

New Jersey Court of Errors and Appeals

Between

Edwin P. Able,
Proponent-Respondent

and

Phoebe Gutmann,
Caveatrix-Appellant.

ON APPEAL.

ON APPEAL FROM DECREE OF PREROGATIVE
COURT REVERSING ORDER OF THE HUNTER-
DON COUNTY ORPHANS' COURT, IN THE MAT-
TER OF PROBATE OF WILL OF KATE ABLE,
DECEASED.

BRIEF OF APPELLANT

STATEMENT OF FACTS

Kate Able died April 12, 1911, leaving her surviving Edwin F. Able, a son, with whom she was living at the time of her death, and Phoebe M. Gutmann, a daughter, with whom she had previously lived. She could not read or write, except to write her name. She left about \$20,000 in personal property and about as much more in real estate. Twelve days after her death her son offered in the Hunterdon County Surrogate's Office for probate a paper purporting to be her last will and testament, in which she left to her daughter one dollar and to her son the rest of her estate and made him the executor. As the daughter had filed a caveat, the question of probate went to the Orphans' Court, and on pe-

tition of the caveatrix the following questions were certified to the Circuit Court for trial under the statute, namely:

FIRST: Whether the paper writing presented to the Surrogate of said County of Hunterdon for probate as and for the last will of Kate Able, deceased, was duly signed, witnessed, published and declared by the said Kate Able, as her last will and testament, according to the statute in such case made and provided.

SECOND: Whether the said Kate Able, at the time of making and executing the alleged will, as aforesaid, was of sound and disposing mind and memory.

THIRD: Whether the said alleged will of the said Kate Able, deceased, was the result of undue influence, imposition or fraud, exercised upon the said Kate Able, by the legatee and devisee, in said will named, or by any other person or persons.

FOURTH: Whether the said paper writing is the last will and testament of the said Kate Able, deceased.

The matter was tried before the Circuit Court, Judge Dungan presiding, and a jury, and resulted in a verdict which was certified back to the Orphans' Court, as follows:

FIRST: That the paper writing presented to the Surrogate of the said County of Hunterdon for probate as and for the last will of Kate Able, deceased, was duly signed, witnessed, published and declared by the said Kate Able, as her last will and testament, according to the statute in such case made and provided.

SECOND: That the said Kate Able at the time of making and executing her alleged will as aforesaid, was of sound and disposing mind and memory.

THIRD: That the said alleged will of the said Kate Able, deceased, was the result of undue influence, imposition or fraud exercised upon the said Kate Able by Edwin F. Able, a legatee and devisee, in said will named.

FOURTH: That the said paper writing is not the last will and testament of the said Kate Able, deceased.

Whereupon the Orphans' Court made a decree denying probate.

The son then appealed to the Prerogative Court, which Court, on conclusions filed by Vice Ordinary Backes, and a decree advised by him, reversed the decree of the Orphans' Court and admitted the will to probate.

From this decree of the Prerogative Court this appeal is taken by the daughter, the caveatrix.

THE QUESTION INVOLVED.

The question involved in this appeal is: Was the alleged will the result of undue influence, imposition or fraud? But back of this question is the one as to how far the Prerogative Court should go in reversing a decree of the Orphans' Court founded on the verdict of a jury where there is evidence to support such verdict, notwithstanding the abstract constitutional right of the Prerogative Court so to do.

GROUNDS OF APPEAL.

The decree of the Prerogative Court is alleged to be erroneous because the decree of the Orphans' Court was reversed and the alleged will admitted to probate.

THE ARGUMENT.

Chancellor Magie, sitting as Ordinary in the Prerogative Court, said:

“If the will thus executed benefits one who at the time occupies to the testatrix a confidential relation, or stood in a position of trust and confidence to her, the burden of proof on this subject is shifted to the proponent thereof, and upon him it devolves to establish that the will was the uncoerced act of the deceased.” (Citing cases).

In re Anastasia Davis, 73 N. J. Eq. (3 Buch.) 617, 619.

Vice Chancellor Reed, sitting as Vice Ordinary in the Prerogative Court, held that slight additional circumstances besides confidential relationship would raise a presumption of undue influence.

Sparks' Case, 63 N. J. Eq. (18 Dick) 242.

Bearing these principles in mind, let us examine the testimony.

In the first place there was no proof that the directions for the preparation of the will were given by the testatrix. The lawyer, a nephew of the testatrix, who prepared the will, was not present at its execution. He received the directions to prepare it from the son's wife, who very carefully in her testimony refrains from saying that her act was done under the direction of the testatrix. When the lawyer prepared the will he sent it to the son's wife, who inserted the date of execution, and who returned the will to the lawyer after execution. The son's wife claimed to have read the will over twice to the testatrix. There was no proof that any one else had read it to her. The son's wife attempts to defend her conduct by saying that testatrix said she wanted to assign everything to the son. The will then at the best should only be treated as an assignment inter vivos and as such be subjected to the more stringent rules surrounding such a transfer.

Note the testimony of the son's wife:

Q. Did she mention afterward anything about a will; if so, what was it and when was it? A. She didn't say a will right out. She wanted to arrange, fix up the papers; wanted to sign everything over to Ed.

Case, p. 151, lines 24-28.

Q. When this letter from me containing that will was received by you what did you do with the letter and the will? A. I gave it to your Aunt and read it to her, read it over twice; and she said, "That is just what I wanted; that just suits me."

Case, p. 151, line 40; p. 152, lines 1-4.

Q. Did she make any remarks about the contents of the will? A. "That is just what I wanted," is what she said.

Case, p. 153, lines 37-39.

The language of the testatrix as testified to above is significant in view of the fact that she had not directed a will to be drawn.

Take in connection with the above the following testimony of Silas H. Rouland, a brother of the testatrix:

The Court: You were asked to give the last question; that is all. A. We were taking dinner at the hotel at Frenchtown. After dinner she called me one side and said she wanted to speak to me. I went with her out in the hall. She says, "I wish you would come up and give Eddie a good licking." I says, "What is the matter?" She says, "I am getting afraid of him—he is abusing me." I says, "Why don't you take

a club and give it to him over the head?" She said, "I am getting too old." I says, "Where is he now?" She says, "In the barroom." She says, "Can't you go out there?" I said, "That is no place to pick a fuss; in a barroom." She says, "I am in dread; I am afraid of him." I says, "Kate, what makes him act this way?" She said, "He wants me to make a will and cut Phoebe out and I want each to have equal." I says, "Have you made a will?" She says, "No, I ain't made a will, but he says I must make a will today; he says I must." We stood there talking and he came to the door and hollered at her in a rough way; in an abusive way—if she wanted to come with them, or talk all day with me? She says, "I have to go; if I don't when I get home he will abuse me." I says, "Good-bye, Kate." That is the last one.

Case, p. 21, lines 21-40; p. 22, lines 1-3.

And the testimony of Roynear Rouland, another brother of the testatrix:

Q. Mr. Rouland, tell what Mrs. Able said to you in that conversation. A. She told me only those children, Phoebe and Ed, "Eddie" she called him, she said she wanted each one to have equally after she was gone; both alike, and she told me it was pretty hard to get along with Eddie, hard to live with him, he abused her so. I says, "Why does he want to abuse you?" She says, "Because I would leave him everything and Phoebe nothing." She said she wasn't going to do it, she was going to leave them both alike.

Case, p. 30, lines 22-31.

Q. She said her son didn't use her good?
A. Yes.

Q. Notwithstanding that she was going to leave him his proportion of the property? A. Wanted both to have equally, alike.

Q. At the same time she said she wanted both to have an equal share she told you he was not using her good? A. Yes; she told me he was abusing her scandalous. It was on account of that she wouldn't give it all to him and nothing to Phoebe.

Case, p. 31, lines 1-11.

And also the testimony of the son himself:

Q. Do you remember, Mr. Able, on different occasions within the four years before your mother's death, in the presence of Mrs. Weed, of Plainfield, quarreling with your mother?

A. Oh, we often had quarrels, I suppose she might have been there for all I know, we have quarreled at Clinton.

Case, p. 180, lines 22-27.

Q. Didn't you at different times, in the presence of Mrs. Weed, call your mother a "God damn bitch" while in Plainfield? A. No, sir.

Q. And a "God damn liar?" A. I might have said that.

Q. Did you or did you not? A. I did.

Case, p. 183, lines 35-40.

Q. You never had any words with your mother about that at all? A. No, sir. I had some words with my mother about some other things.

Case, p. 184, lines 28-30.

And the testimony of the son's wife:

Q. Is it not a fact that Ed abused your mother most shamefully, not physically by blows, but by way of cursing her and calling her foul names and all that sort of thing? A. Why, of course, as a matter of fact, he did say some things that were not altogether right. I often used to say, "You ought not to talk to your mother like that."

Case, p. 158, lines 30-36.

Q. Don't you know he owed her three thousand dollars in interest? A. Yes, I perfectly know exactly what he owed her.

Case, p. 159, lines 1-3.

That the jury arrived at their conclusion by that unbiased consideration a jury should always give a case is strongly borne out by their coming to a conclusion adverse to the caveatrix on the question of the will being a forgery, when there was strong evidence that it was a forgery, a number of witnesses swearing that the signature was not that of the testatrix, while deciding for the caveatrix on the question of undue influence.

The statute says:

"That the verdict of a jury in any proceeding touching the probate of a will, heretofore or hereafter rendered, shall be conclusive and final upon any issue of fact found by such jury, subject to be set aside only for such reasons as would justify the setting aside of verdicts in ordinary proceedings at common law."

While this statute has been held not to abridge the right of the Prerogative Court to pass de novo upon the question whether a will shall be admitted to probate, it is most strongly urged that this expressed will of the people through their Legislature should be given due consideration and that the verdict of a jury where there is testimony to support that verdict should not lightly be disturbed. The following language of Chief Justice Beasley should be remembered as stating a principle not altogether connected with that of constitutional limitation:

“There are two primary principles which are always to be borne in mind in the discussion of every question touching the limitations of the authority of the Legislature of the State. The first of these is, that the legislative body is supreme in every respect, except in the enumerated instances of constitutional restraint; and next, that such restraint cannot be imposed but by plain language, or by implication necessarily springing from the co-ordination of the several parts of the established system of government. It is evident, therefore, that the present motion cannot prevail, unless it can be made plain to the mind of the court that some provision of the Constitution exists which prevents the assumption by the Legislature of the authority to pass the act in question. In the opinion of the legislative and executive branches of the government, this power exists. That opinion is entitled to the utmost respect, and it can, with propriety, be superseded only when this court is convinced beyond a doubt that it is founded in error or misconception.

“The proposition to be considered then, is, not whether doubts exist as to the power of the

Legislature to enact the law in question, but whether it is positively certain that such power has been taken from them.”

Harris vs. Vanderveer's Executor, 21 N. J. Eq. (16 C. E. Gr) 424, 425, 426 (Errors and Appeals, 1869, Beasley, Ch. J.)

It is respectfully submitted that the decree of the Prerogative Court should be reversed and that the decree of the Hunterdon County Orphans' Court refusing probate should be sustained.

FRANCIS J. BLATZ,
Proctor for and of Counsel
with Caveatrix-Appellant.

The Killgore Press, Flemington, N. J.

New Jersey Court of Errors and Appeals

Between	}	
EDWIN F. ABLE,		On Appeal from
<i>Proponent-Respondent,</i>		Decree of
and		Prerogative Court.
PHOEBE M. GUTMANN,		
<i>Caveatrix-Appellant.</i>		

BRIEF OF RESPONDENT

For a correct, concise statement of the facts of the case we refer the Court to the first paragraph of conclusions of Vice Ordinary Backes, see State of Case, p. 268.

The decree of the Orphans' Court of the County of Hunterdon made upon certificate of trial from Hunterdon Circuit Court, dated January 26, 1913, see p. 261, 262, 263, upheld (1) the proper and legal execution of the will of the decedent, Kate Able, (2) determined that the said Kate Able was of sound and disposing mind and memory at the time of ex-

ecuting said will; (3) but decreed that the will was the result of undue influence exercised upon the testatrix by Edwin F. Able, a legatee and devisee named in said will, and (4) that the paper writing was not the last will of the said Kate Able, deceased.

The appeal of the proponent-respondent in this Court, was taken to the Prerogative Court from the said decree of the Orphans' Court, that the will of the said Kate Able, deceased, was the result of undue influence, etc., exercised upon her by the said Edwin F. Able; and from the finding that it was not the last will and testament of said decedent, in consequence thereof; and the proceedings in the Prerogative Court were such that the decree of the Orphans' Court was upheld wherein the will was held to be properly and legally executed, and in finding that the testatrix was of sound and disposing mind and memory, but reversed the Orphans' Court in its findings upon the question of undue influence, holding that no undue influence had been exercised in the making of the will and that the will was the true last will and testament of the said Kate Able, deceased.

The appeal of the Caveatrix-Appellant seeks to set aside the decree of the Prerogative Court and prays that the probate of the said paper writing may be refused.

I.

EXECUTION OF THE WILL.

The testimony of the witnesses to the will—Chester Thompson, p. 6, Charles W. Leigh, p. 12—is the only testimony in the case to the execution of the will. This shows (1st) that the Testatrix signed the will in the presence of the witnesses and the witnesses signed the will in the presence of the Testatrix

and in the presence of each other and that the Testatrix published her will according to law.

There is no testimony in the entire case which contradicts the statements of the witness to the will as to its execution.

II.

MENTAL CAPACITY OF TESTATRIX.

There was no evidence to show that the Testatrix was mentally incompetent to dispose of her estate. On the other hand, the testimony of Dr. Thomas Barber, p. 138, 139, shows his opinion as a physician who was well acquainted with the Testatrix as to her perfectly normal condition of mind.

The question of mental capacity was in no wise seriously controverted in the testimony in the case, nor was it questioned upon argument on appeal from the Orphans' Court to the Prerogative Court.

III.

UNDUE INFLUENCE.

The only testimony in the case that was intended to show undue influence was the testimony of Silas H. Rowland, p. 21, and the testimony of Rynear Rowland, p. 30.

A perusal of the testimony of these two witnesses indicates bias and prejudice against the proponent, Edwin F. Able, and was entirely too remote to be evidential of undue influence at the time of the execution of the will. In fact, it would show undue influence under no circumstances, and was incompetent to that end; and both conversations occurred previous to the circumstances which afterwards induced the Testatrix to cut off her daughter, viz., the "arrest" which was really the service of summons in a suit against the Testatrix by one, Ball, whom she accused as being the paramour of the Caveatrix.

“The settled doctrine in this State is that statements and declarations made by a Testatrix are not admissible as evidence of facts from which undue influence will be inferred. They are only admissible to indicate the state of mind of the person whose testamentary capacity is in question. In re Anastasia Davis, 73 N. J. Eq. 617, 620,” and the cases cited.

“The declarations of the Testatrix whether made before or after the execution of the will, respecting the conduct of the proponent towards her, are not competent evidence of undue influence.” Pember-ton’s Case, 40 N. J. Eq. 520, 528.

Testimony on the part of the Proponent explains conclusively why the will was made in favor of the Proponent and the Caveatrix was cut off, viz., on account of the daughter having forged a check as the Testatrix believed, and drawn the money from the bank account of the Testatrix in Phillipsburg National Bank. She was further incensed with her daughter with regard to her relations with the witness, Ball, and the mode in which she was living. It further appeared that she was induced by a letter of the Caveatrix to go to Plainfield from her home in Clinton for the alleged purpose of making sale of some of her real estate, but in fact for the purpose of serving her with process of the suit commenced against her by Ball, the alleged paramour of the Caveatrix, p. 115, 116.

By the testimony of Alice Schomp, p. 92, etc., it appears that she stated why she had disinherited her daughter.

Testimony of Mary Stanton, sister of Testatrix, p. 99, 100, and the last part of page 101, l. 30 to bottom, shows the frame of mind of decedent toward her daughter and her reasons for it.

Testimony of John Carey, p. 107, l. 9-23, shows her determination not to leave her daughter any

thing, after she had been sued by Ball.

Catherine Lacey testifies, p. 109, l. 20-40, that the Testatrix "didn't like how she (caveatrix) was living."

The testimony of Laura Bird, p. 111, l. 10-35, shows the feeling of the Testatrix after she had been served with summons. It shows her feelings immediately after she was arrested, and also shows, p. 113, l. 9-16, that she had made a will between the time when she had been served with the summons and her trip to Plainfield.

George Leigh's testimony, p. 119, l. 20-28, shows her feeling against Caveatrix with regard to forged check matter.

Mary Kline, p. 121, l. 1-30, expressed dissatisfaction of the manner in which her daughter was living.

Elizabeth Hockenbury's testimony, p. 123, l. 13-36, shows the bitterness of feeling of testatrix toward Caveatrix, on her death bed, and her affirmation of her will.

Mr. A. L. Riley, p. 129, l. 20-32, shows the attitude of the Testatrix with relation to her signature on the check she alleged was forged.

William F. Walters testifies at p. 133, l. 14-40, and p. 134 entire, p. 135, l. 1-4, the details of the service of summons on Testatrix and her expression, p. 135, l. 3-4, "Phoebe done enough in past time; this is the limit; now I am through," and at l. 5-21 it appears that between the time of her making this expression and her next trip to Plainfield on account of the adjourned suit, she had made her will.

The testimony of Harry J. Able, p. 140, l. 29-40, shows that the will was drawn by him at his office in Frenchtown, N. J., and that it was drawn after receipt of a letter from Mrs. Margaret Able, wife of the Proponent, and that the will was mailed, with a letter dated February 2nd, 1911, to Mrs. Margaret Able, and was returned to the witness after it

had been executed, and was kept by him until produced before, and deposited with, the Surrogate of Hunterdon County, at Flemington, pp. 141, 142, 143, etc. The two original letters and a copy of the letter of Mr. Harry J. Able were admitted in evidence, p. 198, l. 30-37.

These letters and the copy mentioned, have been omitted from the state of the case by the appellant and are not before the Court. An explanation of them will be found in the testimony of Margaret Able, p. 149, l. 30-40, p. 150, 151, 152, 153, 154, 155 and 156.

Testimony of Edwin F. Able, p. 174, l. 30-38.

~~UNDUE INFLUENCE.~~

It is contended on the part of the Respondent that the general rule that the party alleging fraud or undue influence must prove it, controls in this case, and that the burden has in nowise been sustained. There is no competent testimony in the case, either direct or circumstantial in its nature, which would tend to show any undue influence on the part of the proponent or any one in his behalf.

The mere fact that the favored legatee was a son and that she resided in his house would not be sufficient to shift the burden of proof where there is no evidence of imposition on his part.

“There is no prima facie presumption of undue influence, merely because the beneficiary stood in a confidential attitude toward the testator.” Spark’s case, 18 Dickinson, 242-248.

“The absence of any influence which can be regarded as undue must in the main of necessity be proved by the legatee himself. The testimony of the legatee, unless contradicted by some other credible testimony or discredited by its improbability, cannot be arbitrarily disregarded.” In re Cooper Will, 5th Buchanan, 196.

“Existence of undue influence or opportunity to exert it is not sufficient. It must actually be exerted.” Schuhardt, 62nd Eq., 710. If there were any slight presumption of undue influence the testimony of the Proponent and his wife shows conclusively that no undue influence was exerted.

Testimony of Margaret Able, p. 164, l. 34-40.

Testimony of Edwin F. Able, p. 165, l. 35 to bottom, pp. 166, 167.

“The denial of the beneficiary, standing alone, if otherwise credible and not challenged by other facts, is sufficient to overcome the legal presumption.” In re Eatley’s Will, 82 N. J. Eq. p. 591, 600.

The brief of the appellant, not having been served upon us, it is impossible to fully anticipate what ground he will take to sustain his assignment of errors.

1. The testimony shows conclusively that the will in this case was legally executed.

2. It appears just as clearly that Testatrix was of sound mind.

3. There is no evidence of undue influence having been attempted or exercised by the Proponent or anyone else. The exercise of undue influence is positively denied by the Proponent and his wife. The testimony also clearly shows that this will was made by the Testatrix just as she had repeatedly stated she intended it should be made. Whether her prejudices against her daughter were well founded does not matter, although it seems she had reason for her suspicion.

4. The appellants have no excuse for attacking this will and the Proponent insists that the appellants should be charged with the costs in this cause.

Respectfully submitted,

H. J. ABLE,

H. B. HERR,

Counsel for Proponent.



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CAVEAT

TO GEORGE H. BLOOM, Surrogate of the County
of Hunterdon.

I, PHEBE M. GUTMANN, one of the children and
heirs at law of CATHERINE A. ABLE, sometimes
known as "KATE ABLE," late of the Town of Clin-
ton, County of Hunterdon and State of New Jersey,
do hereby caveat and protest against admitting pro- 10
bate to any paper purporting to be the Last Will and
Testament of the said Catherine A. Able, sometimes
known as "KATE ABLE," until examination and de-
cree thereon by the Orphans' COURT of the said
County of Hunterdon.

IN WITNESS WHEREOF, I have hereunto set my
hand and seal this seventeenth day of April, A. D.
Nineteen Hundred and Eleven.

PHEBE M. GUTMANN.

FRANCIS J. BLATZ, 20
Proctor for Caveator.

WILL

I, Kate Able, of the Town of Clinton, in the County
of Hunterdon and State of New Jersey, do hereby
make, publish and pronounce and declare, this my last
will and testament in manner following:

1. I direct my debts and funeral expenses to be
paid as soon as can be conveniently done after my de- 30
cease.

2. I give unto my daughter, Phebe Guttman, only
the sum of One Dollar and no more.

3. After the payment of the one dollar to my said
daughter, it is my will and I do give, bequeath and
devise unto my only son, Edwin F. Able, all and every
of my property, both real estate and personalty,
wheresoever the same may be situate and of whatsoever
it may consist, all of which I give unto my said son,
to him and his heirs and assigns forever. 40

Will

4. I nominate, constitute and appoint my son, Edward F. Able, to be the executor of this my last will and testament, and direct that no bond be required of him as such executor by any Court or officer in any State.

IN WITNESS WHEREOF, I have hereunto set my
10 hand and seal this Fourth day of February, nineteen
hundred and eleven.

(Signed) KATE ABLE. [Seal]

Signed, sealed, published, pronounced and declared by the said testatrix, Kate Able, to be her last will and testament, in the presence of us, who were both present at the same time, and who, at her request, and in her presence, and in the presence of each other, have hereunto subscribed our names as witnesses.

20

CHESTER TOMSON.
CHARLES W. LEIGH.

30

40

Petition for Probate of Will

HUNTERDON COUNTY SURROGATE'S OFFICE.

IN THE MATTER OF THE PRO- BATE OF THE LAST WILL AND TESTAMENT OF Kate Able—Deceased.	}	Petition for Probate of Will.
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To George H. Bloom, Surrogate of the County of Hun- 10
 terdon, New Jersey:

The petition of Edwin F. Able respectfully showeth that he is the Executor named in the last Will and Testament of Kate Able dated the fourth day of February A. D. 1911. That said Kate Able departed this life at Clinton, in the County of Hunterdon and State of New Jersey, on Wednesday, the twelfth day of April A. D. 1911.

That said deceased left her surviving the following named heirs and next of kin, whose names with their respective post office addresses, and the manner or degree in which they severally stand related to said deceased, are as follows, to wit: 20

PHEBE M. GUTMANN, daughter, Plainfield, N. J.

EDWIN F. ABLE, son, Clinton, N. J.

That said testatrix died seized of personal property—as near as your petitioner can ascertain—the value of \$20,000.00.

Therefore the said Edwin F. Able respectfully applies for probate of the said last Will and Testament, 30
 and for letters testamentary thereon.

Dated April 24, A. D. 1911.

EDWIN F. ABLE.

Chester Thompson—Direct

Q. Will you please state, in an orderly way, the circumstances which transpired at the time when this signature of Mrs. Kate Able and yourself and Charles W. Leigh were affixed to this paper? A. Mr. Leigh called at my house on a certain day, about noontime, and told me Mrs. Able would like to see me.

Mr. Gebhardt: I object to that kind of testimony. 10

The Court: Do not state anything Mr. Leigh said to you.

Q. In consequence of his call what did you do? A. How is that?

Q. In consequence of the call of Mr. Charles W. Leigh made at your house what did you do? A. I went to the hotel about eight o'clock in the evening.

Q. What hotel? A. Union Hotel.

Q. Who did you see there? A. I saw Mr. Leigh and Mrs. Able. 20

Q. Where were they? A. When I went in Mr. Leigh was sitting in the reading room.

Q. Where was Mrs. Able, if you know? A. I don't know; at that time.

Q. What did you do after you had called at the hotel and saw Mr. Leigh there? A. I asked Mr. Leigh where the folks were. He said he would see.

Q. What was then done? A. He came back again and told me to come in the parlor. We both went in together. 30

Q. Who was there when you went in? A. No one.

Q. Did any one come in after you went in there?
A. Yes.

Mr. Gebhardt: I object.

Q. Just state what happened while you were there?
A. After I went in the parlor? 40

Chester Thompson—Direct

Q. What was said and done? A. Mrs. Able came in with a paper in her hand and I rose and spoke to her, as I generally do.

Mr. Gebhardt: Kept your voice up.

Witness: I rose and spoke to her. I told her Mr. Leigh said she would like me to witness her signature to her will.

Mr. Gebhardt: I object to that and move it be stricken out.

(Overruled and exception.)

Q. This was in the presence of the testatrix?

20 Witness: (Continuing) And she said she would. I asked her if she had it. She said, "I have it in my hand," and handed it over and said I could read it. I said I wasn't there for that purpose, only to witness her signature.

Q. What was then done? A. She signed it; I signed it and Mr. Leigh signed it.

30 Q. Just state how it was done; where your positions were relatively, who signed first, and just what was done while there signing the paper? A. Mrs. Able signed first. We were sitting at a table similar to this (indicating). I signed it and Mr. Leigh signed it.

Q. Were you all there at the same time? A. At the same time.

Q. While all three wrote their names? A. Yes.

Q. Can you state any further conversation that there took place in regard to this paper? A. Nothing. Immediately after the signing was over I bid her good-night and left.

Chester Thompson—Cross

Q. Is this the paper that was there signed (showing witness paper)? A. That is the one.

Q. The paper which you had in your hand? A. Yes.

Q. And is this the paper Mrs. Able had in her hand when she came in the room where you and Mr. Leigh were? A. The paper she handed me when she came in.

Q. I have the will. I ask him if this is the paper 10 that he refers to? A. It is. It contains my signature and that is pretty near valid.

Q. Did you see her have any other paper? A. None that I saw.

Cross examination by Mr. Gebhardt:

Q. You have told us all the conversation, as near as you can recollect it? A. As near as I remember.

What day of the week was this, Mr. Thompson? 20
A. What day of the week? I don't remember. I don't remember the month.

Q. Have you told all that took place on that occasion? A. As far as I know; outside of a little general conversation I had with Mrs. Able regarding her health—she had been sick previous to that.

Q. You don't know the month or the day of the month or the week? A. No, I couldn't say the year from memory. I know it was just before her death.

Q. Well, how long before her death? A. It was, 30 possibly, two or three weeks. It was between her recovery from her illness before she died and the illness at the time she passed away. Between those two periods.

Q. You think it was two or three weeks before? A. I think possibly, it was.

Q. I call your attention to the word "fourth," Mr. Thompson, and ask you if that was done in your presence—red or purple ink? A. I couldn't say that was in there. I presume it was. 40

Chester Thompson—Cross

Q. Was it put in there in your presence? A. No, sir.

Q. It was not? A. In my presence, no, sir.

Q. You are positive about that? A. Nothing there except Mrs. Able's name and Mr. Leigh's name and my name that I saw written.

10 By the Court:

Q. Mr. Thompson, have you stated everything that was said by Mrs. Able, by Mr. Leigh and by yourself with reference to this will while you were in the room?

A. Except, possibly, when she signed the will she didn't take space enough from the seal. She wrote two letters of the last name and found she had to run below the seal. She asked me if that would make any difference. I told her I guess not, as long as there were letters at-
 20 tached to it. She said she wanted to make sure it was all right. That is all I recall. I think I told both at-
 torneys that on each side of the case prior to this time.

By Mr. Able:

Q. At the time she came in the room do you address her? A. I did; rose from my chair and shook hands with her.

30 Q. Repeat that conversation? A. I asked her how she felt. There wasn't any conversation at all.

Q. Was there anything said by you relating to the will at that time? A. Only what I testified to.

By the Court:

Q. Just state again what took place when Mrs. Able came in the room? A. When she first came in the room I rose and spoke to her; shook hands with her.
 40 I asked her how she was feeling. I told her Mr. Leigh—

Charles W. Leigh—Direct

Mr. Gebhardt: I object.

The Court: State it again.

A. When Mrs. Able first came in the room I rose and spoke to her; shook hands with her and told her Mr. Leigh said she said she would like me to witness her will.

10

Mr. Gebhardt: I would like that stricken out.

The Court: Proceed.

A. (Continuing) She said she would. I asked her if she had it. She said, "I have." She said, "You can read it if you wish." I said I wasn't there for that purpose.

20

Mr. Gebhardt: I make a motion to strike out what Mr. Leigh said to him.

(Overruled and exception allowed.)

By Mr. Able:

Q. With relation to the time between her next to last sickness and final sickness which Mrs. Able had, do you know how much time elapsed between these two spells of sickness? A. No.

30

Q. Can you with any greater definiteness than you testified to on cross examination, state about how long after the first sickness, as we will term it? A. I can't tell the time. The only way I know anything about it at all, I go up there frequently for my mail. I saw Mrs. Able around at her usual work after the first sickness, and it was about this time that the will was made.

CHARLES W. LEIGH sworn on behalf of proponent.

40

Charles W. Leigh—Direct

Direct examination by Mr. Able:

Q. Mr. Leigh, you reside in Clinton in this county?

A. Yes, sir.

Q. Did you know Mrs. Kate Able in her lifetime?

A. Yes, sir.

Q. How long had you known her before her death?

10 A. I should judge, twenty-five years.

Q. You are shown a paper writing (handing witness paper), which purports to be the last will and testament of Mrs. Kate Able, and your attention is directed to the signature to the left of the red seal, and you are asked whether you saw that signature written?

A. Yes, sir.

Q. Who did you see write it? A. Mrs. Kate Able.

20 Q. At the bottom of the page, underneath the attestation clause, are the signatures of Chester Thompson and Charles W. Leigh. Did you see Mr. Thompson write his signature? A. Yes, sir.

Q. Is that your signature to this paper? A. Yes, sir; it is.

Q. Now, Mr. Leigh, will you please state, in an orderly way, the conversation and the happenings that took place at the time this was signed—this paper was signed? A. The day the paper was signed?

30 Q. The time. A. As near as I can remember Aunt Kate, as I called her, asked me—few days before it was—if I was willing to sign—

Mr. Gebhardt: That question was not asked.

Mr. Able: Strike the question out.

Q. Had you had any conversation with Mrs. Able relative to a will prior to the date on which this will was signed? A. I should judge it was about a week before the will was signed, Aunt Kate met me—

Charles W. Leigh—Direct

The Court: The question was, did you or did you not have a conversation?

Witness: Yes, sir, I did.

Q. Will you state the conversation and where it occurred? A. Aunt Kate met me about a week before, going to the shed; she was in the washroom. She called me in there and asked me if I would do her a favor. I told her certainly, if there was anything I could do. She said she was going to make a will and asked me if I would be a witness. I told her certainly, I would do anything to accommodate her. She asked me if I would speak to Mr. Chester Thompson, as she wasn't acquainted with anybody in Clinton much but Mr. Thompson and myself. I told her I could ask him. She said she wished I would do it. I told her I was going to dinner that day, which I did. 10

Q. What happened after that? A. I told her Mr. Thompson told me he would. She told me to come up such a night about eight o'clock and tell him to, which I told him. I forget just exactly what night it was. 20

Q. What happened then? A. I was in the hotel when Mr. Thompson came in and he asked me where the folks were. I told him they were in the house somewhere and I would go in and see, and, if I remember right, he and I went in the parlor together and nobody was there. After I came out and Ed was at the head of the steps and I asked him where Aunt Kate was? 30

Q. You mean by "Ed" the gentleman sitting at my left? A. Yes. Aunt Kate came in the parlor with a paper, which I supposed was a will, in her hand.

Mr. Gebhardt: Supposed it was a will?

Witness: Supposed at that time. I didn't know. 40

Charles W. Leigh—Direct

Q. What was said by she or anybody else when she came in the room what was done? A. She came in and Mr. Thompson made some remarks; I didn't keep in my mind what it was at the present time. She said she had her will, and said to Mr. Thompson, supposed he knew what she sent for him for. He said, yes, I had told him.

10

The Court: Mr. Thompson said "yes?"

Witness: Mr. Thompson said yes, I had told him as near as I can remember.

Q. Tell what further was said and what was done?
A. Then she said, there it was, we could read it.
Q. What was?

20

Mr. Gebhardt: I object.

A. I couldn't say, swear and be honest, whether she said that was her will or it was; I didn't keep it in my mind at the time.

Q. State the conversation to the best of your recollection. A. And she said, "Now you can read it," and offered it to Mr. Thompson. He said, no, he didn't care anything about reading it; didn't come for that purpose; he merely come as a witness to witness it.
30 She handed it to me and I said, "No, Aunt Kate; it don't matter to me what is in there, Ches and I are only here to witness your signature." She took the pen—I think Mr. Thompson handed her the pen—she signed it and handed it to me. I said, "Ches, you sign it first." He signed it and finally I signed it.

Q. How far apart were you when you signed your respective signatures? A. We were all right together. I don't suppose outside of five feet circumference; right by the table together.

40 Q. Was there any part of this will, or any portion

Charles W. Leigh—Direct

of it read by you or Mr. Thompson, as you recall? A. We read the witness clause at the bottom that is all I remember reading. What I sign—I always like to know what I am signing.

Q. What do you mean by the “witness clause;” take the paper in your hand? A. From there down (indicating).

Q. You mean you read this attestation clause written beneath the signature of Kate Able and seal? A. Yes, sir.

Q. You read that? A. That is all we read—all I read.

Q. Did you read it out loud?

Mr. Gebhardt: I object.

(Objection sustained.)

Q. How did you read it? A. Well, if I remember right, I read it over to myself. 20

Q. What did you do with it then? A. Then I passed it over to Mr. Thompson and he signed it.

Q. Do you know whether he read it or not? A. Well, I am under the impression that he did; I couldn't say, but I think he did.

Mr. Gebhardt: I object to that and ask it be stricken out. 30

(Motion denied and exception allowed.)

Q. Was the reading done before any signatures was attached? A. Yes, sir.

Q. Have you stated, Mr. Leigh, all the conversation that took place between Mrs. Able and yourself and Mr. Thompson before the signing of this paper? A. I think I have, as near as I can remember. I don't remember—I know Mr. Thompson talked to Aunt Kate 40

Charles W. Leigh—Cross

quite a little while. He didn't talk much to her—about her health and one thing and another; I didn't pay attention.

Q. The conversation I am talking about particularly is any conversation in relation to this paper? A. No, I don't think there was anything else said while we were in there.

10

Cross examination by Mr. Gebhardt:

Q. Now, Mr. Leigh, have you told us all you ever had to do with this paper? A. Well, I think so, as near as I can remember.

Q. Can you tell the Court and jury when that red or purple ink (whatever you call it) word "fourth" was written in there? A. No, I couldn't.

Q. Do you know anything about that? A. No, sir.

20 Q. You remember a week or so ago, Mr. Leigh, Dr. Gutman and Mrs. Gutman, sister of Edwin Able, calling to see you at Hackettstown? A. Yes, sir.

Q. Did you talk over this matter? A. Yes, sir.

Mr. Herr: I would like to know the date.

Mr. Gebhardt: About a week ago.

3) Q. With reference to the signing of this will, did Mr. Gutman in Mrs. Gutman's presence, take your statement down in writing? A. They took some statement down. Just what it was, word for word, I couldn't tell. The doctor wrote something, I don't know what it was.

Q. After he read it over to you? A. Yes, sir.

Q. He didn't hand it to you to read over yourself? A. No. Well, I might have read it over, maybe I did.

Q. Have you stated that statement you read over that day? A. I guess that is all—as far as I know.

40 Q. What that subsequently read over to you in the

Charles W. Leigh—Cross

presence of Mr. Sutphen of Somerville? A. Yes, sir.

Q. Is that true as it is written there?

Mr. Herr: I object to this in this form.

Q. I will withdraw that question and ask, whether at the time you read this over, that was taken down at the time, you believed it to be correct? 10

Mr. Herr: Object.

Witness: Will you let me make a statement in regard to that?

Mr. Gebhardt: I will withdraw that question.

Q. Who took this down? A. Dr. Gutman.

Q. Did he take it down correctly? A. What? 20

Q. Did he take it down correctly? A. Dr. Gutman had that written down when I went to my room. He was talking to me, when I came down he had that written and wanted to know if that was practically so. I said, "I don't remember all the circumstances." He asked me part of those questions. I told him, "Doc, I don't recall all that happened to this day. As near as I can tell—when on the witness stand everything I can recall I will tell you?" He asked me to sign a paper. I said I would sign no paper for nobody or 30 nothing. I read that (indicating) and practically, I don't see anything in that different from what I testified to here. I don't.

Q. You read it over yourself? A. Yes.

Q. He asked you if that was correct? A. I told him, I says, "Doc"—

Q. I didn't ask you that. After you read it over he asked you if that was a correct statement of the facts? A. Yes, I think maybe he did. I told him, as far as I can remember now, "Doc" (this year and 40

Charles W. Leigh—Cross

a half lots of things happened I got to tell you) ask any question on the stand and anything I remember I will tell you."

Q. When he asked you whether this was a correct statement of the circumstances and facts surrounding the signing of the will what was your reply; didn't you say "yes, as near as I can recollect?" A. I told him, 10 "As near as I can recollect at present, Doc, it is." That is what I told him.

Q. You say you have known "Aunt Kate," as you call her, for twenty-five years? A. Yes, sir.

Q. How long did she live in Clinton with her son Edwin Able, sitting at that table? A. She was there practically all the time I was there, outside—nine years—outside three years she had the property—six years not all the time, most of the time.

Q. Do you know it is known as the Union Hotel 20 in the town of Clinton? A. Yes, sir.

Q. Do you know who put that word "fourth" in purple or red ink on that paper? A. No, sir.

Q. What is the business of Mr. Leigh? A. In the nursery business; selling nursery stock at the present time.

Q. At the time this paper was signed in April, you were employed at least part of the time by Mr. Able in the hotel, weren't you? A. No, never; I was there. I was never employed, I stayed there. I made that 30 my loafing place.

Q. You helped him a great deal? A. Yes, considerable.

Q. You waited in the cigar counter? A. No, never did.

Q. You didn't on Sundays? A. Sundays I was there when he was away and looked after the hotel a bit.

Q. You look after the cigar counter and guests coming on Sunday? A. Yes, sir.

Silas H. Rouland—Direct

Q. Made yourself useful in the office part of the hotel? A. Yes, sir.

Q. Had been doing that for some time when this paper was signed? A. Yes, sir.

Q. And you did it for some time after that? A. Yes, sir.

Mr. Herr: We offer the will in evidence, if your Honor please. 10

Mr. Gebhardt: We object on the ground that there has not been sufficient proof of publication.

(After argument.)

The Court: I will admit the will in evidence.

(Exception to caveator.)

20

AFTER RECESS.

Mr. Gebhardt opens for Caveator.

SILAS H. ROULAND sworn on behalf of caveator.

Direct examination by Mr. Gebhardt:

Q. Mr. Rouland, do you know Kate Able? A. She is my sister. 30

Q. Were you brought up with her at home? A. Yes, sir.

Q. Up until the time of her death in April, 1911, did you frequently see her? A. Not so often. The last time I saw her was at the other sister's, Susie, funeral, two years ago last July. We had a conversation then.

Q. Do you know as a matter of fact whether or not she could read or write, outside of her name? A. Not 40

Silas H. Rouland—Direct

to my knowledge she couldn't. Her daughter always done her correspondence for her.

Q. Had you frequently seen her write so you know her signature? A. I think I would, yes, sir.

Q. Here is the alleged will, with a signature purporting to be that of Kate Able, your sister—

10 Mr. Herr: We object. This witness is not properly qualified as an expert.

Mr. Gebhardt: He isn't testifying as an expert.

The Court: I do not understand he is testifying as an expert.

Mr. Herr: He is testifying from an inspection of her signature as to whether he believes it is her signature or not. He may be qualified to testify if he isn't
20 an expert, but it doesn't appear how often he has seen her signature or that he has seen it at all.

The Court: I will overrule your objection.

Proponent's counsel pray an exception to this ruling of the Court.

Exception allowed; and the same is signed and sealed accordingly.

30

Circuit Court Judge.

Q. Had you seen this alleged signature before you examined it now? A. Yes.

Q. What have you to say as to whether or not it is your sister's signature? A. If I had to swear I would swear it wasn't. It isn't her name and it isn't her handwriting to correspond to anything I have seen before. Whoever wrote it hasn't spelled the first name right.

40 Q. Did you ever talk or have any conversation with

Silas H. Rouland—Direct

your sister in reference to the feeling between herself and her son Edward. A. I had several talks of that kind; the last one was when sister was buried.

The Court: I cannot hear.

Witness: When sister Susie was buried in French-town. 10

Q. How long ago? A. Two years ago, I think, the first of last July; somewhere near the 12th.

Q. About how long was it before your sister Kate's death? A. I forget when she died; didn't get notice of the funeral. The day she was buried was the day I got notice. We couldn't get there; I didn't keep no account when she was. I didn't appreciate that very much.

Q. Where was she living at the time of her death? 20
A. Clinton, I believe.

Q. With whom? A. With her son Edward.

Q. Now, I ask you to state any conversation that you had at that time with reference to the state of feeling existing between—statements made by your sister Kate, as to her feelings toward her son Edwin?

Mr. Herr: We object to that as too remote.

The Court: When did your sister die? 30

Mr. Herr: It was in July and his sister died in the following April, that is nine months.

Witness: I couldn't swear, but I think it was the 12th of July.

Mr. Able: Further objected to as calling for hearsay, which is inadmissible unless there is a statement made for what purpose the conversation is sought. 40

Silas H. Rouland—Direct

Mr. Gebhardt: First, to corroborate the testimony that this is not her signature, and further not being able to read or write, that it is not her will. It is not like the state of feelings existing between her and her son that she would make a will to the son, cutting off the daughter and leaving everything to the son whom she had a feeling against. We propose to show by
 10 this witness that this woman was in fear of this son because of the way he talked to her and the things he said to her.

Mr. Able: The statement last made by the Senator—we object to conversations which may have been had between a deceased person and the witness. We are unable to receive them for the purpose of proving undue influence. On those grounds we object.

20 The Court: I will overrule your objection.

Proponent's counsel pray an exception to this ruling of the Court.

Exception allowed; and the same is signed and sealed accordingly.

Circuit Court Judge.

The Court: If counsel, either one or both, have
 30 trials briefs, I would be glad to have them submitted.

Mr. Herr: We have stated the grounds of our objection; that it is irrelevant to prove undue influence.

Q. (Question read.)

Mr. Herr: I would like to ask the Senator whether he relies on testamentary incapacity or undue influence?

Silas H. Rouland—Direct

The Court: If the conversation is relevant under any of the issues framed, is the Senator obliged to declare which of them his question refers to? Must he refer to one of the four issues framed?

Mr. Gebhardt: I don't know whether he relies on the issue framed or not.

The Court: I think the Court must assume that. 10

Mr. Herr: It would save time if he would state if he proposes to eliminate any of them.

Mr. Gebhardt: I do not propose to eliminate any. A. The last conversation I had with her I stated was before my sister's funeral—but I had several before that for the last.

The Court: You were asked to give the last question; that is all. A. We were taking dinner at the hotel at Frenchtown. After dinner she called me one side and said she wanted to speak to me. I went with her out in the hall. She says, "I wish you would come up and give Eddie a good licking." I says, "What is the matter." She says, "I am getting afraid of him—he is abusing me." I says, "Why don't you take a club and give it to him over the head?" She said, "I am getting too old." I says, "Where is he now?" She says, "In 30 the barroom." She says, "Can't you go out there?" I said, "That is no place to pick a fuss; in a barroom." She says, "I am in dread; I am afraid of him." I says, "Kate what makes him act this way?" She said, "He wants me to make a will and cut Phebe out and I want each to have equal." I says, "Have you made a will?" She says, "No, I ain't made a will, but he says I must make a will today; he says I must." We stood there talking and he came to the door and hollered at her in a rough way; in an abusive way—if she wanted to come 40

Silas H. Rouland—Cross

with them, or talk all day with me? She says, "I have to go; if I don't when I get home he will abuse me." I says, "Good bye Kate." That is the last one.

Q. When was the conversation last before that? A. Why, her and me and my other sister, Mrs. Hockenbury. She was visiting me and my wife from Philadelphia—staying a week. We talked things over thoroughly.

10

Mr. Herr: We object, no time is fixed.

The Court: The question was "when?"

Witness: Well, it must have been—a good while ago, maybe eight or nine years.

Mr. Herr: We object.

20

The Court: Sustained.

Witness: It was about the same thing.

Mr. Herr: I ask that that be stricken out.

The Court: It may be stricken out.

Cross examination by Mr. Able.

30 Q. Mr. Rowland, what are your relations with this proponent to the will, Edwin F. Able, friendly or unfriendly in character? A. We never had no words. I never had no use for him? If you want to know the reason I will tell you.

Q. Did you on the day at Frenchtown, at the funeral of your sister Susie, when you say this conversation took place, have another conversation with Mrs. Able? A. We didn't have then.

Q. Did you have any conversation with her relative to the payment of funds for your sister's funeral? A.
40 For what?

Silas H. Rouland—Cross

Q. Your sister's funeral? A. Not with her. My other sister came to me at the graveyard. She said, "Who is paying for this?" I said, "It don't make any difference to you. Everybody will be paid before my brother leaves Frenchtown. We will pay for this. I know they are unable to pay." Never had a conversation with Kate.

Q. No conversation? A. No. 10

Q. Did you have any other conversation? A. I didn't have time. I had to catch a train.

Q. You had no other conversation with Kate at the time of your sister Susie's funeral, except that you have stated? A. In the hotel.

Q. Had there been any request made of her for any part of the expenses? A. Not on my side; I didn't do it.

Q. Do you know of a request being made? A. No, sir, I do not.

Q. Did Mrs. Able say anything to you about that? 20
A. No sir.

Q. Didn't you, on that day, have a conversation of any unfriendly character, the exact language of which I am unable to quote you, with your sister Kate? A. Nothing only friendly; always was.

