New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY, Defendant in Error,	On Indictment for Forgery.
vs.	
WILLIAM H. SKILLMAN, Plaintiff in Error.	On Writ of Error.

TRANSCRIPT.

MR. JOHN F. REGER,

Prosecutor.

MESSRS. CLARK & CASE,

For the Defendant.

SOMERVILLE, N. J.,
The Somerville Publishing Company Printing House.
1908.

New Jersey Court of Errors and Appeals

NEW JERSEY, *ss.*:

The State of New Jersey to the Chief Justice and other Justices of our Supreme Court of Judicature, GREETING:

(SEAL)

Forasmuch as in the record and process and also in the giving of judgment upon a certain indictment against William H. Skillman, late of the Township of Montgomery, in the County of Somerset, for unlawfully having had in his possession, a certain forged and counterfeited will, with intent to alter and pass the same and to permit, cause and procure the same to be uttered and passed, which said forged and counterfeited will is as follows, to wit:

"I, William Lanehart, of Blawenburg, in the County of Somerset, State of New Jersey, do make and declare this my last will and testament; and hereby annul and revoke all former Wills made by me.

I direct all my just debts and funeral expenses be paid by my Executor and Executrix hereinafter named.

I instruct my Executor and Executrix to sell my personal property consisting of household goods, stock and farming implements within one year of my decease; with the express understanding that said personal property must not be sold at the time when its disposal will conflict or interfere with the right of use of said stock and farming implements given to my farmer in a lease holding good and in effect until the first day of April next ensuing my death.

I instruct my farm to be sold either at public or private sale within two years of my death, and as much sooner

as is consistent with getting a fair valuation for the same.

I devise and bequeath to friend Mrs. Doctor Stryker, of New York City, two hundred and fifty dollars.

I devise and bequeath to John S. Van Orden two hundred and fifty dollars.

I devise and bequeath to Mrs. Joseph V. H. Read fifty dollars.

I give and bequeath to Mrs. William Duffield, of Blawenburg fifty dollars.

I give and bequeath to the lady known as Laura Kellogg—my niece—one-half of all the money derived from the settlement of my estate and request her to consult and advise with her co-executor as to the best and safest investment of said money.

The balance of the money derived from my estate I give and bequeath to my friend William H. Skillman, and earnestly request him to advise and look after the interests of the said Laura Kellogg.

I hereby nominate and appoint the said William H. Skillman and the said Laura Kellogg as my executor and executrix of this my last will and testament; and request that both he and she be allowed to qualify without security other than his and her own personal bonds.

I wish my Executors to pay unto Blawenburg Church the same salary I now have agreed to pay until the settlement of my estate is made.

Witness my hand and seal this twenty-seventh day of February, 1905. WM. LANEHART.

Signed, sealed, published and declared by William Lanehart, as and for his last will and testament, in the presence of us both present at the same time, who at his request, in his presence, and in the presence of each other, have hereunto subscribed our names as attesting witnesses.

Witnesses: J. W. SKILLMAN,
W. H. ELY.

(Pro ut the said indictment and the several counts therein), whereof, before the Court of Quarter Sessions

in and for the County of Somerset he was indicted, and was thereof convicted by a certain jury of the county, taken between the State of New Jersey and the said William H. Skillman, and now lately the said matter having been in our said Supreme Court of Judicature, before you, upon a writ of error, and the judgment of the said Court of Quarter Sessions thereupon was in all things affirmed, as is said, manifest error hath intervened to the great damage of the said William H. Skillman, as from his complaint we have received information, we being willing, in his behalf, to correct the error in due manner, if any there shall be, and that speedy justice be done to him, the said William H. Skillman, command you that if judgment be thereon given, then that you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, on Sixth day of July next, together with this writ that the record and proceedings aforesaid being inspected he may cause to be further done thereupon, for correcting that error, what of right and according to the law and custom of the State of New Jersey ought to be done.

Witness, our Chancellor and President Judge of our said Court of Errors and Appeals at Trenton aforesaid, the Sixteenth day of June, in the year of our Lord, one thousand nine hundred and eight.

S. D. DICKINSON,
Clerk.

CLARK & CASE,
Attorneys.

The answer of the Justices of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State, in a certain schedule to this writ annexed as within we are commanded.

WM. S. GUMMERE,
C. J.

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY,
Defendant in Error,
vs.
WILLIAM H. SKILLMAN,
Plaintiff in Error.

Opinion Filed in the Supreme Court.

Argued February Term, 1908.

Before GUMMERE, C. J., and JUSTICES BERGEN and MINTURN.

JOHN F. REGER, for the State.

CLARK & CASE, for Defendant in Error.

ON WRIT OF ERROR TO THE SOMERSET QUARTER SESSIONS.

MINTURN, J.

The defendant was indicted upon the charge of forging and uttering a paper writing purporting to be the last will and testament of William Lanehart, deceased, and was found guilty by the jury of the uttering. The writ of error presents certain exceptions taken at the trial by defendant, relating almost entirely to the admissibility of testimony. The first and second of these exceptions relate to the admission of the testimony regarding the execution of what was called in the case the "Race Will;" a document proved to have been executed by deceased in the City of New York in and by which, after making cer-

tain specific bequests to friends and relatives and $3,000 to his sister Mary J. Lanehart, he directed that the residue of his estate be divided equally among his brothers and sisters, and appointed John N. Race and Laura Kellogg, his executor and executrix respectively.

The admission of this will was competent. It was within the line of proof, for the State to introduce the will for the purpose of establishing the fact, that the testator had executed and preserved a prior will, radically inconsistent with the provisions of the document drawn by the defendant and the Race Will being in evidence for that purpose could be used by the State as a standard for comparison by the jury of the defendant's handwriting.

In England this rule is established and liberalized by an act of Parliament (28 Vict. Ch. 18.) But whatever diversity of a Judicial opinion may exist in this country upon the admissibility of writings otherwise irrelevant to the issue, solely for the purpose of comparison, there is quite a uniformity of opinion that a genuine writing in evidence for one purpose, may be properly used as a standard of comparison by the jury, to determine the genuineness of the handwriting of another document in issue.

Yoe vs. Petty, 13 Stew. Eq. 495;
Shaw vs. Bryant, 157 N. Y. 715;
Huniod vs. Gilman, 147 Ill. 293;
Stephens' Dig. No. 289.
17 Cyc. 163, and cases.

The Court admitted against objection photographic reproduction of the disputed will and signatures, and other signatures of the size of the originals, which were in evidence, and also photographs of letters contained in the signature enlarged twenty-four times without a like enlargement of a standard signature, and this admission forms the basis of an assignment of error, upon which defendant cites the case of HOWARD vs. Ill Trust Co., 59 N. E. 1146. That authority approves the admission of enlarged photographs as evidence, upon the ground,

that they make the proportions plainer and to that extent it is consistent with the weight of authority.

Macy vs. Brown, 169 Mass., 161;
17 Cyc. 414 and cases cited.
Rowell vs. Fullers Est. 59 Vt. 688.

But we cannot give adherence to the view that photographic copies of a disputed document are inadmissible, because the original has been admitted. If such copies were offered as substantive proof of the original document they would be clearly inadmissible, but where the sole purpose is to use the photographs to illustrate and elucidate a contention which forms the gravamen of the case, such procedure seems to be as reasonable as the use of a magnifying glass would be for the same purpose. We find no ground for complaint in the third assignment of error which is based upon the exclusion by the court of certain testimony which the defendant attempted to elicit from cross-examination of the witness, Mary M. Steele, who was called by the State to prove certain admissions and statements made by the defendant, in a contest over the will in question in the Orphans' Court of Somerset County. It is manifest that the questions upon cross-examination refer to another period than that involved in the examination in chief and were therefore properly excluded. It may be further said that the courts action in this particular as in other instances throughout the trial of the case is not properly before this Court for review as the record indicates that no reason was given at the trial for the exception taken.

Columbia Delaware Bridge Co. vs. Giesse. 9 Vr. 39;
State vs. Hendricks, 41 Vr. 41.

A witness, McMurtry, who qualified as an expert, testified that the signatures of the alleged will and a genuine signature were not written by the same person. When asked whether he had had any experience with signatures first written in pencil and then traced over with ink, he replied in the negative. He was then asked whether he

was competent to pass upon that kind of a signature. The question was objected to and properly overruled because by his own admission he was not qualified. Defendant then moved to strike out the testimony, which motion was refused. We percieve no error here, for the witness was qualified to express an opinion eliminating the tracing, and the State could not at that time foresee that the pencil marking was not to be disputed.

Miss Kellogg was allowed against objection, to testify to a conversation had with the testator regarding the defendant, during the year 1905. The question called for a conversation regarding Mr. Skillman, the defendant, but was objected to and allowed; and the witness said that the testator told her that the defendant undoubtedly burned his barns in order to get the insurance money. This evidence was admitted after the defendant had cross-examined the witness regarding the social relations of testator and defendant, and had her testify over objection that they were friendly. In view of this circumstance, and of the fact that the record shows that the object of the question was to contradict the fact that the relaions were intimate between defendant and testator brought out by the cross-examination, the defendant should have given the court the reason for his objection. Still, if this had been done, the evidence was competent in denial of a fact introduced by the defendant.

Objection was also made to the testimony of Hagaman regarding the relations between the testator and defendant. This subject was opened by the defendant on cross-examination of Miss Kellogg. We think it was competent to show that the parties were not friendly as stated in the disputed will, the inference being that the testator would hardly refer to defendant as his friend, if his state of mind was such as his declarations indicate.

The objection stated was that the question was immaterial and not in rebuttal. If it was immaterial no injury was done; and what evidence may be admitted on rebuttal is a matter of discretion; not reviewable except in case of gross abuse; but in this case the defendant offered

evidence of the friendly relations between defendant and testator, which it was competent for the State to rebut.

No reason was given for the exception taken by defendant on the motion to strike out the testimony of the witness Ely. It was clearly not responsive, and the striking out was no injury to the defendant.

The question as to the condition of defendant's health in the winter of 1905 was overruled. This was not important, and in nowise harmful to defendant for if the defendant's witnesses tell the truth the testator went to defendant's house and executed the will and it is admitted that defendant was able to prepare the will.

Exception was taken to the charge of the court upon the fact that defendant did not offer himself as a witness. Miss Kellogg and Mr. Stryker both testified to admissions made by defendant. Miss Kellogg testified that defendant told her that his daughter (who was a witness) was conscientious, and counsel had difficulty in making her say she saw testator use the lead pencil on the day the will was executed. This was an important fact because if the testator had not traced the signature over one made with a pencil it tended to support the theory that the disputed signature had been copied in pencil and then traced with ink. Mr. Stryker testified that the defendant had shown him the will and said "I have used all precautions in writing this will and I don't intend for all hell to change it." This testimony if true, had a direct bearing on the genuineness of the paper. Defendant, in the fact of this testimony failed to offer himself as a witness to disprove these facts—facts which he could meet and deny, and the explanation of which would reach beyond a mere denial of guilt. We think the situation thus presented falls within the rule laid down in Parker vs. State, 32 Vr. 308 and State vs. Wynne 36 Vr. 31; permitting the court to comment on defendant's silence.

It is also urged as error that the court refused to charge when requested as follows: "That the evidence that William Lanehart did not write the disputed signature is largely, if not wholly, circumstantial while some

of the evidence given at the trial is direct and positive, and in order to reach a verdict of guilty the jury must be satisfied beyond a reasonable doubt from the evidence produced before them at this trial, that the witnesses who have testified that they say William Lanehart write the disputed signature did not tell the truth."

All that this request embodies is that the jury must be satisfied, beyond a reasonable doubt, that the witnesses who testified that they saw the disputed signature written did tell the truth. The court was not bound to charge in the words stated in the request, for the jury was not bound to be satisfied beyond a reasonable doubt that the witnesses for the defendant told the truth. All that is required is that the jury be satisfied of the defendant's guilt beyond a reasonable doubt and that depends upon the view they take of the whole case.

It is also urged as error that the court refused to charge as follows; "In weighing evidence the rule is elementary that conflicting testimony must be reconciled without imputing willful perjury to any witness unless the conclusion is unavoidable."

It was held in 1887 in Rickerson vs. State 78 Ga. 15 that in a criminal case, "It is error to refuse to charge, that if there was apparent conflict in the evidence, it was the duty of the jury to reconcile it, if they could and not impute perjury to any witness."

While we doubt the propriety of this conclusion, because it seems to us an invasion of the province of the jury, the present request to charge does not fall within the case referred to, for here the court was not asked to charge, "that if there was any conflicting evidence it was the duty of the jury, etc.," but rather to charge an abstract proposition. A request to charge must be based upon some facts which the evidence tends to prove, and the court should not give instructions which are not relevant to the proofs.

The request embodies nothing of advantage to the defendant. An instruction which would limit the jury in dealing with the credibility of witnesses, it seems to us, would invade the right of the jury to deal with the only

question submitted to them and an instruction that they must reconcile the testimony without imputing perjury unless it is unavoidable, states an abstract proposition which the evidence does not warrant, and the refusal of th court to so charge therefore did not prejudice the defendant.

The court refused to charge that the testimony of a witness who speaks from his personal knowledge, is more satisfactory than the testimony of another who speaks of matters which lie in opinion only, and that the testimony of a witness who was present, and who saw the testator sign the disputed document should outweigh the statement of another witness who testifies that he is acquainted with the signature, and does not believe it to be genuine.

This request was properly refused. Whether the testimony of one witness is more "satisfactory" than that of another is to be determined by the jury upon the facts and circumstances because the word "satisfactory," as there used, means manifestly truthful, and whether both witnesses are equally credible can only be determined by the jury under all the circumstances of the case.

The court refused to charge that the verdict would not establish or set aside the will, and that no legacies mentioned in the will would be paid upon a verdict of not guilty, nor would payment thereof be refused if the verdict were guilty. This request was properly refused. There was no evidence in the case which required any such instruction, and the matters set forth were not within the issue tried.

It is also assigned as error that the court refused to charge "the fact that the defendant did not testify cannot be considered as evidence against him." This, we think was substantially charged. The court instructed the jury that the defendant was not bound to offer himself as a witness, and that in not testifying he was exercising his right as a citizen. Besides this, the defendant although present in the court room produced a physician who testified that the defendant could not safely offer himself as a witness because of his condition of health; and it

was thus made to appear that the defendant was not relying upon any constitutional right he possessed, but on the evidence which was presented to the jury, viz., whether his condition of health was a sufficient explanation for his refusal to testify. He had a right to rely upon his legal right, and he did not choose to do so, but excused himself by raising a question of fact; and if the jury found that fact against him, we think they were justified in drawing the inference, that he refused to offer himself, because he could not truthfully deny the important facts bearing upon the question of his guilt or innocence.

The comments of the court upon the testimony during the charge were made for the purpose of explaining, applying and elucidating the testimony for the convenience and assistance of the jury and under the well established rule present no ground for exception.

Donnelly vs. State, 2 Dutch, 463;
State vs. Valentine, 42 Vr. 553;

An examination of the remaining exceptions taken where reasons were assigned for them at the trial convinces us that they are without legal substance and we therefore, conclude that the judgment of conviction should be sustained.

NEW JERSEY SUPREME COURT.

JUNE TERM, 1908.

THE STATE OF NEW JERSEY,
Defendant in Error,
vs.
WILLIAM H. SKILLMAN,
Plaintiff in Error.

In Error.

Affirmance and Remittitur.

The Court having heard the argument of counsel, and inspected the judgment removed by the writ in this cause, and duly considered the causes assigned for error,—

It is ordered that said judgment be in all things affirmed, with costs, and that the record be remitted to the Court of Quarter Sessions of Somerset County to be proceeded in according to law.

Entered June 17, 1908,
On motion of

JOHN F. REGER, Pros., etc.

I, WILLIAM RIKER, Jr., Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of a rule made by said Court in the above-stated cause and entered in the minutes thereof.

In testimony whereof I have set my hand and the seal of said Court at Trenton, this twenty-second day of June, A. D. nineteen hundred and eight.

(SEAL.)

WM. RIKER, JR.,
Clerk.

VOLUME I.

New Jersey Supreme Court.

THE STATE OF NEW JERSEY, Defendant in Error, *vs.* WILLIAM H. SKILLMAN, Plaintiff in Error.	On Indictment for Forgery. On Writ of Error.

TRANSCRIPT.

MR. JOHN F. REGER,
PROSECUTOR.

MESSRS. CLARK & CASE,
FOR THE DEFENDANT.

SOMERVILLE, N. J.,
The Somerville Publishing Company Printing House.
1908.

New Jersey Supreme Court.

New Jersey | *ss.*

The State of New Jersey to our Judges of our Court of Quarter Sessions in and for the County of Somerset.

(Seal)

Because in the record and proceedings and also in the giving of judgment in our said Court of Quarter Sessions in and for the County of Somerset, upon a certain indictment against William H. Skillman, late of the Township of Montgomery, in the County of Somerset, for unlawfully having had in his possession, a certain forged and counterfeited will, with intent to alter and pass the same and to permit, cause and procure the same to be altered and passed, which said forged and counterfeited will is as follows, to wit:

"I, William Lanehart, of Blawenburg, in the County of Somerset, State of New Jersey, do make and declare this my last will and testament; and hereby annul and revoke all former Wills made by me.

I direct all my just debts and funeral expenses be paid by my Executor and Executrix hereinafter named.

I instruct my Executor and Executrix to sell my personal property consisting of household goods, stock and farming implements within one year of my decease; with the express understanding that said personal property must not be sold at the time when its disposal will conflict or interfere with the right of use of said stock and farming implements given to my farmer in a lease holding good and in effect until the first day of April next ensuing my death.

I instruct my farm to be sold either at public or private sale within two years of my death, and as much sooner as is consistent with getting a fair valuation for the same.

I devise and bequeath to friend Mrs. Doctor Stryker, of New York City two hundred and fifty dollars.

I devise and bequeath to John S. Van Orden two hundred and fifty dollars.

I devise and bequeath to Mrs. Joseph V. H. Read fifty dollars.

I give and bequeath to Mrs. William Duffield, of Blawenburg fifty dollars.

I give and bequeath to the lady known as Laura Kellogg—my niece—one half of all the money derived from the settlement of my estate and request her to consult and advise with her co-executor as to the best and safest investment of said money.

The balance of the money derived from my estate I give and bequeath to my friend William H. Skillman, and earnestly request him to advise and look after the interests of the said Laura Kellogg.

I hereby nominate and appoint the said William H. Skillman, and the said Laura Kellogg as my executor and executrix of this my last will and testament; and request that both he and she be allowed to qualify without security other than his and her own personal bonds.

I wish my Executors to pay unto Blawenburg Church the same salary I now have agreed to pay until the settlement of my estate is made.

Witness my hand and seal this twenty-seventh day of February, 1905. WM. LANEHART."

Signed, sealed, published and declared by William Lanehart, as and for his last will and testament, in the presence of us both present at the same time, who at his request in his presence, and in the presence of each other, have hereunto subscribed our names as attesting witnesses.

Witnesses,

J. W. SKILLMAN,

W. H. ELY.

(Pro ut the said indictment and the several counts therein), whereof, before you, he hath been indicted, and is thereof convicted by a certain jury of the county, taken between the State of New Jersey and the said William H. Skillman, as it is said, manifest error hath intervened to the great damage of the said William H. Skillman, as from his complaint we have received information, we being willing, in his behalf, to correct the error in due manner, if any there shall be, and that speedy justice be done to him, the said William H. Skillman, command you that if judgment be thereon given, then that you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Supreme Court of Judicature, to be held at Trenton, on the fourth day of January next, and this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon, for correcting that error, what of right and according to the laws and customs of New Jersey ought to be done.

Witness, William S. Gummere, Chief Justice of the Supreme Court of Judicature, at Trenton, this sixteenth day of December, Nineteen Hundred and Seven.

WM. RIKER, JR.,
Clerk.

CLARK & CASE,
Attorneys.

The answer of the Judges of the Court of Quarter Sessions in and for the County of Somerset.

The record and proceedings whereof mention is within made, with all things concerning the same, to our Supreme Court of Judicature within specified, the day and place within contained is hereby certified in a certain schedule to this writ annexed, as within commanded.

T. B. BOORAEM,
Judge.

(L. S.)

The State of New Jersey.

Somerset County Court of Oyer and Terminer, holden before Abram Q. Garretson, one of the Justices of the Supreme Court, and Louis H. Schenck, Judge of the Court of Common Pleas.

September Term, 1906.

State of New Jersey, *vs.* William H. Skillman.	On Indictment.

John F. Reger, Prosecutor of the Pleas and Nelson Y. Dungan for the State.

Clark & Case, Attorneys for the defendant William H. Skillman.

State of New Jersey, Somerset County, to wit:

Be it remembered that at a Court of Oyer and Terminer holden at Somerville, in and for the County of Somerset, on the fourth Tuesday of September, in the year of our Lord, one thousand nine hundred and six, before the Honorable Abram Q. Garretson, one of the Justices of the Supreme Court of Judicature of the said State, and Louis H. Schenck, Judge of the Court of Common Pleas in and for the said County, according to

the form of the statute in such case made and provided by the oaths of

C. Ledyard Blair, foreman,
William D. Vanderbeek,
Alfred B. Gibb,
Frank A. Ballentine,
William V. D. Jelliffe,
John F. Schmadeke,
Frank S. Vander Veer,
Abram A. Amerman,
Selah Schoonmaker,
Harry A. Smith,
Woolsey H. Alpaugh,
William H. Staats,
John E. Anderson,
William H. Schultz,
Clayton B. Allshouse,
Harrison Codington,
William H. Coombs,
Elston M. French,
John E. Flammer,
Frederick Kirch,
Henry Lockwood,
Charles N. Hoagland,
Henry J. Garretson.

good and lawful men of the said County, duly summoned and then and there sworn and charged to inquire for the State of New Jersey in and for the body of the said County of Somerset. It is presented in manner and form following, that is to say:

SOMERSET COUNTY|*ss.*

The Grand Inquest of the State of New Jersey in and for the body of the County of Somerset upon their respective oath:

Present, that William H. Skillman, late of the Township of Montgomery in the County of Somerset on the

Thirteenth day of May in the year of our Lord, nineteen hundred and five, with force and arms at the Township of Montgomery aforesaid in the County of Somerset aforesaid and within the jurisdiction of this Court, feloniously did falsely make, alter, forge and counterfeit and cause, counsel, hire, command and procure to be falsely made, altered, forged and counterfeited, and willingly act and assist in the false making, altering, forging, and counterfeiting a certain sealed paper writing purporting to be the last will and testament of William Lanehart, deceased, of tenor and purport following, that is to say:—

"I, William Lanehart, of Blawenburg, in the County of Somerset, State of New Jersey do make and declare this my last will and testament and hereby annul and revoke all former wills made by me.

I direct all my just debts and funeral expenses be paid by my Executor and Executrix hereinafter named.

I instruct my Executor and Executrix to sell my personal property consisting of household goods, stock and farming implements within one year of my decease; with the express understanding that said personal property must not be sold at the time when its disposal will conflict or interfere with the right of use of stock and farming implements given to my farmer in a lease holding good, and in effect, until the first day of April next ensuing my death.

I instruct my farm to be sold either at public or private sale within two years of my death, and as much sooner as is consistent with getting a fair valuation for the same.

I devise and bequeath to friend Mrs. Doctor Stryker of New York City two hundred and fifty dollars. I devise and bequeath unto John S. Van Orden two hundred and fifty dollars.

I give and bequeath to Mrs. Joseph V. H. Reed fifty dollars.

I give and bequeath to Mrs. William Duffield of Blawenburgh fifty dollars.

I give and bequeath to the lady known as Laura Kel-

logg—my niece—one half of all the Money derived from the settlement of my estate and request her to consult and advise with her co-executor as to the best and safest investment of said money.

The balance of the money derived from my estate I give and bequeath to my friend William H. Skillman, and earnestly request him to advise and look after the interests of the said Laura Kellogg.

I hereby nominate and appoint the said William H. Skillman and the said Laura Kellogg as my Executor and Executrix of this my last will and testament; and request that both he and she be allowed to qualify without security other than his and her own personal bonds.

I wish my executors to pay unto Blawenburgh Church the same salary I now have agreed to pay until settlement of my estate is made.

Witness my hand and seal this twenty-seventh day of February 1905.

WM. LANEHART, (L. S.)"

Signed, sealed, published and declared by William Lanehart as and for his last will and testament, in the presence of us, both present at the same time, who at his request, in his presence, and in the presence of each other, have hereunto subscribed our names as attesting witnesses.

Witnesses,
J. W. SKILLMAN,
W. H. ELY.

with intent then and there to prejudice, injure, damage and defraud Simeon Lanehart, John Lanehart, Margaret Lanehart and Mary J. Lanehart, contrary to the form of the statute in such case made and provided and against the peace of this State, the government and dignity of the same.

And the Grand Inquest aforesaid upon their respective oath aforesaid do further present. That the said William H. Skillman on the Thirteenth day of May, in the year of our Lord, nineteen hundred and five, with force and arms at the Township of Montgomery aforesaid in

the County of Somerset aforesaid and within the jurisdiction of this Court, feloniously, did falsely make, alter, forge and counterfeit and cause, counsel, hire, command and procure to be falsely made, altered, forged and counterfeited, and willingly act and assist in the false making, altering, forging and counterfeiting a certain will and testament, purporting to be the last will and testament of William Lanehart deceased, of the tenor and purport following, that is to say:—(Here follows a copy of the will as above.) with intent then and there to prejudice, injure, damage and defraud Simeon Lanehart, John Lanehart, Margaret Lanehart and Mary J. Lanehart, contrary to the form of the statute in such case made and provided and against the peace of this State, the government and dignity of the same.

And the Grand Inquest aforesaid upon their respective oath aforesaid do further present. That the said William H. Skillman on the thirteenth day of May, in the year of our Lord, nineteen hundred and five, with force and arms at the Township of Montgomery aforesaid in the County of Somerset aforesaid and within the jurisdiction of this Court feloniously, did falsely make, alter, forge and counterfeit and cause, counsel, hire, command and procure to be falsely made, altered, forged and counterfeited, and willingly act and assist in the false making, altering, forging and counterfeiting a certain will and testament, purporting to be the last will and testament of William Lanehart deceased of the tenor and purport following, that is to say:—(Here is a copy of the will as above.) with intent then and there to prejudice, injure, damage and defraud Mary J. Lanehart, Elizabeth Long, Maud B. Eaton, Willis A. Voorhees, Lorenzo D. Lovell, Mary F. Stryker, Mary N. Axtell, Simeon Lanehart, John Lanehart, Margaret Lanehart and John N. Race, contrary to the form of the statute in such case made and provided and against the peace of this State, the government and dignity of the same.

And the Grand Inquest aforesaid upon their respective oath aforesaid do further present. That the said William H. Skillman on the thirteenth day of May in the

New Jersey State Library

year of our Lord, nineteen hundred and five, with force and arms at the Township of Montgomery aforesaid in the County of Somerset aforesaid and within the jurisdiction of this Court feloniously, did falsely make, alter, forge and counterfeit and cause, counsel, hire, command and procure to be falsely made, altered, forged and counterfeited, and willingly act and assist in the false making, altering, forging and counterfeiting a certain will and testament purporting to be the last will and testament of William Lanehart deceased, of the tenor and purport following, that is to say:—(Here is a copy of the will as above.) with intent then and there to prejudice, injure, damage and defraud, contrary to the form of the statute in such case made and provided against the peace of this State, the government and dignity of the same.

And the Grand Inquest aforesaid upon their respective oath aforesaid do further present. That William H. Skillman late of the Township of Montgomery in the County of Somerset on the twenty-second day of May in the year of our Lord, nineteen hundred and five at the Township of Montgomery aforesaid, in the County of Somerset aforesaid, and within the jurisdiction of this court, unlawfully and feloniously did utter and publish, and cause, counsel, hire, command and procure to be uttered and published as true, a certain false, altered, forged and counterfeited sealed paper writing purporting to be the last will and testament of William Lanehart deceased, of the tenor and purport following, that is to say:—(Here is a copy of the will as above). with intent to prejudice, injure, damage and defraud Simeon Lanehart, John Lanehart, Margaret Lanehart and Mary J. Lanehart, he, the said William H. Skillman, then and there well knowing the said sealed paper writing purporting to be the last will and testament of William Lanehart deceased, to be false, altered, forged and counterfeited, contrary to the form of the statute in such case made and provided and against the peace of this State, the government and dignity of the same.

And the Grand Inquest upon their respective oath

aforesaid do further present, That William H. Skillman late of the Township of Montgomery in the County of Somerset on the twenty-second day of May, in the year of our Lord, nineteen hundred and five, at the Township of Montgomery aforesaid, in the County of Somerset aforesaid, and within the jurisdiction of this Court, unlawfully and feloniously did utter and publish and cause, counsel, hire command and procure to be uttered and published as true, a certain other false, altered, forged and counterfeited will and testament purporting to be the last will and testament of William Lanehart deceased, of the tenor and purport following, that is to say:—(Here is a copy of the will as above). with intent to prejudice, injure, damage and defraud Simeon Lanehart, John Lanehart, Margaret Lanehart and Mary J. Lanehart, he the said William H. Skillman then and there well knowing the said will and testament purporting to be the last will and testament of William Lanehart deceased, to be false, altered, forged and counterfeited, contrary to the form of the statute in such case made and provided and against the peace of this State, the government and dignity of the same.

And the Grand Inquest aforesaid upon their respective oath aforesaid do further present. That the said William H. Skillman, on the twenty-second day of May, in the year of our Lord, nineteen hundred and five, at the Township of Montgomery aforesaid, in the County of Somerset aforesaid, and within the jurisdiction of this Court, unlawfully and feloniously did utter and publish and cause, counsel, hire, command and procure to be uttered and published as true, a certain other false, altered, forged and counterfeited will and testament purporting to be the last will and testament of William Lanehart deceased, of the tenor and purport following, that is to say:—(Here is a copy of the will as above.) with intent to prejudice, injure, damage and defraud Mary J. Lanehart, Elizabeth Long, Maud B. Eaton, Willis A. Voorhees, Lorenzo D. Lovell, Mary F. Stryker, Mary N. Axtell, Simeon Lanehart, John Lanehart, Margaret Lanehart, John N. Race and some persons to this Grand

Inquest unknown, he the said William H. Skillman, then and there well knowing the said will and testament purporting to be the last will and testament of William Lanehart deceased, to be false, altered, forged and counterfeited, contrary to the form of the statute in such case made and provided and against the peace of this State, the government and dignity of the same.

And the Grand Inquest aforesaid upon their respective oath aforesaid do further present, That the said Willim H. Skillman on the twenty-second day of May, in the year of our Lord nineteen hundred and five, at the Township of Montgomery aforesaid, in the County of Somerset aforesaid, and within the jurisdiction of this court, unlawfully and feloniously did utter and publish, and accuse, counsel, hire, command and procure to be uttered and published as true, a certain other false, altered, forged and counterfeited will and testament purporting to be the last will and testament of William Lanehart deceased, of the tenor and purport following, that is to say:—(Here is a copy of the will as above). With intent to prejudice, injure, damage and defraud; he, the said William H. Skillman, then and there well knowing the said will and testament purporting to be the last will and testament of William Lanehart, deceased, to be false, altered, forged and counterfeited, contrary to the form of the statute in such case made and provided and against the peace of this State, the government and dignity of the same.

And the Grand Inquest aforesaid upon their respective oath aforesaid do further present, that William H. Skillman on the twenty-second day of May, in the year of our Lord, nineteen hundred and five at the Township of Montgomery aforesaid in the County of Somerset aforesaid and within the jurisdiction of this Court, unlawfully and feloniously did utter and publish as true, a certain other false, forged and counterfeited will and testament purporting to be the last will and testament of William Lanehart, deceased, of the tenor, purport and effect following, that is to say: (Here is a copy of the will as above). With intent to prejudice, injure, damage

and defraud; he the said William H. Skillman, then and there well knowing the said will and testament purporting to be the last will and testament of William Lanehart, deceased, to be false, forged and counterfeited contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

And the Grand Inquest aforesaid upon their respective oath aforesaid do further present that, William H. Skillman on the thirteenth day of May, in the year of our Lord, nineteen hundred and five at the Township of Montgomery aforesaid in the County of Somerset aforesaid and within the jurisdiction of this Court, feloniously did falsely make, forge and counterfeit a certain other will and testament purporting to be the last will and testament of William Lanehart deceased of the tenor, purport and effect following, that is to say:—(Here is a copy of the will as above.) With intent then and there to prejudice, injure, damage and defraud, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

And the Grand Inquest aforesaid upon their respective oath aforesaid do further present that William H. Skillman on the thirteenth day of May, in the year of our Lord, nineteen hundred and five at the Township of Montgomery aforesaid in the County of Somerset aforesaid, and within the jurisdiction of this Court, feloniously did falsely make, alter, forge and counterfeit a certain other will and testament, purporting to be the last will and testament of William Lanehart deceased of the tenor, purport and effect following, that is to say:—(Here is a copy of the will as above). With intent then and there to prejudice, injure, damage and defraud; and afterwards, to wit on the twenty-second day of May, in the year of our Lord nineteen hundred and five, at the Township of Montgomery aforesaid, in the County of Somerset aforesaid, he the said William H. Skillman unlawfully and feloniously did utter and publish as true the said false, altered, forged and counterfeited will and

testament purporting to be the last will and testament of William Lanehart deceased, with intent then and there to prejudice, injure, damage and defraud he, the said William H. Skillman, then and there well knowing the said will and testament purporting to be the last will and testament of William Lanehart deceased, to be false, altered, forged and counterfeited, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

(Signed), JOHN F. REGER,
Prosecutor of the Pleas.

Which said indictment was, to wit, on the first day of October, of the term of September, in the year of our Lord, one thousand nine hundred and six, at the Court of Oyer and Terminer in and for the County of Somerset aforesaid, before Abram Q. Garretson and Louis H. Schenck, Judges of the Court of Oyer and Terminer of said County, holden at Somerville, in and for the County of Somerset, duly delivered here in Court by the Grand Jurors aforesaid, in due form of law to be tried.

Whereupon the Sheriff of the County of Somerset aforesaid is commanded to take the said William H. Skillman, if he may be found in the county and him safely keep to answer to the said indictment.

Afterwards, to wit, at the Court of Quarter Sessions, holden at Somerville aforesaid, in the County of Somerset aforesaid, on the fifth day of October, in the year of our Lord, one thousand nine hundred and six, before Louis H. Schenck, Judge of the Court of Common Pleas, here cometh William H. Skillman under the custody of Edward E. Cooper, High Sheriff of the County of Somerset, and the said William H. Skillman having heard the indictment read and forthwith being demanded of and concerning the premises in the said indictment above specified and charged upon him how he will acquit himself thereof, he sayeth that he is not guilty thereof, and therefore for good and evil he puts himself upon the

country, and John F. Reger, Prosecutor of the State for the County aforesaid, who prosecutes for the State of New Jersey in this behalf doth the like.

Therefore let a jury thereupon here come before the said Court of Quarter Sessions and as yet of the term of January, the matter being continued from term to term until now the April term of the said Court in the year of our Lord, one thousand nine hundred and seven, at Somerville, in the County of Somerset aforesaid, on the thirtieth day of April, in the year of our Lord one thousand nine hundred and seven, of good and lawful men, each of whom shall be a citizen of this State, and resident of the County of Somerset aforesaid, above the age of twenty-one years and under the age of sixty-five years, by whom the truth of the matter may be known, and who are not of kin to the said William H. Skillman, recognize upon their oaths whether the said William H. Skillman be guilty of the charges in the indictment aforesaid, above specified, or not guilty, because as well the said John F. Reger, who prosecutes for the State of New Jersey in this behalf, as the said William H. Skillman have put themselves upon the said jury, at which day, to wit, the thirtieth day of April, one thousand nine hundred and seven, as yet of the term of April, in the same year, before the Court of Quarter Sessions at Somerville aforesaid, in the County of Somerset aforesaid, held by Theodore B. Booream, Judge of the Court of Common Pleas in and for the County of Middlesex and State of New Jersey, in the absence of and at the request of Louis H. Schenck, Judge of the Court of Common Pleas in and for the County of Somerset, here cometh as well the said John F. Reger, who prosecutes for the State of New Jersey in this behalf, as the said William H. Skillman in his own proper person in the custody of his bail bond, accompanied by his counsel Alvah A. Clark and Charles A. Reed, and the trial of the said indictment being moved against the said William H. Skillman, and

Charles F. Smith,
Thomas L. Hildebrant,

Charles P. Horner,
Isaac Stryker,
John C. Lane,
Eric E. Houston,
I. D. Dalley,
John B. Simpson,
John G. Sutphen,
Stanley Brampton,
John H. Worth,
Jacob G. Drake,

being called, come, who being chosen, tried and sworn in accordance with law, to speak the truth of and concerning the premises, and the trial of said issue having been regularly continued from day to day until Tuesday the seventh day of May, in the year of our Lord, one thousand nine hundred and seven, before Judge Theodore B. Booream aforesaid, the said William H. Skillman being present in his own proper person, thereupon on said last mentioned day the jurors aforesaid upon their oaths as aforesaid say that they have not agreed and cannot agree on a verdict as to the charges in the said indictment specified, or any of them; and thereupon the said Theodore B. Booream did discharge the said jurors from the further consideration of the said indictment.

The said jurors having so disagreed, and the matter being continued, now, therefore let a jury thereupon come before the said Court of Quarter Sessions, now of the term of September, in the year of our Lord, one thousand nine hundred and seven, on the twenty-fifth day of November, in the year of our Lord one thousand nine hundred and seven, of good and lawful men, each of whom shall be a citizen of this State and resident of the County of Somerset aforesaid, above the age of twenty-one years and under the age of sixty-five years, by whom the truth of the matter may be known and who are not of kin to the said William H. Skillman, recognize upon their oaths whether the said William H. Skillman be guilty of the charges or any of them in the indictment aforesaid, above specified, or not guilty, because as well

the said John F. Reger, who prosecutes for the State of New Jersey in this behalf, as the said William H. Skillman, have put themselves upon the said jury, at which day, to wit, on the twenty-fifth day of November, one thousand nine hundred and seven, as yet of the term of September, in the year of our Lord one thousand nine hundred and seven, before the Court of Quarter Sessions, at Somerville aforesaid, in the County of Somerset aforesaid, held by Theodore B. Booream, Judge of the Court of Common Pleas in and for the County of Middlesex, sitting in the absence of and at the request of Louis H. Schenck, Judge of the Court of Common Pleas in and for the County of Somerset, here cometh as well the said John F. Reger, who prosecutes for the State of New Jersey in this behalf, as the said William H. Skillman in his own proper person, under the custody of his bail, accompanied by Clark & Case, his counsel, and

William Beardsley,
Tunis Mulliner,
John Enk,
Carlton P. Hoagland,
Ephraim Ackor,
Jacob D. Quick,
Augustus Mobus,
William J. Savoye,
John N. Studdiford,
Henry Layton,
Edward S. Tillman,
Jacob S. Young,

being called, come, who being chosen, tried and sworn in accordance with the law, to speak the truth of and concerning the premises, and the trial of the said issue having been regularly continued from day to day until Wednesday the fourth day of November, in the year of our Lord, one thousand nine hundred and seven, before the Judge aforesaid, the said William H. Skillman being present in his own proper person, thereupon on said last mentioned day the jurors aforesaid, upon their oaths as

aforesaid, say that the said William H. Skillman is guilty of uttering the Will as charged in the indictment; and upon this it is afterwards on the eleventh day of December, in the year one thousand nine hundred and seven, as yet of the term of September, before the said Court of Quarter Sessions and Theodore B. Booream, Judge as aforesaid, demanded of the said William H. Skillman to stand up, whereupon the Court doth order and adjudge that the said William H. Skillman be confined in the State Prison at Trenton, New Jersey, at hard labor for the term of five years and to pay a fine of one thousand dollars; the said William H. Skillman to stand committed until the fine is paid.

THEO. B. BOORAEM,
Judge.

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

I, Alexander G. Anderson, Clerk of the Court of Common Pleas in and for the County of Somerset, the same being a Court of record, do hereby certify that the foregoing is a true, full and correct copy of a judgment record as the same was filed and entered in my office January 20th, 1908.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of Somerset County, this Twentieth day of January, one thousand nine hundred and eight.

A. G. ANDERSON,
Clerk.

SOMERSET COUNTY QUARTER SESSIONS

STATE
vs.
WILLIAM H. SKILLMAN. } On Indictment for Forgery.

CASE AND BILL OF EXCEPTIONS.

Transcript of Stenographer's notes of the evidence taken in the above entitled cause, before Hon. Theodore B. Booraem, Judge, and a Jury, at the Court House, in the City of Somerville, November 25, 1907, at 10.00 a. m.

APPEARANCES:

MR. JOHN F. REGER, Prosecutor of the Pleas.

MR. NELSON Y. DUNGAN and MR. E. P. JOHNSON, Associated for the State.

MESSRS. CLARKE & CASE, for the Defendant.

Recess.

A. GIBBEY SPENCER, sworn in behalf of the State.

Examined by Mr. Reger:

Mr. Clark:—This morning before recess, I intended, when it was discovered that a correct list of jurors had not been served on the defendant, to make objection to it. I did not discover it until the jury was in progress

of being impanelled, and I now desire to make the objection, that I would or ought to have made then.

Court:—You must put your objection in some formal tangible shape. What do you want?

Mr. Clarke:—My objection is that the statute has not been complied with, and there the list of jurors that was served was an illegal list.

Mr. Dungan:—The only remedy in a case of that kind would be to postpone the trial and serve a new list, but our contention is that the objection comes entirely too late.

Court:—Your only proper remedy under the circumstances would be a motion to postpone the case, on the ground that the defendant had been deprived of a statutory right in not having a correct jury list served upon him, I will treat your objection as an application to postpone the case on that ground, unless you have some other cause or application to make to the Court. Of course, it only goes to affect the trial of the cause today, it would not affect the trial at some other time to which time we could adjourn to allow the State to serve another list. But if you have no other grounds to urge, I shall deny the motion for the reason that it is not made until after the jury had been impanelled and sworn and also on the further ground that the juror whose name was misspelled upon the jury list, has been peremptorily challenged by the State. The defendant therefore, has received no wrong. You are not compelled to submit to trial by a juror whose name is not correctly placed on the list, nor where you are caused or the defendant caused to exact a peremptory challenge—I shall deny the motion.

