page I find the word "instead" interlined in pencil, when were those written?

A. I suppose at the same time; as to this I am not sure that this last is in my own handwriting, though it may be—it looks like it—very likely it is. 1065

Q 2029. Do you remember when those were done?

A. I suppose at the same time.

Q 2030. Do you know why a third instrument of writing was used to do that—namely, a pencil, after using two kinds of ink?

A. I may have read it over again by myself and put in those interlineations before mailing it. I don't remember doing so, I may have done so; it is
1066 my habit to re-read any letter or thing before sending it off, two or three times, to be sure it is correct.

Q 2031. At the time at which this paper was drawn was your brother Frederick visiting your house, as a regular visitor, I mean?

A. He may have called at the door several times.

Q 2032. Didn't get in if he did?

A. No, sir.

Q 2033. How was that Exhibit X got to Mr. Wallis, do you remember?

A. Before answering that I would like to look at a certain kind of envelope that is here among the papers, the exhibits, if you don't object (witness looks at envelopes). I can't say positively; it was either by mail, or else I took it in person.

1067 Q 2034. Ain't you sure that you took it in person?

A. From the size of the paper, it being rather wider than our envelopes that are in use, I infer that I either had some peculiar shaped European envelopes of my mother's, or else I took it by hand.

Q 2035. Do you remember any envelope that would take that paper, as it is now folded?

A. There is an envelope here that would very nearly carry it, and she had several kinds of large envelopes, and that is one of them, and it may have gone in one of those envelopes.

Q 2036. Exhibit X, is a large sheet of paper, which has been folded twice, and twice only, mak-
1068 ing two creases, Mr. Dale, is it not?

A. Yes.

Q 2037. Do you know of any envelope that will hold it, as so folded?

A. I think that among my mother's things there may be envelopes purchased in Europe, that would hold such a paper.

Q 2038. Do you remember seeing any such envelope about that paper?

A. No, sir; I don't remember.

Q 2039. Is any envelope produced with the paper?

A. I did not produce the paper. 1069

Q 2040. Here, I mean?

A. There is no envelope produced.

Q 2041. That envelope of unusual proportions, which you have just handled here, in this room, is not long enough for that paper?

A. It is not; but my mother had several kinds of such envelopes.

Q 2042. You cannot say that you did not take it in person?

A. No, sir; I can't.

Q 2043. Did you ever have any conversation with Mr. Wallis, in regard to this will?

A. I remember on one occasion hearing him say, that if he was living——

1070

Q 2044. No, one moment; I want you to answer my question—whether you ever had any conversation?

A. I don't know whether you would call it conversation—if listening to observations from him is a conversation—that is—yes.

Q 2045. In reference to this will?

A. Yes.

Q 2046. Did you at that time make any suggestions to him?

A. Not that I remember.

Q 2047. Then, when you said in your chief-examination, that you mailed Exhibit X to Mr. Wallis, you were not sure; you did not speak with 1071 absolute accuracy?

A. I think that I may have confounded the memorandum of the will with the return of Mr. Wallis' draft.

Q 2048. When you said you mailed it, you had

not addressed your mind to it, to answer it with absolute accuracy?

A. I remember mailing something; but I am not sure whether that was it.

1072 Q 2049. You transmitted it to him in some way?

A. Yes.

Q 2050. By Mrs. Dale's request?

A. Yes.

Q 2051. Do you recollect what she said to you in reference to that?

A. I do not, but I know that it was what she wanted me to do with it?

Q 2052. You say that at the time when you made this memorandum, Exhibit X, or rather I will say when the memorandum Exhibit X, was made, that Mrs. Dale had seen Mr. Wallis twice?

A. I think twice.

1073 Q 2053. Do you recollect when the first of those interviews was, or any circumstance connected with it?

A. The only interview of which I have a distinct recollection is one on the fifth of February, in regard to the machinery.

Q 2054. I am speaking now of interviews with regard to the will?

A. I was never present at any conversation between Mrs. Dale and Mr. Wallis in reference to the will.

Q 2055. When you said in your chief examination that Mrs. Dale had seen Mr. Wallis twice, did you mean twice in reference to the will, or not?

A. I said "about twice" didn't I, or "at least

1074 twice." I wasn't certain whether it was twice.

Q 2056. Are you aware of more than two interviews between your mother and Mr. Wallis, between January, 1880, and the time of her death?

A. No, I am not.

Q 2057. Are you aware of as many as two?

A. I remember with distinctness the instance of one interview.

Q 2058. Was that on her way from New Haven to Paterson? 1075

A. Yes.

Q 2059. And quite early in the forenoon?

A. No, it was in the afternoon.

Q 2060. I thought she came down by boat and stopped on her way?

A. No, by cars.

Q 2061. When was that one that you remember distinctly?

A. That wasn't about the will.

Q 2062. Do you know positively about any other interview between Mrs. Dale and Mr. Wallis about the will?

A. I went to New York several times with Mrs. Dale; I went to Mr. Wallis's office several times; 1076 sometimes with Mrs. Dale and sometimes alone.

Q 2063. If I understand you, then, you don't know actually how many interviews, if any, Mrs. Dale had with Mr. Wallis in reference to her will, is that so?

A. I can't say positively.

Q 2064. She had other business with Mr. Wallis, did she.

A. She had the machinery business.

Q 2065. I did not ask you what business?

A. She had other business.

Q 2066. At the time Mrs. Dale made that dictation of which you have spoken, did you speak to 1077 her with reference to your own circumstances and your own necessities?

A. No; I did not.

Q 2067. Mr. Dale, didn't you frequently, either then or previously to that, press upon your mother the idea that you must be provided for?

A. No; I did not.

Q 2068. Didn't you more than once, or once at least, present to her the idea that you were a student, that you were not likely to make yourself
1078 wealthy, and that the bulk if not all her property should come to you, or that you should be taken care of?

A. No, sir; not once.

Q 2069. Didn't you complain to her frequently that you had been disappointed in your anticipations of a provision for life?

A. No, sir.

Q 2070. And that it was very hard?

A. No, sir.

Q 2071. Haven't you told your brother, in reference to this matter, that you must have all this, because half would not keep you, — or words to that effect?

1079 A. No, sir,—excuse me,—no, sir.

Q 2072. Haven't you told friends that you needed all this, and ought to have it, or words to that effect?

Mr. Linn.—This question, and evidence of this character, is objected to by proponents' counsel, on the ground that it is not material.

A. I may have expressed my opinion of the justice of the distribution of the property.

Q 2073. To that effect?

A. What effect?

Q 2074. That you needed this and ought to have
1080 it all?

A. No, sir; I don't remember putting it upon that ground.

Q 2075. Not putting it upon the ground that you were a student and desired to lead a student's life, while Fred was a manufacturer and could acquire wealth, while you could not live comfortably on the half it and ought to have the whole?

A. I think I have expressed myself in this way: that inasmuch as I had spent ten years in building up the business which my brother now had, and that my profession was not a remunerative one, and he was in a way to accumulate property, that I thought 1081
on that ground it was not an unjust distribution.

Q 2076. You were employed in the Dale Mill by your father, in his lifetime, were you not, Mr. Dale?

A. I spent from seven to ten years in the Dale Mill as superintendent.

Q 2077. Under your father?

A. Of the Dale Manufacturing Company, under my father?

Q 2078. Mr. Dale, you don't propose to come here now and say you can't make a living, do you? I ask it because you have testified as to your earnings in four years?

Mr. Linn—I object to that.

A. No, sir, I don't mean to say that; I will tell 1082
you what I do mean to say, if you want to know, though.

Q 2079. If I were asking some one else, I would ask the witness what I supposed to be true—that he is esteemed in scientific circles. How was it that you knew the provisions of your mother's will before you prepared this direction?

A. I did not.

Q 2080. Not at all?

A. No, I knew in a general way that she did not propose to leave my brother much, but I don't call that the provisions of her will.

Q 2081. I show you a paper marked Exhibit &; this paper, I believe, is the one we know here as 1083
Mr. Wallis's first draft; it was made shortly after the transmission to him of Exhibit X.

A. Yes.

Q 3082. The handwriting is the handwriting of some one in his office, or the body of it?

A. Yes, I think so.

Q 2083. On the margin of the first page I find written under a cross the word "Dixwell," also, on page three, on the margin, fifteen lines, and on page
1084 four, on the margin, four lines; in whose handwriting are they?

A. In my own.

Q 2084. The other marginal note, on page five, is not, I believe, in your handwriting, is it, Mr. Dale?

A. It is not.

Q 2085. With regard to those in your handwriting, when were they made?

A. When the draft was received from Mr. Wallis, which was about ten days or two weeks after my memorandum was transmitted to him.

Q 2086. By whom was it received?

A. It was received—the postman left it at my house?

1085 Q 2087. Directed to whom?

A. I forget whether it was directed to Mrs. Dale or to me; I presume to Mrs. Dale.

Q 2088. Do you remember by whom it was opened?

A. I think by me, in her presence.

Q 2089. Was it read over?

A. I read it to her.

Q 2090. Then?

A. Then.

Q 2091. Did you make any suggestions about it?

A. If you will let me look at it I will tell you—
1086 (paper handed to and examined by witness).—I have to speak of these in detail; the correction on the first page, of the word "Dingwell" to "Dixwell," was my own suggestion; the correction on the third page, of the fifteen lines on the third page, the last in the margin, that is the last five lines were inserted at my own suggestion, with Mrs Dale's

approval; the first ten were Mrs. Dale's own, and the other correction——

Q 2092. Was the note on the margin made at that time?

1087

A. Yes, the third may have been my own.

Q 2093. I show you a pencil interlineation on the fourth page?

A. That is not my handwriting.

Q 2094. And one on the fifth page?

A. In my own.

Q 2095. What was done with Exhibit & after these changes were suggested?

A. It was at once re-mailed to Mr. Wallis.

Q 2096. By whom?

A. By me.

Q 2097. Was the subject of this will ever spoken of between you aad your mother after that?

A. I think not, excepting that at her—that Mr. Wallis was instructed to mail the will to her in Philadelphia.

1088

Q 2098. Instructed through you?

A. Through me.

Q 2099. How did you transmit that instruction to him?

A. By mail.

Q 2100. You wrote a letter to him on the subject?

A. I think so.

Q 2101. Did you say anything further with regard to the will in it?

A. No, sir.

Q 2102. Have you a copy of that letter, Mr. Dale?

A. No, sir, I didn't.

1089

Q 2103. When was Frederick Dale telegraphed to about Mrs. Dale's last illness, relatively to the time at which she died?

A. I can't give the exact day or hour.

Q 2104. The day before, wasn't it?

A. Probably, as he came right on,—it must have been two days before she died.

Q 2105. He arrived the day before she died, if I
1090 understood you rightly on your chief examination?

A. I think so.

Q 2106. You had been there a couple of days when you telegraphed for him; hadn't you?

A. I think so.

Q 2107. Mrs. Dale was unconscious during all that time; was she not?

A. When I came there she was conscious; and for the remainder of the day she was conscious.

Q 2108. That would be the fourth of May?

A. Yes, sir.

Q 2109. After the fourth of May, she became unconscious?

A. She gradually became unconscious.

Q 2110. Why wasn't Frederick Dale telegraphed
1091 for before?

A. Because I supposed it was simply a recurrence of an attack, such as she had had in Paterson.

Q 2111. When did you first anticipate her death, in consequence of this attack?

A. When I telegraphed; as soon as I anticipated her death I telegraphed to Frederick S. Dale.

Q 2112. Mr. Dale, haven't you exercised owner ship over the assets of this estate? I will put a more direct question than that; haven't you sold some of the jewels of the estate?

Mr. Linn—I object to that question.

A. Upon the written advice of my counsel, in Rhode Island, I had some of the jewels appraised and sold, in order to defray interest on mortgages
1092 and taxes, on the estate in Rhode Island and Connecticut.

Q 2113. Didn't you barricade yourself in your house there?

A. I resisted writs of replevin.

Q 2114. Directed towards some of the alleged property of this estate?

A. Yes.

Q 2115. Resisted them, by secluding yourself in your house, and denying the officers of the law admittance, did you not? 1093

A Yes; upon the advice of my counsel.

Q 2116. Mr. Dale, when you enclosed the final draft of the will to your mother, from Newport, did you write a letter with it?

A. Yes; I did.

Q 2117. Do you recollect its contents; I don't ask you what they were; I ask you if you do?

A. Yes; I have the letter here.

Q 2118. Will you produce it?

A. That is the letter (hands it to counsel).

Mr. Barkalow—I will offer this letter, and the letter from Mr. Wallis; also, letter of Mr. Dale to his mother, with reference to the executors of the will; also, a postal card. 1094

Marked respectively Exhibit X, 5; Exhibit X, 6; Exhibit X, 7; Exhibit X, 8.