Q.—because of her refusal to pay the expenses of the funeral of your sister Susie? A. That is all rot. Nothing like that came up.

Q. Who was present at the time the conversation took place you have related? A. She called me out in 30
the hall, where the hats hung.

Q. Was anyone present? A. No sir.

Q. Just you and she? A. Just me and her.

Q. What was the reason for calling you there? A. She wanted to talk to him, or give him a smash; he was abusing her awful. If I dared tell it, it is not decent.

Q. What words were used? A. Not to use to his mother.

Q. She called you out there expressly to ask you to 40

Silas H. Rouland—Cross

smash him? A. Have a talk with him, if he didn't promise to behave to smash him.

Q. Expressly for that purpose she called you in the lower hall at the hotel at Frenchtown, and nobody was present? A. Nobody but me and her.

Q. And you refused to smash him? A. I said it was no place to kick up a fuss in the hotel. I had respect
10 for the proprietor. I am not an outlaw.

Q. Have you had any words of an unfriendly character with the proponent, Edwin Able? A. No sir.

Q. Did you ever say anything to him about the matter which your sister asked you to take up with him? A. No sir, I kept away from him. That was my sister he was abusing. The names he was calling her—my temper is apt to rise and I kept away from him.

Q. You didn't believe in interfering in the hotel and kept away from the person she said was abusing
20 her? A. I told her all along—I advised her what to do, but she would not do it.

Q. Will you tell us how this word "Kate" in the will that lies before you—how—is it spelled on the will? A. "K-i-t-e."

Q. That is the way she spelled it? A. That way it is spelled here.

Q. How is the surname spelled? A. K-a-t-e.

Q. No, I mean the last name. A. I don't know as I
30 can read it all or not. She is a woman, as I said before, who can't write or read, only her name. She wrote a very heavy hand, always did, and very plain. If I didn't know that was meant for able, I couldn't read it.

Q. You say she wrote a very heavy and very plain hand? A. Yes sir.

Q. But still she couldn't write anything except her name? A. That is to the best of my knowledge, the daughter always done the correspondence.

Q. Do I understand you to say her handwriting is indicated by her signature? Have you ever seen her
40 write anything except her signature? A. No sir.

Silas H. Rouland—Cross

Q. How long ago is it since you have seen her write?

A. Well, sometime ago; I couldn't tell you just how long. I think at the time her husband was buried we had a little deal between us, a little money transaction; I think papers were drawn up then and she put her signature. I haven't it with me.

Q. How long ago was that? A. A good while.

Q. Have you seen her write since that time? A. 10
I don't think I have.

Q. Would you recognize the date if it was suggested? Do you think that the date of the funeral of Levi Able, husband of Kate Able, you would recognize the date? A. I don't know.

Q. Was it in July or August 1893? A. I couldn't swear to that. I know it was one.

Q. Nineteen years ago? A. I couldn't swear to that.

Q. But, at any rate, that is the last time you ever saw her write? A. Well, she didn't write then. I wrote 20
and she signed her signature.

Q. I refer to the signature; you testified she couldn't write anything but her signature? A. Yes.

Q. Did she write more than once that day? A.
That is all was necessary.

Q. How often have you seen her write her name before that? A. When she was a girl and we all lived at home, she would write one thing and another. I guess I have seen it, may be I could not say, probably, one hundred times. 30

Q. How long a time is it from the time she was a girl and you saw her write and the time you saw her write at her husband's funeral? A. That I can't tell. My father had a big family; we all had to go to work as soon as we were able. There were thirteen in the family and it takes a pretty good man to raise thirteen. I think probably she went to Little Washington, New Jersey, about the time she was sixteen or seventeen, maybe eighteen years old. Her and her sister lived there. 40

Silas H. Rouland—Cross

Q. Was not that approximately thirty years before the date of her husband's death. At least that, was it not? A. I couldn't say when her husband died; maybe in that neighborhood.

Q. Well, after he died in the summer of 1893 then it was thirty years or more before that time that you had seen her write—thirty years before 1893? And between
10 the time you were home, right at home, and the time you saw her write at her husband's funeral you had no occasion to see her write and had not seen her write? A. Not to the best of my knowledge.

Q. And you haven't seen her write since? A. Oh, yes I have. Right away after the funeral she signed her name to a paper for me.

Q. That relates to her husband's funeral? A. No, after; probably a week after.

Q. A week after the funeral? A. Yes, about a week.

20 Q. There was no other funeral except the funeral of her husband? A. Her husband.

Q. So, then, you have not seen her write since about the time of her husband's funeral. A. No, sir.

Q. That was within one or two weeks after the date of the funeral? A. About a week. At Bloomsbury.

Q. How frequently have you visited your sister since the death of her husband. I relate to your deceased sister, Kate. A. I haven't visited them—I did visit them there at Bloomsbury and haven't visited since.

30 Q. About how long ago has that been? A. I couldn't tell that. I didn't keep it in my mind.

Q. What was the occasion of that visit? A. The occasion was they had a kind of goose party supper.

Q. Anything else? A. Some things; I didn't keep a memorandum. I am under oath; I want to give it straight.

Q. Was she have any trouble with her family at that time? A. No, I don't think so. I never went to see her no place on account of a family quarrel. I knowed it.
40 Consequently I kept out of that.

Royneer Rouland—Direct

Q. Did you know she was having family trouble?

A. I did. She told me herself every time we met.

Q. Was there any other trouble relative to her family except what you have already stated? A. She stated his carrying on while in New York, and one thing and another. I paid no attention to that.

Q. Any trouble in the family while she was living at Bloomsbury while you visited there? A. Not as I know of, to the best of my knowledge. 10

Q. Did she ever say to you about any trouble she was having with her daughter? A. No.

Q. I mean at Bloomsbury? A. I understand. She always thought there was nobody like her daughter. That is her conversation.

Q. Did you ever have any conversation with her at Frenchtown when you related to conversation about her daughter, other than you have stated. A. You mean at the funeral? 20

Q. Yes. A. Oh, no.

ROYNEAR ROULAND sworn on behalf of caveator.

Direct examination by Mr. Gebhardt:

Q. Are you related, Mr. Rouland, to Kate Able? A. She was my sister.

Q. Do you know whether she could read or write.

A. No sir, I believe she couldn't read or write, only her signature, her name. 30

Q. Are you familiar with her signature; have you seen her write? A. I have saw her write quite some time ago.

Q. Did you have a conversation about two years ago with your sister about what she wanted to do with her property when she died? A. Yes sir.

Mr. Herr: We object to that as leading.

Royneer Rouland—Direct

The Court: Overrule the objection.

Witness: I said yes, sir.

Q. What did she say about what she wanted to do with her property when she died? A. She said—

10 Mr. Herr: Hold on. I object unless the time is fixed with some definiteness.

Mr. Gebhardt: About two years ago.

Mr. Able: We will object, it is too remote.

The Court: I think the time and place should be fixed with as much accuracy as possible.

20 Q. Where did this conversation occur; where were you? A. Bloomsbury; packing up the housing goods. She wanted to pack and move to Plainfield. I was there helping.

Q. Whereabouts in Plainfield? A. I couldn't tell you the number of the house.

Q. With her daughter, or somebody else? A. With her daughter; in the house her daughter used to live in. She bought that property, I believe.

30 Q. Tell, as near as you can, just about when it was? A. Well, it is fully two years ago, I think. I couldn't remember exactly the right time it was.

Q. I just want the year? A. I couldn't tell exactly what time it was. It was while helping pack the housing goods to move to Plainfield. I was there nearly a week, burlaping the furniture so it wouldn't get broken coming down in the cars.

Q. What did she say to you in that conversation?

Mr. Herr: We ask the privilege of cross examining the witness on the time. We say it was four or five 40 years ago.

Roynear Rouland—Direct

Witness: It was not so long as that,

The Court: You may cross examine.

Cross examination by Mr. Able:

Q. When did she sell her hotel in Bloomsbury? A. 10
I couldn't give you the date of that; long before the conversation.

Q. How long before? A. Quite a while.

Q. How long after she had sold her hotel at Bloomsbury did she move to Plainfield with her daughter? A. Quite a good while. She moved to Clinton and was keeping hotel at Clinton a good while.

Q. Had she been living in Clinton? A. Had been living there. The license was taken away from Mrs. Able and she went to Plainfield and lived with her 20 sister.

Q. You fix the date as being about the time the license was taken away from the hotel? A. It was after the license was taken away.

Q. How long after? A. I think it was fully six months. Just before Todd took the hotel. I couldn't give you the date.

Q. How long has Todd been there? A. Todd was there going on two years.

Q. How long has Mr. Able been back in the hotel 30 since Todd left? A. I guess he is under his first year's license since. I think so, if I remember right.

Q. Todd was there two years? A. I couldn't say two years; maybe a year and a half. I think about two.

Q. To your knowledge Edwin F. Able has been back there, after Todd left, for a period of a year or more?

A. No. I think he is under his first year's license yet. He hasn't applied for the second year, to the best of my knowledge.

Roynear Rouland—Re-Direct—Re-Cross

Mr. Able: If your Honor, please; we can't prove by this witness of course, but are able to prove that two licenses have been granted since he went back there. We can prove that by almost anyone who lives in Clinton. Our insistence is that this conversation is too remote.

10 The Court: I will overrule the objection.

Proponent's counsel pray an exception to this ruling of the Court.

Exception allowed; and the same is signed and sealed accordingly.

Circuit Court Judge

20 Further direct examination by Mr. Gebhardt:

Q. Mr. Rouland, tell what Mrs. Able said to you in that conversation. A. She told me only those children, Phebe and Ed, "Eddie" she called him, she said she wanted each one to have equally after she was gone; both alike, and she also told me it was pretty hard to get along with Eddie, hard to live with him, he abused her so. I says, "Why does he want to abuse you?" She says, "because I would leave him everything and 3) Phebe nothing." She said she wasn't going to do it, she was going to leave them both alike.

Cross examination by Mr. Able:

Q. This conversation took place where? A. Bloomsbury.

Q. At whose house? A. Her house, packing up the housing goods.

Q. In the new house back of the hotel? A. The new 40 house, up toward the depot from the hotel.

Roynear Rouland—Re-Cross

Q. She said her son didn't use her good? A. Yes.

Q. Notwithstanding that she was going to leave him his proportion of the property? A. Wanted both to have equally, alike.

Q. At the same time she said she wanted both to have an equal share she told you he was not using her good? A. Yes; she told me he was abusing her scandalous. It was on account of that she wouldn't give it 10 all to him and nothing to Phebe.

Q. Did she say anything about her daughter? A. As I said.

Q. Anything else? A. No.

Q. That is all the conversation you had between yourselves on that date? A. All at the time.

Q. How did the conversation arise? What were you doing, and who opened the conversation? A. Well, we were sitting down taking our comfort after working all day, taking the fresh air, and there was a little talk 20 about different things, her affairs, and this come up with it.

Q. How did it come up? A. Why she told me Eddie abused her.

Q. Did she volunteer that statement without any previous conversation? A. Certainly; I hadn't asked her about him.

Q. You were sitting there about the table? A. No, it wasn't about the table. It was after we had supper and were taking a rest before bedtaime. 30

Q. Sitting in the house or outside? A. Sitting in the house.

Q. Without any preliminary conversation she up and says to you Eddie didn't use her good because he wanted her to make a will in his favor and she wouldn't do it? A. Both have alike.

Q. It was a spontaneous expression on her part? A. She said Eddie wanted her to leave it all to him and Phebe none. I asked what was the matter he used her so bad. 40

Roynear Rouland—Re-Cross

Q. What I asked was whether there was any conversation preceding that, or did she just volunteer that expression without anything being said? A. She was telling me about Eddie; how he used her; used her so bad.

Q. How long did that conversation last? A. I didn't time it. Five or ten minutes, maybe a little longer,
10 no way near an hour.

Q. What did you say to her? A. What did I say to her?

Q. Yes. A. I told her it was her affair, she could do what she liked.

Q. Did you say anything else to her? A. No, left the subject.

Q. All that conversation passed between you while you were sitting there at that time? A. That was all considered and passed.

20 Q. When did you last see your sister? A. That was the last time I saw her to have any conversation except once in Plainfield, the day she had moved there.

Q. Did you have any conversation with her in Plainfield? A. Nothing only natural talk; "How do you do," such as that. I helped her fetch the goods from the depot to the house.

Q. That was part of the same transaction; the transaction of moving? A. No; quite a while after the goods were packed they didn't move, left them at the
30 house a while.

Q. It was the occasion of the moving from Bloomsbury to Plainfield? A. Yes.

Q. Did you call at Plainfield to see her at any time after she moved there? Not when you unpacked the goods, but any other time? A. Not to my knowledge; I think that was the last time.

Q. After she was living in Plainfield didn't you call there to see her one time with relation to a matter of money, and didn't you have some trouble with her
40 about it? A. No sir.

John W. Creveling—Direct

Q. Didn't you request a loan of money from her?

A. No sir.

Q. Didn't she refuse it? A. No sir.

Q. And didn't you get in words there at that time?

A. No sir, tell you how that was, Mr. Able wanted me go and ask her for some money. I told him to go himself.

Q. You didn't go? A. No, I didn't go, he went. 10

Mr. Gebhardt: Who do you mean?

Witness: Eddie.

Q. Did you have any conversation with her about her daughter at Bloomsbury packing the goods? A. Nothing, only told me she was going to leave both equally alike.

Q. Did she use any expression regarding her, an expression of disaffection of her daughter, about her daughter? A. Not in the least. 20

JOHN W. CREVELING sworn on behalf of caveator:

Direct examination by Mr. Gebhardt:

Q. What position do you occupy—what is your business? A. I am assistant cashier of the Bloomsbury National Bank. 30

Q. Did you know Kate Able in her lifetime? A. I did.

Q. Just the extent to which you had business dealings with her while she lived there? A. As a stockholder of our bank and a depositor therein, I knew her.

Q. Well, how frequently did you come in contact with her in this business way? A. Quite frequently.

Q. Doing things for her of different kinds or not? A. Yes, somewhat. 40

John W. Creveling—Direct

Q. Cashing checks for her? A. Yes.

Q. Who filled out the checks? A. I couldn't say. Sometimes one, sometimes another, I presume.

Q. Did she fill them out? A. No, she did not.

Q. Now, are you able to tell from your business experience with her whether she could read or write? A. I am satisfied she could not.

10 Q. Did you ever cash checks through your bank there that the signature was entirely different from the handwriting on the body of the checks? A. I think we have. We have cashed such checks.

Q. Did you understand the question? A. I understood you to ask if we cashed checks that the signature was not in the characteristics of the filling out of the body of it.

Q. How was it in the checks, if you recollect, the checks that came to the bank signed by her, was the
20 body always in somebody else's handwriting? A. Yes.

Q. Will you take this book (handing witness book) and point to what you know to be her signature? A. I have it here.

Q. Is her signature at any other place in that book? A. I think not.

Mr. Herr: I understand it is not at issue, the signature in the will.

30 Mr. Gebhardt: Of course, it is when we say it is not her signature.

Mr. Gebhardt: I would like to have the statement identified by Mr. Charles Leigh marked for identification.

The Court: Any question that that is the same statement?

Mr. Herr: I don't know. I don't object to its being
40 marked for identification.

John W. Creveling—Cross

(Name is marked Cav. Ex. 1, for iden.)

Q. Is that the only signature of Kate Able in that book? A. I think so.

Q. What is the page? A. No page; indexed A. This is a signature book; that is, a book of depositors.

Q. In the bank? A. In the bank.

Q. Why do you put that in there? Why did you put 10 the signature in there? A. So we can turn to them for reference if there is any doubt.

Q. For the signatures of notes and checks that come in the bank? A. That is it.

Mr. Gebhardt: I would like marked for identification.

(Same is marked Cav. Ex. 2, for iden.)

The Court: The signature is offered as a standard 20 of comparison as I understand it?

Mr. Gebhardt: Yes.

Cross examination by Mr. Able:

Q. How long ago was this signature written, Mr. Creveling? A. It was a good while. I would say twenty or twenty-five years.

Q. Could you state, approximately, the age of the 30 woman at the time she made this signature? A. Well, I will say, forty-five.

Q. Did she use a pen in writing that signature? A. I see not.

Q. What has she written with? A. A blue pencil.

Q. Now, since that signature was written in that book you have had occasion to see her name a number of times, have you not? A. Oh, I have seen her signature, yes. But she was a woman who didn't write frequently.

John W. Creveling—Cross

Q. She used some checks? A. She did.

Q. While there in business in Bloomsbury? A.

Yes, sir.

Q. She was in business in Bloomsbury? A. She was.

Q. What business? A. Hotel.

Q. She ran the hotel herself? A. Yes, sir.

10 Q. And sometimes gave checks for her goods she bought? A. Yes.

Q. And those checks were signed with a signature purporting to be her's? A. Yes.

Q. Did she give as many as twenty-five a year?

A. I don't think she did, Mr. Able.

Q. Did she average one a month? A. Say one a month.

Q. And she did that during the period she continued in business in Bloomsbury running a hotel?

20 A. Yes.

Q. She has owned stock in your bank for how long before her death? A. A number of years.

Q. Her dividend checks were signed with her signature and they have come before your eyes? A. Not necessarily.

Q. Frequently they have? A. Yes, frequently.

Q. Taken in all, you must have seen her signature three hundred or four hundred times? A. I think that would be a maximum.

30 Q. Now, were the signatures when they came before your observation always alike? A. I don't think they were.

Q. They would vary a great deal would they not? A. They would vary some, that is certain.

Q. Would they always vary in the christian or in the sur-name or in both? A. Well, I would say they might vary in both.

Q. Have you had papers, checks we will say, presented to your bank with a signature purporting to be

William Able—Direct

her's which you have refused to pay money on? A. Yes.

Q. Who presented such signatures? A. I couldn't say; they may have come to us in the ordinary course of mail.

Q. Have they ever been presented by anyone in person? A. I don't remember.

Q. Did her son ever present a check, or a note, or 10 paper, anything like that going through your bank with a signature that when presented you refused to acknowledge the signature as her true signature? A. It may be so.

Q. Don't you know that is true? A. I couldn't say we did.

Q. Did her daughter ever present a paper of that kind? A. It may be so.

Q. Have you any recollection about that matter? A. My recollection is, it may be so. 20

Q. With relation to one or both? A. Possibly both.

Q. You say "possibly," you can't tell more specifically than that? A. Yes. I could say Mrs. Able was very chary in writing her name to her checks. Her husband, during his lifetime, would occasionally write her name. After his death I think one of the other children would write her name.

Q. Do you know of any occasion when her name was written by her son? A. I don't know any occasion. 30

Q. Do you know of any occasion when her name was written by her daughter? A. I think so.

Q. Did you see her write the signature which is in that book, Mr. Creveling? A. I think I did.

WILLIAM ABLE sworn on behalf of caveator.

Direct examination by Mr. Gebhardt:

Q. Now are you related to Mrs. Gutman, Mr. Able?

A. Own cousin. 40

William Able—Cross
John W. Creveling—Re-Direct—Re-Cross

Q. Did you know Mrs. Able in her lifetime very well? A. Yes, sir.

Q. How much did you have to do with her in Bloomsbury? A. Nothing at all, just ate at the place.

Q. Were you on good terms? Frequently see her? A. Yes.

10 Q. What have you to say as to whether she could read or write or not? A. She told me herself that she could neither read nor write.

Cross examination by Mr. Able:

Q. You knew she could write her signature? A. I never knew it; never saw it.

JOHN W. CREVELING recalled for caveator.

20

Further direct examination by Mr. Gebhardt:

Q. I show you what purports to be Mrs. Kate Able's last will and ask you whether or not in your judgment the signature to that will is in her handwriting (handing witness paper)? A. It don't look like it to me.

Q. Well, in your opinion, is it her signature, in your opinion? A. I should say no.

30

Cross examination by Mr. Able:

Q. You have had other signatures presented to you when you said it wasn't her signature and refused to pay out the money? A. Yes, sir.

Q. You would act on this signature the same as on those? A. Yes, sir.

Q. Your experience has been that she frequently has written her signature in a manner which indicated to your mind that she hadn't written them? A. Yes.

40 Q. Which afterward turned out to be genuine? A. I don't think so.

John W. Creveling—Re-Cross

Q. Signatures which have been presented to you on checks and which you say you have refused to recognize before now, has the money been paid on those signatures afterwards? A. I think so.

Q. Explain to the jury, Mr. Creveling, wherein the difference lies between the signature to the will and the signature which you deem to be the true one and have introduced as a standard? A. The first letter, capital "K," should bear a mark on the downward stroke of the curve which it is hard to conceive in the first letter to the purported will. The "a" itself, as far as I can tell, don't bear the downward stroke to tell the difference between o and a. There is a little interpolation in the will, purported will; between the "a" and "t" that is foreign. There don't seem to be any necessity for it. The "t" is crossed at the top and not in the middle, and the "e" looks all right. The capital A in Able is a blur, signifying no letter at all, as near as I can make out. The "b" is cut off at the bottom in the same style. The "l" possibly run under the seal, I couldn't tell. The last letter "e" is hardly in shape, according to the standard seen in our deposit book. 10 20

Q. You have seen signatures which differed in both Christian and sur-name; could you state wherein those signatures differed from the signatures on the will? A. There is no other place where she has written it.

Q. What indicated in your mind in the other cases you gave here that her signature was irregular? Do you always find this curve (indicating) in her signature? A. I think so. 30

Q. In the letter "K?" A. I think so.

Q. Always? A. Always.

Q. That letter "a," do you always find it made uniformly in all the signatures you have seen? A. I didn't say so.

Q. There is some lack of uniformity in the "a?" A. Yes, sir. 40

John W. Creveling—Re-Cross

Q. How about the "t?" A. The "t" is off the slant, according to her signature in our deposit book.

Q. Anything else the matter with the "t?" A. The cross in the purported will is at the top and in the other place it is as it should be, one-third the way down.

Q. How about the "e?" A. That ought to pass
10 muster.

Q. That is made almost exactly alike. Have you ever seen her signature wherein the e was nearer exactly alike? A. I think I have seen her signature where the e was left off.

Q. Now the "A;" what have you to say about the "A?" A. That don't seem to be any letter at all.

Q. The "b" and the "l" are the same way? A. The "b" is the same way. The "l" I didn't see.

Q. The "e" is off A. A little.

20 Q. Have you any checks with the signatures of this woman still in your bank? A. No; I think the last we had we delivered you?

Q. Me personally? A. Or your administrator.

Q. Did you notice any hesitancy in the writing of this signature here? A. You would naturally expect it?

Q. Did you notice any? A. What would you call "hesitancy" in writing?

30 Q. Well, hesitancy means there is a tremor some- times, or hesitancy. A. That is recognizable.

Q. You recognize that? A. It is recognizable.

Q. Do you recognize anything in the slant of the last letters? A. They all seem to be off slant.

Q. A little? A. Yes, sir.

Q. In your experience with signatures have you ever noticed that it makes any difference in a person's handwriting, particularly a person's handwriting who is not accustomed to write her signature daily, as to where they lay the paper when they sign anything?

40 A. A very great difference.

John W. Creveling—Re-Cross

Q. It makes a difference in the slant whether they were standing up or leaning over? A. It certainly would.

Q. It is possible that the signature would have that slant if the writer had occupied different positions at the time she wrote them? A. It is possible, I admit that. It is probable.

Q. Isn't that a feature of signature that the slant 10 differs with the position of the person writing them? A. That is true.

Q. In this case, if in a different position and being a person unable to write anything but her name, wouldn't it make any difference? A. I would make it that strong.

Q. How strong would you make it? A. I will say if she wrote that she was at a different angle entirely and must have been under an emotional state of mind.

Q. Is there a decided tremor in the signature? 20 A. Considerably so.

Q. How old is the woman? A. You say about sixty—

Q. No, I didn't say it. A. It is the inference then, that she is over sixty.

Q. How long had you known her? A. About thirty-five years.

Q. What was the age of the woman who wrote here? A. Thirty-five.

Q. That would make her, approximately— A. 30 Seventy.

Q. Then, the signature you are using for a standard was written at about what age? A. Well, it is hard to tell, Mr. Able, when you come to look over the signatures in that signature book. It is written with blue pencil. It is a question how long blue pencils have been in use.

Q. You know how long she has been dealing with your bank? A. She may not have put it in at the time she commenced dealing with the bank. If I could 40

John W. Creveling—Re-Cross

look over the books of record I could tell about the time. Looking at this book I couldn't tell.

Q. There are a number of signatures appearing after her's? A. Yes.

Q. That might give you an idea of the age by referring to the signatures that appear after her's. A. I can, I suppose, approximately.

10 Q. Give it approximately. A. I will say twenty-five years. I don't think blue pencils have been in use longer than that.

Q. Then it was written twenty-five years ago, when she was forty-five years of age? A. Yes, sir.

Q. Then, that tremor which you say is in that signature—or that hesitancy in writing, if I might so term it, might be occasioned by age? A. Yes, it might be; the first word there is not.

Q. The first word or letter? A. The first word
20 "Kate" is very free from tremor. It is a steady stroke. Most people write—

Q. You wouldn't hesitate to say it is a forgery?
A. It don't look right to me.

Q. Mr. Creveling, I show you another signature (handing witness paper), referring particularly to the word "Kate;" how much of a difference do you find in that instance and the instance before you in the will in the word "Kate?" A. There seems to be quite some similarity.

30 Q. Has it got the crook in the "K?" A. No.

Q. Then, you say you were mistaken when you say the crook always appears in the K if that is a true signature which I am showing you? A. It don't appear, Mr. Able, that is right.

Q. Then, would you say, if that is a true signature you are now comparing, that you were mistaken when you said the crook in the letter K always occurred?

Mr. Gebhardt: I object unless he shows that that

John W. Creveling—Re-Cross

is a genuine signature of Kate Able; I object to that cross-examination.

The Court: Objection overruled.

(Caveator's exception.)

The Court: The question amounts to nothing if afterwards it is shown it is not the true signature. 10

Mr. Able: I might state here, we didn't come prepared for this, but I happened to have that with me.

Witness: Then I would say I was mistaken in saying that the K always had a crook in the second downward stroke.

Q. What would you have to say about the letter "a" in the word "Kate," assuming that is a true signature. If it is not, of course, your answers are not to be considered. A. The "a" don't look natural to me. 20

Q. In which signature? A. In the last one shown.

Q. What would your opinion be then about the validity of that signature? A. I would hate to accept it.

Q. You would pronounce that spurious the same as this one? A. Yes.

Mr. Able: We would like, if your Honor please, 30 to have the right of further cross examination of this witness when we have an opportunity to obtain other specimens of her handwriting.

The Court: If the witness is in court when you desire to cross examine you may do so.

Mr. Able: May we mark that for identification?

(Same is marked Pro. Ex. 2, for iden.) 40

Mabel Cook—Direct
William R. Sutphen—Direct

MABEL COOK sworn on behalf of caveator.

Direct examination by Mr. Gebhardt:

Q. Where do you live, Mrs. Cook? A. Plainfield.

Q. Did you know Mrs. Kate Able in her lifetime?

10 A. I have met Mrs. Able three times.

Q. When was the last time you talked with or saw her? A. April, 1911.

Q. Did she in the conversation say anything to you about how she was going to leave her property? A. Well, in speaking about the house in which I live, speaking about the property brought it about; she said she wasn't feeling very well, and would like to get things fixed up. She desired us to buy the place in which we lived. I said, "No." She said she didn't

20 feel well and "I want my property all settled up, because I am not feeling well. She also said she had a strong desire of leaving the property in which she lived to the daughter, Mr. Able.

Q. Daughter of Mr. Edwin Able? A. Yes, sir.

Q. This was in April, 1911? A. This was in April.

Mr. Able: No cross examination.

I was correct in getting the date as April, 1911?

30 The Court: Yes.

WILLIAM R. SUTPHEN, sworn on behalf of caveator.

Direct examination by Mr. Gebhardt:

Q. Mr. Sutphen, what is your business? A. Why, I am a justice of the peace, notary and recorder of Somerville.

40 Q. Notary public and so on? A. Yes, sir; commissioner of deeds.

William R. Sutphen—Direct

Q. Did you go with Dr. Gutmann to see Mr. Charles W. Leigh at Hackettstown one day last week? A. Yes, sir.

Q. About what was done at the signing of the alleged will? A. Yes, sir.

Q. Did you talk to him yourself about it? A. I did.

Q. Who went with you. A. Dr. Gutmann. 10

Q. I call your attention to a statement (passing witness paper), and ask you if you have ever seen that statement before, that writing? A. Yes, I have.

Q. Where did you see it? A. At Hackettstown, at the hotel where Mr. Leigh was stopping.

Q. Did Mr. Leigh read this over in your presence? A. He did.

Q. What did he say about it?

Mr. Herr: We object, Mr. Leigh has not been 20 asked the question presented to this witness. There is no ground for contradicting this witness. Ask him if he said certain things.

The Court: He said he was present.

Q. What did Mr. Leigh say about the contents of that?

Mr. Herr: We object to that. He may testify as 30 to what was said if he is asked the same question as Mr. Leigh.

Mr. Gebhardt: Mr. Leigh, read this over.

The Court: Overrule the objection.

Proponent's counsel pray an exception to this ruling of the Court.

William R. Sutphen—Direct

Exception allowed and the same is signed and sealed accordingly.

Circuit Court Judge.

A. He stated those facts. He read it over and stated it was all so.

10 Q. And in that conversation what did he say with reference as to whether or not anything was said about what that paper was? A. No; I asked him, he stated that was all so. I asked him to sign it, make an affidavit of it. He said, no, but it was so. Those were all facts.

Q. Just read that statement?

Mr. Herr: That is objected to.

The Court: I will sustain the objection.

20 Read it to himself, not to the jury.

Mr. Gebhardt: Yes, to the jury.

The Court: Sustain the objection.

(Exception to caveator.)

30 Witness: In addition to this Mr. Leigh, Mr. Gutzman and myself talked about the case.

Q. What did he say?

Mr. Herr: Unless it was something Mr. Leigh's attention was called to we object

The Court: Sustain the objection.

40 Q. In that conversation did Mr. Leigh say that at the signing of this will, or this paper, that nothing

William R. Sutphen—Cross

was said whatever about its being a will? A. He did

Mr. Herr: I don't remember that question, it may have been asked.

The Court: No objection has been made.

Mr. Herr: The only objection is that question was 10 not asked of the witness, Mr. Leigh, when on the stand.

The Court: Objection sustained.

(Exception to caveator.)

Cross examination by Mr. Able:

Q. What is your business? A. Justice of the peace, recorder, commissioner of deeds, and so on? 20

Q. Justice of the peace, coroner and so on? A. I didn't say coroner?

Q. I thought you said coroner? A. Notary, I said.

Q. You went with Dr. Gutmann to Hackettstown? A. I did.

Q. What was your purpose in going to Hackettstown? A. The Doctor asked me to go along.

Q. Did he tell you what he wanted you to go for? A. Yes.

Q. What did he tell you? A. He wanted to talk 30 with a witness up there and wanted me to hear what was said.

Q. Did you have an appointment with the witness before you went there? A. I did not. I don't know if he did.

Q. You went along to listen? A. I did.

Q. You were taken along because, I suppose, you were a subscriber? A. No.

Q. You don't draw deeds? A. Yes.

Q. You are a commissioner? A. Yes. 40

William R. Sutphen—Cross

Q. You take acknowledgements and draw deeds, don't you? A. I have drawn deeds, I don't make a business of it; I send them to a lawyer.

Q. Your only purpose was to listen? A. Yes.

Q. You were listening? A. I was.

Q. When you asked this man to take his affidavit to a paper which you said you had there you weren't
10 listening then? A. Certainly I was listening. He read it over first.

Q. You weren't listening when you asked him to take his affidavit to it? A. Yes.

Q. Who made that inquiry? A. What is that?

Q. The statement; whether or not he would sign that statement? A. I think the Doctor spoke about it.

Q. He refused? A. He did. He said he wouldn't sign any paper.

Q. What other conversation was there between Mr.
20 Leigh, Dr. Gutman and yourself while you were all three present? A. In what way?

Q. Anything outside of his being a witness of Kate Able's. Was any suggestions made to Mr. Leigh that it would be to his interest to sign such a paper? A. No, sir.

Q. Was there any—? A. No, sir.

Q. What was said? A. Why simply asked if he wanted to make such a statement. He said, no, he wouldn't make any statement. We didn't insist on it.
30 That is all there is to it.

Mr. Gebhardt: I offer the writing in evidence.

Mr. Able: I wish to ask one more question.

Q. Were you paid for your services going up to see this man? A. I was, yes, sir.

Q. Who paid you? A. Dr. Gutmann.

Q. Husband of the caveator in this case? A. Yes,
40 sir.

William R. Sutphen—Cross

Mr. Gebhardt: I offer the paper in evidence.

Mr. Herr: It is objected to.

Mr. Gebhardt: It is admissible, your Honor, although not signed, in just the same way. It was read over by the witness, Mr. Leigh, and directly contradicts his testimony as given on the witness stand this morning as to what occurred at the signing of the will. Now, he read it over; he said this morning, that is all true just as it reads there. We want to show this jury just what it is either by reading it over to the jury or having this come before them just as it is there and letting them read it themselves. I offered to read it awhile ago and they objected. Your Honor seemed to rule against me. 10

The Court: I do not think it should be read, you may be entitled to offer it in evidence. Mr. Herr, what have you to say about that? 20

Mr. Herr: Here is a statement, not made on the witness stand, but made by someone else in his presence and read over by him. If the witness made it himself it would be in the character of evidence, but it couldn't make evidence if read over and assented to in the presence of someone else. He refused to sign it. They propose, in effect, to put an oral statement in evidence, because it is a written statement of what was said by the witness was what occurred. Of course, they can say what he said on that occasion, provided they call his attention to what was said. They can't offer in evidence whatever may be put down as what it was he said on that occasion. 30

The Court: I think ordinarily you are right.

Mr. Herr: They are introducing a written statement of someone who was present at the time, instead 40

Hamilton Gutmann—Direct

of the verbal statement of the witness. If the witness had sworn to the statement at that time I do not think it should have any more consideration than now, because he was not cross examined.

The Court: I am inclined to admit the paper as the witness stated that he had read the statement at the time it was made and he admitted that the facts were true. He read the paper in court and I am inclined to admit it for the purpose of showing what he here admitted he said to Dr. Gutmann at that time. The paper will be admitted.

Proponent's counsel prays an exception to this ruling of the Court.

Exception allowed; and the same is signed and sealed accordingly.

(Same is marked Cav. Ex. 1.)

HAMILTON GUTMANN, sworn on behalf of caveator.

Direct examination by Mr. Gebhardt:

Q. Doctor, are you the husband of Phebe Gutmann?

30 A. I am.

Q. She is the sister of whom? A. Edwin Able.

Q. Where did Mrs. Able reside for some years before her death? A. Just prior to her death she lived at Clinton. Two years prior to her death she resided in Plainfield.

Q. Whereabouts? A. On West Front street.

Q. Did she live with you or alone? A. She lived with me, I think probably half a year.

Q. During the last sickness of Mrs. Able were you at the hotel where she was? A. Yes, sir.

40

Hamilton Gutmann—Direct

Q. Did you have any conversation with Edwin Able at that time in or near her bedroom? A. Well, just entering her bedroom on the evening we called to see Mrs. Able he acquainted me with the fact that probably Mrs. Able wouldn't recognize her daughter, due to the fact that she had a very bitter feeling against her. I looked up with a little surprise—

Q. Who said this? A. Edwin Able. We were then 10 admitted to the room to see his mother, Mrs. Able. He spoke to his mother. She was in what I would consider—well, we would call it—she was sleeping, you had to get her roused to recognize anyone, and that would only be for a second. He called attention to the fact "Phebe is here." He said, "Mamma, do you know Phebe?" She said, "Yes." He said, "Here is Doc." "Yes." That is about all was said. We sat down in the room. After that I heard him caution Mrs. Gutmann not to speak to mother; she was very, very sick, 20 and he didn't want her to speak at all. In fact, she didn't at the time, in my presence.

Q. Did you go to Mr. Charles W. Leigh, one of the signers of this document, at Hackettstown? If so, when; about when? A. I think the first time was about two weeks ago, and the second time was just after Labor Day; I think it was Tuesday.

Q. Do you remember the conversation you had with him as to the making or signing of this paper? A. In a measure, yes, sir. 30

Q. In a measure? A. We talked about different topics, particularly about the signing of that paper, I remember that.

Q. Now, what did he say as to what was said about this paper at the time it was signed by him and by Mr. Thompson and Mrs. Able? A. Why, he said about a few days before he signed—

Q. Wait a minute. I withdraw that question. Who drew this paper (handing witness paper)? A. I drew that. 40

Hamilton Gutmann—Direct

Q. How did you come to draw that? A. From statements Mr. Leigh gave to me.

Q. Was it drawn before or after he gave you the statements? A. It was drawn while he was speaking to me.

Q. You took it down while he was speaking to you? A. Yes, sir.

10 Q. After he was through what did you do? A. Pardon me. You notice the other paper is three inches longer on this end. I started the statement on that end. I had the statement down and recopied it at the upper end of the paper after. The present statement was taken down in his presence and the latter part of this statement taken in his presence, a few lines were filled in while Mr. Leigh went to the station to see some gentlemen. I didn't read the statement then.

20 Q. What did you do after you had finally written as you have it here? A. I read it aloud to him. I handed it to him and asked him to read it. He admitted that was about the nature of the conversation and things that had taken place at the time of the signing of this paper, or will.

Q. Just give the Court and jury some idea of how much you have seen of Mrs. Able in the last ten years. Were you at Bloomsbury when she was there? A. Oh yes; I have known her probably eighteen years, and in that length of time all but four years and a half—
30 I was going to say all but four years and a half was spent in her presence—I am speaking, barring the time she moved to Clinton, that was the last year of her death. I was more or less about where she was, or she about me.

Q. Did you do any kind of business with her or for her? A. No, I didn't do any business for her.

Q. How many times, Doctor, have you seen her signature since you have known her? A. Several, probably fifty times.

40 Q. Were you or were you not familiar with her

Hamilton Gutmann—Direct

signature? A. I was familiar with her signature.

Q. Have you examined this signature to this paper (handing witness paper)? A. Yes, sir.

Mr. Herr: I object to this testifying that he was familiar with her signature unless he has seen her write.

Q. How often, Doctor, have you seen Mrs. Able write her name? A. That is the only thing I saw 10 her write, her name. Probably fifty times, maybe one hundred, as far as I know. I can't recall exactly in the course of eighteen years.

Q. You say she lived with you months at a time? A. Five or six months about four years ago, I think—four years and a half, something like that.

Q. Have you examined the signature to that paper? A. Yes sir.

Q. How many times? A. Yesterday was the first I saw it.

Q. What have you to say as to whether it is her signature or not. A. It doesn't look like her signature to me. 20

Q. What is your opinion about it? A. I would not call it her signature.

Q. Do you know for some years prior to your mother-in-law's death how she felt toward your wife?

Mr. Herr: That I object to.

The Court: I suppose you better specify her. 30

Q. As expressed by Mrs. Able herself, what did she say about her feelings toward her daughter, your wife? A. Never expressed herself in any way particular about her daughter; always seemed satisfied with conditions as they were.

Q. I am referring to her feelings, whether kind or unkind toward her? A. Kind toward her. Always came to her with all her troubles. 40

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Mr. Herr: I object to that and ask that it be stricken out.

The Court: Yes, I think we are judges of that rather than himself.

10 Q. Whatever would you say of the feelings that she had toward your wife? A. Well, visits at our home while she lived in Plainfield.

Q. Is that all you have to say, Doctor, about the relations between Mrs. Able and your wife? A. No more than she was frequently at our house while living in Plainfield. It was a common occurrence to come every day, almost daily.

Q. Can't you state whether her manner toward Phebe was hateful or spiteful, or affectionate? A. Affectionate.

20 Mr. Herr: Objected to as leading. I ask that it be stricken out.

The Court: It may be stricken out.

Q. Is that all you can tell us about the feeling between your wife and mother-in-law? A. Always good feeling between my wife and mother-in-law.

30 Mr. Herr: I object to that. The circumstances should be stated.

The Court: Yes.

Q. (By the Court.) Was there any evidence of feeling toward your wife? A. I saw no indication except pleasant relations, as it always existed.

40 Q. Did you have a conversation with Edwin Able after your mother-in-law's funeral or after her death,

Hamilton Gutmann—Direct

with reference to the making of a will? A. Yes. The day following the burial, on a Sunday.

Q. Where were you? A. In the hotel. In the back part of the parlor.

Q. Whose hotel? A. Mr. Able's hotel.

Q. What did he say about the time when the alleged will was made? A. He said, Mamma made a will and willed everything to him. I asked him 10 then "When did she make this will?" He said, "Just a few days ago." I said, "What do you mean? A few days before your mother was taken sick and died?" He said, "A couple of days ago." I said to him, "Before she taken sick and died; the last sickness just before she died?" He said, "Yes." I asked him three times to get a definite answer.

Q. Who was present? A. No one but Mrs. Gutmann, my wife.

Q. When did she die? A. I think it was the 12th 20 of April.

Q. Do you know when she was taken sick? A. On a Sunday, three days prior to her death.

Q. When you got there what condition was she in? A. What we consider practically a comatose condition. She was sleeping all the time. Occassionally she would arouse and look about and go back to a comatose condition again.

Q. What did you mean by "Comatose?" A. Sleeping condition—well, wasn't conscious of her sur- 30 roundings all the time—practically sleeping all the time. You could wake her by calling her name and she would rouse and look at you and give you an answer, but it took her a long time to put sentences together; one word, then a pause.

Q. What did you say to Mr. Able as to how he knew about the will having been written? A. I asked him, "How do you know?" My wife, I remember, asked him in my presence how he knew Mamma had a will?

Hamilton Gutmann—Cross

He said, "She wanted to make a will; I called Harry up on the 'phone," his counsel—

Q. Mr. Able here, the lawyer? A. Yes, sir. "And Harry was asked if he couldn't come over to make Mamma's will. He wrote a will and sent it over to Mamma to be signed and we sent it back." Then Mrs. Gutman asked him, "Ed," she said, "How do
10 you know what Mamma wanted in this will?" He says, "I don't know; I don't know; I don't know;" took his head up, "I don't know."

Cross examination by Mr. Herr.

Q. How long have you been married to the caveator, Doctor? A. About eighteen years.

Q. At the time you were first married where did you live? A. Bloomsbury.

20 Q. And practiced your profession there? A. No, sir—I lived in Asbury.

Q. That is in the vicinity of Bloomsbury? A. Yes, sir.

Q. And did you practice in the vicinity of Bloomsbury? A. Yes sir.

Q. How long did you live in Plainfield? A. About five years.

Q. During that five years how often did Mrs. Able visit you? A. I would say while she was living there
30 —I am not at home during the day, but used to hear my wife speak of her being there almost every day.

Q. Never mind what your wife said. A. Night-time was the time I was at home—that is only twice a week.

Q. How often did you see her there—approximately?—A. I would imagine once in five or six weeks.

Q. You were away from home during the whole of the week? A. Yes, sir. In town frequently.

Q. You practiced formerly in Lebanon and around
40 there? A. Yes, sir.

Hamilton Gutmann—Cross

Q. And you were at your residence in Plainfield very seldom? A. Came home, yes.

Q. Of whom did your family consist? A. Mr. Ball, my wife and myself.

Q. Who is Mr. Ball? A. A gentleman living with us.

Q. How long did Mr. Ball live with you? A. About six years. 10

Q. Lived with you before you went to Plainfield? A. Well, I couldn't say he did. He was at our place a while a short time before, a few weeks.

Q. When you lived where? A. Bloomsbury.

Q. And continued to reside there ever since? A. Yes, sir.

Q. Or rather with your wife, during your absence? A. Yes sir. During that time I had other people living with me. Mrs. Phillips lived with me one whole winter, and last winter my brother lived with me three months. 20

Q. Mr. Ball lived with you the whole six years, continuously? A. Yes, sir.

Q. Is he employed by you or your wife? A. No, sir.

Q. What did he do? A. He is employed in New York.

Q. How much of his time is spent in New York, if you know? A. Going to and fro and the time there, twelve or thirteen hours. 30

Q. He is home every night? A. Not at the present time.

Q. Up to the time of your mother-in-law's death? A. Yes, sir.

Q. Now, Doctor, when was your mother-in-law there last, at your home? A. I couldn't answer that question.

Q. As near as you can tell? A. I think she was there within two years or a year or two. 40

Hamilton Gutmann—Cross

Q. As a matter of fact had she been there within two years before her death? A. I don't know that.

Q. You don't know whether she had or not? A. I don't know she had.

Q. You don't know she had not? A. I don't know.

Q. Did you hear from your wife that she had
10 been there two years previous to her death? A. I don't recall she said anything at all? If I could ask her that question, how long Mrs. Able had been in Clinton the last time, I could answer more intelligently.

Q. Two years last April is the time she went back to Clinton? A. I knew she was there just before she went away.

Q. And after that? A. I have no recollection.

Q. No recollection of her being there? A. No.

Q. On the last occasion she was there have you
20 heard of any trouble? A. No.

Q.—between your wife and mother-in-law? A. No, sir.

Q. Hadn't you heard that she got angry with your wife and left in a passion? A. No, sir.

Q. Did you ever hear her speak of there being a suit between her and Mr. Ball for failing to pay commissions on real estate? A. Yes, sir.

Q. Did you hear that she claimed your wife inveigled her down there for the purpose of being sued.

30 A. No, sir.

Q. Have you heard that your wife sent for her to come down and when she got there she was served with a summons by either Mr. Ball or your wife? A. It happened this way—Mrs. Able claimed my wife had her come down for the purpose of having Mr. Ball serve papers on her.

Q. Who did you hear that from? A. I think, my wife.

Q. She has never been there, to your knowledge,

Hamilton Gutmann—Cross

since that occasion? A. Don't think so, never heard tell of it.

Q. You knew from your wife Mrs. Able blamed your wife for inveigling her to Plainfield for the purpose of being sued? A. I heard she told Mamma was complaining about Mr. Ball serving papers on her. That is all I heard.

Q. From that time to just previous to Mrs. Able's 10 death, when you went up there, had you seen Mrs. Able? A. I had not, but my wife had.

Q. You did not? A. No, sir.

Q. You have no personal knowledge of the relations existing between your wife and Mrs. Able between that time and the time of her death and your visit there? A. How did you date that?