Mr. Reger:

Q. Where do you reside?
A. Rahway.

Q. What is your official position, or was prior to 1895 —Surrogate and Deputy Surrogate?
A. Surrogate and Deputy Surrogate.
Q. What were you in May 1895?
A. Deputy Surrogate.
Q. And who was Surrogate?
A. William J. DeMond.
Q. I show you a paper, and ask you whether that paper was filed in your office, while you were deputy surrogate?
A. Yes sir, it was.
Q. What is that paper?

Court:—It speaks for itself.

Q. That is a petition for the probate of the last will and testament of William Lanehart, deceased, is it not?
A. Yes sir, it is.
Q. By whom is the petition signed?

Court:—I think the witness should first establish his knowledge of the signature.

Mr. Reger:

Q. Was that paper signed in your presence?
A. Yes sir, it was.
Q. By whom?
A. William H. Skillman and Laura Kellogg.
Q. What is on the back of that paper?
A. There is an oath of the executor's, the applicant.
Q. Taken before you as deputy surrogate?
A. Yes sir.

Mr. Reger:—I offer that petition in evidence.

Marked Exhibit P. 1.

Q. I show you another paper and ask you what that is (handing witness paper)?

A. That is the oath of one of the subscribing witnesses to the will, and also the oath of the executor.

Q. Who is the witness sworn to that paper?

A. W. H. Ely.

Q. Before whom was he sworn?

A. Before me as deputy surrogate.

Q. Was the oath of the executor also taken before you?

A. It was, yes sir.

Mr. Reger:—I offer that paper in evidence.

Marked Exhibit P. 2.

Q. I show you another paper, and ask you what that is?

A. That is the order for the probate of the will.

Q. Made by the surrogate?

A. Yes sir.

Mr. Reger:—I offer that paper in evidence.

Marked Exhibit P. 3.

Q. I show you another paper and ask you what that is?

A. That is the will of William Lanehart, or purported will of William Lanehart.

Q. Is that the paper which was presented to the surrogate, while you were deputy surrogate, and to which was attached the order for probate, which was just shown you?

A. Yes sir.

Q. And by whom was that offered?

A. It was offered by William H. Skillman and I think Miss Kellogg too, I think they were both present at the time it was first brought into the office, according to my recollection.

Paper offered in evidence and marked Exhibit P. 4.

Mr. Clarke:—You offer the paper for the purpose of identifying it as the paper which William H. Skillman and Miss Kellogg brought there for probate, that is the object and purpose of the offer?

Mr. Reger:—Yes.

Mr. Clark:—I make no objection then.

Mr. Reger:

Q. Was there an inventory filed, while you were deputy surrogate by these executors?

A. I think so, I cannot say positively, I do not recollect, Mr. Prosecutor.

Q. I show you a book, marked "Book of inventories, Letter S." and ask you what record is shown on page 215 of that book.

A. Inventory and appraisement of the goods, chattels, etc., of William Lanehart, deceased.

Q. Who are the appraisers named?

A. James L. Brophy, and Augustus Voorhees.

Q. Whose name was subscribed to the inventory?

A. Do you mean to the oath of the inventory?

Q. To the oath to the inventory.

A. William H. Skillman, Augustus Voorhees and Laura Kellogg.

Mr. Clark:—I would like to ask a question right here.

Court:—You may make an objection if you wish.

Mr. Reger:

Q. You are now testifying, as I understand, as to the record, not to the inventory itself?

A. Only the record, I thought that was understood.

Court:—That is what I have just said, the witness is

testifying from the record and therefore the signature of Mr. Skillman does not appear there.

Mr. Reger:

Q. Does the record show that Mr. Skillman's name was attached to the oath?

Mr. Clark:—I object to that.

Objection sustained.

Mr. Reger:—I offer that book in evidence.

Mr. Clark:—I object to the offer of the record.

Objection sustained.

Mr. Reger:

Q. Do you know where the original inventory is?
A. I presume it is in Trenton, it should be.
Q. Is it there where the original inventories are filed?

Court:—I may say that I should entertain an objection if the original inventory was here. I cannot see what bearing the introduction of the inventory could have upon this case at all. If the will that was offered for probate is forged, that is an act complete in itself.

Mr. Reger:

Q. The oath that you have testified to, attached to the petition, and the order for probate, all relate to the paper purporting to be the last will and testament of William Lanehart, which you have also just testified to?

Mr. Clark:—I object to that, the papers should be produced.

Objection sustained.

Cross-Examination by Mr. Clark:

Q. The only original papers which you have here, are the petition and order, and the will?

A. And the two oaths, the oath of the executor and the oath of the witness.

Q. The petition and the oaths attached?

A. Yes sir.

Q. And the order admitting the will to probate and the will itself?

A. When you say "oath attached" there is no oath to the petition, but the oath of the witness?

Q. The only original papers are, first the petition of William H. Skillman and Laura Kellogg, signed by them, and an affidavit thereto made by them—that is marked Exhibit P. 1?

A. Yes sir.

Q. And Exhibit P. 2. is the oath of the subscribing witness to the will, Mr. Ely?

A. Yes sir.

Q. And the oath of the executors?

A. Yes sir.

Q. And then the order for probate by the surrogate, that is marked Exhibit P. 3?

A. Yes sir.

Q. And then the paper purporting to be the last will and testament of William Lanehart, that is marked Exhibit P. 4?

A. That is correct, yes sir.

Q. I observe Mr. Spencer, these large holes at the top of the two pieces of paper, were these holes there at the time the will was presented at the office (handing witness Exhibit P. 4).

A. I do not think so, I think they were made in our office, and I think they correspond with the holes in the paper containing the oaths, they were made for the purpose of fastening this to the oaths, and probate papers.

Q. The sheets were entire, whole, before that time?

A. I believe so, I think they were, yes sir.

Court:

Q. Were the two sheets attached or detached, when they were presented to you for probate?

A. That I do not recall, that I do not recall positively, I think they were pinned together, these sheets bear evidence of having been pinned together, with common pins.

Q. Were they fastened in any other way than by pinning?

A. I think not, not as I recollect now.

ORVILLE B. ACKERLY, sworn in behalf of the State.

Examined by Mr. Reger:

Q. Where do you reside?

A. Yonkers, N. Y.

Q. Where is your place of business?

A. New York City.

Q. Did you know William Lanehart in his life-time?

A. Yes, sir.

Q. How long did you know him?

A. About twenty years ago when I first met him.

Q. And for how long did you know him?

A. All his life after that.

Q. Where did he reside while you knew him?

A. When I first knew him he lived in Brooklyn, afterwards he lived at Blawenburg in this State, and then I think he lived at Hopewell, and at Painfield, N. J.

Q. What were your relations with him?

A. Business relations first,—he came to my office in answer to an advertisement, and he was seeking to exchange a house and lot that he had in Brooklyn for a farm. My business is real estate, and I twice showed him property on Long Island and attempted to make an exchange for him.

Q. Did you transact some business for him?

A. Yes, I sold some lots for him and his brother and sister, that they owned in Rochester.

Q. Did you have any correspondence with him during that time?

A. Yes sir.

Q. Did he ever visit your office?

A. Yes sir, very frequently.

Q. What other business did you transact with him in relation to this case?

A. Well, I wrote a will for him.

Mr. Clark:—I object to this evidence, because it is immaterial and irrelevant and I ask to have it stricken out.

Court:—I think the question is improper, and I overrule the question, and order the answer stricken off the record.

Mr. Reger:—What business did you transact for him if any as a scrivener?

Mr. Clark:—I object to the question unless it is connected with this case in some way.

Question allowed.

A. I wrote a will for him.

Mr. Reger:

Q. When did you write that will for him?

Mr. Clark:—I object.

Question allowed.

Mr. Clark:—I will ask your Honor for an exception.

Exception allowed, which may be sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

A. Five years ago.

Mr. Reger:

Q. I show you a paper, and ask you to examine it, and tell us whether or not, that is the paper which you then wrote for him?

Mr. Clark:—I object.

Objection overruled.

Mr. Clark:—I ask for an exception.

Exception allowed, which may be sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

A. This is the will.

Mr. Reger:

Q. What is the date of that will?

Mr. Clark:—Same objection.

Objection overruled.

Mr. Clark:—I ask for an exception.

Exception allowed, and sealed accordingly.

A. 28th of November, 1902.

(L.S.) THEODORE B. BOORAEM,
Judge.

Mr. Reger:

Q. That will is in your hand-writing, is it?
A. No sir.

Mr. Clark:—I object to the question and I move to strike out all the testimony of this witness on the ground that it is irrelevant and immaterial.

Objection sustained.

Mr. Reger:

Q. In whose presence was that will signed?

Mr. Clark:—I object to the use of the paper in this way, if the object of the paper is to prove the signature of William Lanehart, that is one thing—if the object of the paper is foreign to that, then it is another thing—and I object to it.

Court:—I cannot rule upon that until the paper is offered.

Mr. Reger:

Q. By whom was that paper signed?
A. By William Lanehart.
Q. In whose presence?
A. In my presence, and in the presence of my clerk.
Q. Who were the attesting witnesses?
A. Robert W. Drummond, and myself.
Q. Did you see Mr. Lanehart attach his signature to that paper?
A. I did, I saw Mr. Lanehart sign this paper.
Q. Did he use any pencil before writing his name to that will or paper?

Mr. Clark:—I object to the question as leading.

Objection sustained.

Mr. Reger:

Q. Kindly state all the circumstances surrounding the execution of that paper as you recall them?

Mr. Clark:—I object.

Question withdrawn.

Court:—It seems to me that I can only admit this paper, when offered as a document bearing the signature of William Lanehart, which is sworn to by this witness, as being the genuine signature of the said William Lanehart, as establishing a standard by which the questionable document might be judged. But how the circumstances surrounding the making of that signature, can be relevant to that purpose, I cannot see.

Mr. Reger:—It is our intention to show the parties that have been defrauded by the execution of the other will.

Court:—The Criminal Procedure act says that it is not necessary to allege in any indictment, that any particular person or persons were defrauded, nor is it necessary to prove at the trial that any particular person has been defrauded—all that is necessary to do is to show a general intent to defraud.

Mr. Reger:

Q. Kindly state to the court the circumstances, under which the signature was made by William Lanehart?

Mr. Clark:—I object.

Mr. Reger:—I think it is proper to show that it is a genuine signature of William Lanehart.

Mr. Clark:—I will admit it to be the genuine signature of William Lanehart.

Court:—I will admit the evidence to show the circumstances under which the signature itself was affixed to the document, but I will not admit any evidence whatever in relation to the contents of the document. Question allowed.

Mr. Clark:—I will ask your Honor for an exception.

Exception allowed.

(L.S.) THEODORE B. BOORAEM,
Judge.

A. Mr. Lanehart brought me a paper which he said—(interrupted).

Court:—That is not allowable. You cannot testify to what he said.

Mr. Reger:

Q. Not what he said, but what he did—everything that was done at that time?

A. I don't know hardly how I can tell it. He had a typewritten document there which did not suit him and he wanted a new one prepared.

Court:—I do not think that is competent, the inquiry relates to what happened at the time that Mr. Lanehart wrote his name.

A. The document was prepared by his direction and he signed it and asked us to sign it as witnesses.

Mr. Clark:—I object to the answer and ask that it be stricken out.

Court:—That answer will be stricken out of the record.

Mr. Reger:

Q. What did he sign it with?
A. A pen and ink.
Q. He did not use a lead pencil?
A. No sir.
Q. What was done with the document, after he had signed it?
A. We signed it as witnesses, and he took it away with him.

Mr. Clark:—I object to the last question and answer and ask that they be stricken out.

Mr. Dungan:—I think it is unfair to have that stricken out. If counsel does not object at the time the question is asked, it is improper and unfair to strike the answer out.

Court:—I will allow the answer to stand.

Mr. Clark:—Claim exception.

Exception allowed and sealed, accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

Mr. Reger:

Q. Did you ever draw any other papers for Mr. Lanehart?
A. A deed or two.
Q. Were those deeds signed by Mr. Lanehart in your office?
A. I cannot say now.
Q. Were you familiar with the handwriting of Mr. Lanehart?

A. Yes sir.

Q. You had some correspondence with him I think you have already testified?

A. Yes.

Q. Up to what time did your correspondence with him continue?

A. Down to within a short time before his death.

Court:

Q. Had you received letters from him?

A. Yes sir, frequently.

Q. What were those letters received for?

A. Business that I was doing for him, and attempting to do for him.

Mr. Reger:

Q. And did these letters which you received from him, and the papers which you saw him sign, establish in your mind a standard of the hand-writing of William Lanehart?

A. Yes sir.

Q. Previous to your engaging in your present business, what was your occupation or profession?

A. I was eighteen years employed in the Clerk's office of Suffolk County, Long Island.

Q. In what capacity?

A. The first twelve years I was there as Deputy County Clerk, and afterwards for six years as clerk.

Q. In your capacity as Deputy County Clerk and County Clerk, were you called upon to pass upon the genuineness of signatures?

A. Yes sir.

Q. Have you made an examination of the signatures to the paper writing purporting to be the last will and testament of Mr. Lanehart, which was offered to the Surrogate of this County, and which bore the date of February 27th, 1905, which paper I now show you—it is marked Exhibit P. 4?

Mr. Clark:—I will ask your Honor for permission to cross-examine this witness as to his competency to testify as an expert.

Court:—You may cross-examine him.

Cross-Examination by Mr. Clark:

Q. Did you ever refuse a paper that was brought to your office for record, because of the character of the signature?

Mr. Dungan:—I object to that.

Question allowed.

A. I don't know that we ever refused for record a paper offered for record, on account of the signature of the parties to it.

Q. That is my question—your rule was to admit all papers to record, where properly acknowledged?

A. If the acknowledgement is signed by the proper official.

Q. Yes, if the acknowledgment is signed by the proper official?

A. Yes sir.

Q. And did you ever refuse a paper because it was not signed by a proper official?

A. Yes sir.

Q. Because of the forgery of the signature of a proper official?

A. Yes sir.

Q. In what instance?

A. In the case of a notary public whose wife took the acknowledgment, and signed the certificate herself.

Q. And it was placed on record?

A. No sir.

Q. It did not appear that she had signed it, did it?

A. The signature of the notary public was his signature, but it was his wife who signed it.

Q. In her own name?

A. No sir, she signed her husband's name.

Q. Did you know at the time it was presented to you, that it was signed by the wife for the husband?

A. I knew it was not a genuine signature of the notary public, but I learned afterwards who did it.

Q. Have you any other instance that you can recall?

A. I do not recall a single other case.

Q. So in eighteen years, your experience is, that one case of the signature of a notary public, and you refused to accept it, because you were satisfied, that it was not the genuine signature of the person it purported to be?

A. That is the only one that I recall.

Q. Was the seal of the notary public attached to the paper or not?

A. I do not recall that. A seal is not necessary to a certificate of acknowledgment, it is only to protests and such like that a seal is necessary.

Q. Do you mean to say that you knew the signature of every person taking acknowledgment in your county, and you passed upon them before you admitted those papers to record?

A. Yes sir.

Q. In every single instance?

A. Yes sir, it is the clerk's business, and he has the genuine signature in his office on file for that purpose.

Q. And in that way you were familiar with their hand-writing so as to pass upon the signatures, you think?

A. I acquired the habit of observing them in that way.

Q. This paper with the signature attached to it, now presented to you for consideration, do you pass upon it from an opinion derived by correspondence with Mr. Lanehart, or independent of that, as an expert?

Mr. Reger:—I object to the question. The witness has not given an opinion yet—that is my first objection. My second objection is, that this cross-examination is not directed to matters which would be proper cross-ex-

amination of the witness, but simply as to the ability of this witness to act as an expert.

Objection sustained.

Mr. Clark:—I will ask for an exception.

Exception allowed and sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

Direct Examination by Mr. Reger:

Q. I will repeat the question—in your capacity as Deputy County Clerk and County Clerk, you say you were called upon to pass upon the genuineness of signatures?

A. Yes sir.

Q. Have you made an examination to the signature to the paper writing purporting to be the last will and testament of Mr. Lanehart which was offered to the Surrogate of this county, and bears date February 27th, 1905, and which paper I now show you—it is marked Exhibit P. 4?

A. Have I made an examination of the alleged will, his paper here?

Q. Yes?

A. I have.

Q. When did you make such an examination?

A. When it was offered at the Orphan's Court, I think first, and I saw it again at a former trial, on this indictment.

Q. From the knowledge which you have of the handwriting of William Lanehart, what have you to say as to whether or not, that is a genuine signature of William Lanehart, attached to that paper, marked Exhibit P. 4?

A. I do not think the signature is genuine.

Q. What is the practice in the County Clerk's office with reference to passing upon signatures of officers, presented there?

A. If the signature was that of a man, whose writing we were not familiar with, or not accustomed to seeing it often, we would compare it with the signature attached to his oath of office which we have on file.

Q. How often are these signatures presented to the County Clerk, to be passed upon?

A. Very frequenty, daily, a good many papers are presented to the Clerks of the counties in our State for certification, as to their genuineness, and their term of office, and we certify to the acts and signatures of notary publics, when a paper is to be recorded in some other county, so we need to know the term of office, as well as the genuineness of their signatures.

Q. You have said you did not think the signature attached to the paper marked Exhibit P. 4 is a genuine signature of William Lanehart. When did you arrive at that conclusion?

A. When I first saw the paper, at the time of the offering of it in the Orphans' Court.

Q. And are you or are you not of the same opinion still?

A. I am of the same opinion.

Cross-Examination by Mr. Clark:

Q. Mr. Ackerly, the first time that you were called upon to testify in relation to the signature, was when you were examined before Miss Steele, the Commissioner?

A. I do not remember that?

Q. In an office next to Mr. Dungan's office?

A. I do not remember. There was a lady took testimony, but I thought it was before the Surrogate, or some official, I did not know who it was.

Q. Before some official for whom she was taking the testimony then?

A. I did not know, I thought it was in the Orphans' Court.

Q. Well, perhaps it was in the Orphans' Court—I don't know—how many times had you seen the paper before that occasion?

A. I think only once.

Q. When was that—how long before?

A. That same day.

Q. And had you made a full and particular examination of it, at that first examination, that first time?

A. Yes, sir.

Q. And formed an opinion at that time?

A. Yes.

Q. And your opinion then was the same as it is now?

A. Yes, sir.

Q. And at the time you were examined before the lady, who took the testimony, that was the second time you examined it?

A. Yes, sir.

Q. And you were asked then whether or not, it was in your opinion the genuine signature of William Lanehart, were you not?

A. I think I was, I am not clear about it though.

Q. And you took some time to examine it, before you made an answer?

A. Perhaps so.

Q. And then you testified that in your opinion, it was not his genuine signature?

A. I think I did, yes, sir.

Q. At that time did you observe that the signature had been written in pencil first, and then traced in ink over it?

A. Do you mean to ask if I said so?

Q. No, I mean to ask, if at that time, you observed that the signature had been written in pencil first, and then traced in ink?

A. As near as I can remember about that, I think that I saw traces of lead pencil marks after the signature in part, or in the signature in part,—that is my recollection about it.

Q. And you remember seeing those marks on both occasions when you made your examination?

A. I am not clear about that.

Q. Do you mean to say you do not remember having seen the tracings when you first examined it?

A. That is just what I mean to say, I am not clear in my recollection about that, on my first examination of it. I saw lead pencil marks on it, that I say I am not clear about in my recollection, when I was examining the paper, before the probate judge or whatever official it was, then it was that I discovered some pencil marks under a part of the ink.

Q. Do you think that is the first time you discovered the pencil marks?

A. It is my recollection that it was, I am not quite sure that it was, but that is my recollection.

Q. Yet before that time, you had passed the opinion that it was not William Lanehart's signature?

A. Yes, sir, I had. I had an opportunity to compare his signature.

Q. Did you pass that opinion in the first instance, by reason of a comparison, with signatures which you knew to be his genuine signatures?

A. Yes, sir.

Q. When you were secondly examined before the officer of the Court, and passed the opinion that it was the genuine signature of Mr. Lanehart, did you then make comparison with other signatures said to be genuine signatures?

A. I do not think I did, I do not recollect that I did.

Q. Mr. Lanehart's habit was to write with a pencil, was it not?

A. All his letters to me, were written with lead pencil.

Q. And his signatures were always in pencil?

A. Yes, sir.

Q. Did you ever see him write with a pen?

A. Yes, sir.

Q. How often?

A. Not often, I do not recall to my certain knowledge that I ever saw him write with a pen, except the instance where wrote his name in my office five years ago this month.

(Court:)

Q. This paper (indicating?)
A. Yes, sir.

(Mr. Clark:)

Q. He was a man who labored considerably, when he wrote, that is, it was troublesome for him to write with a pen?

A. Yes, sir, but he did not write with a pen as well as he did with a pencil.

Q. His writing with a pen was slow and troublesome?

A. Yes.

Q. And he wrote with a pencil in a fluent and more easy manner, or style?

A. According to my recollection at the time he did not like to write with a pen.

Mr. Dungan:—I object to the answer, as it is not an answer to the question, and I will ask that the answer should be stricken out.

Court:—I will order it stricken out, as voluntary.

Mr. Clark:—I think, your Honor, it was an answer to my question.

Q. Have you compared the signatures of William Lanehart, which you know to be his genuine signature, with the signature to this paper, what is called the "Skillman will?"

A. Except as I do it here now, I have not.

Q. Then your opinion is solely formed upon a comparison of the signature attached to the Skillman Will with the document which was signed in our presence in your office?

Mr. Dungan:—I object to the question, because he did

not say that, and it is putting words in his mouth which he did not use.

Question allowed.

A. It is not.

(Mr. Clark:)

Q. Why did you say that you had formed no opinion, except by way of comparison of the signature of the Skillman will, to the signature of the document which you had before you?

Mr. Dungan:—I object to the question on the ground that he did not say so.

Question withdrawn.

(Mr. Clark:)

Q. I asked you a moment ago, if you had made a comparison of signatures which you knew to be genuine of William Lanehart's; with the signature which is attached to the Skillman will, and I understood you to say that you had not, except as to the document, which had been executed in your office, am I correct about that?

A. Not quite.

Q. Please go on and correct me then?

A. I had an oportunity, when this so-called Skillman will was shown me first, to compare it with the signatures of Mr. Lanehart's which were undoubtedly genuine. I have not made any comparison of that signature to-day, with any other signature, except as they lie here on the table before me, not to-day.

Q. Your answer related to what you had done to-day?

A. Yes, sir; I thought you referred to to-day. I have seen no signatures of Mr. Lanehart, except as they lie here on the table before me.

Q. What do you know of the genuiness of any of the signatures, presented to you, for the purpose of compar-

sion, with the signatures of the Skillman will, at the time you formed your first opinion, not taking into consideration the documents which were executed in your office?

A. There were a number of signatures of Mr. Lanehart in ink, on checks shown to me at the time that this will was—interrupted—

Q. There were a number of signatures shown to you—do you know that they were genuine—how do you know that they were genuine?

A. Because they were checks which had been honored by the banks.

Q. And because they were honored by the banks, you took them to be genuine, did you?

A. They looked like the genuine signatures of Mr. Lanehart, and the fact that they were honored by the banks, made me feel certain that they were the genuine signatures.

Q. And you formed your opinion from those checks, did you?

A. With a comparison of those signatures on those checks, with the signatures shown me.

Q. You did not compare it with any signature which you knew to be written by William Lanehart, did you?

A. Not with any signature that I had of his; no, sir.

Q. Now, your comparison to-day is with the signature that is attached to the document, executed in your office?

A. That is all we have here.

Q. And that is the only thing you judge from to-day?

A. I am testifying as to what I see here now, and to the best of my recollection.

Q. I just called your attention to that signature on the document executed in your office, and I will ask you to tell me, if you see any signs of pencil marks on that?

A. I do not.

Q. Did you ever see any signs of pencil marks about it?

A. I do not recall any.

Q. Was not your attention called to pencil marks about the signature to that paper, the first time it was

offered in evidence here, the first time it was used in evidence?

A. My attention called to that signature?

Q. Yes, the pencil marks in connection with that signature?

A. I do not recollect that.

Q. Do you say it was not?

A. I say it was not to the best of my recollection.

Q. Was not your attention called to the pencil mark at the commencement of the letter "W"?

A. I do not recall it.

Q. Look now and see if you can see any evidence of pencil marks there?

A. I do not think I do.

Re-Direct by Mr. Reger:

Q. Were there any pencil marks on the paper which was signed by Mr. Lanehart in your office, when taken by him from your office?

A. No, sir.

Q. You are positive about that?

A. I am.

Q. When you examined the checks, with which you made a comparison, about which you have testified to, did you at that time, or not, have in your mind a standard of the signature of William Lanehart?

Mr. Clark:—I object.

Court:—That has already been answered.

Mr. Reger:—Not exactly in that form, I think.

Court:—What is the ground of your objection?

Mr. Clark:—I object on account of its being leading.

Question allowed.

Mr. Clark:—I will ask your Honor to grant me an exception.

Exception allowed and sealed accordingly.

T. B. BOORAEM,
(L. S.) Judge.

A. I hardly know how to answer that.

(Mr. Reger:)

Q. Were you or not familiar with the signature of William Lanehart at that time?

A. I think I was; yes, sir.

Q. Did or did not the pencil writing of Mr. Lanehart, as seen by you, in your correspondence, possess the same characteristics as the writing in ink?

Mr. Clark:—I object.

Court:—Which writing in ink?

Mr. Reger:—Which he saw, wherever he saw it or whenever he saw it.

Objection sustained.

(Mr. Reger:)

Q. Did or did not the signature of Mr. Lanehart in pencil, to the letters which you received, possess the same characteristics as the genuine signature of Mr. Lanehart, which you saw him write in ink?

Mr. Clark:—I object.

Question allowed.

A. The signature in ink, would be more carefully

written, but the characteristics of a man's hand-writing in ink or in pencil, remain the same.

Mr. Clark:—I object to the answer, and move to have it stricken out, because it is not an answer to the question.

Court:—I shall not strike the answer out, I think the answer is responsive.

(Mr. Reger:)

Q. And that was so in the hand-writing of Mr. Lanehart?

A. It was.

Further Cross-Examination by Mr. Clark:

Q. You were familiar with the hand-writing of Mr. Lanehart in pencil, were you?

A. I saw a great deal more of his hand-writing in pencil, than in ink; yes, sir.

Q. And did you say—if I remember correctly you said you had never seen him write in ink, but a very few times?

A. That is correct.

Q. Two or three times?

A. I would not like to swear to that, to the number.

Q. Well, not having seen Mr. Lanehart write with a pen and ink, more than two or three occasions, and the fact being that he wrote with a pencil much more fluently, than he did with a pen and ink, are you prepared to say that the signature to that paper, called the Skillman will, may not have been written by Mr. William Lanehart, first in pencil and then traced by him with ink?

Mr. Dungan:—I object, he has not said so.

Question Allowed.

A. I am not prepared to say how that signature was made, I did not see it made.

(Mr. Clark:)

Q. Or by whom it was made?

A. Certainly not.

Q. Whether it was made by William Lanehart or not?

A. The Skillman will signature?

Q. Yes?

A. Certainly not, I did not see it written, it may have been written with a pencil and someone else may have written it.

Q. It may have been written by Mr. Lanehart first, may it not?

A. Possibly.

Q. And then traced over in ink?

A. Yes, possibly.

Q. All that you mean to say is this, that the signature attached to the Skillman paper, being first written in pencil and then traced in ink, does not look like the genuine signature of William Lanehart, is that so or not?

A. No, sir.

Q. What do you say?

A. If you want me to assume that that signature was written by Mr. Lanehart first, I decline—interrupted—

Q. I didn't ask you to assume anything.

A. I am not going to.

Q. I simply ask to know, what your opinion is worth, and what you found it upon.

A. The opinion I have given was, that this is not a genuine signature.

Q. I know you have given the opinion that this is not a genuine signature, I know that, and yet you have said as I understand you and remember, that you are not prepared to say that that pencil writing may or may not have been written by William Lanehart, and then traced by him in ink?

A. Of course I cannot say that.

Q. Of course you cannot say that it is not so?
A. No, certainly not.

Re-Direct by Mr. Reger:

Q. If Mr. William Lanehart had first written his name with lead-pencil and then traced it in ink, would or would not the ink writing have possessed the same characteristics of the original signature, in our opinion?
A. It would.
Q. Does this signature to the disputed will, possess the characteristics of William Lanehart's signature, as you know them?
A. Not in my judgement.
Q. Either in pencil or in ink?
A. No, sir; neither.

Cross-Examination by Mr. Clark:

Q. How many letters did you receive from Mr. Lanehart?
A. I don't know how many but I should think—interrupted—
Q. When last did you receive letters from him?
A. Not many months, and I think not many weeks before his death.
Q. How many letters did you receive from him in the last year of his life?
A. I cannot say.
Q. Did you receive a hundred?
A. No, sir.
Q. Did you receive five?
A. I should think I have received as many as half a dozen, say in a year from him.
Q. Did you have half a dozen during the last year of his life?
A. I do not know, I cannot say.
Q. Did you have three from him?
A. I think so, I had a good many letters from him?
Q. My question relates to the last year of his life?

A. I cannot say, he was accustomed to coming and seeing me, and when he came to see me, he would not write a letter.

Q. When you speak of characteristics, there is a difference in the hand-writing of men, when written in pencil or when written in ink, if he writes fluently with a pencil for instance, and labors when he writes with ink, would there not be a difference?

A. Naturally there would be.

Q. And that would make a difference in the characteristics, does it not?

A. His handwriting would not be exactly the same.

Mr. Reger:—I offer in evidence the last will and testament of William Lanehart deceased dated November 28th, 1902. I offer it for the purpose of the signature attached thereto.

Mr. Clark:—I object to any other part of the paper being offered, with the exception to the signature of the paper, and I would suggest that the paper be placed in an envelope with the paper of the envelope, cut, so that nothing but the signature can be seen.

Court:—The offer will be limited to the signature.

Marked Exhibit P. 5.

JOSEPH C. HARRISON, sworn in behalf of the State.

Examined by Mr. Reger:

Q. Where do you live?

A. Hopewell.

Q. What is your occupation?

A. Do you want to know all the things I do?

Q. Generally?

A. I have a harness store, a conveyancer, and commissioner of deeds, I am clerk of the Board of Freeholders, Mercer County, and I do some real estate business, and some other things, insurance, agent, and the like.

Q. How long have you held the position of clerk of the Board of Freehoders of Mercer County?

A. Since 1894.

Q. Are you also a notary public?

A. I am.

Q. Did you know William Lanehart in his life-time?

A. I did.

Q. How long had you known him?

A. I think I knew him all the time he lived at Blaumberg, I cannot tell how many years.

Q. How intimately were you acquainted with him?

A. Quite intimately, he and I were on quite friendly terms.

Q. Did you ever transact any business for him?

A. I did.

Q. Of what nature?

A. He executed papers before me several times.

Q. At this time did he write his name in your presence?

A. He did.

Q. How frequently?

A. Oh why—I don't know how often, but every year more or less sometimes.

Q. Were these signatures made in lead pencil or ink?

A. In ink.

Q. Did the signing of these signatures take place in your presence?

A. Yes, sir.

Q. Did the signing of these signatures fix in your mind a standard of the handwriting of William Lanehart?

A. Yes, sir; it did.

Q. And of his signature?

A. It did.

Q. I show you a list dated January 6th, 1904, and ask

you whether that list was signed by William Lanehart in your presence, (handing witness paper)?

A. It was.

Q. When was it so signed?

A. This was the 6th day of January 1905.

Mr. Reger:—I offer that list in evidence.

Marked Exhibit P. 6.

Q. I show you another paper dated January 12th, 1902, and ask you what that paper is?

A. A lease, William Lanehart to John C. Young.

Q. Is the signature to that document the signature of William Lanehart?

A. It is.

Q. Was it signed in your presence?

A. It was.

Q. What is there attached to it?

A. There is a renewal of the lease, dated December 10th, 1903.

Q. By whom is that signed?

A. William Lanehart and John C. Young.

Q. Was that signed by William Lanehart in your presence?

A. It was.

Mr. Reger:—I offer that paper in evidence.

Marked Exhibit P. 7.

Q. I show you a paper purporting to be the last will and testament of William Lanehart, deceased, heretofore marked in evidence and marked Exhibit P. 4. and ask you whether or not you have examined the signature attached to that paper?

A. I have.

Q. For what purport?

A. I examined it for the purpose of a comparison with signatures I had in my possession.

Q. Genuine signatures of William Lanehart?

A. Genuine signatures of William Lanehart that I saw him make.

Q. And from that examination, and from the comparison thus made, and from your knowledge of the signature of William Lanehart what have you to say as to whether or not, that is the genuine signature of William Lanehart?

A. In my opinion, that is not genuine.

Adjourned to November 26th, 1907, at 9.45 A. M.

Pursuant to adjournment, the parties and their counsel met at the Court House, in the City of Somerville, N. J., and the following evidence was taken before His Honor THEODORE B. BOORAEM, Judge, and a Jury, on the 26th day of November, 1907, at 9.45 A. M.

APPEARANCES:

MR. JOHN F. REGER, Prosecutor of Pleas.

MR. NELSON Y. DUNGAN and MR. E. P. JOHNSON, Associated for the State.

MESSRS. CLARK & CASE, for the Defendant.

JOSEPH C. HARRISON, recalled:

Cross-Examination by Mr. Clark:

Q. Did you ever see Mr. Lanehart write with a pencil?

A. No, sir.

Q. How many times did you see him use a pen and write?

A. I really do not know how many times.

Q. The only times you remember of are the instances when he executed the papers which you have produced here?

A. Oh, no sir, several times before that, papers that he executed and took away with him.

Q. Your opinion with reference to the signature of William Lanehart as attached to what is called the "Skillman will" is based solely upon his hand-writing, when he used a pen?

A. Do you want me to tell what my opinion is based upon?

Q. I want you to answer my question, if you please—your opinion with reference to the signature of William Lanehart as attached to what is called the "Skillman will" is based solely upon his hand-writing, when he used a pen?

A. No, sir, it is not based entirely upon the writing.

Q. It is not basel entirely upon the writing?

A. I knew the man and I knew his characteristics, I knew his method of doing things.

Q. Then your opinion, with reference to the signature of this "Skillman will" is based upon things independent of his hand-writing?

A. Not independent, but in connection with his hand-writing.

Q. In connection with his hand-writing?

A. Yes, sir.

Q. In other words, taking the hand-writing alone, you would not form an opinion, with reference to the genuineness of the signature attached to the "Skillman will?"

A. I would, taking the hand-writing alone.

Q. You were asked by the Prosecutor upon your direct examination whether or not, taking the hand-writing of Mr. Lanehart as you saw it, as a standard, what you had to say with reference to the signature to the "Skillman will," whether or not, in your opinion, it was genuine, and you answered, "you did not think it was"—my cross-examination is based entirely upon the direct examination with reference to your standard of comparison; now, eliminate everything else upon which you base a

conclusion, or upon which you base the conclusions, or form an opinion, with reference to the hand-writing, can you form an opinion, or have you formed an opinion solely upon the standards, which have been presented to which you knew to be genuine?

Mr. Dungan:—I object to the question for two reasons. In the first place, I do not understand the question, and I doubt if the witness does. And in the second place, it is based upon a false premise, in that the question is not correctly reciting the evidence given. Counsel says you testified in your direct examination, so and so, while the fact is he did not so testify. The premise being that you base your opinion then solely upon certain things. But he did not base his opinion solely upon those certain things, he gave his evidence and his evidence included other things than those which Mr. Clark has mentioned in his question.

Court:—I think the question could be reformed, and make it much simpler.

Question withdrawn.

(Mr. Clark):

Q. The other things which you mentioned a little while ago, and which have not been told us by you, as far as I remember, I want you to eliminate from your mind, and I will ask you, from the examination of the hand-writing of William Lanehart, and comparison with the signature attached to the "Skillman will," whether you are prepared to say upon that alone, in your opinion, you think the signature attached to the "Skillman will" is not genuine?

A. I am.

Q. Then the comparisons that you refer to are what? I mean written in pencil or in ink?

A. The writing in ink.

Q. When you say "the writing" you refer only to his signature?

A. I refer only to his signature, yes, sir.

Q. How many times did you see him write his signature—I asked you that once before, but I will ask you again?

A. I cannot tell how many times.

Q. Tell me as many as you can?

A. It would be useless to make a guess on it, I haven't any record.

Q. You know that those two leases were executed in your presence?

A. Yes, sir.

Q. And the renewals?

A. Yes, sir, I know that.

Q. Are you prepared to say that there is any other paper, and if so, how many, more than one, was executed in your presence, where he attached his signature to it, I mean?

A. Well, I don't know how many, I know he came to my place—(interrupted).

Q. Are you prepared to say that there was more than one?

A. Well, I feel quite sure there is more than one.

Q. Well, are you sure there is more than two?

A. Well, I cannot remember how many.

Q. I ask you, what is your best recollection?

A. I think there were more than two.

Q. Do you think there were more than three?

A. Well, I do not know how many there were, I do not know, sir.

Q. Well, you do not feel confident there is more than two, I judge from your answer?

A. I should think there was more than two, and I should think there was more than three, and I should think there were several but I cannot tell you how many there were.

Q. Three or several—one is single—do you mean less than three or more than three?

A. I think more than three.

Q. Do you mean more than four?

A. I cannot tell about that.

Q. Now, for how long a period did this writing occur, that is to say how many years did this period cover when you saw him write his name?

A. I don't know, sir, how long he lived at Blawenburg really, I was acquainted with him all that time and he came into my place to do different kinds of business, all these years, I don't know how long it covered, and I had business with a great many people.

Q. I am asking you about what you did for him, not about other people?

A. Yes sir, I know what I am up to.

Re-Direct by Mr. Reger:

Q. You were asked on cross-examination on what you based your opinion, and you said, the opinion was partially based upon your knowledge of the man and his method of doing business—what did you mean by that?

A. I mean that he was a man as far, as my experience went, that did business promptly and quickly, in writing his name, he would sit down and write his name without hesitation, he would get right at it and get it done.

Q. Did you ever know him to use a lead pencil in writing his name?

A. I did not.

Q. Did you ever see him first write his name in lead pencil and then trace it in ink, that is what I refer to?

A. No sir, I did not.

Q. Was there ever any necessity for his doing that, so far as your observation went?

A. No, sir.

Further Cross-Examination by Mr. Clark:

Q. Not having any knowledge of Mr. Lanehart's hand-writing in pencil writing, and this signature appearing to be one which was written first in pencil and then traced in ink, do you feel as well qualified to pass

upon this signature, as if it had been written in ink, alone, without any tracing of pencil?

Mr. Dungan:—I object to the question, because it is based upon a hypothesis that does not yet appear in this case.

Objection sustained.

Mr. Clark:—I will ask your Honor for an exception.

Exception allowed, which is sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

JOHN N. DALRYMPLE, sworn in behalf of the State.

Examined by Mr. Reger:

Q. Where do you reside?
A. Hopewell.
Q. What is your occupation?
A. Justice of the Peace.
Q. What other business, if any, do you transact?
A. Insurance, writing papers and leases and such like, and clerking public sales.
Q. And doing a general business of that character?
A. Yes, sir.
Q. Are you also a farmer?
A. Well, I have a farm, I put it out.
Q. Where is your farm?
A. In Hopewell.
Q. How near to the farm of William H. Skillman is it?
A. Well, I don't exactly know. I think they call it four miles to Blawenburg, and Mr. Skillman's place is beyond that possibly a mile or a mile and a half, I don't know exactly how far it is.

Q. Do you remember the "Asbury" sale that was held in February, 1905?

A. Yes sir, John Asbury.

Q. Where was that sale held?

A. On his farm near Skillman station.

Q. And when was it held?

A. I think, on the 27th day of February.

Q. What year?

A. 1905, I think.

Q. What connection, if any, did you have with that "Asbury" sale?

A. I clerked the sale.

Q. Was the deceased Mr. Lanehart at that sale?

A. Yes, sir.

Q. Did he make any purchases at the sale?

A. Yes, sir.

Q. How long did he remain at the sale?

A. Well, I don't know as I could say about that, it was in the afternoon sometime, after the sale was pretty well over with.

Q. Did you see him about the sale during that day?

A. Oh, yes sir.

Q. What was he doing around there?

A. Walking about and talking to the people.

Q. And making purchases?

A. And making purchases.

Q. Did he make any purchases?

A. Yes, sir.

Q. What did he buy?

A. Well, he bought some farming machinery, I think a mowing machine, possibly a horse rake, I don't just remember all the articles now.

Q. Did he pay for them at the time?

A. No, sir.

Q. What arrangement, if any, did he make for paying for these articles?

A. He made the arrangement for seeing me the next day, when he said he would pay for them.

Q. Did you see him the next day?

A. Yes, sir.

Q. Where did you see him?

A. At my office in Hopewell.

Q. Did he come there?

A. Yes, sir.

Q. How did he come?

A. Well, I think he drove there, but I am not positive.

Q. Did he at that time pay for the articles which he had purchased at the sale the day before?

A. Yes sir, he gave me a check.

Q. I show you a check and ask you whether or not that is the check which Mr. Lanehart gave you on February 28th 1905, at your office in Hopewell (handing witness paper)?

A. Yes, sir.

Q. Where was that check signed?

A. At my office in Hopewell.

Q. By whom?

A. Mr. Lanehart.

Q. Did you see him write his name?

A. I did.

Q. Where was he seated at the time?

A. At a table.

Q. In your office?

A. Yes, sir, a similar table to one of those round tables.

Q. When was it signed with reference to the time when he came into your office?

A. How soon after he came in?

Q. Yes?

A. Oh, it was not long, not very long, ten or fifteen minutes, or it might have been longer, he was not there but a very short time.

Q. What was he wearing that day?

A. He had on an overcoat.

Q. Did he remove his overcoat while signing the check?

A. I do not think he did.

Q. With whose pen was it signed?

A. Well, with my pen.

Q. And that check was left with you at that time?

A. It was.

Q. What was his condition of health as it appeared to you at that time?

A. Well, I should say fairly well, he was walking about.

Q. How long had you known Mr. Lanehart?

A. Well, I could not say positively, but I had known him quite a while, quite a long while.

Q. A number of years?

A. Yes, sir.

Q. Did you observe any difference in his condition of health that day and the day before, than it had been previous to that time?

A. I do not think I did.

Mr. Reger:—I offer this check in evidence, it is dated February 28th, 1905.

Marked Exhibit P. 8.

Q. Was this check dated the day it was given?

A. Yes sir, the 28th of February, 1905.

Q. And it is a check dated February 28th, 1905, payable to the order of John Asbury at the Hopewell National Bank, is it not?