Mr. Barkalow—Those are all the letters we have to offer.

Q 2119. Mr. Dale, was Mrs. Dale engaged, during a part of her last visit to your house, in packing certain fine china of hers?

A. Yes.

Q 2120. It was stored at the Dale Mill, was it not?

A. Yes, at that time.

Q 2121. Were you present at that packing?

A. Sometimes; I generally assisted her part of the day. 1095

Q 2122. Was it pursued upon any fixed system?

A. System? She had a system, she told me, but did not tell me what it was, exactly.

Q 2123. What did she say about it?

A. She told me she was marking—packing those barrels and marking them on her memorandum. Some were for myself and some for my brother.

Q 2124. Did she have some unusually large sets?

1096 A. Yes.

Q 2125. Did she tell you she was dividing them in equal proportions?

A. She did not.

Q 2126. Mr. Dale, have you sent on during the progress of this examination, to your counsel, any book containing an inventory of Mrs. Dale's china?

A. I sent on the little memorandum without a cover.

Q 2127. Yes, that is what I mean?

A. Yes.

Q 2128. Do you know anything about the destruction of the cover?

A. No, I do not, the book is just in the con-

1097 dition in which she had it.

Q 2129. Is it in the condition in which she first had it—could there have been any memoranda on the cover?

A. She may have destroyed the memoranda on the cover; I don't think it ever had a cover when it was used for that purpose, it is just as it came into my possession.

Q 2130. Then you cannot say whether the covers may or may not have contained memoranda?

A. I cannot; the book is now just as it was when Mrs. Dale first began to use it.

1098 Q 2131. In other words, you are satisfied that it contains all that it had?

A. I would like to say that those loose papers and the book contain the whole inventory, so far as I know.

Q 2132. (Memorandum book being shown witness, he is asked): As far as you can judge, is any

part of that book, which could have contained memoranda, missing, or has it disappeared since Mrs. Dale began using it for that purpose; I don't mean to refer to your own possession? 1099

A. No.

Q 2133. Do you recollect, Mr. Dale, whether you were present, when she first began to use that book?

A. I was there a good many times while she was making the inventory; I don't remember whether I was there when she first began, or not.

Q 2134. (Witness being shown certain Exhibits, marked B, 15, is asked); What are those?

A. These form part of the inventory of the contents of those barrels at the Dale Mill?

Q 2135. In whose handwriting?

A. In my own handwriting, taken when I was assisting Mrs. Dale, at her direction.

Q 2136. I show you one of the exhibits, marked 15; there seems to have been a transposition there, over certain articles the word, "Fred," has been written, and been crossed out, and "Nelson," substituted; below, on the same card, certain articles are arranged under the name of "Fred," one of which articles has been crossed out; who did that? 1100

A. I did that, at Mrs. Dale's direction.

Q 2137. Is it meant to indicate a change in her mind, at the moment, as to the appropriation she meant to make with reference to those articles?

A. I think it was some misunderstanding of the things—confusion in the boxes, or something.

Q 2138. We have no more questions. 1101

Mr. Linn—We rest.

Adjourned to Tuesday, December 6, next, at 10 A.M., at the same place.

Examination of witnesses continued, this seventh

day of December, at the same place, in the presence of Hamilton Wallis, Esq., counsel of proponents, and John S. Barkalow, Esq., counsel for caveator.

1102 JAMES BLUNDELL, a witness produced on the part of the caveator, being duly sworn according to law, on his oath deposeth and saith.

Direct examination by Mr. Barkalow:

Q 2139. Were you Sheriff of the County of Passaic, in 1879–80?

A. 1879–80? No, sir; you mean 1875–78.

Q 2140. During your term as Sheriff, did you sell certain machinery belonging to the Dale Manufacturing Company, under executions in favor of Mrs. Sarah P. Dale?

A. I did.

Q 2141. Do you remember how much there was
1103 of it?

A. I can't tell you from memory.

Q 2142. Do you remember what it brought?

Question objected to, as immaterial and irrelevant.

A. Thirteen thousand one hundred dollars.

Q 2143. Did you subsequently give a bill of sale of it to Mrs. Dale?

A. To Mr. Tuttle.

Q 2144. To Mr. Tuttle, as Mrs. Dale's attorney?

A. Yes, sir.

Q 2145. Is that all the property you sold under judgments of Mrs. Dale?

A. Yes, sir.

Q 2146. Can you state the amount of the judg-
1104 ments?

A. One judgment issued out of the Supreme Court, that I received December fifth, 1877,—Sarah P. Dale versus Dale Manufacturing Company,—damages and costs amount to $17,061.03; and another one which I received December eleventh, 1877,

New Jersey Supreme Court,—Sarah P. Dale versus the Dale Manufacturing Company, — damages and costs, $2,429.13.

Q 2147. That's all.

No cross-examination. 1105

Mr. Barkalow—I offer in evidence two bills of sale from Sarah P. Dale to Frederick S. Dale; said bills of sale are respectively marked Exhibits X, 9, and X, 10, on the part of caveator.

Mr. Wallis—I admit their execution and delivery.

FREDERICK S. DALE being recalled, on his oath deposeth and saith.

Direct-examination by Mr. Barkalow;

Q 2148. What was the value of the machinery which you bought from your mother? 1106

Question objected to, as immaterial and irrelevant.

A. At the time I bought it?

Q 2149. Yes?

A. Not over twenty thousand dollars.

Q 2150. Had it been in use some time?

A. It had been in use, three-quarters of it, for sixteen years.

Q 2151. Do you know what it was worth when it was new?

A. It could have been replaced at the time I bought it, for from forty to forty-five thousand dollars.

Q 2152. What is the depreciation of machinery 1107
of that character estimated at by those conversant with it?

A. It is considered generally that machinery depreciates ten per cent. per annum, and manufacturers generally so charge off.

Q 2153. Is it by allowing for such depreciation, that you fix the value of it at the time of the sale to you, at twenty thousand dollars?

A. Yes, sir; it had been kept in tolerably good
1108 repair, but wasn't worth any more than that amount —twenty thousand dollars.

Q 2154. Did you know William Ryle in his lifetime?

A. I did.

Q 2155. What was his business?

A. Silk importer, and formerly tailors' trimming business.

Q 2156. Do you know whether or not he had any acquaintance with this class of machinery which you bought from your mother?

A. He never was in that line of business, and I don't believe he would hardly know that class of machinery if he should see it, except from general
1109 knowledge, as any one else.

Q 2157. Do you know whether he had ever seen this particular machinery at all?

A. I do not think he ever saw this particular machinery; I was in the works a period of over nine to ten years; I never saw him inside the works.

Q 2158. Did you hear the testimony of Miss Inglis in this case?

A. I did.

Q 2159. Do you recollect the evening of which she spoke, on which evening Mr. Ryle expressed himself, as she said, with regard to this machinery?

A. I remember that evening.

1110 Q 2160. Were you there while Mr. Ryle was conversing with your mother?

A. I came there while Mr. Ryle was conversing with my mother in the front parlor.

Q 2161. Did you remain until he left?

A. I retired to the back parlor and remained until he left, and then saw my mother.

Q 2162. Did she say anything to you about him then?

1111

A. She said that was the first time she had seen him since her return from Europe, and she was very much surprised at his appearance and at his condition that evening he called on her.

Q 2163. In what respect?

A. She said she would not have sent for him to call on her for business purposes if she had supposed he would have come up in that condition, that he was under the influence of drinking.

Mr. Wallis—I ask to have that stricken out as immaterial and scandalous.

Q. 2164. Was any part of this machinery which you bought of your mother French braiders?

A. Yes.

Q 2165. How much?

1112

A. Three quarters of it was French braiders and its appurtenances.

Q. 2166. Do you know of whom they were bought originally by Thomas N. Dale?

A. Yes, sir.

Q 2167. From whom?

A. Two-quarters of that three-quarters was bought of Mr. Claude Greppo.

Q 2168. That is, half of the entire machinery?

A. Yes, sir.

Q 2169. When was it bought of Mr. Greppo?

A. Bought in somewheres around '66—1866.

Q 2170. Of how many spindles did it consist— that which was bought of him?

1113

A. Some eight thousand spindles.

Q 2171. For how much were they bought?

A. Eight thousand dollars.

Q 2172. How long was that before you bought them of your mother?

A. Fourteen years, I think—fourteen years.

Q 2173. And about as much more machinery was added to that machinery, which makes up that
1114 which you bought of your mother?

A. Yes, sir, there was some sixteen thousand spindles French braiders machinery which I bought.

Cross-examination by Mr. Wallis:

Q 2174. Wasn't Mr. Ryle engaged in silk manufacturing?

A. I understood that he had moneyed interest in silk spinning manufacturing.

Q 2175. In a silk weaving factory, too?

A. Silk weaving, I believe, only within the past year or so.

Q 2176. In Philadelphia?

A. In Philadelphia, yes, sir.

Q 2177. You had negotiated to purchase this ma-
1115 chinery from your father?

Question objected to.

A. I had instructions from my father to sell it for twenty thousand dollars, and I offered to buy it from my father for that money.

Q 2178. Had you not negotiated with your father for the purchase of it?

Question objected to.

A. I presume that would be negotiating for the machinery—offering to buy.

Q 2179. Was that the price at which he offered to sell it to you?

A. I stated in my previous—

Question objected to.

1116 Q 2180. Was that the price at which your father had offered to sell you that machinery?

Mr. Barkalow—I direct the witness not to answer that, and I desire that the same shall

be certified to the Court for its opinion as to the propriety of his doing so, in which case he will cheerfully answer it.

Mr. Wallis—The counsel for proponent objects to that latter part going on the record, 1117
and counsel for proponents says he has no further questions to ask.

It is agreed by counsel that the signature of this witness to his testimony shall be waived.

SOCRATES TUTTLE, a witness produced on the part of the caveator, being duly sworn according to law, on his oath deposeth and saith:

Direct examination by Mr. Barkalow:

Q 2181. Mr. Tuttle, were you the attorney of Mrs. Sarah P. Dale, while she was absent in Europe, in 1878–9?

1118

A. In 1877, and thereafter, I was her attorney, while she was absent in Europe.

Q 2182. Did you, as such, obtain judgments for her, against the Dale Manufacturing Company?

A. I did.

Q 2183. Did you levy upon their machinery, or cause it to be levied upon?

A. I caused execution to issue, and levied upon the machinery in said mill.

Q 2184. Did you, at any time, receive instructions from Mrs. Dale, as to the sale of that machinery?

A. I did.

Q 2185. What were they?

Question objected to.

1119

A. I was directed to attend the sale, and bid the property up to about the amount of her judgments—to the amount or about the amount of her judgments — my instructions were, that she was willing to let the property go to any purchaser who

would pay the amount of her judgments, which were something over Nineteen thousand dollars.

Q 2186. Any further instructions upon that topic from her?

1120 A. No; I did attend the sale, in pursuance of those instructions, and made an effort to have the property bid in by somebody else, for a sufficient amount to pay the judgments; I remember specially conferring with Catholina Lambert, a silk manufacturer, who was present at the sale, and failing to get anybody to buy the property, and so bid it in myself.

Q 2187. Did you receive any instructions from Mrs. Dale, at any time, with regard to a private sale of that machinery?

A. Yes; I was instructed to sell it for Twenty thousand dollars?

Q 2188. To whom?

1121 A. Well, my recollection is, that the instructions were general; but I supposed—I think I supposed at the time, that F. S. Dale was the only party to whom I could sell it for that price; he being in the possession, and I think, using some portion of it.

Q 2189. Were those instructions in writing?

A. No; I have looked for those instructions, but have been unable to find them, to find any.

Q 2190. You cannot tell us with any more accuracy than you have—or any more certainty?

A. No.

Q 2191. Mr. Tuttle, do you know whether or not Mr. Frederick S. Dale was running that machinery, at the time you received those instructions, or for

1122 some time after that?

A. I am unable to fix the time when he commenced to run the machinery, or any part of it; I am uncertain as to what the fact is; but my recollection is, that he was running some portion of

it before the sale was made; I recollect distinctly understanding and feeling that he was the most likely person in the world to give that price for it; that he could afford to pay more than anybody else. 1123

Q 2192. His name occurred to you on that account?

A. Yes.

Q 2193. Because he was more likely than any one else?

A. Yes.

Q 2194. Because he was, at the time of the sale, and for some time before it, using the machinery—some portion of it?

A. Yes.

No cross-examination.

CLAUDE GREPPO, a witness produced on the part of the caveator, being duly sworn according to law, on his oath deposeth and saith. 1124

Direct examination by Mr. Barkalow:

Q 2195. Do you reside in Paterson, Mr. Greppo?

A. I do, sir.

Q 2196. Are you a silk manufacturer?

A. No, sir; I am a silk dyer.

Q 2197. Did you ever sell some machines, called French braiders, to the late Thomas N. Dale?