Q. I understand you to say Mrs. Able hadn't been to your house from the time Mr. Able moved to the hotel at Clinton? A. Yes. 20

Q. Previous to that is about two years?

Mr. Gebhardt: Only one year.

Q. One year. During that time you never saw her?

A. I have no recollection; I don't remember seeing her.

Q. During the year previous to that how often was she at your place to your knowledge? A. I couldn't answer that.

Q. Did you see her during the year previous to the 30 time Edwin Able moved back to the hotel? A. A year previous to the time Mr. Able moved back to the hotel? I saw her frequently that year. That year she lived in Plainfield.

Q. Where did she live before she moved to the hotel? A. Lived in Plainfield.

Q. Where did she live? A. Opposite me. She lived at 930 and I lived at 933.

Q. When was that? A. April. 40

Hamilton Gutmann—Cross

Q. Two years ago in April—a year before she died?

A. Quite some time before she died.

Q. Who sent for you and your wife to come to Clinton to see Mrs. Able? A. My wife tells me, Mr. Able.

Q. Now, at the time you got there, Doctor, how long had she been sick? A. She was taken sick Sunday; we got there Monday or Tuesday evening, I am not positive. It is the last train comes up the road.

Q. Do you know how long you had been sent for before you went? A. My wife tells me she was just called ten minutes before the other train, which didn't allow time to get to the station and catch the train; ten or twenty minutes.

Q. When did you obtain the information? A. Sometime between that and six o'clock.

Q. Did you accompany your wife? A. I did.

20 Q. Did you meet her at Somerville, or both leave Plainfield at the same time? A. At Somerville.

Q. You went up on the same train? A. Yes.

Q. Mrs. Able was not in a condition to communicate anything when you got there? A. She could talk then, possibly, five, three, or two minutes.

Q. Not connectedly? A. Not connected.

Q. How long before she died after your arrival? A. I wasn't there when she died. I think, thirty-six hours.

30 Q. During that time she remained in a comatose condition? A. She would wake up at times and call for something and go back to sleep.

Q. Not connected thoughts? A. She seemed to be conscious of what she was saying. When she woke up she was conscious of what we were saying, and recognized us. Didn't carry on a conversation.

Q. Doctor, how did you come to go to Hacketts-town to see Mr. Leigh, one of the witnesses of the will? A. I understood he was there.

Hamilton Gutmann—Cross

Q. Who did you understand from? A. I think one of my counsel told me.

Q. He was at Hackettstown? A. Yes.

Q. And advised you to go to see him? A. Didn't advise, merely told me Mr. Leigh lives in Hackettstown.

Q. Who made the suggestion that you go to see him? A. Suggested it myself. I was waiting for an 10 opportunity to find him. He was away from Clinton.

Q. Did you know Mr. Leigh lived in Hackettstown? A. No, he lives in Clinton.

Q. Had you seen him previous to the trip you made to Hackettstown? A. Only Sunday. The last time I saw him was the Sunday after Mrs. Able's burial. Sunday in the Union Hotel at Clinton.

Q. On Labor Day you went to Hackettstown to see him? Yes. I went to see him before that.

Q. Where did you go? A. To Hackettstown. 20

Q. When was that? A. A week before on a Friday. I think it was Friday, August 31.

Q. You had seen him at Hackettstown on that occasion? A. Yes, sir.

Q. Was anything said about the will then? A. That was my purpose of going there.

Q. Who suggested that visit? A. That was my intention I said from the start.

Q. Both visits were suggested by counsel? A. No. The second one was to see if I couldn't get his signature. I figured if I could get his signature it would 30 make it more binding.

Q. Did you make any statement on the first interview? A. Yes. I showed it to him; I also read it. The second time Mr. Sutphen read it.

Q. Where is the statement he made on the first occasion? A. That little portion I explained was torn off. It was all recopied the first time I was there and the rest filled in while he was going to the post-office, or station, to meet a man. After he came back I 40

Hamilton Gutmann—Cross

asked for his signature; I think I asked before, too. After he came back he said "No, sir, Doc. I couldn't fix my signature under no consideration. Ask me anything on that statement and my answer will be in accordance with it." He said, "As far as I know; that is everything that took place while I was there."

10 Q. Did you ask any other questions as to what took place? A. I don't know if I did.

Q. Had you been instructed what questions to ask him? A. I had an outline on the bottom. He was there and I said I would go to see him. If think it any benefit, if you go there you might ask him those questions.

Q. That was before the first interview? A. That was at the time of the first interview.

Q. Who suggested that? A. My counsel.

Q. Where are those questions?

20 Mr. Gebhardt: On the back of the paper.

Q. Doctor, did you go to Mr. Leigh's? A. Yes, sir.

Q. I mean Mr. Thompson's? A. Oh, no.

Q. Why didn't you go to see Mr. Thompson as well as Mr. Leigh? A. I am not acquainted with Mr. Thompson.

Q. You are acquainted with Mr. Leigh? A. Yes, sir. I have known him for years.

Q. Did he know you were coming the first occasion? A. No, sir.

3) Q. Did you know you were coming the second occasion? A. No sir.

Q. From whom did you find out he was in Hackettstown on the first occasion or the second occasion? A. Himself. I asked him in at the time in a general way. I think he made the remark at the supper table, "I am going to finish at Clinton by Labor Day and am going to Little Washington." The second time I saw him he said, "I am going to Phillipsburg, Phillipsburg and Easton—

40 Q. That is not answering my question. How did

Hamilton Gutmann—Cross

you receive the information he was in Hackettstown on the first occasion you saw him? A. From my counsel.

Q. Senator Gebhardt? A. He told me he was in Hackettstown.

Q. How did Senator Gebhardt communicate with you? A. I couldn't just say.

Q. Did he communicate with you at all? A. Yes. 10

Q. You couldn't say how Senator Gebhardt communicated with you? A. I can't recall how he communicated, whether directly with me or whether he had written me in reference to that, now. That I don't recall. Nevertheless I was informed through him, what way I couldn't answer the question at the present time.

Q. Do you know whether he had an interview with Mr. Leigh before you saw him? A. I know nothing about that whatever. 20

Q. Did you go alone the first time? A. Oh, no.

Q. Who went with you? A. My wife.

Q. Anybody else? A. The man that drove the car.

Q. They didn't hear any part of the first conversation? A. Oh, no, neither one.

Q. What was the first thing you said to Mr. Leigh when you got there? A. He spoke to me.

Q. What did he say? A. He said, "Hello Doc. What are you doing here?" I said, "You are just the man I am looking for." 30

Q. Where was he? A. Sitting right on the hotel.

Q. Which hotel? A. Going up on the right hand side; a long hotel.

Q. Just as you turn in the road that goes to Norton? A. Yes.

Q. The road that goes to Norton or to Allamuchy?

A. I can't answer that. I know it is a slate-colored hotel.

Q. Anyway that is where you saw him? A. Yes, 40

Hamilton Gutmann—Cross

in the reading room. He was sitting close to the window. He and some other gentlemen.

Q. Where did you hold the interview in regard to witnessing the will? What took place at the time the will was witnessed? A. Upstairs, you might call it the parlor.

Q. Was anybody there beside you and your wife?

10 A. Nobody else.

Q. That statement you took in writing? A. Yes, sir. A portion of it. Then we went on the front porch. There was a marble-topped table, an old fashioned marble-topped table. I recopied it from the original statement.

Q. I am talking about the first interview? A. That was in the house, in the parlor.

Q. How long a paper did you draw the first interview? A. That is the first interview there. That is
20 the first and second. The same interview.

Q. How much of this did you draw the first time and how much the second? A. Drew it the first.

Q. All of it? A. Yes.

Q. Part of it was there the first time? A. When he went to the post-office I recopied it there, a portion of it.

Q. How much did you draw before he went away? A. Three or four lines.

Q. Did you finish the rest before he got back? A.
30 No, I wrote along as he was talking. I usually write a better hand. I was in a hurry to get it all down there.

Q. Now, Dr. Gutmann, didn't he tell you at that interview that Mrs. Able had sent him down to have Mr. Thompson witness the will, together with himself?

A. Yes, sir.

Q. Didn't he tell you that when Mr. Thompson came they went together into the parlor? A. Yes, sir.

Q. And that Mrs. Able came down while they were

40

Hamilton Gutmann—Cross

there? A. Mrs. Able, he said, wasn't there at the time. He called for her.

Q. Didn't he tell you Mrs. Able had her will in her hand when she came down? A. No, sir.

Q. Didn't he say she had a paper in her hand? A. Yes.

Q. Did he say that Mr. Thompson asked her if that was her will? A. No, sir. 10

Q. Didn't he tell you that Mr. Thompson had said to her he had come there at the request of Mr. Leigh for the purpose of witnessing her will? A. I don't know.

Q. What did he say about that? A. Nothing was said about this paper being a will at all. Not one word.

Q. Didn't he say that Mr. Thompson said to her that Mr. Leigh had told him that Mrs. Able wanted him to come there and witness her will? A. No, sir. 20

Q. What did he say in regard to what occurred between Mrs. Able and Mr. Thompson after she came down? A. The conversation was like this: "I went in the hotel about eight o'clock at night. Mrs. Able was not in. He called for her and she came in the room with this paper in her hand. She laid it on the table and she signed it. Then Mr. Thompson signed it." In the meantime there was talk—some conversation going on between Mrs. Able and Mr. Thompson that Mr. Leigh didn't recall. "I didn't 30 hear what was spoken of; what the conversation was. Some little talk, 'How do you do,' the time of day. When she sat down to sign the paper nothing was said about it being her will?

Q. I am talking of before she sat down? A. No mention then.

Q. Didn't Mr. Leigh say he couldn't recall then what was said? He couldn't recollect some of the things said? A. I don't remember anything to that effect. 40

Hamilton Gutmann—Cross

Q. Did you ask him what was said when Mrs. Able came down? A. No sir.

Q. Didn't ask him about that at all? Do you recall what he said occurred after Mrs. Able came down? A. I don't know of anything particular that was said then. No more than she walked over to the table and sat down and signed the paper. Mr. Leigh tells me Mrs. 10 Able and Mr. Thompson held a conversation. He didn't say what it was.

Q. Weren't Mr. Leigh and Mr. Thompson and Mrs. Able all together at the time the will was signed? A. All sitting at the table.

Q. And from the time Mrs. Able came in the room up to the time the will was signed they were all together there? A. Sitting around the table. He pulled himself around the table and signed the will.

Q. Why didn't you put it in the statement just 20 as he told it to you? A. What is that?

Q. Why didn't you put his statements in this statement just as Mr. Leigh told it to you on that day? A. It is.

Q. No, it isn't put in? A. As far as possible.

Q. As far as the conversation with Mr. Thompson before the will was signed? A. I don't know any of the conversation between Mrs. Able or Mr. Thompson, except Mr. Leigh tells us they were speaking of something. He don't recall, some conversation. He also 30 said to me at the time—I don't know whether it is in the statement or not—"Mrs. Able said, 'Charlie, you can read that if you want.'" I haven't mentioned that here.

Q. Why didn't you put that in the statement? A. Did you ask me for them?

Q. Why didn't you put that fact in this statement Mr. Leigh made, that Mrs. Able said he could read the will? A. It didn't occur to me. He told me that.

Q. He told you substantially the same statement 40

Hamilton Gutmann—Cross

he has sworn to on the stand this morning? A. He said he didn't care reading it, Aunt Kate.

Q. Wasn't that his testimony this morning? A. I haven't heard him say at any time, that Mrs. Able said she had her will and wanted them to sign it. At no time did she say, "I have a will I want you to sign." I will admit she told Mr. Leigh to get Mr. Thompson to witness her will. That was a few days ago. 10

Q. Charlie told you that? A. Yes. When Mrs. Able came in the room to have the will witnessed—as he termed it—Mrs. Able said nothing about, "This is my will." That is one of the things I noted, one of the things I was after, according to the underscored remarks of the counsel.

Q. Have you there the underscored remarks of counsel? A. No.

Q. The facts you have here are in answer to the underscored questions? A. I wanted to see if she declared this was her will. That was my main object. 20

Q. Doctor, of course, you have considerable interest in this case, haven't you? A. I don't know whether I have.

Q. Haven't you said you would rather see—that if your wife didn't get her share you were anxious to see the whole estate lawed away? A. I probably made that remark. I asked Mr. Able if he thought that was fair. I said, "There won't be enough left of this to buy a suit of clothes." 30

Q. Doctor, do you know whether your mother-in-law paid any board the last time she was at your place? A. I couldn't say that.

Q. Do you know whether she paid board at any time she came to visit you? A. I think when she first came there.

Adjournment taken to tomorrow, Thursday,
September 12, 1912, at 9.30 o'clock, A. M.

Hamilton Gutmann—Cross

SECOND DAY.

AFTER ADJOURNMENT.

HAMILTON GUTMANN resumes the stand.

Further cross examined by Mr. Herr:

10

Q. How often have you seen Kate Able write her name? A. Probably fifty or one hundred times.

Q. And when last? A. It must be several years.

Q. Witness is shown paper and is asked whether he recognizes this as her signature? A. Well, that looks somewhat like her signature, yes, sir.

Q. That resembles her signature any closer than the signature to the will? A. Yes, sir.

20 The Court: I suggest that it be marked in some way.

Mr. Gebhardt: I object to that being marked unless the pencil writing be stricken off. It is not part of the receipt and might prejudice the jury in some way.

Mr. Herr: I didn't notice that.

30 Q. Do you recognize that as the signature of Kate Able? A. Yes, sir.

(Same is marked Pro. Ex. 4)

Mr. Herr: I don't want to erase it. The only question is about the signature.

The Court: It can be marked at present for identification.

40 (Same is marked Prop. Ex. 3.)

Hamilton Gutmann—Cross

Q. Witness is shown check dated March 28, 1887, and is asked whether that is her signature? A. I wouldn't call that her signature.

Q. Whose signature is that? A. I don't know.

Q. Aren't you familiar with that signature? A. The signature—the first word is probably her signature.

Q. You were familiar with the writing of your father-in-law, Kate Able's husband? A. No sir. 10

Q. Never saw his writing? A. No, sir.

Q. I thought you were familiar with his signature? A. No sir.

Q. Witness is shown check dated April 1, 1901, and is asked whether he recognizes the signature? A. Yes, sir; that looks like Mrs. Able's signature. That varies a little, but that looks like her signature.

(Same is marked Prop. Ex. 5.)

20

Q. Witness is shown stock book of Bloomsbury National Bank containing signature of Kate Able—signature book—and is asked whether he recognizes that as her signature—or whether the signature was made by the same man that signed these checks? A. I will admit this signature and the others shown are not identical; they vary somewhat.

Q. Well, the signature of Kate Able on the check doesn't resemble the signature book of the bank as the signature of whoever wrote these checks? A. I would put it this way: They don't resemble the signature on these checks as well as they do on the bank book. That check and those others are not identical to me at all. 30

Q. The signatures on the checks dated March 28, 1887, and the signature on the check dated April 1, 1901, you say are not similar. A. No, the first checks shown me and this signature look alike. This doesn't look like Mrs. Able's signature (indicating). This 40

Hamilton Gutmann—Cross

doesn't look as much like Mrs. Able's signature as these signatures on the checks.

Q. I want to know which check,—the check of 1901 and the signature as shown you as the genuine signature of Mrs. Able? A. They don't simulate. These checks (indicating) are alike.

10 Q. Wouldn't you recognize the signature on the stock book as her's? A. Not quite so much so.

Q. Doesn't the signature on the stock book more closely resemble the signature of the check dated April 1, 1887, which is supposed to have been written by L. V. A., for her husband's name? A. That simulates it somewhat.

Q. Witness is shown paper dated May 29, 1908, containing the signature of Kate Able and the will, and is asked whether those signatures are not identical? A. No, sir.

20 Q. Where is the difference? A. There is a difference in "Able." One is "Able" or "Auble" I would know. I couldn't tell that nohow, if I didn't know it was her will.

Q. Take "Kate" first? A. There is some difference in the "K." She writes an H to represent a K.

Q. So does the will? A. Yes.

Q. They are identical? A. Yes, supposed to be. There is an "a" and they have an "i" there (indicating). She always signs her's "Kate." It is "Kaite."

30 Q. Isn't that (indicating) a continuation of the "a"? A. No, it is too distinct for that.

Q. I show you signature on Exhibit 3 and ask you whether the "a" in that signature isn't of the same character as that of the will? A. No, sir.

Q. Except what you call the "i" is not so far away? A. That is distinctly "i" there (indicating).

Q. Isn't that distinct, too? A. No, it is merely a little prolongation of the "a". The "t" is separate. This is a distinct "i".

Hamilton Gutmann—Cross

Q. "Did you ever see any two signatures alike?"

A. They vary.

Q. Don't they vary considerably at different ages?"

A. They vary to a slight degree. I doubt if they vary in the age. I don't see any difference in the age. They always vary in my opinion, just slightly, that is all.

Q. Witness is shown check dated February 28, 1900, 10 and is asked if he recognizes that as Mrs. Able's signature? A. Yes. I would recognize that as her signature. It is one of those kind that vary a little; it varies considerable.

Q. That varies considerably from the ordinary signature? A. It varies considerable. That may be her signature but that varies considerable.

Q. The "a" in that signature very closely resemble the "a" in the will? A. No, I can't see any similarity there at all.

Q. It has one very marked similarity, the last stroke of the "a" don't go all the way to the "t." A. It don't have a triangular appearance on the opposite side at all. The only difference, her "a" is not connected.

Q. Isn't that the difference in the signature to the will? A. No, sir, the "a" is distinct and the "i" is distinct, separate two distinct letters.

Q. Witness is shown book marked "Metropolitan Life Insurance" containing signature of Kate Able, 30 and is asked whether he recognized those as her signatures? A. I question those as her signatures.

(Same is marked Prop. Ex. 9.)

Q. Doctor, you don't pretend to be an expert, do you? A. No, sir.

Q. You wouldn't rely on your judgment as to the signature of Kate Able? A. Yes, sir, I would.

Q. You would? A. Yes.

William Mulligan—Direct

Anna Hoffman—Direct

WILLIAM MULLIGAN sworn on behalf of caveator.

Direct examination by Mr. Gebhardt:

Q. Where do you live, Mr. Mulligan? A. Clinton.

Q. Were you ever employed by Edward Able at his
10 hotel in Clinton? A. Yes, sir.

Q. When did you quit work there? A. A year ago
last May.

Q. With a year or so before you left had you talked
with Mrs. Able with reference to her daughter? A.
No, sir.

Q. Did she ever make any expression as to how her
feeling was toward her daughter? A. Not to the best
of my knowledge.

Q. Not to you? A. No, sir.

20 Q. Did she ever make any expression to you of her
feelings toward Edwin Able? A. Yes, sir.

Q. What did she say? A. Always talked well for
him; in his favor.

(Not cross examined)

ANNA HOFFMAN sworn on behalf of caveator.

Direct examination by Mr. Gebhardt:

30

Q. Where do you live, Mrs. Hoffman? A. Clinton.

Q. Did you know Mrs. Kate Able during her life-
time? A. No, not all her lifetime.

Q. During her life did you know her? A. Yes.

Q. How long had you known her? A. I can't just
tell.

Q. Give us some idea, whether it was five years—

A. In the neighborhood of a couple of years, I think.

Q. Did you know her daughter, Mrs. Gutmann? A.

40 Yes.

Anna Hoffman—Direct

Q. Did you ever hear Mrs. Able say anything with reference to her feelings toward her daughter, or have any conversation with her about—

Mr. Herr: I don't object to her answering the question about any conversation, but I do object to detailing the conversation.

Q. (By the Court.) Did you have any conversation with her about her daughter? A. Yes. 10

Q. (By Mr. Gebhardt.) Did you ever hear her make any expression of her feelings toward her daughter?

(Objected to as leading.)
(Objection overruled.)

A. Yes.

Q. And what were the statements you heard her 20 make?

Mr. Herr: We object to that as incompetent and irrelevant.

The Court: I will overrule the objection.

(Proponents counsel prays an exception to this ruling of the Court.)

(Exception allowed, and the same is signed and sealed 30 accordingly.)

Circuit Court Judge.

Q. What were the statements? A. The only statements in regard to each other, that they would visit; sent word with me that they would write and would see each other down. Anything further than that I don't know.

(Not cross examined)

Edith Shearer—Direct

EDITH SHEARER sworn on behalf of caveator.

Direct examination by Mr. Gebhardt.

Q. Where do you live, Mrs. Shearer? A. Bloomsbury.

Q. Did you know Mrs. Kate Able in her lifetime?

10 A. Yes, sir, since I was living at Clinton.

Q. Do you know Mr. Edwin Able? A. Yes, sir.

Q. And Mrs. Gutman? A. Yes, sir.

Q. Are you related in any way? A. Cousin.

Q. Mrs. Able had only two children? A. Two children.

Q. Did you have any conversation with Mrs. Able or did she make any statements to you with reference to what she wanted done with her property? A. No, sir, not the property exactly.

20 Q. Did you hear her make any complaints or statements to you with reference to what Edwin Able wanted to do with reference to the property?

(Objected to as leading.)

Q. Answer yes or no? A. Yes, sir.

Q. What were those statements?

Mr. Able: That is objected to.

20

Mr. Gebhardt: I will change that.

When was that? A. As near as I can tell, fifteen years ago.

Mr. Able: It is objected to on the ground that it is too remote.

Mr. Gebhardt: We understood it was much later
40 than that.

August Henkel—Direct

Q. I am referring now, Mrs. Shearer, to the last talk you had with Mrs. Able on this subject, the last one; was that fifteen years ago? A. About, I think.

Mr. Gebhardt: That is all.

(No cross examination.)

10

AUGUST HENKEL sworn on behalf of caveator.

Direct examination by Mr. Gebhardt.

Q. Mr. Henkel, where do you live? A. Lebanon.

Q. In this county? A. Yes, sir.

Q. Did you know Kate Able in her lifetime? A. I did.

Q. How many years have you known her? A. As near as I can recollect, thirty or thirty-five years. 20

Q. Were you rather confidential with her or not?

A. Not very much. She talked to me once in a while.

Q. You are under subpoena by the other side of this case? A. I am.

Q. Now, did you have a conversation with her in April, the early part of April, 1911, or not? A. I did.

Q. Where did that conversation take place? A. Why, in a hall in a hotel.

Q. Where? A. At Clinton, her own hotel there.

Q. Was there anybody present when she talked to you? A. Yes, there was a gentleman by the name of Hoff, a resident there. I don't know whether he heard what she said or not. He was present. We had a little business, she followed us in. 30

Q. What did she say to you about what she intended to do with her property?

Mr. Able: That is objected to.

Q. If anything?

40

Phoebe M. Gutmann—Direct

Mr. Able: It is objected to first, on the ground that we are entitled to know what the object of the question is, and, secondly, if it is for the purpose of showing undue influence, that it is irrelevant and inadmissible.

The Court: This is after the date of the will?

10 Mr. Gebhardt: Two months after. It is admissible as attacking this will. The statements tend to show she did not have any will.

The Court: Objection sustained.

(Exception to caveator.)

(Not cross-examined)

20 PHEBE M. GUTMANN, caveator, sworn on her own behalf.

Direct examination by Mr. Gebhardt.

Q. Mrs. Gutmann, you are the wife of Dr. Gutmann? A. Yes, sir.

Q. Who was your mother? A. Mrs. Kate Able.

Q. When did she die? A. April 12, 1911.

Q. Were you with her when she died? A. Yes, sir.

30 Q. When did you first hear of her sickness? A. On Monday after, about quarter after five, I received a telephone call from the Western Union office saying my brother was calling me to his house, that mother was very ill.

Q. And when did she die? A. Wednesday morning between six and a little after.

Q. Up 'till the time of your mother's death what had been the relations between you and her? A. Very good, the best.

40 Q. And what had been the relations between you

Phoebe M. Gutmann—Direct

and your brother? A. Nothing whatever. I have nothing against my brother.

Q. Were you in the habit of visiting each other in the last year or two before your mother's death? A. Yes, sir.

Q. How frequently did you and your mother visit each other? A. I went oftener than mother came. I went to Ed. because I got to see the rest of them. 10

Q. Was your brother Ed about the house during your mother's last sickness? A. Yes.

Q. Just describe what condition your mother was in during her sickness. A. Going there in the evening, mother didn't know anything whatever. In fact, she seemed to be in a very sound sleep. I don't recall whether it was my aunt or sister-in-law said, "You had better wait a minute and not step in the room just at present." So after a little while I insisted on seeing mother, seeing and speaking to her. But she was un- 20
able to talk when I went in. My brother said, "Mamma, Phebe is here." She said, "Yes." He said, "Mother, Doc. is here." She said, "Yes." She started to sleep again and that was the last. Between one and two she revived a few minutes again. She would say just a word or two and pass away again. Tuesday she was just conscious and talked a few times. She died Wednesday morning she died.

Q. Were you alone, at any time during the last sickness, with her? A. Not left in the room alone. 30

Q. Who was there? A. Always seemed to be someone in; mother's sister was there and Mrs. Conover.

Q. Did you have any conversation during these last two days of her sickness with your brother Ed? A. Only just spoke to him.

Q. Did you have any conversation at this time, in the house, at your mother's deathbed? A. During mother's sickness?

Q. Yes. A. No, not confidential. He spoke as he came in. He would ask me did mother say anything 40

Phoebe M. Gutmann—Direct

to me. I would say, "no." He would say, "Are you sure mother didn't say anything to you?" I said, "no." You didn't ask her anything?" I said, "Why, no, Ed. Mother hasn't strength to talk."

Q. After her death did you have a conversation with him? A. Sunday morning.

Q. When was she buried? A. Saturday afternoon.
10 Sunday morning Ed and I sat in the back parlor. I saw a few things belonging to mother and I said, "Ed, I have a suggestion to make, maybe I can look after them." He says, "There are a few things of mother's that I haven't any use for." He said, "Well, if Susie"—he meant Aunt Sue—"if she was living I would know what to do." I said, "Ed, how do you know what Mamma wants done with these things? He says, "Mamma made a will?" "Oh," I says, "she has." With that Doc came in the room.

20 Q. Dr. Gutmann, your husband? A. Yes. I said, "Ham, mother has will; there is nothing for us to do. We may as well go home on this next train." It was interfering with his practice. I says, "Ed," how do you know Mamma wants done?" he said, "She made a will." He said, "Mamma wanted me to call Harry. I did and Harry couldn't come over. He made a will up and Mamma signed it and I sent it back." So I merely said to him, "How did Harry know what Mamma wants in that will?" He answered
30 me like this, "I don't know." I said, "Ed, you ought to know, you tell me you called Harry."

Q. When did he state the will had been made? A. He said the last three days of her sickness. Doc asked him three different times if he meant this last sickness; as we knew she was sick before. He said, "Yes, just these last few days."

Q. Did you go to Hackettstown to see Mr. Leigh, one of the signers to this will? A. Yes sir.

Q. Were you present at the conversation between
40 your husband and Mr. Leigh? A. Yes, sir.

Phoebe M. Gutmann—Direct

Q. I show you a written statement here which has been offered in evidence and ask you if you have seen that before? A. I did.

Q. Where? A. Well, I saw it at Hackettstown, and I saw Doc have it since.

Q. What do you mean, you saw it at Hackettstown? A. Saw Doc write this. Mr. Leigh talked and he wrote it. Saw him pass it to Mr. Leigh to read. 10

Q. Did Mr. Leigh take it? A. Yes.

Q. Looked over it? A. Yes, read it over.

Q. What did he say? A. He said, "Well, Doc that is about all that took place, and I am willing to go on the stand and swear to it.

Q. Did you hear the conversation that took place there between the Doctor and Mr. Leigh? A. Yes, sir.

Q. What did you hear Mr. Leigh say as to what occurred at the signing of the will? A. Doc asked him 20 about what took place during the time he and Mr. Thompson was in the room. He said, "Nothing particular." He said, "I went in there and signed the paper and that was about all.

Q. How familiar were you with your mother's signature? A. Very.

Q. What opportunity had you of seeing her write her name? A. Only in business matters; signing checks and papers, things of that sort. Mother never wrote any letters. 30

Q. About how many times in the last ten years have you seen her write her name? A. Well, I couldn't say that. Probably fifty or seventy-five times—one hundred.

Q. In your judgment is that her signature (handing witness paper) or your mother's handwriting? A. I don't understand you.

Q. In your judgment is that signature your mother's handwriting or not? A. It doesn't look natural. 40

Phoebe M. Gutmann—Direct

Q. What is your opinion about it? Is it or is it not your mother's signature? A. I think not.

Q. Did you have any conversation with Edward Able after your mother's death? A. The morning she died something was said.

Q. After her death? She died in the morning. A. That was after her death. She died on the morning.

10 Q. With reference to what your mother had said to you? A. Yes. It appears some lady came from the town to call; my sister-in-law was out on some errand. Mother said, "Who was that, Phebe?" I said I don't know. She said, "I didn't want to see her." I said, "Mother, you didn't see her." She called "Maggie." She said, "Oh, I didn't want to see her," and glanced that way. Maggie was about to come in the room and she threw up her hands and that minute she was dead.

20 Q. The conversation you had with Ed was after your mother's death? A. Ed wasn't in the room. Maggie said, "Call Ed." Aunt Elizabeth came in then. Naturally I started to cry. She said to me, "You killed your mother."

Q. Who is Aunt Elizabeth? A. She said, "You killed your mother." "I said "I did not—"

Mr. Herr: I don't see what relevancy that has.

The Court: It may be stricken out.

30 Mr. Herr: We don't object to letting it stand.

Q. I am asking about the conversation you had with Ed. A. That occurred at the same time.

Q. That was on Sunday morning? A. That was this morning. Ed said to me, "Phebe, are you sure you didn't say anything to your mother?" I said "No." He said, "If I thought you did it wouldn't be well for you. I and Aunt Elizabeth suppose you killed your mother." I said "Maggie, I can't stay here. I am
40 going home."

Phoebe M. Gutmann—Cross

Cross Examination by Mr. Herr.

Q. How long previous to your mother's death did she visit you? A. Hadn't been there in quite some time.

Q. About how long? A. A year and a half.

Q. Before her death? A. I really couldn't say.

Q. You remember the time when Mr. Irving E. Ball 10
sued her before a Justice of the Peace in the District
Court of Plainfield for \$200? A. I didn't know at the
time.

Q. You knew about the time it occurred? A. I did
not.

Mr. Herr: Well, that was the 24th of January, re-
turnable by the 2d of February, 1911.

Mr. Gebhardt: When was it served? 20

Mr. Herr: The 25th.

Q. Mrs. Guttman, didn't you write your mother a
letter to come to Plainfield about the time this sum-
mons was issued? A. No, I did not; not for that pur-
pose. I didn't know the notice was to be issued.

Q. Did you mention her property and write her a
letter to come to Plainfield about that time? A. No.

Q. Well, did you know that an arrangement had 30
been made, at least a pretended arrangement, for your
mother to buy property in Plainfield? A. No, sir.
For mother to buy property?

Q. To sell one? A. No, sir.

Q. Do you know as a matter of fact that your
mother did come to Plainfield between the time the
summons was issued and the time it was returnable
at the instance of someone to buy a property or to sell
one? A. I didn't know the property, no, sir. If I
know she was there at all. 40

Phoebe M. Gutmann—Cross

Q. Didn't you know she was sent to come? A. Absolutely not.

Q. When did you first hear of that? A. The Monday after it was served, during the week one day.

Q. Where did you hear that the summons had been served? A. Where it had been served?

Q. Yes. A. I think, at the depot.

10 Q. Who told you? A. Mrs. J. P. Burd.

Q. Do you know how she knew? A. I think she said mother told her.

Q. Didn't she say your mother was very angry? A. Yes, she told me.

Q. Now, you say that was the first you heard that this summons was served? A. Positively was the first I heard.

Q. That was Monday? A. Yes.

20 Q. That summons had been served on the previous Wednesday? A. I don't recall the day; might be a week.

Q. Might be the previous week? A. Yes.

30 Q. How did Mrs. Burd tell you this? A. We were talking over the 'phone. I said to her, "How is your mother?" I think Mrs. Burd's mother was sick. I think she told be better. I said I hadn't heard from my mother in quite a while; I don't know how it is. She said, "You do." I said, "I do not." I said, "I haven't heard from my mother." She said, "She was here." I said, "What day?" She said, "I think it was Wednesday." I said, "I wasn't home." She said, "She was in town and Irv," she said, "had her arrested."

Q. Who did she mean by "Irv"? A. Mr. Ball.

40 Q. What else did she say? A. She said, "She was nabbed at the depot." I said, "Oh, goodness. Do you mean to say Irv did that?" "Yes," she said. She wasn't going to tell me any more. I had to coax her. Mrs. Philips and myself I said were busy sewing. I said, "I am anxious to know about this"; so she finished

Phoebe M. Gutmann—Cross

the conversation. I went upstairs and said, "Fan, did you know about that?" "Yes, Phebe," she said, "yes." I said, "Anybody else know that?" She said, "Yes, everybody knows that."

The Court: Is all this competent?

Mr. Herr: Not all competent, no.

10

Q. Now, Mrs. Gutmann, what I wanted to know was as to whether or not Mrs. Burd told you your mother was very angry on account of being arrested and if Mrs. Burd didn't tell you your mother accused you of getting her to Plainfield in order to get a summons served on her?

Mr. Gebhardt: I object to that.

Mr. Herr. It is entirely competent.

20

The Court: How is it competent?

Mr. Herr: It is competent to show the frame of mind of this woman; why she made a will as she did.

The Court: I will sustain the objection.

Proponent's counsel pray an exception to this ruling of the Court.

30

Exception allowed; and the same is signed and sealed accordingly.

Circuit Court Judge.

Q. Now, after that time your mother never visited you in Plainfield? A. No, she did not.

Q. Did you go to Clinton to visit your mother? A. No, I did not.

Q. You didn't see your mother after that? A. Yes, on Monday.

40

Phoebe M. Gutmann—Cross

Q. Just before she died? A. No. Ed and mother was to Plainfield—let me see, he was calling Monday—two weeks before.

Q. Calling where? A. The Monday before he was calling to Plainfield. Mother was in Plainfield about the 3rd. She and Ed were across to Mrs. Cook. I saw her and stepped out. He said, "Mother can't
10 come over." She said, "I haven't time, I have to take the five o'clock." I said, "Very well," and stepped in, but I felt very bad because she didn't come in.

Q. Had you had any disagreement with your mother previous to the time you heard the summons had been served on her? A. No, sir.

Q. About two years before your mother's death hadn't she charged you with forging a check on her bank account? A. Yes, she had.

Q. What was the amount of the check? A. \$300, I
20 think.

Q. Was it three hundred fifty? A. No, I don't think so.

Q. What bank was it on? A. Phillipsburg Bank.

Q. You and your mother had quite a disagreement about that? A. We did not.

Q. Where did you see her when she charged you with forging the check? A. She was at my house next morning.

Q. She was living in Plainfield? A. No, she was
30 just coming to Plainfield to live. She had been living with me previous to that.

Q. Didn't you and your mother have two or three quarrels, or more, because she had accused you of improper relations with this man Ball? A. No, sir.

Q. Do you mean to say she never mentioned that subject to you? A. No sir, she did not.

Q. The last time your mother was at your place, wasn't there trouble between you and your mother about your relations with Ball? A. No, sir.

40 Q. She never found any fault with it at all? A. She

Phoebe M. Gutmann—Cross

said nothing. She always had Irv do a great many things for her.

Q. You mean Ball when you say Irv? A. Yes.

Q. How long has Irv lived with you? A. Ever since we have been in Plainfield.

Q. How long is that? A. Four or five years; I really couldn't say.

Q. Now, Mrs. Gutmann, you accompanied your husband to Hackettstown at the time this alleged statement was made by Charlie Leigh? A. Yes, sir. 10

Q. How did you happen to go? A. The Doctor called me to go with him.

Q. Did you hear the whole conversation between your husband and Charles Leigh? A. Yes, sir. The first day I was there.

Q. And the second? A. The second time I was not along.

Q. Not alone with them? A. No with them. 20

Q. You were there just the first occasion? A. Just the first.

Q. On the first occasion didn't Mr. Leigh tell you, or tell the Doctor in your presence, that there was a conversation between your mother and Mr. Thompson just previous to the execution of the will that he couldn't just recall? A. He said mother and Mr. Thompson were talking, he didn't know what was said; he paid no attention to it.

Q. That isn't in the statement? A. I don't think 30 it is.

Q. Didn't he tell you, too, that your mother had sent him over to get Mr. Thompson as one of the witnesses to her will? A. He said mother asked him to ask Mr. Thompson to come in the evening.

Q. For what purpose? A. For the will, I suppose.

Q. Didn't he tell you he knew it was her will? A. Didn't what?

Q. Didn't he tell you he knew this paper was your mother's will? A. Mt. Leigh or Mr. Thompson? 40

Phoebe M. Gutmann—Cross

Q. Didn't Mr. Leigh tell you that he knew this paper was your mother's will? A. He said mother wanted him to witness a will.

Q. Didn't he tell you your mother asked him to witness a will? A. Yes.

Q. Didn't he tell you your mother's genuine signature was attached to that will and he saw her sign it? A. He said mother signed it is his presence.

Q. You hadn't any doubt at that time—
Objected to.

Q. Mrs. Gutmann, the whole conversation between your husband and Mr. Leigh is not in that statement, is it; not nearly all? A. All that amounts to anything is; what we went there for, yes.

Q. What you went for is put down and what you weren't there for you didn't put down? A. Little incidents that happened during the day wasn't put in; it wasn't necessary.

Q. Who gave you the instructions under which that statement was made? A. None—my husband.

Q. Had you anything to do with getting the statement? A. No, sir.

Q. You know Mr. Thompson? A. I know him; not personally.

Q. You didn't go to Mr. Thompson's? A. No, sir; we did not.

Q. Mrs. Ball, you are acquainted with the signature of your—

Witness: What did you call me?

Mr. Herr: That was a slip of the tongue.

Q. You are acquainted with the signature of your father? A. My father?

Q. Yes. A. It has been many years since I saw it. This is only just the initials, Mr. Herr.

Q. That is in his handwriting (handing witness paper)? A. Those (indicating).

Phoebe M. Gutmann—Re-Direct

Q. Yes. It says "A". A. Yes, I see.

Q. I want to know whether you recognize that as being in his handwriting? A. I don't know whether I have seen him write mother's name.

Q. You have seen him write repeatedly; is that his handwriting? A. Yes, I think it is. If it is not it is a very good imitation. That is the same (indicating). That is the same (indicating); that is the same (indicating). 10

Q. The signature book of the bank; isn't that in the same handwriting that the checks are? That is your father's handwriting, too? A. Do I understand, this is papa's handwriting, do you ask me?

Q. Yes. Wasn't it the same handwriting that signed the checks? A. Yes, I think so. I didn't know whether you asked me if that was papa's handwriting.

Q. Yes. A. Yes.

Re-direct Examination by Mr. Gebhardt: 20

Q. Judge Herr, Mrs. Gutmann has asked you about a disagreement over a three hundred dollar check—

Mr. Herr: \$350 check.

Q. Whichever it was. How long before your mother's death was that? A. What month, Senator?

Q. Judge Herr asked you if your mother accused you of having forged her name to a check. How long before your mother's death was that? A. Four or five years ago; four years anyway. 30

Q. Did you forge your mother's name to a check? A. I did not.

Q. After you talked about this check what were the relations between you and your mother? A. The best; she never said anything to me about it.

Q. Was there any quarrel about that time? A. No, sir, we talked it over; that was the end of it; the next morning. 40

**Phoebe M. Gutmann—Re-Cross
Caveator Rests**

Q. She was at your house the next morning? A. The next morning at the breakfast table.

Q. Was she then living with you? A. No, she had come with Maggie and Helen to go on home across the street. She stayed at my house that night and for breakfast.

Q. Did she visit you after that? A. Every day as long as she lived there.

Cross-Examination by Mr. Herr:

Q. When your mother stayed at Plainfield she paid you board? A. Yes, she gave three dollars a week.

Q. There was no disagreement about that? A. None at all; the best.

By Mr. Gebhardt:

20 Q. Did you charge her three dollars a week board? A. I didn't charge her, she said she wouldn't stay unless she gave—unless I would let her give me something, because there was nothing for her to do.

CAVEATOR RESTS.

Mr. Herr: The first issue is whether the testatrix signed this will and published it in due form; that is the first issue raised in this case. There is some slight evidence in regard to that, but it doesn't seem to me it is really enough to take this case to the jury. We have witnesses who testify that she signed the will in their presence. So far as the testimony of the cashier of the Bloomsbury bank is concerned, it appears how that the signature which he compared with the will was not the signature of Kate Able, but the signature of her husband. Of course, it wouldn't look like the other signature. There is really no serious attack on the signature by anybody. You don't insist, Senator

30
40 Gebhardt, that it is not Kate Able's signature?

Caveator Rests

Mr. Gebhardt: Of course, we do.

Mr. Herr: The burden of the proof is on the caveator; it doesn't seem to have been sustained.

Second, Kate Able at the time of making this will was not of sound and disposing mind and memory; there is no testimony on that issue and that issue should be eliminated from the case. Do you insist on that question, Senator Gebhardt? 10

Mr. Gebhardt: Yes, I do. The reason I do is because the proof shows that she was not conscious during her last sickness and the will was probably made during that period.

Mr. Herr: Does the court have the slightest idea that we should make a defense to the second issue? 20

The Court: So far as the real trial of this case is concerned it must be conducted in much the same manner as in the Orphans' Court. This question is referred to this court to be decided, and any evidence at all ought to be decided by the jury. I think the responsibility is on counsel as to whether or not you will meet these questions of the case.

Mr. Herr: I thought I would eliminate these questions to save time. 30

Third, he alleges that the will was made through undue influence or fraud upon Kate Able. There doesn't seem to be any evidence in relation to that complaint that would put us on our defense in regard to that. Fourth, that issue is involved in the other three.

I submit that the caveator hasn't produced evidence enough to put us on our defense. 40

Alice Schomp—Direct

The Court: Just give your motion.

Mr. Herr: My motion would be to non-suit the plaintiff if a non-suit can be made in a case of this kind.

The Court: I think I have indicated my view. I will deny your motion.

10 Proponent's counsel pray an exception to this ruling of the Court.

Exception allowed, and the same is signed and sealed accordingly.

Judge.

Mr. Herr: I don't know whether it should be to non-suit or dismiss.

20 Mr. Gebhardt: I will consent that the motion be in whatever form it should be.

The Court: I suppose the matter being submitted to this court, the motion ought to be to direct the jury to find these facts in favor of the proponent. If that be the form of your motion I will deny that motion.

Mr. Herr: That is the form of the motion.

30 Proponent's counsel pray an exception to this ruling of the court.

Exception allowed; and the same is signed and sealed accordingly.

Judge.

ALICE SCHOMP, sworn on behalf of the proponent.

Direct Examination by Mr. Able:

40

Alice Schomp—Direct

Q. Miss Schomp, you reside in Clinton? A. I do. I board at the hotel.

Q. Speak a little louder. A. I don't live there, I board at the hotel.

Q. Whose hotel? A. Mr. Able's, the Union Hotel.

Q. How long have you boarded at that hotel? A. About seven years; not consecutive years.

Q. How long consecutively—the last consecutive 10 years you have been there? A. Since 1907.

Q. Did you know Mrs. Kate Able? A. Yes.

Q. How long did you know her before her death? A. Since 1907.

Q. Do you know her daughter, Mrs. Gutmann? A. I do.

Q. Do you know her son, Mr. Able? A. I do.

Q. Is that his hotel where you board? A. Yes.

Q. Had you had a conversation with Mrs. Abel within the last two years before her death? A. Al- 20 most every day until she was taken sick.

Q. Did you have any conversations with her where- in she spoke about either of her children? A. I did.

Q. How long ago was such a conversation held? A. As I said, every day up until the day she was taken sick.

Q. You had a conversation wherein one of the chil- dren, or both of them, were mentioned? A. I think nearly every day; three times a week, I think I am safe in saying. 30

Q. From the time she was taken sick? A. Up un- til the time she was taken sick.

Q. And how long prior to the time she was taken sick were these conversations held? A. I don't quite understand.

Q. You say the conversations with you relative to her children or one of them— A. Yes.

Q. You say she talked about them up to the time she was taken sick? A. Yes.

Q. Do you mean that she did that all during the 40

Alice Schomp—Direct

time you lived there? A. I heard them both mentioned three times a week when I lived there, possibly oftener than that.

Q. Have you heard her mention the matter of a will? A. Not directly.

Q. Have you had any conversation with her relative to her daughter within three months of her death?

10 A. Yes.

Q. Will you state such conversation? A. Exactly what was said?

Q. As near as you can. A. Well, the first conversation was to the effect that she was through with her daughter because she had misused her in many ways.

Q. In what way? A. In many ways, and the effect was she had disinherited her.

Mr. Gebhardt: I think the time should be fixed a little better.

20

Q. I had stated, within three months previous to her death. She would disinherit her? A. Yes.

Q. How long was that before her death? A. That was, as near as I can remember the fourth of February that she told me that.

Q. Can you recall the day of the week? A. Saturday.

Q. Did she give you any reason why she would disinherit her? A. She did.

30 Q. In that conversation. What was that? A. She had disgraced her; she would overlook that; now she had tried to rob her.

Q. Did she state how she had disgraced her? A. She said she had forged a check for three hundred and fifty dollars.

Q. Anything else? A. She said she was collecting her rents and using them.

Q. Anything else? A. No, that is all I recall now.

40 Q. Have you ever heard her say anything about being sued or arrested? A. Yes.

Alice Schomp—Direct

Q. What did she say? A. She said she had been written a letter about a sale of a house and when she stepped off the train she was arrested.

Q. Did she tell you who had done it, or caused it?

A. She said Phoebe and Ball, is the way she expressed it.

Q. Phoebe and Ball? A. Phoebe and Ball.

Q. Did you ever have any conversation with her about the matter of her being arrested? Did she tell you she was arrested or sued? A. She termed it "arrested." 10

Q. Did you have any further conversation relative to that? A. She told me about receiving a letter about her property and the next day she said she was arrested.

Q. Did she say anything about her daughter at that time? A. Except that she was through with her; that is all. 20

Q. Are there any other conversations that you have had recently or had recently with Mrs. Able before her death where any like subject was mentioned? A. About her daughter?

Q. Yes. A. Yes. About being with her, disinheriting her. She said she could never come in the house again; that Helen, her granddaughter, should never visit her.