A. Yes, sir.

Q. For $76?

A. Yes, sir.

Q. Did Mr. Lanehart have an overcoat on when he was signing the check?

A. Yes, sir.

Q. How far is it from Mr. Lanehart's place of residence to your office?

A. They call it four miles from Blawenburg.

Q. What kind of day was it?

A. Well, I don't think it was a stormy day, possibly cloudy, I cannot say exactly, I think it was not a stormy day.

Q. Warm or cold.

A. Well, I should say cold enough to wear an overcoat, rather chilly I should say.

Q. Were you familiar with the hand-writing of Mr. Lanehart?

A. Previous to the signing of the check?

Q. Yes.

A. No, sir.

Q. I show you a paper purporting to be the last will and testament of William Lanehart heretofore offered in evidence and marked Exhibit P. 4 in this case, to which is attached the name "William Lanehart"—I ask you whether you have made a comparison of the signature attached to that paper, with the check which was given you the day following the "Asbury sale," dated February 28th, 1905,—have you made such a comparison?

A. At the other trial I compared the two, that check and that signature.

Q. From that comparison, what have you to say as to whether or not this is the genuine signature of William Lanehart?

A. In my judgment it was not.

Q. In making that signature did Mr. Lanehart use any lead pencil?

A. No, sir.

Cross-Examination by Mr. Clark:

Q. Did you ever see him write with a lead pencil?

A. No, sir.

Q. The only time you ever saw him write was the day this check was given, was it?

A. I think it was.

Q. Who filled in the check?

A. I did.

Q. The table at which Mr. Lanehart wrote was a flat top table?

A. Yes, sir.

Q. The chair he sat in was a high chair or low chair, or a chair of ordinary height?

A. I think it was a chair similar to one of these (indicating).

Q. An ordinary cane bottomed chair?

A. I think that was the kind, I am not positive, but I think it was.

Q. Of the ordinary height for a chair?

A. I think so, yes sir.

Q. Not knowing whether he had his overcoat off or not, while he was in your house, how do you know that he signed with the overcoat on?

A. I thought I said that he did have his overcoat on.

Q. You said so, and the last question that the Prosecutor asked you,—but before that as I remember, you said you did not think that he removed the overcoat?

A. I don't think he did.

Q. Do you know whether he removed his overcoat or not?

A. Yes sir, I am positive he did not remove his overcoat.

Q. What did yo say a little while ago, that you did not think you removed it then?

A. Well, I thought it a proper answer at the time, I did not think he did, in fact I know that he did not remove his overcoat.

Q. What fact or circumstance refreshes your recollection now, so that you can state positively now that you know he did not remove his overcoat?

A. I am sure I did not ask him to remove it—well, I think I did ask him once, if he would not take his overcoat off, and he said no, he would not, he was in a hurry and wanted to go.

Q. You remember that now, do you, or is that simply an impression on our mind, an inference?

A. I remember it.

Q. You do remember it?

A. Yes, sir.

Q. At this sale there were a number of people?

A. Yes.

Q. And you were the clerk of the sale?

A. Yes, sir.

Q Had you time to watch all the movements of the different people around there or were you attending to the auctioneer and were you not trying to get the names of the people, rather than watch the people?

A. I was attending to the auctioneer, I was attending to my business.

Q. You didn't have much time to attend to the actions of the bidders, did you?

A. No, sir.

Q. And what Mr. Lanehart was doing while he was at the sale, did not especially command your attention?

A. No, sir.

Q. Or anybody else that was there?

A. No, sir.

Q. If the signature attached to this will was first written in lead pencil and then afterwards traced in ink, and you not being familiar with Mr. Lanehart's signature in pencil, would your opinion be altered or varied, by reason of that fact?

Mr. Reger:—I object to that as immaterial and irrelevant.

Court:—I shall sustain the objection—neither of the last two witnesses have testified to having seen Mr. Lanehart write with lead pencil.

(Mr. Clark):

Q. If, as a matter of fact, Mr. Lanehart wrote in pencil a fluent hand, quickly, and with the pen of ink slowly, would you be able to form any opinion, with reference to a signature which was written in pencil first and then traced in ink aferwards, by reason of the comparison, had with the signature you saw him write to this check?

Mr. Reger:—I object to that question as immaterial and incompetant.

Objection sustained.

Mr. Clark:—I will ask your Honor for an exception.

Exception allowed, which may be sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Clark):

Q. Your opinion is based solely upon the signature which you saw attached to this check dated February 28, 1905, signed by Mr. Lanehart with a pen and ink, and comparing it with the signature attached to the "Skillman will," and because there is such a dissimilarity you believe the signature attached to the will is not the genuine signature—is that correct?

A. I do.

Q. Is that statement correct?

A. Yes, sir.

Q. Do you remember anything at all about the day, the kind of day it was?

A. The day he gave me the check?

Q. Yes, the day he gave you the check.

A. I remember it was not a stormy day, it was cloudy.

Q. How long was he in your office?

A. Well, I don't know, sir, possibly ten or fifteen minutes, I do not know just the length of time.

Q. Were there other persons settling with you that day?

A. Not while he was there.

Q. There was no one else in the office besides you and Mr. Lanehart?

A. No, sir.

Q. Well, had you known anyhing about the condition of Mr. Lanehart's health, about that time at all?

A. I had heard at different times, a few weeks before that Mr. Lanehart were not very well.

Q. How frequently had you seen him between the time you heard that, and the day that you executed this check, or don't you remember?

A. I don't know that I have seen him at all for several

weeks, until the day of the sale, and the day that he came to my office.

Q. You know nothing of his condition that day, in point of fact as to his health, as compared with what it was several weeks in advance of that, do you?

A. No, sir.

LAURA KELLOGG, sworn in behalf of the State.

Examined by Mr. Reger:

Q. Where do you reside?

A. In Woodbridge, this State.

Q. Did you know William Lanehart in his life-time?

A. Yes.

Q. Do you know the defendant, William H. Skillman?

A. Yes, sir.

Q. What were your relations with William Lanehart?

A. Since the death of my aunt, Mrs. Lanehart, I have been with my uncle, almost constantly, I kept house for him part of the time, and had charge of his accounts, his bank account and cash account and I acted as companion and nurse, when he needed such services.

Q. Did you attend to his books of account, his check-books and other books of account?

A. Yes, sir.

Q. What were your duties in relations to his accounts?

A. I kept his bank account in his check-book, and I was in the habit of writing his checks, filling in the checks, and we kept a cash account of all the transactions.

Q. I show you a check dated May 1st, 1905, payable to the order of J. E. Pierson, at the Hopewell National Bank and ask you whose signature is attached to that check (handing witness paper)?

A. My "Uncle Will."

Q. Were you familiar with your uncle's hand-writing?

A. Very.

Q. How did you acquire that familiarity?

A. I very often saw him write, I saw him sign checks, and I saw him write letters.

Q. For how long a period?

A. Well, for at least four years previous to his death.

Q. Previous to that time did you have correspondence with him?

A. Yes, sir.

Q. For how many years?

A. Well, ten or eleven years, I should think, I cannot tell you exactly.

Q. Now, I show you a check given or dated May 1st, 1905, payable to the order of J. E. Pierson at the Hopewell National Bank for $130; also a check dated April 21st, 1905, to the order of J. Golden Pierson at the Hopewell National Bank for $41; also a check dated April 17th, 1905, payable to the order of A. S. Golden at the Hopewell National Bank for $30.57; also a check dated April 5th, 1905, payable to the order of William Duffield at the Hopewell National Bank for $5; also a check dated April 3rd, 1905, payable to the order of Carl Keifer, at the Hopewell National Bank for $100; also a check dated April 3rd, 1905, payable to the order of August Bechtold, at the Hopewell National Bank for $110; also a check dated March 20th, 1905, payable to the order of the Columbus Carriage and Harness Company, at the Hopewell National Bank for $63.20; also a check dated March 16, 1905, payable to the order of William Lanehart at the Hopewell National Bank, for $18.99, signed C. V. Van Sant, and endorsed "William Lanehart," also a check dated March 3rd, 1905, payable to the order of Carl Keifer at the Hopewell National Bank for $42; also a check dated Februay 21st,, 1905, payable to the order of Dr. M. F. Stryker, at the Hopewell National Bank for $7.50; also a check dated February 20th, 1905, payable to the order of the Columbus Carriage and Harness Co. at the Hopewell National Bank for $17.70; also a check dated December 12th, 1904, payable to the order of B. F. Lewis, Treasurer, at the Hopewell National Bank for $2,000; also a check dated November 15th,

1904, payable to the order of Levi J. S. Van Orden, at the Hopewell National Bank, for $70; also a check dated November 12th, 1904, payable to the order of J. M. Hogg, at the Hopewell National Bank for $222.53; also a check dated October 11th, 1904, payable to the order of A. S. Hagaman, at the Hopewell National Bank for $30; also a check dated October 25th, 1904, payable to the order of William Lanehart at the Hopewell National Bank for $15.68, this check was signed "C. V. Van Sant" and endorsed "William Lanehart"; also a check dated August 6th, 1904, payable to the order of J. M. Hogg, at the Hopewell National Bank for $52.50; also a check dated July 20th, 1904, payable to the order of William N. Funkhauser, at the Hopewell National Bank for $92.20; also a check dated July 8th, 1904, payable to the order of J. S. Schomph, at the Hopewell National Bank for $30.50—I ask you whether the signatures attached to those checks, and the endorsements to the two checks, are the genuine signatures of William Lanehart?

Mr. Clark:—I object to the question generally, and especially to the remoteness of the checks dated, being 1904.

Objection over-ruled.

Mr. Clark:—I will ask an exception.

Exception allowed which may be sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

A. They are.

Mr. Reger:—I offer these checks in evidence, and ask that they be marked as exhibits in behalf of the prosecution.

Mr. Clark:—I object to the offer so far as relates to the checks dated in 1904, as being too remote.

Objection over-ruled.

Mr. Clark:—Exception claimed.

Exception allowed and sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

Marked Exhibits P. 9 to P. 27 both inclusive.

Mr. Reger:—I desire to reserve the right to recall Miss Kellogg, to examine her on other points of her evidence at a later period in the trial of the case.

Cross-Examination by Mr. Clark:

Q. You were familiar with your uncle's hand-writing?
A. Very.
Q. And what is his habit, to write with a pencil instead of a pen, whenever he could do so, was it not?
A. He preferred to write with a pencil.
Q. And did he not always write his letters with a pencil?
A. Nearly always.
Q. Do you remember of any letter which he did not write with a pncil?
A. I have none in mind now, Mr. Clark.
Q. And during the last four years of his life, he did not write a letter with a pen, did he?
A. Oh, yes sir, I think he did.
Q. Has your recollection been refreshed since the last trial?
A. I don't know, sir.
Q. You were sworn in the trial of the "Lanehart will case" were you not?
A. Yes, sir.
Q. Were you not asked this question—"did he ever write a letter with a pen," and did you not answer "You speak of the last four years?" "Q. Yes." And did you not answer "I cannot recall having seen him write a let-

ter with a pen during the last four years of his life"—is that correct?

A. I do not remember.

Q. Are you prepared to say it is not correct now?

A. No sir, I cannot say that it is or is not, because I really do not remember.

Q. And did you not testify as follows:

"Q. Then you think he did not write letters with a pen during the last four years?

"A. I do not remember of seeing him write any letters with 'a pen.' Do you remember that question and answer?

A. No, sir, I do not.

Q. Is it not a fact that you do not remember having seen him write any letters with a pen?

A. Well, I have no particular letter in mind but I think possibly he did.

Q. It would be an exception to the rule, would it not?

A. For him to have written with a pen?

Q. Yes?

A. I rather think it would.

Q. He wrote with a pencil, and quite fluently, didn't he?

A. He wrote fluently with a lead pencil.

Q. And when he wrote with a pen, it was difficult for him to write, was it not?

A. Yes, I think it was, I think he wrote more slowly.

Q. And his hand would shake with a pen, would it not, as a rule?

A. Yes sir, his hand was unsteady most of the time.

Q. And at times, his hands would shake, more than at other times?

A. Yes sir, I believe it is so.

Q. It might be more steady today than it would be tomorrow?

A. Yes, sir.

Q. So that today he might write a better hand than he would tomorrow, with a pen and ink?

A. Yes sir, I think so.

Q. That was owing to his condition of health, was it not?

A. Yes, sir.

Court:—It is hardly necessary to take the time now to cross-examine this witness on this line. It is not cross-examination of anything brought out by the State. You may cross-examine her now as to his knowledge as to the signatures attached to the checks, which she has proved.

Mr. Clark:—I will confine my cross-examination to her knowledge of the signatures on the checks put in evidence.

Q. What kind of pen did he ordinarily write with?

A. A stub pen.

Q. And how did he hold it?

A. Pointing from the shoulder (indicating.)

Q. How did he hold it in the hand, between the thumb and second finger?

A. No, between the thumb and the first finger.

Q. I will ask you again whether his habit was not to hold his pen as I am holding this pen in my hand now, that is, between the thumb and the second finger (illustrating)?

A. I do not think so.

Q. You were sworn before the Surrogate and also before in this case, were you not, at the last trial?

A. I do not think I understand you.

Q. (Question repeated as follows) You were sworn before the Surrogate and also in this case, at the last trial, were you not?

A. Yes, sir.

Q. Did you not testify in both instances, that he held his pen between the first and the second finger?

A. I do not remember.

Q. Do you remember how he held his pen at all?

A. My recollection now is that he held it between his thumb and first finger, but you know it is a long time

since I saw him write, it is a long time since I saw Uncle Will write.

Q. Then your recollection may be somewhat at fault?

A. Yes sir, possibly.

Q. And if you did testify that he held his pen between the first and second finger, before the Surrogate and at the last trial, you are not now prepared to say that that was not correct?

Mr. Dungan:—I object to the question because it is not shown that she did so testify by reference to that testimony, or in some other way, it is not shown that she did testify in that way.

Court:—Counsel has directed her attention to the testimony, and she says that she does not remember, about the things that he is inquiring about. I think that is far enough in that line.

(Mr. Clark):

Q. Is your recollection as good now as it was a year ago?

A. Well, I hardly know.

Re-Direct by Mr. Reger:

Q. Will you illustrate the direction in which your uncle held his pen?

A. (Indicating by holding the pen at an angle pointing away from the right shoulder to the right.)

Q. Away from the shoulder?

A. Yes sir, the pen pointing away from the shoulder.

Further Cross-Examination by Mr. Clark:

Q. You do not mean to indicate that that was the way he held it in his hand?

A. No sir, I thought Mr. Reger was speaking of the direction, that is what I meant to illustrate.

Q. Being able now to state the direction in which he used the pen, as you illustrate, away from the shoulder, are you at all refreshed in your recollection as to the manner of his holding his pen, whether between the thumb and the first finger, or between the first and the second fingers?

A. No, sir, I do not think it is clearly brought to my mind.

Q. You have forgotten now if you did know at that time?

A. Yes sir, I am not clear about it.

T. ROMEYN VAN ZANDT, sworn in behalf of the State.

Examined by Mr. Reger:

Q. Where do you live?

A. Plainfield.

Q. What is your business?

A. I am in the grain and coal business.

Q. How long have you been in that business there?

A. About 15 years.

Q. Did you know William Lanehart in his life-time?

A. I did.

Q. How long were you acquainted with him?

A. I should judge about 20 years.

Q. Where did you live before engaging in business in Plainfield?

A. At Irvington, N. J.

Q. And where before that?

A. Blawenburg, N. J.

Q. How near to the farm of William Lanehart?

A. I lived about a mile from Mr. Lanehart.

Q. Were you acquainted with Mr. Lanehart at that time?

A. Yes, sir.

Q. Were you engaged in business while living at Blawenburg?

A. Yes.

Q. Where?

A. At Skillman Station.

Q. After removing to Plainfield, did your acquaintance with Mr. Lanehart continue?

A. Yes, sir.

Q. During that period did Mr. Lanehart visit at Plainfield, during the period that your acquaintance with him continued?

A. Not all the time.

Q. Well, a portion of the time?

A. Yes sir, a portion of the time.

Q. While he resided at Plainfield, did you see him frequently?

A. Yes sir, quite frequently.

Q. Where?

A. At my office, and at his house, and occasionally at my house.

Q. Did you have any business transactions with him?

A. Yes sir, some.

Q. Of what character?

A. He would occasionally take checks from my firm, the firm's checks, and he occasionally left money with us.

Q. On deposit?

A. With his checks, yes sir.

Q. Did you during that time, see him sign these checks at your office?

A. Some of them, yes sir.

Q. Were these checks signed in your presence?

A. Some of them were.

Q. I show you a check dated July 21st, 1903, payable to the order of William Lanehart, signed "C. B. Van Zandt" and endorsed by "William Lanehart," did you see William Lanehart make that endorsement?

A. I did not.

Q. I show you another check dated August 12th, 1902, payable to the order of William Lanehart at the Hopewell National Bank for $326.15, signed C. V. Van

Zandt and endorsed William Lanehart—do you know where that endorsement was made?

A. I do not.

Q. I show you another check dated June 9th, 1902, signed C. V. Van Zandt, payable to the order of William Lanehart at the Hopewell National Bank for $100 and endorsed by William Lanehart, did you see that endorsement made?

A. No sir, I did not.

Q. I show you another check dated September 18th, 1901, payable to the order of William Lanehart, signed "Van Zandt & Voorhees" at the Hopewell National Bank for $300, did you see that check endorsed by William Lanehart?

A. I don't know, sir, whether I did or not.

Q. I show you another check dated September 18th, 1901, payable to the order of William Lanehart for $68.-28, signed "Van Zandt & Voorhees" and endorsed by William Lanehart, do you know whether you saw that check endorsed or not?

A. I cannot say, I do not know.

Q. From your acquaintance with William Lanehart and from having witnessed his signatures to checks and other documents at your office, such as you have testified to, did that fix in your mind a standard of the signature of William Lanehart?

A. Yes, sir.

Q. Will you examine the checks which I have shown you and testify whether or not the name "William Lanehart" as endorsed on those checks, is the genuine signature of William Lanehart?

Mr. Clark:—I object to the question on the ground of the checks being too remote.

Objection over-ruled.

Exception prayed.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

A. Yes sir, it is the genuine signature of William Lanehart in my opinion.

Mr. Reger:—I offer in evidence the checks that have been referred to and ask that they be marked as exhibits in behalf of the prosecution.

Q. I show you other checks, heretofore offered in evidence and marked Exhibits P. 9 to P. 27 both inclusive, and ask you whether you have examined the signatures and endorsements to those checks of the name of William Lanehart?

A. I have.

Q. I show you another paper, heretofore offered in evidence and marked Exhibit P. 4 and purporting to be the the last will and testament of William Lanehart to which is attached the name of "William Lanehart" and ask you whether you have compared that name and signature with the signatures to the checks Exhibits P. 9 to P. 27 inclusive,—have you made such comparison?

A. I have.

Q. From that comparison, and from the knowledge that you have of the genuine signature of William Lanehart gained by your business transactions with him, as you have testified to, what have you to say as to whether or not the signature to this paper marked Exhibit P. 4 is the genuine signature of William Lanehart or not?

A. It is not a genuine signature of William Lanehart in my opinion.

Cross-Examination by Mr. Clark:

Q. Did you ever see William Lanehart write with a pencil?

A. I think I have, yes sir.

Q. And to any of these checks which you have testified about, did you see him attach his name?

A. I don't know that I did, I am not positive that I did.

Q. Then you form your opinion with reference to the genuineness of the signature of William Lanehart to the checks which passed between you and him, solely upon the fact that they were received and passed by the bank?

A. No sir, I know his signature, I know his handwriting when I see it.

Q. You mean what—did he ever correspond with you?

A. I have received letters from him, yes, sir.

Q. When?

A. When he lived in Plainfield.

Q. How many years before his death was that?

A. I should think about three or four years.

Q. You were examined in this case at the trial on April 30th, 1907, or thereabouts, April and May, 1907, were you not?

A. I believe so, yes sir.

Q. Did you not then testify that you had had no correspondence with Mr. Lanehart?

A. I don't think I did.

Q. Do you remember whether you did or not?

A. I do not remember.

Q. If you did so testify, was it a mistake?

A. It was, yes, sir.

Q. Now, the correspondence you had with him, was it in ink, or don't you remember?

A. I have received letters from him in lead pencil.

Q. Did you ever receive a letter from him in ink?

A. I think so.

Q. Do you remember it as a fact?

A. No sir, I am not positive, no sir.

Q. At the time you saw him write his name, what was his condition of health—good?

A. Very good.

Q. He made no complaint at that time about his bodily health, so far as you know?

A. Not so far as I know.

Q. He wrote then a good strong hand?
A. Yes, sir.
Q. And had no difficulty in writing?
A. No, sir.
Q. All the condiions were favorable?
A. As far as I know they were.
Q. You never made any study of his hand-writing, did you?
A. No, sir.
Q. Do you know, or have you formed any opinion, whether this signature to the "Skillman will" to which our attention has been called was first written in lead pencil or not?
A. My attention has been caled to it.
Q. Well, I ask you whether you formed any opinion about that?
A. Whether it was written in lead pencil or not?
Q. Yes?

Mr. Dungan:—I am willing that the question should go as far as "whether or not"—but as to his forming an opinion, what that opinion is, I shall object to that.

Question allowed.

A. I have not formed any opinion from what I have seen.

(Mr. Clark):

Q. What do you mean by that?
A. Well, I have heard it in court, that people say it was written in lead pencil, but I have not seen any lead pencil marks.
Q. Have you examined to see?
A. Yes sir, I have examined it?
Q. When?
A. Now, and the other time I was here before.
Q. At the time you saw him write his name, how

many years was it before his death—four or five years, was it not?

A. Something like that, yes sir.

Re-Direct by Mr. Reger

Q. You received letters from him after that time, did you not?

A. I think so.

JOHN N. RACE, sworn in behalf of the State.

Examined by Mr. Reger

Q. Where do you live?

A. Hopewell, N. J.

Q. What is your business?

A. I am cashier of the Hopewell Bank.

Q. How long have you held that position?

A. Since its organization, I think about 17 years.

Q. Did you know William Lanehart in his life-time?

A. I did.

Q. Do you know the defendant, William H. Skillman?

A. Yes, sir.

Q. How long have you known Mr. Lanehart?

A. Well, I should presume twenty years perhaps, ever since he moved out to Blawenburg.

Q. And how long have you known the defendant, William H. Skillman?

A. Oh, I have known Mr. Skillman for thirty or forty years I guess, a good while, ever since I was a boy.

Q. While Mr. Lanehart resided at Blawenburg, where did he do his banking business?

A. At Hopewell.

Q. In the bank of which you are the cashier?

A. Yes, sir.

Q. What were your relations with Mr. Lanehart?

A. They were very friendly, quite intimate I should say.

Q. What business relations did you have with him?
A. Well, I had his papers there and I done some business for him, invested some money for him, and collected some.

(Court):

Q. You had his papers there,—what do you mean—in the bank?
A. Yes sir.
Q. In your possession?
A. Yes, sir.

(Mr. Reger):

Q. What was the nature of those investments that you made for him?

Mr. Clark:—I object to the question as immaterial.

Objection sustained.

(Mr. Reger):

Q. What papers did you have in your possession belonging to Mr. Lanehart at the time of his deah?

Mr. Clark:—I object to the question as immaterial.

Question allowed.

Mr. Clark:—Exception prayed.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

A. Notes, deeds, mortgages and different papers, and a will that he had.

(Mr. Reger):

Q. From whom did you receive that will?
A. I received the first will from Lawyer Van Dyke.
Q. I am speaking of the will that you had at the time of his death?
A. From him.
Q. From Mr. Lanehart?
A. From the package of papers which was there.
Q. From Mr. Lanehart?
A. Yes, sir.
Q. And when was that will and those papers placed in your possession?
A. That is a little hard question for me to answer. It is a good while ago, I cannot recall the date, I do not think, when they were first placed there.
Q. I am speaking of the will which was in your possession at the time of his death, more particularly.
A. Oh, I should say—(interrupted.)

Mr. Clark:—I object to the question as immaterial.

Objection over-ruled.

Mr. Clark:—Exception prayed.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

A. Some two or three years prior to his death, I think, I cannot recall the date, I never took notice.

(Mr. Reger):

Q. Did that will remain in your custody from the time when it was placed there, two or three years previous to his death, until the time of his death?

Mr. Clark:—I object to the question as leading.

Question withdrawn.

(Mr. Reger):

Q. After the will was placed in your possession as you say, two or three years prior to his death, how long did it remain in your possession?

Mr. Clark:—I object to the question. My reason for the objection is this—If the object of the examination of the witness is for the purpose of showing the business relations between the deceased and Mr. Race, the witness, then of course with the view to show that he is familiar with his hand-writing, and that thereby he is competent to testify in relation to the genuineness or not of the signature, to the will, I do not see any reason why there should be any differentiation between the papers left with him and the will, so called, the attention of the witness is particularly called to the will—what is the object and purpose of that? If it is important and material that the will itself shall be specified, or designated, so that the will should be testified to, now, then let us thrash that out here and now. If it is important that the relations between the witness and the deceased should be shown, then it can be shown as well by saying that he was simply the custodian of papers of importance and value, and then stop there. I do not know what the purpose of the examination is- except as I suppose it is, with the intention of showing the different relations between the deceased and the witness whereby he would be able to testify as an intelligent man touching the genuineness of the signature, which is here charged to be a forgery, and therefore, eliminating all the papers and directing special attention to the will is a matter which should be taken into consideration and my objection is properly founded upon it.

Mr. Dungan:—The object and purpose of the examin-

ation is not the question which should be presented to the court—the question for the court to consider and decide is, whether the question asked the witness is a proper one at this time or not. The object of the examination may be disclosed or not, just as the case may be.

Court:—I cannot go into the realms of speculation in trying this case, I must deal with each concrete proposition and rule upon it as it arises. The concrete legal proposition presented to the court is this—whether a will previously executed, or executed previous to the date of the alleged forged will, remained in the custody of the decedent at the time of his death or not. That is the only question I can rule upon here now. I think that fact can be taken into consideration by the jury in this case, and I will therefore over-rule the objection.

Exception prayed.

Exception allowed and sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

A. Until his death.

(Mr. Reger):

Q. During the period beween the time when that will was left at the bank with you, and the time of his death, did Mr. Lanehart visit the bank?

A. Quite frequently, yes, sir.

Q. How frequently?

A. Well, I cannot say quite frequently, I cannot say as to how often. He was like any other customer in that way.

Q. Did he ever speak to you about the papers which you had in your custody?

A. Yes, sir.

Q. Did he ever examine the papers which you had in your custody?

A. Yes, sir.

Mr. Clark:—I object to this line of evidence for the reasons already given.

Court:—I think the only important fact that should be brought out is, that this will which the witness had in his possession of the decedent's, remained in his possession until after the time when the alleged will was executed, and that during that time the decedent visited the bank and examined the papers—I will allow you to go that far.

(Mr. Reger):

Q. How frequently did he examine these papers?

A. I cannot say how frequently, quite a number of times.

Q. Was the will among the papers when he examined them?

Mr. Clark:—I object to that.

Court:—That is objectionable on the same ground and I shall exclude it.

(Mr. Reger):

Q. Between the 27th of February, 1905, and the 11th of May, 1905, the date of Mr. Lanehart's death, did he visit the bank and examine the papers which you had in your custody?

A. Yes, sir.

Q. Do you know how frequently?

A. I am not positive, but two or three times, he would generally come about the 1st of April, and look over these things, a time or two.

Q. Was the will taken away from your custody during that period?

A. Not to my knowledge.

Q. Well, you know, don't you?

A. Well, he would take the package and look it over, he might have taken that away and other papers away, and brought them back at various times, I cannot say as to that.

Q. But it was there at the time of his death?

A. Yes, sir.

(Court:)

Q. The package was taken out by him?

A. Yes, sir, I gave it to him, the package was in a large piece of manilla paper, tied up with a piece of string.

Q. And he examined the papers at the bank?

A. Yes, sir.

Q. Privately?

A. Yes, sir.

(Mr. Reger:)

Q. When was the last time that Mr. Lanehart had that package of papers?

A. I could not fix any date.

Q. You cannot fix the date?

A. No, sir.

Q. What was done with the will which was in your custody after Mr. Lanehart's death?

A. I brought it to Somerville—interrupted—

Mr. Clark:—I object in view of the ruling of the Court to this evidence.

Objection overruled.

Exception prayed.

Exception allowed and sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

A. I brought it to Somerville and placed it in the hands of the Surrogate.

(Mr. Reger:)

Q. I show you a paper heretofore offered in evidence and marked Exhibit P. 5, which is endorsed "Last will and testament of William Lanehart" and dated November 28th, 1902, and ask you to look at that, and tell us, whether that was the paper which was in your possession at the time of Mr. Lanehart's death—is that the paper?

Mr. Clark:—I object to that.

Question allowed.

Exception prayed.

Exception allowed sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

A. Yes, sir.

Mr. Reger:—I offer the paper as the will which was in the witness's possession and which is testified to as having been left in his possession by the deceased, and which was there at the time of the death of Mr. Lanehart.

Mr. Clark:—I object to the offer.

Court:—There is no doubt in my mind as to the propriety of the admission of this paper, as a testamentary disposition by Mr. Lanehart, remaining in the possession

of this witness, at the time of Mr. Lanehart's death, uncancelled and revoked. My doubt now is, whether I should go further and allow the actual contents of the paper to go before the jury.

Mr. Reger:—I refer your Honor to the well known Gordon will case, in which the issue was forgery, and which was quite similar to this case in many respects. In that case the Chancellor in holding the will to be a forgery, based his conclusions and reasons largely upon the bequests contained in a prior will, as showing the improbability that the testator would have made the will which was in dispute, as showing the unnatural features of the will which was in dispute. So in this case, which we are now trying, I would like to submit to your Honor the opinion of the Chancellor in that Gordon will case.

Court:—I am familiar with that case. The difficulty here is, that in the Gordon will case, the issue before the court was, whether or not the will should be admitted to probate or the contrary. Here the issue is, whether the defendant has committed forgery, there is quite a distinction.

Mr. Reger:—The rules as to proof of forgery are the same in the civil as they are in criminal cases, I take it. And if a testator by one will makes certain bequests and gives to certain relatives of his or recognizes the claim to certain persons as natural objects of his bounty, and then by a subsequent will leaves them out, would not that be a circumstance which you might properly place before the Jury, for them to consider?

Court:—That is not the issue here. The issue here is did William H. Skillman forge the name to that paper?

Mr. Reger:—I call your Honor's attention to the opinion of the Chancellor in the Lanehart will case?

Court:—I have read that opinion, and there is the

same distinction I notice. There is the issue between the parties, whether or not the will should be admitted to probate or whether the probate should be revoked. I am quite clear about this, and I shall have to overrule the offer of this document, so far as the contents thereof are to be submitted to the Jury. I shall allow it to go to the Jury as a document purporting to be the last will and testament of William Lanehart, dated November 28th, 1902, which was found in the possession of John N. Race, at the time of the death of the testator in May, 1905, unrevoked and uncancelled, and which remained in Mr. Race's possession, subsequent to the execution of the "Skillman will" under the circumstances the witness has related on the stand. Now, if there is any way that I can exclude from the Jury the contents of the will, more than I have done, I shall be glad to do it.

Mr. Clark:—I do not know of any way in which it may be done, unless we put it in an envelope and cut the envelope, so as to allow only the signature to be seen by the jurors.

Court:—You may do it any way you choose, so that the end may be attained.

(Mr. Reger:)

Q. What was your connection with the will which has just been shown to you?

Mr. Clark:—Will you please explain just what you mean by that?

Court:—You may object to the question, Mr. Clark.

Mr. Clark:—I object to the question, because I do not know what it means—I object to it as immaterial and irrelevant.

Court:—That is not a good ground of objection, I will allow the question.

A. No further than I was one of the executors.

Mr. Clark:—I object to that and ask that the answer be stricken out.

Court:—The answer may stand, I will overrule the objection.

Mr. Clark:—That is proving the contents of the paper your Honor.

Court:—To some extent, but that opens a new suggestion and field of inquiry, he was the proper custodian of the paper.

Exception prayed.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Reger:)

Q. Was anyone a co-executor with you?
A. Yes, sir.
Q. Who?
A. Miss Kellogg.

Court:—Do I understand you that you do not make any objection to these last two questions on the ground that they call for the contents of the document itself?

Mr. Clark:—I said they did call for the contents of the document itself.

Court: The difficulty there is, that you insisted upon the document being shown by the production of the docu-

ment itself, thus laying the whole matter open to the Jury. If you insist that instead of calling for the contents of the document in question, the examination should be limited to the contents, by the production of the will, I will rule in your favor, and I shall allow in that case, as to the executor and executrix to be proven by the production of the will itself.

Mr. Clark:—I presume that would follow and I think my ground of objection as stated is all that I have on the record, and I will let it stand in that way.

(Mr. Reger):

Q. What persons were named as beneficiaries in that will?

Mr. Clark:—I object to that as irrelevant and immaterial.

Objection sustained.

(Mr. Reger):

Q. I ask you to refer to the will about which you have just testified, as having it in your possession at the time of Mr. Lanehart's death, and ask you what persons are now mentioned in that will as beneficiaries?

Mr. Clark:—I object to that as irrelevant and immaterial.

Objection sustained.

(Mr. Reger):

Q. When did you first learn of another will?
A. The day of Mr. Lanehart's funeral.
Q. How did you learn it?
A. From Miss Kellogg.
Q. Was that the first intimation you had had that there was another will?

A. Yes, sir.

Q. What did you subsequently do with the other papers, besides the will which you had in your possession?

A. I delivered them to Mr. Skillman.

Q. When?

A. I think perhaps two weeks after Mr. Lanehart's death, I cannot say as to the date.

Q. Where were they delivered to Mr. Skillman?

A. In the Hopewell Bank, he came there after them.

Q. He came there after them?

A. Yes, sir.

Q. Was anyone with him at the time?

A. Miss Kellogg was out in the carriage.

Q. She did not come in the bank?

A. Later she did, after he went out.

Q. What papers did you deliver to Mr. Skillman?

Mr. Clark:—I object as immaterial and irrelevant.

Objection sustained.

(Mr. Reger):

Q. What was said to him by you at that time?

A. Mr. Skillman came in and laid down letters testamentary, and I asked him if he wanted Mr. Lanehart's papers and he said he did, and I got them and gave them to him.

Q. What else did you say to him or he to you?

A. He also had a check of Mr. Longshore's, a milk check—(interrupted.)

Mr. Clark:—I object to any further answer to that question, on the ground that it is not responsive.

Court:—It is not an answer to the question.

(Mr. Reger):

Q. What else did you say to him or he to you?

A. He asked me to cash this check, he said that he would sign it, and Miss Kellogg would come in and sign it as executors, and to give her the money.

Q. Did you cash the check?

A. I did.

Q. Was there any other check referred to in your conversation with him at that time?

Mr. Clark:—I object to that as immaterial and irrelevant.

Court:—I cannot see how the issues we are trying can be aided in any way by showing what he did with another check. I shall overrule the question, and I shall also overrule the answer to the former questions, in reference to the cashing of the check and will also overrule the question just now asked.

(Mr. Reger):

Q. Was the check you cashed for Mr. Skillman a check of the estate of William Lanehart?

Mr. Clark:—I object to the question as immaterial and irrelevant.

Objection sustained.

(Mr. Reger):

Q. To whom was that check payable?

Same objection.

Court:—I shall sustain the objection.

Mr. Reger:—If this were a check payable to the order of William Lanehart which the defendant offered to the

bank to be cashed and endorsed it as one of the executors of William Lanehart, would not that be an act of uttering?

Court:—It might be an act of misappropriation.

Mr. Reger:—The endorsement of a check as executor?

Court:—Of course the crime of forgery would merge the crime of misappropriation, but these facts could only be admissable, as to whether or not he had misappropriated a fund belonging to the estate. I shall sustain the objection.

(Mr. Reger):

Q. Have you or not, received a check from Mr. Lanehart prior to his death?

Mr. Clark:—I object to the question as immaterial and irrelevant.

Objection sustained.

(Mr. Reger):

Q. Did you or not at the time of Mr. Lanehart's death have in your possession, a check signed in blank by William Lanehart?

Same objection.

Same ruling.

(Mr. Reger):

Q. What did you have in your possession of Mr. Lanehart's at the time of his death?

Same objection.

Same ruling.

(Mr. Reger):

Q. What papers do you refer to when you say you had papers of William Lanehart in your possession at the time of his death?

Same objection.

Same ruling.

(Mr. Reger):

Q. What had been your relations with Mr. Lanehart, in relation to the investment of money?

Mr. Clark:—I object to the question on the ground that he has already answered it sufficiently, he said that he had made investments for him.

Court:—I think it is immaterial to show the confidential relations existing between these parties, so far as the witness has already gone, but I do not think we have any connection at all with the details of those business relations, I think that is as far as you can go, unless you have something that directly affects the defendant.

(Mr. Reger):

Q. What confidential and business relations did you have with William Lanehart during his life time, and up to the time of his death?

Same objection.

Mr. Dungan:—It seems to me that the Prosecutor has the right to show that these papers that were left with Mr. Race were valuable papers. They might have been waste paper, newspaper or anything else like that and that there was nothing with these waste papers, but the will. Now, in showing these confidential relations and

the trust and confidence that Mr. Lanehart reposed in Mr. Race, it may become important and relevant to show that the papers he had of Mr. Lanehart's were not of the character of papers I suggest, but on the other hand, that they were valuable papers.

Court:—The witness said in his direct examination that he had in his possession papers belonging to Mr. Lanehart, that is at the bank in his possession, at the time of his death, and that the papers included notes, deeds, and mortgages, as well as the will. Now what more do you want? You have shown that they were valuable papers. I will not permit you to go further into details to show what notes, or what deeds, or mortgage, was in his possession. I shall not permit you to go on and show anything more in detail.

(Mr. Reger):

Q. Were you familiar with Mr. Lanehart's handwriting?

A. Yes, sir.

Q. How did you become familiar with it?

A. In my business with him at the bank.

Q. Have you seen him write his name?

A. Yes, sir.

Q. How frequently?

A. Oh, a number of times in the bank there, I cannot say how often.

Q. And you have his signature at the bank as a standard, have you not?

A. Yes, sir.

Q. What are your duties at the bank with reference to passing upon signatures to checks and notes presented there for payment?

A. Well, I have to satisfy myself that they are genuine.

Q. What was Mr. Lanehart's habit of handwriting, as to whether it is slow, rapid or fluent?

A. Mr. Lanehart was quite a rapid writer for a man of his age, I think.

Q. Do you say that by reason of having seen him make his signature?

Mr. Clark:—I object to that as immaterial and leading?

Objection sustained on the ground that the question is leading.

(Mr. Reger):

Q. Why do you say that—that he was quite a rapid writer?

A. Well it never took him but a few moments to write his name, he would write his name as quickly as I would myself, my own name.

Q. I show you the checks heretofore offered and marked exhibits P. 9 to P. 27 inclusive, and ask you whether you have examined those signatures?

A. Yes sir, I think I have, all of them.

Q. Were these checks paid through the Hopewell National Bank?

A. Yes, sir.

Q. By you as cashier?

A. Yes, sir.

Q. I show you a paper purporting to be the "last will and testament of William Lanehart" heretofore marked exhibit P. 4 and I will ask you whether you have previously examined that signature or not?

A. Yes sir, I have.

Q. Have you made a comparison between that signature and the signatures to the checks marked exhibits P. 9 to P. 27 inclusive?

A. I have.

Q. From that examination and comparison, and from your knowledge of the signature of William Lanehart gained in your business transactions with him, at the bank, and from your knowledge of the man, what have

you to say as to whether or not, that is the genuine signature of William Lanehart to the will?

A. I should say it was not.

Cross-Examination by Mr. Clark:

Q. How often have you examined the paper called the "Skillman will" with reference to the signature?

A. I think some couple of times—twice perhaps.

Q. When did you first examine it?

A. In the Surrogate's office.

Q. And when then?

A. When then?

Q. Yes, about at what time when with reference to the time it was left there?

A. Well, shortly after, I cannot say when it was.

Q. Within two weeks?

A. Perhaps it may have been, I would not say whether it was two weeks or a month or what, I cannot recall it now.

Q. At the same time that you left the other papers there which you have denominated a will?

A. No, sir.

Q. I got the impression that you left this other paper there, which you called the will of Mr. Lanehart, and which you say was in your custody about two weeks after the death of Mr. Lanehart—is that wrong?

A. No sir, that is not right, I left the will I had with the Surrogate—Mr. Lanehart was buried on the Saturday and I left it there on the following Tuesday, under the advice of my counsel, Carroll Robbins.

Q. Now, at that time, I understood you to say you knew there was another will?

A. Yes, sir.

Q. At least you had been told so?

A. I had been told so.

Q. Do you know whether the "Skillman will" was in the office at the time you left what you call your will?

A. I do not.

Q. Let me see if I misunderstood you—you say you

left your paper there the Tuesday following the burial of Mr. Lanehart, the burial took place on the Monday, and on the following day you went there, or was it the week following?

A. I went to the funeral on Saturday, and the following Tuesday was when I came here with that will.

Q. Mr. Lanehart had not yet been dead ten days?

A. No, sir.

Q. Now how soon after that did you examine the will, as nearly as you can tell, the "Skillman will?"

A. Well, I would say possibly it might have been two weeks, or it might have been a month, I cannot say, I cannot recall the time.

Q. Did you examine the signature to the will at that time?

A. Yes, sir.

Q. Did you form an opinion at that time, as to the genuineness of the signature?

A. I did.

Q. Was you opinion then the same as it is now?

A. Yes, sir.

Q. Did you file any caveat to the "Skillman will?"

Mr. Reger:—I object to the question as not being cross-examination.

Objection sustained.

(Mr. Clark):

Q. You say that you were named as one of the executors in the paper which was left with you called a "will?"

A. Yes.

Q. Having examined the "Skillman will" after it was presented to the Surrogate's office, and forming an opinion that it was a forgery, did you take any step to contest that will?

Mr. Reger:—I object to the question as immaterial and irrelevant.

Objection sustained.

Mr. Clark:—I will ask your Honor to allow an exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Clark):

Q. When did you last see Mr. Lanehart write?

A. Oh, I could not say as to the time, sometime along in the spring when he was up there transacting his banking business and the like of that different times, I cannot say as to the dates.