A. I did.

Q 2198. When?

A. In 1866: as far as I can remember.

Q 2199. Are you sure it was about that time?

A. Either '66 or '67—either one or the other.

Q 2200. How many spindles? 1125

A. There were eight thousand spindles.

Q 2201. With their appurtenances?

A. Everything connected with it—shafting, belting, one thing and another—machinery and everything that was for the manufacture of braids.

Q 2202. What did you sell them for?

A. Eight thousand dollars.

Q 2203. Were they in good condition?

A. Well, about a third of them had been running
1126 a year and a half, and two-thirds of them I got from the custom house in the original packages, just as I received them from Europe.

Q 2204. You sold them below their actual value at that time?

A. I did, sir.

Q 2205. For business reasons of your own?

A. Yes, sir.

Q 2206. What is the general depreciation of silk machinery, annually, in the estimation of manufacturers?

Objected to, because the witness has not been proven to be an expert on silk machinery.

A. It is generally estimated at from ten to twelve per cent; it ought not to be estimated at less than
1127 ten per cent.; I think fifteen per cent. would be a fair estimate of the wear and tear of machinery—silk machinery.

Q 2207. Then it needs constant care?

A. It does; yes, sir, to keep it in order.

Q 2208. What have you ever had to do with such machinery?

A. I ran it, as I tell you, for eighteen months, a part of that machinery.

Q 2209. You have been a silk manufacturer?

A. I was.

Q 2210. Did you ever happen to be a manufacturer of silk machinery?

A. No, sir, I am not; I manufacture machinery for my own use, for silk dyeing, but I do not manu-
1128 facture what is called silk machinery.

The signatures of Mr. Tuttle and of this witness to their testimony are waived by consent of counsel.

The testimony is closed on both sides.

PROPONENTS' EXHIBITS.

1129

Exhibit D 1.

Depositions.—See page 48.

Exhibit D 2.

Know all men by these presents that I, Sarah P. Dale, of Paterson, in the county of Passaic and State of New Jersey, have made, published and declared, and do by these presents make, publish and declare my last will and testament in manner and form following, that is to say: 1130

First.—I order and direct that all my just debts and funeral and testamentary expenses be first paid out of my estate.

Second.—I give and bequeath to my son Thomas Nelson Dale, of said Paterson, all the personal property, including paintings, books, furniture, bronzes, porcelain and glassware, diamonds, jewelry, silver and silver plated ware, in my possession, or to which I may be entitled at the time of my death, except such as may be hereinafter specifically bequeathed, to be his absolutely and forever.

Third.—I give and devise to my said son Thomas Nelson Dale the lots of ground now belonging to me situate upon York street, Wall street, Orchard street, Dixwell avenue, Prospect street, High street and Foote street, all in the city of New Haven, in the State of Connecticut, to have and to hold the same to him, his heirs and assigns forever. 1131

Fourth.—I give, devise and bequeath to my said

son Thomas Nelson Dale my house and lot at Newport, in the State of Rhode Island, together with the furniture therein contained, to have and to hold
1132 the same to him, his heirs and assigns, forever.

Fifth.—I give and bequeath to my grand-daughter Sarah Nelson Dale, the daughter of my son Thomas Nelson Dale, the contents to two barrels now belonging to me and contained in the building No. 84, Broadway, Paterson, N.J., in said Paterson, which barrels are numbered respectively numbers 32 and 33, to be delivered to her by my executors hereinafter named whenever the parents of my said grand-daughter, or the survivor of them, shall certify in writing that she is of sufficient discretion to receive the same, and if both of her said parents shall die without making any such certificate, then said contents are to be delivered to my said grand-daughter upon the death of the survivor of her said
1133 parents.

* said barrels are marked S P D ⅀ 32 & S P D ⅀ 33

Sixth.—I give, devise and bequeath to my said son Thomas Nelson Dale all property, real and personal, that may come to me as heir-at-law or devisee of my late father Alfred S. Munson, deceased, formerly of said New Haven, and which may come to me by devise or descent from my mother Mary Ann Munson, of said New Haven, and also all my interest in a certain bill of sale and chattel mortgage made between me and my son Frederick Sheldon Dale of certain machinery in said Paterson, and all moneys that may become due and payable to me or my estate therefrom or thereunder, To have and to hold the same to my said son Thomas Nelson Dale:
1134 In trust nevertheless upon the following uses and trusts, that is to say—

1. To apply the rents, profits and income of said property to the payment of all taxes, insurance premiums, interest or repairs, that may become charge-

able against said property or any part thereof, or that may be necessary for the preservation of the same.

2. To pay therefrom to Lulu Dale and Florence Dale, children of my son Frederick Sheldon Dale, each the sum of one thousand dollars in such instalments and at such times as he, T. Nelson Dale, with the advice of my other executor, David L. Daggett, may think proper; but, in any case, with interest from the date of one year after my decease. 1135

3. To receive the rents and income to be derived from said property so to be acquired by me as heir or devisee of Alfred S. Munson, and apply the same to his own use until his youngest child living at the time of my death, or that may be born within the ordinary time of gestation thereafter, shall have reached the age of twenty-one years, and thereupon to divide the same to and among such children of my said son and the legal representatives of such of them as may have died *per stirpes* and not *per capita*, equally share and share alike. 1136

4. To divide any property to which I may become entitled as heir-at-law, next of kin, devisee or legatee of my said mother, Mary Ann Munson, into two equal shares or portions.

To retain one of said equal shares or portions to him, his heirs and assigns for ever.

To securely invest the other equal share or portion in such securities as he, in his discretion may think best, and to pay over the net income therefrom to my daughter-in-law, Margaret Dale, the wife of my son, Thomas Nelson Dale, during the term of her natural life, and upon her death to pay over the principal of said equal share or portion to my granddaughter, Sarah Nelson Dale, or her legal representatives. 1137

Seventh.—All the rest, residue and remainder of my estate, real, personal or mixed, I give, devise

and bequeath to my said son Thomas Nelson Dale, to have and to hold the same to him, his heirs and assigns for ever.

1138 *Eighth.*—I give and grant unto my executors and the survivors of them and the successor and successors of such survivor, in their discretion, full power and authority to sell and convey any and all real estate of which I may be seized, or to which I may be entitled at the time of my death and to make, execute, acknowledge and deliver all deeds or other instruments in writing necessary for that purpose.

Ninth.—I nominate and appoint my said son Thomas Nelson Dale and my friend David L. Daggett, of New Haven, in the State of Connecticut, executors of this my last will and testament, hereby
1139 revoking all other or former wills by me made.

In witness whereof I have hereunto set my hand and seal this twenty-eighth day of April in the year eighteen hundred and eighty.

SARAH P. DALE. (L. S.)

Signed, sealed, published and declared by the said testatrix as and for her last will and testament in our presence, who, at her request, in her presence and in the presence of each other, have hereunto subscribed our names as witnesses. } WM. J. KELLY. W. B. ATKINSON, M.D. DAVID WINTERS.

1140

Exhibit X.

I appoint Thos. Nelson Dale Jr. my executor. 1141
I bequeath my house & lot & furniture at
Newport R. I. my lots in New Haven, Conn.
on York St. on Wall St. Orchard St. Dixwell Ave.
Prospect St. High St. Foote St. together with my
personal effects, paintings, books, furniture, bronzes,
porcelain & glass ware, diamonds, jewelry, silver
and silver plate, etc. to my son Thos. N. Dale, Jr.
(The exact description of these lots are enclosed)
Except two barrels containing silver and
silver plate, and numbered 32 and 33, which
~~I leave to~~ remain unused and are to go to my granddaughter
Sarah Nelson Dale whenever at the discretion of her 1142
parents, it shall seem wise to give them to her.

I bequeath to the two children of my son
Frederick Sheldon Dale: Lulu Dale and
Florence Dale — the sum of $1,000 each
out of the last payment on purchase of
machinery, ~~what,~~ to be placed at interest by my
executor and principal & compound interest
to be given them when they shall attain their
21st year.

In the event of my ~~death~~ surviving the
fulfillment of the contract for sale of machinery 1143
made with Fred S. Dale, ~~or in the event of his~~
~~failure,~~ or in the event of his failing to fulfill its
conditions before my decease, I bequeath to his
children instead of the above ~~the s~~ a like sum

to each—to come however from the property held in trust by my mother Mary Ann Munson
1144 for the heirs of Alfred S. Munson—when it shall be divided among them or from other property at the direction of my executor

In the latter case I bequeath the ~~whole~~ remainder ~~in he~~ otherwise the whole of said property held in trust by my mother Mary Ann Munson, when at her death it shall be divided among the heirs of Alfred S. Munson, to the present or future ^ children of Thomas Nelson Dale Jr. ^ to held in trust by their father (interest of it for him) ^ and divided equally among them when they become of age.

As to any other property which I may otherwise
1145 inherit from my mother, ~~or my grandmother~~ Mary Ann Munson, I bequeath one half of it to my son T. Nelson Dale, & the other half I desire ^ to be securely invested by my executor and the interest accruing from it to go to his wife Margaret Dale, and upon her death the principal to go my grand-daughter Sarah Nelson Dale.

I desire that the payments for machinery shall be used for defraying taxes, insurance interest ^ and improving my real estate excepting the
1146 sum of $1700 a year which ~~I be~~ is to go to my son T. Nelson Dale as long as his circumstances require it.

I desire my executor to have full liberty to sell the property held in trust by my mother for the heirs of Alfred S. Munson when it shall come into his hands in order to invest the proeeeds more profitably — according to his discretion. 1147

1148

1149

Exhibit Y.

Last will and testament of Alfred S. Munson.

1150 I, Alfred S. Munson, of the City and County of New Haven in the State of Connecticut, of lawful age and of sound and disposing mind and memory, do make, publish and declare this to be my last will and testament as follows, to wit:

First.—I direct that all my just debts and funeral expenses be first paid.

Second.—I give, devise and bequeath, release and surrender to my dear wife Mary Ann Munson any and all legal right, title and interest which I may have in or to any estate, real or personal, which came to her by gift, grant, devise or inheritance, whether the same be now standing in her name or
1151 in my own.

Third.—I give to each one of my children who shall be living at the time of my decease and to their legal representatives the sum of Four thousand dollars, to be paid to them as hereinafter mentioned.

Fourth.—The one-half of all my estate, both real and personal, including the homestead where I now live, fronting on Elm st., and running back to within one hundred and fifty feet of Wall street, as part and parcel of the same, I give and bequeath to my said wife and to her heirs forever.

Fifth.—I give to my said wife the use, income and improvement of the other half of all my estate during her natural life, it being subject however to the payment of said sum of Four thousand dollars
1152 to each of my children, as mentioned in the third article of this my will.

Sixth.—All the remainder of my estate after the decease of my said wife, I give, devise and bequeath to my children who shall be then living, and to their legal representatives, share and share alike.

Seventh.—My will is, and I direct that my executrix hereinafter named, do pay the said sum of Four thousand dollars mentioned in the third article of this my will, to each of my children respectively in cash, or in any part of my estate real or personal which shall be equivalent thereto at her option, of which equivalent she shall be sole judge. 1153

Eighth.—I direct that said sum of Four thousand dollars or its equivalent be paid to each of my children who shall be of full age at the time of my decease, at any time within eighteen months after my decease, and to each of my children shall then be minors under the age of twenty-one years at any time within twelve months from the time when they shall respectively arrive at the age of twenty-one years.

Ninth.—I constitute and appoint my said wife the guardian of my minor children, and my will is that they continue with her as members of her family and receive from her their support and education until they shall respectively arrive at the age of twenty-one years. 1154

Tenth.—I authorize and empower my executrix to execute good and sufficient deed or deeds for the purpose of conveying to my said children or to either of them, any real or personal estate which she may deem proper in payment of said sum of Four thousand dollars mentioned and provided in said third article of this will, and I give to my said executrix full power and authority to sell and dispose of any part of my estate and to reinvest the avails thereof at her discretion, and to exchange estates and generally to manage and dispose of all said estate as she may deem best and expedient, exercising her best judgment and discretion therein, and regarding, as I do not doubt she will, the best interests of our children, and to 1155

those ends, I give to her full power and authority to execute and deliver good and sufficient deeds of conveyance.

1156 *Eleventh.*—I nominate and appoint my said wife sole executrix of this my will, and I direct that she be required to give bonds to the Court of Probate, in no greater sum than may be necessary for the security of the creditors to the estate.

In witness whereof, I have hereunto set my hand and seal, on this 2d day of April, A. D. 1857, eighteen hundred and fifty-seven.

ALFRED S. MUNSON. [L.S.]

Signed, sealed, published and declared by the said testator, as and for his last will and testament, in the presence of us the subscribers, who have hereunto signed our names as witnesses in the presence of said testator, at his request and in the

1157 presence of each other.