Q. Did she tell you why? A. Yes.

Q. State what reasons she gave. A. For the same reasons, she had disgraced her, robbed her. 30

Q. Did she say how she had disgraced her? A. Yes.

Q. What did she say that indicated it? A. She said she had been living with Mr. Ball and she had told them; Phoebe excused her actions in Plainfield, that Ball had lived in her house.

Q. Did you hear Mrs. Gutmann and her husband, Dr. Gutmann, ask to come to the hotel in Clinton at the time Mrs. Able was sick? A. Yes. 40

Alice Schomp—Cross

Q. Do you know whether they were sent for or not?

A. Yes.

Q. Who sent for them? A. Mr. Edwin sent for them.

Q. How do you know he sent for them? A. I wrote the telegram.

Q. Was the telegram written in Mrs. Able's bedroom? A. Yes.

10 Q. Did she hear any of the conversation? A. I don't just remember. I think she did. You mean Mrs. Kate Able?

Q. Yes. A. Yes, she did.

Q. What did she say? A. She said, "Don't send for her; she can't come."

Q. What did she say? A. "Don't send for her; she can't come."

20 Q. How long before her death? A. That was Monday morning, I think about half-past four, when I went home from school.

Q. Was Mr. Able there? A. Yes.

Q. Did he hear her say that? A. Yes.

Q. What did he say or do after she said that? A. He said, "I feel she ought to be here."

Q. Was the telegram sent after that? A. Yes.

Cross-Examination by Mr. Gebhardt:

30 Q. No doubt in your mind, Mrs. Schomp, that this was Saturday, the fourth of February? A. No doubt at all, no.

Q. And what time of day? A. When she was talking with me?

Q. Yes. A. I should say about nine o'clock in the morning.

Q. No doubt about that? A. No, because it was after breakfast.

Q. You have no doubt of it? A. We used to have breakfast at eight o'clock. It was right after
40 breakfast in her room.

Alice Schomp—Cross

Q. Think a moment and see if you want to change your testimony with reference to the time of day. You recollect it as being after breakfast, nine o'clock in the morning? A. After breakfast.

Q. About nine o'clock in the morning? A. Yes.

Q. You would fix it somewhat by the fact that it was Saturday and you didn't have to be in school? A. Yes. I would make this one change, Mr. Gebhardt, 10 it was the Saturday after her first illness.

Q. I don't care anything about that. In that conversation you say that she said to you that she had disinherited her daughter? A. Yes.

Q. No doubt about that either, is there? A. No, sir.

Q. Are you sure about it? A. Sure.

Q. Was it at this time she talked about this forged check? A. No, it was before that.

Q. How long before? A. I think it was three weeks, 20 in January, when she came there.

Q. And when did she say the check had been forged? A. About two years before; not quite probably.

Q. Two years before that? A. I think so. I am not positive, some time before.

Q. Now, going back. From the time she told you the story of the forged check, two years before, she and her daughter had been on good terms, had they not? A. From 1910 as far as I know, they were.

Q. In other words, what I want to know is after 30 the forgery of the check, for a considerable time, they were still on good terms? A. To all appearances, except what she told me.

Q. As far as you knew, you didn't hear until January before she died that there was a disagreement about the check? A. That was the first I heard about the check.

Q. Had you noticed any change in Mrs. Able toward her daughter before the conversation in January? A. 40 Yes.

Alice Schomp—Cross

Q. Did you see this letter that was written Mrs. Able to come down there? A. No.

Q. You don't know there was such a letter do you? A. Only what she told me.

Q. Do you know, Miss Schomp, that Mrs. Able was very fond of her granddaughter, Helen, don't you? A. Yes.

10 Q. And that she was the only grandchild that she had? A. Yes.

Q. Did she claim that Helen had anything to do with this disagreement? A. No.

Q. And still she said to you at this conversation on the 4th of February, that Helen should never visit her again? A. Never visit her daughter Phoebe.

Q. I may be wrong about that. As I remember it, you said that Mrs. Gutmann should never enter the house? A. Should never come in the house of Kate

20 Abel, and Helen should never go to see Mrs. Gutmann.

Q. (By the Court): Helen is the daughter of Edward Able? A. Yes.

Q. I understand you to say you never had any conversation directly with Mrs. Able in reference to her will. A. Not directly.

30 Q. How long had Mrs. Able been in the Edwards Hotel, living there before she died? A. They moved in April, 1910, if I remember correctly. They lived there before that from 1907 to 1908.

Q. Did you ever hear of any disagreements between Mrs. Able and Ed? A. I did not.

Q. How is that? A. I did not.

Mr. Able: If your Honor will permit one to two questions that were previously omitted.

The Court: Yes.

Alice Schomp—Re-Direct

Further Direct Examination by Mr. Able:

Q. Miss Schomp, after the conversation which you had with Mrs. Able on February 4th, 1911, did you ever mention the fact that she had disinherited her daughter?

Mr. Gebhardt: Object to that as a leading question. 10

Q. Did you ever have any conversation with respect to her property after February 4th, 1911? A. I don't know how to answer that. She asked me if I thought a will properly signed by two people would hold good.

Mr. Gebhardt: Fix the time.

Q. When was that? A. The last of January, and again the first week of February. The last part of January and the first week in February, I think it was. 20

Q. Did she ever say anything to you after February 5th? A. Yes.

Q. State the conversation. A. It was about the same—

Mr. Gebhardt: Objected to.

The Court: On what grounds?

30

Mr. Gebhardt: On the ground that he is trying to have this witness make a verbal statement of what the contents of this written instrument were.

The Court: Overrule the objection.

(Exception to caveator).

Q. State the conversation. A. She had at least three times such a conversation with me. "Do you 40

**Alice Schomp—Re-Direct—Re-Cross
Mary Stanton—Direct**

believe in writing a will?" "I said, "Yes." "Who ought to write the will?" I said, "I suppose a lawyer." She said, "Have you a will? How many people ought to sign a will? Do you know whether a will signed by two good witnesses would hold?"

Q. Did you have more than one conversation of that kind? A. At least three.

10

Re-Cross-Examination by Mr. Gebhardt:

Q. You can't fix the time these conversations took place? A. Well, one was the week including the 16th of January, it was the first one.

Q. How do you fix the time? A. Because I came home from the hospital on the 16th.

MARY STANTON, sworn on behalf of proponent.

20

Direct Examination by Mr. Able:

Q. Mrs. Stanton, where do you live? A. Phillipsburg.

Q. Did you know Kate Able in her lifetime? A. I think I should, I am a sister of hers.

Q. Have you ever had any conversation with your sister? A. Yes, we had a conversation several times together.

30

Q. Relating to any of your family? A. Yes, sir.

Q. Have you had such conversation within the last three years we will say? A. Well, we held very good conversations together when sister Sue was buried.

Q. When was that? A. That was in July, I think, 1910, but I couldn't call the day.

Q. Will you repeat that conversation, as near as you can, Mrs. Stanton? A. Well, while we was at the funeral, after my sister was lowered in the grave her and I took a walk. She said, "I want to talk to you."

40

We went around talking and then we started on the

Mary Stanton—Direct

will business. She says to me, "Has Perry got a will"—that is my husband. I said, "Certainly he has." I says, "Kate, ain't you made your will yet?" She says, "No, but I am going to." I says, "Don't put it off too long." "I says, "Today we are alive, tomorrow somewhere else." I says, "You know when people are gone sometimes things ain't as they should be. You ought to make a will." She says, "I am going to make will." She says, "I am not going to will Phoebe a damn cent"—if you want the conversation between us you will get it. Then we went on to talk; I says, "Kate, if you don't make a will, when you are gone your money will go like chaff before the wind." She says, "I am going to make a will; I am not going to will Phoebe one cent, as that good-for-nothing whoremaster of a Ball to get it." That is the language she used, and I use it also. Then lots of things were brought up between her and I and I wouldn't repeat no place. 10 20

Q. Did they relate to the children? A. She said she was going to give Eddie all her money. Will it all to him, and Phoebe shouldn't get a cent.

Q. When was this? A. This was the day my sister Sue was buried.

Mr. Gebhardt: Fix the time.

Mr. Herr: 1910. 30

Witness: 1910.

Q. When before that did you have a conversation with your sister? A. Well, we held several conversations, I can't just count them. When she came to my place. She to my place once and told me the bank people said to bring her bank book to them and settle up. She said, "Will you go with me to the bank?" I said, "I will." We went down and stepped up to the 40

Mary Stanton—Direct

window. Mr. A. L. Riley was at the window. She says, "What is wrong with my book?" He says, "Your daughter was here and drew three hundred and fifty dollars." Well, I didn't know what to do with my sister for a little bit.

Q. Just state what happened and what was said by your sister? A. She didn't know what to do for that amount of money.

10 Q. What did she say or do? A. She said, "Mr. Riley, I never sent her to get any money. I never sent no check. I told you time and again not to let anyone have any money unless I came myself with my book." "He says, "I did hesitate, but she insisted on it, so we let her have it."

Q. What did she say and do then? A. He said if she wasn't willing to take it off her book they would take care of the other party. He told my sister if there was anything wrong they would take care of the party. If she cared to they would put her behind bars, and take care of her there.

20 Q. What did she say? A. She stood there and cried. Finally she concluded to let them take it off the books. Mr. Riley handed her a letter to give to her daughter when she got home. When she went out of the bank we crossed back to go to Easton—

Mr. Gebhardt: Has she fixed the time?

30 Mr. Herr: Within the last few years.

Witness: A year or two before she died.

Mr. Gebhardt: I would like to know the date.

Witness: I can't tell you; before she died.

Q. Fix the time, as near as you can, if you can fix it.

A. I don't know whether I could or not. Mr. Riley
40 is here, I think he can fix it. I think, probably, three

Mary Stanton—Direct

years before she died. I wouldn't say; it took place in the First National Bank of Phillipsburg.

Q. Have you had any conversation with your sister since then? A. Yes.

Q. What was the nature of this conversation, relating to the family or property in any way? A. Both relating to the family and property. Spoke well to me of Ed—she never said "Ed," always said "Eddie." 10

Q. Mrs. Stanton, you were about to relate some further conversation relating to the family of your sister, or her property, and I ask you if you will kindly proceed to state it.

Mr. Gebhardt: When was it?

Mr. Able: She said since that time—since the bank affair. 20

Mr. Gebhardt: I object unless the time is fixed nearer than that, that was three years before her death.

Witness: It was just a short time before she died that I saw her the last time.

Q. We will take that— A. I saw her and we were talking.

Q. What was that conversation? A. Well, the conversation was, she didn't intend for Phoebe to have one bit of her property, living as she had done. She had disgraced her and all her folks the way she was living. 30

Q. Did she state in what the disgrace consisted?

A. Of course, having that man in the house.

Q. Did she state who? A. Yes, she said living there with Ball.

Q. What was said, anything else? A. Yes, she didn't intend for Phoebe to have one cent of her property or money. 40

Mary Stanton—Cross

Q. That was within two or three months before she died? A. Yes.

Q. Did you have any other conversation with your sister? A. We did several years ago, not so lately.

Q. Within the last year or two? A. Yes.

Q. I want any conversation within the last year or two.

10

Mr. Gebhardt: The woman having died a year and a half ago this couldn't be a year or two.

Q. You have stated about all of the conversations? A. About all we have had lately together.

Q. I want to ask you another question. While you were at the funeral of your sister Susie, did you notice whether your sister Kate had a conversation with her brother Silas? A. No, I couldn't tell you.

20 Q. How long did you remain with her? A. With Kate?

Q. Yes. A. A great deal. After we were at the hotel they were talking; what their conversation was I couldn't tell you.

Q. Did you see them go out of the parlor into the hall? A. That I don't recollect.

Cross-Examination by Mr. Blatz:

30 Q. You won't say your brother Mr. Rouland, Rouland is a brother? A. Yes.

Q. —and your sister didn't have a conversation at the time of that funeral? A. No, I didn't say they didn't nor I won't say they did. I saw them talking together, but what it was I don't know. They were talking the same as we were all talking.

Q. What do you mean? A. Whether he called her in the hall or not I wouldn't say.

Q. You saw them talking together privately? A.
40 No more than the rest.

Mary Stanton—Cross

Q. Were you around? A. We were all together shaking hands and passing the time of day.

Q. Were you and your sister in the same carriage riding to and from the funeral? A. Just two.

Q. Two in the carriage? A. Just two—it wasn't a carriage.

Q. You walked? A. Walked to the cemetery and walked back.

Q. And who was ahead of you? A. The nearest friends were ahead of us—family. 10

Q. Your sister was with you? A. We wasn't talking.

Q. You were talking after? A. Talking in the cemetery. She said, "I want to talk to you." We went by the graves and went by ourselves.

Q. You want me to understand that while your sister's body was being lowered in the grave you and your sister Kate were talking in the cemetery and she was telling you these things? A. After she was lowered in the grave we took a walk. 20

Q. After she was lowered and the dirt put in? A. We never stayed at the grave when they were putting the dirt in.

Q. What part of the cemetery did she take you to? A. The grave was here (indicating), we turned around and walked back this way (indicating), and passed the plot where she used to own.

Q. What was the first thing she said to you? A. 30 She said, "We will have to help bury Susie, I suppose."

Q. Who were you burying at this time? A. My sister, she was poor.

Q. Which sister? A. Susie. They were very poor people.

Q. That was the first thing she said? A. That is what she said to me. Then we were talking. I said "Kate"—we were talking about wills, about her giving a plot of ground to her sister. But as I understand her she didn't give it to her. We were talking about 40

Mary Stanton—Cross

the will business. She says, "Have you a will?" I says, "No, I ain't, but Perry has one.

Q. That was the first thing? You asked her if she had made a will? A. She said she hadn't but was going to.

Q. That was back in 1910? A. Yes.

10 Q. How long did you stay at the cemetery? A. Took quite a little walk and then walked back as far as Harry Able's home. Then we stopped the conversation because we took his mother down to the hotel.

Q. Kate Able told you her son Ed was living in New York? A. She didn't say Ed was in New York.

Q. Didn't she at any time tell you her son Ed was living in New York? A. No, sir, she did not.

Q. At no time? A. No, sir.

Q. Do you know he was living in New York? A. No, sir.

20 Q. You didn't know he had lived in New York? A. No, sir.

Q. Had you lived in Plainfield? A. No, sir, never to Plainfield in my life.

Q. Did she ever say anything to you about Ed? A. Nothing more than she always called him "Eddie" nothing was said about Eddie.

Q. Did she tell you he was living with a woman in New York? A. No, sir, she never said a word to me.

30 Q. How many times did she tell you that she was going to make a will and leave everything to Ed and not a cent to Phoebe? A. She told me time and again.

Q. Did she tell you ten times? A. I didn't count them.

Q. Did she tell you eight times? A. Several times.

Q. How many times? A. I couldn't tell you.

Q. Yes, you can. A. I cannot. I didn't keep a memorandum. If I noted this thing and put it down every time I would have a great many more things to

40 tell you than this.

Mary Stanton—Cross

Q. When was the last time that she told you she was going to give everything to Ed and nothing to Phoebe? A. I couldn't just say, but she told me since the funeral.

Q. That was in July, 1910? A. Yes. I saw her I guess, about a year after.

Q. Whereabouts? A. She was at my house.

Q. The first time she told you was about five or six 10 years ago? A. Yes, she told me several times.

Q. The first time was five or six years ago? A. Yes. I would say all of that, since she has been to Clinton.

Q. Was it five or six years ago? A. I should judge four years ago, four or five.

Q. From that time she kept telling you— A. Every time we came together that was our conversation. She didn't intend for Phoebe to have one cent. The other word she used, too.

Q. Phoebe and her mother got along nicely? A. 20 No, sir; she never spoke well of Phoebe to me.

Q. You don't like Phoebe? A. No, I don't. I am no relation to her; remember that from this day on, and haven't been for years.

Q. You like Eddie? A. Yes, Eddie is all right, but if I had anything against him he would get it just the same.

Q. You don't know anything about the relations between Kate Able and Phoebe when they were living in Plainfield? A. She told me enough. 30

Q. There wasn't any unfriendly feeling at that time? A. Then I was more against Phoebe from what her mother told me.

Q. Her mother lived with Phoebe and paid three dollars board? A. Yes, but she got away.

Recess from twelve to one o'clock.

John Carey—Direct

AFTER RECESS.

JOHN CAREY, sworn for the proponent.

Direct Examination by Mr. Able:

- Q. Mr. Carey, where do you live? A. Clinton.
- 10 Q. And your business is what? A. Paper-hanger.
- Q. Did you know Kate Able? A. Yes.
- Q. How long did you know her before her death?
- A. Ever since she moved to Clinton, probably eight or nine years.
- Q. Did you know her well? A. I think so, I worked with her right along in the hotel. She was always around where work was going on.
- Q. Did she ever have any conversation with you relative to any disaffection in her family? A. Yes, she has
- 20 talked some about it.
- Q. Did she ever say anything to you about her daughter? A. Phoebe?
- Q. Yes. A. Yes.
- Q. Did she ever say anything to you about her property, or her intentions as to her property after her death? A. Yes, we talked about that.
- Q. How long ago were such conversations held?
- A. I think the first year she moved there I done some work there.
- 30 Q. How long ago? A. I don't know when she first moved there, eight or nine years ago.
- Q. In 1905 or 1906, I think it was. A. The first year. I was doing up the house all through, paper-hanging.
- Q. Well, did you have a conversation with her at a later time than that? A. Yes, talked different times.
- Q. How late a conversation did you have with her about her family affairs or any intention of disposing of her property? A. After they moved back the sec-
- 40 ond time.

John Carey—Cross

Q. Where? A. The hotel there.

Q. State how long ago that has been. A. I think a year and a half, the second time.

Q. Relate the last conversation after she moved back. A. That was after her daughter had her arrested in Plainfield.

Q. Whatever she said to you please state. A. She said she wouldn't give Phoebe one damn cent of her money; she had done with her. 10

Q. Where was this conversation held? A. Where I was working in the room.

Q. Was there anybody there besides you? A. No. she was always there when any work was going on.

Q. Did she tell you anything further; any reason why she would not leave her daughter a cent? What did she say? A. She had her arrested and she was done with her. When she said she was done she meant it. 20

Q. Did she speak in a determined manner? A. She always spoke that way. When she said a thing you knew pretty near what she meant.

Q. Did she detail any more specifically in her conversation her reason for making that statement? A. I don't know as she did. In the way of walk she brought it up. It was none of my business, I didn't pay any attention much.

Q. Did she say anything after this time? A. I don't think she did. 30

Q. Can you give us the date? A. Five or six weeks before she died. The last work I was doing there.

Q. You say the other conversation you had was about the time they moved there? A. When they first moved there; the first year they moved there, I don't know how long ago it was.

Cross-Examination by Mr. Gebhardt:

Q. What did she say to you about her family, Mr. Carey, at the first time you talked to her, which you 40

Catherine Lacey—Direct

say was the first year she lived in Clinton some eight or nine years ago? A. The first time she moved there. She was talking then like—

Q. (Question read). A. All she said then, she was talking about the two, Phoebe and Ed, she was going to let each of them have the money equally.

10 Q. You say this last conversation was five or six weeks before she died? A. Yes, some time after that arrest in Plainfield.

Q. How long after? A. I don't know how long after.

Q. About how long? A. About six weeks before she died. That was the last time I was there doing any work.

Q. Have you a book showing the last work you were doing there? A. No.

20 Q. You have given it to us the best you can? A. I should say about six weeks. I wouldn't state positively six weeks, about that.

Q. Do you know when she died? A. No, I don't know when she died—in April.

Q. The 12th of April, it has been testified. A. Twelfth of April. Well, this was in March, doing the spring papering.

Q. In March. A. Yes.

Q. Are you sure it was in March? A. Yes.

30 CATHERINE LACEY, sworn on behalf of proponent.

Direct Examination by Mr. Able.

Q. Mrs. Lacey, where do you live? A. Plainfield.

Q. Did you know Mrs. Kate Able before she died? A. Yes, sir.

Q. Did you know her son, Edwin S. Able? A. Yes, sir.

40 Q. Do you know her daughter, Mrs. Gutmann? A. Well, I have seen her.

Catherine Lacey—Direct

Q. What is that? A. I have seen her a couple of times.

Q. How long ago has it been since you had any conversation with Mrs. Kate Able? A. I had some conversation since about a month before she died.

Q. Before she died? A. No much.

The Court: Speak a little louder.

10

Witness: Only about some business between me and Mrs. Able was what we talked about.

Q. Some business transaction? A. Yes.

Q. During that conversation was anything said about her family? Any particular member? A. I don't think at that time there was.

Q. Have you had any conversation with her as to her family relations? A. I don't think at that time; I 20 wouldn't say.

Q. Have you ever had any conversation with her about her family? A. While she was living in Plainfield some time ago.

Q. How long ago? A. Over two years ago.

Q. Was it about the time she moved from Plainfield to Clinton? A. I think she was going to move then.

Q. Did she say she was going to move? A. Yes, 30 sir.

Q. Will you tell us this conversation you had? A. Well, she told me she didn't want to leave Plainfield only for some trouble between herself and her daughter, I think.

Q. Did she state the trouble? A. A party, I think.

Q. How is that? A. She didn't like how she was living, something like that.

Q. She didn't like how she was living? A. Yes.

Q. Anything more? A. Well, there wasn't much 40 more.

Catherine Lacey—Cross
Laura Burd—Direct

Q. Did she say how she was living? A. Well, she said she was having somebody staying with her.

Q. Did she say who it was? A. Mr. Ball, she says.

Q. Did she say any more? A. I don't think she did at the time.

Q. Did she say anything about making a will? A. No, sir, she didn't say that to me.

10 Q. Did you have any conversation prior to that time before this time? A. Before that time?

Q. About the same subject? A. No, sir, it was not.

Q. What was the nature of the conversation? A. Well, it was something about make a trade upon a mortgage, Mrs. Deitrich had a mortgage for a year and Mr. Ball was to trade it off for her for some house in Plainfield; I don't know where.

Q. Did she say anything about her family? A. No, I don't think she did. The first time Mr. Ball kept
20 some money from her.

Cross-Examination by Mr. Gebhardt:

Q. Did she say also Mr. Ball kept some money because she owed it to him for making a sale or exchanging property? A. She didn't tell me that.

Q. Do you know Mr. Ball did do her business? A. I suppose he did.

Q. You know he exchanged property in Blooms-
30 bury for property in Plainfield for her? A. Yes.

Q. And he did it as an agent for her? A. I suppose so.

LAURA BURD, sworn on behalf of proponent.

Direct Examination by Mr. Herr:

Q. Mrs. Burd, where do you reside? A. Plainfield.

Q. You were acquainted with the testatrix, Mrs.
40 Able, during her lifetime? A. Not all her lifetime.

Laura Burd—Cross

Q. You knew her in her lifetime? A. Yes.

Q. How long had you known her previous to her death? A. About seven years, I think.

Q. Was she at your place of business in Plainfield about the time the suit was brought against her by Mr. Ball? A. Yes, sir.

Q. That is true? A. Yes, sir.

Q. You had a conversation with her? A. I did. 10

Q. State what the conversation was. A. She came into my place of business and she was crying. I asked her what was the matter and she told me Mr. Ball had written her a letter to come to Plainfield and what train to come on, that he had a customer to buy her house on Second street. When she got there the constable served a summons on her.

Q. What else did she say? A. I don't remember all she said; that she told me was the matter.

Q. What did she say about her daughter, Mrs. Gutmann? A. She said it was as much her as Mr. Ball. 20

Q. Anything about the will? A. I said to her, "There is so much money spent on cases you should not leave somebody fight over what you got." I said, "I believe if you die today you haven't got any will." She said, "I have."

Q. What else did she say? A. I guess that's all she said of any importance. I don't remember all, but I remember that very well.

Q. Did she say any more in connection with her will and her daughter Phoebe? A. I don't just recall what she said. 30

Q. Did she say anything about her money ever coming to Plainfield? A. She said, "Not a cent of my money will ever come to Plainfield."

Cross-Examination by Mr. Gebhardt:

Q. This was in January? A. The last of January or first part of February. I think it was the first part of February. 40

Laura Burd—Cross

Q. The summons is here, Mr. Lacey, I would like you to state as nearly as you can. It was the day the summons was served? A. She was there the day the summons was served and she was to appear before Judge DeMeza later, and I saw her both times. She came to my store and waited until near train time.

10 Q. Did she say a summons was served on her, or she was arrested? A. She said she was arrested because she didn't understand a summons.

Q. She thought she had been arrested? A. Yes, she said she was arrested.

Q. She wasn't, was she? A. I think you call that thing arrested.

Q. You learned afterwards that just a summons had been served on her? A. I learned it at the same time.

20 Q. That it was only a summons? A. I thought that was what it was.

Q. You think you knew her seven years before her death? A. Yes, I think so. I knew her all the time she lived in Plainfield, and knew her before she lived there.

Q. I understood you to say this conversation, the first conversation with her, that she said Mr. Ball sent this letter to her? A. Yes.

Q. Are you sure now she said, "Well, I have a will"? A. I know it.

30 Q. Where did you see her that day? A. In my store.

Q. Where is your store? A. 153 East Front.

Q. Where is that with reference to the station where she got off the train? A. About three blocks, I think, from the station.

Q. Did she have a summons with her? A. I don't know.

Q. Well, she was very much excited, wasn't she?
A. Very much hurt.

40 Q. And crying? A. She did.

Jacob Hulsizer—Direct

Q. For the summons had just been served on her?
A. It had. She said she was just arrested, didn't call it a summons.

Q. It must have been due to the summons being served upon her? A. That was one time, and she was to my place when she was taken before Judge DeMeza.

Q. Was it the day she was just arrested, was that the day she said she had a will? A. I don't think so, I think it was the last time I was talking with her, I think the last day. 10

Q. Are you sure about it one way or the other, or are you guessing? A. I know she said it.

Q. Did she say it on the first day you saw her? A. No, I didn't say anything to her about it because she was feeling very bad.

Q. She said she thought Mrs. Gutmann knew all about the transaction? A. She did, so she said.

20

JACOB HULSIZER, sworn on behalf of proponent.

Direct Examination by Mr. Herr:

Q. Where do you reside, Mr. Hulsizer? A. Clinton.

Q. How long have you resided there? A. Ten years.

Q. What is your business? A. Selling.

Q. Did you know the testatrix, Kate Able, in her lifetime? A. Yes.

Q. How long have you known her? A. Twenty-five or thirty years. 30

Q. Where did she reside the last few years of her life? A. Clinton.

Q. How far from you? A. About three hundred yards.

Q. How frequently did you see her? A. Probably two or three times a week.

Q. How intimately did you know her? A. Very.

Q. During the two years previous to her death did you have any conversation with her about her daughter 40

Jacob Hulsizer—Direct

Phoebe? A. She used to call me in very often and talk with me and ask me different questions about her business, and so on.

Q. Tell us the first conversation you can recall in regard to her daughter.

The Court: You mean, when it was?

10

Mr. Herr: Yes, when it was and what it was.

Q. I mean within two years previous to her death? A. I couldn't tell when this was; it was kind of a daily occurrence. We talked over matters and things; I was well acquainted with her, and she was quite a one for telling her troubles to me. She even sent out for me to come in and talk matters over.

Q. Did she tell you in those two years of any trouble between her and her daughter Phoebe of ill feeling? 20

A. Yes, some little feeling there.

Q. I said did she tell you? A. She told me herself.

Q. Did you ever have any communication from Phoebe on the subject or any conversation? A. No, not in particular.

Q. Give the conversation you had with Mrs. Able.

A. I wouldn't know how to commence that. I wouldn't know where to commence it.

Q. State in a general way what you remember of 30 it. A. She would send quite often for me to come in and would tell her trouble. It would be sometimes one thing and sometimes another.

Q. What was it in regard to her daughter Phoebe, Mrs. Gutmann, the caveator in this case? A. About the last of this business was—I can't commence the first part—the last of the business was she called in and told me she had made a will.

Q. When was that? A. I couldn't tell you dates, it was so frequent she called me in I wouldn't know. 40 I think this time she sent to the house for me.

Jacob Hulsizer—Direct

Q. Did she tell you more than once she had made a will? A. No.

Q. Give the conversation. A. She made a will and said she had cut Phoebe out. I said, "My God, that won't do." She said, "Yes, she don't care nothing for me, why should I care for them?" I said, "I am sorry for that." I said, "I don't think that." She said, "You know that." I said, "I don't know it." 10
We talked the matter over and she told me she had a will and she had Mr. Thompson and Mr. Leigh witness the will. She said if I was in town she would like to have me. I said, "I am awful glad I wasn't here."

Q. Did she say what disposition she had made of her property? A. Yes.

Q. What did she tell you? A. She said she had left it all to Eddie.

Q. Why did she say she had left it all to him? A. She gave different reasons. 20

Q. Repeat them. A. She said Phoebe didn't care for her.

Q. What else? A. I couldn't tell you all of them; I don't know.

Q. Did she say anything about being arrested? A. Yes, sir.

Q. What did she tell you about that? A. She gave me the devil, too, on that.

Q. Go on and tell that. A. In the first place she said—in fact, Phoebe had been writing for her to come down. She didn't reply, then, of course, Phoebe wrote to me to ask her mother to come down; which I did. I went up and told her. "Phoebe can't get up to see you, why don't you go to see her; she is your only daughter. She wants to see you and wants to see you bad. Why don't you go?" Mrs. Able began to cry and said, "She don't care for me and I don't want to." I said, "You ought to go. It is your only daughter. I don't see why you shouldn't go." She said, "I can't go." 40

Jacob Hulsizer—Direct

Q. Did she tell you why she couldn't go? A. She didn't at that time.

Q. Afterwards? A. I went over one time. I got another letter from Phoebe asking me to see her mother again to come down; and she had written Eddie's daughter.

Q. Helen? A. Helen. But she got no reply and
 10 asked me to see her mother again; which I did. I told her, "Mrs. Able, if I was in your place I would go down. She can't come up she told you." She commenced to cry. This was in the hall of the hotel. We went in the parlor. I went away—I didn't go away more than Able came in and said, "What is the trouble?" I told him all I knew. I told him the circumstances. He said, "She had no business to go." That
 20 settled that part of it. In a short time Mrs. Able sent for me to come to the hotel, she had a letter from Phoebe to come down; they had a customer for her property. Now was the time to sell her property and to come at once. I didn't go over, I was going down town. She said, "What shall I do?" I said, "If you want to dispose of that property you would go. Probably that is what Mrs. Gutmann wanted all this long time." Well, she went. That all went along nicely until she came back. She asked me to come over and then she wanted to pitch into me. She said, "It was
 30 a concocted scheme of you and Phoebe to get me arrested. I know what you was after, some trouble. Now I know what it was you got me to go down there and get into it." I had an awful time making her believe I didn't know anything about it. She wouldn't let up for a long time. I think Mr. Able came in while she was at it and pacified her, or I don't know if I would have gotten out alive.

Q. After he had pacified her, after the excitement, did you all stay there? A. I went out.

Q. Did you see her again when you had any conversation about the will? A. I don't remember much
 40

Jacob Hulsizer—Cross

about the will after that day she told me of what she had done about the will. She said she didn't leave anything to her because she didn't care for her and she didn't see why she should care.

Q. Did she say anything about Ed? A. Yes.

Q. What did she say? A. She said—I don't mention Ed because I don't know anything about him.

Q. Who did she tell you she had left her property to? A. Eddie, she said Eddie. 10

Cross-Examination by Mr. Gebhardt:

Q. You got two letters, you say, from Phoebe? A. Yes, sir.

Q. Asking her mother to come down? A. Yes, sir; asking me if I wouldn't see her mother; that she would like to see her.

Q. About that time she said she had a will and Charles Leigh and Mr. Thompson witnessed it? A. I don't know whether it was that time or after she came back, I wouldn't say about that. I remember she told me about this will, I don't know now. 20

Q. I understood you to say you called in a great many times? A. Lots of times.

Q. And she finally told you she had a will and had cut Phoebe out and that Mr. Thompson and Mr. Leigh were witnesses to the will? A. Yes, sir.

Q. You said something then about giving you the devil. Later you said you finally succeeded in getting her to go down there and she did go down, and came back and gave you the devil. A. Exactly. 30

Q. At that time that she gave you the devil was anything said about the will that day? A. I don't remember.

Q. It was before that? A. I don't remember whether it was before or after; I think it was after that.

Q. Be sure. A. I can't. I seen her so often and had conversations; I never made no note. She was quite a talker—I didn't want to know her trouble. 40

George Leigh—Direct

Q. What made her cry when you were getting her to go to see Phoebe? A. Phoebe didn't care for her, she said, and she didn't see why she should care.

Q. Did she give the fact that Phoebe wanted to see her as one of the facts of why she didn't care for her? A. No. I said it was an only daughter and as her mother she ought to see her.

10 Q. That little business was before she went down?
A. Yes, sir.

Q. In none of these conversations did she say anything about the will, about Eddie knowing anything about it? A. Yes. When she said about the will she didn't mention Eddie, didn't know anything about it.

Q. Also said she left her property to Ed? A. Yes, and I think she said she left Phoebe just enough so she couldn't break the will.

20 Q. After Mrs. Able had been to Plainfield, do you remember getting another letter from Phoebe? A. No, sir.

Q. Do you remember receiving a letter from her telling you to see her mother and tell her that she was in no way to blame for Mr. Ball? A. Yes, I think I do.

Q. And to tell Mrs. Able? A. Yes, I took the letter and showed her; I couldn't pacify her. I said, "I don't believe for a moment she would," but I could never make her believe it.

30 GEORGE LEIGH, sworn on behalf of proponent.

Direct Examination by Mr. Able:

Q. Mr. Leigh, where do you reside? A. Clinton.

Q. In this county? A. Yes, sir.

Q. Did you know Mrs. Kate Able in her lifetime?
A. Knowed her for the last ten years.

Q. Do you know Edwin Able? A. Yes, sir.

40 Q. Do you know Mrs. Phoebe Gutmann? A. Yes, sir.

George Leigh—Cross

Q. Have you ever worked about the Union Hotel?

A. I worked for them ever since they have been there.

Q. What do you do, what is your business? A. In the stable.

Q. Have you ever conversed with Mrs. Kate Able, say within the last three years of her life, relative to her family relations or to any disposition she might have had in mind to make of her property? A. All I know is what she told me. 10

Q. How long ago was that? A. Coming in the stable she said, "What do you suppose Phoebe did?"

Q. How long ago was that? A. Some time before she was taken sick.

Q. The sickness from which she died or the previous sickness? A. Before that. I think the first year they come back there.

Q. From Plainfield? A. Yes.

Q. State that conversation. A. I can't tell exactly what it was. I don't remember it. 20

Q. What was the conversation? A. Coming out she said, "What do you suppose Phoebe is doing?" and I said, "I don't know." She said, "Forged a check for three hundred dollars, and I have got to lose it. I am through with her. I'm done for good with her. She will think of it some time." I didn't have any more conversation with her.

Q. Did you have any conversation later than that? A. No. 30

Q. Did you ever hear her say anything to you about making a will? A. No.

Cross-Examination by Mr. Gebhardt:

Q. When did she say that Phoebe forged a check?

A. Didn't say when, just come out and told me.

Q. This was just a short time before she died? A. Quite some time before that; I can't tell when.

Q. Just one month, two months, three months, some- 40

Mary Kline—Direct

thing like that? A. I think there was something like that, I forget.

MARY KLINE, sworn on behalf of proponent.

Direct examination by Mrs. Able:

10 Q. Mrs. Kline you live in Clinton, N. J.? A. Clinton, N. J.

Q. Did you know Mrs. Kate Able in her lifetime?
A. I knew her for the last five or six years since she lived in Clinton.

Q. Do you know her son, Edwin Able? A. Certainly.

Q. And her daughter, Mrs. Gutmann? A. Certainly.

Q. Did you have any conversation with Mrs. Able, say within a period of two years before her death?

20 A. Well, of course, I had several conversations with her all through the time she was in Clinton.

Q. How frequently did you see her? A. Every Sunday, probably during the week.

Q. Did you live near the hotel? A. Opposite the hotel.

Q. Did you have any conversation with her in the last two years which related to her family relation?

A. Not two years, but the last year of her life.

Q. Will you please relate such conversation?

30

Mr. Gebhardt: Fix the time, please.

Q. How long before her death? A. Well, I think about in February, but I can't remember the date. I am not very good on dates.

Q. In February? A. I think it was February.

Q. Of the same year she died? A. That she died.

Q. Do you know the year she died? A. I do not remember. It was the same year, in February; she

40 died the first of April.

Mary Kline—Cross

Q. Please state the conversation? A. Well, she came in the dining room leaning on the arm of her daughter-in-law. I noticed she looked very ill. They seated themselves at the table opposite where I was. When I was through my meal I walked over and asked her what was the trouble, or matter. "Oh," she says, "trouble." I says, "Are you sick? She says, "No, worse than that." I said, "Mrs. Able, why should you 10 have trouble?" "Well," she says, "you know my daughter Phoebe is living with two men, with her husband and the Doctor. That is sufficient trouble for you." I made the reply that, of course, I thought it was.

Q. Is there any more to that conversation? A. Nothing of any account. I didn't want to enter into any conversation on that subject.

Q. If you can, state all her last conversation? A. Well, she said, "You know," she says, "she has been 20 living with Ball all these years as well as her husband. And," she says, "there will be a time when Phoebe will feel very sorry to have disobeyed me in all respects." That is the sum and substance of it all on that matter.

Q. Did you have any further conversation? A. I told her it was foolish to worry over those matters.

Q. Did you have a conversation at any other time?

A. No, one time. That was the only time she spoke to me about it.

30

Cross examination by Mr. Blatz:

Q. That was the only time she spoke to you about family troubles? A. That was the only time. I am not the kind to hunt up trouble.

Q. Did she say anything about her son, Ed? A. Not at that time. She frequently spoke of Eddie. He always seemed to be her favorite.

Q. She never talked about him living in New York? 40

Elizabeth Hockenbury—Direct

A. No. I know nothing about her affairs in New York.

Q. Did she say anything about a will at that time?

A. No, nothing about her will.

Q. Did she complain to you, Mrs. Kline, that while Ed was in New York that he was going around with another woman? A. No, sir, not a word.

Q. At that time? A. Never a word.

10 Q. Or at any other time? A. No, sir.

Q. This was the only time she ever said anything about Phoebe? A. This was the only time I had any conversation in regard to her children.

Q. And you had been talking with her two or three years? A. Yes, sir.

Q. And never at any time, other than this time, had she said anything detrimental to her daughter or son? A. No.

20 Q. You were very confidential with her? A. I don't know as I would say "confidential," only neighborly.

Q. You saw her Sundays? A. I saw her every Sunday. Took our dinners there; that is why I would say every Sunday.

Q. This was in February she told you? A. I think it was in February.

ELIZABETH HOCKENBURY, sworn on behalf of proponents.

30

Direct examination by Mr. Able:

Q. Mrs. Hockenbury, where do you live? A. Here in Flemington.

Q. Were you a sister of Mrs. Kate Able? A. I certainly was.

Q. Did you ever see your sister within a period of two years before her death? A. Yes, quite often see her.

40

Elizabeth Hockenbury—Direct

Q. At such times you would have conversations about family affairs? A. No, sir.

Q. You did have conversations together? A. Well, sometimes. She never told me anything of home affairs, or I never pried into them.

Q. Did you ever have any conversation with her wherein the subject of her children were mentioned?

A. Nothing, other than mentioned them; because I 10 didn't think it my business to interfere in her family. I never asked her any questions.

Q. Did she talk to you about her daughter Phoebe?

A. Not a great deal; no more than, she never had much pleasure with Phoebe. She didn't treat her as she should treat her mother.

Q. When was such conversation held? A. I don't recollect the time.

Q. Were you present at Clinton during the last illness of your sister? A. I was there two nights before 20 her death.

Q. While you were there did she say anything about either of her children to you? A. She didn't say nothing until the night Phoebe came there.

Q. What did she say? A. I was out in the hall when Phoebe went in the sick room. When she came out I went in. She said, "What is Phoebe doing here. I didn't want to see her." I didn't make no reply; I sat down by her bed. She said, "I tell you, I have made a will. I didn't leave her nothing, because she 30 forged a bad check on me against the bank for \$350. That is all I want her to have." The next morning as I took the train to go away they come for me. I went back to the house and she died in a few minutes. That is the last words I said to her and it is the last she said to me.

Q. Did she at that last conversation, or any conversation you may have had preceding that one within a reasonable period of time, tell you why, or give you any reason why she didn't want to leave her daughter 40

Elizabeth Hockenbury—Cross

anything? A. Only at that time; that was the only time I knowed she had a will.

Cross-Examined by Mr. Gebhardt.

Q. When did you first arrive there in her last sickness? A. I think it was on Monday morning. They
10 'phoned down for me to come up, that she wasn't at all well; and I went up during the day.

Q. In the afternoon? A. In the afternoon I think, about noon when I got there.

Q. How did you go—what road? A. On the cars, on the Lehigh Valley, I stayed all night.

Q. You wasn't there in the afternoon? A. No. I didn't take no account; didn't think this thing would occur.

Q. You stayed all night with her? A. Stayed all
20 night.

Q. When did the conversation take place? A. Why, Wednesday morning.

Mr. Able: Will your Honor permit another question?

The Court: You may ask it.

By Mr. Able:

20

Q. Mrs. Hockenbury, it has been testified by Mrs. Gutmann on the stand that you said to her, "You have killed your mother." What did you do that for? A. I don't remember ever saying that word. I said she was a woman who died with a broken heart. I don't thing I said any more.

Q. Who did you say that to?

(Objected to.)

40

A. L. Riley—Direct

Q. You didn't say any such words to her? A. I don't think I said any such words to her.

Q. What did you say to her—Mrs. Gutmann?

(Objected to)

(Objection sustained)

A. L. RILEY sworn on behalf of proponent. 10

Direct-Examination by Mr. Able.

Q. Mr. Riley, where do you reside? A. Phillipsburg, New Jersey.

Q. What is your present occupation? A. I am a clerk in the Warren Foundry & Machine Company.

Q. What was your occupation previous to your present one? A. Assistant cashier in the Phillipsburg National Bank. 20

Q. How long did you occupy such position? A. I was with the bank twenty-three years. I don't recall how long I held that position.

Q. Did you know Mrs. Kate Able? A. In a business way, yes.

Q. Have you ever seen her write? A. Yes.

Q. Have passed upon her signature in that bank? A. I have.

Q. With what frequency? A. Probably half a dozen times. 30

Q. And during the period in which you were engaged in service in the bank, was it your business to compare signatures? A. It was part of my value to the bank.

Q. For how long did you do that class of work? A. Well, all the time I was there?

Q. Twenty-three years? A. Yes.

Q. Have you ever made a study—have you given it particular attention, the question of handwriting and 40

A. L. Riley—Direct

signatures? A. well, no, except as it came to me in a business way. I didn't make it a profession, but part of my value to the bank was my ability to see if checks were properly signed.

Mr. Able: Do you want to cross examine the witness as to his qualifications?

10

Mr. Gebhardt: No.

Q. I show you a book, which is endorsed signature book, Exhibit No. 1, Bloomsbury National Bank, and direct your attention to the name of Kate Able therein written in purple pencil apparently, and would ask your opinion as to whether or not Kate Able wrote that signature?

20 The Court: Are you going to attack the standard?

Mr. Gebhardt: I have no objection to his going ahead.

Q. Witness is shown paper, proponents' exhibit 4 which it is admitted by the caveator contains the true signature of Kate Able. Witness is also shown exhibit 3 proponent's, for identification, purporting to be the correct signature. What have you to say as to the 3) standard in the book being the same signature as the signature upon the two papers which you have before you? A. It is not the same, unless it was made at a very much earlier date.

Q. You are shown signatures upon some checks—

The Court: Is there any objection to those checks being marked for identification? They were shown Mrs. Gutmann as purporting to be in the handwriting of Mrs. Able's husband.

40

A. L. Riley—Cross

Mr. Gebhardt: I have no objection

(Same as marked Pro. Ex. 10 for Iden.)

Q. You are shown four checks, all four marked Pro. Ex. 10 for identification, and are asked to compare the signature on those checks with the signature upon the signature book of the Bloomsbury Bank and to state whether or not, in your opinion the handwriting in the book and the handwriting on those checks is the same? A. In my opinion it is. 10

Q. I show you Pro. Exhibit 1, and you are shown signature on that paper and asked whether, in your opinion, that is the true signature of Mrs. Kate Able, deceased? A. It is.

Cross-Examination by Mr. Gebhardt.

Q. You were the assistant cashier of a bank? A. I 20 was.

Q. Did you have in your bank a book like that (indicating) with the signature in it so the bank could identify the signatures? A. Years ago, yes.

Q. They didn't have the practice of putting signatures in that book that weren't the right signatures of persons? A. Not in my experience in the bank.

Q. Yet you say this book you looked at which was the signature book of the Bloomsbury National Bank and has what purports to be the genuine signature of Mrs. Able, was not put there by her? A. In my judgment it was not, unless it was done at a very much earlier date than the signature I am familiar with. 30

Q. You have been shown some signatures written in 1887, that is about twenty-five years ago, and then you are shown some made very recently, three or four years ago, to which do you refer?

Mr. Able: The checks were presented as the husband's signatures. 40

A. L. Riley—Cross

Q. Only the late signatures you refer to? A. In my judgment, this wasn't the writing of Kate Abel in this book.

Q. Why do you say that? A. It hasn't the characteristics of her signature as I knew it.

Q. It having been made thirty years before you knew it, you still say it wasn't made by her? A. Comparing it with the checks signed by someone else, it is
10 my judgment it was written by that person who wrote those checks, said to be her husband.

Q. You want the jury to believe, in your opinion, the husband wrote his name in that book for his wife?

Mr. Herr: Objected to what he wants the jury to believe.

The Court: Objection sustained.

20

Q. You tell us on the stand that this signature made in this book for the bank was made by the husband and not the wife? A. That is, provided the husband wrote those checks I was shown, which I do not know anything about.

Q. Suppose you hadn't them to look at? A. I would simply say that I didn't believe this was the signature of Kate Abel.

Q. What would you base your opinion on? A. The
30 difference in the handwriting.

Q. You say you saw her write about six times in her lifetime? A. I saw her signature perhaps six times, but I have seen the same signature a great many times.

Q. Did you have her signature in your book in your bank? A. Yes.

Q. How did the signature you have compare with this signature? A. Not at all.

Q. Didn't look like it? A. No, sir.

40 Q. Will you give us your opinion of what good it

A. L. Riley—Re-Direct

was to the bank it was to have a signature that didn't look like her's. It wouldn't give much aid? A. Not unless they used this signature in paying checks.