Q. Are you sure you saw him write in the spring at all?

A. Yes, sir.

Q. What did he write in the spring?

A. He wrote his name to checks.

Q. Did you see him write his name to any checks, that is to say in your presence?

A. Yes, sir.

Q. Can you name any checks?

A. I can, yes sir—but I tore it up.

Q. You can name a check?

A. Yes, sir.

Q. You say you saw him write his name to a check?

A. Yes sir, to various checks that I cashed for him.

Q. Do you mean this Mr. Race, that he would come in the bank and write checks, and you would cash them for him there?

A. Yes sir, in the ordinary way, that you might come to the bank and draw a check for $10 or $20—(interrupted.)

Q. That was in the spring—how long before his death?

A. I think he was up there something like a week or two before his death, I am not positive as to that, he would come quite often there, and I cannot tell you the times.

Q. Did you ever see him write with a lead pencil?

A. No sir, I never did.

Q. Did you ever have any correspondence with him?

A. I never had a letter with Mr. Lanehart in my life.

Q. You never saw any of his writing in lead pencil?

A. No sir, I never did.

Q. When you saw him write, what was his condition of health—good condition of health?

A. Sometimes I would say, "how do you feel Mr. Lanehart," and he would say, "well, I am not feeling so well," and sometimes he would say, "all right, John," that is as far as our conversation usually went, just the ordinary compliments of the day.

Q. So far as his condition of health was concerned, his condition of health was very good when you saw him write, was it?

A. Yes, sir.

Q. Now, Mr. Race, I wish you would tell me why you think the signature to the "Skillman will" is not the handwriting of William Lanehart?

A. It does not look from it to me, and from his mode of writing, his habit.

Q. Have you any other reason?

A. Nothing more than my just observing him as I would anyone else, one thing from another, that is the only way I detect any of the signatures in my business.

Q. How does that paper look to you, as if it had been written?

Mr. Dungan:—I object to the question.

Question withdrawn.

(Mr. Clark:)

Q. What do you mean when you say it does not look to you like his handwriting?

A. Well, taking any signature, if you come into the bank with a check and I will say, "I don't think that looks like the man's signature," that is my knowledge of

the signature, I am not an expert, but only—(interrupted.)

Q. Your meaning then, as I understand, it is this, from the observation which you have made of signatures, which you are satisfied are the genuine handwriting of Mr. Lanehart, and comparing these signatures with the signature to the "Skillman will" you see a dissimilarity, and owing to that dissimilarity, you therefore form the opinion that the signature to the "Skillman will" is not genuine, is that right?

A. I say it does not look like Mr. Lanehart's signature, and in my opinion it is not.

Q. Is it because of the dissimilarity between that signature and the signatures of the standards you have seen?

A. Yes sir, just because it does not look like it to me.

Q. I know that you say that it does not look like it to you, but it does not look like it because it is dissimilar, it is not like the signatures which you are accustomed to seeing of his, is that it?

A. Yes, sir.

Q. That is what you mean, is it?

A. Yes sir, it does not look like it to me.

Q. Supposing the signature were a tracing or a traced writing,—written first in lead pencil and then traced in ink—do you suppose it is possible, or do you think it possible to write a signature which would be exactly similar to the signature which was not traced?

Mr. Reger:—I object to the question as immaterial and irrelevant.

Court:—I think this gentlemen has testified sufficiently to warrant his evidence being taken, as an expression purely of his opinion, not evidence as an expert, and I will therefore permit this question. In other words, you may examine him to test his knowledge and as to the accuracy of his statements—objection overruled.

A. I could not say, I never tried it, I cannot say.

Q. If, as a matter of fact, this signature was first written in lead pencil and afterwards traced in ink, and not having had any experience, touching the difference betweeen signatures so made, and a signature not written in that way, are you able to form any opinion, whether or not, the signature of the "Skillman will" is or is not genuine, under those circumstances?

A. Well, I don't know anything about that, I cannot tell whether it was traced by a lead pencil or not.

Re-Direct by Mr. Reger:

Q. You have testified that Mr. Lanehart's condition of health, when you saw him write, was apparently good; what was his condition of health during the winter of 1905 and spring of that year?

A. Well, he was not feeling very well, he complained quite some.

Q. Was he able to attend to his business at the bank?

A. Yes, sir.

Q. And those are the times when you saw him write?

A. Yes, sir.

Q. Did you see him write during the winter of 1905 and the spring of that year?

A. Yes, sir.

Further Cross-Examination by Mr. Clark:

Q. You spoke of the papers—was this paper which you called a "will" sealed or unsealed?

A. Sealed.

Q. And you first knew of a paper being a will after his death?

A. This will that you mentioned?

Q. No, the will which you had in your possession?

A. No sir, it was in his papers, and marked "Will" on the outside.

Q. And that is all you knew about the contents of the will, was it?

A. Yes, sir.

Q. You did not know whether that paper was taken away at any time when he was there or not?

A. No sir, not to my knowledge.

Q. The court asked you a question, which I intended to follow up a little further—when Mr. Lanehart called there and you gave him his package of papers, did he go away by himself and make an examination of them?

A. There is a window right at the back or the side of the bank, and he would go over there and examine his papers and then put them back in the package and bring them back to me, and give them to me.

Q. And you attended to your business as cashier, while he attended to his business at the window?

A. Oh, yes sir.

Q. And the papers were left with you, that is, they were tied up again by him and given to you?

A. Yes sir, and sometimes he would hand them all to me, and he would say, "here wrap these up again, you can do that better than I can."

Further Re-Direct by Mr. Reger:

Q. When did you learn that you were to be his executor?

A. Mr. Lanehart asked me to be his executor, but I learned of it when I opened this will and read it.

Q. When did he ask you to be his executor?

Mr. Clark:—I object to the question as immaterial and irrelevant.

Objection sustained.

JAMES L. GRIGGS, sworn in behalf of the State.

Examined by Mr. Reger:

Q. Where do you reside?

A. In Somerville, N. J.

Q. What is your profession?

A. I am a lawyer.

Q. Were you acquainted with William Lanehart in his life time?

A. Yes sir, I was.

Q. What were your relations with him?

A. Well, I had social relations with him, and I also did law business for him.

Q. How long had you known him?

A. For nearly twenty years before he died.

Q. Did you know where he resided at Blawenburg?

A. Yes, sir.

Q. What business transactions did you have with him?

Mr. Clark:—I object as immaterial and irrelevant.

Question allowed.

A. I sold him my father's farm, exchanged it rather, for property which he owned in Brooklyn. I foreclosed a mortgage for him on a farm which he owned at the time of his death, I searched a title for him down in Burlington County, within a year or so before he died. I advised him in several different things, several different matters.

Q. Did you or not ever prepare any papers for him?

A. Oh, yes sir.

Q. Were those papers signed by him in your presence?

A. Yes, sir.

Q. Did you ever have any correspondence with him?

A. Yes sir, he wrote me a great many letters.

Q. Were you familiar with his handwriting?

A. I was.

Q. Did you know his signature?

A. Yes, sir.

Q. I show you a number of checks, heretafore offered in evidence and marked Exhibits P. 9 to P. 27 inclusive and ask you if you have previously examined the signatures to those checks?

A. I have.

Q. I show you a paper, purporting to be the last will and testament of William Lanehart, to which there is a signature attached, "William Lanehart," and ask you whether you have previously seen that?

A. I have.

Q. Have you made a comparison of the signature attached to the paper purporting to be a will, and the checks?

A. Yes, sir.

Q. From the comparison which you have made, and from your knowledge of the genuine signature of William Lanehart, what have you to say as to whether or not the signature to the document, purporting to be a will is the genuine signature of William Lanehart?

A. In my opinion, it is not genuine.

Q. To what degree of certainty is that opinion?

A. I have no doubt upon the subject whatever.

Q. Were you acquainted with the defendant, William H. Skillman?

A. Yes sir, I have always known him from boyhood.

Q. Have you ever had any correspondence with him?

A. Yes, sir.

Q. I show you a letter, the date is not here, it is addressed to "James L. Griggs, counsellor-at-law, 29 Inst. 1905" and ask you from whom you received that letter (handing witness paper.)

A. Knowing the handwriting of William H. Skillman, I am confident I received it from him, it came through the postoffice.

(Court):

Q. How do you know his handwriting?

A. I have seen him write, and corresponded with him at different times, for a period of years.

Q. By corresponding with him, you mean you have written letters to him and received letters in reply from him?

A. Yes, sir.

(Mr. Reger):

Q. Is William H. Skillman's name signed to that letter?
A. Yes, sir.

Mr. Reger:—I offer that letter in evidence.

Mr. Clark:—I object to the letter as immaterial.

Court:—I will admit the signature to the letter, but on the present proof, I do not admit the letter.

Marked Exhibit P. 33.

(Mr. Reger):

Q. I will ask you to examine the letter again and state whether or not that is in the handwriting of William H. Skillman?
A. It is.

(Court):

Q. The body of the letter?
A. Yes, sir.

(Mr. Reger):

Q. And you have testified that you are familiar with the handwriting of William H. Skillman, the defendant?
A. I have, and I am.

Mr. Reger:—I offer the letter in evidence.

Mr. Clark:—I object as immaterial and irrelevant.

Objection overruled.

Exception prayed.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

Marked Exhibit P. 33.

(Mr. Reger):

Q. I show you a letter addressed "James L. Griggs," and dated 20th inst., 1905, signed William H. Skillman, and ask you whether or not you received that letter through the mail (handing witness paper)?
A. I did.
Q. In whose handwriting is that letter?
A. That is in the handwriting of William H. Skillman, the body of the letter and the signature.

Mr. Reger:—I offer that letter in evidence.

Mr. Clark:—I object to it as irrelevant and immaterial.

Objection overruled.

Exception prayed.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

Marked Exhibit P. 34.

(Mr. Reger):

Q. Will you examine the handwriting in the body of the will, purporting to be the last will and testament of William Lanehart, marked Exhibit P. 4, and I will ask you in whose handwriting the body of that document is?
A. I have examined it with great care, heretofore, and

I believe it to be in the handwriting of William H. Skillman.

Q. Also the attestation clause?

A. I believe that to be in the handwriting of William H. Skillman, having examined it carefully.

RECESS.

Cross-Examination by Mr. Clark:

Q. Mr. Griggs, you are the counsel for the contestants of the "Skillman will?"

A. I am, yes sir.

Q. And in your duties as counsel, you sought to procure testimony for the purpose of supporting your side of the case, did you not?

A. I did.

Q. And your attention was devoted to that for a long period of time, was it not?

A. Yes, sir.

Q. And you were also engaged, for a long period of time in the Orphan's Court in the trial of the case there?

A. Yes, sir.

Q. Have you ever seen Mr. Lanehart write in pencil?

A. I am not sure about that.

Q. Have you examined this signature for the purpose of ascertaining whether it is or is not a tracing over a lead pencil signature?

A. Yes, sir.

Q. And have you come to a conclusion about that?

A. As to whether it is or is not a tracing over a pencil signature?

Q. Yes?

A. I do not know that I came to a definite conclusion as to that, no sir.

Q. Had you ever any doubt about it?

A. About what?

Q. About the fact that it was written over a pencil signature, a tracing over a pencil signature?

A. I cannot say that I had.

Q. That being so, what is there in the handwriting by way of comparison between this which you know to be the genuine or accepted as such, signature of William Lanehart and this signature, which makes you have any doubt whatever that this is a forgery?

A. Well, I do not base that whole upon the examination of this signature, in connection with others.

Q. Then your opinion, as given here today, was not based upon the signatures, which were presented here alone, were they?

A. Yes, sir.

Q. Then if that is so, I repeat my former question—that being so, what is there in the handwriting by way of comparison between this which you know to be the genuine, or accepted as such, signature of William Lanehart, and this signature, which makes you have no doubt, whatever, that this is a forgery?

A. I should have said, "comparison with others."

Q. I will ask you another question, whether in giving your answer to the question which I asked you before, as follows,"then your opinion as given here today was not based upon the signatures, which were presented here alone, were they," and to which you answered, yes?

A. My answer is yes, you don't understand the answer.

Q. The answer is as I understand it, "that it is based upon the signatures presented here today, alone?"

A. No sir, I have just said the opposite.

Q. Then I misunderstood you, if that is so?

A. This is what I intended to say—"my opinion is based both upon comparisons with other signatures, and my general knowledge of the handwriting of Mr. Lanehart.

Q. Your general knowledge of the handwriting of Mr. Lanehart—did anything else influence your decision—I haven't asked you what, I simply asked you now, if you are influenced by any other thing?

A. I have not analyzed my conception of all these things sufficiently to answer that off hand.

Q. Now, not having seen Mr. Lanehart write in pencil are you prepared to say that his signature may not have

been originally written by him in pencil—referring to the signature attached to the "Skillman will?"

A. You predicate your question upon a premise, which is not based on my evidence. I have not said that I did not see him write his name in pencil, I said I cannot recall any occasion when I did see him write his name in pencil, but I have, I think, seen him write his name in pencil.

Q. You have no recollection, however, of when or where or what it was to?

A. Yes sir, that is what I mean to say.

Q. Now, having no recollection of having seen him write his name in pencil, then I assume you do not rely upon pencil signatures at all, in making comparison?

A. Oh, yes, I do.

Q. Oh, you do?

A. Yes sir, I have examined forty of his pencil signatures, at the foot of letters which he addressed to me, about forty of them.

Q. These are not exhibits in the case and I don't know anything about them—you say you have examined these?

A. Yes, sir.

Q. Now, these letters which you have examined were written in a fluent hand in pencil?

A. Yes sir, they were.

Q. Now, do you know what kind of hand Mr. Lanehart would have written if he had taken a stub pen and ink and attempted to trace these signatures with a pen and ink?

Mr. Reger:—I object to the question—I do not see how the witness can answer that.

Mr. Clark:—I am testing his knowledge of his handwriting.

Court:—I will permit that to be answered. The witness first said, "I have never seen him write in pencil. Now, he said "I think I have seen him write his name in

pencil," I will allow the question on the ground that he says he thinks he has seen him write his name in pencil.

A. I cannot say that I would know what kind of a signature he would have made in that way, I can only imagine what it might have been if he had tried to make such a signature.

(Mr. Clark):

Q. And upon that imagination you form a conclusion that the "Skillman will" signature is a forgery?

A. Oh, no.

Q. Not being able to say what kind of signature he would make, in tracing a pencilled signature with ink, how can you say that the signature to this "Skillman will" is not his genuine signature, that is to say, it is not his genuine tracing over his genuine signature?

A. Because it does not bear the characteristics of his signature.

Q. Oh, that may be true, and yet it may be an abnormal signature, may it not, as traced by him?

A. Not if it was correctly traced.

Q. Not if it was correctly traced, that is it exactly, whether it is correctly traced or not, his ability to correctly trace it or not?

A. I do not understand the question.

Q. I supposed you understood what I inferred to, from that—whether, under these circumstances, from your want of knowledge, you can say that this may or may not be the genuine signature of William Lanehart?

A. I can.

Q. You can?

A. Yes, sir.

Q. You are willing to swear to a positive certainty?

A. As far as my best judgment goes, that is not a genuine signature.

Q. Oh, yes, you said that before, I am testing your reasons for your conclusion—can you give us any other reason that you have given for your conclusions?

A. Oh, yes sir.

O. I mean by way of comparison, which we have here before us, and which are evidence in the case, that is what I refer to, I haven't any other things to base my question on?

A. Yes sir, I can give you a great many reasons why I think the signature is not genuine.

Q. I wish you would?

A. By comparison with genuine signatures, standard admitted in the case.

Q. Do so, go on?

A. I will have to have the signatures here for the purpose, but I would rather not, I do not profess to be a handwriting expert at all.

Q. Well, are the reasons which you give us, practically embraced in the answers which you have given us?

A. No sir, I can give you other reasons, pointing out differences between the signature and the standards, which have been admitted in evidence.

Q. Very well—may not all these differences be accounted for by reason of the fact that the effort was to trace in ink a genuine hand in pencil?

A. No, sir.

Q. Can you show a single thing? (interrupted.)

A. The final termination of the letter "t."

Q. You say that could not be his?

A. Yes, sir.

Q. Simply because you have never seen any "t" of that kind made by him?

A. I do not say that.

Q. That is the question—is that so?

A. Not for the reason only, no sir.

Q. Well, the letter "t" is similar in some respects to the letter "t" whch you have seen Mr. Lanehart make, is that so?

A. Well I think it is more dissimilar than it is similar, there are more points of dissimilarity than there are points of similarity.

Q. I understood you to say that some of the signatures which you regard as genuine of Mr. Lanehart's may con-

tain characteristics of similarity to the letter "t" as contained in the "Skillman will," did I understand you correctly?

A. What I say is this—there are more points of dissimilarity than there are of similarity.

Q. Oh, more points of dissimilarity than there are of similarity.

A. Yes, sir.

Q. But there are some points of similarity?

A. Yes, sir.

Q. And consequently, there being more points of dissimilarity than there are points of similarity, your conclusion is that it is not genuine?

A. Yes, sir.

Q. May not those points of dissimilarity be accounted for wholly on the theory of its being a tracing?

A. No.

Q. You would not take into consideration the condition of the man's hand at the time, and not knowing anything about the condition of the man when he wrote the signature, the letter "t" I am speaking of, you would or would not determine that that was of any moment in deciding whether or not that was so dissimilar as to charge it to be a forgery?

A. I do not like to pose as an expert.

Q. Oh, that is what you are, that is what you said you are, and that is what it amounts to?

Court:—He has not said so, and the court's understanding of his evidence is that he said he is familiar with Mr. Lanehart's handwriting the signature both lead pencil and ink, and having compared the standards with the signature to the will, from that comparison, and from his general knowledge of the handwriting of Mr. Skillman, he states that in his opinion that is not Mr. Lanehart's signature. Now, I do not understand that that qualifies a man as an expert.

Mr. Clark:—He has gone further than that. The

Prosecutor asked him one question which he answered, that subjects him to this cross-examination.

Court:—What was that?

Mr. Clark:—Whether he could say to a certainty whether this was or was not a forgery.

Court:—I had a case the other day where a bank cashier refused to testify to a signature by saying that he was not an expert, and the fact that as a cashier of a bank, he pays money out on a signature, to that extent he becomes an expert. This witness says that the only knowledge that he has, upon which he bases his testimony, is his knowledge of Mr. Lanehart's signature, as he said he has made a practice of comparing this signature with other signatures. Now, this does not take him out of the class of an ordinary observer. He is competent to testify to this signature, because he has seen the man write his name.

Question withdrawn.

Re-Direct by Mr. Reger:

Q. You testified on cross-examination that you have examined about forty of Mr. Lanehart's penciled signatures on letters written to you, did you have these pencilled signatures in mind in rendering the opinion as to the falsity of that signature?

A. Yes sir, that was one of the elements.

Q. And your opinion is based partially upon the penciled signatures as well as upon the ink signature?

A. Yes, sir.

ALBERT L OSBORN, sworn in behalf of the State.

Examined by Mr. Reger:

Q. Where do you reside?

A. In Rochester, State of New York.

Q. How long have you resided there?

A. Twenty-seven years.

Q. What has been your business or profession during that time?

A. I have been a commercial school teacher, a teacher of penmanship and other school branches, and for some years have given special attention to the examination of questioned handwriting, documents, typewriting, etc.

Q. How long have you been engaged in that profession?

A. I first testified, I think, in such a case, upwards of fifteen years ago.

Q. And are you now giving your whole time and attention to this subject?

A. I have been for the last—about three years now.

Q. And have you or not given special attention to the subject of photography in connection with the investigation of disputed handwriting?

A. I have given special attention to the question of photography in connection with the illustration of various questions arising in connection with disputed documents, this covers a period of about ten years.

Q. And are you a practical photographer?

A. Yes sir, of that kind, I am not a portrait photographer.

Q. Of handwriting?

A. Yes sir, documents.

Q. Have you been called upon to make photographs in this case?

A. Yes, sir.

Q. I show you two letters, marked respectively Exhibit P. 34 and P. 33, and also a paper purporting to be "the last will and testament of William Lanehart,"

marked Exhibit P. 4 and ask you if you have made photographs of portions of that will and those letters?

A. I have.

Q. I show you a photograph and ask you, of what that is a representation?

A. That is a photograph of two portions of the will marked Exhibit P. 4, including the names "William Lanehart" as appearing upon the first page, first part, or first line, and upon the attestation clause. These two portions of this exhibit photographed, in connection with two portions of the letters already referred to, including the word "Lanehart" in each of the letters.

Q. How many of those are there?

A. Four prints.

Mr. Reger:—I offer in evidence these four prints or photographs, and ask that they be marked exhibits for the prosecution.

Marked Exhibits P. 35, P. 36, P. 37 and P.38 respectivey.

(Court):

Q. Are these four duplicates?

A. They are four prints of the same thing.

Court:—Do you desire to offer them as four separate exhibits?

Mr. Reger:—They may be marked as the same exhibit, if your Honor prefers.

Court:—I think they had better be marked separately.

Mr. Clark:—I want to ask a question, if your Honor will permit me.

Court:—You may do so.

Cross-Examination by Mr. Clark:

Q. Were these photographs taken separately in each instance?

A. No sir, they were all taken together, on one plate?

Q. All at one time?

A. Yes, sir.

Q. No one of them is a signature at all—it is simply a representation, as I understand it, of the handwriting of William H. Skillman, as contained in the letters or as contained in the first line of the will, and the attestation clause of the will?

A. You said, "William H. Skillman," you mean "William Lanehart?"

Q. This is a photograph of the handwriting of William H. Skillman, is it not?

A. Yes sir.

Court:—I understood the witness to say that the name "William Lanehart" in two cases are taken from the document marked Exhibit P. 4, as to whose handwriting they were in, he did not say, but that they were not the signature of William Lanehart.

(Mr. Clark:)

Q. I understood you to say that the name of William Lanehart appears on this photograph, as photographed from the first line of the "Skillman will," and as it appears in the attestation clause of the "Skillman will?"

A. That is right.

Q. And the name "Lanehart" on the lower part of the card is photographed from two letters which are before you?

A. That is correct.

Q. And have been put in evidence?

A. Yes, sir.

Q. They are the letters received from Mr. Griggs?

Mr. Reger:—They are the letters received from Mr. Griggs.

(Mr. Clark:)

Q. Spoken of as the letters received from Mr. Griggs and marked Exhibits P. 33 and P. 34 respectively?

A. Yes, sir.

Q. What was the object and purpose of taking these photographs?

Mr. Reger:—I object to the question as immaterial and not proper cross-examination.

Objection sustained.

(Mr. Clark):

Q. I would like to ask you whether there were four photographs taken and how they were taken?

Mr. Dungan:—As to part of that question, it is objectionable, and I will object to the question as a whole.

Objection sustained.

Mr. Clark:—I will ask your Honor to allow an exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Clark):

Q. Why were four photographs taken instead of one?

Mr. Reger:—I object.

Objection sustained.

Mr. Clark:—Exception prayed.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Clark:)

Q. Now, was it the object and purpose to take simply a picture or photograph of the name, "William Lanehart?"

A. That is what I photographed, yes sir.

Q. You had no regard for anything else, except that—that is you had no desire to get a photograph of anything except the word "Lanehart?"

A. That is all.

Q. How was your camera directed, at what angle, in taking this photograph, and what distance from the object photographed?

A. The object photographed was arranged in a vertical position—(interrupted.)

Q. Show us how, if you please?

A. In a vertical position up and down.

Q. Yes, that is right, go on?

A. And in front of the camera, the object being an equal distance from the lens, that the plate was, when the exposure was made. The distance depends on the length of the focus of the lens. This particular lens has a focal length of about eight inches so that the distance would be about sixteen inches from the object to the lens, and about sixteen inches from the lens to the plate, or negative, which resulted from the photograph or the exposure, which would result in a photograph the same size as the original.

Q. Now, is it the same size as the original?

A. Approximately.

Q. Approximately?

A. Yes, sir.

Q. What is the difference?

A. This print would indicate that the photograph is

somewhere between one thirty-second, or one sixty-fourth of an inch longer, on a distance of two and a half inches.

Q. And it would be increased in height in the same proportion?

A. Yes, sir.

Q. So it is larger than the original handwriting?

A. Slightly.

Q. Is that a fair illustration—(interrupted.)

Mr. Reger:—I object to that.

Question withdrawn.

Mr. Reger:—I renew my offer of the photograph.

Mr. Clark:—I object to the photographs being admitted in evidence.

Court:—The objection will be overruled and the photographs admitted.

Mr. Clark:—I further object to having four photographs being admitted in evidence, one would answer as well as a dozen.

Court:—If they are duplicates, I suppose that is so, but how will that prejudice the rights of your client?

Mr. Clark:—It simply multiplies the truth, if they pick out one card which they wish to enter into evidence, that would be sufficient.

Court:—I shall overrule the objection and they will be admitted and marked.

Marked Exhibits P. 35, P. 36, P. 37 and P. 38 respectively.

Re-Direct by Mr. Reger:

Q. I show you another photograph and ask you of what that is a representation?

A. That is a photograph of the signature of what is marked as Exhibit P. 4 and known as the "Skillman will."

Q. Was that photograph taken by you?

A. It was.

Q. Is it a correct or accurate reproduction of the signature to that paper?

A. It is.

Q. Is it the natural size or enlarged?

A. It is enlarged.

Q. What is the degree of enlargement?

A. About three diameters, or a little more than that, I think just a trifle more than that.

Q. How many of those are there?

A. Nine.

Mr. Reger:—I offer these nine photographs in evidence and ask that they be marked as exhibits in behalf of the prosecution.

Mr. Clark:—I object to them also for the same reasons.

Court:—They will be admitted and marked.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

Marked Exhibits P. 39 to P. 47, both inclusive.

(Mr. Reger):

Q. I show you another photo—what are those representations of?

A. These are representations of two "William Lanehart" signatures to checks dated February 28th, 1905, of $76 and March 3rd, 1905, of $42.

Q. I show you the check marked Exhibit P. 8 and ask you if the photograph which I have just shown you is a photograph of that signature, in connection with one other signature?

A. Yes, sir, this is the signature photographed on the upper part of this photographic print.

Q. How many of those are there?

A. Ten.

Mr. Reger:—I offer those in evidence.

Mr. Clark:—I make the same objection to those as to the other.

Court:—They may be admitted and marked separately.

Marked Exhibits P. 48 to P. 57, both inclusive.

Mr. Clark:—My objection to these photographs is, in the first place, that they are unnecessary. Secondly, they are not competent testimony in the case, and third, they are not true reproductions of the signatures which they purport to give, nor are any of the signatures which have been produced here, excepting perhaps with the trifling variation in the name of "William Lanehart" as photographed from the will, and they are not signatures.

Court:—The objection will be overruled. Do I understand that you do not include in your objection the fact that ten duplicates are offered?

Mr. Clark:—Oh, yes, I object to that also.

Court:—That objection is overruled.

Mr. Clark:—I pray an exception to both of your Honor's rulings.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Reger):

Q. I show you another photograph of two signatures, and ask you of what that is a representation?

A. This is a representation of the signatures of two checks, the first dated February 20th, 1905, for $17.70, and the other was February 21st, 1905, for $7.50—there are ten duplicates photographed.

Q. Are they accurate representations of the signatures photographed?

A. They are.

Q. And what is the degree of enlargement.

A. Sightly more than three diameters, they are photographed on the same scale as the signature to the will, in an enlarged form.

Q. I show you Exhibits P. 18 and P. 19 and ask you whether those are the signatures which were photographed in the photograph last shown you (handing paper to witness)?

A. These are the signatures.

Q. How do they compare in date, with the date of the will of which you have already photographs?

A. The two photographs last proved, are photographs of the two signatures, nearest in time, preceding the date of the will in question. That is the one known as the "Skillman will" and the two enlarged genuine signatures first proven, are the two signatures immediately following nearest in time, to this will in question, that is of the signatures that were in my possession.

Mr. Reger:—I offer these photographs in evidence.

Mr. Clark:—I object to them for the reasons heretofore given.

Objection overruled.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

Marked Exhibit P. 58 to P. 67, both inclusive.

(Mr. Reger):

Q. I show you another photograph of signatures, and I also show you Exhibits P. 8 to P. 27 inclusive, and ask you whether or not the photograph last shown you is a photograph of the signatures in those exhibits?

A. This is a photograph of the signatures, last described, including two endorsements, one of them an endorsement on a check drawn by S. B. Van Zandt, of October 25th, 1904.

Q. Marked Exhibit P. 24?

A. Yes sir. The other endorsement, the second one, photographed is on check March 16th, 1905, signed S. D. Van Zandt and marked Exhibit P. 16. All the others are photographs of signatures to these checks.

Q. How many of those photographs are there?

A. Fourteen. These are photographs the same size as the others were.

Mr. Reger:—I offer these fourteen photographs in evidence and ask that they be marked in behalf of the State.

Mr. Clark:—I object to them for the reasons heretofore given.

Objection overruled.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

Marked Exhibits P. 68 to P. 81, both inclusive.

(Mr. Reger):

Q. I show you another photograph and ask you of what that is a representation?

A. This is a photograph of the second page of Exhibit P. 4.

Q. That being the purported will of William Lanehart?

A. Yes sir, that is the page upon which the signature of William Lanehart appears.

Q. Is that an accurate representation of the handwriting and the signature on the second page of the exhibit marked P. 4?

A. It is.

Q. How many of those photographs are there?

A. Eleven.

Mr. Reger:—I offer those photographs in evidence.

Mr. Clark:—I object for the reasons heretofore given.

Objection overruled.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

Marked Exhibits P. 82 to P. 92, both inclusive.

(Mr. Reger):

Q. I show you another photograph and ask you, of what that is a representation?

A. This is a representation or photograph on the first page of what was known as the "Skillman will." There are nine duplicates altogether.

Q. Is that an accurate photograph?

A. It is.

Mr. Reger:—I offer those nine photographs in evidence.

Mr. Clark:—I object for the reasons heretofore given.

Objection overruled.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

Marked Exhibit P. 93 to P. 102, both inclusive.

Court:—For the purpose of simplifying the thing, I will ask the stenographer to note on the record that these duplicates, numbered from P. 39 on to the end of the series of photographs which have been offered in evidence, be marked in classes, from "A" onward, in alphabetical order. That is to say, P. 39 to P. 47 be marked Class "B" and each one separately in that way, so that in case we should require to refer to them, by classes, afterward, you will not be confused.

(Mr. Reger):

Q. I show you another photograph—what is that a representation of?

A. That is a representation of the attestation clause of Exhibit P. 4 also called the "Skillman will." There are five photographic duplicates altogether.

Q. Is it an accurate reproduction of the original?

A. It is.

(Mr. Clark):

Q. Are they the original size, the same as the attestation clause, in size?

A. Yes, sir.

Mr. Reger:—I offer those five photographs in evidence.

Mr. Clark:—I make the same objection.

Same ruling.

Exception prayed.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

Marked Exhibits P. 103 to P. 107, both inclusive.

(Mr. Reger):

Q. I show you another photograph, what is that a representation of?

A. This is a representation, a twenty-four diameter enlargement of the letter "W," and the lower part of the letter "L" of the signature to Exhibit P. 4, the "Skillman will." There are five duplicates altogether of this.

Q. That is an accurate enlargement, is it?

A. It is.

Mr. Reger:—I offer these five photographs in evidence.

Mr. Clark:—I object to these for the same reasons heretofore given and also on the further ground that they are distortions, not fair illustrations of the letters, and misleading, they are not proper reproductions, and should not be evidenced in the case.

Mr. Dungan:—My suggestion would be that that objection should not go upon the record, because there is no foundation for it.

Objection overruled.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

Marked Exhibits P. 100 to P. 112, both inclusive.

(Mr. Reger):

Q. I show you another photograph and ask you of what that is a representation?

A. This is a photograph on the same scale, that is twenty-four diameters enlargement, of the letters immediately following the capital "L" in the word Lanehart" in the disputed signature on the "Skillman will"—and there are four prints altogether.

Mr. Clark:—I make the same objection to this offer, for the same reasons, as I made to the five preceding photographs.

Objection overruled.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

Marked Exhibits P. 113 to P. 116, both inclusive.

(Mr. Reger):

Q. I show you another photograph, and ask you of what that is a representation?

A. This is a photograph on the same scale—twenty-four diameters enlargement—of the small letter "e" in the word "Lanehart" and the first portion of the small "h"—and there are four prints altogether from the same negative.

Q. In what?

A. In the disputed signature to the "Skillman will."

Mr. Reger:—I offer these four photographs in evidence.

Mr. Clark:—I object for the same reasons heretofore given, and in addition to the objections, on the previous offers, I insist that they are not evidence, because they are not connected with the signature as a whole.

Objection overruled.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

Marked P. 117 to P. 120, both inclusive.

(Mr. Reger):

Q. I show you another photograph and ask you of what that is a representation?

A. This is a photograph of the concluding portion of the name "William Lanehart" as it appears upon what is known as the "Skillman will," including the finishing part of the small letter "r" and the small letter "p," excepting the extreme upper portion.

Q. How many are there?

A. There being five duplicate prints from the same negative.

Mr. Reger:—I offer these five photographs in evidence.

Mr. Clark:—I object for the same reasons heretofore given.

Same ruling.

Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

Marked Exhibit P. 121 to P. 125 inclusive.

(Mr. Reger):

Q. I show you another photograph and ask you what that is a representation of?

A. This is a photograph of that portion of the name of "William Lanehart" appearing upon the "Skillman will" following the letter "h" in the word "Lanehart" including the last part of "h," the "a," the small letter "r" and the beginning portion of the letter "t"—there are four duplicate photographic prints.

Mr. Reger:—I offer these four photographs in evidence.

Mr. Clark:—I object for the same reasons heretofore given.

Same ruling.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

Marked Exhibits P. 126 to P. 129, both inclusive.

(Mr. Reger):

Q. In each instance, where you have used the words "duplicates" in referring to these photographs, you mean "prints?"

A. I do—duplicate prints from the same negative.

Q. Are all of these photographs of the names and handwriting shown by these photographs accurate representations of the original?

A. They are.

Q. Are your lenses accurate?

A. They are.

Q. Are they certified lenses?

A. They are.

Q. By whom are they certified?

A. By the Government Bureau of Standards at Washington.

Q. Have you the certificate with you?

A. No sir, I have not.

Q. You have such a certificate?

A. I have.

Court:—I suppose that could only be properly proven by the production of the certificate itself.

(Mr. Reger:)

Q. By whom were these prints made?
A. By Mr. Baldwin.
Q. A photographer at Somerville?
A. Yes sir—that is I understand they were all made by him, the negatives were developed in his gallery, and he made the prints that were used before.

Mr. Reger:—I desire to withdraw this witness, at this point, for the purpose of producing the photographer, to prove these prints—that is the photographer who made the prints—unless it is admitted.

Mr. Clark:—No, I do not admit it.

(The witness withdrawn for the purpose of examining John W. Baldwin.)

Court:—I will permit you, Mr. Clark, to cross-examine Mr. Osborn on the testimony already given hereafter.

JOHN W. BALDWIN, sworn in behalf of the State.

Examined by Mr. Reger:

Q. Where do you reside?
A. At Somerville.
Q. What is your business or profession?
A. A photographer.
Q. How long have you been in that business?
A. Some twenty years.
Q. Were you called upon to print certain photographs in this case?
A. I was.
Q. Did you make prints of certain photographs?
A. I did.
Q. I show you photographs marked Exhibits P. 35 to

P. 129 inclusive, and ask you whether or not, you printed those photographs?

A. I did, I made them all.

Q. Are they accurate prints?

A. They are reproductions from the negatives, accurate reproductions.

Q. Were the photographs taken at your studio?

A. Yes, sir.

Q. By whom?

A. By Mr. Osborn.

Q. In your presence?

A. In my presence and in the presence of Mr. Kinsley, Mr. Dungan, Mr. Dumont and yourself.

Q. Who made the negatives?

A. Mr. Osborn.

Q. Are these prints accurate representations of the negatives furnished by Mr. Albert S. Osborn?

A. They are.

Cross-Examination by Mr. Clark:

Q. How do you know?

A. I made the prints from the negatives.

Q. Where are the negatives?

A. In my gallery.

Q. They are all enlargements of the original, are they not?

A. Not all.

Q. Is there any one that is not?

A. Yes sir, there are a number of them are not.

Q. No enlargement of the picture?

Mr. Dungan:—I object—this witness simply says that he printed them from negatives, and I object to this because it is not proper cross-examination.

Objection sustained.

(Mr. Clark):

Q. All you mean so say is, that you took the negatives that Mr. Osborn had taken and from those negatives, printed the pictures, that is, printed the handwriting?

A. I made the prints from those negatives, such as has been just sworn to.

Q. What does that mean, what did you do?

A. To make a photographic print from a negative in each case?

Q. Tell me how you did it?

A. You put some paper prepared by silver, or made sensative to light, and the action of light, through the negative on to the paper, and the paper then becomes the positive, when acted upon by the chemicals.

Q. You do not make use of the camera for that purpose at all, do you?

A. Not at all in making a print.

Q. In simply making the print, you do not use the camera?

A. No, sir.

Q. And in that way you get an accurate copy of the negative?

A. Yes, sir.

Q. Were they all made from one negative or different negatives—I mean to say each class?

A. Each lot of prints, each class is made from separate negatives.

Q. In other words, you only take one negative for each class?

A. Yes, sir.

Q. That is right?

A. That is right.

Q. How many prints can you take from a negative without destroying or injuring or impairing the negative?

A. I don't know, sir, thousands of them, if you are careful of your negative in handling it, it is glass, of course, and it is liable to be broken, unless properly prepared and taken care of, otherwise there is no limit to the number of prints you can make from a negative.

Q. Do different prints of the same negative vary in print?

A. It is possible, owing to the exposure.

Q. And in that way the same negative would cause one print to vary from another in appearance?

A. Yes sir, it is possible, if one is printed longer than the other it would be a little darker than the other, or if under printed, it would be lighter—(interrupted.)

Q. Well, you get a copy so to speak, a picture of the object, photographed—it would not be an exact illustration by reason of the variation in color, would it?

A. That is possible.

Q. Have any of these prints, to your knowledge, been touched with ink?

A. They have not been.

Q. May or may not, certain portions of the photograph, owing to the light and shade, be more prominently expressed in the photograph than otherwise?

A. That would depend on what you are making, if you are making a portrait, that would be so, that is exactly what you are to avoid. In a case of this kind, that would not be so, because you prevent it, you put it in a light to prevent such a thing, if I understand your question aright, in lights and shades.

Q. Now, if you are photographing a piece of goods for instance, would not certain lights so strike these goods as to produce portions of those goods more prominently than other parts?

A. Well, you can have that so if you desire it, or not, you have absolute control of the light yourself, or should have.

Q. What did you have to do in the control of the light in this case?

A. Nothing at all.

Q. All you did was simply to print from the negative?

A. Yes, sir.

(Court):

Q. Do I understand that the light has nothing to do with the printing from negatives?

A. No, sir.

(Mr. Clark:)

Q. You testified that the prints were not retouched with ink, were the negatives retouched?

A. They were not.

ALBERT S. OSBORN, recalled in behalf of the State.

Direct Examination continued by Mr. Reger:

Q. What has been your experience in the examination of questioned documents?

A. As I have already testified, I have given special attention to the subject for upwards of fifteen years, and have been engaged in a large number of cases, in various places, involving questions of handwriting and documents generally.

Q. Have you examined the questioned will marked Exhibit P. 4 in this case, and also the exhibits marked P. 8 to P. 28, inclusive?

A. I have.

Q. For what purpose?

A. For the purpose of determining whether the signature of "William Lanehart" of Exhibit P. 4, known as the "Skillman will" was a genuine signature or not.

Q. When did you make such an examination and comparison?

A. I made such examination and comparison last fall some time, I cannot remember exactly the date.

Mr. Dungan:—If the court please, may these photographic prints be distributed to the jury now, so that they

may better understand Mr. Osborn's evidence in respect to them?

Court:—They may, subject to objection.

Witness:—If I may make a suggestion, I think it woud be better to give them to the Jury when we are testifying to any one of them, then to hand that particular photograph to the Jurors.

Court:—The copies of the photographs will be furnished to the Jurors, as Mr. Osborn, the witness, or the other witnesses, takes them up to testify in relation thereto.

Mr. Clark:—What class of photographs have the Jurors now?

Mr. Dungan:—They have classes "B," "C" and "D."

(Mr. Reger):

Q. What special examination have you made of the disputed signature, with the standards, for the purpose of determining its falsity or genuineness?

A. I made a careful comparison with the disputed signature with the standard signature, which were submitted to me, as the writing of William Lanehart, and examined them in every way, that would lead to the conclusion as to the genuineness or falsity of the signature in question; that is a comparison in all the ways that handwriting can be prepared and compared that I know anything about.

Q. What is the purpose of the photographing of the signatures?

A. The purpose of photographing the signatures is to bring the various signatures into view at one time, those that are photographed in their natural size, and also so that the different observers can see the same thing at the same time, and for the purpose of facilitating examination in Court, and the enlarged signatures are made for the

purpose of showing certain characteristics and particulars in the signature which are more plainly seen in the enlarged form.

Q. What is the effect of enlarging the signature?

A. The effect of enlarging the signature is to increase it in size, in every direction, so that an enlarged signature, is not a distorted signature, because the proportions of the parts remain the same to each other—it is simply enlarged.

Q. Is the effect of the enlargement such as would be observed by examining the signature under a microscope?

A. Just exactly the same, the magnified image of the subject, it is just the same as would be seen by the use of a microscope, except that the image is in permanent form, thus enabling a more extended and easier examination of the subject.

Q. You have given your view as to the falsity of the signature to the paper writing, marked Exhibit P. 4, have you?

A. I do not think you have asked me that.

Q. I will now ask you—(interrupted.)

Mr. Clark:—I would like to ask him a question or two. I understood the witness to say that he had made an examination of the signature, both of the disputed and the standard, and that he has formed a conclusion. I simply want to inquire whether all of the signatures which he used in comparison are here now in court, or whether there are any other signatures which he compared with the disputed signatures for the purpose of forming a conclusion.

Court:—I think that is a proper question to ask, on a preliminary examination, and I will allow it to be asked here.

Mr. Clark:—That is all I desire to ask, if the stenographer will repeat that question.

Q. (Question repeated as follows)—I understood you to say that you had made an examination of the signa-

ture both the disputed and the standard, and formed a conclusion. I simply want to inquire of you, whether all of the signatures which you used in comparison are here now in Court, or whether there are any other signatures, which you compared with the disputed signature, for the purpose of forming a conclusion?