DENNIS KIMBERLY.
LAURA I. SPENCER.
HENRY D. WHITE.

District of New Haven, ss.: Probate Court, June 6, 1870.

The foregoing last will and testament of Alfred S. Munson, deceased, was received, proved, allowed and ordered on record, and the estate being declared by the administrator with the will annexed not to exceed in value the sum of Two hundred and twenty-five thousand dollars, United States Internal revenue stamps to the amount of One hun-

1158 dred and twelve $\frac{50}{100}$ dollars were affixed to said will and duly cancelled.

LEVI B. BRADLEY,
Judge.

I hereby certify that internal revenue stamps to the amount of $112.\frac{50}{100}$ dollars, were affixed to said will and the same were duly cancelled.

JAMES J. HAYES,
Clerk. 1159

Probate Court, New Haven, February 26th, A. D. 1880.

I hereby certify that the within and foregoing is a true copy of record.

MAURICE F. BRENNAN,
Clerk.

Exhibit Z.

To the Probate Court for the district of New Haven. Estate of Alfred S. Munson, late of New Haven, in said district, deceased.

The subscribers, distributors on said estate, having been duly sworn, have set out and distributed the same according to law and the will, as follows, viz.: 1160

We have set to Mary Ann Monson, the widow of said deceased, to be hers absolutely, in accordance with the provisions of the will of said deceased, a piece of land with the buildings thereon, situated in said New Haven, containing eleven acres more or less, bounded northerly by land of Major Namer, land of La Forge, and land of others unknown, easterly by Dixwell avenue, about two hundred and thirty-seven feet, and in part by land of La Forge, southerly by land now or formerly of Ford, westerly in part by land of parties unknown, 12,000 00

Also a piece of land on Prospect street 1161
in said New Haven, bounded northerly land of Prof. O. C. Marsh, about six hundred and eighty feet, easterly by Prospect street, one hundred and fifty feet, southerly by land of Mrs. E. N. Gale and

New Jersey State Library

land of Mrs. L. A. Tuttle, in all about six hundred and eighty feet, and westerly by Mansfield street, one hundred and fifty-five feet, 15,000 00

1162 Also a piece of land on High street in said New Haven, bounded northerly by land of E. L. Mix, about ninety feet, easterly by land of Dr. Dibble, about eighty-five feet, southerly by land of McGill, about ninety feet, and westerly by High street, about eighty-five feet. 12,000 00

Also a piece of land on Foote street in said New Haven, bounded northerly by Foote street, about one hundred feet, and by land of Bennett, about forty feet, easterly by land of Bennett and land of Mrs.
1163 Chase and others, in all about one hundred and ninety-two feet, south by land supposed to belong to Mrs. Hope, and west by land of estate by land of Coe and others, in all one hundred and ninety-two feet more or less. 2,000 00

Also a piece of land on Orchard street in said New Haven, bounded northerly by land of Sullivan, one hundred and fifty feet, easterly by Orchard street, one hundred and fifty feet, southerly by land of estate of A. S. Monson, one hundred and fifty feet more or less, and westerly by land now or formerly of Gloson Hall, about one hundred and fifteen feet, 3,625 00

1164 44,625 00

Also the following personal estate, viz.: 1 Heifer, 60; Top Carriage, 125; Two Seated Carriage, 50; Lumber Wagon, 20; Harness, 15; Sleigh Bells, 2.50; Old Top

Wagon, 20; Garden Tools, 15; Household Furniture 500; Medical Library, 50; 3 Guns, 27.50, 885 00
6 shares Dale Manufacturing Co. Stock, 150 00 1165

$1,035 00

We have set to said Mary Ann Monson for her use during life, in accordance with the provisions of the will of said deceased, the following property, viz.:

A piece of land with three dwelling-houses thereon, situated in New Haven, and bounded northerly by land hereinbefore set to Mary A. Monson, about one hundred and fifty feet, easterly by Orchard street, ninety feet, southerly by land of party unknown, about one hundred and fifty feet, west by land now or formerly of Gloson Hall, about ninety feet, 10,000 00 1166

One other piece with dwelling-house thereon, bounded northerly by land of Donovan and others, easterly by land now or formerly of C. A. Warren, about forty-three feet, southerly by land now or formerly of said Warren, about one hundred and fifty feet, and westerly by Orchard street, about forty-three feet, 3,500 00

One other piece with dwelling-house thereon, known as No. 46 Ashmon street, bounded northerly by land of Mrs. Gray, easterly by Ashmon street, southerly by land of Cassidy, and west by land of persons unknown, 2,000 00 1167

One other piece of land with dwelling-house thereon, known as No. 40 Ashmon street, bounded northerly by land of Ken-

nedy, easterly by Ashmon street, southerly by land of Myers, and westerly by land of B. C. Lum, lot about 49 ft. by
1168 120 ft., 2,500 00

One other piece with dwelling-house thereon, known as No. 211 York street, bounded northerly by land formerly of Thos. Atwater, easterly by premises known as "Old Ladies' Home," southerly by land of the estate hereinafter described, and westerly by York street, about 40 feet, 5,000 00

One other piece of land with dwelling-house thereon, known as No. Foote street, bounded northerly by land now or formerly of Bennett, easterly by land
1169 of I. F. Gilbert, southerly by Foote street, about forty-one feet, and westerly by land now or formerly of H. N. Warren, 3,500 00

Another piece of land in said New Haven, bounded northerly by land of the estate above described, easterly by premises known as the Old Ladies' Home, southerly by Wall street, about 117 ft., and westerly by York street, about 94 feet, 14,000 00

One other piece of land situated in said New Haven, bounded northerly by land supposed to belong to C. R. Pope, easterly by land of the estate, southerly by land of Mrs. Hope, and westerly by
1170 Winter street, lot about 46 ft. front, 110 ft. deep, 1,325 00

One other piece of land, containing about two acres, and situated near Todds Packing House, bounded northerly by

land now or formerly of A. Todd, easterly and southerly by land now or formerly of Wm. B. Bristol, westerly by Cresent street, 1,000 00 1171

One other piece of land situated on the westerly side of a lane leading from Charles street to James street, together with an undivided one-half part of said lane. Said land is bounded northerly by parties unknown, easterly by said lane, southerly by parties unknown, and westerly by land of several proprietors fronting on Orchard st. 1,000 00

One other piece of land bounded westerly by Winter street, 13 feet, northerly by land now or formerly of I. N. Hine, about 90 feet, easterly by land of estate, southerly by parties unknown; also a piece of land in the rear of this last described piece about wide, on the easterly and westerly sides, and about 150 feet on the northerly and southerly sides, the two together valued at 800 00 1172

44.625 00

Also the following personal estate:

Forty shares Dale Manufacturing Co.,	1,000 00	
Garden and Farming Tools,	35 00	
	$1,035 00	

RECAPITULATION.

Order of Distribution Real Estate,	71,900 00	1173
Personal,	2,327 50	
	$74,227 50	

In distributing the estate we have re-

appraised the property real and personal, increasing the valuation of the real estate $17,350, and decreasing the valuation of
1174 personal estate $257.50, making a net increase of valuation, 17,092 50

Making the basis of distribution, 91,320 00

We have set to Mary Ann Monson, widow of deceased, in her own right, 45,660 00

We have set to said Mary Ann Monson, for her use during life, 45,660 00

91,320 00

Dated New Haven, August 16th, 1877.

SYLVANUS BUTLER,
GRISWOLD I. GILBERT,
EDWARD Y. FOOTE,
Distributors.

1175

Received, accepted and ordered on record, Aug. 28, A.D. 1871.

SAMUEL A. YORK,
Judge.

Probate Court, New Haven, February 26, A.D. 1880.

I hereby certify that the within and foregoing is a true copy of record.

MAURICE F. BRENNAN,
Clerk.

Exhibit &.

1176

Know all men by these presents, That I, Sarah P. Dale of Paterson, in the County of Passaic and State of New Jersey, have made, published and declared, and do by these presents make, publish and

declare my last will and testament in manner and form following, that is to say :

First.—I order and direct that all my just debts and funeral and testamentary expenses be first paid out of my estate.

Second.—I give and bequeath to my son Thomas Nelson Dale of said Paterson, all the personal property, including paintings, books, furniture, bronzes, porcelain and glass ware, diamonds, jewelry and silver-plated ware in my possession or to which I may be entitled at the time of my death, except such as may be hereinafter specially bequeathed, to be his absolutely and forever. 1176

Third.—I give and devise to my said son Thomas Nelson Dale the lots of ground now belonging to me situate upon York street, Wall street, Orchard street, Dingwell avenue, Prospect street, High street and Foote street, all in the city of New Haven, in the State of Connecticut, to have and to hold the same to him, his heirs and assigns for ever. Dixwell 1177

Fourth.—I give, devise and bequeath to my said son Thomas Nelson Dale, my house and lot at Newport, in the State of Rhode Island, together with the furniture therein contained, to have and to hold the same to him, his heirs and assigns for ever.

Fifth.—I give and bequeath to my grand-daughter Sarah Nelson Dale, the daughter of my son Thomas Nelson Dale, the contents of two barrels now belonging to me and contained in the building No. in said Paterson, which barrels are numbered respectively numbers 32 and 33, to be delivered to her by my executor hereinafter named, whenever the parents of my said grand-daughter, or the survivor of them, shall certify in writing that she is of sufficient discretion to receive the same, and if both of her said parents shall die without making any such certificate then said con- 1178

tents are to be delivered to my said grand-daughter upon the death of the survivor of her said parents.

Sixth.—I give, devise and bequeath to my said
1180 son Thomas Nelson Dale all property, real and personal, that may come to me as heir-at law or devisee of my late father, Alfred S. Munson, deceased, formerly of said New Haven, and which may come to me by devise or descent from my mother, Mary Ann Munson, of said New Haven, and also all my interest in a certain bill of sale and chattel mortgage made between me and my son Frederick Sheldon Dale of certain machinery in said Paterson, and all moneys that may become due and payable to me
1181 or my estate therefrom or thereunder, To have and to hold the same, to my said son Thomas Nelson Dale: In trust nevertheless upon the uses and trusts following, that is to say :

1. To apply the rents, profits and income of said property to the payment of all taxes, insurance premiums, interest or repairs, that may become chargeable against said property or any part thereof, or that may be necessary for the preservation of the
1182 same.

2. To pay therefrom to Lulu Dale and Florence Dale, children of my son Frederick Sheldon Dale, each the sum of one thousand dollars*

* insert.

in such installments and at such times as he T. Nelson Dale, with the advice of my other executor David L. Dagget may think ad proper. But in any case with interest from the date of one year after my decease.

3. To receive the rents and income to be derived from said property so to be acquired by me as heir or devisee of Alfred S. Munson and apply the same to his own use until his youngest child living at the time of my death or that may be born within the ordinary time of gestation thereafter, shall have reached the age of twenty-one years, and thereupon to divide the same to and among such children of my said son and the legal representatives of such

of them as may have died, *per stirpes* and not *per capita*, equally, share and share alike.

4. To divide any property to which I may become entitled as heir-at-law, next of kin, devisee or legatee of my said mother, Mary Ann Munson, into two equal shares or portions. 1183

To retain one of said equal shares or portions to him, his heirs and assigns for ever.

To securely invest the other equal share or portion in such securities as he in his discretion may think best, and to pay over the net income therefrom to my daughter-in-law, Margaret Dale, the wife of my son Thomas Nelson Dale, during the term of her natural life, and, upon her death, to pay principal of said *equal share or portion over the ~~same~~ to my grand-daughter, Sarah Nelson Dale, or her legal representatives.

* that is the other equal share, the principal.

1184

Seventh.—All the rest, residue and remainder of my estate, real ~~and~~ personal or mixed, I give, devise and bequeath to my said son Thomas Nelson Dale, to have and to hold the same to him, his heirs and assigns for ever.

Ninth.

Eighth. I nominate and appoint my said son Thomas Nelson Dale and my friend ∧ David L. Daggett, of in the State of Connecticut New Haven, ∧ Conn. executors of this my last will and testament, hereby revoking all other or former wills by me made.

1185

Eighth. I give and grant unto my executors and the survivor of them, and the successor or successors of such survivor, in their discretion ∧ full power & authority to sell and convey any and all real estate of which I may be seized or to which I may be entitled at the time of my death and to make, execute, acknowledge and deliver all deed or other instruments in writing, necessary for that purpose.

In witness whereof I have hereunto set my hand and seal this day of in the year 1880.

1185 Signed, sealed, published and declared by the said testatrix as and for her last will and testament in our presence, who at her request, in her presence, & in the presence of each other, have hereunto subscribed our names as witnesses.