Q. What do you mean by that? A. Persons doing a banking business sometimes authorize other people to sign their checks. In that case they take the signature of the person who is going to sign the checks to authenticate the checks by. 10

Q. Do they do that when a person has the opportunity to sign their own check and sign their own name in the book? A. It is not a common thing.

Redirect examination by Mr. Able.

Q. Mr. Riley, do you recollect Mrs. Kate Able at any time disputing a check which had been paid by the bank in which you have been employed? A. I have.

Q. State your recollection about that and what she may have said, to the best of your recollection? A. Well, I have no distinct recollection of what she said, except it was not her signature and the bank should not have it charged to her. 20

Q. Do you remember any more of the conversation? A. The whole conversation—she made a strenuous objection to having been charged with the amount of the check and upon being—of course, representing the bank it was sought to persuade her she may have written it or authorized someone to do it for her and forgotten the fact, but she was positive and emphatic on not having done so. 30

Q. Was she informed who had presented the check? A. Yes, sir.

Q. Who informed her? A. I presume I did.

Q. What information did you give her about that? A. I told her if anyone else signed her name and drawn the money it would be a very heinous offense, and she should think the matter over carefully before accusing anyone. If she insisted on the return of the money 40

A. L. Riley—Re-Cross

the bank would prosecute the person who drew the check. Upon being informed the nature of the offense she asked me again what the penalty might be, and asked me to put that in writing that she might impress on the person who had done it, that it might not be repeated. That is my recollection of the circumstances.

10 Q. Did she accuse anybody there at that time? A. I don't know what she said, but she said she had authorized no one to draw the money.

Q. Who drew the money? A. Phoebe M. Gutmann.

Q. Was there anybody with Mrs. Able you observed at that time? A. Yes.

Q. Did you hear who was there? A. Her sister, Mrs. Stanton.

Q. Did you hear any conversation that Mrs. Able had with Mrs. Stanton in reference to the check? A. 20 Not that I recall.

Re-cross examination by Mr. Gebhardt.

Q. Where is this check, Mr. Riley? A. Where is it?

Q. Where is it? A. In my pocket.

Q. We would like to have the check produced.

(Witness produces check)

30 Q. Now, Mr. Riley, will you tell us, in your judgment, whether that is the genuine signature of Kate Able? A. It is not.

Q. It is not her genuine signature? A. In my judgment it is not.

Q. Why? How does that differ in any respect whatsoever from the signature presented as the signature you accept—in the slightest particular, in any way whatsoever? A. It is written in a very much easier hand from the other; apparently by a young person.

40 Q. Take the last "t" and "e" on "Kate" in the

A. L. Riley—Re-Cross

check and also the written instrument witnessed by F. J. Blatz which has been admitted to be her signature, and tell me in what respect the two letters "t" and "e" on the check are not smoother than the "t" and "e" on the check? A. No, not smoother.

Q. Just about as smooth? A. Just about alike.

Q. Now, in what respect is the word "Able" on the agreement smoother than the word "Able" on the check? A. There is no tremble about the "Able" on this check itself. 10

Q. Is it on the other? A. There is. The downward stroke on the "b," and look at the up stroke on the "A" and the final stroke.

Q. Did you notice that cross on the "A" on the check made entirely separate, a different color ink almost? On the check I am talking about? A. The pen has been removed from the paper making the signature on the check apparently, and also on the "b." 20

Q. So it evidently wasn't made all at once, the "A?" A. Evidently wasn't made all at once.

Q. Whereas the "A" on the admitted agreement was made all at once? A. It was made all at once.

Mr. Gebhardt: I would like to have this check marked as an exhibit.

Mr. Herr: If the Court please, its prohibitive force as evidence is to show the feeling of Mrs. Able toward her daughter. It don't make any difference whether that is the genuine signature or not. The Senator had the check produced, we didn't. We are willing to let it go in if he wants. 30

The Court: Let it be marked. If it is consented to be marked in evidence it will be so marked.

Mr. Herr: What we object to offering it in evidence is to show that as the genuine signature. 40

A. L. Riley—Re-Cross—Re-Direct
William F. Walters—Direct

Mr. Able: We didn't seek to prove that was genuine or not.

The Court: The check is offered and consented to be admitted.

10 (Same is marked Cav. Ex. 4.)

Mr. Gebhardt: It is plainly understood that the check is admitted in evidence.

Q. When this check first came to the bank who looked it over? A. The teller.

Q. Who is the teller? A. His name was Charles Davis.

Q. How long had he been in your bank? A. For a
20 number of years; I don't know how long.

Q. Had it been his business to pass on checks? A. Certainly was.

Q. Mrs. Able's and others? A. Yes, sir.

Q. And he passed it as her genuine signature? A. He did. As far as I know, he did.

Q. It was after the check was cashed and charged to her account this fuss arose and Mrs. Able said she didn't sign it. A. Yes.

30 Further re-direct examination by Mr. Able.

Q. Was your attention called to the check at the time it was produced for cashing? A. Not to my recollection.

Q. Have you any positive information, any direct information, of what was said or done at the time it was cashed? A. None whatever.

WILLIAM F. WALTERS sworn on behalf of pro-
40 ponent.

William F. Walters—Direct

Direct examination by Mr. Able.

Q Mr. Walters, where do you live? A. Plainfield.

Q. Did you know Mrs. Kate Able in her lifetime?

A. I did.

Q. Do you know her son, Ed? A. I do.

Q. Do you know her daughter, Mrs. Gutmann? A. I do.

Q. How long had you known Kate Able? A. About 10
three years, I think; three or four I think, something
like that—three years, I think.

Q. Have you had any conversation with her? A.
At different times, yes sir.

Q. With relation to her family? A. I had one
then.

Q. When was that? A. At the time the paper was
served on her in Plainfield.

Q. Will you state that conversation? A. Why, 20
she wrote a letter—no, she didn't, but Helen did,
that is Mrs. Edwin Able's daughter; wrote a letter to
me stating Grandma was coming down; that Phoebe
and Ball had a chance to sell the Cecilia Avenue house;
that is in Ventnor Township; that I should meet her
at the depot. I always went with Mrs. Able on any
business she had to do. She notified me ahead of time
and I went with her. She wrote this letter to come
down; I went to the depot to meet her. When I
came to the depot I seen John Manny, the constable, 30
and Mr. Ball at the depot. When I seen them there—
I don't know why I should get the suspicion—I don't
know of any of the dealing between her and Ball,
any more than they had some land deals—

The Court: Just state what occurred.

Q. What was done and said? A. She got off the
train and met me. Previous to her getting off the
train, as the train was coming in, Ball told John 40

William F. Walters—Direct

Manny to serve it on the woman that came up to me. I heard him make that remark when the train was coming over the Park avenue bridge. When she shook hands with me, John Manny served the paper on her. When he served the paper she clung to my arm. She said, "What is this, am I arrested?" I said, "No, don't you worry. I asked him if he knowed anything about it.

10 He said, "No." The agreement was to meet this party at three o'clock, I am sure at the Kensington Hotel. We went to the Kensington Hotel where the man was to be. In the meantime I was talking with Ball and found the man's name that was to be there. I knowed him; he was an insurance agent. We went to the Kensington Hotel and he wasn't there. We walked around the town; Mrs. Able couldn't sit in the hotel. We went back again, probably at three o'clock. This man wasn't in the room. We went downstairs and I found

20 this man. His name was Elliott. I brought him up. Mrs. Edward Able and Aunt Kate was there. They had a talk about the property down there. I knowed this man didn't have a dollar himself. The conversation didn't last a couple of minutes until Edward Able told the man he was a humbug and didn't have no money at all; it was a scheme to get Mrs. Able down there, and the man practically admitted it right there in the hotel. Then I went down stairs again and Mr. Able wanted to see Ball. We went around that

30 street looking for Ball. We came to Front street and on to Park avenue and we came on him so suddenly—coming into Park avenue there is a little alley—

Mr. Gebhardt: I object.

The Court: I think it is entirely irrelevant.

Q. I want to know what Mrs. Able said and what she did that had any relation to her two children. I

40 thought we would save time by letting the witness go

William F. Walters—Direct

on. What did Mrs. Able say there. A. At that point, after we left Ball we were going away. Well, she says, "Phoebe done enough in past times; this is the limit; now I am through."

Q. Did you have any conversation after that? A. Down there once after that.

Q. Did she say anything about her daughter at that time? A. Didn't say a word about her daughter 10 at all. The only thing she said to me was a will was made out.

Q. How long was that after she had been down there first? A. Probably a week, no, the first week it was adjourned on account of her being sick. After the paper was served it was adjourned on account of Mrs. Able being sick; it was the following week.

Q. What did she say? A. She said she was through with Phoebe, she done enough.

Q. The following week? A. She told me she had 20 made a will.

Q. Did she say any more? A. Not to me at that time.

Q. Have you had any other conversation which related to her daughter? A. Previous to that I had, before she left Plainfield.

Q. How long before her death? A. I think they have been there two years; it was before she left Plainfield. I would say positively, didn't keep no track. Have no necessity for keeping track. Previous to that 30 we used to go out very frequently. She told me different times and we would sit in the room and talk. She said Phoebe was acting very disgraceful to her and her family. That she had a good family and had no right to act as she had been acting.

Q. Did she tell you how she was acting? A. She told me how she was acting.

Q. What did she say? A. She said she had Ball there as man of the house, but the Doc was. At that time I never seen Doc to know him, at that time. 40

William F. Walters—Cross

Phoebe, Mrs. Gutmann, would come over to their house in the evening and we would play whist. Old Mrs. Able would come there and she told me Phoebe was very untrue to her husband. She got disgusted was one of the reasons she left there; got disgusted the way Phoebe was acting.

10 Cross examination by Mr. Gebhardt:

Q. Didn't Ed Able and Mrs. Able come together?

A. When the paper was served.

Q. Didn't they go there together? A. I can't answer that question.

Q. Wasn't he there while she was there, as far as you know? A. While I was there.

Q. When Ed left to go back to Clinton she left too?
A. Yes.

20 Q. And still she told you she left Plainfield because of the bad way Phoebe was acting? A. She didn't say that, pardon. That was the reason she left boarding at Mrs. Gutmann's on account of the indecent way she was living.

Q. You didn't refer to her leaving there to go back to the Clinton Hotel? A. No, going back to Mr. Able's house, 934 Front street; Mr. Edward Able, where he resided at that time.

30 Q. It was Mr. Able's mother's house? A. The house belonging to Mrs. Able, yes; but he was living there.

Q. In all the time she was in Plainfield she lived with Ed? A. I can't tell you that; most of the time I knowed them. I don't know what time she first came to Plainfield.

Q. How long had you known her in Plainfield? A. About three years?

Q. In Plainfield? A. No; nine months or a year.

Q. In Plainfield? A. In Plainfield.

40

Thomas Barber—Direct

Q. Most of the time she lived with Ed? A. Yes, sir.

Q. And all she did was to go back to Ed's? A. She used to visit back and forth from Mrs. Gutmann's, but she lived with Ed.

Q. Her real home was with Ed in Plainfield? A. At that time, yes.

Q. You and Ed Able are very good friends, aren't you? A. Friends, belong to lodges is the only thing that way. 10

Q. Did you not do the work of collecting the rents? A. I done it for her mother before she died.

Q. And have done it for him ever since? A. Yes. The administrator asked me to continue as I had been. Ed never asked me.

Q. You were asked to collect the rents for the property, as you had collected the rents for Mrs. Able in her lifetime and you have collected them ever since for Ed? A. Not Ed, for the administrator. 20

Q. Who is that? A. Charles N. Ready.

Q. And you have continued to collect for him ever since? A. I have up to the present time. I have had work done on the house at Plainfield, through his advice; have got a man doing the work on the house, keeping the house in repair. I collect the rents on the Cecilia place in Ventnor Township.

THOMAS BARBER, sworn on behalf of proponent. 30

Direct examination by Mr. Able:

Q. Doctor, where do you reside? A. Phillipsburg, New Jersey.

Q. You are a regular practicing physician? A. Yes, sir.

Q. How long have you been practicing? A. Thirteen years, now.

Thomas Barber—Cross

Q. You are a graduate of what college? A. University of Pennsylvania.

Q. Did you know Mrs. Kate Able in her lifetime?

A. Yes, sir.

Q. Did you attend her in her last illness? A. I was called, I think, twice in consultation; I think twice. Once I know, but I think twice, in the last three weeks
10 of her life.

Q. Will you state about what time that was—the month? A. I couldn't do that.

Q. Was it the illness of which she died? A. Yes, sir.

Q. Had you known her before that time? A. Yes, I was called in one time in consultation at Plainfield. Saw her there and have seen her once or twice before, but not intimately acquainted with her.

Q. From the examination you made and your con-
20 versation with her, what have you to say about her mental capacity? A. When I saw her in Clinton it was no different from what it had always been; no mental trouble that I observed.

Cross examination by Mr. Gebhardt:

Q. Did you know that her last sickness only last three days, not three weeks? A. It lasted more than three weeks.

30 Q. It wouldn't if she was taken sick Sunday and died early Wednesday morning, six o'clock in the morning? A. I think I saw her three days before, Senator. I haven't an exact recollection of that; I know I saw her this last illness. They gave me the history. I know, positively, she was ill longer than what I was told.

Q. What day did you come to see her first? A. I don't know.

Q. Was it Sunday or Monday? A. I don't know.

40 Q. Tuesday? A. I don't know.

Thomas Barber—Cross

Q. How many days apart were the consultations?

A. I am not definitely satisfied I made two consultations, but I think there were.

Q. Do you know which day it was? A. I don't know which day either was. I was consulted once, I think twice. I wouldn't testify it was twice.

Q. You know you weren't there the fourth of February? A. I couldn't say I wasn't; not one day I was there. 10

Q. While you were there it wasn't during her last illness. A. During her last illness.

Q. Do you know whether that was April or February? A. If they would tell me it was February I would believe it.

Q. The will purports to be signed on the 4th of February, and it is an indisputable fact that she died April 12th. A. If she died in April I was there a week before she died. 20

Q. It was not two months before she died? A. No, within two or three weeks; if I saw her twice the last time was three days before she died.

Q. If she made her will the 4th of February you do not know anything about her condition at that time? A. No.

Q. Isn't it a fact, Doctor, that she was unconscious all the time you were there in her last sickness? A. Never unconscious when I saw her; talked to me.

Q. Did she talk rational? A. Rationally as she ever did. 30

Q. You mentioned seeing her once before? A. I said I met her; I used to call on her. I could recollect the time when I had seen her in Plainfield; I called down there once or twice; there half a day at one time, between trains going from Phillipsburg to Plainfield. I can't tell, about three or four years ago, I saw her at Mr. Able's at Clinton—it might have been two years ago. 40

Harry Able—Direct

HARRY ABLE, sworn on behalf of proponent.

Direct examination by Mr. Herr:

Q. Witness is shown check dated February 25, 1900, marked Ex 6, for identification, and is asked whose signature is attached to that check? A. That
10 is the signature of Kate Able.

Q. Did you see her sign it? A. Yes; I saw her sign that.

Mr. Herr: I offer that as a standard.

The Court: It will be admitted as a standard.

Q. Witness is shown paper dated August, 1898, marked Exhibit 1; 1/2 for identification, and is asked
20 whether he saw that signature attached. A. Yes.

Mr. Herr: I offer that in evidence.

The Court: Let it be marked in evidence.

Mr. Gebhardt: What do you offer that for?

Mr. Herr: As a standard.

Q. Witness is shown paper writing purporting to
30 be the will of Kate Able, marked Exhibit 1 for identification, and is asked in whose handwriting the body of the will is? A. It is in my handwriting.

Q. When did you draw that and where? A. I drew it on the 2nd of April, 1911. It was drawn—

The Court: The 2nd of April?

Witness: Pardon me, the 2nd of February, 1911.
It was drawn in the office of myself and partner at
40 Frenchtown.

Harry Able—Direct

Q. How did you happen to draw that will? A. I received a letter from Mrs. Maggie Able.

Q. Edward's wife. A. Edward's wife.

Q. Have you that letter with you? A. I have the letter.

Q. Produce it.

(Witness Complies.)

10

Q. After you had drawn the will what did you do with it? A. I mailed it, together with a letter addressed to Mrs. Maggie Able.

Q. Did you keep a copy of that letter? A. Yes, I have a copy of that letter.

Q. Or have you the original? A. I haven't the original.

Q. Do you know where the original is? A. Only from inquiry I made. I inquired of Mrs. Able and received a reply from her about it.

20

Mr. Herr: Have you any objection to the introduction of the copy of the answer.

Mr. Gebhardt: From what?

Mr. Herr: Answer to that letter was returned with copy of the will.

30

Mr. Gebhardt: Yes, I do. I don't know what it contains or anything about it.

Q. Have you any way of getting the original? A. I was informed that they didn't have it; it was destroyed.

Q. Let me have the copy.

(Witness complies.)

40

Harry Able—Direct

Q. This you say was mailed to who? A. Mailed this letter, together with the will, to Mrs. Maggie Able at Clinton.

Q. Did you receive the will in return afterward?
A. Yes; I received the will.

Q. When did you receive it, if you can tell? A. I think about less than a week after I had made the will.

10 Q. Did you receive any communication with the will, or just the will itself? A. There was a letter with the will.

Q. Have you that? A. I have the letter; it was written by Mrs. Able and signed by Mr. Able.

Q. Written by Maggie Able? A. It was written by Maggie Able and signed by Ed. I know the writing.

Q. Was the will in the present condition when you receive it signed and witnessed? A. Just as it is today so it was as it left my hands, with the exception of the word "fourth" and the signature of Kate Able and the signatures of Charles W. Leigh and Mr. Thompson. This caret mark on the will I think, I drew, where the witnesses were to sign.

Q. After you received it what did you do with it?
A. I put in in the safe at our office and kept it there until after her death.

Q. What time? A. After her death—I did not attend her funeral is the reason I can't give it.

30 Q. I was only trying to fix the time you produced it. What? A. I filed it at Frenchtown finally. First I wrote Mrs. Gutmann to say what I had here. I had a letter from Mr. Blatz saying—

Mr. Gebhardt: What has that to do with it?

Q. I only asked what you did with the will? A. I brought it before the Surrogate at Flemington.

Q. Where it has been ever since? A. Yes, as far
40 as I know.

Harry Able—Direct

Q. Did you leave it with the Surrogate? A. Yes, it is in exactly the same condition as when I produced it.

Mr. Herr: I would like these letters to go in.

Mr. Gebhardt: I object to their being admitted. I understand you ask me to consent to their admission? 10

Mr. Herr: Yes.

Mr. Gebhardt: On the contrary, I object. One purports to be signed by Edward F. Able and by Maggie Able. There is no objection to that all because you can easily prove them.

Mr. Able: I shall not offer them unless you want to offer them yourself. 20

NOT CROSS EXAMINED.

Mr. Gebhardt: There is one thing, if the Court please I hardly know what to say about it. Mr. Able has testified he received a letter from Maggie and produces the letter. That leaves the impression on the jury that the letter was to impress him that a will be drawn, yet the letter contained that request is not offered. It seems to me that unless it is offered his 30 testimony should not be accepted.

The Court: Judge Herr was perfectly willing to have it in. This letter will be admitted.

Mr. Herr: I couldn't consent to that unless the three go with it.

Mr. Gebhardt: What letter?

Mr. Herr: The reply? 40

John W. Creveling—Re-Called—Direct

Mr. Gebhardt: Have you got the original?

Mr. Herr: We haven't the original reply. We have a copy.

Mr. Gebhardt: I will not admit the copy.

10 The Court: I cannot rule upon the copy. The two letters themselves will be admitted and marked.

Mr. Herr: The Court understands I will object to the admission of the letters.

The Court: Of course, I cannot admit them at this time under objection.

(Letter of February 2d to Harry Able marked Cav.
20 Ex. 5 for identification).

(Letter February 6th to Harry Able marked Cav.
Ex. 6 for identification).

JOHN W. CREVELING recalled on behalf of proponent.

Direct examination by Mr. Able:

37 Q. Mr. Creveling, this book that was produced by you yesterday as being a signature book, marked Exhibit 1, of the Bloomsbury Bank, containing in blue, or purple pencil the signature of Kate Able, is again submitted to you. I would like to call your attention to four checks, marked proponent's Exhibit 10 for identification, with particular relation to the signatures on these checks, and would ask you to state whether or not by comparison with the standard which you presented, those are the signatures of Kate Able? A. It
40 would seem so, yes sir; they are.

John W. Creveling—Re-Called—Direct

Q. They were written by Kate Able? A. Undoubtedly they were not.

Q. Do you know who wrote those? A. It says per her husband.

Q. After examining those signatures and comparing them with the standard which you presented, what have you to say about the signature and the standard being identical? A. I would say they are identical, 10
Mr. Able.

Q. Are they, in your opinion, written by the same hand? A. They are.

The Court: What do you mean by the "standard?"

Mr. Able: The book that was presented as a standard.

20

Q. After having your attention called to the signatures on the checks and directed again to the signature standard in the signature book Exhibit No. 1 Bloomsbury Bank, do you still say that the standard in purple pencil was written by Kate Able? A. I should say it was not.

Q. Having clarified the atmosphere in regard to the "standard" I present the will purporting to be Kate Able's will and at the same time presented to you Proponent's Exhibit No. 4 which is acknowledged to be Kate Able's signature and also present Proponent's Exhibit No. 8 for identification. You are also shown Proponent's Exhibit No. 6, being a check dated February 28, 1900, and you are asked whether or not, having the benefit of the comparison of those signatures, you would change your opinion as to the signature on the will. A. I certainly would, Mr. Able. 30

Q. Would you now say that is or is not the signature of Kate Able, deceased, on the will? A. It would seem to be the signature of Kate Able. 40

John W. Creveling—Re-Called—Cross

Q. Would you say it was her signature? A. Yes.

Cross examination by Mr. Gebhardt:

Q. Mr. Creveling, you said, as I believe, you had known this woman for thirty-five years? A. I think so.

10 Q. Nearly all of that period she did business in your bank? A. I think so.

Q. You have been in that bank all that time? A. Yes.

Q. And had seen her name on checks many times? A. I would like to qualify that. She was very slow in giving out checks, as I remember.

Q. You certainly cashed checks in the bank quite a number of times? A. She did.

Q. Signed by herself? A. We supposed so.

20 Q. "We supposed so?" A. Yes.

Q. You knew that yesterday? A. Yes.

Q. You remembered it? A. Yes.

Q. You remembered her signature yesterday, didn't you? A. I thought I did.

Q. Your judgment yesterday as to the signature on the will was founded on a comparison of the signature in the stock book and the will, wasn't it? A. It certainly was.

30 Q. Wasn't it also your recollection of having seen her signature? A. Yes.

Q. You can tell the signature of people who are used to signing checks and dealing with the bank themselves, ordinarily, without comparing anything? A. As a rule, yes.

Q. You said that signature was put in by her in the book? A. I said so. I don't believe it now, Senator.

40 Q. Why not? A. The checks submitted for comparison dated April 1, 1887; I guess it is March 28, 1887; November 30, 1886, and April 12, 1887, all say "per L. F. Able."

Margaret Able—Direct

Q. In the book there did you have that signature for her or him? A. For her, strange as it may appear.

Q. What good was it for your bank to have it done by him and not her?

Mr. Able: It is objected to.

The Court: Overruled. 10

A. She told us that was her signature, evidently.

Q. Isn't it on the paper in the book. It is on this book, left on the book; it must have been done at the bank? A. I don't know about that.

Q. It wasn't a separated paper pasted on? A. No.

By Mr. Herr:

Q. You are acquainted with the signature of Levy Able, are you not? A. That is Levy's signature, all right. 20

Q. Your judgment yesterday was influenced by his signature in writing the checks written by him were on her account? A. Yes.

By Mr. Gebhardt:

Q. The fact is you are easily fooled in the whole business? A. You certainly are, Senator.

MARGARET ABLE, sworn on behalf of proponent. 30

Direct examination By Mr. Able:

Q. Mrs. Able, are you the wife of Edwin F. Able, the proponent in this suit? A. I am.

Q. Where do you live? A. Clinton.

Q. What is the occupation of your husband? A. Hotel keeper.

Q. You reside with him at the hotel in Clinton? A. I do. 40

Margaret Able—Direct

Q. The Union Hotel? A. Yes.

Q. How long have you known Mrs. Kate Able?

A. It will be nineteen years the coming October, next month.

Q. Has she lived in the same house with you during any of that time? A. Yes.

10 Q. State how much of the time she lived in the same house with you? A. Two years she stayed in Bloomsbury in the same house and two years after that in Clinton and two years in Plainfield, and up to the time of her death in Clinton again. In number about eight years altogether?

Q. Did you have any conversation with Mrs. Kate Able, relative to her making a will?

20 Mr. Gebhardt: Objected to on the ground that while she isn't a party of record she is a party at interest, being the wife of Edwin F. Able, and therefore she can't testify as to any conversation or transaction with a deceased person under the last decision of the court.

The Court: Objection overruled.

(Exception to Caveator.)

30 Q. If you had any such conversation, will you please state it? A. Yes, I had a conversation in regard to her will.

Q. When did you have such conversation?

Mr. Gebhardt: Objected to for the same reason.

The Court: Overruled. An exception will be allowed if you desire.

40 Q. State when, as near as you can? A. The night she came home from Plainfield after this summons was served on her.

Margaret Able—Direct

Q. What did she say?

Mr. Gebhardt: I suppose I may offer one general objection to all the conversation with the deceased with reference to the will and let it so stand.

The Court: I do not like objections made wholesale. I will overrule your objection.

10

(Exception to caveator.)

Q. What did she say? A. In respect to her will?

Q. Yes. A. When she came home from Plainfield that night she told me she wanted me to write you immediately and tell you to fix up papers, that she wanted to sign everything she had over to Ed.

Mr. Gebhardt: That is objected to, of course, and exception allowed. 20

The Court: Exception allowed.

(Exception to caveator.)

Q. Was there any other conversation at the same time; any further conversation at that time with her?

A. Yes. She went over to speak with a man who swindled her down to Plainfield, falsely—

30

Q. State what she said? A. Well, just said, "Maggie, just think what they done with me now. That thieving Ball has sent for me to come to Plainfield for the reason he wanted to have me arrested. That is all Phoebe has been writing for the last few weeks to Helen."

Q. Anything further at that time? A. Well, I told her—she kept on and told me several times I should be sure and write you first thing in the morning.

Q. When she told you to write me, on her return 40

Margaret Able—Direct

from Plainfield, what did you? A. I promised I would write; I didn't say when; I told her I would write.

Q. Did you write then? A. Not then.

Q. Did you have any further conversation after that? A. Two or three times after that.

Q. State the conversations? A. I can't recall the conversation; I didn't pay attention to everything that
10 was said. Of course, she complained mostly of the way she was swindled down at Plainfield.

Q. Did she say anything further about her will before you say you wrote?

Mr. Gebhardt. Objected to.

The Court: Overruled.

(Exception to caveat.)

20

Q. As I understand it she mentioned the matter of a will to you when she returned from Plainfield; when she said she was arrested? A. Yes.

Q. Did she mention afterward anything about a will; if so, what was it and when was it? A. She didn't say a will right out. She wanted to arrange, fix up the papers; wanted to sign everything over to Ed.

Q. How often did she say that? A. Well, several
30 times, during that day when she would happen to be talking. It came up in conversation almost continually until the letter was written.

Q. Did you say you wrote the letter? A. I wrote the letter.

Q. You are shown a letter marked Caveator exhibit 5 for identification. Is that the letter which you wrote me? A. Yes, this is the letter.

Q. And after that letter was written to me what happened with relation to a will? What is the next
40 you know about the will after you wrote this letter?

Margaret Able—Direct

A. I received a letter from you stating that if Aunt Kate wanted to make an assignment—

Mr. Gebhardt: She is stating what she letter contained.

Q. Have you that letter? A. No.

Q. What did you do with it? A. It was destroyed. 10
It was around on the desk in my room several days, or may be two or three weeks. After that, along with some other old letters I was tearing up, I destroyed that letter too.

Q. Do you recollect what was in that letter; the letter I wrote? A. Yes, I remember some parts; I don't remember the letter thoroughly. I remember some parts said—

Q. I didn't ask you that. Will you state your recollection of the contents of that letter? 20

Mr. Gebhardt: Object.

The Court: Sustained.

Q. What came with the letter of which you spoke of having received from me; any enclosures? A. Yes.

Q. What was it? A. A copy of the will.

Q. You are shown a paper purporting to be the last will and testament of Kate Able, deceased, marked 30
Proponent's exhibit 1, is that the paper that was enclosed with the letter? A. Yes, this is the same.

Q. Is there anything on the paper now that was not on it when you received it? A. Yes, the names that are signed here was not on.

Q. Anything else? A. I see the word "fourth" written in different colored ink. I don't remember about it. Yes, I remember now. I put it there myself, that extra word.

Q. When this letter from me containing that will 40

Margaret Able—Direct

was received by you what did you do with the letter and the will? A. I gave it to your Aunt and read it to her, read it over twice; and she said, "That is just what I wanted; that just suits me."

Mr. Gebhardt: I desire to object on the same grounds as before.

10

The Court: Overruled.

(Exception to caveator.)

Q. Did you read the letter to her? A. I did.

Q. Did you read the letter more than once to her?

A. I don't remember about the letter, whether it was more than once or not.

Q. How soon did you read it to her? A. As soon
20 as it was received.

Q. And the will how long after it was received was it before you read it to her? A. Immediately when it came to the house I took it to her and read it to her.

Q. What was done then? A. She took it in her possession, I had nothing more to do with it until after it was signed and then she asked me to send it back to you.

Q. Where was it read to her the second time? A. In
30 her own room.

Q. How did you come to go in that room to read it to her? A. She asked me to come in.

Q. What did she say? A. She said, "Now, I want you to read this over to me once more, then I want to send it back to Harry."

Q. Was that read before or after it had been signed?
A. Before it had been signed.

Q. Can you state how long an interval elapsed between the first reading of it to her and the second?
40

Margaret Able—Direct

A. I don't just remember, but I don't think it was over a day.

Q. Do you know what was done after that—that you saw? A. After it was signed?

Q. After you read it to her the second time, when did you next see it? A. Just now is the first time after it was signed.

Q. You read it on two occasions before it was signed. A. Yes. 10

Q. After you read it the second time before it was signed, when next did you see it? Understand me?

A. The next time I saw it was when she handed it to me and asked me if I would send it to you.

Q. Can you recollect when that was? A. What date?

Q. Well yes, if you can recollect it? A. It seems to me it was Sunday evening, I think it was when she handed it to me; either Saturday or Sunday, I just forget. I didn't take any account of the dates. I don't just remember. 20

Q. When she handed it to you what did you do with it? A. I sent it back to you.

Q. Did she say anything about the will after you read it the second time?

Objected to.

Objection overruled.

30

(Exception to Caveator)

A. She said, "I want you to take this and send it back to Harry and tell him to keep it.

Q. Did she make any remarks about the contents of the will? A. "That is just what I wanted," is what she said.

Q. Have you seen this will since it was mailed to me

40

Margaret Able—Direct

by you? A. Never until now, until you handed it to me now.

Q. Has she said anything to you about this will after it was sent to me? A. Several times.

Q. Will you state what she said?

10 Mr. Gebhardt: It is objected to.

The Court: Objection overruled.

(Exception to Caveator)

Q. State what she said. A. Well, she said, "Probably Pheobe and Ball won't be so smart now."

Q. Are you using her language? A. I am using her language.

20 Q. Anything more. Just tell the conversation she may have had with you? A. I don't just remember what words were said.

Q. Anything more than that? A. Nothing in particular.

Q. Was there anything in general? Whatever your recollection is? A. That was the subject that generally came up.

30 Q. Well, can you state with what frequency, if there was any frequency, she mentioned the matter of the will after you had mailed it back to me? A. Well, one thing she said, "I have given everything to Eddie. I hope he will take care of it."

Q. Anything else? A. Well, nothing in particular.

Q. Did she say anything relating particularly to her daughter after that time? A. Yes, she mentioned several times—

Q. What did she say? A. I can't recall the words she said, she mentioned several times, "Phoebe and Ball wouldn't be so smart when they heard of this."

40

Margaret Able—Cross

Q. Did she give any reason when she said that? Will you state the reason? A. I don't just recall.

Q. Had you ever been asked by Mrs. Kate Able to write to anyone about drawing a will before that time? A. Never.

Q. While she lived with you who did her correspondence, her writing? A. I did a great deal of it for her. I guess I was the only one ever did, except 10 once in a while Helen would write some simple letter for her.

Q. Who is Helen? A. My daughter, her granddaughter.

Cross examination by Mr. Gebhardt.

Q. When did you put that word "fourth" in there, Mrs. Able? A. Why, I don't remember.

Q. You don't remember when it was put in? A. I 20 don't remember.

Q. Was it before or after the will was supposed to be signed? A. Before—no after.

Q. After it was signed? A. Yes.

Q. You are sure about that now? A. I am pretty sure.

Q. Was it the day that Mrs. Able returned from Plainfield after the service of a summons upon her that she asked you to write that letter? A. That very night, yes, sir. I didn't write it at the time. It was 30 a few days after that.

Q. She told you she had been arrested, didn't she? A. Yes, sir.

Q. She hadn't been arrested, had she? A. No.

Q. And she was very mad at that time? A. Very.

Q. And continued to be mad for how long a time?

A. I guess, up to the time of her death.

Q. Did she cool off any before she died? A. Not very much.

Q. How did you come to say in that letter that 40

Margaret Able—Cross

“Mother wants to assign everything to Ed”? A. That is what she wanted me to say in the letter.

Q. She didn't ask you to write him and tell him to make a will? A. Yes—no she said to make a will?

A. Yes—no she said assignment. She wanted him to fix up papers; wanted to assign everything over. She didn't say assignment.

10 Q. Why didn't you in this letter tell Mrs. Able to write a will if that was what she wanted? A. I didn't know anything about it. I didn't say anything; didn't tell in the letter. I worded the letter as near as I could what she told me.

Q. You didn't ask Ed to write a will for you? A. No. After it came back she said, that is just what she wanted. “Just exactly what I want,” she says.

Q. Did you know that a will was going to be made that night? A. Going to be made?

20 Q. That night? A. No, sir, I didn't know it was going to be made.

Q. Where were you? A. The will was made at Frenchtown; I was in Clinton.

Q. Signing make a will. A. Where was I?

Q. Yes. A. In my room upstairs.

Q. You knew what was going to be done? A. Mrs. Able's room is opposite mine. She had to pass our end. She says, “I am going down to have these men sign my will.”

30 Q. She stopped at your door? A. Said it as she passed. I sat still in my room. After she had gone downstairs so long a time—I knew in the first place I ought to go down; I was sorry I didn't go down in the first place; and I did go down. It was all over, the signing. They had signed it and the men were standing up ready to go out of the room as I entered the room.

Q. What did she do with the paper? A. Took it up to her room.

40 Q. When did she give it to you? A. I didn't go up-

Margaret Able—Cross

stairs at that time she did. I had a little work to do downstairs and after I went up she asked me if I would please send it to Harry as soon as I could. I said yes, I would attend to it.

Q. Do you remember when you sent it to Harry?

A. My recollection is it wasn't that day. I think this was Saturday night. I sent the letter Monday, as near as I can remember.

10

(Adjourned until Monday, September 16, 1912,
at 9.30 a. m.)

Flemington, N. J., Monday, September 16, 1912.

Trial resumed pursuant to adjournment.

MARGARET ABLE resumes the stand.

Further Cross examination by Mr. Gebhardt.

20

Q. Where at that time was your husband? A. He was downstairs somewhere, I don't know where.

Mr. Herr: What time do you mean, Senator?

Mr. Gebhardt: At the time Mrs. Able started to come downstairs.

Q. Are you sure about that Mrs. Able? A. Yes, sir, 30
I am sure.

Q. Let me try to refresh your memory by stating that Mr. Charles Leigh says they went into the parlor—

Mr. Gebhardt: Have you a copy of the testimony?

Mr. Herr. No.

Q. Mr. Leigh stated in his testimony that as your mother came out of the room to come downstairs that 40

Margaret Able—Cross

Ed was at the head of the stairs. A. He went and called mother and then went on downstairs; he went downstairs, he called mother that he wanted to see her.

Q. Where had he been upstairs? A. He was no further than the hall.

Q. How did he get up there. A. I suppose he walked up the stairs.

10 Q. Did he go up there at your request to call your mother? A. No, sir.

Q. Are you sure about that? A. Yes, sir.

Q. He was not up there with your mother, as Mr. Leigh's testimony seems to relate? A. He was not up there with mother, no sir.

Q. As a matter of fact your husband and your mother-in-law had very bitter quarrels for several years before she died didn't they? A. Who?

Q. Your mother-in-law and your husband? A. Bit-
20 ter quarrels?

Q. Yes. A. About what?

The Court: The question is whether they had quarrels, not what they were about.

Witness: I never remember of them having any quarrels except some little thing around the house, as people will.

30 Q. Is it not a fact that Ed abused your mother most shamefully, not physically by blows, but by way of cursing her and calling her foul names and all that sort of thing? A. Why, of course, as a matter of fact, he did say some things that were not altogether right. I often used to say, "You ought not to talk to your mother like that."

Q. He was constantly getting money out of her, wasn't he. A. No, sir.

Q. How? A. He accounted for every dollar he ever
40 got from his mother, he had to account for it.

Margaret Able—Cross

Q. Don't you know he owed her three thousand dollars in interest? A. Yes, I perfectly know exactly what he owed her.

Q. He owed her three thousand dollars in interest at the time of her death? A. No, sir, not that.

Q. About that? A. No sir. He gave an account for every dollar his mother ever let him have.

Q. But he did not pay it back, did he? 10

Objected to as incompetent.

Objection overruled.

Q. Did he pay it back? A. He paid it back in some way, yes.

Q. Do you remember the time that this check purports to be dated?

Mr. Able: Which check are you alluding to? 20

Mr. Gebhardt: The alleged forged check.

A. Yes, I was with her when she went in the bank, I had a little business over at Easton, and when I came back she was standing outside crying.

Q. How long ago was that? A. Four years ago last April.

Q. And you were all living where at that time? A. 30 We was still in Clinton, but Mrs. Able was living in Plainfield with her daughter at the time the check was forged.

Q. How long did she continue to live there with her daughter after that? A. Well, not very long because she was up with us between the time, and we moved to Clinton the 15th of June the following year.

Q. It was between the time when the fuss occurred over the check— A. Well, if I may tell you—

Q. Wait a moment, my question is not finished. It 40

Margaret Able—Cross

was between the time of the fuss over the check and the time of your moving back to Clinton, it was during that period that Mrs. Able lived in Plainfield, or a part of that period rather, and she was on the most intimate terms with Mrs. Gutmann, is not that so?

10 A. Yes, but wait, I hadn't finished. The day that this check was forged, or the day before we moved to Plainfield I went to the bank with Mrs. Able, we moved to Plainfield the very next day, when she went home her daughter kept saying, "What is the matter?" I said, "your mother has had trouble." I didn't really know what the trouble was but it was just the night before we went to Plainfield, or rather the day before we went to Plainfield when she went to the bank.

Q. It was after your husband lost his license in Clinton and moved to Plainfield? A. Yes, sir.

20 Q. Were not Mrs. Gutmann and your mother-in-law on good terms from that time down to the so-called arrest in Plainfield two months before she died, about?

A. Well, yes, in a way; she never said anything to Mrs. Gutmann but she talked a good deal to other people about her affairs and used to talk to me about it, and I used to often tell her not to talk to me so much but to go and talk to the people it belonged to.

Q. Did you ever hear any quarrel of any kind between Mrs. Gutmann and Mrs. Able over this check?

30 A. No, sir.

Q. None whatever? A. No, sir.

Q. And you were all living together; close by, were you not? A. Yes, sir.

Q. Did you ever, after the supposed forging of this check hear any quarrel between Mrs. Gutmann and your mother-in-law? A. No, sir, nothing of any account.

Q. Do you remember one instance where your daughter, Helen, wrote a letter for your mother-in-law
40 to Mrs. Gutmann asking Mrs. Gutmann to make a hat

Margaret Able—Cross

for her? A. No, sir. Mrs. Gutmann wrote a letter to Helen and told Helen she was making a hat for grandmother, and grandmother sent word back not to make the hat, she would not wear it—not to make it she would not wear it.

Q. Do you remember any letters Mrs. Gutmann wrote to your mother-in-law during the year before her death, especially letters asking Mrs. Able to come 10
down and see her? A. Yes, sir. I remember full well, after she got into this trouble she said, "That is why Phoebe has been writing for me to come down there so much, she wanted to wiggle me down there to have me arrested."

Q. Who put that into her head? A. I could not tell you, sir; I guess it was in her head.

Q. It evidently was. A. Yes.

Q. I understood you to say the other day you put the word "fourth" in there the next day or that 20
night. A. The morning the letter was written, the morning of the fourth; I read the will the night before the next morning grandmother called me into her room about nine or ten o'clock, she asked me to come in there and read this over again, and I went in and read it over, and she said, "I am going to have this signed tonight, because I want to send it back, I want Harry to surely have it," so I wrote the word in that morning.

Q. When you stated the other day that you wrote it 30
in after the will was signed you were mistaken? A. I was mistaken, yes sir.

Q. Where were you when you did this? A. In Mrs. Able's room.

Q. And the will was signed down in the parlor? A. Yes, sir.

Q. Did you have red ink all over the house there?
A. Red ink?

Q. Yes, or purple ink, whichever you call it. A.
She took her own bottle of ink with her when she 40

Margaret Able—Cross

went downstairs, we never kept any in the parlor, she had this crimson ink in her own room and she took it with her when she went downstairs.

Q. Did she bring that bottle of ink back then to her own room? A. I told you I signed it in the morning up there, it was written. I want to rectify the mistake I made the other day.

- 10 Q. Were you present when a conversation occurred between Mr. Holsizer and Mr. Able and Ed. wherein Mr. Holsizer said that when a discussion arose about the letter that Holsizer had received from your mother-in-law asking him to come down Ed spoke up and said, "She had no business to go."

Mr. Able: I object to the question because it incorrectly states the testimony.

- 20 You didn't mean to say Mr. Holsizer received the letter from the witness's mother-in-law, did you?

Mr. Gebhardt: No, you understand what I mean—received a letter from Mrs. Gutmann.

- 30 Q. I should have said that Mr. Holsizer stated that he received a letter from Mrs. Gutmann him to come and asking Mrs. Able to come down, and in that conversation with Mr. Holsizer Ed spoke up and said she had no business to go. Were you present at the time? A. No, sir.

Q. You didn't hear that conversation? A. No, sir, not there.

Q. Do you know Mrs. Able of your own knowledge, whether anything was done by yourself or by Ed. to heal up the difference between Mrs. Gutmann and her mother? A. Did we ever do anything to try to heal up the differences?

- 40 Q. Yes. A. I don't just understand, or recall—those things.

Margaret Able—Cross

Q. When did Mrs. Able appear to have the most ill-feeling toward Mrs. Gutmann, between the time of the alleged forgery and the time of the alleged arrest, or was it after the alleged arrest? A. She always said after the time she had forged that check that was the last cent of her money she would get. She used to tell me that every day. I don't believe there was a day ever passed, and I used to say, "Grandma, 10 why don't you talk to your daughter yourself about that, and not always be telling me about it?" I said, "If you talk to your daughter you can impress on her mind what a terrible wrong she has done, not always be telling me about it. I don't believe you have ever said a word to her, but it is brought up in the house every day."

Q. Yet this alleged forgery occurred in 1908? A. Four years ago, yes, sir.

Q. It is dated the 30th day of March, but that is 20 practically April? A. Yes, sir.

Q. Between that time and the making of this will did you know or had you heard from your mother-in-law, of the making of any other will prior to this one? A. No, sir.

Q. Then she let the matter of the forged check drag along from April, or about April 1, 1908, until February, 1911, a space of nearly three years before she made any will at all? A. Yes, sir. Nothing that I know about. 30

Q. That is all I am speaking about. You know, don't you that for several years prior to your mother's death she was constantly finding fault with Ed for his misbehavior? A. I never heard her find much fault about him, she seemed to like to live with him.

Q. You all went to Plainfield because Mrs. Gutmann was living there, that is the way you came to go there, is it not? A. Yes, sir; that is, grandmother thought we might all live there together. 40

Margaret Able—Cross

Q. You all went there together after Ed lost his license in the Clinton, didn't you? A. Yes, sir.

Redirect examination by Mr. Able:

Q. When did Mrs. Kate Able first mention to you about the signing of any papers about the disposition
10 of her property?

The Court: Didn't she go into that on her direct examination?

Mr. Able: As to the first time, I don't think she said that. She said that she did at one time, but I asked her when the first time was.

A. I didn't quite understand your question.

20

Q. (Last question read to witness.) A. The night we came to Plainfield. That is the first time she ever directly mentioned it.

Mr. Gebhardt: Just fix what particular night that was.

The Court: That has been fixed in the direct testimony.

30

Mr. Able: I think that has been fixed between the 25th of January.

Q. Had you before that time said anything to her about making her will? A. Never.

Q. Did you make any suggestion to her or use any language to her to indicate your desire at that time she should make a will? A. I did not.

Q. Senator Gebhardt spoke to you about the time
40 of the will and asked you when you signed it, did you

Edwin F. Able—Direct

mean by that you signed the will, or what did you mean? A. That I signed the will?

Q. Yes, he asked you when you signed it? A. He spoke of the word "fourth," when did I put that word "fourth" in the will, I don't think he asked me if I signed the will.

Q. He used the word "signed," I wrote it down.

Mr. Gebhardt: No, you are wrong about that. 10

The Court: I think you did, Senator, I noticed the use of that word.

Mr. Herr: It was probably a slip of the tongue.

Mr. Able: The Senator meant "date" and the witness meant "date," but the record shows "signed."

20

Mr. Gebhardt: Then change it and make it read "date."

EDWIN F. ABLE, sworn for the proponent.

Direct examination by Mr. Herr:

Q. You are the proponent and the beneficiary under this will? A. Yes, sir.

Q. And the son of Kate Able? A. Yes, sir. 30

Q. Do you remember the occasion when this will was signed? A. When it was signed?

Q. Yes, the fourth of February, 1911. A. Saturday night.

Q. What did you do or have to do with the signing of the will that night? A. Nothing, only called my mother.

Q. You called your mother? A. Yes, sir.

Q. At whose request? A. Charlie Leigh's.

Q. What did you tell her? A. I told her to come 40

Edwin F. Able—Direct

down, I told her Charlie Leigh was down there and wanted to see her.