A. I mainly examined the signatures photographed here. My recollection is, that I saw some other signatures, a few, in connection with these papers, but I am not quite clear about that—not very many, anyhow.

Q. What I want to ascertain is, whether the conclusion which you have reached, was based upon these signatures and others, or these alone?

Mr. Dungan:—I object to this question being asked at this time. It might be a proper subject of cross-examination, but that cross-examination cannot be made now.

Mr. Clark:—I would like to know the reason why.

Court:—The reason is this: I permitted you to examine the witness to ascertain just what examination or comparison he had made, which qualified him to testify in this case. To that extent your inquiry was entirely proper, I cannot allow you now to examine him as to his conclusion for the reason that he had not yet stated it.

Mr. Clark:—I do not ask for his conclusion, I am asking only what he did, for the purpose of forming a conclusion.

Court:—He has testified to that—your question is, "was your conclusion as to the genuineness of these signatures, based upon the papers and photographs in court, or not"—I do not think that is competent at the present time, you may repeat it on your cross-examination.

(Mr. Reger):

Q. Was the examination which you gave and the com-

parison which you made, made with the exhibits marked in this case, P. 8 to P. 29 inclusive, and which you photographed?

A. Yes, sir.

Q. I show you a photograph marked Exhibit P. 78, belonging to class "E" and ask you whether or not your comparison was made with those signatures?

A. Yes sir, it was.

(Class "E" distributed to the Jurors.)

Q. And these are the standard signatures of William Lanehart, upon which you base the conclusion which you have reached?

A. Yes, sir.

Q. After the examination and comparison which you have made, what is your opinion as to whether or not the signature to the paper writing purporting to be the last will and testament of William Lanehart and marked Exhibit P. 4 is genuine or not?

A. In my opinion, it is not the signature of William Lanehart.

Q. What difference do you observe in the signature to that exhibit P. 4 and the genuine signature of William Lanehart as exhibited in the stand?

A. The basis for my conclusion do you want?

Q. The basis for your conclusion, yes sir.

A. The basis of my conclusion that the signature to the so-called "Skillman will" is not a genuine signature of William Lanehart is based upon a thorough examination and study of the various features and characteristics that enter into this genuine signature. In reaching such a conclusion I make a careful examination in every particular—(interrupted.)

Mr. Clark:—I object to the disertation allowed the witness.

Court:—The statement that he always makes a certain examination is hardlly competent. It is competent for the

witness to state that he has made a careful consideration of the various features and characteristics contained in the handwriting in question, that is competent. But the witness must confine himself to what he did in this particular case, not what he has done in other cases.

Witness:—I made a careful examination in every particular of the genuine signatures submitted to me for comparison, and then made a comparison with those signatures of the signature in question. In my opinion the signature in question is not genuine, because in the first place, upon a general inspection, the general appearance and first view of the signature is unusual; that is, its general appearance required, when it is compared with the genuine signature in the case, that it be explained in some way. That is, if even a genuine signature, it must be an extraordinary signature. So I should say, the signature is not genuine, in the first place, because its general appearance is not the general appearance of the signature of William Lanehart. Then it is not genuine in my opinion—(interrupted.)

Q. Let me interrupt you—in what respects is it dissimilar to the genuine signature, in its general appearance?

A. The answer to that question is the analysis of the signature, which I am going to make. That is the general appearance of a writing, is due, of course, to various features and parts—(interrupted.)

Mr. Clark:—I object to that—the question is the dissimiliarity that you are addressing your remarks to?

Court:—Counsel has the right to interpose an objection at any time he sees fit, but he will have to reserve his cross-examination until the proper time.

A. That is, that the analysis of this writing in question, of course, points out and brings to view and explains why the signature, as a whole, has the appearance that it has, so that this general appearance is a combination in

my opinion of all the divergencies when looked at and examined with a view of determining, whether it is the genuine signature of William Lanehart or not.

Now, it diverges in my opinion, in form characteristics, that is in the shape of the letters.

It diverges in the position which the signature itself indicates that the pen was held when the signature was written, as compared with the same particulars and parts, of the genuine signature, the characteristics of the genuine signature in this particular—(interrupted.)

Q. In what position was the pen held in making the genuine signatures of William Lanehart, as shown by the standard?

A. As shown by the standard, in making the genuine signature of William Lanehart. it indicates that the pen was held in such a position that pressure could be exerted upon it, and a shading made on a stroke from left to right. Do you want me to go on with that?

Q. Just as you wish?

A. I was going to point out these genuine characteristics first, which make up this general appearance. The last one was the pen position. Then the next is the divergence in slant, that is in relation to the base line of the letters, as compared with the genuine signatures. It is divergent in spacing, that is, in relation to the letters to each other in proportion as they occupy the position upon the line of the signature as a whole.

The signature is divergent in that it has been retouched' that is, the pen has been placed back upon the paper, after certain parts of it have been written, and added ink, added strokes, put upon the signature. And in this same connection—(interrupted.)

Q. Signature to Exhibit P. 4 you are referring to?

A. Yes sir, the signature to Exhibit P.4 I am referring to. And in this same connection, the signature is defective in my opinion, because the pen is taken up at unusual places as compared with the genuine signature of William Lanehart, that is in pen lifts.

The signature is also defective in my opinion in shading characteristics. That is the places upon the signature

were emphasized, in places, differing from the shading as shown in the genuine signature.

The signature is also defective in my opinion in its alignment. That is, its relation to the base line, to the straight line under it.

The signature is also defective in my opinion, in proportion, that is in relation to the different sizes of the letters to each other throughout, as compared of course, in every instance, with the genuine signature of William Lanehart.

It is also in my opinion defective in tremor, that is in changes of direction of the stroke, and in different widths of the stroke, in different parts of the signature. Thus it is divergent in that particular from the genuine handwriting of William Lanehart.

It is also defective in my opinion, in the connections between the various parts of the letters, that is, the signature is made more roundly, the parts, the connections between the different strokes of the different letters are made more rounder in the signature in question than in the genuine signatures.

And it is also defective in my opinion. fundamentally defective in its manner of production. That is the movement employed in its production. The form, characteristics of the signature, differ from those of William Lanehart's in my opinion in many particulars. The first of which is the capital "W." The genuine signature of William Lanehart contains a capital "W" of a peculiar form, divergent from any system or form of the capital "W," therefore constituting in this writer an individual characteristic in this particular. That is, that he developed or learned to make or unconsciously acquired a particular form of capital "W" that differs from the standard form in that letter. If this letter is reversed, put it the other side up, you will see that the letter is an enlarged form of the small letter "u,"—making two parallel parts —(interrupted.)

Q. The genuine signature, that is?

A. The genuine signatures—take the group photographs of the genuine signatures—and if the paper s

reversed, and the form of the first letter looked at, you will see that it is an enlarged form of the small letter "u" —a downward stroke traced back nearly, and sometimes more than half way, the two strokes parallel with each other or very nearly the same height.

This letter made in combination with the small letter "m" constituting the abbreviation "Wm.," and consequently a study of the genuine signatures, leads me to the conclusion that this combination of the capital "W" and the small letter "m" is what modify this capital letter "W." The motion by which it is made, are all motions running to the left and upwards, that is they are all made running to the left and then down and then the line traced back again, and down again, and the capital "W" being made in that way, the small "m" is made in the same way.

Q. Won't you illustrate that on the paper on the easel?

A. The genuine signatures of William Lanehart are made with an upward curved stroke, and the downward line re-traced, and the second one nearly a duplicate of the first, re-traced in the same way. And then the small letter "m," part of the abbreviation of "Wm.," is made with a reduced form of these same characteristics, that form the beginning of the capital letter "W" (illustrating,) and in my opinion, this combination is what modified this capital letter "W." So standing alone, if you remove them from the other letter, it would be difficult to tell just what the letter was intended for itself, it looks like an enlarged small "u," if you were to take the small "m" away from it.

Now, when we compare this in this particular with the signature in question, we find, in my opinion, a significant divergence, and a divergence that in my opinion also points to the fact that the signature is not the production of William Lanehart, for the reason that it not only diverges, from the letters, but it tends or is inclined to be or suggests the ordinary form of the capital "W" in which the intermediate or upward stroke of the letter—that is the second stroke of the letter—a letter beginning in this way (illustrating) the third stroke is a down-

ward stroke to the left. And this signature in my opinion —that is the signature in question, is particularly divergent in this interior or middle part of the capital "W"—this second stroke—that is in the signature in question—the second stroke is that of the ordinary initial "W." The "W" of the copy-book made with the upward right curve and downward stroke, which curves as it comes down—(interrupted.)

Q. If that capital letter "W" were reversed, would that exhibit the form of a small "u," such as is in the standard?

A. Oh, not at all.

Q. Show what it would represent?

A. If we reversed the enlarged photograph, you will see that the base of the letter would not be correct, as a small "u," because the divergence in the signature in question is also a divergence in the height of the three parts, that is to say, the standard of the capital letter "W" is a letter that decreases in height, from left to right in this manner (illustrates.) So that the last part of each one of them is slightly lower than the preceding part. That is, the ordinary copy-book form of the capital letter "W" (illustrating.) Now, this signature of William Lanehart, in that particular, it was not only divergent in shape, but also in height, which was due to the habitual writing of that abbreviation system of which the small "m" is part, at the top of which resulted in this abbreviation of the letter "W." Thus if you will look at the signature in question, you will find that the three finishing parts, notwithstanding the part that it is made with the abbreviation "m" following it, which is in its wrong position, because of the failure of this part to go up to the height that the genuine signatures go, notwithstanding that, the three parts are decreasing in height, just the same as the standard form of this letter would be.—(interrupted.)

Q. How does the letter "W" with the sharp points, such as is shown in the disputed signature, compare with the capital letter "W" that is in the handwriting in the body of the will, and in the letters of William H. Skillman, which you have photographed?

A. In answer to that question I would say that the capital letter "W" in question diverges from the Lanehart "W's" in just the direction of the letter "W" shown in the body of the writing of the will. That is, the three parts are decreasing in size, and also that the beginning stroke instead of being distinctly curved, as this beginning stroke is curved, is nearly straight, and the signature in question, the beginning stroke, although connected at the top with a narrow turn, the stroke is almost straight, and in that particular, it is like the letter "w" in the body of the "Skillman will."

Q. Is it or not the same style of letter "W" which appears in the handwriting of the defendant in the body of the will and the letters?

A. It is the same style, with just the exception of the upper part of the first stroke. In the signature in question, the upper part of the first stroke is a rounded portion, and it has not the angular connection in the letter "W" appearing in the body of the document in question —the connection in the top of the letter "W" is a sharp connection.

(Photographs classes E, F, G, H, J, and L handed to jurors.)

Q. What other differences of form do you observe in the disputed signature?

A. The next one I will call attention to, in order, is that connected with this particular form of letter "W"—that is the second part of the "W" being made high, carries the abbreviation "M" up nearly on a line or towards the top of the letter, and the position of the letter "m" in the signature in dispute, as a result of course, of the short extension of the finishing part of the "W" is much lower than it ought to be in the "Lanehart" signature. That is in my opinion, if that signature is written by William Lanehart, that letter "m" would have been up even with the top of the capital "W."

Q. Is that so in the standards?

A. Yes sir. This habit is a very pronounced one in his

signatures. They are not all the same height, but they are higher than the average or usual form that the capital "W" would place that particular letter following it.

The next divergence in form that I would call attention to, is in respect to the capital letter "L." The capital letter "L" begins with a line, almost a straight stroke, in the signature in question. You will observe that leaving the small letter "m" part of the abbreviation of William, there is a small irregularity or jog and then the line proceeds to the top of the letter "L" and from that point, descend almost in a straight stroke until we strike the turn at the base of the letter "L" preparatory to making the turn. Now, if that is compared with the genuine signatures in that particular, a very pronounced divergence is immediately observed. That is a disconnection in the signature in question, and a difference in the angle of the stroke. That is, the genuine signature begins with a pronounced dip or depression of the pen at that point (indicating) as the beginning part of the capital letter "L" is made, and then the pen is carried up from that point to the top of the capital letter and then continues down or extends down to the base line, when another stroke is made. That is similar and in the same general direction as the beginning stroke, and if the genuine signatures are carefully examined, it would be observed that that particular shape at that particular place, is a characteristic form in the genuine signature of William Lanehart.

Q. You refer to the shading?

A. Yes, I am going to do that now. Under this point just referred to, and which has just been called to my attention by counsel, the question of shading and pen position are the two things that are connected directly with each other. In this way—that the position of the pen—now, if you will take the photographs that have the enlarged genuine signatures, you will observe very readily where the genuine signatures are shaded. That is, there is a distinct emphasis at the beginning part of the letter "L"—there is also a distinct emphasis at the finishing part of the letter "L" and at the end of the signature, after the letter "t." And by an examination of the

genuine signatures, you will see, that that is a habit of this writer that is in these particular shadings, in these particular places, and are in my opinion unconscious habits in this writer, acquired after long practice or long repetition of this particular signature. So that in writing it, unconsciously the pressure is placed upon the pen at these places just the same as the letter is made in the signature in a certain form, because it has been repeated in that way, so many times.

Q. In order to produce the shades at particular places, how must the pen have been held?

A. The pen must have been held—and that I call your attention to under the head of "pen position"—which in my opinion, is an indication of fundamental divergence in this signature in question, because the writer of this signature did not write with the pen in the same position as it was held by Mr. Lanehart.

Q. That is the writer of the disputed signature did not hold his pen in the same position as Mr. Lanehart held his pen?

A. No sir, the signature in question indicates a pen position, that is different from the pen position shown in the genuine signature? The pen position in this writing would indicate by the shaded portions, for example in these two photographs, you will observe that in the finishing part of the letter "t," in two of them, shows the track or the marks of the pen point, and the signatures written with a pen which has two points and when pressure is placed upon the pen, then these points separate and the mark of these points upon the paper is an indication of the position of the pen.

Q. Won't you show that with a pen?

A. I have a little instrument here that I have just constructed that illustrates or indicates what I wish to show —(producing small instrument and illustrating.) That is the position of the pen—and indicates where the two marks would show when the pressure is placed on the pen. If the pen is held in the ordinary position—by the ordinary position I speak of that position when the pen holder is pointing towards the writer. Now, if pressure

is placed on that pen, on a downward stroke, the two marks of the pen will be parallel with each other. When pressure is placed on the pen when it is held in that position, and the stroke is made from left to right, then the two points of the pen will follow each other in one track as it were, so that the position is indicated by the marks of the nib of the pen. I have two small crayons here, which I have fastened together, which illustrates this point that I make, in this way. If I put these two crayons on the paper in the ordinary position of a pen in the act of writing, and make a stroke (illustrating) I make two marks—the downward stroke, with the pen spread in that position, would make two parallel marks, in a vertical position. If we move that pen from left to right, the two marks will follow each other, and we get but one stroke. Now, the position of the relation of this pen holder and pen to the paper, indicates its position by the position of the shade of the strokes, and particularly the position of the nibs of the pen. For example, if we hold the pen in the ordinary position, we can make parallel downward stroke, with the pen, the shade showing the two marks parallel with each other, just in proportion as we hold it over to the right, just in that proportion we can make what is shown in the finishing part of these enlarged photographs at the end of the two lower signatures which has been blotted and the nib marks of the pen show more plainly. Now, it would be physically impossible to make these two strokes as made upon these two signatures with the pen held in the ordinary position. Because if pressure was placed upon it in that way, the two points would follow each other, so that the marks must have been made with the pen held over to the right in this position, (indicating) far enough, so that when pressure is placed on it, the two marks will show on a stroke made almost in the direction from left to right in this way (illustrating).

Q. Was it characteristic for Mr. Lanehart to place pressure on that pen?

A. It was, that was one of Mr. Lanehart's characteristics in pen writing. Three characteristics in his writing show: One, at the beginning of the letter "L;" one at

the lower part of the letter "L," and the other at the finishing part of the letter "t." That is, this stroke at the end that I am referring to now, the finishing stroke, we find in the signature in question, the pen held in such a position, that when pressure is placed upon it—for example, we have pressure placed at the end of the signature on the downward stroke, where there is a pressure upon the pen—that is the stroke is two or three times as wide as the narrower stroke, made in the different parts of the signature. We also have at the finishing part of the letter "L," which is the result of the pressure of the pen when held in the ordinary position, and the stroke being made from left to right, is attempted, that is a ragged broken stroke, in which the marks of the pen do not show, as they show in the finishing part of this genuine signature.

Q. Is there a shading in the disputed signature at the lower part of the letter "L?"

A. The shading in the disputed signature at the lower part of the letter "L" is a dotted retouching."

Q. What do you mean by a retouching?

A. That is it is disconnected from the letter and put on after the letter "L" is completed, up to the point where this retouching is made or done.

Q. What does that indicate?

A. It indicates that the letter was not satisfactory to the writer, when first written, when first made, and was corrected, or an attempt made to correct it, by the addition of this stroke.

Q. Were two or more strokes used to make the latter part of the letter "L?"

A. Yes, sir.

Q. The latter part of the letter "t," does it show a shading in the disputed signature?

A. It shows a shading in the wrong place, which in my opinion is doubly significant, in that it differs from Mr. Lanehart's writing, diverging from the characteristics—that is to say, if this signature in question was shaded by Mr. Lanehart, the shading would be upon this stroke, commencing at the bottom of the letter. As it

is here, the stroke shows no shading whatever, at this point, which in my opinion, would be impossible with the position of the pen as held. Then when the turn is made, and the stroke goes down, the pressure of the pen is exerted on it, and the shading put in the wrong place.

Q. Was the shading on the down stroke?

A. The shading was on the down stroke.

Q. Would that be possible with a pen held as Mr. Lanehart held the pen, that is, with the pen held away from the shoulder?

A. No, sir, that would be the opposite of what I have illustrated. If the pen were held around to the right, and strokes were made, so that the two points of the pen would follow each other, it would only make one stroke. Just as soon as the stroke was made in the direction of the position of the pen, then pressure exerted upon it, it makes two strokes, the nibs of the pen make two marks.

The signature in question in my opinion, is not a genuine signature, because it is spread out too much in proportion to its size. Take the word "Lanehart" for example, and compare it with the genuine signature. The letters are too far apart in proportion to each other. And this is of significance, because this matter of proportion of letters is a system characteristic that is persistent. That is, one learns to write in a certain proportion, and that proportion is a fixed, comparatively fixed thing. For example, if we examine all these genuine signatures, we find that the relation of length to size of writing and spacing between the letters, is just about the same all the way through, although there are certain differences in it.

If we examine the signature in question, we see that there is a wide spacing, between the letters after the capital "L" in the word "Lanehart." The small letters "e" and "h," are made close together comparatively, and then there is a wide spacing between the letter "r" and the letter "t" at the end, partly due to the shape and abnormal combination in the disputed letter "r" in the word "Lanehart," which is made too wide at the base, and carried out too far to the right.

Then in my opinion the signature is not genuine, be-

cause the alignment—that is the relation of the letters to a line are not the same as they are in the genuine signatures. The signature in question, the small letters rise in the arc of a circle, and extend out to the right, in a way that is, in my opinion, very divergent from the genuine habits of William Lanehart.

Q. Do you observe any of the William Lanehart genuine signatures that were not written on the line?

A. Yes, sir, there are two of them in those photographs, the two endorsements upon the checks, the fourth signature in the first column.

Q. Do they present a straight base line?

A. They do that is ordinarily straight, that is, it has not at all, the characteristics shown in the signature in question. The other endorsement is the third one in the second column.

Q. Do you observe any tremors in the genuine signature of William Lanehart.

A. Yes, sir, there are tremors in the genuine signature of William Lanehart.

Q. Where are they?

A. They are peculiarly placed, and these genuine signatures show a lack of muscular control in certain parts, but show by their freedom and lack of hesitation in many places that element of genuineness which it is always important to consider, that is the unconsciousness, the careless, inattention to the process of writing. The genuine signatures, many of them have a tremor at the lower part of the letter "l," at the base of the letter.

Q. Will you illustrate that?

A. A distinctive significant tremor, is observable, just at the lower part of the letter, that is, at the base, at this point, (indicating), just before this shaded stroke is made (illustrating). And also some of them, quite a number, have a tremor at the top, where the connection is made at the top of this stroke in the capital "L." And then there are occasional tremors in the genuine signature in different places. But these are peculiarly significant habits of this particular writer.

Q. Does any such tremor as that in the letter "L" appear in the disputed signatures?

A. There does not, no sir. And the letter "L" in the disputed signature in the downward stroke, as well as the upward stroke, is too straight. The letter is a long awkward letter, which does not have the graceful combination of curves as shown in the genuine signature. The signature in question is also defective in my opinion, because of its proportions. That is to say, the capital letter "W" is too small, in proportion to the capital letter "L." That is the signature increases in size, apparently from the capital letter "W" up to the end of the capital letter "L" and in that particular it is divergent, from the genuine signature of William Lanehart. Also this particular capital letter "L" is divergent in its long extension, below the line, as compared with the genuine signature, which is no instance, have I found where they extended so far below the line, as in the signature in question.

And the signature in my opinion is also fundamentally defective in its concluding part. This is based upon the points I have already called your attention to—that is the matter of pen position and the shading. But also in the proportions and shape of the concluding part of this signature, which is in my opinion fundamentally divergent from the genuine signature, which at this particular place, show a distinctive individuality, that is a form developed after very many repetitions, and the signature in question the concluding stroke, is too long, it is made downward at the finish, instead of out to the right; the pressure is at the wrong place, that is the shading is at the wrong place, and the letter begins with the stroke, that curves up too much to the left.

Q. What have you to say as to the degree of care shown in the construction of the disputed signature?

A. The disputed signature in my opinion, is fundamentally defective, in its method of construction. That is, in my opinion, it is not a written signature but is a carefully drawn signature. I mean by carefully drawn signature, a writing in which attention was given to the writing process, to the act being performed, from beginning to end.

This is shown by its continuous hesitation throughout, changes of direction, changes in width of stroke, and a general indication of care and attention inconsistent with the genuine writing of anybody. The point I call attention to is shown conspicuously, in the enlarged photograph of the capital "W." If that photograph is held, so that you can look lengthwise of the strokes, any of them, upward or downward strokes—that is, if it is held flat in front of the face, and you look lengthwise of the strokes, you can see changes in direction, the changes in the width of the stroke, due in my opinion to the stopping of the pen at that point, and the difference in pressure, impossible as a result of very careless unconscious writing, and this particular letter is an illustration of the same thing, shown in various other parts of this signature, this difference in width of stroke, in changing direction, as shown in the upward stroke, before the letter "e" and the finishing part of the letter "h," carefully drawn line, which as I say, in my opinion, is inconsistent in the genuine handwriting of anyone—a carefully drawn signature.

The signature is also defective in pen lifts. The pen is taken up in the letter "m" in the abbreviation of "Wm." —interrupted—

Q. In the disputed signature?

A. Yes, sir, in the disputed signature, the pen is taken up in the letter "e" in the word "Lanehart" which is not a habit shown in the genuine signatures.

Q. What have you to say as to whether or not, the lifting of the pen at the end of the letter "e" is characteristic of the handwriting in the body of the will?

A. It is.

Q. What have you to say as to whether it is characteristic of the handwriting of the letters of William H. Skillman which have been offered in evidence?

A. It is.

Q. Do you find that same break at the end of the letter "e" in the word "Lanehart" as appearing in the body of the will and in the letters which have been offered in evidence?

Mr. Clark:—I object to the question as leading.

Court:—The prosecutor can modify his question so as to avoid leading the witness.

Question withdrawn.

(Mr. Reger:)

Q. What resemblance, if any, do you observe, in the letter "e" in the disputed signature, and the letter "e" in the body of the will, and the letters of William H. Skillman, which you have photographed, and which have been offered in evidence?

A. I find in the signature in dispute. the same lifting of the pen, after the small letter "e" and before the letter "h" in the word "Lanehart," which is shown in I think, every instance, in which the word "Lanehart" is written in the "Skillman will," and also in the two letters examined. This is a peculiar characteristic, because the separation of the small letter "e" from the letter following it, like the letter "h," there is no necessity for it, it is not like a combination of the letter "e" with the letter "d" for example, it begins at the top. We have a small letter "e" ending at the base, and that is where the letter "h" begins, and there is no reason for the stopping of the pen at that point. Of course, the combination of the letter "e" and the small letter "a" which letter starts at the top, is not an unusual characteristic, it is characteristic in many writing, because of the shape of the letter "a" which requires a retracing of this long stroke if the pen is not raised. But I find in the writing of the body of the will in question, where the word Lanehart appears, and also in other places, I remember, there is one word "hereunto," I think in the attestation clause—yes, that is the word "hereunto" in the attestation clause—we have the attestation clause—we have the same peculiar disconnection, between the two letters, both of which end and begin at practically the same place, that is at the lower part of the letter.

Q. Do you find it to be the habit of the defendant to stop at the end of the letter "e?"

A. I find it a very frequent characteristic feature of that writing.

Q. Could these divergencies from the signature of William Lanehart of which you have spoken, be accounted for in the fact that the writer was writing under unfavorable conditions?

A. I think not.

Q. Could they be accounted for by unfavorable conditions surrounding the writer?

A. I cannot understand how unfavorable conditions would cause a writer to abandon his own habits and diverge in these fundamental ways from his regular writing.

Q. Are the retouchings which you find in the disputed signature, evidence of a lack of genuineness?

A. I think so, decidedly, I have referred to one already, the capital letter in the finishing part.

Q. Do you find any other retouchings?

A. I do, I find the letter "e" in the word "Lanehart" has been retouched or covered up, at the top by a second application of ink.

Q. If William Lanehart had written his name in lead pencil, and then traced it in ink, would or would not the characteristics of the lead pencil signature appear in the ink signature which covered the pencil?

A. Why I think they would undoubtedly.

Q. Would a person who had difficulty in writing be able to trace an outline?

A. In my opinion, the question based upon the theory that this signature was outlined in pencil—interrupted—

Mr. Clark:—I object to the answer, I think the question ought to be answered yes or no.

Court:—Read the question.

Q. (Qestion read as follows:) Would a person who had difficulty in writing be able to trace an outline?

Court:—I will allow the question.

A. I should say that that would depend upon the outline and upon the person.

(Mr. Reger:)

Q. Would or would not it be difficult for a person who had difficulty in writing, to trace an outline?

A. Yes, sir, I think it would be more difficult for me than to do the writing without the outline.

Q. That is, he could easier write his name without the outline than with it?

A. Yes, if he knew out to write.

Q. Have you examined the pencil marks which appear about certain letters in the disputed signature?

A. I have.

Q. What is the character of the pencil marks which appear there?

A. The character of the pencil marks were of a delicate character, inconspicuous, and in connection with the pen strokes of the signature, appearing only in certain places.

Q. Do you recall in what places, they appear?

A. There is one at the end of the signature in question, at the right hand side of the downward stroke, the end of the letter "t." That is perhaps the most conspicuous one of the signature. There is an outline at the right hand side of the small letter "h" about half covered by the small letter "h," as shown in the enlarged photograph. There is also an outline at the right hand side of the small letter "h," in the word "Lanehart," extending partially around the side of the letter. And there are remnants of pencil strokes, in other portions of the signature.

Q. You have already testified that you have compared the disputed signature, with the hand-writing in the body of the will, and with the letters written by the defendant William H. Skillman?

A. I have.

Q. What resemblance do you see in the disputed signature, to the hand-writing in the body of the will, and in the letters signed William H. Skillman?

A. I find resemblances between the signature in question and the writing in the body of the will and these letters that I have examined here, that is in numerous particulars, some of them very significant. The writing in question diverges from the "Lanehart" writing, in the direction of the writing of the body of the will. One of these is in the letter "W" already referred to, where the beginning stroke is a straight line, half pointed at the top, it would be almost an exact duplicate of the letter "W" appearing in the body of the will. The finishing parts of the letter are decreasing in height, the same as the capital "W" in the body of the will. The capital "W" and the capital "L" are different in size. I find in the body of the will, where the word "William H. Skillman" is written, in every instance, the letter "S" in the word "Skillman," extends below the line of the small letters, about the same as the capital letter "L" does in the document in question. The two letters are similarly formed, the letter "S" and the letter "I." In that particular the divergence of the writing in question, is in the direction of the writing of the body of the will.

I find also this charateristic and peculiarity, the raising of the pen in the small letter "e" in the middle of the name "Lanehart," is the same in the writing in question, and in the writing of the body of the will.

I also find two small letters "a's" in the word "Lanehart" are almost exactly duplicates in numerous instances in the will, that is a charateristic feature, being a difference in slant between the parts of this letter and the other parts of the signature.

Q. From the examination of the signature and comparison with the hand-writing in the body of the will, what is your opinion, as to whether the person who wrote the hand-writing in the body of the will, wrote the disputed signature?

A. I would say in answer to that question, that in my opinion, the writing of the body of the will, is the same

as the signature, only I would modify that opinion by saying, that the connection between the two, is not so forcible in my mind, as the opinion that this in not a genuine signature.

Q. To what degree of certainty has your examination led you, in relation to the falsity of the signature attached to that document, exhibit P. 4.?

Mr. Clark:—I object to the question, as calling for a mere expression of opinion.

Court:—It seems to me that this is in the nature of a probing or testing the accuracy of your own witness, which would more appropriately be a subject of cross-examination. The witness says "in my opinion it is a forgery" and he states his reasons. Now, it is for the jury to determine how accurate and forcible those reasons are, I shall sustain the objection.

Cross-Examination by Mr. Clark:

Q. As I understand your answer to the prosecutor's question, respecting the signature being the same as that in the body of the will, you say practically, that you are clear about that?

A. I made a comparative statement—as compared with my opinion, regarding the genuiness of the signature.

Q. You are not as clear about that in your own mind, as you are with reference to the genuiness of the signature?

A. No, sir. Do you want me to tell you why, or is that enough?

Q. Oh no, I don't want you to tell me why—supposing Mr. Lanehart wrote his signature to this disputed paper in pencil, and then he took a pen, which did not let the ink flow freely, and held it for the purpose of copying or tracing, not for the purpose of writing, would that or not in your opinion, alter any of the characteristics of his hand-writing?

A. It would alter in my opinion, the appearance of the

signature somewhat, if I understand your question. You use the word "characteristics" in a technical sense?

Q. Yes, I used the word "characteristics"?

A. I should say, if you used the word "characteristics" in a technical sense, I would say "no."

Q. "Characteristics" consist in certain regularities, which are observable in all signatures, where the pen is held in a certain position, and where a person is accustomed to writing?

A. There may be characteristics that are not at all connected with pen position, characteristics in a handwriting sense applies to anything that serves to identify or differentiate writing from any other writing, it may be pen position, it may be form, it my be movement, it may be disconnection, or retouching, or anything else.

Q. The shading would be changed, where a person held the pen between the forefinger and the thumb, or whether he held it between the first and second finger, would it not?

A. Yes, sir.

Q. In attempting to trace?

A. Yes, sir; that is, if it changed the position of the pen in relation to the paper. Of course there are those who hold the pen between the first and the second fingers, who do not hold the pen to the right—(interrupted.)

Q. I mean holding the pen to the right—holding the pen to the right with the pen between the thumb and the first finger, would produce one characteristic of writing?

A. Yes, sir.

Q. And holding the pen between the first and the second finger, and not holding out to the right, would produce another characteristic in the writing, would it not?

A. Yes, sir; it would produce another characteristic in the writing, of the shaded portions of the writing.

Q. So that the shaded portions would differ according to the way the pen was held?

A. That is what I have already said.

Q. Precisely—now, in case of attempting to trace a signature, the success with which a person met in tracing, would depend very much, first, in the way he held the

pen, secondly, upon the fluency with which the ink ran from the pen; thirdly, with reference to the position he occupied in attempting to trace—I mean the table or the place upon which he had his paper to write; fourth, the physical condition of the writer; fifth, the freedom with which he was permitted to use his hand, either by reason of being enclosed in clothing or stiffness, or numbness of the hand or both, would they not?

A. Would they not affect the results?

Q. Yes.

A. If your question is, simply one, whether it would affect the general result of a writing, these unusual conditions you have described, I would say yes. If you say would it result in what we find in the disputed signature, I should say "no."

Q. I have not said anything about the disputed signature, I am talking about the effect of conditions upon a person situated as I have described him, in attempting to trace a signature?

A. I think all those things would affect the result, except as to pen position, I do not think that that pen position would affect the tracing to any great extent, that is a mere tracing, but it affects or creates a restraint due to the unusual circumstances, and of course that would affect that writing, is that what you mean?

Q. I mean that of course.

A. You said "tracing."

Q. I am talking now about tracing, too?

A. I did not know how technical you wanted me to be.

Q. I base my question upon the fact that the writer was attempting to trace with a pen and ink, over a pencilled signature?

A. His own signature?

Q. His own, or anyone elses?

A. That would make a difference at once. Suppose he was tracing in a foreign language, the forms of which he did not understand—(interrupted.)

Q. I did not go outside of the English language?

A. Well, those conditions would affect it.

Q. I am not talking about foreign signatures?

A. Well, whether it is his own or someone elses, you said?

Q. Well, his own, put it in that way if you choose?

A. What was the question?

Q. Whether those conditions I have named, would not affect the general characteristics of the signature?

A. I should be inclined to think—yes, I should say so.

Q. There is no way to tell whether the signature to this will, if it was written in lead pencil, before the ink was traced upon it, is or is not the genuine signature of William Lanehart, excepting by the removal of the ink, is there?

A. I don't know what that would do to it, would help it.

Q. The removal of the ink would show the pencil writing, would it not?

A. The pencil writing shows already.

Q. The removal of the ink would show all of the pencil writing, would it not?

A. All of the pencil writing that is covered up by the ink, assuming that there is pencil writing under the ink.

Q. Yes, assuming that there is pencil writing under the ink—the removal of that ink would show all of the pencil writing then, would it not?

A. If you remove the ink perfectly, and do not remove the pencil writing, the pencil writing would be there.

Q. That could be done, could it not?

A. That depends upon conditions, somewhat, it depends upon the kind of ink used, and also upon the time it has been upon the paper.

Q. Is there any way you could tell, to an absolute certainty, whether or not, that is or is not, the signature of William Lanehart, excepting by the removal of that ink, all of the ink from the signature?

A. Why, I would say that would not tell it, I don't think that the removal of the whole of the ink, would tell that that was the signature of William Lanehart necessarily.

Q. I ask you, is there any way to tell, except by the removal of the ink?

A. To tell what? Whether it was traced over pencil or not?

Q. Whether or not the pencilled signature, if there is one there, was or was not written by William Lanehart?

A. I think it would be impossible to tell in that way.

Q. Is there any way to tell, I repeat, whether the pencilled signature, if there is one there, purporting to represent William Lanehart's signature, was or was not written by him, excepting by the removal of the ink?

A. Well, I should say you could not tell that way, and if you want me to say whether I think there was one there, I will tell you that.

Q. I want you to answer my questions?

A. I am trying to.

Q. Then please don't volunteer, I will ask you all I wish to know—you think then, that if the ink were removed, and a pencil signature was there, containing the name of William Lanehart, you would not be able to tell by that pencilled signature, in comparing it with the genuine signatures of William Lanehart, or the standard signatures, whether it was or is written by him?

A. No, sir; I do not think there would be enough of it there to tell in this case.

Q. Have you ever removed the ink from a pencilled signature?

A. I have.

Q. And your opinion is, that enough of it could not be removed, to ascertain what the pencil signature is?

A. Well, you see—(interrupted.)

Q. Answer my question please—your opinion is that enough of it could not be removed to ascertain what the pencil signature is?

A. My opinion is, that there is not enough there to indicate whether it would be a genuine signature in pencil of William Lanehart or not.

Q. You are assuming by that, that there is no lead pencil signature under the ink?

A. No, sir; no.

Q. I have said, if there was a lead pencil writing under the ink,.

A. If it was a sufficiently distinct lead pencil writing under the ink.

Q. I said to you, supposing the name "William Lanehart" was written there with a pencil and then traced over in ink, and this was the signature, now presented to you in a disputed will, are you able to determine whether or not, that pencilled signature is or is not the handwriting of William Lanehart, excepting the ink is removed?

A. If there was enough of it left so that it showed sufficiently, or sufficient of the characteristics of William Lanehart's genuine signature, then you could tell.

Q. Then you mean by that, that the ink may have obliterated some of the pencil marks?

A. No, that is not what I mean.

Q. Very well, I will give it to you another way—this signature may be an abnormal signature, may not it?

A. An abnormal genuine signature?

Q. Yes, an abnormal genuine signature?

A. No, sir; I think not.

A. No, sir.

Q. For the reasons you have given?

A. Oh yes.

Q. How much do you receive a day?

A. I don't know, I haven't made any arrangement in regard to this case.

Q. What are your charges?

Mr. Dungan:—I object to that as immaterial.

Question allowed.

A. I can tell you what I was paid before on the other trial.

Mr. Reger:—I object to this line of evidence as immaterial and irrelevant, it does not go to the weight of this case.

(Mr. Clark):

Q. What do you charge in this case?

Mr. Reger:—Same objection.

Question allowed.

(Mr. Clark):

A. I haven't made any charge.
Q. What do you expect to receive?

Same objection.

Court:—The witness says he has made no arrangement and has made no charge.

Objection sustained.

(Mr. Clark:)

Q. You do not come here gratuitously?
A. No, sir.
Q. You expect to be paid?
A. Yes, sir.
Q. And you expect to be paid more than fifty cents a day, don't you?
A. Yes, sir; I think so.
Q. You expect to be paid $50 per day, don't you?

Mr. Reger:—I object to the question as immaterial and irrelevant.

Objection sustained.

Mr. Clark:—Prays exception.

(L.S.) THEODORE B. BOORAEM,
Judge.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Clark) :

Q. What are your usual charges for service of this character?

Same objection.

(L.S.) THEODORE B. BOORAEM,
Judge.

Same ruling.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Clark) :

Q. You purposely made no arrangement as to charge, so that you might be able to answer the question in this way?

Mr. Reger:—I make the same objection.

Question allowed.

A. No, sir, I did not.

(Mr. Clark) :

Q. Why didn't you make an arrangement as to charge?

Same objection.

Objection sustained.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Clark):

Q. You did before, didn't you?

Mr. Reger:—Same objection.

Objection sustained.

Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Clark):

Q. In this case?

Same objection.

Same ruling.

Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Clark):

Q. You testified before in this case?
A. I did.
Q. And this is the second examination?
A. This is the second examination.

Q. And on the former occasion, you were paid a compensation for your services?

A. Yes, sir.

Mr. Reger:—I object to this line of examination, for the reasons already given.

Court:—I do not think that whether he was paid for the former trial or not, has anything to do with this case. You may ask the witness whether he is here under a retainer by the State or not, unless there is an arrangement that he should have so much money, I shall exclude the further examination on this line.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Clark):

Q. This signature to the Skillman will, is a very bad forgery, is it not?

A. In speaking of other forgeries, comparing it with other forgeries, I should say so.

Q. Comparing it with the genuine signatures that you say are standards?

A. When you asked me the question, whether the signature to this "Skillman will" was not a very bad forgery, then I have to compare that with what I think are forgeries, not with the standards in this case.

Q. It is a very bad piece of work, taking the standard signatures here as genuine signatures?

A. Yes, I think that is true.

Q. And it is so bad, that anyone could see it, and observe the difference between the handwriting, between a standard signature and the signature attached to the will?

A. I cannot say what anyone would say, but it seems

to me that any intelligent competent person would be able to see it.

Q. And that had no weight at all with you in forming your conclusions?

A. Certainly—do you mean that it is bad, or what someone would think of it?

Q. No, whether the condition of the signature, had any weight at all with you in forming your conclusions as to it?

A. There are all degrees of success in simulated signatures. Sometimes it is quite well done, and sometimes it is very fairly done—(interrupted.)

Q. Is there any effort,so far as your opinion goes, to disguise the handwriting?

A. In my opinion, that is a simulation of the genuine signature of William Lanehart.

Q. You think there is some standard to go by?

A. Yes sir, his genuine signatures, and the general form of his signatures.

Q. Then the signature does indicate the general form of the genuine signature?

A. In a general way, yes sir.

Q. So it is not so bad after all?

A. You can tell what it is, yes.

Q. I know, but—(interrupted.)

A. These are all comparative questions, and I cannot say—(interrupted.)

Q. I was only wanting to know what there was of similarity between the Lanehart signature and the Skillman signatures, of the signature of William Lanehart?

A. It is spelled the same, and the general impression it would give at the first glance would be, that it was in a general way, similar to the genuine signature.

Q. Now, in writing or attempting to trace—an ability to trace well depends largely upon the paper, the pen and the ink, does it not, the kind of paper used, its texture, as well as the pen and the ink?

A. Those would affect it of course, but of course the skill of the operator would be the main point.

Q. Well, the skill of the operator is the main point of

course, but I am asking you this question, whether the texture of the paper has anything to do with the success or non-success of an attempt to trace?

A. Yes sir, I think it might.

Q. Does the character of the pen have anything to do with it?

A. You are speaking in a general way?

Q. Yes?

A. I think that might affect it, yes sir.

Q. Does the character of the ink have any effect upon it?

A. Yes sir, it might.

Q. So that a paper of a fine or course texture, the ink being thick or thin, a pen being poor or good, would all have some effect upon the effort of tracing?

A. It might have.

Q. Did you take into consideration these things in forming your opinion, touching the tracing in this case?

A. Certainly.

Q. Did you see the pen with which this signature was claimed to have been written?

A. No, sir.

Q. You have never tried the pen?

A. No sir, I do not remember of seeing it?

Q. The paper is an ordinary foolscap, is it not?

A. Yes sir, I think so.

Q. Is that of a coarse or glazed texture?

A. That is fairly good paper.

Q. I know it is fairly good paper—I did not ask you that—but it is not like the usual cap, it is not glazed, is it?

A. I think this was a calendared paper, but it has been handled so, that it has—(interrupted.)

Q. Is the paper as of good texture, or bad texture or as good as a legal cap?

A. There are all kinds of legal cap, it is as good as legal cap of this quality.

Q. I show you this paper, is it as good as this legal cap, which I now show you?

A. It would be impossible to say very positively, on

account of the handling that that paper has had, I should say there was not very great difference, unless you mean as it would affect the writing, is that the idea? You are not speaking of the thickness of the paper or the weight of the paper, as to how it would affect the handwriting?