1186

1187

Ex X2 Ex Nov 28/81

How much money have ~~you~~ ~~[illegible]~~ ~~[illegible]~~

~~First in reply to mine of 15 April.~~

Dear Milton

I have been ~~[illegible]~~ feeble, I have been out riding with my Dr. Atkinson, is his name I am taking all he, it is pretty powerful but he understands himself I sleep until ten to eleven dress at 12, often Mrs & Mrs Winters are in my room to chat a while before I dress. I can scarcely walk, think of going somewhere to Atlantic.

City - where I can have have hot salt water baths the part not far from the eyes, to [illegible] to pay [illegible]

you think.
I am a little better
this morning this Dr
is willing to change
medicine every 3 or
4 Day I dress 11 or 12
go down Stairs at 12
~~walk~~ I am very feeble

Love to all eff Mother

Mitt. Ap. 1/80 second
in reply to mine of
Ap. 15th

Saturday
6.33 Christian St

Dear Nelson
The paper is
here I think very
satisfactory.
What you
think of putting off
the Winters (Rev. Mr.
I mean) as a 3d exec-tor
D Daggett is older and
may pass away, he
could handle Fund &
Daggett could do between
~~you~~ New & even in case

Ex. X3 ex. 1 Nov. 28/81

of those two should
be called upon to
attend to it, should you
disfavor me they would
be strong enough

The Dr. takes me out to ride

Yours
Wm. Chas. Lamb
about me
Ca. 1 Oct. 1881
$60. so not file [illegible]

I enclose a letter
to Mrs Winters from her fine
Mr McCarthy whom you
once knew & thought so of
he seems now to be leaving
his place for something else you can
ask him to Newport
which will give both
a chance to talk it up — I can
soon put you in the way of
having a house by exchanging
land or something. If I settle
you once on a small track &c
& it will certainly grow
&c with the place you hold
them in society

Adieu

Mother

18/8/24

Mr McCarthy's address
is 149 George St New Haven

CAVEATOR'S EXHIBITS.

1198

Exhibit B 1.

Telegram from S. P. Dale to F. S. Dale.
See page 83.

Exhibit B 2.

Letter from Sarah P. Dale to F. S. Dale.
See page 83.

Exhibit B 3.

Telegram from Frederick S. Dale to Mrs. Thomas N. Dale.
See page 84.

1199

Exhibit B 4.

Telegram from Sarah P. Dale to Frederick S. Dale.
See page 84.

Exhibit B 5.

Letter from T. Nelson Dale.
See page 89.

Exhibit B 6.

Copy of letter from John S. Barkalow to Prof. T. N. Dale.
See page 94.

Exhibit B 7.

Received at Paterson, N.J., 1200
8.20 A.M., July 19, 1879.

To Charles Streiber,
Paterson, New Jersey.

Act for me, pay expenses, order flowers. I sail with mother. Ida go in mourning.

FREDERICK DALE.

Exhibit B 8.

Philadelphia, Pa., May 7, 1880.
Received at Paterson.

1201 To Frederick S. Dale.

I fear mother is dying.

T. NELSON DALE,
1633 Christian St.

Exhibit B 9.

Telegram from T. Nelson Dale to Garret A. Hobart.

See page 129.

Exhibit B 10.

Telegram from Hamilton Wallis to G. A. Hobart.

See page 130.

1202 *Exhibit B 11.*

Part of letter from Sarah P. Dale to F. S. Dale.

See page 130.

Exhibit B 12.

Postscript to letter from Thos. N. Dale to F. S. Dale.

See page 130.

Exhibit B, 13.

I, Mrs. Sarah P. Dale, of the city of Paterson, State of New Jersey, being in good health and of a sound mind, make this my last will and testament.

1203 *First.*—I give and bequeath to Mrs. David Winters of the city of Philadelphia, Pa., all my worsted dresses and garments, three dozen linen napkins, two pairs of linen sheets, my black satin dress with colored figures and black dress with little orange wheels, my two gold drop bracelets, also my gold

pin with drops, also my plain gold bracelets, also my plain black velvet cloak, also one shawl, my Chantilly lace cape, white comb, blue moire antique silk dress, and a portion of my point lace. I also give and bequeath to the said Mrs. David Winters two framed pictures (porcelain), one pastel picture and three painted plates. 1204

Secondly.—I give and bequeath to Mrs. David Winters of the city of Phila. One thousand dollars ($1,000.\frac{00}{100}$) of my money to be paid within six months after my death. I also bequeath to the building fund of the Ladies' Hospital of the city of Paterson, State of New Jersey, One thousand dollars of my money ($1,000) to be paid as soon as may be convenient after my death. To my husband Thos. N. Dale I give and bequeath the use of the remainder of my money till the time of his death, after which I direct in this my last will and testament, that it shall be equally divided between my two sons Nelson and Fred. 1205

Thirdly.—I bequeath to Mrs. Maria Lyon one silk dress. I direct that my underclothing be equally divided between my two daughters-in-law and Mrs. David Winters, my summer clothes I wish to have divided in like manner between the same persons. I also wish some article of lace or jewelry to be given to the wife of each of my brothers and to my two daughters-in-law. I also give and bequeath to Mrs. David Winters my garnet necklace with large drop, garnet ear-rings, garnet pin and garnet bracelets and garnet sleeve buttons and my buff enamelled ball pin and ear-rings My ring with five diamonds I wish to have taken to pieces and the diamonds to be divided as follows, viz: the largest to be given to Mrs. D. Winters, the two second in size to be given one to each of my daughters-in-law, the next two to be given one to each of my brothers 1206

Charles and Frank. I also give and bequeath to Mrs. David Winters one of my point lace handkerchiefs, the other to be given to the wife of my son
1207 Fred. I also direct that Mrs. D. Winters shall have one other of my best handkerchiefs. I also give to Mrs. D. Winters two cake baskets now in her possession and also the waiter to match them, also one dozen silver gilt fruit knives.

Fourthly.—I give and bequeath to Mrs. David Winters Four thousand dollars ($4,000.$\frac{00}{100}$) of my money, in addition to the one thousand ($1,000) above named.

Fifthly.—I direct that no one shall take any charge of any of my effects after my death but Mrs. D. Winters, to be assisted by my husband T. N. Dale.

Sixthly.—I appoint Mrs. David Winters and my husband Thos. N. Dale, executors of this my last will and testament.

1208 In witness whereof, I, Mrs. Sarah P. Dale, testator, set my hand to this my last will and testament, made this twenty-fourth day of January in the year of our Lord one thousand eight hundred and seventy-six.

SARAH P. DALE.

ROBERT REED STEWART,
DAVID WINTERS, } Witnesses.

Exhibit B 14.

Inventory.

Exhibit B 15.

Balance of inventory.

1209

Exhibit X 5.

Newport, Ap. 15, '80.

Dear Mother:

Mr. Winters' letter of the 13' just recd. I have

written a "stirring" letter to Mr. Wallis & I think you will receive the document pretty soon now. I have just been footing up my accounts. It has cost to box your things & mine, to store them & move some furniture & ourselves here, altogether $267.27. To pack my collection would be about $40 more, & the freight on my things within a hundred miles would perhaps amount to $100 besides, so that the whole cost of boxing & storing your things & that of boxing & storing mine will amount altogether to about $400. 1210

But we will have more to do with by the time it becomes necessary to ship the collection & the furniture. Thus far we have not exceeded the $300 estimated for removal to Litchfield this spring. I have sent a money order for $1.50 to the New Haven Bank supposing you had not attended to it.

We are having some trouble in getting the right kind of girls but shall be fixed in a few days. 1211

The U.S. Govt. Survey have their headquarters here & Prof. Baird of the Smithsonian is to be here this summer, so I shall see if there is any possibility of scientific work for me. Dr. Thayer has written to Prof. Murray of Princeton to see if he knows of any college where I would be needed. I have engaged a physician for Maggie—Dr. Rankin, who attended the Powells & the Maurans.

The cold northerly winds have stopped & it is now quite tolerable. The sea is magnificent. I had rather be a stone mason within sight of such grand scenes than receive a good deal more pay in a silk factory in New Jersey.

Paterson has passed mostly out of mind like a bad dream, but it will take time to forget. The children are doing nicely. The watch-dog is no watch-dog at all & is to be dismissed at once. 1212

Are you not well enough to drop me a line your-

self telling me more particularly how you are—you certainly have little to worry or annoy you now.

With much love from us both,

1213 Your aff. son,

T. Nelson Dale.

Thank Mr. Winters for writing & rememb. me very kindly to them both.

Since writing the above & just before mailing mine to Mr. Wallis the document came. Read his letter & get three gentlemen witnesses. If you can get a lawyer or a physician and a good business man besides Mr. Winters do so.

Exhibit X 6.

New York, Apl. 14th, 1880.

T. Nelson Dale, Esq.

Dear Sir,

1214 The long delay in forwarding Mrs. Dale's will has been caused by the confusion incident to a removal of my office to above address. I have not been able to do anything or find anything for two weeks. I enclose the will. You do not require any doctor's certificate, but must have three witnesses. You had better have it executed before some one familiar with such matters; all the witnesses & Mrs. Dale must sign in presence of each other, & the witnesses must know from Mrs. Dale that the paper is her last will, & that she signs & seals, publishes & declares it as such and she must request them to sign it as witnesses.

Yours very truly,

2115 Hamilton Wallis.

I have taken note of the will & will not need to see it again in order to draw up mine.

T. Nelson Dale.

Exhibit X 7.

Newport, Ap. 19, '80.

Dear Mother,

Your note just recd. It would make things 1216
rather complicated to have 3 executors at the same time. I should put Mr. W. as executor to take the place of either of the other executors in the event of their death. This will answer your object without having so many executors to sign documents & consult each other.

We have finally secured, I think, two good servants, a cook & laundress, etc., sister-in-law of Kearney (the watchman) at 3½ dollars a week, and an upstairs girl and nurse at $3 a week. It is the cheapest & best I could do. Have had 2 intelligence offices and seen about 8 girls; the one we took from Paterson left at our suggestion, & we were glad of it; she paid part of her fare up, & of course, all 1217
back. Our watch-dog is improving; he growls fiercely at night & barks at people passing in Gibbs ave., but in the day time he never says anything; he is a "Scotch collie," whatever that is; I believe some kind of shepherd dog. I am sorry you are not improving more rapidly. How is your nose? Are you not a little stronger than when you first arrived in Phila.?

I am now working at the library, have patched up the paper, put in window panes, taken up the matting, going to paint over the scratches on the walnut graining, am having the Franklin stove set up there, & the room will soon be in as good order as our resources will permit. I have had a bad cold and chills, so could not do much, but am all right 1218
again now.

Your aff. son,

T. Nelson Dale.

Some dyed buttons came from the mill for you; they look well.

Exhibit X 8.

Dear Mother,

1219 If Mr. Wallis has sent you the document please send it to me (registered) so that I can draw up mine. I will begin to-day or to-morrow on the list of your things & send to you at once.

The watchman's bill & $12 for cleaning cistern, etc., will reduce my balance considerably and do not come into my estimate of $15 a week, but I have enough for the present.

Yr. aff.,

N.

Exhibit X 9.

Know all men by these presents, That I, Sarah P. Dale, of Paterson, in the county of Passaic and
1220 State of New Jersey, party of the first part, for and in consideration of the sum of one dollar lawful money of the United States, to me in hand paid at or before the ensealing and delivery of these presents, by Frederick S. Dale, of said Paterson, party of the second part, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant and convey unto the said party of the second part, his executors, administrators and assigns, all my right, title and interest of, in and to all and singular the goods, chattels and personal property mentioned and described in the schedule hereto annexed, being part of the same property sold and conveyed to me by the Sheriff of said
1221 county of Passaic on the ninth day of April, in the year 1879. To have and to hold the same unto the said party of the second part, his executors, administrators and assigns for ever.

In witness whereof I have hereunto set my hand

and seal the thirteenth day of February, in the year one thousand eight hundred and eighty.

SARAH P. DALE. (L. S.)

Signed, sealed and delivered in the presence of T. NELSON DALE. 1222

Exhibit X 10.

Know all men by these presents, that I, Sarah P. Dale, of Paterson, in the county of Passaic and State of New Jersey, party of the first part, for and in consideration of the sum of twenty thousand dollars, lawful money of the United States, to be paid to me as hereinafter specified and agreed by Frederick S. Dale, of the same place, party of the second part, have bargained and sold, and by these presents do grant and convey unto the said party of the second part, his executors, administrators and 1223
assigns (such conveyance to be effected only as hereinafter agreed and specified) all the machinery, goods and personal property particularly mentioned and described in the schedules hereto annexed, contained in "Dale Mill," on Railroad avenue, in said Paterson, being the same property that was heretofore and on or about the fourteenth day of March, 1878, and the nineteenth day of April, 1879, sold and conveyed to me by the Sheriff of said county of Passaic, under and by virtue of two certain executions issued out of the Supreme Court of the State of New Jersey under a certain judgment recovered by me therein against the Dale Manufacturing Company, to have and to hold the same, unto the said party of the second part, his executors, ad- 1224
ministrators and assigns for ever.