Q. Where were you when you told her that? A. I had been out to the shed and came in.

Q. Previous to that had you mentioned the subject to your mother of a will? A. No, sir.

Q. Or of her signing over her property to you?

10 A. No, sir; I never wanted her to.

Q. Did she ever say anything to you about it?

A. No, sir.

Q. Do you remember having a conversation with her coming up from Plainfield? A. Yes, sir.

Q. Did she or did she not at that time express a desire to sign everything over to you?

20 Mr. Gebhardt: That is objected to on the ground that the witness is a party to the record, and is giving conversation with a deceased person; in this case also he is a party in a representative capacity as the executor of this will.

The Court: Assuming that to be so cannot an executor offer himself? The other party can only be sworn when the executor first offers himself as a witness but cannot the executor as such always offer himself as a witness?

30 Mr. Gebhardt: I am not sure about it and I want to make the objection.

The Court: I will overrule the objection and allow an exception.

Counsel for caveator prays an exception to the above ruling of the court.

Exception allowed. Let it be sealed and it is sealed accordingly.

Edwin F. Able—Direct

Mr. Herr: The witness is not executor anyway.

Mr. Able: He is mentioned as such in the will but has never had letters issued to him.

A. Yes, sir.

Q. Do you remember having a conversation with her on the 25th of January on your return from Plain- 10
field after this summons was served on her as has been testified? A. Yes, sir.

Q. If anything, state what she said about signing her property over to you on that occasion? A. On the train?

Q. On the train? A. She started to talk and she had been sick and went in the toilet, and when she came back I told her to be still, I did not want to take it.

Q. What did she say that you said that to, what did 20
your mother tell you? A. She said she was going to make an assignment, to sign everything over to me; I told her I did not want her to. I told her to spend her money herself, that she made it.

Q. Did you afterward have a conversation with her to the same purport. A. On the train that night.

Q. Anywhere else? A. No sir.

Q. Did you or did you not ever say anything to her to induce her to make a will in your favor or to cut 30
your sister off? A. Never.

Q. Did you ever use any other means to induce her to execute a will in your favor? A. No sir.

(Letter shown witness marked Exhibit 6 for identification, the letter being dated February 6, 1911, addressed to Harry Able.)

Q. Whose signature is that to the letter? A. Mine.

Q. Who wrote the signature? A. I did.

Q. State how you happened to write that signature? 40

Edwin F. Able—Direct

A. I was going to Plainfield in the morning and my mother asked my wife to write a letter to send to Harry. I was going to Plainfield, Mr. Ball had sued her down there and I went and explained it to Judge DeMeza, and I signed the letter and took the train.

Q. At the time you signed the letter did you know what was in it? A. I did not.

10 Q. At whose request did you sign? A. By my mother.

Mr. Gebhardt: He did not know what was in what?

Mr. Herr: In the letter.

The Court: I thought those two letters had been offered in evidence.

20 Mr. Able: There was some talk about that but I think there was an objection made, and I forget what your Honor's ruling was. The objection was on the ground that the whole correspondence should go in, the copy of the letter which was written by me and the other two letters.

Mr. Herr: There was an objection to the two letters unless the reply went in as well, and I think that's as far as we went, I think they were marked for identification.

30

Mr. Gebhardt: Was not this the case, you wanted a copy of Harry Able's letter to go in and said that unless that was admitted the other would not be put in.

The Court: My motion was I admitted them; perhaps I did not. At any rate it is agreed they have not been admitted.

40 Mr. Gebhardt: Yes, I so understand it.

Edwin F. Able—Cross

Cross-examination by Mr. Gebhardt.

Q. You say that you had a conversation with your mother on your way from Plainfield, when was that?

A. The night she had the summons served on her; the train left Plainfield at five twenty-two.

Q. Did she say that she had a summons served on her or that she had been arrested? A. No, I carried 10
it in my pocket myself, she would not pick it up, she knocked it out of a man's hand.

Q. How came you to be on the train? A. She asked me to go down with her.

Q. You went down with her? A. Yes, sir.

Q. Who summoned your mother to come there, that is who wrote to her to come? A. I don't know, I didn't see the letter.

Q. What did you understand you were going there for? A. To sell the property. 20

Q. To whom were you to see the property? A. To some man who had sent for her to come there and see it.

Q. Who had sent? A. Sent for to come and see it?

Q. Yes. A. I don't know who it was.

Q. Don't you know it was Mr. Ball? A. I do not.

Q. Don't you know he had charge of this property for your mother at the time? A. No, sir; I don't. Other people had it to sell down there.

Q. But didn't he have it for sale for your mother 30
at this very time, and didn't you understand that Mr. Ball had sent for her to come down, that there was a chance to sell the property? A. No, sir.

Q. You did not? A. No, sir.

Q. What was your understanding about it? A. She had a letter to come down there and sell the property.

Q. From whom? A. I don't know who it was from.

Q. Did you see the letter? A. No, sir. 40

Edwin F. Able—Cross

Q. What did she tell you about it? A. She asked me to go along, I didn't want to go.

Q. What did she tell you about the letter? A. That she had a chance to sell the property.

Q. Didn't she tell you who the letter came from? A. No, sir.

Q. Did you ask her? A. No, sir.

10 Q. You were not interested? A. No, sir.

Q. You have stated that she talked to you about signing over, as you call it, all her property to you?

A. On her way back.

Q. Had she ever talked of doing that before? A. No, sir.

Q. Had she ever talked to you at any time about the disposition of her property before this night after the arrest? A. No, sir.

20 Q. Up until that time she and Mrs. Gutmann were on good terms, were they not?

Mr. Herr: That is objected to as not cross examination.

The Court: I will overrule the objection this is one of the parties.

Q. Up till that time they had been on good terms? A. Yes, sir, in some ways.

30 Q. Visiting back and forth? A. At Clinton?

Q. No, at Plainfield? A. I don't know about Plainfield.

Q. You know your mother went down to see Phoebe? A. Not after we moved back.

Q. She went down sometimes? A. Only to see Mr. Walters. (?)

Q. You did not go with her did you? A. No, sir.

Q. You don't know what she did when you didn't go with her, do you? A. No, sir.

40 Q. In this conversation coming home, after the so-

Edwin F. Able—Cross

called arrest, in Plainfield, which I understand was in the latter part of January, before she died, the January just before she died, she talked about assigning all her property to you and you would not listen to it? A. That is right.

Q. That is you would not let her do it? A. No, sir.

Q. Why not? A. I told her I might run away with it and she might be out. 10

Q. How? A. I told her I might spend it myself and she would be out. I told her to spend her own money, she had worked very hard for it.

Q. Did she say anything at that time about making a will in your favor? A. To me?

Q. Yes. A. Nothing said about a will.

Q. On the occasion of signing this letter, the day after the will was made, did you sign this yetter without knowing what was in it? A. I did.

Q. You did not ever know your mother had made a will, did you? A. No, sir, I heard them talking about it that is all. I did not know what was the occasion of it. 20

Q. You did not know your mother was going down sairs to sign a will? A. That night?

Q. Yes. A. Yes, sir.

Q. You did know? A. Yes, sir.

Q. How did you learn? A. Through Charlie Leigh.

Q. Your mother did not say anything to you about it? A. About a will? 30

Q. Yes. A. Not to me, no.

Q. You did not know what was in it? A. I did not.

Q. Never heard of it? A. Never until I was told.

Q. After it was all over? A. Yes, sir.

Q. Did you know your wife had gotten it by mail?

A. What?

Q. The will. A. No, sir.

Q. You didn't know your wife had gotten it? A. No, sir.

Edwin F. Able—Cross

Q. Your wife never said a word to you about it?

A. She mentioned it after it was signed, that was all.

Q. I mean before it was signed.

Q. Have you any explanation to give of why your wife did not acquaint you with the fact that your mother was going to make a will? A. I have not.

Q. You were interested in the matter very much.
10 were you not? A. In the matter?

Q. Yes. A. No, sir.

Q. Why not? A. Why should I?

Q. You were interested in her making a will which would give you all of her property and cut your sister out? A. I could not have been if I said I didn't want her to make an assignment.

Q. How? A. I told her I didn't want her to make an assignment, so I could not be interested in the will.

Q. Why? A. I would have had her make an as-
20 signment if I was interested that way, would I not?

Q. I am not answering questions, I am asking them. You were interested in the making of this will? A. Not a particle.

Q. You did not want her to make a will in your favor? A. I never asked her to.

Q. You did not want her to? A. No, sir.

Q. You wanted your sister to have her share of the property? A. That was my mother's will, not mine.

Q. You wanted your sister to have her share of the
30 property, didn't you?

Objected to as incompetent.

Objection sustained.

Counsel for caveator prays an exception to the above ruling of the court.

Exception allowed. Let it be sealed and it is sealed accordingly.

Edwin F. Able—Cross

Q. When did you first learn your mother had made a will? A. On Saturday night.

Q. After it was made? A. Yes, sir.

Q. Did you know what the will contained? A. I did not.

Q. Did you ask? A. No, sir.

Q. You knew that it was going to be made? A. By Mr. Leigh.

Q. You knew from Mr. Leigh that your mother was going to make a will? A. Yes, sir. 10

Q. And you never asked what it contained? A. No sir.

Q. You never paid any attention to it whatever? A. No, sir.

Q. Showed no interest in it whatever? A. No, sir.

Q. Did you have any idea whether you were to be cut out or not in that will? A. No, sir, I didn't know anything about it. 20

Q. Where were you when you signed this letter which was written by your wife? A. In the house.

Q. In your own house in Clinton? A. Yes, sir, that is where I lived.

Q. What room were you in when you signed this letter? A. What room?

Q. Yes. A. My wife brought it to me.

Q. Did she have the envelope with her? A. The envelope of what?

Q. That this letter was to go in? A. I didn't see 30 the envelope. I just signed the letter, that is all.

Q. You did not know what it contained? A. No, sir, I was going to Plainfield.

Q. You didn't ask her what it contained? A. No, sir, not a thing.

Q. You didn't ask her what it was about? A. No, sir, I didn't, I wanted to go to Plainfield, I was mad.

Q. What do you mean by that? A. To go down and stop this case against her because she was sick.

Q. And because you were mad on account of your 40

Edwin F. Able—Cross

going to Plainfield you signed a letter— A. I signed the letter and took the hack and went.

Q. —which your wife had written? A. Yes, sir.

Q. To Harry Able. A. Yes, sir.

Q. Without asking— A. Any questions.

Q. Without asking any questions? A. Yes, sir.

Q. Or having any idea what it contained? A. Yes,

10 sir.

Q. You didn't know then your wife was writing a letter to be signed by you, on which to base a divorce case or what it was about?

Objected to.

Mr. Gebhardt: It was to show how utterly indifferent the man was, I am not casting any aspersions at all.

20 Q. Had you any thought in your mind at all at the time as to what this letter was about? A. No, sir.

Q. When before that had you signed letters written by your wife without knowing the contents of the letter? A. Twice.

Q. When was the other time? A. That letter was sent to Harry, too.

Q. And you didn't know what that was about? A. No, sir.

Q. How did you come to sign the letter— A. Before this one.

30 Q. This letter, how did you come to sign this letter without having the slightest idea of what it contained or what it was about? A. This last letter?

Q. Yes. A. I was just with my mother in her sick room and she asked me.

Q. And your mother did not tell you what it was about? A. No, sir.

Q. She then asked you to sign a letter which Maggie, your wife, would write? A. Yes, sir.

40 Q. You didn't sign the first letter, did you? A. What first letter?

Edwin F. Able—Cross

Q. The first letter your wife wrote to Harry Able?

A. I signed two letters to go to Harry Able.

Q. My understanding was the first letter was signed by your wife? A. There might have been some other letters written.

Q. (Producing letter) Here is the first of the two letters referred to dated February 2nd and marked Exhibit 5. A. That is the one I signed. 10

Q. But this one—that is not signed by you, is it?

A. No, sir.

Q. That is Exhibit No. 5 and that your wife signed, didn't she? A. You say it is signed so.

Q. Look at it yourself, you know your wife's handwriting. A. That's her name, yes, sir.

Q. Is it her signature? A. Yes, sir.

Q. And is it her handwriting? A. Yes, sir.

Q. You were not asked to sign that? A. No, sir.

Q. And you were not told anything about it? A. 20
No, sir.

Q. What explanation, if any, have you to give the court and jury why you did not sign that letter and did sign the other one? A. I was not asked to.

Q. Is that the only explanation? A. That is all I have to say.

Q. You say your mother on her sick bed asked you to do that? A. I said in her sick room.

Q. How sick was she? A. She was very sick.

Q. How sick? A. I could not tell you how sick. 30

Q. Dangerously sick? A. Oh, no, nothing like that.

Q. In bed was she? A. She had been and got up.

Q. How long had she been sick in that spell? A. I think she was just taken sick that night if I remember right.

Q. That was the night after the making of the will?

A. After the making of the will?

Q. Yes, that same night. A. What, on Saturday night?

Q. Yes. A. No—on Saturday night? 40

Edwin F. Able—Cross

Q. Yes. A. She was taken sick on Saturday night?

Q. Well, I am asking you, I don't know anything about it, I wasn't there. A. No, sir, I signed that letter in the morning I said.

Q. What morning was it? A. Monday morning.

Q. What was the matter with your mother? A. I am no doctor, I could not tell you.

10 Q. What did you understand was the matter with her? A. I didn't ask.

Q. She had been quite feeble for some time had she not? A. In what way? She had had indigestion for a long while, that is what they claimed.

Q. Didn't she have a severe nervous attack? A. Everytime this case came up to go to Plainfield she did.

Q. But before that? A. No, sir.

20 Q. How many times did this case come up in Plainfield? A. I think it was twice.

Q. What become of that case? A. I don't know.

Q. You never heard anything about it? A. No, sir, Mr. Blatz said it was struck out.

Q. Did Mr. Blatz tell you that? A. No, sir, he told another party that.

Q. Did he tell you it? A. No, sir.

Q. After you signed that letter when did you first make inquiries about the contents of the will? A. Never.

30 Q. Never down to this time? A. Never.

Q. When did you first learn the contents of the will? A. That Saturday night.

Q. On that Saturday night? A. Not the contents, but that mother made a will.

Q. When did you learn your mother had left all the property to you and nothing to your sister? A. My sister told me myself.

Q. When? A. On Sunday afternoon.

Q. What Sunday? A. After the funeral.

40 Q. That is the first you knew of it? A. That is the

Edwin F. Able—Cross

first I knew the will—what was in it, I didn't know it then, she told me.

Q. You just heard it? A. She told me.

Q. After the will was made on Saturday night did you make any inquiries of anybody, Harry Able, your wife or anybody else? A. I never spoke to anybody about it.

Q. —as to the contents of the will? A. Nothing at all. 10

Q. And did your wife ever tell you what it contained? And you never inquired of anybody? A. No, sir.

Q. Why did you take that course knowing your mother had made a will and that your wife—did you know your wife knew the contents of it? A. That my wife knew the contents of the will?

Q. Yes. A. No.

Q. You did not know that? A. No, sir. 20

Q. You knew your mother could not read nor write? A. I knew she could write.

Q. Her name? A. Yes, sir.

Q. But nothing else? A. I never knew of anything else, never heard of it.

Q. How did you understand she learned of the contents of the will? A. Who learned the contents?

Q. Your mother? A. She learned the contents of the will?

Q. Yes. A. I did not know she learned it. I did not know anything about that; I only know what Phoebe told me Sunday afternoon that she had been told— 30

Q. Wait a minute. You knew your mother could not read? A. Yes.

Q. Yet you knew she had executed a will? A. By Charlie Leigh.

Q. Didn't you make any inquiries from Charlie Leigh or anybody else as to whether she knew the con- 40

Edwin F. Able—Cross

tents of the will or not? A. I did not, I never asked anyone.

Q. You never asked anyone? A. Neither Mr. Thompson either, nobody.

Q. You didn't know whether they knew or not? A. I don't know what they knew, I was not in the room.

10 Q. You did not know whether they read it over, of course? A. I don't know anything about it.

Q. You never say it yourself? A. No, sir.

Q. Never inspected it? A. I never saw it until it laid on that table (indicating).

Q. Were you not afraid that she might have signed something and not being able to read didn't know what she signed? A. I was not.

Q. Not a bit? A. No, sir.

Q. Where was your mother buried? A. Bloomsbury.

20 Q. How soon after your mother's death did you go to Harry Able's office in Frenchtown to see the will? A. Never.

Q. How soon did you make inquiries about the will? A. After my sister told me on Sunday.

Q. Was Sunday the day your mother was buried? A. Saturday.

Q. Up to that time you had not asked your wife what the contents of the will were? A. No sir.

30 Q. Was Harry Able at the funeral? A. I did not see him.

Q. You had not called him on the phone to ask him what it contained? A. No, sir.

Q. You had not taken any steps whatever to learn what it contained? A. No, sir, until the time I was sent for to come here.

Q. And your wife didn't say anything to you about it? A. No, sir.

Q. Just tell the court and jury when you first learned what was in the will. A. That Sunday afternoon.

40 Q. I mean from your actual knowledge, your own

Edwin F. Able—Cross

knowledge, not from what Phoebe told you, but from your own knowledge, when did you first learn what there really was in that will? A. When I came down to my cousins.

Q. When was that? A. The same time they wrote for Phoebe to have the will read.

Q. Did she come? A. She did not.

Q. Did you come? A. Yes, sir.

10

Q. Where to? A. Flemington.

Q. The Surrogate's office? A. Yes, sir, and we waited here.

Q. You waited here? A. Yes, sir.

Q. What for? A. I don't know what for; we were waiting for him.

Q. Then did you see the will? A. I did not.

Q. You did not look at it? A. No, sir.

Q. Where was it? A. I think Mr. Bloom had it.

Q. You mean Mr. Bloom, the Surrogate? A. Yes, 20
I know him.

Q. I say you mean Mr. Bloom, the Surrogate? A. Yes, sir.

Q. And Mr. Bloom had the will? A. He said he had.

Q. And you did not ask to see it? A. No, sir.

Q. Did you ask what it contained? A. No, sir.

Q. Did you know what it contained? A. No, sir, only what Phoebe told me.

Q. You did not ask Harry Able what it contained? 30
A. No, sir.

Q. On that day? A. No, sir.

Q. What did you do that day? A. I did not do anything, I took the train and went back after I had my dinner.

Q. Why? A. I don't know why, he did not tell me why.

Q. Did he tell you a caveat had been filed against the probate of the will? A. Probably he did, I don't

40

Edwin F. Able—Cross

know, I didn't pay any attention to it, I left all the business to him; I left him and he stayed here.

Q. Didn't he tell you your sister was contesting the will because you were to get all the property and she was to get none? A. I don't think he said anything about it.

Q. And you didn't know anything about it? A. No, 10 sir.

Q. You did not know what was the trouble? A. No, sir.

Q. Nor anything at all? A. No, sir.

Q. Where was it that your sister spoke to you? A. In the parlor.

Q. Of the hotel at Clinton? A. Yes, sir.

Q. How did you and she come to talk about it? A. That I could not say.

Q. You don't remember? A. No, sir, I wanted them 20 to stay and take dinner, but they didn't want to stay, they said no, they would go home.

Q. Do you remember, Mr. Able, on different occasions within the four years before your mother's death, in the presence of Mrs. Weed, of Plainfield, quarreling with your mother? A. Oh, we often had quarrels, I suppose she might have been there for all I know, we have quarreled at Clinton.

Q. On those occasions didn't you curse at your mother and call her the vilest names, as whore and 30 bitch and so forth? A. What was the last?

Q. Didn't you call your mother in the presence of Mrs. Weed a whore and a bitch and that sort of thing? A. Never.

Q. In the presence of Mrs. Weed? A. Never, my mother could use language as fast as I could, we were not the best people to talk, I admit, but as far as calling my mother that, I would not let myself call her that or anyone else.

Q. Do you remember on one occasion in April, 1909, 40 at Mrs. Weed's home in Plainfield, when you came there

Edwin F. Able—Cross

in an intoxicated condition and abused your mother, and she slapped you in the mouth?

Objected to as incompetent.

Mr. Gebhardt: I want to show the character of the relations that existed between the mother and the son.

Mr. Herr: I do not think that is competent. 10

The Court: I overrule the objection.

Mr. Herr: My objection is that the fact is irrelevant. My understanding of the law is, and there is a long line of decisions to that effect, that the only effect of testimony of this sort would be to show the testatrix was not in her right mind at the time she made; I cannot see any other reason why this testimony would be competent at all. 20

The Court: The question is really what the effect on the mind of the mother is, not to prove the falsity of the facts themselves.

Mr. Gebhardt: My purpose is to show that this man and his mother frequently had the most bitter kind of quarrels and that there was every reason why she should be on bad terms with him as well as on bad terms with the daughter. 30

The Court: He admits that they did have quarrels.

Mr. Gebhardt: But I asked about this particular time. Judge Herr has shown that there was bad feeling between Mrs. Gutmann and her mother; now I want to show that there was also bad feeling between Mr. Able and his mother, and if she would do an unnatural thing like this the probabilities are she would not do 40

Edwin F. Able—Cross

it unless she was imposed upon or her mind was not in a natural condition.

Mr. Herr: We did show there was bad feeling between Mrs. Gutmann and her daughter because the court had permitted Mr. Gebhardt to introduce testimony here of a number of relatives who said Mrs. Able
 10 had told them this witness had attempted to induce her to make a will cutting out Mrs. Gutmann.

The Court: If words indicating a condition of mind are relevant why are not actions indicating a condition of mind also relevant?

Mr. Herr: The condition of mind must be a little different from that of condition of mind now thought of by your Honor. It makes no difference what her feelings were for Mrs. Gutmann or for Mr. Able, you could
 20 not introduce testimony to show a conversation in which she said she had quarreled, or by which you could show that they had quarreled. That would not prove any undue influence; the only evidence that could be introduced to prove undue influence would be evidence of what somebody had heard on the part of this proponent, some conversation he had had with his mother trying to induce her to cut out his sister or make a will in his favor. That I think would be competent, but
 30 anything she might have said could not be competent under any circumstances except to show, not her mental condition, her attitude towards either of these parties, but it might affect the question as to whether she was in her right mind, whether she was in her right mind, whether she was competent to make a will at all. Beyond that all that testimony I think is absolutely irrelevant.

The Court: I will overrule the objection.

Edwin F. Able—Cross

Counsel for proponent prays an exception to the above ruling of the court.

Exception allowed. Let it be sealed and it is sealed accordingly.

Judge.

(Last question read)

10

Mr. Herr: That is entirely too remote anyway, it is back in 1909.

The Court: I understand the question, Judge, and you have your exception.

Q. What is your answer? A. At Mrs. Weed's house? Not that I know of, no sir. I don't remember.

Q. Do you say it did not happen? A. I do.

20

Mr. Gebhardt: I would like, if the Court please, to have the question which I asked Mr. Able a while ago, and in which I used the two words "bitch" and "whore" amended, so as to strike out the word "whore" and leave the rest of the question. I would like now to have an answer to that?

The Court: You had better ask it again.

Mr. Gebhardt: Suppose I withdraw the other question entirely? 30

The Court: It was asked and answered.

Q. Didn't you at different times, in the presence of Mrs. Weed, call your mother a "God damn bitch" while in Plainfield? A. No, sir.

Q. And a "God damn liar?" A. I might have said that.

Q. Did you or did you not? A. I did.

40

Lydia Schomp—Direct

Q. Your family, including Mr. and Mrs. Gutmann and you and your wife and your mother were all on intimate terms with Mrs. Weed, were they not? A. For a while, until Mrs. Weed began to tell us some stuff that my sister said, and my mother, and then they had some words.

10 Q. You were in her house almost every day for a while there? A. No, sir; quite often, not every day, no.

Q. Didn't you and your mother have frequent quarrels over your friendship for Miss Prudan, I think it is? A. Never.

Q. Never did?

Mr. Herr: That is objected to as incompetent.

Objection overruled.

20 Counsel for the proponent prays for an exception to the above ruling of the court.

Exception allowed. Let it be sealed and it is sealed accordingly.

Judge.

A. No, sir.

Q. You never had any words with your mother about that at all? A. No, sir. I had some words with my mother about some other things.

30 Q. You never had any quarrel with your mother on that account? A. Not on that account.

LYDIA SCHOMP, sworn on behalf of the proponent.

Direct Examination by Mr. Able:

Q. Where do you reside? A. Newark, N. J.

40 Q. Did you know Mrs. Kate Able in her lifetime?
A. Yes.

Lydia Schomp—Direct

Q. Were you present at Clinton, N. J., at any time when you heard Mrs. Able speak about either of her family, that is either her daughter or her son? A. I heard her speak twice about her daughter while I was there.

Q. How long ago was that? A. The last part of February, 1911.

Q. The last part of February, 1911? A. Yes, sir. 10

Q. Will you please state what that conversation was? A. The first that I remember was when she was preparing to go to Plainfield.

Q. State all the conversation you might have had. A. She said to me she was going to Plainfield because Phoebe and old Ball had sent for her. That is the remark she made to me.

Q. Anything further? A. Not at that time, only some talk in general, but nothing that I just remember.

Q. At any subsequent time was there any conversation? A. Yes, later, the night she came from Plainfield, she was feeling badly and looked very badly and was in the back room conversing with her son and his wife, I being in the hall, and Mr. Able asked me to step into the back parlor, knowing that I had had a similar case, attesting a will, and asked me a number of questions, and they conversed together over it, and the mother of course, was very indignant and said she had done with her daughter, Phoebe had robbed her and so forth. 20 30

Q. When was this? A. That was, I think, the last week in February, 1911; I had been at the hotel for two weeks.

Q. Did you have any other conversations with her than this you have related? A. Not particularly bearing on this, no sir.

Q. Did she ever say anything to you about her son? A. No, no more than she had said once to me that she could not live away from him, always wanted to be with him. 40

Lydia Schomp—Cross

Cross-Examination by Mr. Gebhardt:

Q. How did you come to be at the hotel? A. I came there January 16th with my daughter, coming to that hotel, and I was there two weeks, one week waiting on her and one week I remodeled some gowns for Mrs. Able, that kept me in the house two weeks.

10 Q. I wish you would fix the time when this occurred, just as nearly as you possibly can. A. Well, we came home from the hospital January 16.

Q. How long after that was it? A. Then I remained with her two weeks at the hotel, and then spent two weeks at Miss Dye's (?) and came down more or less every day to see my daughter.

20 Q. You went there you say on the 16th of January; with reference to the time you arrived there on the 16th of January when was it you were called into the parlor and had this conversation? A. It was the night after she came from Plainfield, after having been sent for to come down.

Q. It was the night after the so-called arrest? A. Yes, sir.

Q. Are you sure about that? A. Yes, sir.

Q. There is not any doubt in your mind about it? A. No, I am positive, because I remember this question put to me.

30 Q. What were the questions? A. Concerning a law suit we had in Flemington and I had lost the case, and why, and so forth.

Q. A will case? A. Yes, sir.

Q. Tell us what that conversation was as nearly as you can. A. Well, I don't know that I can bring it out, I spoke very freely of how I had been deceived in different things and didn't think I had proper treatment in one way and another, and I saw how I had made some mistakes, and I thought hereafter people had better keep their eyes open.

40 Q. Ed was present? A. Yes, sir.

Lydia Schomp—Cross

Q. He asked you to come in? A. I was in the hall and he asked me in and I walked in and his mother was sitting there in a rocking chair and the daughter was sitting there, and they commenced the conversation. The mother was very dejected.

Q. And all together they talked about the making of a will? A. Yes, sir, and I expressed my opinion and Mr. Able his.

10

Q. What did he say about making a will? A. I don't know as I said anything, only I said to them, "You ought to look out what you are doing."

Q. Didn't you tell them in that conversation they had better look out how they had this will executed? A. I didn't know anything about this will.

Q. But if they were going to make a will didn't you tell them to be careful how they made it? A. No, I didn't say anything about that.

20

Q. How did you come to speak anything about the will business? A. She was so upset and she said she had done with her daughter, as near as I can recollect she said, "I have done with my daughter, she has robbed me," and then commenced this general conversation.

Q. About making a will? A. No, about will cases; I had said I had a case and the mother had been misused, she thought, it was just a family conversation, nothing about making this will, but she said she had all this trouble with her daughter and she would do this and that.

30

Q. What did she say? A. She said she had robbed her.

Q. But Mrs. Able said she would do this and that, what did she say she would do? A. She said she had done that so she didn't want any more business with her, because of this bank business, the forged note they were talking of.

Q. The check? A. Yes, as I remember.

40

Lydia Schomp—Cross

Q. Did she say she was going to fix her property?

A. No, sir.

Q. How did you come to talk about the will business, what had that to do with the conversation? A. She was angry with her children, at her daughter and in speaking in that way I brought up my affair.

10 Q. Did you advise her she ought not to make a will cutting off her daughter? A. I don't think she spoke about a will in any way or shape, but it was just general conversation, I was brought in because I was asked in and got into the conversation, which amounted to almost nothing, only I remember those few remarks that were said.

Q. Did they want your advice, ask your advice?

A. No, oh no.

Q. What did they call you in for? A. Why I don't know as I know about that.

20 Q. What did Ed say to you when he did call you in? A. He didn't say anything, he sat by the table and his mother and Mrs. Able were talking, and the amount of it was that she was just about sick of—you know, she was in an excited state of mind, she wanted to talk a little bit of business.

Q. What was the business? A. That she had been to Plainfield and felt badly; as I say I had remodeled a gown for her and that was in that conversation, and how she felt about this and that, I remember those two
30 words she did use.

Q. She was in an extremely excited condition? A. Well, she was about sick, and felt badly and looked badly and I assume that is what brought me into it more, I felt sorry for her.

Q. When did you see her next? A. Have any conversation?

Q. Yes. A. Those were the only two conversations she had with me in regard to her daughter.

40 Q. Did you see her the day after this night when you were called into the parlor? A. I might have just

Lydia Schomp—Cross

seen her, but I had no conversation that I remember with her.

Q. That first night when she said to you that she was done with Phoebe, did she say she was going to cut her off in her will, or anything like that? A. No, she said, "I am done with her, I have been robbed," those are the two pointed things. I had never inquired into her business therefore it was a little—

10

Q. Had she ever said anything to you about her business matters before this night? A. No, sir, only at the time when she was preparing to go to Plainfield, when she said she had been sent for and I said, "What for?" and that is all.

Q. Did she say who had sent for her? A. Her remark was that Phoebe and old Ball had sent for her.

Q. Was that the first time? A. That is the first time she ever said anything pointed.

Q. Now maybe I misunderstood you, but you said 20 this conversation took place before she went to Plainfield the first time in answer to a request to come there about the sale of the property; was it before she had been there at all about the sale of the property? A. While it was fixing her gown, she said, "I have to go to Plainfield and I don't want to go," and I said, "Why do you go?" and she said, "Because Phoebe and old Ball have sent for me and I have to go."

Q. That was before the so-called arrest, was it not? A. Well, this was under the arrest she was going, was 30 it not?

Q. I don't know. A. Oh no, she sent down and when she came back that was the trouble; she had been down there and came back and that is the night I was called into the parlor.

Q. Was it before that night this other conversation took place about her going down there? A. Yes, sir, it was in the bedroom upstairs.

Q. It was before— A. Before she went to Plainfield.

40

Lydia Schomp—Re-Direct

Q. Before she went at all? A. Yes, sir.

Q. Are you sure about that? A. Yes, sir, I think so.

Q. And she said she had to go because Phoebe and old Ball had sent for her? A. Those were the words she said to me.

Q. She had to go? A. Yes, sir.

10 Q. Did she tell you why she had to go? A. Well, with regard to the property, I cannot tell anything more than that.

Q. Did she say she did not want to go? A. Well, yes, she didn't want to go, I guess she thought it would worry her and be unpleasant for her.

Q. Did she say she didn't want to sell the property or what? A. No, she did not say that. I never had any talk with her about property and was rather surprised when she made that remark to me.

20 Q. She never had talked with you like that before, had she? A. No, sir.

Re-direct examination.

Q. You say Mr. Able called you into the room on this occasion? A. Yes, sir.

Q. Do you know whether he called you in reference to the gown you were finishing, or was it about something else? A. Just to come in and have a talk, I guess; I don't know that there was anything pointed about it.

30 Q. Did he say why he called you? A. No, he came out in the hall as I was passing by, or just going down stairs, I don't remember, and they were talking, and he said, "Come in here," that's just what he said—"Come in here."

Q. Did he remain during the whole conversation or go out? A. No, he talked awhile and walked around the room, he did not sit down at all, and went out and left us.

40 Q. Didn't it occur this way—didn't she say she had—

Pearl Conover—Direct

Objected to as leading.

Mr. Herr: I want to call her attention particularly to one point in the conversation which I think will straighten it all out.

Q. Mrs. Schomp, who was the first person who mentioned will that night? A. I was.

Q. In the first place you say Mrs. Able referred to the trouble she had had that day, and didn't you go on and say you had had trouble too, and that your trouble was about a will? A. Well, I presume—

Objected to as leading.

Witness: I think it was this way—

Objected to.

Q. Well, tell just how it was? A. It was this conversation that she had had this trouble down there and felt worried and annoyed and all that sort of thing, but nothing in regard to her will or writing one, and I said, "Well, that is the way it goes in family troubles, we certainly have had them and had our share," and then I went on to relate how we had them, and I said, "When you get into these things you have got to look out and fight for yourself." That was about the essence of the conversation. But Mr. Able didn't mention that nor the family didn't talk anything about a will, nothing at all.

Q. And nobody asked you about it? A. No, sir, not at all.

PEARL CONOVER, sworn on behalf of proponent.

Direct examination by Mr. Herr:

Pearl Conover—Direct

Q. Mrs. Conover, where do you live? A. Clinton,
N. J.

Q. Did you know Mrs. Kate Able in her lifetime?

A. Yes, sir, I did.

Q. Were you present with Mrs. Able at any time during her last sickness? A. I was, yes.

Q. Did you have any conversation with her or she
10 with you wherein her daughter's name was mentioned?

A. Yes, sir.

Q. Will you state the conversation, please? A.
Well, I had several conversations with her on that line,
not necessarily during her last sickness.

The Court: You are asked now concerning a conversation during her last illness.

Witness: When she was taken ill first Mr. Able
20 suggested we send for his sister because she was very ill, and Mrs. Able said she never wanted to see her again, and she asked me not to give her any of the medicine—I was there taking care of her, and she asked me not to give her any of the medicine that doctor had given her, and she said her daughter had robbed her and disgraced her and she was trying to get her down to Plainfield to court to probably rob and disgrace her further, and that she preferred to die to ever seeing her daughter again.

2)

Q. Did this conversation take place about the time Mr. Able mentioned sending for his sister? A. No, I think it was before that, I think it was when she was first taken sick.

Q. Was there any conversation had at the time when he said he was going to send for his sister? A. Yes, at that time she forbid him to send for her.

Q. Did she say anything further then? A. I think
40 that she probably did relate the different troubles that she had with her daughter, and how she disapproved of

Pearl Conover—Cross

her mode of living and how she was spending her money and the way she had got money from her, and she said she had things fixed now so that her daughter would never get another cent of her money, more than she had already gotten, and before they got her into any further trouble she wanted to die.

Q. Will you kindly state any other conversation which you may have had, fixing the time as near as you can, with Mrs. Able about her daughter? A. I have no particular way of recollecting any of the dates, other than that I remember I went over to call on her one afternoon and it happened to be directly after she had had this trouble with her daughter in Plainfield, that she had been called down there supposedly to sell a piece of property to some one and after she got there she had been arrested; she told me all about that and felt very, very badly about it, and she told me at that time that she never would want to see her daughter again, that she didn't suppose after all her daughter had disgraced her during her life she would have to live to her time of life to be disgraced by her again in that way. 10 20

Q. Did you ever have any conversation with her before the time she claimed she was arrested, as she said, wherein her daughter's name was mentioned? A. Well, perhaps two or three different times she had spoken of her daughter.

Q. What was the nature of the conversation? A. Well, I don't know as I could say just exactly what it was, other than that she disapproved of her daughter and her way of living. 30

Cross examination by Mr. Gebhardt:

Q. When were you subpoenaed to come here, by Mr. Able, I mean, or by his side? A. Why, I don't know who I was subpoenaed to come here by, I think 40

Pearl Conover—Cross

it was Mr. McConnell who served to subpoena, I don't know which side it was for.

Q. When was that? A. As nearly as I can remember, I think it was about two weeks ago.

Q. You didn't come, did you? A. I did not, not on the day I was subpoenaed to come on.

Q. How came you to come here today? A. Because
 10 Mr. Conover called up—I think he called Mr. Queen yesterday and asked Mr. Queen if it was proper to serve or if anyone could serve you with a subpoena on Sunday, and Mr. Queen said I think no, and he said that if he was in his place he would not avoid—that is if he was in my place he would not avoid the service of the subpoena, and I was subpoenaed to come here last Tuesday, but owing to illness, which my doctor telephoned to the Court House, I was unable to come and I think other people have told me that if
 20 you are subpoenaed for a certain day of trial that subpoena holds good, and I didn't know whether that was true or not, but I thought I would come today and have it over with, as you might say.

Q. Did anyone on Mr. Able's behalf come to see you since last Tuesday? A. No, I have not seen any member of Mr. Able's family until I saw them in court this morning.

Q. Did I understand you to say Mr. McConnell served the subpoena on Sunday? A. No, but the question
 30 arose between several people at our house whether it was legal to serve a subpoena on Sunday or not, and that occasioned the call to Mr. Queen.

Q. That had nothing to do with the occasion of your coming here as a witness? A. No, sir.

Q. Because you had not been served on Sunday? A. No, sir.

Q. You knew Mr. McConnell represented me in serving that subpoena? A. Well, I had seen him with you and you with him.

Pearl Conover—Cross

Q. Didn't you know he served that subpoena for me? A. No, I did not.

Q. I understood you to say that Mrs. Able requested you in her last sickness not to give her any medicine?

A. She did, yes.

Q. Because she wanted to die? A. She wanted to die, she didn't want anything done for her she said, to make her live in misery any longer.

10

Q. Just state to the court and jury what day it was she made that statement to you, do you remember?

A. Mrs. Able died on Thursday morning, and it was before Easter a year ago, I don't remember the exact date, and it was the Monday previous to that; she was taken very sick on Sunday and it was on Monday she told me that. I went there on Sunday and took care of her right up to within a few hours of the time she died.

Q. What day was it that you heard Mrs. Able forbid her son to send for her daughter? A. If I am not mistaken it was on Tuesday; I think that he wanted to send for her on Sunday and on Monday and finally concluded to send for her—that her illness was so serious that he had best send for her whether his mother wanted him to or not, and I am under the impression that that was on Tuesday.

20

Q. You have had a good deal of experience in nursing, have you not? A. Yes, sir, I have had quite a little.

30

Q. What condition was Mrs. Able in from the time you arrived at the house on Monday until she died on Thursday—are you not mistaken about its being Thursday, was it not Wednesday that she died? A. I think it was—perhaps I am mistaken, but I was under the impression it was very early Thursday morning.

Q. It was Wednesday, there is no doubt about that. What condition was she in when you first got there and until her death? A. When I first got there she seemed to be suffering greatly but was perfectly con-

40

Pearl Conover—Cross

scious and rational in every way, there were times from then on when she was slightly delirious and unconscious, but for the greater part of the time, while she was a great sufferer, she was perfectly conscious and seemed to be, as nearly as I could tell, in a normal state of mind.

- Q. Were you there when she died? A. I was not.
- 10 Q. Where were you at that time? A. At my home.
- Q. You do not know then of your own knowledge what hour of the day she died? A. No.
- Q. Did you see Mrs. Gutmann there? A. I did.
- Q. Were you there when she came there? A. I was.
- Q. Did you see her greet her mother? A. Yes, sir, I did.
- Q. Do you remember that on one occasion Mrs. Able asked her to hold her hand? A. No, I do not.
- Q. And asked her not to go out of the room? A. No.
- 20 No. Mrs. Able asked me not to go out of the room while Phoebe was there, but I never heard her ask Phoebe not to go out of the room.
- Q. How did they act towards each other? A. Well, I should not say very friendly.
- Q. You should not say? A. No.
- Q. Tell us how they acted? A. When Mrs. Gutmann came in she spoke to her mother and her mother did not answer, so finally she said, "Mother, don't you know me?" she said, "Yes, I do," and I sat by Mrs.
- 30 Able's bedside at that time holding her hand, I think I had been rubbing her wrist, or something of the kind, to help the circulation of the blood, and it was Mrs. Gutmann who asked me if I would not please get up and let her sit beside her mother.
- Q. Did you do it? A. I did.
- Q. Did she sit there? A. She did.
- Q. And take her mother's hand? A. I think she did for a moment, and Mrs. Able took her hand away. I remember that distinctly.
- 40 Q. Took her hand away? A. Yes, sir.

Pearl Conover—Cross

Q. What did she say? A. She didn't say anything.

Q. That is when she first came there this occurred?

A. Yes, sir.

Q. She stayed there until her death? A. As far as I know she did, yes sir.

Q. When did you leave there, and not come back, how long before her death? A. Only a few hours.

Q. Then, with the exception of a few hours you 10 were there up to the time of her death? A. I was.

Q. Did you see any other intercourse of any kind between Mrs. Able and Mrs. Gutmann? A. No, I did not.

Q. Was not Mrs. Gutmann in the room after that?

A. She was.

Q. Was she not in there a good deal of the time?

A. Yes, she was.

Q. And that is all you have to say about their actions toward each other? A. That is all.

20

Mr. Able: If your Honor please, with the exception of some documentary evidence which has been marked, and I think not yet introduced into evidence, we rest.

It may be that the Senator has some testimony to offer in way of rebuttal. If so we would like to reserve the right to introduce these papers before the close of the case:

30

The Court: I think they should be introduced now before you close your case.

Mr. Able: Very well. We would like to offer if your Honor please, a letter which was marked "Caveator, Exhibit 5 for Identification"; I think that was an error, however, but that is the way it was marked.

The Court: That is no error, the request came from Senator Gebhardt at that time.

40

Admission of Proponent's Exhibits

Mr. Able: The reply to Exhibit 5, which I just mentioned, has no mark, I think it was used and asked to be marked and probably was omitted. That is my letter in reply to the one of February 2nd.

Mr. Gebhardt: A copy of your letter.

10 Mr. Able: A copy of the letter which I wrote, yes. And we would like to offer that in conjunction with Exhibit 5, and would also like to offer Exhibit 6 for identification on the part of the caveator, which is so marked. I would like to offer those three in conjunction with each other.

Mr. Gebhardt: I consent to the letter signed by Mrs. Able and the one signed by Edwin F. Able, but object to the copy of the letter sent in reply.

20 Mr. Gebhardt (After considerable discussion and after examining the letter in question): I do not think I will object to that going in, I had not read it before.

Mr. Able did testify, or say that was a copy of the letter he wrote?

The Court: Yes. The papers will all be marked. They are admitted in evidence.

30 Said letters were then marked as follows: Letter dated February 2nd, addressed to "Dear Harry" and signed "Maggie," Exhibit P No. 5. Copy of letter dated February 2nd and signed "H. J. Able," Exhibit P No. 6. Letter dated February 6, addressed to "Dear Cousin Harry," and signed "E. F. Able," Exhibit P No. 7.

Mr. Able: We offer proponent's exhibit P No. 2 as
40 it has been marked for identification.

Admission of Proponent's Exhibits

The Court: The purpose being that the signature shall be used for comparison and identification?

Mr. Able: Yes.

The Court: It is admitted.

Mr. Able: We offer proponent's Exhibit 3 for the same purpose. It is a check of April 1, 1901. 10

Also proponent's Exhibit 6 which will now be offered 8½.

Also proponent's Exhibit 8.

Also proponent's Exhibit 4.

Also proponent's Exhibit 11.

Mr. Gebhardt: I object to that, what is the purpose of it? 20

Mr. Able: There was a standard introduced by yourself from the signature book of the Bloomsbury National Bank, and these signatures were used for the purpose of showing that your standard was incorrect, that the standard signature which you have used was not the signature of Kate Able, but was the signature of her husband.

Mr. Gebhardt: I do not think they are admissible for that purpose. 30

The Court: I will admit the checks for the purpose of permitting a comparison of them with the signature in the signature book of the Bloomsbury National Bank, introduced by the caveators as a standard of Kate Able's signature.

Mr. Gebhardt: I object to their admission and ask for an exception. 40

Edwin F. Able—Recalled—Re-Cross

The Court: The exception is allowed.

Mr. Gebhardt: Before the proponents rest I want to ask Edwin Able another question.

EDWIN F. ABLE recalled for further cross-examination by Mr. Gebhardt.

10

Q. Were you not indebted to your mother at the time of her death? A. Yes, sir.

Q. Several thousand dollars? A. Yes, sir.

By Mr. Able:

Q. Did your mother have any security for your indebtedness? A. She had.

Q. What had she? A. A mortgage.

20 Q. One mortgage? A. That is all.

Q. For her whole indebtedness? A. Yes, sir, on the hotel.

Q. Are you correct about that? A. No, sir, she had another piece of paper, I don't know what that is, I was sick when that was made and don't remember.

Q. Can you state the exact amount of the mortgage or the mortgage? A. Ten thousand dollars on the hotel at Clinton.

30 Q. What mortgage was that? A. On the Clinton hotel.

Q. Who was that mortgage given to originally? A. Johnny Walters.

Q. How did your mother come into possession of it, if you know? A. She paid it up and took it herself.

Q. What do you mean? A. She paid Mr. Walters the money and took the mortgage herself on the property.

40 Q. Was there any other mortgage besides that? A. There was something done while I was in Plainfield, I don't remember.

Edwin F. Able—Recalled—Re-Cross

Q. Was there any besides the Plainfield paper that you are talking about? A. There was a note.

Q. How much do you owe your mother that she has not got security or paper to show for? A. Well, do you mean at the time I went to Bloomsbury and borrowed money from her for the purpose of straightening some matters out at Plainfield?

Q. No, what do you owe your mother? A. Thir- 10
teen thousand dollars, I should say.

Q. You didn't answer my question, you didn't let me finish my question. Just strike that answer out.

Mr. Gebhardt: I do not want it stricken out.

Mr. Able: I want to finish my question.

The Court: It is stricken out.