Q. Yes, I am speaking of the weight and thickness of the paper, and as to how it would affect the handwriting.

A. I should say that these two would be practically uniform, parallel as to surface.

Q. I want to ask you if you think this signature photographed in the class "B," and marked Exhibit P.40, is a fair demonstration or illustration of this signature attached to the will?

Court:—I think the witness should testify as to it, and then the paper could be handed to the jury, you are submitting the exhibit before the answer to the question is given.

Q. (Question repeated)—I want to ask you if you think this signaure, photographed in the class "B," and marked Exhibit P. 40 is a fair demonstration or illustration of this signature attached to the will?

Court:—You may answer that.

A. It is.

Court:—Now, if the jury desire to look at the exhibit they may do so now (photographs handed to jurors.)

(Court):

What opinion have you, as to the writer of Exhibit P. 4, the disputed document, and the writer of the letters marked Exhibits P. 33 and P. 34?

A. I have no doubt whatever about them, that they are the same.

Q. You mean the disputed signature and the writer of the letters Exhibits P. 33 and P. 34?

A. No sir, the body of the will.

Q. Referring in Exhibit P. 4 to the body of that paper?

A. I do, that is my opinion, but body of the document of Exhibit P. 4 and the two letters marked Exhibits P. 33 and P. 34 are undoubtedly the same handwriting.

(Mr. Clark):

Q. Those are the Griggs letters?

A. Yes, sir.

Re-Direct by Mr. Reger:

Q. You have given it as your opinion, that William Lanehart did not write the disputed signature?

A. Yes, sir.

Q. You have also given it as your opinion, that the same hand which wrote the body of the will, wrote the disputed signature?

A. Yes, sir.

Q. You said on cross-examination that there were not as many evidences that the hand which wrote the body of the will, wrote the disputed signatures, as there were, that the signature itself was false, and you offered to explain and were not permitted to explain—now will you please explain what you meant by that?

A. In my opinion, the signature in question is an imitation of the genuine signature of William Lanehart, and that it has that about it, which serves to identify it, as having been written by a particular person, not William Lanehart, and the proofs of that are, simply that the unconscious characteristics got into that signature or that have been put in it, without it being intended to be there, and for that reason there is in it, some basis for the opinion, as to the connection between the writer of a signature which is not genuine and the genuine writing of one, who might have made it, as there is for example,

between the body of this document in question, and these letters, where we have a number of characteristics, and various things, which connect them. Of course, in the signature in question, we have just the things I have been pointing out, or attempting to, which connect the signature in question with the writing in the body of the will.

Q. Is or is not, that always true, in simulated or forged signatures?

A. Oh, undoubterly.

Q. You were asked, if the ink were removed, whether or not, you would then be able to tell whether there was a genuine signature of William Lanehart, under the writing, and you answered that you did not think there was much writing there, and offered to explain and were not permitted?

A. Yes.

Q. What did you mean by that?

A. I mean by that, that in my opinion, there would be a genuine signature of William Lanehart under this writing. That is to say, if the signature had been placed there by William Lanehart as a means by which he could make an ink signature, it would be written in such a way in my opinion, that where he wrote his own signature. its presence there would be unmistakable. If he was writing, because of unfavorable conditions, or feebleness, or anything of that kind, that is, he would not make a delicate outline of the signature and then write it with pen and ink, but he would write it with a pencil so that anyone could see it, and the examination of the signature through it, with a microscope, shows no indication that there was a pressure of a pencil there, or that a genuine signature had been written with a pencil even if the ink were removed.

Q. Are there any evidences of erasures?

A. There are evidences of erasures in this enlarged photograph of the letter "W," and though the pen line has been disturbed in a way that in my opinion cannot be accounted for by its use in handling it altogether. Of course the fact that it has been handled and used, inevitably affects the surface of the paper. But this signature

throughout shows these white streaks across the lines. These white places are particles of fibre of the paper, torn out of the line, and in this large photograph of the letter "W," these particles of paper are perfectly apparent, you can see them very readily, and the examination of this signature throughout, shows a disturbance of the paper, which in my opinion, is the result of the removal of the outline, which was made before the signature was written, but the outline was a delicate outline, the outline where it is shown, there is no indication in the paper at all that it had been disturbed, showing that it was not a signature in my opinion, but that it was a delicate outline sketched in there in order to make an imitation of the genuine signature—not a genuine signature, written in pencil and afterwards written over. Such a result the conditions unmistakably show, the conditions here are unmistakable. There are certain parts of his signature where there are no evidences at all of the presence of the pencil.

Further Cross-Examination by Mr. Clark:

Q. Can you tell from your examination now, when the disturbance of which you speak took place?

A. No sir, only that it took place before I made this examination I have described.

Q. Is there evidence on this paper, of the glazing having been removed, by an attempt to erase the pencil lines?

A. Well, the glazing has been removed by handling it.

Q. Can you tell, in consequence of that, whether or not, there was any attempt at an erasure, within six months?

A. Oh, no, I cannot tell anything about that, I cannot give any date at all.

Q. Or a year?

A. Oh, no sir, I cannot tell you anything about that, I cannot give you any date.

Q. Would you be able or willing to say that the disturbance you speak of, was not due entirely to the handling of the paper, having gone through a trial occupying

several weeks, and the trial here occupying several days, and the examination necessarily incident to preparing for the trial, while the paper was at the Surrogate's office?

A. I would say in answer to that, that these conditions might be due to the circumstances that you have described, but I have already said that in my opinion, that this disturbance was of a characer—(interrupted.)

Q. I did not ask you that?

Court:—I think the witness is entitled to complete his answer.

A. It indicated that it was more than would result from such handling, although I would say that I would not say so absolutely.

Q. I see—your conclusion, in answer to the Prosecutor, that you would not be able to tell whether this signature was or was not written by William Lanehart, is based upon the theory that there was no pencil signature there, attached to that paper, before it was traced in ink, was it not?

Mr. Reger:—I object to the question, the witness did not say that.

Question allowed.

A. If I understood the question aright, I would say that in my opinion, there was no—what could be designated as a—"genuine signature of William Lanehart there."

Q. And your answer to his question is based upon the theory that there was no pencil signature there?

A. As a signature.

Q. As a signature?

A. Yes sir, that there was no pencil signature there.

Q. As a signature?

A. Yes, sir.

Q. Now, if there was a pencil signature there, as a

signature, then subsequently an effort was made to trace it in ink, would there be any way to determine whether that signature was or was not written by William Lanehart, excepting by the removal of the ink?

A. That is the same thing we had before, and I would have to answer in the same way. In the first place in my opinion, unquestionably—(interrupted.)

(Court):

Q. If there had been in question a genuine signature of William Lanehart?

A. I think those conditions would be unmistakable.

(Mr. Clark):

Q That you would have to remove the ink?

A. No sir, that condition which you describe.

Q. If the paper were actually signed by William Lanehart in pencil, and afterwards traced by him in ink, would there be any way to tell, excepting by the removal of the ink, whether or not, that handwriting was or was not originally in the hand of William Lanehart?

Mr. Dungan:—I object to the question, because it has been asked several times already.

Question allowed.

A. No sir, I do not think you can tell in that way.

(Mr. Reger):

Q. You said there was a pencil signature underneath as a signature, was there a pencil writing underneath in your opinion?

A. In my opinion, there was a pencil writing under parts of it.

Adjourned to November 27th, 1907 at 9.45 A. M.

Transcript of stenographer's notes of evidence taken in the above entitled cause, before his Honor, THEODORE B. BOORAEM, Judge, and a Jury, at the Court House, in the City of Somerville, New Jersey, on the twenty-seventh day of November, 1907, at 9.45 A. M.

APPEARANCES:

MR. JOHN F. REGER, Prosecutor.

MR. NELSON Y. DUNGAN and MR. E. P. JOHNSON, Associated for the State.

MESSRS. CLARK & CASE, for the Defendant.

MARY M. STEELE, sworn in behalf of the State.

Examined by Mr. Reger:

Q. Where do you live?
A. Somerville.
Q. What is your profession?
A. A lawyer.
Q. Are you also a stenographer?
A. I am.
Q. Did you take this testimony in the Orphan's Court, on the trial of the appeal from the probate, of the last will and testament of William Lanehart?
A. I did.
Q. When was that testimony taken?
A. I could not say certainly, Mr. Reger, the notes will show.
Q. You may refer to your notes (handing book to witness) and tell us when the testimony so taken was taken?
A. It was commenced on the 29th of January, 1906.

Q. Did you take all the testimony that was taken in that trial?

A. I did.

Q. And on that trial, was the defendant William H. Skillman, sworn as a witness?

A. He was.

Q. I show you a paper purporting to be the last will and testament of William Lanehart, deceased, and ask you whether that was an exhibit at that time?

A. It was.

Q. Was the defendant William H. Skillman shown that paper, and asked in whose handwriting it was?

A. He was.

Q. What was his answer?

A. "It is in mine, excepting the signature," I would not say that those were his exact words, but that is his testimony.

Q. Did he at that time, testify when the directions for the writing of that will was given?

A. He did.

Q. When did he say those directions were given?

A. Between the middle and latter part of January, 1905, he thought the latter part of January.

Q. Did he at that time say when the will was signed?

A. He did.

Q. When did he say it was signed?

A. Two or three days after the 27th of February, the day it was dated.

Q. Did he say whether he had seen Mr. Lanehart, between the time when the directions for the writing of the will was given, and the time when the will was signed?

A. He did.

Q. Did he testify what Mr. Lanehart had said to him, with reference to the will?

A. Yes.

Q. What did he say?

A. He said he did not think he had given him any directions, except to draw the will, as soon as he could fix the will up.

Q. Did he say whether Mr. Lanehart had referred to the will, between the time when the directions were given and the time when the will was written?

A. Yes, in this way, to fix up and to draw it as soon as he could.

Q. How many times was this said to him?

A. He gave no definite number.

Q. Did he say it was more than once?

A. Several times I think.

Q. That Mr. Lanehart had told him to go ahead and fix it up several times?

A. Yes.

Q. What, if anything, did he testify as to what was done with the will after it was signed?

A. He said he kept it in his possession, after it was signed, until after Mr. Lanehart's death.

Q. And where did he then bring it?

A. Up to Somerville, to Mr. Clark's office.

Q. Was he able at that time to testify to the date of Mr. Lanehart's death?

A. Not certainly, no sir.

Q. What did he say with reference to that?

A. He said he thought it was in the second week in May, that he did not remember the date, or that someone had told him the date—he believed it was the 12th he did not know of his own positive knowledge, but he knew neither the day of the week or the day of the month.

Q. Did he say whether or not the will, after it was signed, had been seen by anyone else?

A. He said no one had seen it, from the time it was signed, until after Mr. Lanehart's death.

Q. And that it was in his possession, during all that time?

A. Yes, sir.

Q. Did he say whether or not, he was at the funeral of Mr. Lanehart?

A. He said he was not at the funeral.

Q. Was he asked why he did not attend the funeral?

A. He was.

Q. What did he answer?

A. He said he was ill, that he could not walk there, and the carriage was full, the carriage in which his family went.

Q. Did he say where he was the day of the burial?

A. He admitted where he was, yes sir.

Q. Where?

A. In Somerville.

Q. When did he say the will was admitted to probate, with reference to the time that the law allowed?

A. The first day.

Q. The first day the law would permit?

A. Yes sir, the first day that his counsel had told him it could be filed, he said nothing about the law, further than that.

Q. Was he asked, if he had taken the will to Judge Bartine and showed it to him?

A. Yes.

Q. What did he say with reference to that?

Mr. Clark:—I object as immaterial and irrelevant.

Question allowed.

Mr. Clark:—I will ask you Honor for an exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

A. He said he had not shown Judge Bartine the original, it was a copy he had shown the judge.

Q. Was he asked to examine the will at the time of the trial, while he was on the witness stand, for pencil marks?

A. Yes, sir.

Q. What did he say, as to whether or not he saw pencil marks?

A. He said he had not seen any, and he could not see any that morning.

Cross-Examination by Mr. Case:

Q. You were asked with reference to the giving of directions by Mr. Lanehart to Mr. Skillman—was he not asked—"Mr. Skillman, when did you have a conversation with Mr. Lanehart in relation to a will, with reference to the time this will was executed, I mean, when did you have the first conversation"—and did he not answer—"not when he first mentioned about writing the will, I will start with a memorandum?"

A. Yes, I think he said that.

Q. Was the question then asked—"when was that, with reference to the execution of the will"—and the answer "that was in January, previous to his death, from the middle to the latter part of January, I would say the last part of January?"

A. I so testified.

Q. And the question was then asked—"and this will was executed when"—and the answer—"the last part of the next month, February?"

A. Yes, sir.

Q. "Q—did you make a memorandum, in consequence of the conversation you had with him in reference to the will"—and the answer—"I did"—and then the question—"have you that memorandum"—and the answer—"I have?"

A. Well, I will have to look at that.

(Court):

Q. You may refer to your notes, what page is it on-

Mr. Case:—Page 24.

A. (Reading)—"have you that memorandum,"—answer—"I have"—yes, sir.

Q. And the previous question—"did you make a memorandum in consequence of the conversation you had with him in reference to the will"—and the answer—"I did?"

A. Yes, sir.

Q. And was he asked—"will you produce it"—and did he answer—"I will?"

A. Yes, sir.

Q. He is instructed to produce it, and he produces a memorandum?

A. Yes, sir.

Mr. Reger:—I object to the further questioning on this line as not being cross-examination.

Court:—I think it is, it pertains to the instructions he received, I will allow the examination.

Mr. Case:—Is he asked—"is that the paper on which you made the memorandum?"

"A. It is.

"Q. That is the envelope containing it, it is on the back of an old letter?"

"A. Yes, sir.

"Q. You made a memorandum on the back of an old letter?

"A. Yes"—is that right?

A. That is correct, that is here.

"Q. You say this memorandum was made by you within a month preceding the execution of the will?

"A. About a month, yes.

"Q. Where was it made?

"A. At my place, in front of my wagon house.

"Q. Who was by when the memorandum was made?

"A. As we were closing the matter up one of my boys was called up, no one was present really, there was no one present when the memorandum was made, except Mr. Lanehart and myself.

"Q. Who was called up?

"A. One of my sons.

"Q. What is his name?

"A. Edward, he was called up on that business.

"Q. Who called him?

"A. Mr. Lanehart.

"Q. And he had a conversation with him then and there?

"A. Yes.

Mr. Reger:—I object to this line of evidence, where it extends or goes to the extent of detailing conversations between Mr. Lanehart and the defendant's son, Edward.

Court:—I do not think the cross-examination should extend to conversation between Mr. Lanehart and the son, Edward, I will permit the word "conversation" to be used, but I shall exclude the conversation itself.

"A. Yes,about a matter entirely foreign to this matter"—all of these questions were asked, and the answers given in that way?

A. Yes sir, as they appear here.

Q. And then was he asked as follows: "Q. Now then, after the memorandum was made, did you and Mr. Lanehart have a talk about it?

"A. Not at that time, not particularly, except that he wished me to draw the will, and to put these facts in it.

"Q. I ask you now, Mr. Skillman, what conversation passed between you and Mr. Lanehart at the time you made this memorandum, touching the preparation"—that question was withdrawn, and then the following evidence was given by Mr. Skillman—"Q. Mr. Skillman, at any other time, at any other place, did any conversation occur between you and Mr. Lanehart, wherein you made a memorandum touching the preparation of this will?

"A. No."—is that correct?

A. That is here, yes sir.

Q. And then did he testify as follows: "Q. What memorandum did you use in the preparation of the will?

"A. The one produced here.

"Q. The memorandum which you have now here in court, is the memorandum which you used in the preparation of the will?

"A. Yes sir."—Is that correct.

A. Yes, sir.

Q. And then was Mr. Skillman asked this question (as found on page 27), "Q. Mr. Skillman, state the conversation which passed between you and Mr. Lanehart in relation to the preparation of the will, what instructions he gave you and what memorandum you made in consequence of his directions, by means of which the will was subsequently prepared?

"A. Well, as I understand the question after Mr. Lanehart had given me the points that I made the memorandum of, he said 'go on, and draw the will, or fix the will up,'that was the purport of what he said, and that was all he said, so far as I can recollect, except he said 'do it before long, or in the near future' "—is that correct?

A. Yes sir.

Q. And then did he testify as follows: "Q. Now what were the points, the directions which he gave you, of which you made a memorandum?

"A. That was in the document I showed you here this morning, I still have it in my pocket.

"Q. That is what I am now asking you for?

"A. Do you want the document?

"Q. Give your statement as to what his directions were?

"A. As to what I put down in the memorandum—that is what I drew the will from, I went on and drew it from the memorandum he had given me.

"Q. You are entitled to use the memorandum, if you wish to do so?

"A. I will have to, he wished Mrs. Dr. Stryker"—(interrupted.)

Mr. Reger:—I object to this—the question on direct examination was, "When were the directions given for the writing of the will" not what was given, but when they were given. That is all I asked on the direct examination, and it seems to me it is not cross-examination of anything brought out on direct examination.

Objection sustained.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge,

(Mr. Case):

Q. I understood you to say that the defendant testified that subsequently the decedent had said to him, to go on and draw up the will as soon as he could, as soon as possible; now, is not this what he said at that time? "He said to give to John S. Van Orden, $250.—(interrupted.)

Witness:—What is the page?

Mr. Case:—Page 28.

Mr. Dungan:—We object to the testimony. Mr. Case is attempting to put in his testimony, referring to a time prior to the testimony, brought out by the Prosecutor, on the direct examination.

Court:—The question will be limited to the conversation or statement or instructions given by Mr. Lanehart

between the date of the first instructions and the date of the death of Mr. Lanehart. In other words, no testimony will be allowed as to the contents of the memorandum that was made on the day of the first visit, when the first instructions were given, and when the defendant has said that he wrote on the back of an envelope or letter or piece of paper, standing in front of his wagon house on that day.

Mr. Clark:—To that ruling your Honor we take an exception.

Court:—The exception may be noted, whether it will be sealed or not, will be determined hereafter.

(L.S.) THEODORE B. BOORAEM,
Judge.

Mr. Case:—I have not asked my question yet.

Court:—I made my announcement, in response to the request of the State—confine your answer to the conversation, subsequent to the wagonhouse incident, nothing as to the wagonhouse incident must be referred to.

(Mr. Case):

Q. "Mrs. J. V. H. Reed, $50.—(interrupted.)

Mr. Reger:—I object to the question being read, it has been already ruled out by the court, and it is improper that it should be stated at this time.

Court:—The question may be asked.

(Mr. Case):

Q. "Mrs. William Duffield, $50;" he wished Miss Laura Kellogg to have one half of his estate, after the above and the expenses were taken out, and the balance

he wished to give to myself. The Blawenburg church was to receive their present salary until his estate was settled, the present salary which he was then paying; he wished me to advise and consult with Miss Kellogg, as to the disposition of the money which she would receive, those were the points which I jotted down. Then he told me to go on and draw the will up in the near future as soon as I could." Were not those the directions which you referred to in your testimony and in connection with his drawing the will in the near future, and as soon as he could."

Mr. Reger:—I object for the reasons already stated.

Court:—The objection will not be sustained, but the witness will be directed to state, whether or not the defendant at the trial stated that such instructions were given by William Lanehart to him, at a time subsequent to the transaction at the wagonhouse that you have just testified to, yes or no.

Mr. Clark:—To that ruling we desire an exception, as being a limitation to the answer.

Court:—You may have the exception noted upon the record.

(L.S.) THEODORE B. BOORAEM,
Judge.

A. As I understand it, I am to testify as to whether his instructions to Mr. Skillman to draw the will up as soon as he could were given after or before the interview at the wagonhouse?

Q. No, whether or not the instructions which had been embodied by Mr. Case in his question, were stated by the defendant, at the former trial to have been given subsequent to the incident related at the wagonhouse, as taking place at the wagonhouse?

A. They were not given subsequent to the interview at the wagonhouse.

Q. They were not given subsequent to the interview at the wagonhouse?

A. No, sir.

Q. You mean the directions to go on and fix the will up as soon as he could were not given subsequent to the interview at the wagonhouse?

A. No sir, I mean the Van Orden bequest and the Mrs. Reed bequest, those directions were not given subsequent to the interview at the wagonhouse.

Q. I wish you would turn to the testimony, which you testified to before, on the examination by the Prosecutor, as showing that Mr. Lanehart told Mr. Skillman to go on and hurry up and draw the will up as soon as he could?

A. It is on page 27.

Q. Read it, please?

A. (Reading) "Mr. Skillman, state the conversation which passed between you and Mr. Lanehart in relation to the preparation of the will, what instructions he gave you and what memorandum you made in consequence of his direction, by means of which the will was subsequently prepared?" "Well—(interrupted.)

Mr. Reger:—I object to that evidence being read, the same ruling of the court as already made, practically covers it, it was the same question, the question now asked is or attempted to be answered is, as to what instructions were given—that has already been ruled out.

Court:—The answer will be excluded.

Mr. Clark:—I will ask your honor to grant me an exception—we cannot excude the question without excluding the meaning of the answer.

Court:—The Prosecutor asked as to what instructions were given by Mr. Lanehart, according to Mr. Skillman's

testimony, to the defendant, subsequent to the date of the giving of the first instructions. Now the witness can certainly turn to that part of the record which she testified to, and state again, without repeating the question, just what she said to the Prosecutor.

Mr. Case:—This is a cross-examination and I wish to show the imperfections of the testimony already given.

Court:—You may do so but not in this way.

Mr. Case:—Can we have an exception to the previous question.

Court:—Yes—exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Case):

Q. Please read Mr. Skillman's answer which you had in mind when you replied, as I have stated, to the Prosecutor's question.

Court:—Do you withdraw the first question. I have not overruled your question, but I instructed the witness to limit her reply to the answer.

Mr. Case:—I will withdraw the question and put it another way.

Question withdrawn.

(Mr. Case):

Q. Miss Steele, in your answers to the Prosecutor, you stated that Mr. Lanehart had told Mr. Skillman to go on and draw up the will and hurry up as soon as possible or words to that effect—will you please turn to your record of the testimony and give the questions and answers embodying that statement?

A. That statement was made more than once.

Q. You had the matter before you a moment ago?

A. On one occasion? He saw him several times.

Q. What page is that on?

A. Page 36 (reading) "He saw me several times, but never to say anything but once or twice he said, 'fix it up as soon as you can;' he came up while I was sick, and while I was convalescing, and said, 'now Skillman fix it up as soon as you can.' "

Q. Is that all the answer?

A. (Reading) "And he may have said something similar before."

Q. Was there any other time, in which he said that which Mr. Skillman testified, was there any other time in his testimony, that Mr. Skillman testified to directions by Mr. Lanehart to hurry up and draw the will as soon as he could?"

A. Do you mean in the whole course of his testimony?

Q. Yes?

Court:—Subsequent to the wagonhouse incident.

A. (Reading) "So far as I can testify he said that subsequent to the wagonhouse incident, Mr. Lanehart saw me several times and told me. He never gave me any further directions except to go on and fix the will up as soon as he could."

Q. There is no other place in his testimony, except the one to which you have referred, in which he states that?

A. None that I recollect.

Q. None that you recollect?

A. No, sir.

Q. Did he testify that the same directions, practically were given him in the conversation at the wagonhouse?

A. Yes, sir.

Q. What were his words at the wagonhouse, concerning "hurrying up?"

Court:—That same question I have excluded.

Mr. Case:—I did not think in that shape, I would like to have a ruling on that question.

Court:—I will overrule the question.

Exception prayed.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Case):

Q. You have said that Mr. Lanehart gave directions concerning the drawing of the will, the middle or the latter part of January, 1905, that Mr. Skillman so testified —please turn to the testimony with reference to that?

A. That was in January.

Q. What page is it on?

A. Page 24 (reading) "That was in January previous to his death, from the middle of the latter part of January, I think I may say the last part of January.

Q. He says nothing there about directions?

A. Not in what I have read, no sir.

Q. That is what I asked you?

A. I read the whole answer.

Q. That is the only reference you have in your answer to the Prosecutor, by any statement by Mr. Skillman that he gave the directions?

A. I cannot say that is the only reference that is in my mind when I testified, but to say that that was the only reference, I would have to make a close examination of the testimony to say that.

Q. I ask you to turn to the page where the directions are, whereby you answered and made reference to the directions given?

A. That was on page 36.

Q. It was to those directions, that you referred in your answer to the Prosecutor?

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A. The directions that he gave on page 36?

Q. Yes?

A. Yes, sir.

Q. But they were not the directions for drawing the will, they were the directions to hurry up?

A. Well, evidently.

Q. Now, I ask you where the directions are given for the drawing for the will I referred to?

A. To draw the will?

Q. No, to go on and draw the will—are they not given on page 28?

A. Well, I do not have any reference to his directions concerning the contents of the will, I only had reference to what he said concerning when he should draw the will.

Q. You spoke about directions given between the middle and latter part of January?

A. Yes.

Q. What directions were they?

A. The directions I had in my minl, were the directions concerning his going on and drawing the will, when he should do so.

Q. Turn to page 24, your answer concerning it being "from the middle to the latter part of January," and read the preceding question and answer, and then tell us what it was that was done between the middle and the latter part of January?

A. Well, you asked me what was in my mind.

Q. Please answer the question?

A. Read the preceding question and answer?

Q. Yes?

A. I hadn't any reference to that, I did not read it. I shall have to go through the whole testimony.

Mr. Dungan:—This is objected to, on the statement of the witness that she had no reference to that part of the testimony whatever, in her testimony, and it is not proper cross-examination consequently.

Court:—I will overrule the objection but I will limit

the witness to the answer and the statement made by the defendant as a witness.

Mr. Case:—Are we not entitled to have the question to which the answer was given?

Court:—Not just now, you may have that later.

A. (Reading) "You say that is the paper on which you made the memorandum"—that is the question—(interrupted.)

Court:—We do not want the question,give the answer?

A. (Reading) "It is, that is the envelope containing it."

(Mr. Case):

Q. Did you read the answer preceding that matter which I called your attention to, or the one following it?

A. Preceding.

Q. Let me call your attention to page 24, the first answer given on that page is this—"that was in January previous to his death, from the middle to the latter part of January ?"

A. Just one moment please—(reading)—"That was in January previous to his death, the middle of the latter part of January"—do you want the answer preceding that?

Q. Yes—that was the answer you gave me a few moments ago, having relation to the time when the directions were given?

A. Yes.

Q. Now, I ask you to read the answer preceding that?

Mr. Reger:—I object to that.

Objection overruled.

A. (Reading) "Now, when he first mentioned about writing the will,I will start with the memorandum."

(Mr. Case):

Q. Yes, read it—go on?

A. (Reading) "When was that with reference to the execution of the will."

Q. It was to that, that the answer is made "from the middle to the latter part of January," is it not?

A. Well, in drawing my memorandum, as to what testimony I was to give in this matter, I referred to this one question—"when was that with reference to the execution of the will"—and the answer—"that was in January previous to his death, from the middle to the latter part of January"—that is the giving of the directions.

Q. That is the answer here at the top of this page (indicating)?

A. Yes, sir.

Q. And that has reference to the preceding answer, has it not?

A. Well, it is in the testimony.

Q. And is not that referring to the memorandum?

A. It refers to the directions in the memorandum.

Q. No, he started with the memorandum, didn't he?

A. Yes, he started with the memorandum.

Q. And he says, "when was that with reference to the execution of the will," and he said—"from the middle to the latter part of January?"

A. Yes, but you were asking me—(interrupted.)

Q. No, never mind—now then it was the directions for the memorandum that was given "from the middle to the latter part of January" was it not?

A. Yes.

Q. And it was to that testimony that you had reference in replying to the Prosecutor, was it not?

A. Well, I cannot say that it was, no.

Q. That was the answer you gave?

A. Yes, but in my mind, I had reference to the time when he wrote it, when he gave it.

Q. It is the testimony in the book we want, not the testimony in your mind?

A. I thought it was the testimony in my mind, to what I had referred that you wanted.

Q. Can you recall what took place except by reference to your notes, now, of the preceding trial?

A. No sir, not at all.

Q. You depend entirely upon your notes, do you not?

A. Entirely.

Q. Now, I say, since you rely entirely upon your notes was it not with reference to that answer given in the testimony, that you made your reply to the Prosecutor's question?

A. No sir, it was not with reference to that exactly.

Q. Is not the answer precisely as you gave it?

A. Yes.

Q. And that is the answer you had in mind,and that is the fact really—in fact, is it not the answer given in the book—is the answer given in the book, not exactly as you gave it there?

A. That he commenced with the memorandum—that is the answer given in the book, but my attention was drawn—(interrupted.)

Q. Now then, I ask you, knowing what the directions referred to to turn to those directions?

A. That is the memorandum.

Q. Yes, if that is what was referred to in that testimony?

A. Well, that is the directions given here.

Q. What page is it?

A. Page 28.

Q. Now what are those directions?

Mr. Dungan:—I object.

Objection sustained.

Mr. Case:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Case):

Q. Do the notes on page 28 of the testimony, correctly give Mr. Skillman's account of the directions which you say he testified was given to him "from the middle of to the latter part of January?"

A. According to the notes, they are the memorandum.

Q. Those notes are correct?

A. As far as I know.

Q. Did Mr. Skillman have his memorandum in hand at the time he testified?

Mr. Dungan:—I object to that.

Objection sustained.

Mr. Case:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Case):

Q. You testified in your testimony in reply to the question by the Prosecutor, that Mr. Skillman said he did not know just when the death of Mr. Lanehart took place—can you turn to the testimony which relates to your reply to the Prosecutor, "that the will was signed two or three days after it was dated?"

A. I have it here—page 53.

Q. The question was: "Q. It is dated the 27th day of February. You have explained why it was dated that day, what day of the week was that, Mr. Skillman?

"A. I think it was on Monday?

"Q. What day was the will signed?
"A. A day or two or three days afterwards, two or three days afterwards.
"Q. Cannot you get it any nearer than that?
"A. No.—(interrupted.)

Mr. Dungan:—I object to all this as not cross- examination.

Mr. Case:—Will you permit me to complete the question first?

Court:—You may complete the question.

(Mr. Case):

Q. "Q. Cannot you get it any nearer than that?
"A. No, I do not know what day of the week it was signed, it was two or three days afterwards"—is that not what was asked and replied?
A. Yes, sir.
Q. Now, then, was there anything testified to by Mr. Skillman, concerning what was done by Mr. Lanehart in reference to the will, at visits between the time of the directions being given, and the execution of the will—I refer you to page 29 of the testimony?

Mr. Dungan:—I object on the ground that it is not cross-examination.

Court:—You may go into that as fully as is necessary.

(Mr. Case):

Q. Was not the will produced, the disputed will produced to Mr. Skillman and the question asked—"When did Mr. Lanehart see this will, that is with reference to its execution"—and did he not answer—"a few days, possibly a week, before it was executed."

Mr. Reger:—I object to the question—all that the witness was asked and testified to on direct examination was, that on two or three or several occasions, between the time that the directions were given and the time the will was signed, that Mr. Lanehart had seen Mr. Skillman and told him to go ahead and fix it up.

Court:—All the conversation that took place between Mr. Lanehart and Mr. Skillman is competent in cross-examination?

Mr. Reger:—As to the time when Mr. Lanehart said to Mr. Skillman to go ahead and fix it up?

Court:—Yes. The question calls for an answer by this witness, as to a statement by this defendant of a certain statement or words used by Mr. Lanehart, at the time that Mr. Skillman showed him the will prepared for execution, and not to the time testified to by the witness, under examination, and not to the times when the instructions were given by Mr. Lanehart to Mr. Skillman. The way the question is framed it does not call for anything between the time of the giving of the directions to Mr. Skillman, and the time of the execution of the will, therefore I will overrule the question.

Mr. Case:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Case):

Q. Was not Mr. Skillman asked "when did Mr. Lanehart see this will, that is with reference to its execution?

"A. A few days, possibly a week, before it was executed.

"Q. Where?

"A. At my house.

"Q. Do you know whether he read it at that time or not?"

"A. I know he did.

"Q. Was there anything said or done in relation to the execution at that time?

"A. There was nothing done, there was something said about its being executed," was that not said?

Mr. Reger:—I object to that as not being cross-examination and incompetent and irrelevant.

Question overruled

Mr. Case:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Case):

Q. Was not Mr. Skillman asked this question: "When did Mr. Lanehart see this will, that is with reference to its execution?

"A. A few days, possibly a week before it was executed.

"Q. Where?

"A. At my house.

"Q. Do you know whether he read it at that time or not?

"A. I know he did.

"Q. Was there anything said or done in relation to the execution at that time?

"A. There was nothing done, there was something said about its being executed?

"Q. Was any time fixed for the execution?

"A. Yes.

"Q. When?

"A. The following Monday, succeeding this time,

when he was there, when he read it over"—was that not testified to by Mr. Skillman?

Mr. Reger:—I object to it for the reasons hertofore given.

Court:—The question in its entirety is overruled.

Mr. Case:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEO. B. BOORAEM,
Judge.

(Mr. Case):

Q. Did Mr. Skillman not testify as follows: I refer you to page 29 of the evidence—"that a few days, possibly a week before the will was executed, Mr. Lanehart called at his house, and after reading the will, fixed the following Monday as the time for the execution"—interrupted—

Mr. Reger:—I object to that for the same reasons.

Question allowed.

A. A few days possibly a week after?
Q. "A few days possibly a week before?"
A. Yes, that is here.
Q. Mr. Skillman did so testify?
A. Yes, according to the notes.

Mr. Clark:—According to the evidence as recorded here, I am afraid there may be some confusion, from the question by the witness, "a few days possibly a week after" and we desire to have that made straight on the record.

Witness:—I mean to say that the answer as repeated by counsel is the one that appears in the notes.

"A few days, possibly a week before."

(Mr. Case):

Q. Mr. Skillman also testified, did he not, "that on the following Monday Mr. Lanehart did not come to execute the will,"—I refer you to page 29 of the record?

Mr. Reger:—I object to that for the same reasons heretofore given.

Objection sustained.

Mr. Case:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEO. B. BOORAEM,
Judge.

(Mr. Case):

Q. Where is the directions to which you refer, as being the directions given, "between the middle and the latter part of January, 1905," the directions which Mr. Skillman testified to, that he followed, when drawing the will —interrupted—

Mr. Dungan:—I object to the question—that relates to no conversation.

Mr. Case:—I want to know what directions were testified to.

Court:—Does not that call for the conclusions of the witness as to what the directions were?

Mr. Case:—I am referring to Mr. Skillman's testimony in that regard, as recorded in that book of evidence.

Court:—Yes, but does it not call for a conclusion of the witness, as to what the directions were?

Mr. Case:—Unless she knows, of course she cannot answer, and she can say so.

Question overruled.

Mr. Case:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEO. B. BOORAEM,
Judge.

(Mr. Case):

Q. Where in the testimony, are the directions to which you refer, as being given by Mr. Lanehart to Mr. Skillman, between the middle and the latter part of January, 1905?

Mr. Dungan:—I object to this, because it has been answered, two or three times, already.

Court:—The witness may turn to that page of the testimony.

Witness:—It is on page 36 of the record.

Court:—Now, Mr. Case you may ask your question.

(Mr. Case):

Q. Are the words "directions" used on that page at all?

A. I will have to examine the page.

Q. You may do so?

A. You ask me if those were the directions, the word "directions" may not appear, and yet there may be directions.

Q. I ask you whether the word "directions" appears on that page or not?

A. I find no word "directions."

Q. You do not find it?

A. No, sir.

Q. When you swear that Mr. Skillman said "there were directions given during the middle or the latter part of January, 1905" you are testifying to a conclusion on your part as to what "directions" means?

Mr. Dungan:—I object to that.

Question allowed.

A. I am testifying according to the notes. "That directions were given."

(Mr. Case):

Q. I asked you to turn to those "directions," and you referred to a page on which the word "directions" does not occur—and I now ask you whether your use of the word "directions" is not a conclusion of your own?

A. Well, to my mind, it does not seem to me that the word "directions" should be used to know whether they are "directions" or not.

Q. It is your conclusion, and not the word of the defendant that you had reference to, in using the word "directions?"

A. It is the words of the defendant.

Q. Where are they?

Court:—The record shows clearly that Mr. Skillman said certain things, now what he said, is relevant I think.

(Mr. Case):

Q. Will you tell us what Mr. Skillman said, whereby you conclude that he gave "directions?"

Court:—Now repeat the words that he said, read them.

A. (Page 37 of the record). "He saw me several times, but never to say anything except once or twice he said, 'fix it up as soon as you can.' He came up while I was sick and when I was convalescent, he said, 'now Skillman, fix it up as soon as you can,' and he may have said something similar before."

(Mr. Case):

Q. You stated in your direct examination that certain "directions" were given, as testified by Mr. Skillman, at the wagonhouse, and I now ask—(interrupted.)

A. I said nothing about the wagonhouse.

Q. "Between the middle and the latter part of January"—certain "directions" were given?

A. Yes?

Q. Now, I ask you to turn to the testimony and give us the page, in which Mr. Skillman gave evidence whereby you conclude that he was given "directions?"

Mr. Reger:—I object—she has been all over that.

Objection sustained.

Mr. Case:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Case):

Q. Will you turn to page 28 of the record—is not the

matter given in the second answer from the last on that page, the matter to which you refer as being the "directions" given between the middle and the latter part of January?

A. I have replied to that several times.

Court:—That has been replied to several times before, and the question is overruled. There is no use going on in a circle, I have ruled upon this question and too much time must not be taken in repetition. You have everything on this page in the record and the ruling of the court, on the question now should limit this examination.

Mr. Clark:—If we are to stop here we will do so but it will be under protest.

Court:—I do not desire you to stop, you may have other very relevant cross-examination, and you may proceed.

Mr. Clark:—I mean on this point.

Court:—On this point you have covered the ground, you have got the ruling of the court on every proposition you have raised, and unless you have something you can call the court's attention to, I do not think it would be proper to permit you to proceed further in that direction.

Mr. Clark:—Then that question is overruled.

Court:—Yes, that question is overruled.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Case):

Q. What did Mr. Skillman testify to, as to the condition of the will, with reference to its being complete at the time Mr. Lanehart was there and read the will over, preceding the execution?

Mr. Reger:—I object for the reasons already given.

Objection sustained.

Mr. Case:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Case):

Q. Did not Mr. Skillman testify that between the time which Mr. Lanehart came and read the will and the Monday following, when he was to come to execute it, that he filled in the date on the will?

A. Refer me to the answer, please?

Q. You ask me for the page—I think you will find it on page 74?

A. I do not see that on page 74.

Q. I call your attention to the question "when did you decide upon the fact that this will was to be executed on Monday, the 27th day of February?"

A. On page 74?

Q. Page 74 as marked in my book?

A. It is not in this book at page 74.

Q. This is the answer to which I have reference (indicating.)

A. It says, "I will be there on Monday morning"—do you want me to repeat the answer?

Q. Did not Mr. Skillman testify that between the time which Mr. Lanehart came and read the will, and the

Monday following, when he was to come to execute it, that he filled in the date on the will?

A. That answer so appears on the record.

Q. And you were asked, "What was done with the will after it was executed," were you not?

A. Yes.

Q. And in connection with that, did not Mr. Skillman testify, "that when they were through, we talked, all of us talked, one with the other, for a few minutes, and Mr. Ely said he had not covered his horse, and he left. Mr. Lanehart left just about the same time, and in a few minutes I followed him to the gate and came back."

"Q. Where was the will when you followed him to the gate?

"A. It was left lying on the lid of my writing desk—(interrupted.)

Mr. Reger:—I object to that question, there has been no direct examination as to this occurrence whatever. The testimony on the direct-examination was that after the will was executed, it was in the possession of the defendant, until brought by him to Somerville, that is all that was asked in the direct-examination, and this question tends to include conversations and statements and transactions by other people.

Objection sustained.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Case):

Q. Did not Mr. Skillman testify as follows—"You said that no one had seen the will, from the time it was

executed, until the time it was produced for probate, after Mr. Lanehart's death"—or words to that effect—now did not Mr. Skillman testify "That after the will was executed, and he returned to the room, that the will was in the possession of his son and daughter?"

Mr. Dungan:—I object to the question on the ground that that is not what she testified to.

Objection overruled.

A. What is the page, please?

Mr. Dungan:—I also object because the examiner has not quoted correctly what the witness did testify to?

Court:—If that is so, the witness will correct that.

(Mr. Case):

Q. Do you not remember that that was testified to?
A. I remember it in a way, but not the certainty to which I care to swear to it.
Q. Turn to page 33—page 76 gives it better, I think?
A. He speaks of the going out with Mr. Ely, and he says, "when I came back, from the horse, then one of my boys was talking about the will."

Mr. Reger:—I object, and I ask that that answer be stricken out as not responsive.

Motion granted, and the answer ordered stricken out.

Mr. Case:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Case):

Q. Did he say, "that he left it lying on the desk when he went out of the room?"

A. He said that on the first page you gave me, page 33, but not on this page 76.

Q. And did he not say in his testimony "that succeeding the execution of the will, the will was kept in a pigeon-hole in his desk?"

A. You will have to refer me to the page.

Q. Do you not remember that that was said?

A. I do not remember the pigeon-hole part of it, no sir.

Q. Can you turn to that part of the testimony to which you referred in your examination, wherein you said Mr. Skillman had testified "that no one had seen the will from the time of signing it, until after Mr. Lanehart's death" (page 38?)—now, on that page he is asked, "No one ever saw this will after it was signed, except you, until after Mr. Lanehart died"—is that right?

A. That is right.

Q. In connection with that, was he not asked "if he had ever talked to anybody about it?"

Mr. Dungan:—I object to that as not cross-examination.

Objection sustained.

Mr. Case:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Case):

Q. And he said, however, "it was seen by the parties in the room, at the time of the execution, didn't he?"

Mr. Dungan:—I object to that for the reasons heretofore given.

Objection sustained.

Mr. Case:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Case):

Q. Is this the only place in the testimony to which you refer to where the will was, or its not being shown to anyone, between the time of its execution and Mr. Lanehart's death?

A. I cannot say positively.

Q. You cannot say positively?

A. No, sir.

Q. And this book contains all the testimony in the case, does it not?

A. It does.

Q. And it is a correct transcript of the testimony?

A. So far as I know.

Q. You took all the testimony?

A. Yes sir, I did.

Q. And you were a sworn stenographer at the time?

A. I was.

Q. And correctly transcribed your notes?

A. To the best of my ability.

Mr. Clark:—We would like to have this book marked for identification, so as to have it preserved in some way.

Court:—Do you want to offer it in evidence.