And the said party of the second part in consideration of this conveyance does for himself, his heirs, executors and administrators, covenant and agree

to and with said party of the first part, her executors, administrators and assigns, that he will pay for said goods so conveyed as follows, to
1225 wit: The sum of four thousand dollars, with interest thereon from the first day of January, which will be in the year eighteen hundred and eighty, upon the execution of this instrument, and two hundred dollars for the use of said property before said date, and thereafter the sum of two thousand dollars on the first days of July and January in each year until the whole of said purchase money shall be fully paid, and that at each half-yearly payment to said party of the first part said party of the second part will pay interest upon the part of said principal that shall have remained unpaid during the preceding six months at the rate of six per cent. per annum.

And said party of the first part does hereby for herself, her executors, administrators and assigns,
1226 covenant and agree to and with said party of the second part that all sums of money paid to her by him since the first day of August, in the year one thousand eight hundred and seventy-nine, shall be credited upon and taken and considered as part of said payment of four thousand dollars.

In witness whereof we have hereunto set our hands and seals the twelfth day of February in the year one thousand eight hundred and eighty.

SARAH P. DALE. (L. S.)

(L. S.)

Signed, sealed and delivered in the presence of
2127 T. NELSON DALE.

New Jersey Prerogative Court.

Between T. NELSON DALE, *Appellant,* AND FREDERICK S. DALE, *Respondent.*	*On Caveat.* *On Appeal from Passaic Orphans' Court.* *Decree of Reversal.*

This cause having been brought to a hearing on an appeal from the Passaic Orphans' Court at the last May Term of this Court, and Hamilton Wallis and John Linn of Counsel with Appellant, and Joseph D. Bedle and John S. Barkalow of Counsel with Respondent having been heard, and the questions brought up by said appeal having been duly considered.

It is on this thirtieth day of October in the year eighteen hundred and eighty-two, ordered, adjudged and decreed, that the order of the Passaic Orphans' Court made on the eighteenth day of February, eighteen hundred and eighty-two appealed from by the appellant, which adjudged that the said Sarah P. Dale at the time of the execution of the instrument in writing purporting to be the last will and testament which had been offered for probate by the appellant was under undue influence and that the execution thereof by her was procured while she was under constraint and undue influence and that the said instrument was null and void as the last

will and testament of the said Sarah P. Dale, deceased, and that probate thereof should be denied, be and the same hereby is in all things reversed, set aside and for nothing holden with costs of appellant and respondent in this Court, and the Passaic Orphans' Court, together with reasonable counsel fee on both sides in both Courts to be paid out of the estate of the testatrix.

And it is further ordered, adjudged and decreed, that the instrument in writing purporting to be the last will and testament of Sarah P. Dale, deceased, and offered for probate by the appellant, was properly executed and is genuine and valid; that the Sarah P. Dale, at the time of executing said instrument, was in all respects competent to execute the same and was not under restraint or undue influence, and that the said instrument be and the same hereby is admitted to probate in and by this Court.

And it is further ordered, adjudged and decreed, that letters testamentary issue thereon out of this Court to T. Nelson Dale and David S. Daggett, the Executors named in said will.

And it is further ordered that all further proceedings herein be had in this Court on motion of Wallis and Edwards, Proctors of Appellant.

THEODORE RUNYON.

In the Prerogative Court of the State of New Jersey.

Between

T. Nelson Dale,

Appellant,

and

Frederick S. Dale,

Respondent.

The respondent hereby appeals from so much of the final decree made in this Court in the above stated cause, as adjudged that the decree of the Passaic Orphans' Court in said matter be reversed and that the instrument in writing purporting to be the last will and testament of Sarah P. Dale, dec'd, and offered for probate by the appellant was properly executed, is genuine and valid and that the said Sarah P. Dale at the time of executing said instrument was in all respects competent to execute the same and was not under restraint or undue influence and that the said instrument be admitted to probate and that letters testamentary issue out of the Prerogative Court thereon to the Court of Errors and Appeals in the last resort in all causes.

Dated Oct. 30th, 1882.

G. A. HOBART,

Solicitor of Respondent.

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

JOHN S. BARKALOW,
Of Counsel.

Messrs. Wallis and Edwards take notice that the within is a copy of a notice filed in the Prerogative Court Oct. 30th, 1882.

JOHN S. BARKALOW,
Of Counsel with Respondent.

State of New Jersey, Passaic County, *ss.*:

ALLEN CLUSS of full age, being duly sworn on his oath saith that on the 30th day of Oct. at Jersey City he served a notice and a petition copies whereof are hereto annexed upon Messrs. Wallis & Edwards, attorneys of T. Nelson Dale in said cause by leaving the same at their office in Jersey City with Mr. Edwards, a member of the firm.

ALLEN CLUSS.

Sworn to and subscribed before me this thirtieth day of October, eighteen hundred and eighty-two.

H. A. WILLIAMS,
Master in Chancery.

IN THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

Between

FREDERICK S. DALE,
Appellant,

AND

T. NELSON DALE,
Respondent.

On Appeal from Prerogative Court.

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

The humble petition of Frederick S. Dale, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Prerogative Court of the State of New Jersey by his Honor Theodore Runyon, Ordinary, bearing date the thirtieth day of October, in the year eighteen hundred and eighty-two—wherein the said T. Nelson Dale was appellant and the said Frederick S. Dale was respondent in an appeal from the Orphans Court of Passaic County—in this respect to wit—that the said decree of the Ordinary adjudges that the decree of the Passaic Orphans Court in said matter be reversed and that the instrument in writing purporting to be the last will and testament of Sarah P. Dale dec'd, and offered for probate by the appellant, was properly executed and is genuine and valid and that the said Sarah P. Dale at the time of executing said instrument was in all respects competent to exe-

cute the same and was not under restraint or undue influence and that the said instrument be admitted to probate and that letters testamentary issue out of the Prerogative Court thereon, and your petitioner humbly appeals from that part of the decree of the ordinary which decrees as aforesaid upon the ground that the same is erroneous for that the said Sarah P. Dale was not of testamentary capacity, and was subjected to undue influence, in the making of her alleged will.

Your petitioner therefore prays that the said decree of the said ordinary may be in the particuticulars aforesaid reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this honorable Court shall seem meet.

Dated, Oct. 30, 1882.

G. A. HOBART,
Solicitor of Appellant.

JOHN S. BARKALOW,
Of Counsel.

Messrs. Wallis and Edwards take notice that the within is a copy of a petition filed in the Court of Errors and Appeals.
Oct. 30, 1882.

JOHN S. BARKALOW,
Counsel of Appellant.

IN THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

Between
FREDERICK S. DALE,
Appellant,
AND
T. NELSON DALE,
Respondent.

Answer to Petition of Appeal.

The answer of the above named respondent to the petition of appeal of the above named appellant.

This respondent not acknowledging all or any of the matters, which in the said petition of appeal are contained, to be true, for answer thereto, nevertheless, says and admits that a decree was on the thirtieth day of October, last past, made and entered in the Prerogative Court of the State of New Jersey, in the cause for that purpose mentioned in the petition, as is therein stated; but as to the form and substance thereof, this respondent prays to refer thereto, when the same shall be produced.

And this respondent 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 adjudged to this respondent.

Dated November 9th, 1882.

WALLIS & EDWARDS,
Proctors of Respondent.
JOHN LINN,
of Counsel.

(A true copy.

The following are the points urged by the appellant:

1. The testatrix died of a disease the necessary consequence of which at the stage which it had reached in her case, is mental alienation particularly of the emotional faculties and of the judgment.

2. Even if it be held that mental alienation is not a necessary consequence of the disease at the stage contemplated, yet it is a consequence so highly probable that the presumption of it must be overcome by positive evidence.

3. Even if that presumption be not tenable as a simple medical proposition yet in this case taken in connection with actual manifestations of disordered faculties as proved the conclusion is inevitable.

4. Laying aside the argument from necessity and by presumption and ceasing to inquire for the specific disorder of body—the words and the actions of the testatrix and the contents of the will itself in connection with her previous declarations and her bodily ailments indicate a want of testamentary capacity.

5. Even assuming a capacity which if free from interference would have been sufficient for the execution of a valid will the testatrix was subjected to an undue influence strong enough to disturb and control her action enfeebled as she was in mind and body.

6. Assuming as a proposition of law that the attention of the Court must be directed to the time of the signature of the will nevertheless the testatrix must be considered then in the light of her previous and subsequent mental history.

7. The contents of the will are a proper subject of consideration as a measure of capacity.

PASSAIC ORPHANS' COURT.

Hon. J. Dixon presiding

On the application to admit to probate a certain writing purporting to be the will of Sarah P. Dale, deceased. This instrument was executed by Mrs. Dale in due form on April 28th, 1880.

We do not think that at the time this instrument was framed the testatrix was incapable of making a valid will if left to herself, but we think that her mind was disturbed and enfeebled by disease and made liable to alterations and perversions of feeling scarcely consistent with normal mental soundness and this will is the outcome of one of these abnormal conditions, aggravated and operated upon unfairly by the influence of the chief beneficiary under it.

We are led to this conclusion mainly by the following considerations which appear to us to be warranted by the evidence :

The will was executed within a week of Mrs. Dale's final lapse into unconsciousness, several weeks after a prior lapse of similar character induced by the steady progress of a disease which for years had been undermining her power.

Shortly before this instrument was drafted her affection towards her son Frederick was such as is usual from mother to son ; the claims of her only children, Nelson and Frederick, upon her bounty whether their dutifulness to her or their pecuniary circumstances be considered, were not dissimilar, and her testamentary purpose was to make an equitable division of her property between them.

At this time in the sale of machinery by Mrs. Dale to Frederick there arose a misunderstanding, which in a reasonable mind, could have occasioned at most

only a temporary irritation. Mrs. Dale was then living with Nelson whose feelings towards his brother were and long had been unfriendly, and he of course took part with her in the existing disagreement. Then the making of Mrs. Dale's will was broached and at length in an interview between her and Nelson alone, when she was too ill to sit up, instructions for it were drafted in Nelson's handwriting. By these instructions the whole of her estate valued at over fifty thousand dollars was given to Nelson, his wife, and children, except two thousand dollars which were to be paid to the children of Frederick. Nelson admits that this last legacy was increased and modified to suit his wishes then and there expressed to his mother and it is plain that every other provision made must have accorded with his desires. These instructions were afterwards substantially embodied in legal form and became the will now propounded. The will was executed after Mrs. Dale had temporarily left Nelson's home and gone to visit mutual friends, but in every step leading up to its execution, Nelson's legacy appears, and a wish for an additional executor, expressed by Mrs. Dale in a letter to Nelson after their separation was abandoned by her on Nelson's objections, so that there is no room to doubt that this instrument accords with Nelson's purposes concerning his mother's estate as fully and exactly as if his control over its terms had been absolute.

While the framing of the will was in progress Frederick was excluded from visiting his mother by members of Nelson's family and with his knowledge, whether at Mrs. Dale's request or not is scarcely important, since the influences which could induce her to disinherit her son could also induce her to request his exclusion from her presence.

So that we have in this case a testatrix of enfeebled mind, abandoning a natural testamentary pur-

pose for an unnatural one under circumstances where she was most likely to be subjected to the influence of the chief beneficiary, where that influence was sure, if successfully exerted, to produce the present unnatural disposition, where it affirmatively appears that that influence did produce the clause in the will in which, a priori, there was least reason to suspect it, and where the disinherited son of the testatrix was excluded by the beneficiary from intercourse with her and kept in ignorance of the contemplated scheme.

Such a case is one which we think requires clear proof to dissipate the presumption of fraud or undue influence which naturally arises.

The proponent alleges three causes as legitimately accounting for this inofficious will:

First.—The dispute in the sale of machinery before mentioned. This involved a few hundred dollars only in purchase of twenty thousand dollars' worth of property. Mrs. Dale's counsel advised her that she had no right to the claim she was making against Frederick and yet Frederick yielded to that claim in part and it was settled. This cause is utterly inadequate to the result ascribed.

Second.—It is said that the machinery sold by Mrs. Dale to Frederick for twenty thousand dollars was worth so much more that she regarded it as an advancement of his share in her estate. The evidence is clear that it is not worth more, and there is no reliable evidence that she thought it was worth more.

Third.—It is stated that Mrs. Dale looked upon Frederick as able to make his own way in the world, but considered Nelson as inefficient and incapable of so doing. But it is strange that this view of her son's abilities had never before engendered such testamentary purposes as are now disclosed, and the will itself by putting the whole estate substantially in Nelson's management, as one of the executors, as sole trustee

and as principal beneficiary, indicates that she did not distrust his capacity.