Q. What did you owe your mother that she was not 20
secured for by mortgage, or that she did not hold your paper to show you had received it? A. Nothing, she has got paper to show for it, she holds everything against me.

By Mr. Gebhardt.

Q. Was there not three thousand dollars back in- 30
terest due at the time of your mother's death?

Mr. Able: If there was the papers show for it.

A. I suppose there was, yes, sir.

A recess was then taken.

Hamilton Gutmann—Recalled—Re-Direct

AFTER RECESS.

HAMILTON GUTMANN recalled in rebuttal.

Direct Examination by Mr. Gebhardt:

10 Q. Do you remember about the time of the check of March 30, 1908, alleged to be signed by Mrs. Able, and did you have a conversation with Mrs. Able about the check? A. Well, some time after the check was given.

Mr. Herr: I would like to ask the object of this.

20 Mr. Gebhardt: The ground of the making of this will is largely placed upon the fact that this check was forged. We propose to prove by this witness not only that the check is genuine and that Mrs. Able told him she had given it to the daughter and what it was given for, but perhaps to follow it up by two other witnesses who will swear they saw the check signed by Mrs. Able at the time, and the main purpose of this testimony is to show that there must have been something the matter with this woman's mind or memory when she would afterwards under those circumstances dispute the fact that she had given that check.

20 Objected to.

The Court (After discussion): I will overrule the objection and the testimony will be admitted.

In order to get the objection properly on the record it should be made to the question which naturally follows.

40 Q. What was that conversation?

Hamilton Gutmann—Recalled—Re-Direct

Mr. Herr: I object on the ground that this is not rebuttal and furthermore that it is not competent under any circumstances, and also on the further ground that this is hearsay testimony.

Objection overruled.

Counsel on behalf of the proponent prays an exception of the above ruling of the Court. 10

Exception allowed, let it be sealed, and it is sealed accordingly.

Judge.

A. She told me that she had paid for Phoebe's operation, she gave her a check to pay for the operation that she had there about two years prior to the time that check was dated or drawn. That original check there was given two or three years before it was drawn; that was directly for her operation at the Union Hotel in Clinton, that is, Edward Able's hotel; she wanted to know how much the operation cost and I told her about and she asked my wife who was going to pay for it. whether she was going to pay for it or I and my wife said, "I have the money and I think I will pay for it." And she said, "All right, Phoebe, if you are going to pay for it." 20

Q. Don't give the conversation, just what you know yourself. A. She merely told me she had given Phoebe a check to pay for the operation and that is supposed to be the check. 30

Q. I show you the check and ask you whether in your opinion that is the genuine signature of Mrs. Able?

Mr. Herr: I object to that. It has not been alleged on the part of the proponents that that was or was not her genuine signature; that testimony was brought out by the other side. 40

Hamilton Gutmann—Recalled—Re-Direct

Mr. Gebhardt: From your witness.

Mr. Herr: Yes, but it was your own testimony, it was not a proper cross-examination and we did not raise the question of the genuineness of that signature.

10 The Court: I will overrule the objection.

Counsel for the proponents prays an exception to the above ruling of the court.

Exception allowed; let it be sealed; and it is sealed accordingly.

Judge.

20 Mr. Herr: I only thought—Well, he has not testified, I believe, to his knowledge before.

The Court: Yes, he said he saw her sign her name about fifty times.

A. That is Mrs. Able's signature.

Q. Since Mr. Ball has lived in your family what relation has he had in the family?

Objected to as incompetent.

30 Objection sustained.

Exception to caveator.

Q. Dr. Mr. Ball or not ever live in any improper way with your wife? A. No, sir.

Mr. Herr: That is objected to.

Objection sustained.

40 Exception to caveator.

Hamilton-Gutmann—Recalled—Re-Direct

Mr. Able: I move the answer may be stricken out.

The Court: Yes, it should be stricken out. The objection was timely.

Q. It has been stated here in open court that your mother-in-law in her lifetime said that Mr. Ball was living with your wife as her husband. I ask you now whether that is true or not?

10

Objected to.

Objection sustained.

Exception to caveator.

Q. I ask you whether during the past seven years from your own personal knowledge, it has been possible for your wife to be guilty of immoral conduct with any man.

20

Objected to.

A. It has not.

The Court: The objection is sustained.

Exception to caveator.

Mr. Herr: I ask the answer may be stricken out.

30

The Court: It may be stricken out if recorded.

Mr. Gebhardt: I may say that in pursuing this line of inquiry further my object is simply to have a ruling upon it.

The Court: I was going to suggest that perhaps the ruling on these four questions will give you a proper

40

Hamilton-Gutmann—Recalled—Re-Cross

exception so that if the Court is wrong you will have the benefit of it.

(A discussion here arose between counsel).

The Court: It may be noted that my ruling is the same after listening to counsel's argument.

10

It may be rather hard for Mrs. Gutmann herself to have inferentially these accusations against her, but I am quite clear that whether they are true or false the matter is not within the issues of the case.

Mr. Gebhardt: Your Honor will allow me an exception.

The Court: An exception will be allowed.

20

Cross-Examination by Mr. Herr:

Q. I believe you told us when you were on the stand a few days ago how long since you had seen your mother-in-law write; will you state how long ago it was? I do not remember. A. I do not remember myself.

Q. Have you seen her write within the last ten years? A. Oh, my yes.

30 Q. In the last five years? A. In the last five years I don't think I have seen her write so often, because I have not been about where she was.

Q. (Witness shown exhibit No. 2 for proponent and asked to compare that signature with the signature on the check in question and to state whether he sees any similarity). A. Well there is some difference there and there is some similarity.

Q. Where is the similarity? A. In the H.

40 Q. There is not any H there. A. (Witness indicates).

Hamilton-Gutmann—Recalled—Re-Cross

Q. That is not an H. That is a K. A. Well, I meant that; to me it always looks like an H. Her K is like an H to me. And the T and E the difference in the dash.

Q. In the last word is there any similarity in any respect? A. No, the B is about the only thing; and A instead of being an A is just half an A.

Q. Where as in the check in dispute it is a full A? 10
A. Yes, sir.

Q. And the B's do not resemble each other? A. Well, some.

Q. It does not resemble it any more than a "b" would in your handwriting does it? A. Yes, it does.

Q. And the L does not look a bit like it? A. Not in this signature, no.

Q. (Witness shown Exhibit P 8½ and is asked whether there is any similarity between that signature and the signature in the disputed check). A. Yes, the "ble" there is just a little difference in the angle, but the K is natural. 20

Q. You say that is the signature of Kate Able merely because she told you so, don't you? A. No, I—

Q. Now because you would recognize it apart from anything you knew about it? A. Yes, sir, I would say it was her's because I have seen it a number of times; it seems to me just like her natural signature; her whole name was always written very distinct.

Q. Are you acquainted with your wife's signature? 30
A. Yes, sir.

Q. Is that your wife's signature on the back of the check? A. I would say it was.

Q. I call your attention to the little bit of tracery there, or change in the b, where the pen has evidently been taken off the paper in making that signature and ask you whether you observe it and whether you ever saw anything of that sort in Kate Able's genuine signature? A. I don't know that I have ever looked at

Hamilton-Gutmann—Recalled—Re-Cross

the signature as close as that; I never had any occasion to until my attention was called to it here.

Q. This check is dated March 30th, 1908, and it was cashed you say some three years after that? A. No, that check was given before it was cashed—before it was presented to the bank; it was given several years before the date of March 30th, 1908.

10 Q. That check was given several years before March 30th, 1908? A. Yes, sir.

Q. What year was that check given in if you know? A. I would say in 1906.

Q. Where did you live when the check was given? A. In Bloomsbury.

Q. That is when the check was given? A. Yes, sir.

Q. When did you have this conversation with your mother-in-law about this check? A. Shortly after the check was given.

20 Q. How did you happen to have a conversation with her then? A. My wife was operated on at her brother's hotel and after the operation—

Q. Why by? A. Dr. Mickel from Easton and Dr. Blackwell.

Q. Who paid Dr. Mickel and Dr. Blackwell? A. I did.

Q. How long before this check was given? A. I don't know whether I paid it before or after. I paid Dr. Blackwell with a check and Dr. Mickel in cur-

30 rency.

Q. How much altogether? A. I don't know, several hundred dollars.

Q. About one hundred for both of them? A. Oh, no, Dr. Blackwell's bill was something like \$30 and Dr. Mickel's bill was seventy dollars or seventy-five dollars.

Q. And that was all? A. That was all for these two.

Q. Do you mean to say this check for \$350 was given to pay that bill? A. Yes, sir, that didn't in-
40 clude everything. There was some question when the

Hamilton-Gutmann—Recalled—Re-Cross

check was given as to just what the amount of the operation would be.

Q. You say the check was signed at that time? A. I never saw it signed.

Q. And your mother-in-law never told you anything about it? A. Yes, sir.

Q. When? A. I suppose three or four weeks after when I came back to Clinton.

Q. It was in 1906 as near as you can recollect? A. Well, several years before that—probably two years; the way I figure that is that I have been living in Somerville six years and that would bring it back to about 1906; that is how I am doing my calculating.

Q. And it was about that time your mother-in-law told you about the check? A. Oh, no, shortly after the check was given, it must have been six months, I guess, but I merely give you that approximately; it was about that time.

Q. What did she tell you? A. I cannot recall anything more than she said, "I have given Phoebe a check." No, she said, "I have paid for Phoebe's operation." That is all that was said about it.

Q. She said she had paid for it? A. Paid for Phoebe's operation; she meant in the check, you know.

Q. You don't know anything about that. A. Well, I don't know exactly.

Q. All you know about it and all you confine your testimony to is Mrs. Able at some time said to you she had paid for Phoebe's operation which occurred in 1906? A. Well, I don't recollect now whether she said she had paid for it or had given her a check, but I think she said she did give her a check for the operation.

Q. Do you recall that? A. Well, no, I don't recall that exactly.

Q. Why didn't you state in your examination in chief that you didn't remember whether it was by check or whether it was that she paid? A. She did pay

Hamilton-Gutmann—Recalled—Re-Cross

it after that by check—"I have given her a check for the payment of the operation."

Q. Why are you so much more certain now than you were a few minutes ago? A. These things are rather confusing; she never spoke to me but once about it, I had no idea she was going to do that.

10 Q. As a matter of fact, you don't remember what she said? A. Yes, sir, I do, very distinctly, she said, "I have given Phoebe a check for the operation."

Q. You remember that now? A. Yes, sir.

Q. How much did she say it was for? A. I don't remember that now.

Q. Did you tell her that you had paid for the operation? A. She didn't ask me—yes, she did.

Q. When did you ever hear that? A. She asked me who I paid, in fact, she asked my wife first.

20 Q. Never mind that. A. Well, she asked me and I said I had paid Dr. Blackwell and Dr. Mickel and the nurse's board at the hotel, she knew about that.

Q. You said awhile ago this check was given for the expenses of the operation? A. Yes, sir.

Q. And now you say that cost about one hundred dollars all together? A. No, I didn't, that was merely for the surgeon's fee and Dr. Blackwell's fee.

Q. I mean for the two doctors. A. Yes, sir.

30 Q. And you and your mother-in-law had a conversation about a check that she had given to pay for these expenses or for that operation and she didn't tell you how much that check was? A. No.

Q. You didn't know how much the check was and she didn't mention it to you afterward? A. The check was already made probably four or five days before she spoke to me about it.

Q. Did you see her make this check? A. No, sir.

Q. Do you know anything about her making the check excepting what she said? A. That was all.

40 Q. She didn't tell you what the check was for? A. No, sir.

Hamilton-Gutmann—Recalled—Re-Direct—Re-Cross

Q. Or when it was dated? A. No, sir, she did not; I never spoke to her afterwards about it, nothing was said about it.

Q. All you know or have any recollection of is that she has either given a check or the money to pay for that operation? A. No, given a check, that is all.

Q. Now you say it was a check. A. That is the only thing I recall. **10**

Q. Whose handwriting is the face of this check in? A. My wife's.

Q. That you are sure of? A. Yes, sir.

Q. When did you first hear that Mrs. Able alleged this check was a forgery? A. A few days, probably a week or ten days, after it was presented at the bank.

Q. And you and Mrs. Able never had any conversation about the check excepting what you have already stated? A. That is all.

Re-Direct Examination:**20**

Q. Did you see the check before it was cashed at the bank? A. Oh, yes, I saw the check once.

Q. How long was that before it was cashed? A. That probably had been some time between the time it was given and the time it was cashed; I don't just recall.

Q. How long before it was cashed, a year or six months? A. I would say a year, about a year. **30**

Re-Cross-Examination:

Q. Where did you see it then? A. My wife showed it to me.

Q. You mean a year after the check was dated or a year after it was cashed? A. I make it about a year between—about two years elapsed between the time that check was given and the check was presented for payment. **40**

Irving E. Ball—Direct

Q. And I understand you to say this conversation between you and Mrs. Able occurred in a few months after the operation was performed? A. No, within a week; I was going back and forth from Bloomsbury to Clinton at the time and I came back sometimes twice a week, sometimes three times or perhaps only once in five days and it was on one of those trips.

10 Q. Was it within a week after the operation was performed? A. Yes, sir, my wife was up and about.

Q. And the operation was performed— A. Several weeks before that.

IRVING E. BALL sworn for the caveator in rebuttal.

Direct Examination by Mr. Gebhardt:

20 Q. Are you the Mr. Ball who boards with Dr. Gutmann and his wife? A. Yes, sir.

Q. (Handing witness check for \$350) I show you a check and ask you if you saw the name of Kate Able put there? A. I did.

Q. Who put it there? A. Mrs. Kate Able.

Q. Where was Mrs. Able and where were you when you saw her sign it?

30 Objected to as irrelevant, incompetent and not rebuttal.

Objection overruled.

Counsel for proponent prays an exception to the above ruling of the court.

Exception allowed. Let it be sealed and it is sealed accordingly.

Judge.

Irving E. Ball—Direct

A. In room No. 4 at the Union Hotel, Clinton, N. J.

Q. Did you hear at the time for what purpose it was given? A. Yes, sir.

Q. What was the purpose?

Objected to as calling for hearsay.

Q. Did you hear from Mrs. Able at the time the purpose for which she gave the check? A. I did. 10

Q. What was the purpose? A. For the operation she had.

Q. Who had? A. Mrs. Gutmann.

Mr. Herr: Will your Honor allow an exception?

The Court: The last question was not pursued, the one to which you objected.

Q. How long have you boarded with the Gutmanns? 20

Objected to as irrelevant and not rebuttal.

Objection sustained.

Exception to caveator.

Q. Have you ever been guilty of immoral conduct with Mrs. Phoebe Gutmann? 30

Same objection.

Same ruling.

Exception to caveator.

Q. After the signing of the check that you have just testified about down until the time that Mrs. Able 40

Irving E. Ball—Direct

left Plainfield for Clinton, did you do any business for Mrs. Able and if so what?

Objected to as irrelevant.

10 Mr. Gebhardt: My purpose is to show that this man during this period of time when this deceased person is alleged to have been so bitter against the daughter because of the way in which she was living with this man that he and Mrs. Able were during that period while they lived in Plainfield on the best of terms and he was representing her in business.

20 Mr. Herr: I do not see how that can be competent any more than any of the other questions with reference to this man's relations with the caveator, and it can make no difference whether he did business with Mrs. Able and it is not rebuttal.

The Court (after hearing argument): The objection will be overruled and the question allowed.

Counsel for the proponent prays an exception to the above ruling of the court.

Exception allowed; let it be sealed and it is sealed accordingly.

Judge.

30

A. The transferring and sale of real estate.

Q. During that period upon what terms were you with her?

Objected to.

Objection sustained.

40 Exception to caveator.

Irving E. Ball—Cross

Q. How long did the business relations you have just testified about last, and when did they cease, how long before her death? A. Do you want the period from the first until the last?

Q. When did they cease; how long before her death did the business relations cease? A. About May, 1910.

Q. It has been testified that you sued Mrs. Able one day when she came to Plainfield to see about this property. Did she owe you any money at that time or not? 10

Mr. Herr: I object to that latter part of the question.

Objection sustained.

Exception to caveator.

Q. What did you sue her for? 20

Same objection.

Same ruling.

Exception to caveator.

Q. Had Mrs. Gutmann anything to do with that suit?

Same objection. 30

Same ruling.

Exception to caveator.

Cross-Examination by Mr. Herr:

Q. How long had you been at the hotel at Clinton at the time this check was signed? A. From April 1, 1905, until July 1, 1906. 40

Irving E. Ball—Cross

Q. And this check was made during that time, between 1905 and 1906? A. I did not say so.

Q. I asked you how long you had been living there at the time this check was signed. If you can answer that any other way I will let you? A. I misunderstood you, Judge, your Honor.

10 Q. That is the question. A. That check was made on July 1, 1906.

Q. I did not ask you that, but how long had you been living at the hotel at the time that check was made? A. I had been living at the hotel from April 1, 1905, until the time that check was given which was July 1, 1906.

Q. At the time Dr. Gutmann and his wife came from Bloomsbury to Clinton previous to the performance of the operation Dr. Gutmann referred to, did you live at the hotel at Clinton? A. Yes, sir.

20 Q. And had for some time previous to that? A. I had lived at the hotel from December 31, 1903, until the time Mr. Able took charge of it and from that on.

Q. Were you acquainted with Mrs. Gutmann at that time? A. Not until after Mr. Able took charge of the hotel. I had seen her, but was not acquainted with her.

Q. When was that? A. That was during the year 1904 sometime, I had met her in business transactions.

Q. What was her physical condition at the time this check was signed? You say it was signed in her room.

30 A. She had just underwent an operation.

Q. How did you happen to be there? A. I was boarding at the hotel.

Q. How did you happen to be in her room? A. Well, I was in Mrs. Able's room, I was in Mrs. E. S. Able's room all along; I was treated as one of the family.

Q. I asked you how you happened to be in Mrs. Gutmann's room? A. It was on a Sunday, we were there with the Sunday papers.

Irving E. Ball—Cross

Q. Who else was there besides you two? A. Mrs. Kate Able.

Q. Anybody else? A. No, sir.

Q. What was the first thing said in regard to this check? A. The first thing was, Mrs. Able said, "Phoebe, how much does this operation cost you?" "Oh," she said, "Mamma, about three hundred dollars or a little over." Well, she says, "It is a shame 10 to make poor doc pay for it and I am going to pay for your operation." And the first check that was drawn was dated on Sunday, July 1, and I told Mrs. Able that it was no good, so that check which you hold in your hand was drawn and was not dated until it was cashed.

Q. But it was signed on Sunday? A. Yes, sir.

Q. What was Mrs. Gutmann's physical condition at that time? Could she sit up? A. Yes, sir, just about able.

Q. Just about able to sit up? A. She had sat up for 20 two or three days.

Q. Who drew that check? A. Mrs. Gutmann filled it up with the exception of the signature?

Q. Filled it up when she was lying in bed? A. No sir, sitting in her mother's Morris chair.

Q. You can write can't you? A. Yes sir.

Q. Why didn't you fill it in? A. That was not necessary.

Q. You know how to draw checks? A. I have 30 drawn enough of them.

Q. Why was it necessary for Mrs. Gutmann to get up out of a sick bed and draw this check when you are perfectly able, willing and competent to draw it? A. She did not get up out of a sick bed to draw the check; she was sitting up and had been for two or three or four days previous.

Q. You were mistaken then a while ago when you said she was in bed? A. I said she had just been out of bed for a few days.

Q. Who was the nurse at that time? A. Miss Ryan. 40

Irving E. Ball—Cross

Q. Was she there? A. No, she had been discharged about two weeks previous.

Q. How long after the operation was it that this occurred? A. This was within ten days of the time Mrs. Gutmann went home; she went home on July 11, 1906.

Q. When was the operation performed? A. May 26,
10 1906.

Q. May 26, 1906? A. Yes sir, she was at Mr. Able's hotel, which he charged her board for, seven weeks.

Q. How long after the operation was performed did the nurse stay? A. Three weeks.

Q. Three weeks after the operation was performed? A. Yes sir.

Q. Was this check drawn before or after the operation? A. This check was drawn about the time Mrs. Gutmann was figuring on going home.

Q. How long after the operation? A. Well, the difference between the 26th of May and July 1.
20

Q. You are sure now that the date was July 1, when the check was signed? A. Yes sir, Sunday, July 1, 1906.

Q. Where did Mrs. Able sign this check? A. At Room No. 4 in the Union Hotel.

Q. Mr. Ball, at about the time this check was signed you were in some financial trouble, were you not? A. I was not.

Q. How much of the proceeds of this check did you get? A. Not a penny.
20

Q. At the time this check was taken up to the bank to be cashed you were with Mrs. Gutmann were you not? A. I was not.

Q. Didn't you go to Phillipsburg with her? A. No sir, I never went to this Phillipsburg bank.

Q. And didn't you stay out in the street while she went in to get this check cashed? A. I did not.

Q. You were in Mrs. Gutmann's room every day
40 after the operation was performed until she became

Irving E. Ball—Cross

convalescent were you not? A. I was, yes sir, at the request of Dr. Gutmann.

Q. Sometimes three or four times a day? A. Yes sir.

Q. And did not the nurse object very seriously to your being there during that time? A. No sir.

Q. And didn't you refuse to go out and stay out? A. No sir.

Q. Was this check signed with the same pen and ink with which the check was filled up? A. That I could not swear to.

Q. You were there when it was signed? A. That I cannot recall.

Q. You don't know whether you were there when it was signed or not? A. Yes sir, I was there when it was signed. Mrs. Able as a usual rule used a fountain pen; whether that was signed with a fountain pen or not I cannot say.

Q. After this check was signed when did you next see it? A. I saw it several times.

Q. Where did you see it next? A. I saw it one time in Troy, N. Y., when Mrs. Gutmann was a little short of money and asked me when she and her mother were up there on a visit if I would like to let them have some money until her husband sent a check to the mother, and I made the remark it was on a New Jersey bank; I could not collect it without sending out there and pay a fee for collection. And then again I saw it at Plainfield.

Q. How long did Mrs. Gutmann stay at Troy when you were there—which did you say Troy or Albany? A. I said Troy, didn't I?

Q. I don't know and I don't want to make any mistake in asking the question. How long did she stay there? A. Her and her mother the first time I think were there three weeks and the second time I think six and the last time sixteen weeks.

Q. Where did they live there at that time? A. At 40

Irving E. Ball—Cross

Mrs. Charlotte Bacon's 2113 Fifth Ave., Troy, New York.

Q. The doctor was not up there during that time at all? A. No sir.

Q. Who paid their expenses? A. They paid their own expenses.

10 Q. You say you saw this check another time. When was the date when they were at Troy, what time? A. They were at Troy during May, the first visit, and they were there during July for another visit.

Q. What year? A. 1907; that was the time I was there, and they came back again then after the Fourth of July, I can't tell you the exact date, and they stayed there until the 31st of December 1907 at which time we all left.

20 Q. And all returned to Plainfield? A. Mrs. Gutmann returned to Somerville and I went to work in Plainfield.

Q. As a matter of fact, was not Mrs. Gutmann there a good while before her mother came up? A. No sir, she was only there once on a visit.

Q. Without her mother? A. Yes sir, at the request of Dr. Gutmann.

Q. Did you hear Dr. Gutmann request her to come up there? A. Dr. Gutmann telephoned me and asked me if she could come up there.

20 Q. How long was she there when her mother was not there with her? A. I think two or three weeks; I cannot just swear to the length of time.

Q. How long after the time Mrs. Able was there and this check was mentioned did you see it again? A. I cannot just recall that date.

Q. Was it while you were in Troy or after you returned to Plainfield? A. I saw it once or twice after I returned to Plainfield.

Q. How did you happen to see it then? A. Why it was in Mrs. Gutmann's pocket book.

May Beatrice Weed—Direct

Q. Do you know whether it was folded or not? A. Well, I could not say that.

Q. Did you see it after that? A. After when?

Q. After the time you saw it in Mrs. Gutmann's pocket book? A. Well, I could not just say about that.

MAY BEATRICE WEED sworn for caveator in rebuttal:

10

Direct examination by Mr. Gebhardt:

Q. Where do you live? A. 705 West Front street, Plainfield, N. J.

Q. How near is that to where the Gutmanns then lived in Plainfield? A. Well, at the time that I was on very friendly relations with the Ables and the Gutmanns I lived directly opposite, at first, to Dr. Gutmann's house and in the course of about one month they moved and it was then 954 West Front street. I think it was 954 or 956, then they moved two doors below me on the same side of the street. At about the time that Mr. Able came to reside there from Clinton I didn't know Mr. Able at that time; I believe he was in New York; I didn't know him until after he was brought home ill with typhoid fever, which I think was in July of that year—

Q. Can you tell what year it was? A. 1909, and I lived in that house until March 20th—no, that was 1908, and I lived in that house until March 20th, 1909, and was on intimate terms with both families until March 20th, 1909, when I moved about, I should say, two and a half blocks below on the same side of the street, and have lived there ever since.

Q. Mr. Able asked this morning whether in your presence on one occasion while his mother was in Plainfield he did not call his mother a bitch and whether she did not hit him in the mouth and he denied that was done—

40

May Beatrice Weed—Direct

Mr. Herr: Don't answer; we object to that.

The Court: Yes, that does not state the question as it was asked?

Q. Mr. Able testified that on one occasion when you were present he did not call his mother "A God damned
10 bitch."

Mr. Herr: We object to that because it was testimony brought out by his own cross examination; it was not in regard to anything that had any relevancy in this case and I don't see how it either tends to prove or disprove the issues of this cause.

Mr. Gebhardt: Do you say it does not describe his testimony.

20 Mr. Herr: No, and I don't care if it did.

The Court: I will overrule the objection.

Counsel for the proponents pray an exception to the above ruling of the Court. Exception allowed; let it be sealed and it is sealed accordingly.

Judge.

30 Witness: May I answer that, your Honor?

The Court: You may answer it.

Witness: He emphasized it.

The Court: No, the question is whether he called his mother that or not?

Witness: He did many times during the time I knew Mr. Able; he cursed his mother and used lang-
40 uage as no child should use to any parent.

May Beatrice Weed—Cross

Mr. Herr: I object to that.

The Court: It may all be stricken out, the entire part of the volunteered answer.

Q. In that instance did his mother hit him in the mouth? A. She did.

Cross examination by Mr. Herr:

10

Q. Who else was present at the time when you say his mother hit him in the mouth? A. My husband and children; I put them out of the room, my children, put them in the kitchen and closed the door.

Q. Did you put him out? A. My husband took him by the neck and set him down in the chair and told him if he ever heard him swear like that to his mother again he would attend to him.

20

Q. Did he hit his mother when she struck him in the mouth? A. No, he was too intoxicated to strike his mother?

Q. He was intoxicated? A. Yes sir.

Q. He was intoxicated to such a degree that he was incompetent of knowing what he said? A. He was not; he had eaten a big dinner, he came in and he invited himself to dinner.

Q. Did he get intoxicated at your house? A. No, he did not, but the dinner I suppose sobered him up, I understand it does with men when they have been drinking, it sobers them up.

30

Q. Is Mr. Able in the habit of drinking? A. He is in the habit of becoming intoxicated and he has come into my home so and I objected to it.

Q. Whom did you make your objection known to?

A. Mr. Able himself.

Q. And he kept coming right on? A. Mr. Able did, he kept coming right on.

Q. You received him when he came after you ob- 40

May Beatrice Weed—Cross

jected? A. He is not the kind of a man you would not care to have the ill will of and a man you could not insult.

Q. You didn't tell him not to come again when he came in like that? A. Many times I told Mr. Able my husband objected to it.

10 Q. Objected to what? A. His coming in the house and cursing and swearing and after he had been drinking so that he could not be called a gentleman; I didn't care to hear it.

Q. Let me see if I have got you right. You say when Mr. Able came in your husband didn't want him to come in there drunk and to continue drinking after he had been drunk, is that it? A. I didn't say that and you didn't ask me.

Q. Let me get a correct understanding of it. Did he call his mother a "God damned bitch" when he was 20 sober? A. He certainly did.

Q. Where was that? A. That was in their own home during the winter of 1908 and 1909.

Q. In his own home? A. Yes sir, in his own home.

Q. Yes, I understand you. A. Did you?

Q. How often did that occur? A. That would occur on an average of every time I was there if his mother would say the least little thing that didn't suit.

Q. What did she say? A. Well, shall I give you one instance?

3) Q. Yes, let us hear what she said. A. We were there for cards one evening and she said "You had better put a little coal on the furnace." And Eddie started to—

Q. Oh, tell us what was said. A. I have got to get to that. I said, "The idea, you are putting on kid gloves," he was putting on gloves, and she said something about his soiling his hands.

Q. Tell us what he said to her. A. Shall I tell it? He says, "You God damned old bitch, you will be shoveling coal in hell." and I turned cold from head to foot 40 because I never heard such a thing.

May Beatrice Weed—Cross

Q. And you continued playing cards? A. No sir, in about fifteen minutes afterwards as soon as things could get around we left.

Q. How often did you go back? A. We had no occasion to go back, for Mrs. Able and young Mr. Able were in our house pretty nearly every day.

Q. And you went back to see them? A. To see Mr. Able and his wife.

10

Q. Was he there when you went back? A. Many times.

Q. Did you see him when you went back? A. I certainly did.

Q. Your objection then to his language was not of such a serious nature that you refused to go back at all. A. I was not calling on Mr. Able.

Q. You called at his house? A. No, I did not; I called at his mother's house and she said she supported him and was keeping that home.

20

Q. Now, Mrs. Reed— A. Weed, if you please.

Q. Mrs. Weed did you ever hear her say anything about her daughter? A. I positively did not, detrimental to her daughter.

Q. Did she ever talk about her or mention her name? A. She certainly did.

Q. Would her daughter be present sometime when these things took place? A. She certainly was.

Q. What did she do? A. Cried.

Q. Now, Mrs. Weed, did you continue to call at that house up to the time they moved away? A. No, I did not. The last time I was in Mr. Able's house—was in the spring, about in May of that year

30

Q. What year? A. 1909.

Q. Do you know when they moved away? A. I certainly do.

Q. What was the cause of your discontinuing your calls? A. Must I tell that? I don't want to.

Q. Why? A. Because I don't.

Q. Let us know what the occasion was? A. The 40

May Beatrice Weed—Cross

occasion was because Mr. Able, after our introducing him to our friends and taking him around in the automobile and trying to straighten him out, did a dirty act—

Q. What was it? A. He came to my husband and said, "Do you know anybody I can rent a commutation of; I am going to Newark to meet Mrs. Perrine tonight and go to New York and I don't want to pay" 10 and he said, "yes, I think I can; I can introduce you to Mr. Cadmus," which Mr. Weed did. In the meantime as near as I can remember there were efforts made to catch these men who were loaning these commutation tickets and knowing Mr. Weed was a friend of everybody and knew everybody in Plainfield he went after Mr. Weed to get him in trouble that way and I resented that by not having anything to do with him after that; that was in April, I think and 20 that was the last he was in the house, during the first week in April when he came there drunk; I don't know whether it was in May or April he did that but it was about that time.

Q. Mr. Able was a detective, was he not, for the Central Railroad of New Jersey? A. He denied it.

Q. Do you know whether he was or not? A. I do not.

Q. And didn't it so happen that some of your friends, that he picked out and reported them to the 30 company and their commutation tickets were taken up and on that account you became angry with him and refused to associate with him or call on his family? A. I didn't refuse to call on his family; I simply ignored—

Q. Did you call there? A. I had no occasion to, they were getting ready to move away.

Q. Although his language was so bad you didn't object to calling on him? A. I certainly did.

Q. You called? A. Not on him.

May Beatrice Weed—Cross

Q. You called at his place? A. At his mother's home.

Q. Where was he? A. I didn't know or care whether he was there.

Q. You knew he was living there? A. I knew he claimed that was his home when in Plainfield.

Q. You knew his wife lived there? A. Yes, sir.

Q. And his daughter. A. Yes, sir. 10

Q. You knew he had been sick there? A. He was brought there sick.

Q. And had been sick? A. I believe so.

Q. You knew he was there with his wife and family after that? A. Yes, sir.

Q. And you continued to call there? A. Why not?

Q. Did you continue to call there? A. I did.

Q. And you discontinued your calls after Mr. Able had caused the taking up of some of the commutation tickets of some of your friends? A. Not my friends, 20 no, because I myself only knew them to speak to.

Q. Well, your husband's friends. A. I don't know that I can say they were my husband's friends. You understand friends and acquaintances are two different things.

Q. Well, put it that way, your husband's acquaintances. A. My husband's acquaintances.

Q. And that annoyed you and made you mad. A. It didn't make me mad; I resented it; on account of my husband. 30

Q. Your feeling was of resentment, not of anger? A. That is it exactly.

Q. You were neither angry nor did you resent his language that you had just repeated on the stand a number of times. A. I beg your pardon.

Q. But this matter of the commutation ticket you did resent, that is so? A. I resented his language many times and asked him not to use it or come to my home, but as I say, he was a man you could not insult.

Q. You did not resent it to the extent of discon- 40

William Knight—Direct

tinuing calling. A. Why should I, with his wife there and his mother?

Q. I am not arguing the matter. I would like an answer. A. No, I called on his wife and mother.

Q. After this commutation ticket affair took place you did resent it to such an extent that you discontinued calling. A. But with—

10 Q. Just answer the question. A. Yes, sir I discontinued calling at the house.

WILLIAM KNIGHT sworn for the caveator in rebuttal.

Direct examination by Mr. Gebhardt.

Q. You are a practicing physician? A. Yes, sir.

Q. Of how many years standing. A. Since 1871.

20 Q. A graduate of what college? A. University of Pennsylvania.

Q. Were you the attending physician on Mrs. Able in her last sickness? A. Yes, sir.

Q. When did you begin attending her? A. I was called on Sunday morning, April 11th.

Q. It has been testified by Mrs. Hockenbury that on the Wednesday morning of that spell of sickness Mrs. Able told her that she had made a will and cut off Phoebe. I ask you now whether at that time, this
30 was on Wednesday morning, whether at that time she was in condition to say anything to anybody?

Objected to as incompetent.

Objection overruled.

Counsel for the proponents prays an exception to this ruling of the Court.

William Knight—Cross

Exception allowed; let it be sealed, and it is sealed accordingly.

Judge.

A. No sir.

Q. What time did she die? A. On Wednesday morning about six o'clock.

Q. What condition was she in twenty-four hours before that?

10

Objected to as incompetent.

Mr. Gebhardt: During the twenty-four hours previous I meant; all of the twenty-four hours previous.

Mr. Herr: I object to that as incompetent because it would not be in contradiction of Mrs. Hockenberry's testimony.

Objection overruled.

20

Counsel for proponent prays an exception to this ruling of the Court. Exception allowed; let it be sealed and it is sealed accordingly.

Judge.

A. She became unconscious on Monday afternoon and on Monday night we had a consultation, three of us in consultation, and decided it was a hopeless case, and so told the family. I saw her again on Tuesday morning. I remained there up until probably eleven o'clock on Monday night; on Tuesday morning I called and she was still in the same unconscious condition and it was a question in my mind whether she ever spoke afterwards.

30

Cross examination by Mr. Herr:

Q. Tuesday morning was the last time you were there, was it not? A. In the forenoon.

40

William Knight—Cross

Q. How early? A. About nine or ten o'clock somewhere along there.

Q. Who was there with you? A. Dr. Dolley.

Q. And that was the last you were there? A. Yes sir.

Q. Why didn't you go back again? A. Why simply because after Mr. Dolley and I had a consultation
 10 Mr. Able had got his sister to come in and ask Dr. Dolley to take the case and Dr. Dolley refused to do so, stating Dr. Knight had done everything in the case that could possibly be done. I immediately called Dr. Dolley to one side and said, "You have got to take this case; I have never been used by a white man like this before, and I don't propose to be used like it now and I am going to leave this case."

Q. You were not there afterwards? A. No, sir.

Q. Was it not Mrs. Gutmann the caveator in this
 20 case. A. I don't know anything about—

Q. —Who discharged you? A. Mrs. Gutmann did through Mr. Able, ask Mr. Dolley to take the case.

Q. Did Mr. Able say a word to you? A. No, he was behind the scenes and told her to do it.

Q. He was the one who did it? A. Yes sir.

Q. She told you she didn't want you any more? A. She didn't tell me that; she went down and got my prescription filled after that, after I left.

Q. How do you know? A. Didn't I go down to the
 30 drug store and find that out?

Mr. Herr: I object and move to strike that out.

The Court: Strike it out.

Q. Is not this the fact, that you went there intoxicated? A. No sir.

Q. And didn't Mrs. Gutmann object to your being there because you were drunk? A. Not a word of it—
 40 I hadn't had a drink that morning.

Silas Rouland—Recalled—Re-Direct

Q. You say Ed was behind the scenes, how do you know? A. I saw him looking out of the window when I told Dr. Dolley I was going to leave the case.

Q. And because you saw him looking out of the window you say he was behind the scenes. A. I have heard since he was behind the whole thing.

Q. Then you are testifying from hearsay evidence. A. No, I can prove that. 10

Q. I don't care about that; you don't know it yourself; you are an intelligent man and have been a witness often have you not? A. Yes sir.

Q. Don't you know the rule of law is you can only swear to that which you have seen yourself and know of yourself, not what you hear? A. Well, I didn't hear it all.

Q. Don't you know you are not allowed to testify to anything you have heard and don't you know of your own knowledge; haven't you been a witness here often enough to know that? A. I know hearsay evidence does not amount to anything. 20

Q. And yet you attempt to testify with hearsay evidence yourself now. That is all.

SILAS ROULAND recalled for the caveators in rebuttal.

Direct examination by Mr. Gebhardt: 30

Q. Mrs. Stanton testified on the witness stand some days ago about a conversation had between herself and Mrs. Kate Able at the funeral of your sister at Frenchtown on the day your sister was buried. Are you in a position to know whether that is true or not true; were you there that day? A. Yes sir.

Q. Is her statement true with respect to that conversation?

Objected to. 40

Silas Rouland—Recalled—Re-Cross

Q. Were they alone together that day at any time?
A. Not to my knowledge.

Q. Do you know whether they were or not? A. I know they were not at any time together.

Cross examination by Mr. Able:

10 Q. Were you in the cemetery? A. I was.

Q. What were you doing there? A. Burying her sister.

Q. Did you observe everybody in attendance at that funeral? A. The crowd was not so big, and the relations were all together.

Q. Did you notice whether Mr. Able and Mrs. Stanton were talking together at all? A. At the grave we were all talking together.

20 Q. Did they walk out of the cemetery together? A. They positively did not; she walked out with your mother, Mrs. Stanton did; I invited her and your mother to come down and take dinner with me at the hotel and they went.

Q. Where was Mrs. Able that time? A. Her and Mrs. Hoekenberry and Ed Able were ahead.

30 Q. Then you are prepared to swear that the conversation which your sister testified to having had with her sister, also your sister, could not have taken place because you didn't see them together? A. They were not far enough away to have any such conversation without my hearing it.

Q. Your answer was not responsive. (Last question read) Is that what we are to understand? A. They were not alone together; we were all together at the grave, but they didn't take no walk like she said by themselves.

Q. How do you know they did not? A. I was right there all the time.

40 Q. There were others besides you? A. Your mother was there.

Pearl Conover—Recalled—Re-Direct—Re-Cross

Q. Any others? A. Yes sir, the other sister and my other two sisters and—

Q. Wait a minute; don't answer anything of that kind until you are asked. That is all.

PEARL CONOVER recalled on behalf of the proponents:

Direct examination by Mr. Able:

10

Q. You have stated that you were acting in the capacity of a nurse for Mrs. Able during her last illness, were you present at any of the visits of Dr. Knight?

A. Yes sir, I think I was there every time he called.

Q. Were you there when Dr. Knight called on Tuesday before the death of Mrs. Able? A. Yes sir.

Q. Why did Dr. Knight discontinue his calls if you know? A. Because Mrs. Gutmann told him he was not wanted any more. 20'

Q. Did she give him a reason? A. She said because her mother was not satisfied with him, and I had heard her mother say on a number of occasions she was not satisfied with him.

Q. Were you in a position to observe the condition of Dr. Knight when he called at the sick room on his various calls? A. Yes.

Q. Did you observe anything irregular the doctor's condition? A. I don't know as you would call it irregular exactly, but Mrs. Able objected to him because she said he was drunk. 30

Cross examination by Mr. Blatz:

Q. Did you authorize your husband to go and see the Gutmanns about a year ago or nine months ago and offer to sell your testimony?

Objected to.

40

Phoebe Gutmann—Recalled—Re-Direct

A. Oh, I did not.

The Court: The objection is sustained.

Q. Have you in your possession a letter written by Mrs. Gutmann or by myself to you in response to that offer?

10

Objected to.

Objection sustained.

Exception to caveator.

PHOEBE GUTMANN recalled:

By Mr. Gebhardt:

20

Q. I call your attention to check, exhibit 4 for the caveator and ask you if you ever saw that check before? A. Yes sir.

Q. Did you see that check signed? A. Yes sir.

Q. Who signed it? A. My mother.

Mr. Herr: I think those questions have all been asked and answered.

30 The Court: I think not. The testimony which seems to me to make this evidence in reference to the check competent is the testimony of the witness who says that in his judgment the signature to this check is not the genuine signature of Mrs. Kate Able.

Mr. Herr: The testimony was introduced by them and I object now because this was their own testimony and they cannot contradict it.

40 The Court: The objection is overruled.

Proponent's Request to Charge

Counsel for proponents prays an exception to this ruling of the Court. Exception allowed; let it be sealed and it is sealed accordingly.

Judge.

Q. Did you draw the money on that check? A. Yes sir.

Q. What did your mother give the check for? A. 10 For the expenses of my operation.

Q. How long after that check was given did your mother visit you? A. After it was drawn?

Q. Yes. A. Why she visited me at Bloomsbury.

Mr. Herr: I object to that as repetition.

Mr. Gebhardt: I offer the check in evidence which has been marked exhibit 4 on the part of the caveator.

The Court: It may be received. 20

Mr. Herr: I have a paper here which has been offered in evidence but I offer it again. It is marked Exhibit 1 1-2 for proponents.

The Court: Let it be received in evidence.

TESTIMONY CLOSED

Counsel summed up

30

Counsel for the proponents request the Court to charge the jury as follows:

1. That the execution of the will is duly proved.
2. That all the evidence as to statements of deceased are only evidential to prove mental capacity, and are not evidence of undue influence.
3. The evidence of the legatee unless contradicted by some other credible testimony, or discredited by its improbability cannot be arbitrarily disregarded. 40

Charge

CHARGE.

DUNGAN, C. C. J.: Gentlemen, as has been stated several times by counsel during the case, this is rather an unusual one to be tried in a court of law, in which you are now sitting. Such cases are usually heard in either the Orphans' Court of the county or the
 10 Prerogative Court of the State, without a jury; but our law permits the Orphans' Court to certify the question involved in such a case as this into the Circuit Court for trial by a jury, and that is what was done in this case.

The Orphans' Court, in pursuance of the powers given by the law referred to, has certified to this Court, to be determined and answered by you, four questions.

20 First: Whether the paper writing presented to the Surrogate of the said County of Hunterdon for probate as and for the last will of Kate Able, deceased, was duly signed, witnessed, published and declared by the said Kate Able as her last will and testament, according to the statute in such cases made and provided.

Second: Whether the said Kate Able at the time of making and executing the alleged will as aforesaid, was of sound and disposing mind and memory.

30 Third: Whether the said alleged will of the said Kate Able, deceased, was the result of undue influence, imposition of fraud, exercised upon the said Kate Able by the legatee and devisee in said will named or by any other person or persons.

Fourth: Whether the said paper writing is the last will and testament of the said Kate Able, deceased.

Your negative answer to any of these questions, excepting the third, and your affirmative answer to that,
 40 would result in deviating the probate of this paper

Charge

which is presented as the last will and testament of Kate Able, and this is the document in question in this case, and would result in the finding by the Orphans' Court, which is bound by your answer to these questions, in favor of the caveator, Mrs. Phoebe M. Gutmann.

Your first consideration will be whether or not the paper presented to the Surrogate of the County of Hun- 10
terdon for probate, as and for the last will of Kate Able, which is Exhibit No. 1 for the proponent, was duly signed, witnessed, published and declared by her as her last will and testament according to the statute in this State.

The statute relating to the execution of wills as applicable to this case provides "that all wills and testaments shall be in writing, and shall be signed by the testatrix, or the making thereof acknowledged by her, and such writing declared to be her last will, in the 20
presence of two witnesses, present at the same time, who shall subscribe their names thereto as witnesses, in the presence of the testatrix." The word "testatrix" as applied to this case, meaning, of course, Mrs. Kate Able.

Leaving out of consideration for the present the question of whether or not the signature to the will is the true signature of Mrs. Able, which has been raised in this case, the first requirement of the statute—that it shall be in writing—has been complied with. As to 30
the second requirement, that it shall be signed by the testatrix, Mr. Chester T. Thompson and Charles W. Leigh, whose names are signed to the paper as witnesses, both testified that Mrs. Able signed the will in their presence; that she signed it when both witnesses were present at the same time; and that both Mr. Thompson and Mr. Leigh subscribed their names to the paper as witnesses, in the presence of Mrs. Able.

This is not denied except by such inferences as you may draw from the testimony introduced on the part 40

Charge

of Mrs. Gutmann that the signature of Mrs. Able to this paper is not her true signature.

The third and only other requirement of the statute is that such writing shall be declared to be her last will, and this act is what is known as publication; for the law requires that the testatrix shall know that it is her will that she has been signing, and that the
 10 witnesses also shall know that it is the will of the testatrix that she is signing and that they are witnessing.

Publication is essential to the validity of a will. To comply with the statute I have just quoted the testatrix, in order to accomplish a legal publication, must declare the writing which she executes as her will to be her last will in the presence of two witnesses present at the same time, who shall subscribe their names thereto as witnesses. She may do so, however, and I
 20 am quoting now from a decided case in our Prerogative Court on this point, that of Robbins vs. Robbins and adapting it to this case—she may do so, however, by act or sign as well as by word, if the act she does or the sign she makes clearly indicates the character of the instrument. The statute does not require that publication shall be made by words alone; any act or sign by which the testatrix makes known to the subscribing witnesses that she executes the paper as her will, is
 30 enough. The form is immaterial, but the witnesses must know that it is the will of the testatrix they are witnessing. It is sufficient publication when enough is done or said by the testatrix, or in the presence and with the knowledge of the testatrix, to give the witnesses to understand distinctly that the testatrix desires them to know that the paper is her will and that they are to attest it.