Mr. Clark:—Oh no, merely offering it for identification—all we want is to identify it, so that we do not need

to bring the witness back, we have already a correct copy of it.

Court:—I will permit the book that has been used as a memorandum to be marked for identification.

Marked D. 1 for identification.

(Mr. Case):

Q. In connection with Mr. Skillman's testimony, as to his recollection of the date on which Mr. Lanehart died, did he not, on page 57 of the record, testify "my recollection is that he died on Wednesday midnight, or soon after, or it was that morning, the next morning?"

Mr. Dungan:—I object to that question for this reason, they may take the testimony of this witness, and show by her, if they can, that Mr. Skillman did not say the things which the witness testifies that he says. But to go on and show that he said other things at other times, we do not think they are admissible. Their cross-examination may go to that extent, of saying, that the things this witness says he said, Mr. Skillman did not in fact say, but that at that time or some other time, he said something else—that is not permissible in my view of the case.

Court:—I will allow the question.

A. The answer appears as repeated by counsel on page 57 of the record.

(Mr. Case):

Q. And he says, with reference to the funeral, does he not, "that it was on the Saturday" (reading) "I think it was on Saturday?"

A. Yes, sir.

Q. That is on the same page?

A. Yes, sir.

Q. He was asked, "if he was at the funeral," and he says, he was not"—and he was asked, "where Mr. Lanehart was buried," and he says, "In New York State?"

A. Yes, sir.

Q. And he says, "he thinks the body was taken on the following Monday?"

A. Yes.

Q. And he was asked, "was he there when the body was taken," and he said "No, they started early in the morning?"

A. Yes.

Q. He testifies on pages 57 and 58, "that he went to Mr. Lanehart's residence, after Mr. Lanehart's death, and offered his services as a bearer, and was informed that they had dispensed with bearers," is that correct?"

Mr. Dungan:—I object to this as immaterial and irrelevant and not cross-examination.

Question allowed.

A. On page 58?

(Mr. Case):

Q. Pages 57 and 58—at the bottom of page 57 and the top of 58?

A. Yes.

Q. And on page 682, does he not say "that he was not at the funeral, he was sick in bed, he was not able to walk there, and the carriage was full?"

Mr. Dungan:—I object to the question for the same reason heretofore given.

Objection overruled.

A. That so appears on the record.

(Mr. Case):

Q. That is correct?
A. Yes, sir; it so appears on the record.
Q. He states on page 698 that the carriage did go from his house, and that his family went, and the carriage was full, didn't he?

Mr. Dungan:—Same objection.

Court:—The witness has already said that on direct examination—I will permit it to be answered.

A. (Reading), "My family went, and the carriage was full," that was the answer.
Q. He says on page 61, that he was not in Somerville on the day of the funeral, but he did come to Somerville on the day on which they had taken the body away?
A. I remember that, yes sir.
Q. With relation to the time on which the will was probated on page 58 he says, "that he brought the will up to Mr. Clark, and Mr. Clark told him he had so many days, ten days before it could be probated, and that on the day on which he was instructed, he came, as he thinks, and probated the will"—is that correct?

Mr. Dungan:—Same objection.

Question allowed.

A. Yes, sir.
Q. On page 60 of the record, does not Mr. Skillman say "that he does not think he saw Judge Bartine, the first time he came to Somerville, that it was two or three days later?"
A. He so says according to the record.
Q. Does he not say on page 71 of the record "that he does not know whether the copy of the will, submitted to Mr. Bartine, was written or typewritten, that it was secured by him from Mr. Clark's office?"

A. He says, "He does not recall whether it was written or typewritten.

Q. "He does not recall, whether it was written or typewritten and that he secured it from Mr. Clark's office?"

A. Yes, sir.

Q. On page 694, does not Mr. Skillman say, "that he has no recollection of being in Judge Bartine's office?"

A. (Reading), "I have no recollection whatever of it in Judge Bartine's office."

Q. You gave testimony on your direct examination, concerning pencil marks, as seen by Mr. Skillman in the will, as testified by him—on page 40 of the record on Mr. Skillman's examination, did he not testify with reference to pencil marks in reply to this question, "Q. You said something about Mr. Lanehart having both a pen and pencil in his hands, which I did not quite understand," you said you handed Mr. Lanehart a pen, did he have a pencil in his hand, at that time?

"A. I did not notice.

"Q. When did you first notice the pencil?

"A. At the time when I told you, on the straight examination, he had been at the desk quite some little time, and I glanced at him, and just then I saw him transfer the pencil to one hand, and the pen to the other" —(interrupted.)

Mr. Dungan:—I object to that for the reasons heretofore given.

Objection sustained.

Mr. Case:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Case):

Q. Was this said—"Q. When did you first notice the pencil?

"A. At the time when I told you on the straight examination he had been at the desk quite some ittle time and I glanced at him and just then I saw him transfer the pencil to the one hand, and the pen to the other.

"Q. Had he written his name then?

"A. I think not, or at least I had not seen him, but I saw him put the pen to the paper, and start to write,"—(interrupted.)

Mr. Dungan:—Same objection.

Objection sustained.

Mr Case:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Case):

Q. On page 50 of the record, "after Mr. Lanehart wrote his name, did you look at the signature yourself?"

"A. I did.

"Q. Did you see these pencil marks?

"A. I did not, nor I haven't seen them yet, I have looked this morning, and I cannot see them," was that what he said on that examination?

A. (Reading), "I did not, nor I haven't seen them yet, I have looked this morning, and I cannot see them."

Q. The entire testimony on that point is as I have asked you the question?

A. Yes, sir.

Q. Now, turn to page 76 of the record,—"Q. You

said that you did not notice the pencil marks, and don't notice them now?

"A. Yes.

"Q. Mr. Skillman, you said that after Mr. Lanehart wrote his name you looked at his signature, but did not see any pencil marks; why did you look at his signature?

"A. Because my son Edward, called my attention to it."

Mr. Dungan:—Same objection.

Objection sustained.

Mr. Case:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Case):

Q. Was this testified to—"Q. What did you look at the signature for then?

"A. Pencil marks.

"Q. Did you see them?

"A. I did not.

"Q. And you say you were not able to see them to-day?

"A. Yes, sir; I cannot see them to-day," was not that what Mr. Skillman was asked, and what he said in reply to the questions?

A. It all appears on the record.

Q. Was not this evidence given—"Q. How is your eyesight?

"A. Pretty good when I keep my glasses on, I think.

"Q. How is that signature to-day, in comparison with what it was the day it was signed at your desk?

"A. Exactly the same, so far as I know"—was that so said?

Mr. Dungan:—Same objection.

Question allowed.

A. That is true.

Q. And this evidence, was it given—"Q. Mr. Skillman, you said, that after Mr. Lanehart wrote his name, you looked at his signature, but did not see any pencil marks—why did you look at his signature?

"A. Because my son, Edward, called my attention to it."

Mr. Reger:—I object to the question on the ground that it has already been asked and ruled upon.

Question allowed.

A. That is true.

Mr. Clark:—I ask the Prosecutor if the memorandum which has been testified to as being in the possession of Mr. Skillman is here?

Mr. Reger:—We have no such memorandum.

(Mr. Clark:)

Q. Was the memorandum which Mr. Skillman used, at the time of testifying, admitted in evidence in the case?

Mr. Dungan:—I object to that as immaterial, and as not cross-examination.

Objection sustained.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Clark):

Q. Was it used in the examination of the witness?

Same objection.

Same ruling.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

WILLIAM J. KINSLEY, sworn in behalf of the State.

Examined by Mr. Reger:

Q. Where do you reside?

A. Nutley, Essex Co., New Jersey, my office is in New York.

Q. What is your business or profession?

A. An examiner of questioned documents, handwriting, pen writing, typewriting, ink and paper.

Q. How long have you been practicing that profession?

A. I have been a professional penman for about twenty-three years, and for nineteen or twenty years of that time, I have given particular attention and study to the investigation with regard to questioned documents, handwriting, ink, paper, etc., and for the past twelve years, I have been testifying in courts of law in regard to these questions.

Q. What special study or examination have you given to this subject?

A. I was associated with Mr. Daniel T. Ames, one of the pioneers in this line, and the founder of the Penman's Art Journal, I studied under him, and assisted him, and at the same time, I purchased all the books, teaching any of the branches of the work, and I studied and investigated questions along these lines. I also took a normal course in penmanship, under H. W. Flancher and graduated under him.

Q. Have you ever written or lectured upon these subjects?

A. I have, I have written works upon penmanship, in the penman's Art Journal, I have written a number of articles for that journal and other magazines, and given a number of lectures on this subject.

Q. What experience have you had in the courts of law as you have testified to?

A. I have had something over seven hundred and seventy-five cases in twenty-six states of the United States of America and Canada, as far south as New Orleans, and as far west as San Francisco.

Q. Where is your office?

A. 245 Broadway, New York.

Q. And your residence is at Nutley, N. J.?

A. Yes sir, Nutley, Essex Co., N. J.

Q. I show you certain exhibits numbered from P. 4 to P. 29 both inclusive, in this case, and ask you if you have examined these exhibits, previous to this time? (Handing witness papers)?

A. Yes sir, I believe these are the exhibits I have examined before me.

Q. When did you make such examination?

A. My first examination was made October 4th, 1905, my second on February 22nd, 1906, and the third early in November, 1906, and the fourth in April, 1907, and the fifth this week.

Q. You have testified in two previous trials in this matter?

A. Yes sir, I have.

Q. And the examinations which you have testified to were made, some of them, at the time of these previous trials?

A. Yes sir, one in the trial of this year, and another one I think in the spring of 1906, I think I have skipped one, at the first trial.

Q. I show you a photograph, and ask you whether the exhibits which I have shown you, whether the signatures to the exhibits I have shown you, are some of them embodied in that photograph?

A. Yes sir, the check signatures are and the endorsements.

Q. Have you compared the signature to Exhibit P. 4, which is the paper purporting to be the will of William Lanehart, with the Exhibits marked P. 8 to P. 29 inclusive, which I have already shown you?

A. I have.

Q. Did you make that comparison at the time you made the examination about which you have testified to?

A. I did, whether or not all of these checks were shown me at the first examination, I do not recall. I think I made these different examinations, and I cannot recall just what exhibits were shown me, the first time I think there were not quite so many exhibits at the first examination, we have been collecting them since.

Q. Did you examine at the last examination, all the exhibits shown in that photograph marked Exhibit P. 80, class "E?"

A. I did, in November, 1906, and in April, 1907.

Q. Were you present when that phonograph was taken?

A. I was.

Q. From your examination and comparison of these exhibits marked from P. 5 to P. 27 both inclusive, assuming that they are genuine, what have you to say as to whether or not the signature to the writing purporting to be the last will and testament of William Lanehart and marked Exhibit P. 4 is the genuine signature of William Lanehart?

A. In my opinion, the hand that wrote the signatures,

"William Lanehart," on the checks, either as maker or endorser, and also wrote the signature "William Lanehart" to the will Exhibit P. 5, did not, in my opinion, write the name "William Lanehart" on the "Skillman will" Exhibit P. 4.

Q. Will you give your reasons for that opinion?

A. In taking up the study of this case, and examining the handwriting and the standards of William Lanehart, making a comparison between that handwriting and the handwriting in the signature, that purports to be William Lanehart's on this "Skillman will," marked Exhibit P. 4, I find certain physical conditions that are perfectly apparent to anyone on a casual observation, other than upon a study, disclose certain facts, and in making a comparison between the standards and disputed, I found it was impossible in any way, to account for these conditions, in the disputed signature, and reconcile them with the characteristics and the habits of William Lanehart, as shown in the standard writings. In this case, as in substantially every handwriting case, I found the characteristics, that is, those peculiarities that enter into the make-up of every normal handwriting—(interrupted.)

Mr. Clark:—I object to this disertation upon the handwriting by the witness.

Court:—I think so far as it has gone, it is proper.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Reger):

Q. Go on?

Court:—I desire also to say, that the witness ought

to answer the question, without giving a lecture upon penmanship.

A. The characteristics are those peculiar individual things, peculiar to the writer, and to Mr. Lanehart in this particular handwriting, peculiarities that depart from the conventional, school or copy-book hand; handwriting that closely approximates a school or copy-book hand, is harder to detect, the more it departs from the school or copybook handwriting, and has peculiarities in it that are significant and individual to that writer alone, are much easier to identify. The Lanehart handwriting is full of peculiarities and personal characteristics. These characteristics in the Lanehart handwriting are clear through countless repetitions, over and over again, are they repeated, all these things, these characteristics, throughout the whole of his writing, just as we might make little gestures, they are habits of handwriting, just as the gestures are personal habits of an individual. These gestures, which we make without knowing that we are making them, and without a knowledge that we possess those peculiarities of characteristics. We have these little peculiarities in our habits in our gestures, in our face, features and manners, and yet we are just as unconscious of possessing them as we are unconscious of the possession of the characteristics of our handwriting, there is the winking of the eye, or a movement of the foot, a peculiarity in walking, and all these characteristics are just like that, it is not so hard for us to identify them, nor is it hard in Mr. Lanehart's handwriting to point out many of these characteristics, nor only in his handwriting but in any handwriting.

In taking up the study of the characteristics, if we take the capital "W," or any letter in Mr. Lanehart's handwriting, you will find wherein it departs from the conventional or school or copybook style of handwriting.

The capital "W" in the style adopted by Mr. Lanehart is the conventional capital "W." He departs from it to some extent, and makes it a characteristic and individual capital "W" to him, through difficulties in writing his signature. The combination of letters present to each

of us a little different variety from the others, and the result is a little divergence or difference in the handwriting, and causes us to make a curve in one direction, while another man following us, would make a curve in the other direction. Now, the capital "W" is based on the reverse of an oval, that is an oval with an up-stroke first, The direct oval is the other one altered somewhat, and the second part of the capital "W" is based on that—in other words, the capital "W" is simply—the first part is simply that oval—that is this part of the oval of the letter is the oval part (illustrating.) Adding the other, —here is the upstroke or the second part of the letter, like that (illustrating.) Now, there is a reverse motion, and when we reverse motions in handwriting, it is the same as everything else, it is more or less difficult to change the direction. We start in this direction for the first part, and then reverse the motion for the second part (illustrating.)

The attempt to make this letter, keeping the pen down at the base line, as rapid writers do, especially when they do not put much shading and making it rapidly, you can trace the gradual evolution of running down hill in handwriting, the dragging down of the hand through the rapid motion. And also because of the same left curved strokes following and connecting with the letter "m," whereas we start with this conventional copybook hand, both in the eye and the hand, and we gradually drift into the style of the making of these upstrokes, with a left curve like this (illustrating) and omitting the right curved stroke. That is a peculiarity that is found standing out very prominently in his handwriting. And in making these, he retraces well up on the downstroke, with the upstroke—that is characteristic—in order to go away back here in making both of these upstrokes,—that departs from the school or copybook hand, first in the Lanehart way by making the oval begin too high. Secondly, making it too narrow a curve there, it should be two-thirds as wide as it is high to be a correct copy-book style. He makes it too flat. He does not lift the pen and he retraces or makes a small loop, quite a distance up—

that is another departure by which it may be identified. Third, that short stroke if a left curve instead of a right curve (indicating) in the word "Lanehart," it is a left curve. Fourth, it has a turn at the top instead of an angle. Sometimes these turns are quite angular, but nevertheless it is a turn instead of an angle. Fifth, we have this retracing once more, and sixth, we have a left curve again coming up, (illustrating) so in that we have six departures, just in the outline and method of construction alone—six departures from the conventional school or copybook hand, and the law of probability in stating what chances there would be, what mathematical probability of a repetition of these things in another hand or the failure rather to incorporate anyone or all of these in his own hand, and under what conditions they must be considered. Now, we have but one mental conception of form, in our handwriting, one mental conception for each style of letter that we undertake—for example—some people make two or three kinds of "W's" and mix them up, and for each they have a mental conception, they train their hand to reproduce that mental conception. If a man be intoxicated and attempts to put on paper that mental conception, in the way of handwriting, he will partly fail, not wholly, but partly fail, he does not make the letter in another hand, but he would "stagger" to some extent, as he would "stagger" in walking, it is the same man, and the same "stagger" that he had before he attempted to write.

Mr. Clark:—I object to the disertation of the witness.

Court:—I think the witness had better confine himself to stating his reasons for his opinions, describing the exact phenomena observed by him, in his examination of the writing.

(Mr. Reger):

Q. Are not those the reasons by which you base your opinion?

Mr. Clark:—I object to that.

Question allowed.

A. In considering the study of the Lanehart standard writings, and making a comparison with those, and the disputed signature, we take into consideration not only the styles of letters and the proportions of them, but also the spacing between the letters and parts of the letters, the base line, the slope, that is whether or not the base line runs up hill or down hill (illustrating.) And then we consider the alignment, that is how the letters approach to or recede from that base line. I want to differentiate between the general base line slope, and the alignment of the letters on that base line, they are two separate things. The pen pressure or quality of line is also considered, as going to the touch, the individual touch of the writer, and this may also include the tremor. Some penmen have more or less tremor in their hand, showing little minute shakes, showing changes of direction. In addition to that, we have the method of pen holding. Every pen stroke, and it is so in the Lanehart writings, leaves behind it a little history, showing how the pen was held, the speed used to produce the stroke, and also the movement to produce the stroke. The speed indicates how many strokes were made in a given time, and the movement is whether it was a finger pen or wrist movement; the slant of the writing is taken into consideration, and the construction of the letters I have spoken of, the styles of the letters and the construction of the letters, but not the proportions,—that is the proportions between the "W" and the "m" and the "W" and the "L," and the different parts of the "M." We have certain definite proportions, ingrained in our handwriting, whether or not we know it. In addition to that, there is the question of lifting the pen, how often that is done. Some writers lift the pen at every downstroke, some writers run across the whole of the page without lifting the pen, slurring words and letters together. And then,

there is a method of retouching, that is going back, and trimming up letters and strokes.

An examination of the handwriting with all these standard things in mind, the things to which I have alluded, will allow or enable us to determine whether or not, a handwriting was written by the person who wrote the common or admitted standard writings. In the matter of spacing, I find that the standard writings of William Lanehart differ materially, in the matter of spacing from the questioned writing of this signature in the will, the signature in the disputed will—we find the abbreviation of "Wm."—(interrupted.)

(Mr. Dungan):

Q. To which will signature do you refer, the disputed signature?

A. Yes sir, the disputed signature, marked Exhibit P. 4. I believe it is.

We find in that signature the spacing from the beginning point of the letter "W" to the finishing stroke of the small letter "M" to be less than in the admittedly genuine writings of Wiliam Lanehart. In other words, the spacing between the parts of the letter "W" in the admittedly genuine Lanehart writing, is greater than in the disputed writing. I have indicated by a dotted line, what should not be so long in the standard writings. In all other particulars, I think the name "Lanehart" in the disputed signature, is much more widely spaced. It differs in two ways. First, "Wm." is continuous, and the name "Lanehart" is more widely separated. We have a signature which varies in both ways. First, it is too continuous, as I have shown you, referring to the "Wm." and then it is too spread out, (referring to the name Lanehart,") and then it is a little longer in the average, for the whole name. If he had continued the way he started, it would have been storter, and had the whole of the signature been written as the word "Lanehart" is written, it would have been too big—so you see we have a writer

in this signature, vacillating, as to width and as to slant; we also have it varying considerably.

We also find the capital "L" in the disputed signature is almost under the small "m" in the abbreviated "Wm." that is the lower part of the capital "L" with the line drawn vertically from the end of the capital "W" would almost run through the lower loop of the capital "L" in the disputed signature. In the genuine writings of Mr. Lanehart, that is not true, judging from these standards. We have the letter brought forward to the right, so that there is a big gap, even more in proportion than I have indicated it here, (illustrating). That is what is between the vertical stroke from the letter "W," it would be far to the left of the loop of the capital "L." Now, these habits of spacing, are ingrained in us, we do not study or think about them, except when we are learning to write, learning copybook handwriting in school.

RECESS.

(Mr. Reger):

Q. When court adjourned, you were calling attention to the difference in spacings between the standards, the genuine signatures of William Lanehart, and the disputed signature, had you finished with that explanation?

A. Yes sir, substantially.

A. Will you take up such other differences as you discovered?

A. The base lines slope in the standards writings of Mr. Lanehart, he keeps what can be fairly said to be, an approximately horizontal base line; that is, he has not any upward or downward trend, the majority of the standards we have are written on ruled lines. But we have some two endorsements, in these photographs, that are written on unruled paper, and it will be observed that they are just as nearly horizontal as the ruled ones. That being so, then I would take it for granted that he wrote fairly horizontally, whether he had a ruled line or

not. That is, the standards,—in the disputed signature to the will we have not, there is an upward trend.

The letter "s" in the disputed signature is an upward trend, there is a general upward trend.

The alignment, how the letters recede from or come to the base line, is another question. In the standard "Lanehart" writings the capital "W" and the capital "L" come down fairly well to the base line. The first part of the capital "W" touches the line as a rule. The second part is a little above, and the capital "L" touches the line, and then substantially all the small letters run along on the line or close to it. Of course there is nothing mathematically close to it, but it is fairly good for a young man and essentially good for an old man. In the disputed signature there is a wonderful variation in fact, there is no two letters in the entire name, on the same line, not any two of the letters on the same alignment. Of course the small "m" we would expect to be either in the disputed or the standard. The capital "W" and the capital "L" are all different. The letter "a" in the word "Lanehart" is not on the line with the capital "W" or the capital "L," and none of the small letters are on the alignment with any other small letter, or with the capital letters. So I say there is a wonderful variation and vacillation. And then we run along to the capital "L" and then come the small letters "a-n-e-h-a-r" drop down and the letter "t" up again. There is nothing constant in that alignment. It is remarkable that you do not find any two letters in it that would or do agree. That is evidence to my mind, upon an investigation, that the operator who made the signature, could not see well, either his eyes were bad, or the light bad, or it was a combination of the two.

The next question—and these are not taken in any particular order of importance at all—the next point is, "pen pressure," quality of line anl tremor taken into consideration. Now, we all know that habit, peculiarities in pen pressure, whether we know them or not, exist, just as we have emphasis in certain words, whether we know we have them or not. In making certain letters, in the word

"Lanehart," where he put the pressure usually on the upstroke, in the capital letter "L" and also on the side stroke in the capital letter "L," and also in the finishing stroke of the capital letter "L" (illustrating.) I have exaggerated that more than he does (illustrating). He places an emphasis on this side movement, on these side movement strokes mainly, and on the side stroke in the letter "t" very often he puts quite a decided emphasis, thus (illustrating). I haven't any ink to fill it in all at one time—but in running all the way through without stopping to go into detail, you can see many of these things at a glance (illustrating), now, I have called your attention to it. You will find the pen pressure on almost every letter, it is the type of letter "W" for instance, it turns, that is where he makes the turn and at the bottom of a good many of the letters. We will now take up why it is at these particular points later.

(Mr. Reger):

Q. In the disputed signature, do you find these pen pressures?

A. I do not. There is a uniformity of pressure on the up and the down strokes, from the beginning to the end in the disputed signature. There is little variation in the width of the stroke—that is not the pressure. It is a variation caused by a stopping—stopping where to see where to draw next—seeing where to draw next. As I said this morning, every pen stroke records how the pen was held, it records the speed and the movement used to produce that stroke.

This disputed signature shows that it is a specimen of drawing, not writing, not handwriting at all, just drawing an object, and the operator in making this signature was drawing some object, and it is necessarily the quality of the line that indicates that, that indicates the movement, it was necessary to stop at very frequent intervals, as any of us would if we were working from a model, and drawing from a model, we do not know thoroughly how the line should continue, and we stop, and

then go on again and in that way do I account for these variations.

Now, that is just as opposite as it can be, this movement of drawing the writing, and the quality of the line, all indicate that, to persons accustomed to examine writing, they can look at the questioned will signature and see very readily the movement which was used to produce that signature, in this case, it shows that it is a slow halting hesitating drawing, and not a free off-hand style of handwriting of any person at all.

This quality of line is one of the very important things in the consideration of handwriting, of any handwriting, because it attracts attention without anything being said at all and requires an explanation as why it is thus, why it has this unusual appearance—it immediately attracts the attention of anyone accustomed to examine questioned handwriting. When you take handwriting of the same person, and have some handwriting of that person between the dates the 28th day of February, and the 3rd of March following, signatures on both sides of the date of the disputed signature, which would cover the period and show there was nothing even approximating permanence in bad health, that would occasion this, then this signature would require some explanation. In looking at it carefully, and finding in October 1905, traces of lead pencil marks scattered all the way through from beginning to end, and places in between the letters indicating that signs of outlines of the letters are largely the same, that there had been sketched on this paper a lead pencil signature first, a lead pencil writing, an imitation of the signature in lead pencil, and there had been an attempt to ink it over, in fact had partly covered these lead pencil lines, leaving some of the pencil marks, I cannot see those that were covered of course, but an examination of the surface of the paper shows that there had been an abrasion of this surface caused by rubbing intentionally to some extent, and partly probably caused by handling the paper.—(interrupted.)

Q. What kind of examination reveals that?

A. The examination reveals that condition, and that

specially appears when an examination is made with a stereopticon microscope, thus examined it shows the raising of the fibre from the surface of the paper. It would require very rough handling to raise the fibre in any great quantities off the surface of the paper.

(Court):

Q. Have you made such an examination as this you speak of?

A. Yes sir, I have.

(Mr. Reger):

Q. When did you first make such an examination as that?

A. I made the first examination in October, 1905, with a compound microscope, and since then I have made an examination with stereoscopic microscope.

Q. Were those indications there in October, 1905?

A. They were, and the lead pencil showed a little more clearly then, and the contrast between the abrasion of the surface of the paper and the other area of the paper, the surface of the paper and area surrounding the signature itself, and other portions of the paper, was in sharper contrast in October, 1905, than it is now, because the paper is softer and has been much handled since then. This quality of line in the disputed signature, is quite uniform from beginning to end (illustrating.) It shows the holding position, and the hesitating strokes. It shows a fairer uniformity of pen pressure, with the upstrokes about as heavy as the downstrokes, the top strokes, no heavier than the bottom strokes, which is quite unusual for Mr. Lanehart, as exhibited in the standards before us. The only exception to that is the finishing stroke of the letter "t" which is somewhat heavier than the balance of the writing. The letter "L" is not an exception to that because it is a patched up letter.—(interrupted.)

Q. How was the pen held in making the disputed signature, in your opinion?

A. In making the disputed signature, in my opinion, the pen was held close to the school or copy book style of penholding. In other words, with the end of the penholder pointing over the right shoulder, which would put the two nibs of the pen quite squarely on the paper, and would cause, when the nibs were separated or forced apart, on the downstrokes, if the nibs were spread, it would cause the pressure to produce a shading—shading is nothing more or less than the spread of the nibs of the pen, when the pressure is put upon it. In the disputed signature, it shows that the pen could spread because it is spread in the making of the letter "t" and in drawing up the letter "L" and in the balance of the signature there has not been any spreading, showing that the drawing was a good deal like a drawing of any kind, without any variations in light or shade or light pressure or stroke or pressure.

In the "William Lanehart's" writings, we have a great many places where he puts pressure at the top and bottom of strokes, and on side movement strokes, and the only way that that can be accomplished, is by turning the pen point round, and of course that is necessary, when that is done, to turn the penholder round, and the end of the penholder must point away from the right shoulder, and that will produce this "side method pressure" that I have already alluded to.

The "Lanehart" method of making the letter "L" is to put a little pressure down where it leaves the small letter "m" run up, and then when it comes over to the right, the pen, without any pressure at all, is bound to put a shade on the side strokes. You also find that true in letters like the small "n" at times, at the bottom of the stroke. It shows where the nibs were spread apart. Now this is fundamentally different in the standards, from what it is in the disputed signature, they are two entirely different methods of pen work—no explanation that I can figure out at all in my own mind would account for a man trying to do something in an unaccustomed way—there is no reason why he should hold the end of the penholder pointing away from the right shoulder,

differing from the conventional method, employing a method which he is not accustomed to—in fact, the pencil effort would not account for this, because his habits were ingrained in his hand, the method of holding his pen was ingrained in his hand, he was accustomed to doing it in that way, and in my experience of many years and I have taught over 15,000 pupils how to write, I have always found it a very difficult thing to teach a writer who comes to you with an improper method of holding his pen, how to properly hold it, and in teaching I have always tried to bring the hand back to the natural position, where it would work without tiring, and I have always had a struggle for a long time to break that up—(interrupted.)

Mr. Clark:—I object to this disertation of the witness, and move to strike out what the witness says about his experience as a teacher.

Court:—Motion denied.

(Mr. Reger):

Q. The disputed signature showns that it is a drawing as you have stated?

A. Yes.

Q. What does that indicate as to its genuineness or falsity?

A. It is significant of forgery, because a large proportion of forgeries that I have examined, are drawings, that is they are not writings, and the construction of this signature is significant of its being a forgery, even without the traces of lead pencil, although they indicate that at first there was a lead pencil sketch of the signature put on the paper, and this sketch is an artist's sketch to be used as a guide to follow, and the signature in ink over the pencil shows that it is a tracing, it is not the free flowing writing or the heavy writing, with proper emphasis, such as Mr. Lanehart employed, or I believe that anyone would employ, it is simply an artist sketch, these lead

pencil lines indicated, put on there as a guide or a model to ink over.—(interrupted.)

Q. Is it such a writing as a person would make in writing his signature in pencil?

A. I believe not.

Q. What do you mean by "an artist's sketch?"

A. A sketch to guide them when they ink over. I am connected with an engrossing gallery, and our artist's make the lines in pencil, and then ink it over.

Q. What is the quality of the line as shown under the microscope, and shown in this disputed signature?

A. It shows it is a lead pencil sketching stroke, and taking the small letter "a," there are evidences of the stroke showing above the ink writing, and that stroke is not the heavy stroke showing the indentation or to put plenty of graphite on the paper, that you would have in such handwriting as Mr. Lanehart's, with such thumb and finger pressure in his handwriting, that is absent, instead of that we have the light sketching stroke, the kind of stroke that is made to be thereafter erased, that you don't want to put on to remain and thus you would not want to put too much graphite on to it.

Q. In speaking of an "artist's sketch," do you mean one put on by a school hand, or in the school hand style?

A. No, sir; I am speaking of a sketch and likening it to a preliminary sketch, made by an artist, with the idea that it will be erased afterwards, not a permanent drawing but a mere preliminary sketch.

The movement used in Mr. Lanehart's writing is partly finger, partly wrist, mainly those two, with a little forearm movement. The action of the fingers is called "finger movement," when the wrist is rested, that is called "wrist movement," and forearm movement is used where the fleshy part of the forearm is used as a fulcrum, with which to gain the power, and Mr. Lanehart used a fair amount of each, but he wrote with a fair degree of speed, and with fair facility, and he wrote a good hand for a man of his years, and he wrote with a quick movement and here and there there is a quick tremor in some of the letters, not the slow halting, hesitation writing.

Q. Are these tremors shown in the disputed signature at all?

A. They are not shown in the disputed signature at all. The absence of those characteristics in the disputed signature are quite significant. The haltings and the hesitation apparent in the disputed signature are not tremors in that sense, but they are the pauses caused by a writer trying to copy—for example, trying to copy that letter "L," he makes little stops to see where to do to next, and these little breaks, the constant changes of direction are caused by the little stops I mention. We know that no rapid writing, for example, supposing we wanted to make a capital "W" like that, and the pen skipped marking, and we wanted to fill it in, we would go back and draw that in. That would be clearly apparent, afterwards, where he began or where he stopped, with the drawing stroke, as differentiating that offhand free handwriting. That is "speed," the speed with which we make the stroke, shows in the stroke itself, that is the difference between the "Lanehart" writing and the disputed signature. The "Lanehart" writing is free off-hand writing. The disputed signature is a slow, halting, hesitating, drawing style of handwriting, it is drawing, not handwriting really.

Q. Would a person in tracing his own signature, find it necessary to make these frequent stops?

A. No. In tracing someone else's signature he would, because he is not familiar with the signature. But in tracing his own, he would follow right along, because he knows the movement, in fact the tracing might almost look like that he could do it with freedom, and do it so nearly as to practically cover up a great deal of the lead pencil writing, there would be no necessity for looking, he is not drawing, to that same extent.

The movement used in writing the disputed signature, is largely a finger action, most drawings are. We do not dare get enough of vim, enough of fire, or go to make the latter off-hand, and the fact is, they move along by little hitches and pauses, mainly with a finger action. So we have a difference here in speed, and also in the dif-

ference in the movement used to produce this signature, as between the standards and the "Lanehart" writing.

The matter of slant is quite different. In the "Lanehart" writing, there is a fair degree of uniformity of slant throughout (illustrating.) The slant can be tested by drawing long strokes through the writing, in this wise. (Illustrating.) Of course the photographs themselves should be used, because these illustrations, no matter how carefully I tried, I would not have it absolutely accurate, but it will do for the purposes of illustration, and you can follow and see how nearly the standards come to that (illustrating.)

There is quite good uniformity in the "Lanehart" downstrokes. Of course these are not perfect in the illustration, but if we undertake to measure the slant, and when we compare the "Lanehart" standards with the disputed signature you will notice quite a contrast (illustrating.) You will notice that immediately on the third stroke after the letter "m" the first stroke in the small letter "m," the first stroke of the slant, it runs into the second stroke a short time, and then comes back again, and then there is another variation, and then the letter "L" turns over and under and forward and then the letter "e" is very characteristic, it turns right backwards and then he jumps right back again, so you go on throughout the whole of it, there is a curve here (illustrating) a curve, not a slant, all the way through. Now, this is a characteristic difference. It is difficult to see how conditions could be so brought about that a man will either forget all the characteristics of his handwriting, conscious or unconscious or fail to produce them either by being hampered physically or mentally. It is very difficult to explain, I cannot figure it out anyway.

The proportions of the letters differ in the disputed signature, from what they are in the standards. In the disputed signature, the letter "L" is much higher than the letter "W," the capital "L" quite a little bit higher, than the capital "W," that is the upper part, and the lower part is lower than the capital "W," and lower than the capital "L" of the word "Lanehart." The letter "m" in

the abbreviated "William," in the "Lanehart" writing he makes it high up, near the top of the capital "W," almost to the top. In the disputed signature, you will observe that the first stroke of the letter "m" in that abbreviation of "Wm." is substantially in the middle of the letter. The proportions are clearly wrong in that, the whole letter "m" is much too low, I mean just the proportions now, the relative size and location of that capital "W" and the letter "m" in the abbreviated word "Wm."

And then the capital "L" in the "Lanehart" writing —he makes a rather quick stroke, with the emphasis on the side. While the copyist made a stroke rather short, but not heavy at all. In an affort to widen that stroke the hand did widen it with two strokes there, and dropped down too far below the line for the standard signature, as is shown here, in the word "Lanehart." This touching up of that stroke, and I have not indicated it accurately at all (illustrating) because it is a very irregular line, I believe it was done to emphasize, to get that side pressure that we find in the standard signatures and in doing that it was made a little longer than was the intention.

The finishing stroke of the small letter "t" is much longer than the habit of the writer, of the standards indicate. He throws the finishing stroke over to the right, sometimes there is a little downward tendency, but nothing in any of the standards that I have found, that resembles the one in dispute.

In the movement or construction of letters and styles of letters, we find some characteristic differences. Mr. Lanehart makes a small letter "a" with a flying start. The small letter "a" is an open oval, angular somewhat near the copy book style, the curve on the left, rather flat on the right. Mr. Lanehart made a fairly good "a" except that he began his letter "a" without that up stroke and made an up-stroke of this kind (illustrating).

Now, that is a fundamental, that is a characteristic peculiarity, a peculiar thing in his hand-writing, sometimes you cannot see it at all, even with a glass, and other times it will show quite strikingly, and you can see it with the

naked eye. There are cases where that stroke shows, so that there cannot be any dispute as to his method of making it. The next to the last signature in the first column of this photograph, class "A" shows the stroke extending down in the angle. You will find the beginning stroke at that point (illustrating) and in a number of other cases, where a glass would help you, when you find the method of making it, it is the same, whether you see it or not, because he runs that stroke closely together, so that you cannot see it sometimes, so that the second one covers it up.

Now, all writing is a record of movement, the pen touches the paper, and leaves a record of the movement behind it. We cannot forget these movements, and these are ingrained in his hand, just as much as the pen pressure, the pen holding. The capital letter "W" I pointed out in talking about the characteristics. There is a difference there, there is a difference in the small letter "m" of the Lanehart writing. Mr. Lanehart has an angular tendency. He travels up rather on an angle, and starts as if he were going to make a turning and rather spoils it at the top (illustrating). I have exaggerated that more than he does, but you will see from the photographs, just exactly what he does with the hand—the letter "m" is more or less angular at the top you will observe. Sometimes it is nothing more than a letter "u." Now, we notice in the disputed signature that the first part of the letter "n" in the word "Lanehart" is very round and then as if to strike an average and make the next part too angular, the operator shows a break, and pausing in the making of that stroke, he discovers his error and then he tries to correct it on the second part, and thus spoils the letter "n." But the first part is altogether too round (illustrating). Now, that is not in the hand-writing of Mr. Lanehart. The small letter "e" in the "Lanehart" approximates the school or copy-book hand. It is one of the lines he makes fairly well. The school or copy-book small letter "t" is crossed at one third its height, has a short turn at the line. Now Mr. Lanehart makes his fairly well, he makes his turn at the line a little too

broad, which rapid writers do, or anyone who writes a good deal, whether they write rapidly or not, this (indicating) has a tendency to slur around the corner, as he connects that with the small letter "a." In the small letter "e" we have a non-descript character, for the -small letter "e." We have the small letter "m" made, and then the character that follows, I don't know whether to call it a character or a blot, but it shows fairly clearly, notwithstanding the blot, that the hand and the pen travelled over towards the left, and then back to the base line, or something like that (illustrating) and then another stroke was put in here (indicating) and that was blotted over in that manner (illustrating) in an attempt to either stroke them, or cover up or change the letter "e." The letter "e" as originally made, is just as different from the Lanehart small letter "e" as it is possible to be. In the first place, it is a back-hand letter. The letter "e" of Mr. Lanehart's is a forward hand letter, and he makes the small turn and connects with the following letters easily. Here we have something that slopes backward and stopping at the base line, and not connecting with the following letter. It is altogether different, in an effort to either strengthen the original line, to hide what was done, so as to cover or so that you could not see that back hand "e," that is the reason the strokes were put on there. Then we have a great variation in the small letter "e" and the small letter "h." In the "Lanehart" handwriting it differs a little as to slant but not so very much. While in the disputed signature there is a wide variance, there is a break between the letter "e" and the letter "h," and the construction of the second part of the letter "h" is also different.

The second small letter "a" differs, which is the same as the first letter "a." The small letter "r" is radically different—there are two types of small letters "r." The type used here is like the first part of the small "n" and "m," with this projection on the end (illustrating.) Mr. Lanehart attempts to use that style, and his method of making it, is to have it rather angular, to retrace and then with a combined curve, go over towards the letter "t"

(illustrating.) You see he departs in several particulars from the copy-book style.

In the disputed signature, we have a departure from the "Lanehart" style. We have the bend running up at the top, and then an upstroke something like the letter "u," at the bottom we have a right curve, instead of a retracing, going back on that line again, that goes up and down, and then over to the letter "t" (illustrating.) In fact there is a very characteristic difference in the construction of that small letter "r."

The letter "t" differs in several points. The upstroke, the method of retracing and especially the side pressure is brought around with a waving line in the wandering down on the sheet, in a way altogether foreign to the style of Mr. Lanehart.

The "Lanehart" signature has but two penlifts in it from beginning to end. One after the capital "L" between the capital letter "L" and the small letter "a," and the other in the small letter "e" and the other between th small letter "h" and the "a," in connecting this small letter "u" stroke it is quite usual to keep the pen down, when you desire to copy that small letter "a," it calls for a reversal, and it is quite difficult and many people hate to lift the pen and after a while, that lifting the pen gets to making quite a gap, and Mr. Lanehart's hand, evidently he was afraid of that small "a" so he lifted the pen between the small letter "h" and the "a," but he passed around that altogether, but here they do not touch (indicating.)

This disputed signature has nine or ten different pen lifts, and they, some of them, are perfectly apparent, you do not need a glass, and I will therefore not go all the way through them in detail.

Q. Those large photographs of the twenty-four diameters show some of them?

A. Yes sir, the large photographs are excellent for that purpose.

(Mr. Clark):

Q. Where is the entire name in that enlarged photograph?

Q. We haven't it all, there are several portions of it, making up nearly the whole name, excepting I think the capital "L."

(Mr. Reger):

Q. Go on?

A. There is a break between the small letter "a" and "h" and numerous other breaks, between the small letters "a" and "n," which require glass to study, but it shows the halting, and hesitation of the writing of the disputed signature. In making this drawing he had to stop or pause—in these stops he sometimes lifted the pen and sometimes he did not. There are pauses and breaks, all of which are foreign to the handwriting of Mr. Lanehart, as judged from these standards. I do not find it all in the standards.

And the retouching I find in the letter "L" and the letter "e." Now, these are not the retouchings of a person who had failed to make a letter, where the pen made a very light stroke, and he came back to emphasize it, they are not the natural reenforcement of strokes, because that letter "L" as first made, was nearer the proportion of Mr. Lanehart's handwriting than the letter "L" as it now appears, so far as the proportions are concerned, it simply lacked emphasis. The pen itself was capable of making the emphasis, and if it did not, it shows that he let it go, because the emphasis shows that he varies in that regard, in that respect there is quite a difference between the disputed signature and the "Lanehart" signature.

Q. How many of the pen lifts are possible to be seen by the naked eye?

A. Outside of two that should be there, those that occur between the letters "L" and the letter "a," between the letters "e" and "h," are perfectly apparent, and the

large photographs make it apparent at the top of the first small letter "a," where it shows at the downstroke, and also at the bottom of the small letter "n." The second part, where it goes to the letter "e" and also at the top of the second part of the other letter "a," the top of the letter "r" where it joins the letter "t." For the others you would have to use quite a high-powered glass, but they show nevertheless with the glass.

Now, taking all of these numerous characteristics which are significant through their absence from this signature, taking into consideration—considering in all probability any circumstances which might arise to limit the handwriting, I cannot in any way account for their absence from the disputed signature, on any other theory, than that the disputed signature in Exhibit P. 4 was written by the William Lanehart who wrote the standard exhibits which have been referred to.