These hypotheses seem not at all so probable a method of accounting for this will as is the view we take that it is the result of undue influence operating upon a feeble and distorted mind. These suggestions may have been the means through which that influence was exerted, but the influence was after all the efficient cause, we think, of the effect produced, nor does Nelson's denial countervail the probative force of the admitted circumstances, for not only is he as a witness liable to the imputation of bias through both his self-interest and his enmity to the caveator, but his mode of testifying under cross-examination is not such as to inspire confidence.

It is our judgment that this will should not be admitted to probate.

PREROGATIVE COURT.

Oct. T., 1882.

THOMAS NELSON DALE,
Appellant,

AND

FREDERICK S. DALE,
Respondent.

On appeal from decree of Passaic Orphans' Court

refusing to admit to probate a paper writing to be the will of Sarah P. Dale, deceased.

MR. H. WALLIS and
MR. JOHN LINN
for Appellant.

MR. J. S. BARKALOW and
MR. J. D. BEDLE
for Respondent.

The Ordinary.

Sarah P. Dale, widow of Thomas N. Dale, deceased, died on the Eighth of May, 1880, in Philadelphia, at the house of her friend Rev. David Winters, whose family she was then visiting, and whose wife was an old acquaintance and intimate friend of hers. She had been at his house for over five weeks, from about the Twenty-sixth or Twenty-seventh of March preceding. On the Twenty-eighth of April, ten days before her death, she executed her will, which had been some time previously drawn for her by her lawyer Mr. Hamilton Wallis, and which was sent to her at Philadelphia. By the will, after ordering that her debts and funeral and testamentary expenses be paid, she gave to her son Thomas Nelson Dale as his absolute property all her personal property, including paintings, books, furniture, bronzes, porcelain and glassware, diamonds, jewelry, silver and silver plated ware in her possession or to which she might be entitled at the time of her death, except such as was in the will specifically bequeathed, and also certain real estate in New Haven, and her house and lot at Newport, with the furniture therein. She then gave to his daughter Sarah Nelson Dale the contents of two barrels (of crockery) belonging to her, the testatrix, and in Paterson, to be delivered to her by the Executors whenever her parents or the survivor of them shall certify in writing that she is of sufficient discretion to receive them, and provided that if both

of the legatee's parents should die without making any such certificate, the contents of the barrels are to be delivered to the legatee on the death of the survivor of her parents. She then gave to her son Thomas Nelson Dale all her property real and personal, that might come to her as heir at law or devisee of her father then deceased, and which might come to her by devise or descent from her mother, and also all her interest in a bill of sale and chattel mortgage given to her by her son Frederick S. Dale, of certain machinery in Paterson, and all moneys that might become due or payable to her or her estate therefrom or thereunder, in trust, first to apply the rents, profits and income to the payment of all taxes, insurance premiums, interest or repairs that might become chargeable against the property or any part of it or that might be necessary for its preservation; second, to pay to the two daughters of her son Frederick $1000 each, in such installments and at such times as the trustees with the advice of her other executor (David L. Daggett of New Haven), might think proper, the legacies to bear interest from the period of one year from her decease; to receive the rents and income from the property to come to the testatrix as heir or devisee of her father and apply them to his own use until his youngest child living at her death or that might be born within the ordinary time of gestation thereafter, should have reached the age of twenty-one years, and thereupon to divide that property equally among those children and the legal representatives of such of them as should have died, per stirpes and not per capita ; to divide what property she might be entitled to as heir at law, next of kin or devisee of her mother into two equal parts and retain one for himself absolutely and invest the other half as he should see fit and pay the next income to his wife for life and the principal at her death to their daughter Sarah or her

legal representatives, and she gave the residue of her estate to him and appointed him and Mr. Daggett before mentioned the Executors, giving them power to sell her real estate. The admission of the will to probate is resisted by the testatrix's son Frederick and his opposition to it is based on the allegation that she was when the will was made, not possessed of testamentary capacity, and that the will was the result of undue influence by his brother Thomas Nelson upon her. The testatrix had but two children. Her husband died in the summer of 1879. Her estate amounts, according to the caveator's estimate, to about $44,000. When she died she had long been suffering from a disease which in her case proved incurable, and which at last caused her death. In the summer of 1879 she was in Europe, at Teplitz in Bohemia, whither she had gone some time previously, and where she had stayed alone. Her husband when she went to Europe remained in Paterson and her two children also remained in this country. In the summer of 1879 her son Frederick went to Teplitz to see her with a view as it appears, of buying from her certain machinery for the manufacture of silk owned by her and being in Paterson, and which he was desirous of purchasing but for which he had failed to make a bargain with his father (who acted as his wife's agent in the matter) they being unable to agree upon the price. She and Frederick returned together. After they had returned to Paterson she sold the machinery to Frederick (her husband died in June, 1880) for $20,000. After the negotiations were completed and the sale made, a misunderstanding arose between them which was adjusted by her agreeing to accept the sum of $200 which he offered to give instead of a much larger sum which she claimed he owed her (he denied the justice of the claim however) on account of interest or the use of the machinery in the transaction,

From that time she appears to have entertained feelings of resentment and hostility towards him on that account and repeatedly refused to see him when he called at the house (Thomas') where she was. Dr. Blundell, who was called by the caveator and who was her physician while she was in Paterson, says that when the sale of the machinery was brought about all her feelings toward Frederick seemed to be changed, and instead of affection her feeling seemed to be one of hate. It appears from his testimony that he learned from her that there was a misunderstanding (it appears to have occurred as far back as the fall of 1879) between them arising out of that sale. Mr. Wallis, the testatrix's lawyer, who advised her in the matter of the sale, so far as she needed legal advice, and who prepared the papers which were executed in the transaction, testifies that she expressed herself (this was he says in the first part of November, 1879) as being very much dissatisfied with Frederick's refusal to pay what she demanded; that he, Mr. Wallis, told her he would not advise her to enter into any contest in relation to the matter, that a contest would only result in tying up the machinery so that it would produce her no income and that all contests were uncertain as to their results and that under the circumstances he would advise her to accept her son's proposition which was in the nature of a compromise, to allow her two or three hundred dollars for the use of the machinery; that she said that if she must, she supposed she must, but that Frederick would have cause to regret compelling her to accept any such proposition, or something to that effect. To Anna Inglis she said that she had made over her property to her son Nelson (Thomas) that Frederick must remember that what he took from her, now, he could not have when she was gone and that she had given $2000 to his children to prevent the breaking of the will. The witness just mentioned further says that the

testatrix at the time she told her of the will said that Frederick had done her two or three ugly tricks but she never believed he would he would have done this and that it was on account of the difficulty which arose out of the sale of the machinery that she refused to see him. To Elizabeth Provan she complained of Frederick's treatment of her in the matter of the machinery and said she could not trust him. In this connection it may be remarked that one of the caveator's witnesses testifies that in August, 1879, after the testatrix' return from Europe she said to him that she loved Frederick as much as she did Thomas; that she was glad the former was getting along as well as he was, and she praised him for what he had done for her when he was in Europe. This conversation, it must be remembered, took place before the difficulty in regard to the machinery occurred, and it is apparent that when subsequently to that conversation she changed her opinion of Frederick, it was because of what seemed to her to be an adequate reason. Of the adequacy of it however we cannot judge (and it is not important to do so) without a better knowledge of Frederick's dealings with her and the rest of the family than the evidence discloses. It does appear that Mr. Dale, the father, was unfriendly to Frederick up to his death, so much so that when the latter was about to go to Europe in 1879, he went to the house where his father was then living to take leave of him and though his father bade him good bye, it was after turning his back to him and refused to shake hands with him. It appears that there was enmity between Frederick and Thomas. It is quite probable that the testatrix's dissatisfaction with Frederick was heightened and intensified by the fact that she considered that he had got a great bargain in buying the machinery from her at $20,000, nothwithstanding she was willing to sell it at that price previously to the sale to him, and to let it

go for about $19,000, the amount of the claim, at the sale at which she acquired her title to it, which was a sale under an execution in her favor for about that sum. After the sale of the machinery had been completed, which was February 16th, 1880, she made her will and she appears to have set about making it soon after that date, although it was not signed until April following. She gave directions for it herself. She first went to Mr. Wallis' office on that business in February and she then had a conversation with him on the subject. At his suggestion then made to her, she sent to him at his office in the City of New York a written memorandum dictated by her to her son Thomas at his house in Paterson, and by him written down and probably taken by him to Mr. Wallis' office. She subsequently visited Mr. Wallis again at his office on the subject and he then went over the memorandum with her, making some alterations in it. On that occasion she and he conversed together on the business for about an hour. From the memorandum thus altered and other papers which she furnished him, Mr. Wallis made a draft of the will which he sent to her at Paterson and received it back again after it had been altered a little and a blank which had been left for the name of one of the Executors, filled with the name of Mr. Daggett. From the draft the will was engrossed.

MR. WALLIS testifies as follows:

Sometime, it must have been in the month of February, 1880, Mrs. Dale called upon me in relation to her will; she wanted me to draw her will for her, and I told her if she would put her ideas in shape, in rough shape on paper, so that I could understand it, I would prepare the will and send it to her. I think it was on that occasion that she asked me if it was necessary to state in her will the names of all her children, and I told her that there was an antiquated notion that that

was necessary, but that in fact it was not necessary. I then received this paper, which I produce; whether it was sent to me by mail or not I am not certain, but I incline to think that it was not. I have no recollection on the subject, but from the manner in which the paper has been folded I am satisfied that it was brought to me and not sent by mail. Mrs. Dale called upon me afterwards; when I arrived at my office in the morning I found her in my private room alone; my best recollection is that at that time she produced this paper, that is, the same one; it may have been I had received it before; at all events, this paper was there present; I went over the paper with Mrs. Dale, and made certain changes in pencil, or annotations in pencil, which are on the paper now; we had a conversation there about an hour, and after the conversation was over I escorted her to the outer door, and met her son Nelson in the outer office. From this paper and certain others I prepared the draft of the will. The question arose during that conversation whether the property in New Haven, which passed under her father's will, and which she seemed to consider as hers, whether she really had a title to it, was tied up by the trust so that the title would pass by operation of law to her heirs, if she died before her mother; I requested her to obtain for me a copy of her father's will before I proceeded to draw her will, and she sent me one, which I have here, also, copy of certain partition proceedings in New Haven, Connecticut, which I here produce from these documents, which I will now offer in evidence separately from those papers, or from the information contained in those papers, I prepared a draft of the will, that was some time in the month of March, either the latter part of February or the early part of March, 1880, which draft I have in my hand. I prepared a pencil draft, and this is a copy, made by a copyist in my

office, from that pencil draft; this I sent to Mrs. Dale in Paterson, and received it back by mail, I think, with two alterations, the one on the first page, the one on the third page and the insertion of the name of an Executor which had been left blank on the last page; no, I find one other, on the next to the last page; about the same time I received that paper, I received directions to send the will engrossed to Mrs. Dale, in Philadelphia, giving the street and number where she was to be addressed. About that time I moved my office from 120 Broadway, Equitable Building, to 48 Wall Street, where I am now; we actually commenced to move, I am very positive, on the 24th of March, or about that time, it was just a week before the first of April, 1880. The will was engrossed, but the engrossed copy, which is the paper in evidence already —the paper put in evidence the first day, the will offered for probate—was packed away with other documents in the office for removal; I received a letter from Nelson Dale, which I cannot find, stating that his mother was anxious for her will, and wanting me to send it to he; I found the engrossed copy, but could not find the address of Mrs. Dale, in Philadelphia; I knew the address of her son in Newport, and I therefor sent the will to him to forward to his mother; the next time I saw it was when it was produced by Frederick S. Dale and Nelson Dale, after their mother's death. In all these interviews I had with Mrs. Dale—and there were several of them—I failed to notice any sign of mental weakness or mental disturbance; she certainly appreciated fully her rights in regard to that machinery, and understood and told me what she wanted done with it; she also stated to me generally the other property she possessed; she also knew the names of her children, who they were, and impressed me as being a woman of very excellent and sound sense; I had no idea that anything was the