The testimony on this point is given by Chester Thompson and Charles W. Leigh. Mr. Thompson says that in consequence of a call from Mr. Leigh a few days previous to the signing of this paper, he went to
 40 the Union Hotel, in Clinton, where Mrs. Able was liv-

Charge

ing with her son Edward, about eight o'clock in the evening of the day it was signed. He saw Mr. Leigh there and with him went into the parlor of the hotel. They were soon joined by Mrs. Able who came in with this paper in her hand (producing and referring to the will, Exhibit 1). He said he arose and spoke to her and told her Mr. Leigh said she would like him as a witness to her will; that she said she would; that he asked her if she had it and that she said "I have it in my hand," she handed it over and said he could read it, to which he replied that he was not there for that purpose, only to witness her signature, that she then signed it and that then he, Mr. Thompson, signed it and then Mr. Leigh signed it, all being there together at the same time. 10

Mr. Leigh testified that about a week before this paper was signed Mrs. Able told him she was going to make a will and asked him if he would be a witness, to which he replied that he would and that she then asked him to speak to Mr. Thompson, which he did, and that afterwards she told Mr. Leigh to come up on a certain night, at eight o'clock, and to tell Mr. Thompson; that they went to the hotel as requested and went to the parlor together; that Mrs. Able soon after came in with the paper and had some conversation with Mr. Thompson, which the witness says he does not recollect; that she said she had her will and then said to Mr. Thompson that she supposed he knew what she sent for him for and he said yes, Mr. Leigh had told him. She then said, "There it was we could read it," that Mr. Thompson said no, he didn't care about reading it, that he did not come for that purpose, he merely came to witness it, and she then handed it to Mr. Leigh and he said, "It doesn't matter to me what is in there, Ches, and I am only here to witness your signature." She then signed and handed it to Mr. Leigh who requested Mr. Thompson to sign first, which he did, and then Mr. Leigh signed it. He said that he read the 20 30 40

Charge

attestation clause, or witness clause as he called it, and he thinks Mr. Thompson read it.

If you believe this evidence and find from it that the paper which Mrs. Able had in her hand when she came into the parlor she designated as her will, and that one of the witnesses spoke of it in her presence as her will, and that she assented to it and then signed
10 it and handed it over to the witnesses to sign taken in connection with the previous request to the witnesses to be present that evening to witness her will, and that she thus or in any other way by words, acts or sign indicated to the witnesses that the paper was her will, that would be sufficient publication of it, if she knew the contents, and your answer to the first question should be in the affirmative—that this paper was signed, witnessed, published and declared by Mrs. Able as her last will and testament. But if you find
20 that there was no such publication of it as contemplated by the statute under the rules I have given you, then your answer to that question must be in the negative because the law requires that there must be a publication of a will, even though it permits such publication to be as informal as I have indicated.

You will observe the qualification I made to a sufficient publication—that she must have known the contents of the paper she signed; for even though she did declare and publish it as her will, if she did not
30 know what was in the paper it would not, in law, be her will.

It is the undisputed testimony in the case that Mrs. Able could neither read nor write, except her name, and when that is the fact it must satisfactorily appear to the jury either that the will was read to her or that in some other way she was made fully acquainted with its contents and gave them her approval, and notwithstanding the fact that when there is a perfect attestation clause appended to a will and signed by two
40 witnesses, as in this case, the burden of showing that

Charge

the will was not duly executed is upon the caveator, Mrs. Gutmann; the burden showing that the will was read to her or its contents fully made known to her, is upon the proponent, Mrs. Able.

There is but one witness to this fact, and that is the wife of the sole beneficiary of the will, Edwin Able. She testifies that on the return of Mrs. Able to Clinton, after a trip to Plainfield where the summons was served 10 on her at the suit of a man named Ball, she was very angry and accused her daughter of being a party to or having knowledge of it, and several times requested Mrs. Margaret Able to write to Mr. Harry Able, a lawyer, to fix up her papers and sign everything she had over to Ed. That after some days she wrote the letter which is in evidence in this case. That Mr. Harry Able replied enclosing this paper (referring to will), which she took to Mrs. Kate Able and read it over twice to her. That Mrs. Kate Able said that it was just what 20 she wanted.

If you find this evidence to be true you may find from it that Mrs. Able did know the contents of the paper she signed, and the fact that in her conversations with Mrs. Edwin Able, prior to the receipt of the will, she spoke of signing her property over to Ed, would make no difference if she understood that the paper which she read to her and which she executed was in fact her will. Of course, if you find as a fact that Mrs. Kate Able did not know the contents of the 30 paper she signed, it cannot be admitted as her will.

The second question is whether or not Mrs. Able at the time of making this will was of sound and disposing mind and memory.

The testimony of Dr. Knight, who says he was the attending physician up until Tuesday, as Mrs. Able died on Wednesday morning, is that she became unconscious on Monday, that he continued with her until eleven o'clock; when he called she was in the same condition and he thinks she did not again regain conscious- 40

Charge

ness before she died. Taking this in connection with the testimony of Mrs. Gutmann that Ed told her that the will was executed during the last illness of the testatrix, which, according to Dr. Knight, commenced on Sunday morning, you may consider that will was executed during that illness and during that condition of mind. But Dr. Barber, who was called there
10 in consultation during her last illness testified that he observed no mental trouble with her and that she was not unconscious when he saw her; and Mrs. Conover says—quoting from her testimony—“When I first got there she seemed to be suffering greatly, but was perfectly conscious and rational in every way; there were times from then on when she was slightly delirious and unconscious, but for the greater part of the time, while she was a great sufferer, she was perfectly conscious and seemed to be, as nearly as I could tell, in a normal
20 state of mind.” But, gentlemen, you will recall the testimony of Mr. Thompson and Mr. Leigh, that this will was executed some weeks before her death when there is not the slightest question about her mental condition, except the influence upon her mind, and her mental condition, as indicated by the statements made by her to others about her children, to which I will call your attention, particularly in commenting upon the third question—that of undue influence.

In addition to this there was a letter written by
30 Mrs. Margaret Able to Mr. Harry Able, which is in evidence here and which you will have before you, in reference to making an assignment to Edwin Able, which is dated February 2nd, the death occurring on April 12th. Harry Able's reply, a copy of which is also in evidence, is dated February 2nd, and in that letter Mr. Able said the will was enclosed. The will itself is dated February the 4th, and Mrs. Margaret Able testifies that that date, the 4th, was inserted the morning of the day the will was executed. There is also
40 in evidence a letter dated February 6th, with which

Charge

Mrs. Margaret Able and Harry Able say the will was forwarded to the latter, after it was executed.

From this and all the evidence in the case, whether mentioned or not, it will be for you to say when this will was executed and whether, when it was executed, Mrs. Kate Able was possessed of a sound and disposing mind and memory.

The third question is whether the will, even though 10
you should find it to be properly executed, is the result of undue influence, imposition or fraud, and here, by reason of the relations existing between Mrs. Kate Able and her son the burden of proof is upon him. Our courts have defined undue influence as being such influence exerted by another on the mind of a person as to result in the destruction of her free agency, that is, such influence as overpowers the mind of such person and cause her to express the will of another rather 20
than her own, and influence, however slight, which produces that result, is undue influence. But, on the other hand, influence, however great, which fails to destroy the free agency of another, is not undue influence to the extent of invalidating an instrument such as this one now under consideration.

A will may be contrary to the principles of justice and humanity. It may be both unnatural and unjust, yet if it appears to be the free expression of a sound mind the courts must uphold it.

In this case it appears from the testimony of Mr. 30
Leigh and Mr. Thompson, as well as from that of Mrs. Edwin Able, that this will was executed in the house of Edwin Able with whom the testatrix had resided for some years, and who is her sole legatee and devisee to the exclusion of her only daughter. While this fact alone would not be sufficient to invalidate the will it would call for careful investigation on your part of the condition of the testatrix's mind, causing her to make such a will, which investigation must, of course, 40
be made in the evidence of the case.

Charge

Mr. Silas Rowland, Mrs. Able's brother, says that when their sister Susie was buried, after the funeral, in July, 1910, Mrs. Kate Able said to him, "I wish you would come up and give Eddie a good licking, the way he is abusing me. I am afraid of him, I am in dread of him. He wants me to make a will and cut Phoebe out, and I won't do it," and Margaret Able

10 says that Ed said things that were not just right and "I said to him that he ought not to talk to his mother that way." Mr. Edwin Able, the proponent of this will, admits that his mother and he often had quarrels and that he called her opprobrious names, but he says "we were not the best people to talk," and that his mother could talk some herself; and in that connection you will remember her language as testified to by some of the witnesses.

Rynear Rowland, another brother, testifies to a con-

20 versation in which the testatrix said it was hard to live with Eddie, he abused her so because she would not give him everything and Phoebe nothing, that she only had two children and wanted each one to have equally when she was gone.

Mabelle Cook says that in April, 1911, Mrs. Kate Able said to her that she had a desire to leave a house she owned in Plainfield, to Helen, her granddaughter, and daughter of Edwin Able.

Both Mrs. Gutmann and her husband Dr. Gutmann,

30 testify to friendly relations and frequent visits of her mother to them, although it was admitted that such visits had not recently been frequent, if at all, and that on more than one occasion her mother had visited Plainfield without visiting her.

These declarations and actions on the part of Mrs. Able, standing alone, would not be sufficient, or indeed any, proof of undue influence, but, if such influence be shown by other evidence, and proper inferences from other proven facts, it is proper to be considered by you

40 to show the effect and the power of the influence ex-

Charge

exercised by Edwin Able and his wife, upon the mind of his mother. I say Edwin Able or his wife, because it is not suggested in the case that such influence was exercised by anyone else and I know of no direct proof in the case of any act done or any influence exercised by them which could in any way affect Mrs. Able in the making of her will. Practically all that is before you is the inference to be drawn from the fact that the will was signed by Mrs. Able in his hotel where she had lived with him, as I have before reminded you, for some months, and the condition of mind which these statements show, and the statement of Mrs. Gutmann of her conversation with her brother about the will and his statement, according to her testimony, that it had been made during the last sickness of the testatrix, which was of only three or four days' duration, her death occurring April 12th, while one of the witnesses to the will and Mr. Edwin Able's wife testify that it was executed some weeks before. There is no evidence that Mr. Edwin Able was present when the will was made. In fact the testimony is that he was not. One of the witnesses saying, however, that just before the will was executed he saw him on the stairs and inquired of him where Mrs. Able was, and Edwin admits that he went upstairs to call Mrs. Able and told her that Mr. Leigh was downstairs and wanted to see her; he says that he did not know that a will was made until that night and that for a considerable time afterwards he did not know the contents of this will.

As was said in a leading case in this State on the subject, the case of *Russling vs. Russling*, such declarations and statements are not even lawful evidence of fraud, which is charged in this case to have been undue influence; such undue influence must be shown by other evidence and unless there is substantial evidence of it, independent of such declarations, that Ed or someone else had, and exercised, the alleged power of dominion over the mind of his mother, there is no legal proof of

Charge

it and if that be shown in this case your answer to this third question must be in the negative,—that the will of Mrs. Kate Able was not the result of undue influence, imposition or fraud exercised upon her by her son or any other person.

On the other hand a number of witnesses have been produced on the part of Mr. Able, some of whom testify
 10 to dissatisfaction having been expressed by Mrs. Able because of improper relations supposed by her to exist between her daughter and a man named Ball, who it appears has been living in Dr. Gutmann's family for some years, in which the mother expressed a sentiment that her daughter had disgraced her and that she was done with her. Others testify to an expressed belief on the part of the testatrix that her daughter had forged her name to a check for three hundred and fifty dollars and
 20 pressed by Mrs. Able that her daughter was a party to or had knowledge of a scheme to get her to go to Plainfield for the purpose of having summons served upon her at the suit of Mr. Ball—"arrested"—as she expressed it. This was shortly before the date of the will, and several witnesses testify to the great anger of Mrs. Able at her daughter on account of it, and Mrs. Edwin Able, as I have previously mentioned, testified that it was on the same night of her return from Plainfield, that Mrs. Kate Able requested her to have Mr. Harry
 30 Able draw papers to sign over her property to her son Ed. and it was only a few days later the witness says that the will was executed.

It may be unfortunate for Mrs. Gutmann, and may seem hard that the rules of evidence and the issues involved in this case make it improper for her to deny the truth of these statements, but, as I have remarked with reference to the statement imputed to Mrs. Able by the witnesses for Mrs. Gutmann, none of these statements are evidence of the truth of the fact to which they re-
 40 late; they may be entirely untrue, and with whether or

Charge

not they were true or false you have nothing to do in your determination of this case, but what you have to do with and consider is what effect the belief they were true produced upon the mind of Mrs. Able when she made her will.

The fourth question, whether the said paper writing is the last will and testament of the said Kate Able, deceased, involves the others and must be answered in the negative if you should decide either or any of them against its validity, but it also involves the additional question of whether or not the signature to the will is the true signature of Mrs. Able or whether it is a false one. This subject might also properly have been considered under the first question, but for convenience and to avoid possible confusion I have reserved it for separate consideration under this head, although if you should find that it is not the true signature of Kate Able that would necessarily control your answer to the first question also, and you would be obliged to answer it in the negative and to say that this paper, Exhibit P No. 1 has not been duly signed, witnessed, published and declared by Kate Able as her last will and testament.

Silas Rowland, her brother, said that Mrs. Able's signature to this will is not her handwriting. John W. Creveling, assistant cashier of the Bloomsbury National Bank, when called as a witness by the caveator, after comparing the signature of the will with a signature of Mrs. Able which he said he thought he had seen her make about thirty-five years ago in the signature book of the bank, testified that in his opinion the signature to the will was not her's, but when called later by the proponent, and after examining certain checks signed by Mrs. Able's husband and certain signatures proved to be true signatures of Mrs. Able, he testified that in his opinion the signature in the signature book was made by the husband, or rather that the signature in the book had been

Charge

made by the same person who made the signatures on the checks shown to have been signed by Mrs. Able's husband and that he changed his opinion as to the signature to the will—that he would say it was Mrs. Albe's signature.

Hamilton Gutmann said he had seen her write her name probably fifty times and that the signature to the
 10 will did not look like Mrs. Able's signature.

On the other hand Mr. A. Lincoln Reiley, who is now employed by the Warren Foundry Company, but who was formerly assistant cashier of the Phillipsburg bank and who says that he knew Mrs. Kate Able and had seen her write, testified that the signature to the will is in his opinion her true signature.

In addition to this you will of course take into consideration in this connection the testimony of Mr. Leigh and of Mr. Thompson, who say the will was signed by
 20 Mrs. Able in their presence and that the signature to the will is her true signature, together with any other testimony on that subject, whether I have recited it or not.

It is also your privilege and duty to take with you to the jury room the signatures of Mrs. Able which are proven in this case to be her true signatures, and which have been admitted in this case as standards of comparison and compare the disputed signature with them, and from all the testimony in the case on that subject,
 30 including this comparison, it will be for you to say whether or not Mrs. Able made the signature to the will. If she did not then your answer to this question, as well as to the first question, must be in the negative—that is, that the will was not duly executed and that the paper here produced is not the last will and testament of Kate Able. If she did sign it, then of course in answering these questions the subject of whether or not the signature to the will is her true signature need not be further considered by you. And in answering this
 40 fourth question your answer must be in the negative if

Charge

you decide either or any of the others in favor of the caveator, Mrs. Gutmann.

I have not attempted to recite all the evidence on these various questions, and of course you will take into consideration all the evidence relating to them whether I have recited it or not.

The evidence of many of the witnesses varies greatly, and conflicts greatly, and it will be your duty as jurors to endeavor to reconcile it if you can do so, imputing the truth to all the witnesses if that is possible. Where you cannot reconcile it, it will be for you, after having seen the witnesses upon the stand, considering their intelligence or lack of it, and their interest in the case, to any which of the witnesses are correct when the facts testified to by different witnesses conflict. Your oath is to find a verdict according to the evidence and, of course, in finding a verdict according to the evidence under the rules of law I have given you, you must exclude both sympathy and prejudice from your mind and in considering the case and rendering your verdict you will not take into consideration whether that is an unjust or an unnatural will, but will apply to the various questions I have recited, and which you are called upon to determine, the rules of law I have given you in relation to each of them.

Your verdict in this case should be an answer to each of the four questions propounded, which questions you will find on the second page of the issue framed, and that paper you will take with you to the jury room, and should all of the questions be determined by you in favor of the validity of the will you may also render a general verdict in favor of the proponent, Mr. Able; but if you determine any one or more of them against its validity you may render a general verdict in favor of the caveator, Mrs. Gutmann.

I am requested to charge you as follows:

Charge

First: That the execution of the will is duly proved.

That I decline to charge except as I have charged, the granting of this request would be practically directing your answer to the first question, which I decline to do.

10 Second: That all the evidence as to the statements of the testatrix are only evidential to prove mental capacity, and are not evidence of undue influence.

That I decline to charge except as I have already charged.

Third: The evidence of the legatee, unless contradicted by some other credible testimony, or discredited by its own improbability, cannot be arbitrarily disregarded.

20 I charge you that.

I wish to say, gentlemen, that some of these exhibits that you will take with you to the jury room, are valuable to the parties who produce them, and I shall ask you to take very good care of them and see that everyone of them is returned to the clerk when you render your verdict.

Mr. Herr: I pray an exception to the refusal of the Court to charge as requested.

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Exception allowed. Let it be sealed and it is sealed accordingly.

NELSON Y. DUNGAN,
Judge.

Petition to Circuit Court

HUNTERDON COUNTY ORPHANS' COURT.

IN THE MATTER OF THE APPLICATION FOR PROBATE OF THE WILL of KATE ABLE, Deceased.	}	Petition to Have Question Certified to Circuit Court.	10
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TO THE ORPHANS' COURT OF THE COUNTY OF
 HUNTERDON:

The petition of **PHEBE GUTMANN** respectfully shows that Kate Able, late of the Town of Clinton, in the County of Hunterdon, State of New Jersey, died on the twelfth day of April, Nineteen Hundred and Eleven, and more than ten days ago, leaving a paper writing purporting to be her last will and testament, and that on the 19th day of April, Nineteen Hundred and Eleven, your petitioner, being one of the children and next of kin of the said Kate Able, deceased, filed a caveat against the probate of said will. 20

AND YOUR PETITIONER FURTHER SHOWS that the Surrogate has duly cited all persons concerned as next of kin, heirs at law, devisees or legatees, to appear before this Court to show cause why said will should not be admitted to probate. 30

Your petitioner therefore prays that the questions involved in such controversy may be certified into the Circuit Court of this County for trial before a jury, pursuant to the statute in such case made and provided.

Dated, June 15th, 1911.

PHEBE GUTMANN.

Petitioner's Oath

STATE OF NEW JERSEY }
COUNTY OF HUNTERDON } ss.

PHEBE GUTMANN, being duly sworn on her oath according to law, deposes and says that she is the petitioner in the foregoing petition named, and that the matters and things therein contained are true to the
10 best of her knowledge and belief.

PHEBE GUTMANN.

Sworn and subscribed to before me this 15th day of June, 1911.

Herbert W. Knight,
Master in Chancery
of New Jersey.

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Questions Certified to Circuit Court

HUNTERDON COUNTY ORPHANS' COURT.

IN THE MATTER OF
THE APPLICATION
OF EDWARD F. ABLE
FOR PROBATE OF
THE WILL
of
KATE ABLE,
Deceased.

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EDWARD F. ABLE, the above named proponent, having presented a paper writing purporting to be the last will and testament of Kate Able, deceased, to the Surrogate of the said County of Hunterdon, for probate, and Phoebe Guttman having filed a caveat against the probate thereof, and the Surrogate having cited all persons concerned as next of kin, heirs at law, devisees or legatees, to appear before this Court to show cause why the said will should not be admitted to probate; and the matter in controversy, and the said parties now being before the Court, and the said Phoebe Guttman having presented her petition, praying that the questions involved in such controversy be certified into the Circuit Court of said County for trial before a jury:—

IT IS THEREUPON, on this 15th day of June, Nineteen Hundred and Eleven, on motion of Francis J. Blatz and William C. Gebhardt, of Counsel with the caveator, ORDERED that the following questions involved in this case be, and the same hereby are certified into the Circuit Court of said County of Hunterdon for trial before a jury, pursuant to the statute in such case made and provided, to wit:

FIRST: Whether the paper writing presented to the Surrogate of said County of Hunterdon for probate as and for the last will of Kate Able, deceased, was duly signed, witnessed, published and declared by the said

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Questions Certified to Circuit Court

Kate Able, as her last will and testament, according to the statute in such case made and provided.

SECOND: Whether the said Kate Able, at the time of making and executing the alleged will, as aforesaid, was of sound and disposing mind and memory.

THIRD: Whether the said alleged will of the said Kate Able, deceased, was the result of undue influence, imposition or fraud, exercised upon the said Kate Able, by the legatee and devisee, in said will named, or by any other person or persons.

FOURTH: Whether the said paper writing is the last will and testament of the said Kate Able, deceased.

Done in open Court

GEO. H. BLOOM,
Clerk.

JOHN L. CONNETT,

Judge.

Pleas

HUNTERDON COUNTY CIRCUIT COURT.

Pleas, before the Judge of the Circuit Court of the County of Hunterdon, of the Term of April, A. D. Nineteen Hundred and Twelve.

Witness, Hon. Nelson Y. Dungan, Judge; Oliver R. Kugler, Clerk.

STATE OF NEW JERSEY } 10
COUNTY OF HUNTERDON } ss.

Edwin F. Able, plaintiff, puts in his place his attorneys, Hagaman & Able, against Phebe M. Gutmann, in a plea of contract.

STATE OF NEW JERSEY }
COUNTY OF HUNTERDON } ss.

Phebe M. Gutmann puts in her place William C. Gebhardt and Francis J. Blatz, her attorneys, at the suit of Edwin F. Able, in a plea of contract. 20

STATE OF NEW JERSEY }
COUNTY OF HUNTERDON } ss.

BE IT REMEMBERED, that on the second Tuesday of April, A. D. Nineteen Hundred and Twelve, before the Judge of the Circuit Court of Hunterdon County, at Flemington, came Edwin F. Able, the plaintiff in this suit, by his said attorneys, and brought into this Court a certain bill against Phebe M. Gutmann, the defendant in this suit, of a plea on contract, which said bill is in these words, to wit: 30

STATE OF NEW JERSEY }
COUNTY OF HUNTERDON } ss.

Edwin F. Able complains of Phebe M. Gutmann, for that whereas before and at the time of the making of 40

Pleas

the promises and undertakings of the said defendant as hereinafter mentioned, to wit: on the nineteenth day of May, A. D. Nineteen Hundred and Eleven, at Flemington, in the County of Hunterdon, before the Orphans' Court of said County, a paper purporting to be the last will and testament of Kate Able, late of the Town of Clinton, in the County of Hunterdon, deceased, 10 was presented to the Judge of the said Orphans' Court, for probate and letters testamentary thereon; and thereupon on the day and year last aforesaid, before the said Orphans' Court, a certain discourse was had and moved between the said plaintiff, as the executor therein named, and the said defendant as caveator, wherein certain questions arose, and were debated between them, that is to say:

FIRST: Whether the paper writing presented to the Surrogate of said County of Hunterdon for probate as 20 and for the last will of Kate Able, deceased, was duly signed, witnessed, published and declared by the said Kate Able, as her last will and testament, according to the statute in such case made and provided.

SECOND: Whether the said Kate Able, at the time of making and executing the alleged will, as aforesaid, was of sound and disposing mind and memory.

THIRD: Whether the said alleged will of the said Kate Able, deceased, was the result of undue influence, imposition or fraud, exercised upon the said Kate 30 Able by the legatee and devisee, in said will named, or by any other person or persons.

FOURTH: Whether the said paper writing is the last will and testament of the said Kate Able, deceased.

And in that discourse the said plaintiff asserted that the said paper purporting to be the last will of Kate Able, deceased, offered for probate was signed, witnessed, published and declared according to the statute in such case made and provided, that the said Kate Able was at the time of making the same, of sound 40 and disposing mind and memory; that the making of

Pleas

the same by the said Kate Able was not the result of undue influence, imposition or fraud, of any person and that the said paper was the last will and testament of said Kate Able, deceased, which said assertions and affirmations of the said plaintiff, the said defendant then and there contradicted and denied, and then and there asserted and affirmed the contrary thereof, and thereupon afterwards, to wit: on the day and year aforesaid, at Flemington aforesaid, in consideration that the plaintiff at the request of the defendant had then paid to the defendant the sum of Five Dollars, the defendant undertook and promised to pay the plaintiff the sum of Ten Dollars, if the said affirmation and assertions of the said plaintiff were true, as asserted and affirmed by him. 10

And the said plaintiff in fact says, that the said assertions and affirmations on the day and year last aforesaid, at Flemington aforesaid, were true, whereof the said defendant then and there had notice, whereby the said defendant became liable to pay to the said plaintiff the said sum of Ten Dollars. 20

And the said defendant by her attorneys comes and defends the wrong and injury, when, etc., and says that the said plaintiff ought not to have or maintain his aforesaid action against her, because, she says, that though it is true that the said discourse was had and moved by and between the said plaintiff, and the said defendant wherein the said questions did arise as aforesaid, and the said defendant did undertake and promise, in manner and form as the said plaintiff has above thereof, in that behalf, alleged, nevertheless, the said defendant for plea in that behalf says: 30

That the said paper purporting to be a last will and testament presented for probate as in the said plaintiff's declaration stated, is not the will and testament of the said Kate Able, deceased, that it was not signed, witnessed, published and declared according to the statute; that the said Kate Able was not at the time 40

Pleas

of the making, signing, publishing and declaring, said alleged last will, of sound and disposing mind and memory, and that the making, signing and publishing of said alleged will was secured through undue influence, imposition or fraud, from or by, the legatee and devisee named in said will, or by some other person or persons.

And the said defendant puts herself upon the Country, and the said plaintiff does the like.

10 Therefore, let a jury thereupon come before the Judge of the Circuit Court of the County of Hunterdon, on the Second Tuesday of April, A. D. Nineteen Hundred and Twelve, by whom, etc., and the same day is given to the parties aforesaid, then, etc.

Let the above be the issued framed in the above case.
Dated April 9th, 1912.

NELSON Y. DUNGAN,
Judge.

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Certificate of Trial in Circuit Court

HUNTERDON COUNTY CIRCUIT COURT.

EDWIN F. ABLE, PROPONENT, vs. PHEBE M. GUTTMAN, CAVEATOR.

On Caveat to Probate of Will of Kate Able, de- ceased.
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Certificate of Trial in Circuit Court.

TO THE ORPHANS' COURT OF THE COUNTY OF
HUNTERDON:

I, Nelson Y. Dungan, Judge of the Circuit Court of the County of Hunterdon, do hereby certify and return to the Orphans' Court of said County, that a certificate certifying the above stated matter into the said Circuit Court for trial before a jury having been filed with the Clerk of said Circuit Court, I, as Judge holding such Court, did frame an issue which is filed in the office of the Clerk in said Court, and a true copy whereof is hereunto annexed, and that the issue so framed was duly tried before me at the September, 1912, term of said Circuit Court at Flemington, by a jury duly empaneled and sworn to speak the truth, and that thereupon witnesses were sworn and examined, that the testimony of such witnesses was taken down stenographically, and reduced to writing, as required by Edwin F. Able, the above named proponent, and Phebe M. Guttmann, the above named caveator, and that all exceptions which were taken to the admission or rejection of testimony were entered upon the record, which said testimony, and the said exceptions entered as aforesaid are hereunto annexed, and that a true copy of the charge delivered by me to the jury, together with the exceptions taken thereto, by counsel for the above named proponent and caveator, and a certified copy of the costs taxed, and a statement of the expenses of

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Certificate of Trial in Circuit Court

said trial are also hereunto annexed, and I further certify that the said jury did certify and return the verdict as follows:

FIRST: That the paper writing presented to the Surrogate of the said County of Hunterdon for probate as and for the last will of Kate Able, deceased, was duly signed, witnessed, published and declared by the
 10 said Kate Able, as her last will and testament, according to the statute in such case made and provided.

SECOND: That the said Kate Able at the time of making and executing her alleged will as aforesaid, was of sound and disposing mind and memory.

THIRD: That the said alleged will of the said Kate Able, deceased, was the result of undue influence, imposition or fraud exercised upon the said Kate Able by Edwin F. Able, a legatee and devisee in said will named.

FOURTH: That the said paper writing is not the
 20 last will and testament of the said Kate Able, deceased.

All of which I hereby certify and return according to the statute in such case made and provided this tenth day of December, Nineteen Hundred and Twelve.

NELSON Y. DUNGAN,

Judge.

Decree Denying Probate of Will

HUNTERDON COUNTY ORPHANS' COURT.

EDWIN F. ABLE, PROPONENT, vs. PHEBE M. GUTMANN, CAVEATOR.	} On Caveat to Probate of Will of Kate Able, de- ceased.
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Decree denying probate of will on verdict of Jury.

WHEREAS, upon the application of Phebe M. Gutmann, the above named caveator, this Court certified into the CIRCUIT COURT in and for the said County of Hunterdon for trial before a jury upon an issue to be framed by the Judge of the said Circuit Court for that purpose, the following questions involved in the controversy concerning the probate of the alleged will of the said Kate Able, deceased, to wit: 20

FIRST: Whether the paper writing presented to the Surrogate of said County of Hunterdon for probate as and for the last will of Kate Able, deceased, was duly signed, witnessed, published and declared by the said Kate Able, as her last will and testament, according to the statute in such case made and provided.

SECOND: Whether the said Kate Able, at the time of making and executing the alleged will, as aforesaid, was of sound and disposing mind and memory. 30

THIRD: Whether the said alleged will of the said Kate Able, deceased, was the result of undue influence, imposition or fraud, exercised upon the said Kate Able by the legatee and devisee, in said will named, or by any other person or persons.

FOURTH: Whether the said paper writing is the last will and testament of the said Kate Able, deceased.

And it appearing that the said certificate of this Court was duly filed with the Clerk of the said Circuit Court that an issue was duly framed by the Judge of 40

Decree Denying Probate of Will

the said Circuit Court and a trial had thereon before a jury in the same manner as in causes commenced in said Circuit Court, and that after the said trial was concluded the Judge of the said Circuit Court did, by certificate duly filed in the office of the Surrogate of said County of Hunterdon, certify and return to the Orphans' Court, the proceedings thereon had, and the verdict of the jury, together with the testimony a copy of
 10 the charge to the jury, all exceptions taken in the trial to the admission or rejection of evidence, or to the charge to the jury, together with a certified copy of the costs which have been taxed, and a statement of the expenses of the said trial, and it appearing from the aforesaid certificate that the said jury did find and render their verdict as follows:

FIRST: That the paper writing presented to the Surrogate of the said County of Hunterdon for probate
 20 as and for the last will of Kate Able, deceased, was duly signed, witnessed, published and declared by the said Kate Able, as her last will and testament, according to the statute in such case made and provided.

SECOND: That the said Kate Able at the time of making and executing her alleged will as aforesaid, was of sound and disposing mind and memory.

THIRD: That the said alleged will of the said Kate Able, deceased, was the result of undue influence, imposition or fraud exercised upon the said Kate Able
 30 by Edwin F. Able, a legatee and devisee in said will named.

FOURTH: That the said paper writing is not the last will and testament of the said Kate Able, deceased.

And due notice of this application, having been given to all parties above named.

It is thereupon, on this sixth day of January, Nineteen Hundred and Thirteen, on motion of William C. Gebhardt and Francis J. Blatz, of Counsel with caveat,
 40 **ORDERED ADJUDGED AND DECREED** as follows:

Decree Denying Probate of Will

FIRST: That the paper writing presented to the Surrogate of the said County of Hunterdon for probate as and for the last will of Kate Able, deceased, was duly signed, witnessed, published and declared by the said Kate Able, as her last will and testament, according to the statute in such case made and provided.

SECOND: That the said Kate Able at the time of making and executing her alleged will as aforesaid, was 10
of sound and disposing mind and memory.

THIRD: That the said alleged will of the said Kate Able, deceased, was the result of undue influence, imposition or fraud exercised upon the said Kate Able by Edwin F. Able, a legatee and devisee in said will named.

FOURTH: That the said paper writing is not the last will and testament of the said Kate Able, deceased.

That probate of the instrument offered as aforesaid is hereby refused.

And it is further ordered that a counsel fee of Five Hundred Dollars be allowed to William C. Gebhardt 20
and Three Hundred Dollars to Francis J. Blatz, of counsel with the caveator and that a counsel fee of Eight Hundred Dollars be allowed to H. J. Able and H. B. Herr, of counsel with proponent, and that said counsel fees, and the costs which have been taxed, and expenses of this litigation, as well on the part of the caveator as on the part of proponent of said will shall be paid by the administrator of the estate of Kate Able, deceased, out of her said estate.

PAUL A. QUEEN, 30
Judge.

Appeal

HUNTERDON COUNTY ORPHANS' COURT.

In the matter of the estate of
KATE ABLE, deceased.

BETWEEN

EDWIN F. ABLE,

Proponent and Appel-
lant,

and

PHEBE M. GUTMANN,

Caveatrix and Respon-
dent.

Appeal from Decree
Denying of Pro-
bate of Will.

Edwin F. Able, a legatee and devisee, as well as the
executor named in the will of Kate Able, deceased,
hereby appeals to the Prerogative Court of the State
of New Jersey from the decree of the Orphans' Court
of the County of Hunterdon, dated on the sixth day of
January, Nineteen Hundred and Thirteen, and from so
much thereof as orders and decrees, that the alleged
will of the said Kate Able, deceased, was the result of
undue influence, imposition or fraud, exercised upon the
said Kate Able by Edwin F. Able, a legatee and de-
visee in said will named; and from so much thereof as
orders and decrees that the said paper writing is not
the last will and testament of the said Kate Able, de-
ceased; and from so much thereof as refuses probate of
the instrument offered as the last will and testament of
said Kate Able, deceased

H. J. Able—H. B. Herr,
Counsel and proctor for
proponent and appel-
lant.

We conceive that there is good cause for appeal in
the above stated cause.

H. J. Able,
H. B. Herr,
Counsel.

Petition on Appeal

NEW JERSEY PREROGATIVE COURT.

BETWEEN

EDWIN F. ABLE,
Propōnent and Appellant,

and

PHEBE M. GUTMANN,
Caveatrix and Respondent.Petition on
Appeal.

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To the Ordinary of the State of New Jersey :

The humble petition of Edwin F. Able, a legatee and devisee, and executor, named in the will of Kate Able, deceased, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by an order or decree made by the Orphans' Court of the County of Hunterdon, bearing date of the Sixth day of January, A. D. Nineteen Hundred and Thirteen, in the matter of the probate of the will of Kate Able, deceased, in this respect, to wit: 20

That the said decree finds that the said alleged will of the said Kate Able, deceased, was the result of undue influence, imposition or fraud exercised upon the said Kate Able by Edwin F. Able, legatee and devisee in said will named.

That the said paper writing is not the last will and testament of the said Kate Able, deceased.

And that the said decree refuses probate of the instrument offered as and for the last will and testament of said Kate Able, deceased. 20

Your petitioner appeals from those parts of the order or decree of the Orphans' Court of the County of Hunterdon, as adjudges, orders and decrees as aforesaid upon the grounds that the same are erroneous.

Your petitioner therefore prays that said orders or decrees may in the particulars aforesaid be reversed, set aside and for nothing holden and that the said instrument offered for probate as and for the last will and 20

Petition on Appeal

testament of Kate Able, deceased, may be admitted to probate, and letters testamentary granted thereon to this petitioner, and that this petitioner may have such relief in the premises as to this honorable Court shall seem meet.

H. J. ABLE & H. B. HERR,
Proctor and Counsel
for Appellant.

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Answer

NEW JERSEY PREROGATIVE COURT.

Between EDWIN F. ABLE, Proponent and Appel- lant, and PHEBE M. GUTMANN, Caveatrix and Re- spondent.	IN THE MATTER OF THE PROBATE OF THE ALLEGED WILL OF KATE ABLE, DE- CEASED.	10
	ANSWER TO PETI- TION ON APPEAL.	

The answer of Phebe M. Gutmann, respondent to the petition of appeal of Edwin F. Able, appellant:

This respondent admits that a decree of the date, tenor and effect in the said petition of appeal set forth, was made by the Orphans' Court of the County of Hun-
 terdon, and this respondent is advised and believes and
 submits that such decree is just and equitable, and
 therefore prays that the said decree may be affirmed
 by this court, with costs to be adjudged to this respon-
 dent.

PHEBE M. GUTMANN.

STATE OF NEW JERSEY. }
 COUNTY OF SOMERSET. } ss.

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Phoebe M. Gutmann, the above-named defendant, being duly sworn on her oath saith—That the matters and things set forth in the above answer, so far as relates to her own acts, are true, and so far as relates to the acts of others, she believes them to be true.

Sworn and subscribed before me this day of
 December, 1913.

PHOEBE M. GUTMANN.

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Conclusions

Submitted, January 11, 1916. Decided January 13, 1916

NEW JERSEY PREROGATIVE COURT.

10 IN RE THE LAST WILL AND
TESTAMENT OF KATE } CONCLUSIONS.
ABLE, DECEASED.

On Appeal from the Orphans' Court of Hunterdon County. For the Appellants: Messrs. Harry J. Able and H. B. Herr; for the Appellee: Messrs. William C. Gebhardt and Francis J. Blatz.

BACKES, VICE-ORDINARY:

20 This is an appeal from a decree of the Orphans' Court of Hunterdon County, upon a verdict of a jury denying probate of the last will and testament of Kate Able, deceased. The testatrix was a widow with two married children, a son and daughter. In the later years of her life she lived with her son, and by her will gave to him all of her estate. The daughter filed a caveat, and upon her motion the cause was certified into the Circuit Court for a trial before a jury. Before that tribunal the will was contested on the grounds that it was a forgery; that it was not executed

30 according to the statutory requirements; that the testatrix was incompetent, and that the paper was procured by undue influence. A verdict was returned that the testatrix was of sound and disposing mind, and that the will was duly executed, but that it was the result of undue influence, imposition or fraud exercised upon the testatrix by her son, Edwin F. Able, and, therefore, was not her last will and testament.

There was no evidence produced at the trial of fraud or imposition and if, besides the proof of confi-
40 dential relation existing between the mother and son,

Conclusions

there was some of "slight additional circumstances" to raise a presumption of undue influence (Sparks Case, 63 N. J. Eq./242), the burden cast upon the proponent of rebutting the presumption was fully and satisfactorily discharged, and the jury's verdict was not warranted. The record disclosed that the testatrix was a woman familiar with business affairs, intelligent and firm of mind. She was unable to read or write, except to sign her name; but this evidently was a slight handicap, for it appears that she accumulated a small fortune in running a hotel. It is proved beyond peradventure that she was mentally competent to dispose of her estate by last will and testament, and also that she did so volitionally and knowingly and with all of the formality required by law. No undue influence was brought to bear upon her to select the son as the sole object of her bounty—at least nothing of the kind was shown by admissible testimony. To choose him was her privilege. The exclusion of the daughter was for reasons which she regarded as good and sufficient, and which she seems to have made generally known. Whether they were well founded need not be passed upon. It is enough to say that she had reasonable grounds for believing the circumstances which moved her to disown the daughter, and that these circumstances were not extrinsic to the daughter's conduct.

The decree will be reversed, and the will admitted to probate.

Decree Reversing

NEW JERSEY PREROGATIVE COURT.

IN THE MATTER OF THE LAST WILL AND TES- TAMENT OF KATE ABLE, DECEASED.

}	On Appeal from the Orphans' Court of the County of Hunterdon.
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Decree.

This cause coming on to be heard in the presence of Harry J. Able and H. B. Herr, of Counsel for appellant, and William C. Gebhardt and Francis J. Blatz, of Counsel with appellee, on the Third day of January, 1916, and after reading and considering the testimony and hearing the arguments of counsel of the respective parties herein, the court being of the opinion that the paper writing offered by the proponent as the last will and testament of Kate Able, deceased, was executed according to law, and that the testatrix was of sound mind at the time of the execution thereof, and that the said Kate Able did not sign and execute said will by reason of undue influence on the part of the proponent, and that said paper writing is the last will and testament of said Kate Able, deceased.

IT IS thereupon on this Eighteenth day of January, A. D. Nineteen Hundred and Sixteen, ORDERED, ADJUDGED and DECREED that the decree of the Orphans' Court of the County of Hunterdon, in so far as the same denies probate of the last will and testament of Kate Able, deceased, be and the same is hereby reversed, and the said paper writing admitted to probate, as and for the last will and testament of Kate Able, deceased, and that the record be remitted to the Hunterdon County Orphans' Court.

And it is FURTHER ORDERED that a counsel fee of Two Hundred Dollars (\$200.00) be allowed counsel for the appellants and a like sum be allowed to counsel

Decree Reversing

for Appellee, on account for their services in this court and that the counsel fees and costs incurred in this matter be paid out of the estate of said Kate Able, deceased.

E. R. WALKER,
Ordinary.

Respectfully advised
JOHN H. BACKES,
V. O.

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Endorsed:

“FILED Jan. 18, 1916.
THOMAS F. MARTIN,
Register.”

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Notice of Appeal

NEW JERSEY PREROGATIVE COURT.

<p style="text-align: center;">EDWIN F. ABLE, Proponent-Respondent, vs. 10 PHOEBE GUTMANN, Caveator-Appellant.</p>	<p>Notice of Appeal from Decree of the Prerogative Court Reversing Decree of the Hunterdon County Orphans' Court.</p>
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Phoebe Gutmann, caveator-appellant, in the above stated cause, on appeal to the said Prerogative Court, hereby appeals from the final decree made in said Prerogative Court on the Eighteenth day of January, Nineteen Hundred and Sixteen, wherein it is ordered, adjudged and decreed that the decree of the Hunterdon County Orphans' Court, dated on or about the Sixth day of January, Nineteen Hundred and Thirteen, be reversed, and admitting to probate the instrument purporting to be the last will and testament of Kate Able, deceased, and further ordering that letters testamentary be issued upon the aforesaid will and testament, to the Court of Errors and Appeals of New Jersey, in the last resort in all cases.
Dated February 29, 1916.

FRANCIS J. BLATZ,
Proctor and of Counsel
with Phoebe Gutmann.

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

WILLIAM C. GEBHARDT,
Of Counsel With Appellant, Phoebe Gutmann.

Petition of Appeal

NEW JERSEY COURT OF ERRORS AND APPEALS.

EDWIN F. ABLE,
Proponent-Respondent,
vs.
PHOEBE GUTMANN,
Caveator-Appellant.

On Appeal from the Decree of the New Jersey Prerogative Court reversing a Decree of the Hunterdon County Orphans' Court refusing to probate the Instrument purporting to be the last Will and Testament of Kate Able, deceased, and further ordering that letters testamentary be issued upon the aforesaid will and testament to Edwin F. Able. 10
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Petition of Appeal.

TO THE HONORABLE THE COURT OF ERRORS
AND APPEALS OF THE STATE OF NEW JERSEY
IN THE LAST RESORT IN ALL CAUSES:

The petition of Phoebe Gutmann, the appellant in the above stated cause, respectfully shows: 30

That your petitioner finds herself aggrieved by a decree made in the New Jersey Prerogative Court by His Honor, Edwin Robert Walker, Ordinary of said Prerogative Court, bearing date the Eighteenth day of January, Nineteen Hundred and Sixteen, which said decree reverses a decree made by the Hunterdon County Orphans' Court, dated on or about the Sixth day of September, Nineteen Hundred and Thirteen, in the matter of paper writings alleged to be the last Will 40

Petition of Appeal

and Testament of Kate Able, late of the County of Hunterdon, deceased, by which the above named respondent, Edwin F. Able, was named as Executor, by whom said paper writing has been offered for probate before said Orphans' Court, and wherein your petitioner filed a caveat against admitting the same to probate; and your petitioner further shows that she is aggrieved
10 by said decree of said Prerogative Court in this respect, to wit:

The said decree of said Prerogative Court reverses said decree of said Orphans' Court and adjudges that the instrument in writing offered by the proponent for probate as and for the last Will and Testament of Kate Able, deceased, was duly executed by said Kate Able, as and for her last Will and Testament, and in that the said Kate Able, deceased, was mentally competent to dispose of her estate by last Will and Testa-
20 ment, and in that the said Kate Able, deceased, was mentally competent to dispose of her estate by last Will and Testament; and in that the said Kate Able executed the said will volitionally and knowingly, and with the formalities required by law, and in that no undue influence was brought to bear upon her to make the said alleged will as it was made; and in that the said Court found that the said Kate Able, deceased, was of sound, disposing mind and memory at the time of the making of the said alleged will; and in this that
30 the said decree of the said Prerogative Court also further orders and decrees that letters testamentary be issued upon the said last Will and Testament admitted to probate as aforesaid, to Edwin F. Able.

And your petitioner appeals from the whole and every part of said decree of the said Prerogative Court upon the grounds that said decree should have in every way affirmed the said decree of the said Orphans' Court, and should have adjudged that said will should not have been admitted to probate, but that probate
40 thereof should have been refused, and that said de-

Petition of Appeal

creed of the said Prerogative Court and every part thereof is erroneous.

Your petitioner, therefore, prays that the said decree of said Prerogative Court may be wholly reversed, set aside and for nothing holden, and that probate of said paper purporting to be said last Will and Testament of said Kate Able, deceased, may be refused, and that your petitioner may have such further relief 10
in the premises as shall be equitable and just.

FRANCIS J. BLATZ,
Proctor and Counsel
with Appellant.

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Answer to Petition of Appeal

NEW JERSEY COURT OF ERRORS AND APPEALS.

10	Between EDWIN F. ABLE, Proponent-Respondent, and PHEBE GUTMANN, Caveatrix-Appellant.	} On Appeal from De- } cree of Prerogative } Court reversing Hun- } terdon County Or- } phans' Court in the } matter of Probate of } Will of Kate Able, De- } ceased.
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Answer.

The answer of the above named proponent and respondent to the petitioner of appeal of the above named Caveatrix and Appellant.

20 This respondent not acknowledging all or any of the matters which in said petition of appeal are contained, to be true, for answer thereto, says and admits that a decree was made and entered in the Prerogative Court on the date and of the purport mentioned in said petition, but as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced.

And he is advised and believes that the said decree is just and equitable, and prays that the same may be affirmed, with costs to be adjudged to this respondent.

30 HARRY J. ABLE and H. B. HERR,
 Proctors for and of
 Counsel with Respondent.