matter with her, and did not until after her death. I think she stated to me, two or three times, that she did not expect to live long. I never transacted any business for Nelson Dale, until I propounded this will for probate; never knew him until he was brought into my office by Mrs. Dale herself, so far as I can recollect. That the testatrix was possessed of testamentary capacity both at the time of the preparation of the will and at the time of executing it, there seems to be no reason to doubt. Her conversation with Mr. Wallis, Miss Inglis and Mrs. Provan clearly show that she had full capacity when the will was prepared. Reference has already been made to the conversations with Mr. Wallis and Miss Inglis. About three weeks before she went to Philadelphia, that is, in the early part of March, she had a conversation with Mrs. Provan on the subject of the will, in which she told Mrs. Provan what disposition she was going to make thereby. Mrs. Provan asked her whether she thought that that disposition of her property was a just one, and she replied that she supposed she would receive condemnation from some persons on account of it, but that Frederick was a smart business man and had an opportunity of making a living, which Thomas had not, and that what she was doing was for the best; providing for those who could not provide for themselves. The testimony of the subscribing witnesses shows that she was competent when the will was signed. Those witnesses were the Rev. Mr. Winters, Mr. William J. Kelly, a bookseller of Philadelphia and Dr. William B. Atkinson of that city. He was her physician there. They all regarded her as entirely competent, and they all had opportunity to judge of her testamentary capacity. Mr. Winters had known her for a long time. At her request he invited Mr. Kelly and Dr. Atkinson to come to his house on that day for the purpose as they were told when they were invited, of witnessing

her will. He invited them to dinner and they came accordingly. After dinner the will was produced in the front parlor and was signed there. Dr. Atkinson says he and the testatrix were talking about everything, chatting for a long while about the current topics of the day and even joked about the contesting of wills. The medical testimony adduced to show that her condition from the effects of disease must have been such as to incapacitate her for the disposition of her property by will, is met by counter testimony of the same kind and of at least equal weight. And here it may be remarked that her business capacity was not doubted or questioned by the caveator down to February 16th, 1880, at least, for he then closed with her the transaction of the sale of the machinery by which he bought from her property at the price of $20,000. Indeed her competency to do business does not appear to have been questioned by anybody at any time. The proof of her actual mental condition at the time of the act under scrutiny, the making of the will, is, to say the least of it, far more satisfactory and convincing than the conjectural opinions of the experts. And this is especially so, seeing that one of the testamentary witnesses was himself an expert, her physician and (as were the others also) wholly without interest of any kind in the disposition of her estate. "The point of time" said Vroom, Ordinary, in Sloan v. Maxwell, 2 Green C., 563, 573, "at which the testator's competency is to be tested, is that of the execution of the will; his antecedent or subsequent condition is chiefly important as it may bear on that epoch. And we naturally resort in the first place to the subscribing witnesses; because they have seen him at the decisive period, and because the law expects from them peculiar care, caution and circumspection, presuming from the fact of the attestation that they believed him competent as otherwise they ought not to have given countenance to

a deceptive instrument." Much stress is laid on the part of the caveator on the fact that the testatrix while she was in Paterson in March, 1880, lay for about two days in a comatose condition, the effect of her disease; from which it is argued that taking into account the nature of her complaint and the stage of it in which she then was, it follows legitimately and necessarily that she was incompetent when she executed the will. But the attack was but transient, though of long duration; she recovered from it and went in the latter part of the month to Philadelphia, where she remained till her death. Dr. Atkinson says she told him of that sickness and that she had been for quite a considerable time unconscious. He was asked: "Did she on that occasion (an occasion on which he was called to visit her professionally) tell you that she had before coming to Philadelphia at that time been for several hours and on one occasion as long as eighteen hours, unconscious from the effect of it?" and he answered "She told me something to that effect. I can't say eighteen hours, but it was quite a considerable time she was unconscious. "So that she not only knew of the sickness but was fully aware of its character. Much reliance is placed by the caveator on the testimony of Elizabeth O'Connor (who was a servant in Thomas' family) as showing mental disturbance and and serious aberration in the testatrix. But the testimony is entitled to but very little, if any weight, and it may be said as to all the testimony now under consideration, that the mental incapacity, the existence of which it is produced to establish, was but temporary and did not exist when the will was made. It is worthy of remark that the coma occurred in March while the instructions for the will were given in February, and the will was executed on the twenty-eighth of April. The letters of the testatrix, written while she was in Philadelphia, are by no means evidence of

the want of testamentary capacity, but the contrary. Her whole conduct in reference to the will while she was at Mr. Winters' house not only shows competency but freedom from constraint of any kind. In January, 1876, she made a will in which she made gifts of valuable goods, jewels and ornaments, to Mrs. Winter besides two legacies amounting to $5000. That will she delivered to Mr. Winter for safe keeping. At her request he sent her a copy of it while she was in Europe. The will now under litigation gives nothing to Mrs. Winters or her family, though she gave her some articles of household furniture during her last visit. Notwithstanding the change in her will, so far as Mrs. Winters was concerned, she did not, though she was a guest at her house, conceal the fact that she had made the new will or what its contents were. Mr. Winter testifies that soon after (he thinks it was the next day) she came to his house on her last visit, she told him she had made her will and expected soon to sign it. He also says that at her request he read the will over to her two weeks before it was executed, and that he read it to her several times. After it was executed it went into her possession. Neither of her sons *was* in Philadelphia during that visit before the will was signed. Thomas, who came first, arrived there only about five days before she died. After she reached Philadelphia she seems, as appears by the correspondence put in by the caveator, to have been anxious to get the will that she might execute it, and after she got it she wanted to be sure that it was as she intended it to be.

It is urged that the conduct of Thomas in connection with the making of the will is evidence of fraud on his part. It appears that he acted as his mother's amanuensis in making the memorandum for the will and assisted her in correcting the draft which was sent to her by Mr. Wallis, but it does not appear that he did anything more in those matters than to comply

with her wishes. There is no evidence that her will was overborne by his, or that he had recourse even to persuasion to induce her to favor him in her testamentary disposition of her estate. It is urged that the fact that the will reached her hands through his is a circumstance significant of undue influence; but it appears that the understanding was (as Mr. Wallis testifies) not that it should be sent to Thomas or to her through him, but that it should be sent directly to her address in Philadelphia. Mr. Wallis appears to have delayed sending it merely because he lost sight of it for a while in moving the furniture and papers of his office. and it was only because he had forgotten her address and lost the memorandum of it, if he had any, that he sent it (and he did it of his own accord and merely because he did not know how else to get it to her) to Thomas at New York to be forwarded to his mother, and it was forwarded accordingly. There is no evidence of threats, restraint or coercion of any kind to produce the will; nor, as before stated, even of any importunity or persuasion. It has been repeatedly said that undue influence like other species of fraud, must be proved and will not be presumed. It is a conclusion and not a presumption, and the burden of proof where the testator was of sound mind, is on the person who impeaches the will on the ground of fraud. "In order" said the Lord Chancellor in Boyse v. Rossborough 6 H. of L. 2,51, "to set aside the will of a person of sound mind, it is not sufficient to show that the circumstances attending its execution are consistent with the hypothesis of its having been obtained by undue influence. It must be shown that they are inconsistent with a contrary hypothesis." To the same effect was the charge of Judge Grier in Turner v. Hand, Meeker will case, 3 Wall, Jr. 88,113, "circumstances which should avail for the proof of fraud are such only as are inconsistent with a contrary view of

the transaction and lead irresistibly to that conclusion." And though fraud may be inferred the inference cannot lawfully be drawn unless it is natural and necessary. The caveator insists that it appears that Frederick was prohibited by Thomas from seeing his mother while she was at the latter's house, at the stay during which the will was prepared but not only do Thomas and his wife swear that this was done at her request, but the evidence of Miss Inglis corroborates this statement. She testifies that the testatrix told her that she had refused to see Frederick once or twice, that the reason of it was the difficulty about the machinery, and that Frederick had called at the house to see her, and that she sent word that she could not see him, but afterwards did see him. She also says that the testatrix told her she had received him coldly. The circumstances and incidents which are relied upon as the evidence of the incapacity or fraud imputed do not seem to me possess such weight or force as to justify the conclusion that the testatrix was incompetent or that the will was the result of fraud. It is not the province of the Court to make wills for testators nor to defeat their testamentary intentions where there is capacity and no fraud, and in simple justice to the accused no less than out of regard to the rights of testators and the dictates of a sound public policy it will refuse to impute where the evidence does not necessitate a belief in its existence. It is obviously not for the Court to annul a testator's disposition of his property by will, on the mere ground that he has unequally or unjustly divided his estate or even capriciously or through prejudice given it away from those who in view of his natural or social relations and obligations have undoubted claims upon his bounty or his justice, and bestowed it upon less worthy or even upon absolutely unworthy objects. In the language of Chief Justice Green in Den v. Gibbons, 2 Zab. 117,

the validity of a will cannot depend upon the consistency of its provisions with our ideas of fairness or propriety or even with the principles of justice and humanity; such a test of its validity would be certainly subversive of that absolute control and dominion which the law has given to every man over his own property. In his charge in Greenwood v. Greenwood, reported in 3 Curteis (app.) 337, Lord Kenyon, referring to the testator's prejudice against his brother, said that if those prejudices though on improper grounds, were such as might reside in a sound mind, while it was hard that they should lead to conclusions unfavorable to his brother, yet hard as the case may be, it was better that a thousand hard cases should take place that that the Court should remove the landmarks by which man's property is to be decided. And he proceeded further to say that the testator's conduct to his brother was to be considered to ascertain whether it was the evidence of a derangement of mind or only of an unreasonable prejudice; and if it were the latter, it did not unfit him to make the will. He added, "A multitude of instances there have been where men have taken up prejudices against their nearest and dearest relations; it is the history of every week in the year and the history of almost every family at one time or another, that unreasonable prejudices have taken place, that one child standing equally near in blood has been preferred to another; and if once we get into digressions of that kind, then we get upon a sea without a rudder. Where will you stop? What partiality will be enough to set aside a will and what partiality will you give way to and say the will is good? These are questions which the most correct and acute mind that ever addressed himself to the consideration of questions will not be able to settle." And here it will not be out of place to advert to the case of Wintermute v. Wilson, 1 Stew. 437, decided in the Court

of Errors and Appeals in 1877. The testator was advanced in years and enfeebled by disease, but his mental decay had not reached the point of legal disqualification. The will was plainly unjust to his wife. Besides her claim upon him arising from her faithful discharge of her duty to him as a wife she had for many years successfully managed his affairs, and there was reason to believe that a large part of the property which the will diverted from her was the fruit of her own exertions. Said Chief Justice Beasley, in delivering the unanimous opinion of the Court, "But the misfortune is that such diversion was not without cause. Just before the making of this will she quarreled with her husband and the anger thus kindled was not suffered to die out, but was inflamed by some of those who were likely to profit by it. But the occasion of the anger being real, there is no pretext for saying that the will is the offspring of delusion; in truth it is the product of bad advice and a disproportioned resentment; and this clearly can lay no ground for setting it aside in a Court of law. The will was properly admitted to probate." It is the duty of courts not only to uphold but to guard the right of free testamentary disposition of property. Public policy demands it. "The English law" said Lord C. J. Cockburn, in Banks v. Goodfellow, L. R. 52, B. 549,564, "leaves everything to the unfettered disposition of property. Public policy demands it." "The English law" said Lord C. J. Cockburn, in Banks v. Goodfellow, L. R. 52, B. 549,564, "leaves everything to the unfettered discretion of the testator, on the assumption that though in some instances, caprice, or passion, or the power of new ties or artful contrivance or sinister influence may lead to the neglect of claims that ought to be attended to, yet the instincts, affections and common sentiments of mankind may be safely trusted to secure, on the

whole, a better disposition of the property of the dead, and one more accurately adjusted to the requirements of each particular case, than could be obtained through a disposition prescribed by the stereotyped and inflexible rules of a general law." In the case in hand the estate is almost entirely given to one of the two children to the disinherison of the other. A testator of sound mind is at liberty to make an absolutely unfair disposition of his property and in the absence of fraud his will must stand. That the testatrix had a reason (one or more) for her action in making the disposition is clear, though if of sound mind she was at liberty to act even capriciously in the matter and might have disinherited both sons had she seen fit and have given her whole estate to stangers or to charity. It is proved as before shown that after the sale of the machinery to Frederick her feelings toward him in consequence of what she regarded as his unfair dealing with her in that matter, changed from love to dislike and she harbored resentment against him. There was no delusion as to the transaction. She did sell him machinery for the price of $20,000 and there was a difference between them in which she on the one hand demanded a very considerable sum of money from him as interest, or for the use of the machinery, which he on the other refused to pay, denying the justice of her demand, but subsequently offered $200 which she unwillingly accepted. This appears from the caveator's own testimony. There was then no delusion but a real ground for her action. This is apart from the fact that she appears to have had sti'l another reason, viz, that Frederick was a man of business and therefore able to take care of himself without aid from her while Thomas was not, but was merely a man of science. In fine, the testatrix was possessed of testamentary capacity. She understood the business in which she was engaged when she made her will, she

knew what her property was, and who were the objects of her bounty, and the manner in which she disposed of her property. There is no proof of fraud. The will was executed with all due legal formalities. It must be admitted to probate. It will be so decreed. The decree appealed from will therefore be reversed. Under the circumstances the costs of both sides with reasonable counsel fees in both Courts should be paid out of the estate.