Q. Could these divergencies be accounted for in the fact that the writer was writing under unusual conditions?

A. No sir, I cannot conceive of any conditions that would make a man forget all of his characteristics and omit them from his handwriting, especially since we have standards written at the time and before and after that date, in which his normal characteristics appear.

Q. Would unusual conditions make him forget the character of the letter which he makes?

A. No. Something or someone might push a man's arm, for example, if he started to make a capital "L" to do something of that kind (illustrating), a joggle of the table, it is not a joggle all the way through the signature, it does not make him forget everything, it would not make him forget how to hold the pen, it would not make him forget the slant, it would not make him forget the alignment, he would not forget the speed, and he would not forget the movement, of course, speed might be changed by illness, or the fact that a man was very cold, it might make him hesitate a little, but here we have an utter absence of all the characteristics in combination from the signature—it is just as foreign to his hand-

writing as could be, except that it is spelled as his name is spelled, with the general type of letters that he follows.

Q. Have you examined the letters addressed to James L. Griggs, and marked exhibits P. 33 and P. 34?

A. They are not here, but I have examined them, and portions of them are reproduced in the photograph Exhibit P. 35 of class "A."

Q. Have you compared the handwriting in these letters and the handwriting in the body of the will?

A. I have.

Q. And that attestation clause also?

A. Yes, sir.

Q. Have you made the comparison of the writing there of these exhibits with the disputed signature?

A. I have.

Q. What is your opinion as to whether or not the person who wrote the letters Exhibits P. 33 and P. 34 and the body of the will P. 4 and the attestation clause, also made the disputed signature?

A. In my opinion the same hand that wrote the standards referred to as the "Skillman writings" and the body of the will and these letters to Mr. Griggs wrote the questioned signature of "William Lanehart" to Exhibit P.4.

Q. Do you find any of the characteristics shown in the handwriting in the body of the will and in the letters in the disputed signature?

A. I do.

Q. Will you point out what those characteristics are as shown in these two writings?

A. This peculiar combination in the capital letter "W" was difficult to account for by a comparison made in the writing of the body of the will, where the name "William Lanehart" occurs, and also where the name occurs in the letters to Mr. Griggs, written by Mr. Skillman. The only change is that the "Skillman" letter "W" starts with a "W" that has an angularity at the top, the letter "W" being the same angular or conventional school or copy-book style.

Q. Is that style a characteristic of the "Skillman" handwriting?

A. It is. It is found in these letters and it is shown in that composite photograph, or clippings from the will marked Exhibits P. 4 and the letters referred to. It occurs several times there, both the word "William" and also the word "Lanehart"—it occurs twice in those photographs. That style of "W" that he depicts that have these angles, that we find in the disputed signature, which Mr. Lanehart did not use in his letter "W," but which Mr. Skillman used in his "W," now, we find those in the disputed signature. The one change is, that there is an attempt of simulation in the upstroke of the "Lanehart W," rounding the letter "W" at the top in the disputed signature. In the "Skillman" signature I have pointed out, it is the other way, otherwise in proportion in openings through this bend and the angles through the top and the bottom, the general trim and general proportion throughout it is the same in the "Skillman" as in the disputed signature, and yet differs from the "Lanehart" letter "W."

The small letter "m" in the abbreviation of "Wm." in the "Skillman" writings, has a tendency towards angularity, a little more than in the disputed signature. But we have the proportions, so that there is more space between the first and the second part of the letter "m" than there is between the second and third parts, showing that that was a little peculiarity found in the Skillman writing, as found in the disputed signature.

There is also a tendency to slant the first part of the letter "m" to a back hand, or more to the left, than the second and third members—that is another thing found in the disputed signature, in the letter "m."

Q. Is it characteristic in the "Skillman" handwriting to have backhand strokes?

A. It is, and it is shown in this letter "m." And I call particular attention to it, in another letter, the small letter "E" in the word "Lanehart," it is on this photograph, four times, and three out of the four times, the let-

ter "e" is made backhand, and in all four times, there is a break between the letter "e" and the "h" following.

In addition to that the words "Signed and sealed" in the attestation clause, one letter "e" in the word "signed" and the two letters "e" in the word "sealed," there are breaks, following the "e" in "signed" and the two "e's" in "sealed," and the "e's" are slanting backhand. In other words, the "Skillman" style of making the letter "e" is like that (illustrating) in that it has a break. The "Lanehart" style of making the letter "e" is the conventional "e," with a broader turn connecting with the following small letter (illustrating.)

Q. Do you find it to be a habit of Mr. Skillman's to stop after the small letter "e?"

A. The small letter "e," he stops, or not only stops, but he makes that radical change in the slant—for example the small letter "n" will be a good forward slant, and the letter "e" will go right back (illustrating.)

Q. Is that the style of letter "e" found in the disputed signature?

A. That is the style of letter "e" which is found in the disputed signature, but in the disputed signature, it is as I said, treated in that manner (illustrating) after it was made.

Q. Is that style of letter "e" also found in the handwriting of the body of the will?

A. It is, that style of letter "e" is also found in the handwriting of the body of the will, and in the "Skillman" letters to Mr. Griggs.

He does not always make a break in the small letter "e" but very, very often he does not very, very often he slants it back and this photograph shows the characteristic "Skillman" method of making the letter "e" and toppling it backwards. This is a particularly significant connection between the disputed and the Skillman writing. It is a strongly marked characteristic, because it departs so far from the standard, it is a great departure from the copy-book standard.

Q. Did you find that style of letter "e" in the "Lanehart" handwriting?

A. No sir, I have not been able to find a single example of it. The letter "e" in the "Lanehart" handwriting is the conventional or copy-book example, and like the one I have placed on the board (illustrating.)

Then the capital "L" in the "Skillman" writing, where he writes the name "William Lanehart," has a tendency to make this loop at the base line too big. That is one of the faults of the disputed signature, having this loop too big, so much larger than the average of Mr. Lanehart's loops. And another peculiarity found in the disputed signature, is now accounted for by finding in the "Skillman" will a very long dropping down stroke, as the finishing part of the letter "L" in the word "Lanehart."

Q. Is that a characteristic of Mr. Skillman's "L's?"

A. It is.

Q. Does that appear in the word "Lanehart" in the body of the will and in the letters referred to?

A. It does. In the disputed signature, it occurs more nearly resembling this one of the "Skillman," which is in one of the letters, he just put on that oval part, but in the majority of cases, he puts this large flourish over that. In two cases, this oval is put over there (indicating) and then brought down too far here (illustrating.) It is a characteristic of "Skillman" writing and not of "Lanehart" writing.

The small letter "a" which I called attention to as not being the "Lanehart" "a" is too much, too broad, too round—the "Lanehart" "a" approximating the school or copy-book style of letter "a"—it is narrower through the oval part, it is a little better made "a." The "Skillman" letter "a" is rather too broad, and that top, that proportion of the letter "a" is found in the disputed signature, resembling the "Skillman" style of letter 'a."

In addition to that, the "Skillman" handwriting, as shown in the body of the will, and these letters referred to, has but little, if any, variance between the up and down strokes, there is a uniformity of pen pressure, and equality of line running through, it is found in the disputed signature, it is found in the "Skillman" writings, and it is not found in the "Lanehart" writings. In that

way I connect the "Skillman" writings with the disputed signature.

These characteristics are sufficient in number, and strength that I have marked, to make it, based on the law of probability, that the writer in the body of the will, and these "Skillman" letters to Mr. Griggs, was the writer of the disputed signature in Exhibit P. 4.

Q. From the writing in these letters and the body of the will, are you able to determine how the writer of these exhibits held his pen?

A. Yes sir, he held it much nearer the school or copy-book style, that is the modern style, with the end of the pen-holder pointing towards the right shoulder, just a little way from the right ear.

Q. How does the manner of holding the pen, as shown by the letters, and the writing in the body of the will compare with the manner in which the pen was held, which made the dispute signature?

A. The same method of holding the pen was used in writing the body of the will and in writing the disputed signature.

Q. What do you find to be the habit of the defendant as to pen lifts?

A. He makes quite a good many pen lifts, more than does Mr. Lanehart.

Q. Is it shown in the writing in the body of the will and in the letters referred to ?

A. Yes sir, it is. You can pick up any of the writings and you will find—the word "executor" for example—the letters "ex" or the letter "e" break away, and "cut" or the letters "or," all exhibit breaks, and they are written quite rapidly at that. I am speaking now from a letter written to Mr. Griggs, marked Exhibit P. 33.

Q. Can you pick out any in the will itself, or in the attestation clause?

A. In the word "executor" five or six lines above the signature the same thing that I called your attention to before exists. I cannot tell without a glass, whether the pen was lifted between the letters "o" and "r" or between the letters "t" and "o," they run together somewhat, I

cannot tell without a glass, it overlaps, but there is a break for the letters "e" and "x," and then the letter "e" stands alone. In writing the words "witness my hand," the letter "h," there is a break after that, between the letters "an" and then there is a break after the "n," between "n" and "d," and then on the next line in the word "executor," after the letters "ex," there is a break, and then the letter "e" another break, and then the letters "cut" and another break—and all the way through the body of the will, the writing is full of these pen lifts.

Q. In the body of the will, what do you find to be the habit of the writer, with reference to the pen lifts after the letter "e?"

A. In the great majority of cases, the pen is lifted, and if it is a final "L" or a final "e" the break is oftener in evidence than at other places, just as a finish in the word "Lanehart" in the disputed signature.

Q. From your examination of the standards and the disputed signature and assuming the latter to be a simulated signature, have you formed any opinion as to how the disputed signature was made and the cause of its radical departure from the normal signature of Mr. Lanehart?

A. Yes sir, so far as I think, there was a pencil drawing put on the paper, sketching an outline of a name "William Lanehart," and then the ink was next put on, and the rubbing, and the abrasions, to get rid of the pencil marks then occurred, and some of them I take it, were rubbed out, there is a disturbance of the fibre of the paper which indicates that some of it was successful.

Cross-Examination by Mr. Clark:

Q. You think the person who wrote the signature to the will had before him a model signature of William Lanehart?

A. I do, yes sir.

Q. And he tried to imitate that first in pencil, is that right?

A. Yes.

Q. And then he tried to cover it with ink?

A. Yes.

Q. These abrasions that you speak of, did you say you observed them in October, 1905?

A. Yes.

Q. You were sworn at the trial of the Lanehart appeal in the Orphan's Court, did you testify to any of those abrasions then?

A. I do not recall, I may not.

Q. Was not your attention called to the paper at that time and were you not asked whether there is any evidence by way of an attempt to conceal the fact that the paper had been written first upon with a lead pencil, there being no erasure of the gloss, or no indications at that time of the gloss on the paper?

A. I do not recall that being called to my attention.

Q. Was not this the fact, that at that time, there was not any evidence of the glazing of the paper being disturbed, so far as an effortat erasing the lead pencil was concerned?

A. No sir, I noticed the fibre had been disturbed as I recall it now.

Q. If you did not testify to that then—why did you not testify to it then?

A. Oh, I don't know, sir, likely it was forgotten, I will think of some things that I ought to have testified to after I get off the stand today that I have not.

(Mr. Clark):

Q. Your attention was called to the question as to whether there had been any effort of the concealment of the use of lead pencil?

A. I cannot put it in that way—I do not recall it, it is perfectly apparent that lead pencil was used.

Q. Did you take into consideration the physical conditions of the writer at the time you formed your opinion, with respect to this signature, or did you know nothing about his physical condition?

A. I took into consideration what I could find. I was

told that he was seventy-five or seventy-six, or over that, years of age; that he might have been ill—and I called for handwriting, just as near that point as possible, because his handwriting at that period would show his physical condition—and they gave me handwriting before and after that, and very near the time, so that that was the best mirror of his physical condition.

Q. If, as a fact, his handwriting was some days good and some days bad, owing to his physical condition, would that alter your theory in any respect, your opinion with regard to the signature to the will?

A. It would, if I did not have a lot of standards, which showed his handwriting on a good many different days, but I have the handwriting in these checks and the other papers.—(interrupted.)

Q. Hold on, you can answer yes or no, and I wish you would do so?

A. I cannot answer it yes or no, except in the way I have.

Q. If you cannot, then I will give you the time necessary to answer fairly—now supposing the will was written under circumstances which the writer was not accustomed to write, for instance, with a sharp pointed pen instead of a stub, his custom being to write with a stub, on a slanting table instead of a flat table, sitting on a low chair instead of an ordinarily high chair, so as to bring him up, so that the arm moved freely, that he was troubled with heart trouble and his hands were swollen and stiff and numb; that he first wrote in lead pencil his signature and then afterwards attempted to trace it in ink—would that not alter or vary your opinion with reference to the kind of signature he would make?

A. Yes, if all those things were true, it would affect the signature some.

Q. Now, when a person attempts to trace a signature, or copy it so to speak, they are not writing, as you say they are simply drawing?

A. Yes.

Q. And it does not depend very much upon the kind of paper that was used, the texture of the paper, the kind of

ink that is used, as to the flow of the ink, whether thin or thick, also the kind of pen that is used, as well as the position of the writer, in having the ability to make a good drawing or a bad one?

A. All those things would of course make a difference.

Q. I see—supposing the writer was seated on a low seat, so that his elbow, his arm, was resting on an inclined table, it was swollen, his hand was swollen and stiff and numb, he was writing with a pen with which he was not accustomed to write with, the nibs of the pen were not even, would that or not make a variation in his signature—I mean to say of the drawing which he was attempting to copy?

A. Yes.

Q. The pen lifts of which you spoke, would depend very largely upon the freedom of the flow of ink from the pen, would it not?

A. No, not in—(interrupted.)

Q. That is an answer—if the ink did not flow freely from the pen, but stopped, and then the pen would have to be lifted for the purpose of getting whatever stopped it out of the way, would it not?

A. Yes.

Q. It takes but a trifle of a fibre to stop the flow of it from the pen, does it not?

A. Yes.

Q. The checks which you have examined with the signatures which you have pronounced as standards, have you examined the fibre or the texture of the paper?

A. In a general way I have had a microscope on it.

Q. Is it a close texture, a substantial paper?

A. It is a medium grade, it is not the best not as good as—(interrupted.)

Q. Now, the flow of ink, that is to say, whether the ink was flowing from the pen stroke, makes a wider or narrower mark, oftentimes depends very much upon the texture of the paper, does it not?

A. Microscopically, yes, but practically no.

Q. Well, do you mean that, with any perceptible change?

A. Not any perceptible change, no sir.

Q. The course of the fibre of the paper, the greater the flow of ink. is it not?

A. Yes.

Q. It covers more space?

A. Yes, sir.

Q. When you speak of variations in angles, do you mean that Mr. Lanehart's angles were always alike, or when I say always, I mean the great majority of them were alike?

A. Yes.

Q. If, therefore, it appears in the examination of any of Mr. Lanehart's signatures, that the angles vary very materially, would that be in your opinion, an indication that these signatures were not genuine?

A. On that point, yes sir, that would be one thing.

Q. If, however, it should appear in any of Mr. Lanehart's standard signatures, that in the framing of them so to speak, the angles vary very material, would that alter your notion with respect to the force and effect of that criticism?

A. Well, I had better understand what you mean by "varying," whether or not you mean or speaking of the uniformity of slant, the downstrokes of the capital "W" for example—(interrupted.)

Q. If you don't understand the question we will stop —I want an answer to my question?

A. I cannot answer questions when I don't understand what you mean by "varying"—that can be interpreted two or three different ways.

Q. Take a signature of Mr. Lanehart—I understand his signature does not vary, as a rule with reference to the angles?

A. I did not say that.

Q. The angles of the letters do not vary?

A. I did not say that, I said they were comparatively uniform, I modified it and indicated the one I put on the

board to show the variance in the slant of the downstrokes, a variation—(interrupted.)

Q. You have answered the question—now then, if it appears that in the standard signatures, there are variations, of which you speak, would it or would it not take away the force and effect of the criticism which you have made, upon the signature in that regard?

A. I think I will never testify again, if you find it like that.

Q. Well, I only want to know what you said?

A. If it varies, that disputed signature—(interrupted.)

Q. You have just shown me the large photograph of Mr. Lanehart as attached to the will?

A. Yes.

Q. I observe that when using the paper to illustrate it, you filled the top of the letter "e" after it was drawn?

A. Yes.

Q. Now what is there which warrants the conclusion that the letter "e" in the word "Lanehart" was filled with a separate stroke of the pen after it had been written, and how do you differentiate between the use of the pen, lifting it up towards the loop of the letter "e," the pen might have dropped ink and thus blotted the top oval?

A. I differentiate in this way. There was an upstroke made on the letter "e," the pen was lifted, and another upstroke was made, and then there was a third patch of that, an independent downstroke, but I did not so testify I know it, and it is my opinion or that I thought that that blot was occasioned by this extra patching that was put on there, and that filled in the strokes. In other words —(interrupted.)

Q. That is the answer.

A. It is not all of the answer.

Q. Go on then?

A. The small letter "e" when made in this will, these strokes are comparatively close together, and if you start to put another stroke anywhere near or inside of that, the wet strokes would have a greater affinity for each other than drier strokes would, and then they would

flow together, and the shape of that blurring shows that there must have been a loop outlined there, it is not too straight strokes running together, but two curved strokes and that is the reason I give it as my opinion that there was a loop there, that has been filled in.

Q. That is simply a view of the thing?

A. It is a view with my eye, yes.

Q. Yes, with your eye?

A. Yes, sir.

Q. And that is all you are testifying from now?

A. There are certain physical effects here, for instance, there is the letter "h"—(interrupted.)

Q. Stop now, you have answered the question—now, in this model which the person attempting to copy it must have been a signature running up hill, so to speak?

A. It might.

Q. That would be somewhat abnormal according to Mr. Lanehart's usual method of writing, from the standard shown you?

A. Yes, of course we did not have the model here, it is speculative as to what it was.

Q. What do you think about the signature having stops in it, also?

A. I don't know, sir.

Q. You don't know about that?

A. I have signatures of his, the standards do not stop that way.

Q. I am speaking about the model in use at the time when the signature was attempted to be drawn?

A. You cannot form any conception about that, it is purely speculative.

Q. I say, it is not difficult to trace your own handwriting in ink, after writing in pencil?

A. It is more difficult than it would be to write it, one in ink.

Q. Answer the question, yes or no?

A. It is a comparison, some people could do it, better than others.

Q. Would it not be difficult to trace a pencil signature with a view to cover the pencil marks with the ink?

A. Yes, it is more or less difficult always.

Q. And in the effort to do that successfully, it would require painstaking, slow, hesitating hand, would it not?

A. Well, that is comparative again, it depends on the skill of the operator, his eyesight, and a lot of things, his physical condition, that I did not know anything about.

Q. Yes, it depends on the skill of the operator, his eyesight, and his physical condition, and also upon the kind of pen used, does it not?

A. Yes.

Q. And the character of the ink used?

A. Yes.

Q. If it was a pen that allowed the ink to flow freely there would not be so much difficulty being in the way, as if it was a pen that did not flow so freely?

A. No, the broader the mark it would make, the easier it is to use.

Q. A signature may be abnormal yet genuine, may it not?

A. Some signatures, yes sir.

Q. Was there any effort of concealment, in tracing this signature, so far as you remember, by the observation you made in October, 1905?

A. Yes sir, it was lead pencil put on the paper, and ink attempted I think, to be put over it, and part of the signature, or part of the lead pencil or at least I suppose part of it, concealed, I cannot see it.

Q. And of course the concealment then, so far as the lead pencil writing was concerned, would be a concealment, but independent of that, was there anything that indicated concealment, so far as you observed at that time?

A. I don't know of anything else that you would call a concealment in a traced signature of this kind.

Q. These signatures which Mr. Lanehart is said to have written, the standards, that is to say the signatures to the checks, as I understood from Miss Kellogg, were written with a stub pen—perhaps I am mistaken about that?

A. I heard her testify that they were written with a

stub pen, and I think she is mistaken about some of them. The difference between a stub pen and a medium coarse pen, the dividing line is broader shaded—in judging the quality, and at first I thought they were all written with a pen not a stub, and on looking at some of them since then, I think some of them a fine stub pen was used, I think fully one half of them were written with a fine pen though.

Q. In tracing with a stub pen you would get a different mark than in tracing with a pointed pen, would you not?

A. Yes.

Q. And in some places it would be broader and some places narrower?

A. Yes.

Q. And that would necessarily effect the shading more or less, would it not?

A. Yes.

Q. Would or would not the writing of a person who was accustomed to write partly with the finger and partly with the wrist and fore-arm be affected materially by reason of the physical condition which I spoke of a few moments ago namely, of a swollen hand, numb, and ill, and writing on an incline table, and seated on a chair which was low?

A. Yes sir, it would vary from hardly perceptible to so bad that he could not write at all.

Q. I see—when you spoke of the quality of the line of the pencil marks, as being sketchy, a sketchy stroke, a light sketchy stroke—I want to call you attention to the pencil marks that are there apparent, and were apparent, when you first saw the paper in October, 1905, and ask you whether those lines were not heavy lines, which were perceptible?

A. They were not heavy lines, but they were perceptible, plainly visible to the naked eye.

Q. Yes, plainly visible to the naked eye—well, that was not a light sketching stroke then which you saw then, which would be easily effaced?

A. Yes, it was made as a guide for the naked eye, and had to be observable with the naked eye of course.

Q. When you say that it ought to be observable with the naked eye, I want to know whether that part which was observable was plainly observable, then put it that way?

A. It varied, there were parts of it that were plainly observable, other parts that you could just simply observe, others that you have to put a glass on to see it at all, and some places you were in doubt, whether there was or not any graphite on the paper at all.

Q. Might not that be accounted for because of the handling of the paper, and the texture of the paper, and the handling and folding of it, after it was executed?

A. That is hard to say, I don't know just how it was handled, I inquired at the time.

Q. My point is this, were not the abrasions, as you call them, or the roughening of the surface, whether these things might not be accounted for as the cause of all the disturbance of the fibre, which you observed on October 5th or thereabouts, when you first examined the paper?

A. Oh, it might, it might, I don't think it is probable, but it might.

Q. Have you any recollection at all of having had your attention called to the abrasions as a matter of any seriousness or importance, on the occasion when you testified in the Orphan's Court, in the Lanehart will case?

A. No sir, I do not recollect my attention being directed to that at all.

Q. Here the abrasions have been spoken of as being matters of some importance, do you mean to say that they would so far escape, as not to have been mentioned at all if they were serious at that time, or don't you know enough about that to say?

A. Well, I know from other cases, I have considered the time, that I have and I am in a hurry to get through, and the Prosecutor or the attorney rather limits me in some cases, as to time, and I overlooked some things, I know at the last trial I did not take so much time as I did at the will trial for example.

Q. If this signature was first written in lead pencil

and then subsequently traced with ink, is there any way to ascertain to a positive certainty whether or not it was or was not written by Mr. William Lanehart, excepting by the removal of the ink?

A. I do not know of any way, and I do not know whether that would do it or not.

Q. If the ink was removed, and the lead pencil signature was there, after the removal of the ink, of course it would then enable you to compare that signature as thus left, with the standard signatures presented?

A. If that could be done, without it staining the paper, and you could not show the lead pencil underneath, what little lead pencil is observable—(interrupted.)

Q. On moment please—do you mean to say that in your experience you have never known that to be done, and without staining the paper, and so done as to enable you to determine to a reasonable certainty, whether the signature was or was not a forgery?

A. I have never known it to be tried in court but once and then there was no lead pencil writing underneath, there was a charge that there was lead pencil writing underneath, and there was not.

Q. In your experience, you never tried to remove—in other words you never tried to remove ink that was written over lead pencil, have you?

A. Oh, yes, I have done it. Some inks you can take out fairly well, and if the lead pencil is heavy and put on in good shape, and is there of course, and the paper is good, there may be enough of it left to be sure about it.

Q. The pencil does not yield to the same chemicals that the ink does?

A. No, sir.

Q. The pencil is graphite?

A. Yes sir, the pencil is graphite.

Q. And the ink can be removed and the graphite remain?

A. You mean the ink can be removed from the top of the graphite writing? I suppose it could be, but sometimes it requires so much rubbing to remove ink, that you

disturb the fibre of the paper, and the pencil is rubbed off.

Q. I understood you to say that you had examined the "Race will," did you do so?

A. I did.

Q. At the time you examined that, did you observe any evidence of pencil marks attached to that (Exhibit P. 5.)

A. I did.

Q. Where a signature is placed under favorable conditions, such as I have mentioned, would or would not those unfavorable conditions, in your opinion, change in any respect, for instance, the slant?

A. It might.

Q. And this affect the angles?

A. It might.

Q. Would it not affect the shading?

A. Yes, in these conditions you mention, yes it might, and probably would.

Q. Would it affect the pen lifts?

A. It might.

Q. Might it affect the alignment?

A. It might.

Q. Might it affect materially the form of the letters?

A. It might.

Q. Do you know in whose custody these papers were at the time the photographs were made?

A. Yes sir, in the custody of Surrogate Dumont.

Q. Well, were they not brought down from Trenton at the last trial here and photographs made then?

A. Previous to the first criminal trial photographs were then made.

Q. They were then in the possession of the Secretary of State—I may be mistaken about that?

Mr. Dungan:—You are.

Witness:—The photographs were made in November, 1906, that is a year ago this month, and the Surrogate

sat up there in the photographic gallery while the photographs were being taken.

Q. Were there other papers there than those which you selected and made photographs from?

A. That I do not recall, I think in the matter of signatures, we photographed about everything that we had there, we did not photograph the entire paper.

Q. You made the selection?

A. There was no selection made in this case, we took every signature as I recollect, that we had, and Mr. Osborn and I conferred in regard to the arrangement, so as to take them in order of dates, for signatures.

Q. All the copies presented here were there at that time, were they not, the letters to Mr. Griggs, the two wills, all checks that are here?

A. Yes, sir.

Q. They were all there?

A. Yes sir, they were all there.

Q. And from all that mass the photographs which are here presented were selected and made?

A. Yes, sir.

Q. Were there pencil writings there also?

A. I think not.

Q. You do not remember?

A. No sir, I am not sure, but I do not recollect now, it is a year ago.

Re-Direct by Mr. Reger:

Q. Does the photograph of the twenty signatures show certain signatures prior to the date of the alleged will, and certain signatures subsequent to the date of the alleged will?

Mr. Clark:—That appears by the photographs themselves, the papers themselves.

Court:—It appears from the checks, I do not know whether it appears from the photographs.

A. We put these dates on ourselves.

Q. What do the dates on the margin indicate on the photographs?

A. There are dates put there in lead pencil, the dates being taken from the faces of the various checks that were photographed,

Q. How many of these are prior to the date of the disputed will?

A. Ten.

Q. And the same number subsequent to the date of the disputed will?

A. Yes sir, ten subsequent to the date of the disputed will, that is ten before and ten after?

Q. And you say in one of the examinations of the will known as the "Race" will, you observed some pencil marks about the signature?

A. Yes.

Q. What was the nature of those pencil marks?

A. They were very, very fine marks, done near the bottom of the capital "W," as if somebody had pointed at the letter a couple of times, and struck the paper with the pointed lead pencil.

Q. Were there lead pencil tracings about that signature anywhere?

A. No, sir.

Q. Did you observe those pencil marks the first time you made an examination?

A. I did not in October, 1905, I observed them February 22nd, 1906, the first time.

Q. Were they there in October, 1905?

A. I do not think they were.

Q. You made a careful examination at that time?

A. I did, I put a microscope all over the surface of that paper.

A. And you did not at that time observe any pencil marks?

A. No, sir.

Q. If a person was seated on a low seat and writing with the hand somewhat swollen, and with a strange pen, would that lead the writer to forget his characteristics?

Mr. Clark:—I object to the question.

Court:—On what ground? You asked a hypothetical question, which was based upon facts which had not yet been proven in the case.

Mr. Clark:—That is true.

Court:—Stricty speaking that question was objectionable, but as it was not objected to, I let it pass. I think Mr. Reger's question is proper under the circumstances and I will admit it.

Q. (Question read as follows:) If a person were seated on a low seat and writing with the hand somewhat swollen and with a strange pen, would that lead the writer to forget his characteristics?

A. No sir, it would not.

Q. Would it cause him to depart from the form of letter which he was in the habit of making?

A. No sir, it might make it more difficult for him to make his usual form of letter, but it would not make him change his style, and it would not make him write the "Skillman" style of handwriting, for example.

Q. If the disputed signature was made under all the adverse conditions detailed by counsel for the defendant, would that account for the departure in the disputed signature from the normal signature of Mr. Lanehart?

A. It would not.

Q. If the disputed signature were made under all these adverse conditions, and the signature to the check dated February 28th, 1905, to John Asbury were made under similar conditions would that be any indication that the disputed signature was or was not made by William Lanehart?

Mr. Clark:—I object to that.

Court:—I think the question should be limited to what was actually in the evidence. He said "a table like that,"

but the table did not shake at that time—the question must be modified, otherwise I shall overrule it.

(Mr. Reger):

Q. Would the kind of pen used account for the departure from Mr. Lanehart's normal signature as shown in the disputed signature?

A. No sir, I think not.

Q. I show you a pen and ask you if that pen had been used, would that account for the departure from Mr. Lanehart's normal signature, as shown in the disputed signature?

A. No sir, it is a style of pen used in the body of the instrument it makes the style of stroke, but it would not account for the regular handwriting in the signature, it would account for the width of the stroke.

Mr. Reger:—I ask that that pen be marked for identification.

Marked P. 130 for identification.

Mr. Clark:—Is that the pen that was brought here by the Secretary of State?

Mr. Dungan:—It is.

Mr. Clark:—I have no objection to its going in the case.

Court:—I suppose it will be offered at the proper time.

(Mr. Reger):

Q. You were asked if the signature might be abnormal and yet genuine?

A. I was asked that, yes sir.

Q. And I think you said "yes"—I ask you if this is an abnormal genuine signature of Mr. Lanehart? (P. 4.)

A. In my opinion it is not, this in my opinion is a farcry from being a genuine signature of anyone.

Q. If Mr. Lanehart had traced his genuine signature, would not his normal characteristics be in it?

A. They would.

Further Cross-Examination by Mr. Clark:

Q. This is no signature at all then?

A. I don't think it is, I think it is a drawing.

Mr. Dungan:—We ask that these drawings of Mr. Kinsley be marked for identification.

Mr. Clark:—I object to them as immaterial.

Court:—Objection overruled.

Marked P. 131 to P. 139 both inclusive for identification.

A. GIBBEY SPENCER, recalled in behalf of the State.

Examined by Mr. Reger:

Q. What was your official position in the county during the year 1905?

A. Deputy Surrogate during part of 1905.

Q. How long did you hold that office approximately?

A. Oh, about six years.

Q. Were you also Surrogate—have you also been Surrogate?

A. I have, yes sir.

Q. How long did you hold that office?

A. A little less than a year.

Q. While in the discharge of your official duties, did you have anything to do with the matter of comparing hand-written signatures?

A. Yes sir, at times.

Q. In what way was that necessary?

A. Why, in comparing the signatures of subscribing witnesses to wills, with the signatures of the witnesses to the oaths in the proof of the will.

Q. And you were then called upon to pass upon the genuineness of the signatures, were you?

A. Well, yes sir, I considered that a part of my duty.

Q. I show you exhibits marked P. 8 to P. 32 both inclusive in this cause, and ask you if you have made an examination of the signatures and endorsements of William Lanehart to these exhibits?

A. Yes sir, I believe I have.

Q. When did you make such an examination?

A. This morning.

Q. Had you previously examined these exhibits?

A. Why, I believe so, I examined some certain exhibits previously.

Q. I show you Exhibit P. 4 and ask you whether you have examined the signature to the paper writing purporting to be the last will and testament of William Lanehart?

A. Yes, sir.

Q. Have you made a comparison of the signatures and the endorsements to William Lanehart to the exhibits first shown you with the signature to the Exhibit P. 4?

A. Is this the Exhibit P. 4—it is marked P. 1.

Q. You will find the mark P. 4 in another place?

A. Yes sir, I have.

Q. Have you formed an opinion, as to whether or not the person who wrote the exhibits shown you, the standard of William Lanehart, wrote the signature to Exhibit P. 4?

A. I have formed an opinion, yes sir.

Q. What is your opinion?

Mr. Clark:—I object, I do not think the witness has shown himself competent to testify as an expert.

Objection overruled and the evidence admitted.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Reger):

Q. What is your opinion?

A. My opinion is, that the person who wrote the signatures of these checks shown me, did not write the signature or purported signature to the will.

Q. The will Exhibit P. 4?

A. Yes sir, unless at the time that was written the person who wrote it was in a very nervous condition.

Cross-Examination by Mr. Clark:

Q. The condition of the person physically, the kind of pen he was writing with, the seat in which he was seated at the time of writing, whether low or high, the kind of pen he used, and the ink and paper, would all have to be taken into consideration in determining as to the genuineness of the signatures, would it not?

A. Why, I presume it would, yes sir.

Q. If this was not written at all, was simply a tracing, would you be willing to say it was not traced by William Lanehart?

A. No sir, I could not say that.

Re-Direct by Mr. Reger:

Q. Would or would not, in your opinion, a traced signature bear the characteristics of the signature which was traced?

A. Do I understand you to mean a signature written originally by the same person as and for his signature and then traced over subsequently with ink?

Q. Yes, would that in your opinion bear the characteristics of a signature which was traced?

A. To a great extent I think they would, yes sir.

Further Cross-Examination by Mr. Clark:

Q. That would depend on the condition of the writer and the circumstances under which he wrote, would it not?

A. Yes sir, as I qualified it before, if he were very nervous, then of course he might possibly have traced this off and have written it with a pencil first, and then succeeded in tracing it fairly well with a pen.

Q. Now, supposing that William Lanehart's genuine signature was written up-hill-way, that is to say, did he write that signature in the up-hill-way in lead pencil first,—that would indicate, would it not, that it was a different way from what he generally wrote his signature from the standards you had before you?

A. Of course there would be a difference, I do not say that this is uphill, the first part of it is, and then it curves round to the level again.

Q. The criticism as I understand it is, that the capital letter "W" and the capital letter "L" are in the same line and then the letters "h-a-r-t" run uphill, not on the same line with the other letters?

A. I see what you mean now.

Q. He first wrote in that way with lead pencil, and then attempted to trace it in ink, under conditions that were unfavorable, all might account for the condition of things that exist now, might it not?

A. Yes sir, it might.

GEORGE V. VANDERVEER, sworn in behalf of the State.

Examined by Mr. Reger:

Q. Where do you reside?

A. Somerville.

Q. What was formerly your position with the Second National Bank of Somerville?

A. I was president and director.

Q. How long did you hold that position?

A. I don't remember exactly, I think about three or four years as president, and ten years as director.

Q. Were you also connected with the People's Building and Loan Association?

A. Yes.

Q. As president of the Second National Bank of Somerville, were you called upon to pass upon signatures presented to the bank?

A. Quite often.

Q. Previous to your election as president, did you have any other banking experience?

A. Yes sir, I have had a good deal of it for the last twenty-five years.

Q. In what capacities?

A. Various capacities, clerk, assistant cashier, vice-president and bookkeeper.

Q. During that period, have you been called upon to pass upon the genuineness of signatures presented to you?

A. Yes, sir.

Q. And what is the practice in the bank when a signature is presented to you, about which there is any question?

A. It is our practice to compare it with the signature in the signature book, which is kept for that purpose.

Q. Such a book is kept for that purpose?

A. It was in that bank and I presume is in most banks.

Q. And you were frequently called upon to pass upon signatures of that character?

A. Quite frequently.

Q. I show you certain checks marked in this case Exhibits P. 8 to P. 39 both inclusive, and ask you whether or not you have examined the signature of William Lanehart to those checks?

A. I have.

Q. I show you another paper purporting to be the last will and testament of William Lanehart heretofore marked as exhibit P. 4 and I will ask you whether you have examined the name "William Lanehart" attached to that document?

A. I have.

Q. Have you made a careful comparison of the exhibits previously shown you, that is the checks, with the signature to that document, Exhibit P. 4?

A. Quite careful.

Q. For what purpose?

A. For the purpose of determining whether the two signatures agreed—that is by two signatures, I mean the series of signatures upon the checks agreed with the signature upon the will.

Q. What is your opinion, after examining the standard signatures of William Lanehart and comparing them with the signature on Exhibit P. 4, as to the genuineness of the signature attached to the will marked Exhibit P. 4?

A. My opinion is, that the signature attached to the will is not the genuine signature of William Lanehart.

Cross-Examination by Mr. Clark:

Q. Do you mean to say by that, that the signature to the will may not have been written in lead pencil by William Lanehart, and then traced in writing, so that it is not a writing, but simply a tracing of the pencil marks, so far as it is possible to do it?

A. No sir, I don't mean to say that.

Q. Now, if William Lanehart did write the signature to that paper "William Lanehart" and then afterwards attempted to trace it in ink, would you be willing to say that that was not his tracing?

A. No sir, if he did it, I would not be willing to say that it was his tracing.

Q. Now, would you be willing to say that because of the difference between the standard signatures and this tracing that therefore he did not trace it?

A. No.

Q. Now, a traced signature is no signature, is it?

A. I do not consider it such.

Q. A traced signature is simply a drawing or the effort to draw the signature over which it is intended to cover?

A. Yes, I think so.

Q. And in doing so, are you prepared to say that that is not the writing of William Lanehart in an effort of tracing?

A. I have said that I do not consider it his genuine signature.

Q. If William Lanehart had taken a pencil and written his name, and then in his effort at tracing or copying the pencil writing with ink, would you say that it would not produce the result which is now demonstrated in Exhibit P. 4?

A. It might produce it possibly.

Q. Would you not have to take into consideration the circumstance of the physical condition of the writer or the person who attempted to trace it at the time, for the purpose of determining whether or not, he had or had not done that thing?

A. To a certain extent, yes sir.

Q. Now if, as a matter of fact, William Lanehart was ill, had a swollen hand or hands, and they were cold and numb, that he was seated on a low chair, and had an inclined desk to write upon, with two overcoats on, and in his effort to sign the paper Exhibit P. 4, first signed it with a lead pencil, and then, would you say under those circumstances, his effort at tracing would not be the result, which is produced in Exhibit P. 4, with what purports now to be the signature there?

Mr. Dungan:—I object to the question—it states a hypothetical condition of facts, that do not appear in the case.

Court:—It does not apply to cross-examinations, I have just ruled upon that same objection—I will take it.

A. It might.

(Mr. Clark):

Q. The fact is, that it would not be any signature at all, it would be simply a picture, so to speak?

A. Under your statement, it would not be any signature?

Q. So that, to compare such a signature, or such a presentation as is attached to Exhibit P. 4 with the standard signatures, under such circumstances, would not be any fair comparison, would it?

A. I don't know why not, if it was a tracing.

Q. Well, it depends entirely upon these conditions, would it not?

A. Well, it depends to a certain extent, perhaps upon conditions.

Re-Direct by Mr. Reger:

Q. Would not the traced signature possess the same characteristics of the signature which was traced?

A. I should think it would possess a great many of them.

Q. Can you conceive of any condition that would have caused Mr. Lanehart to omit practically all of his characteristics, and inject many of the characteristics of the person who wrote the body of the will?

Mr. Clark:—I object to the question on the ground that it presupposes that he had done that here.

Court:—It is following up your lead—I will allow the question.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

A. No, sir; not entirely.

(Court):

Q. Have you ever in your experience, examined for the purposes of comparison or otherwise, a signature in ink traced over a lead pencil signature?

A. I do not think I have.

(Mr. Clark):

Q. You judge, and your opinion is founded solely upon the dissimilarity of the signature to exhibit P. 4., as compared with the standard signatures, do you not?

A. Yes, sir.

FRED. N. VOORHEES, sworn in behalf of the State.

Examined by Mr. Reger:

Q. Where do you live?

A. Bound Brook.

Q. What is your business?

A. Why I am a member of the N. J. Bar, but I am Deputy Clerk of Somerset County, in the Clerk's office.

Q. How long have you been a lawyer?

A. I have been a lawyer about ten years.

Q. How long have you held the position of Deputy County Clerk?

A. About five years.

Q. And previous to that time, were you employed in the County Clerk's office?

A. Yes, sir; I was.

Q. For how long?

A. Since April 1892.

Q. As Deputy County Clerk and as Clerk in the office, have you been called upon to pass upon signatures presented to the office?

A. Almost every day we are.

Q. For what purpose?

A. For the purpose of comparing the signatures in the execution of papers in there with the signatures as recorded in the book of oaths, which we have.

Q. I show you Exhibits P. 5. and also P. 8. to 31 inclusive, and ask you if you have examined the signatures of William Lanehart, appearing upon those exhibits?

A. I have.

Q. Have you made that examination more than once?

A. Several times.

Q. I show you exhibit P. 4. purporting to be the last will and testament of William Lanehart, and ask you, have you examined the name "William Lanehart" appearing upon that document?

A. I have.

Q. Have you made a comparison, between the signatures of William Lanehart appearing on the exhibit P. 5., and P. 8. to 31 inclusive, which I have just shown you, with the signature or name, upon Exhibit P. 4?

A. I have.

Q. For what purpose did you make such a comparison?

A. For the purpose of determining whether in my judgment, the signature upon Exhibit P. 4. was the name signature upon those exhibits of these checks, and also upon P. 5.

Q. After the several examinations and comparisons which you have made, what is your opinion, as to whether or not, the name "William Lanehart" appearing upon Exhibit P. 4. is the genuine signature of William Lanehart, as shown by the other exhibits with which you have compared it?

A. That is the signature upon this as compared with these (indicating).

Q. Yes?

A. That is not the signature in my opinion, it is a different signature.

Q. It is not the genuine signature of William Lanehart?

A. No, sir; it is not the genuine signature of William Lanehart.

Q. Have you made any examination of the hand-writing of the body of the will?

A. I have looked over the hand-writing in the body of the will; yes, sir.

Q. Have you compared that with the hand-writing of the disputed signature to that document?

A. I have.

Q. What is your opinion as to whether or not the person who wrote the body of the will also made the disputed signature to that document?

A. Well, I hardly consider myself expert enough to speak definitely upon that subject, although I noticed one of the characteristics in the writing of this will, that wherever an "e" occurred the habit of the writer seems to be to make a break between "e" and the next letter, and I notice that characteristic in the signature at the bottom of the will.

Q. Did you observe any other similarity between the hand-writing in the body of the will and the disputed signature—I call your attention to the letter "w?"

A. Well, the "W" has some resemblance to the "W" in the will, but as I said before, I hardly consider myself expert enough to handle the handwriting of both.

Q. You do feel however that the signature of exhibit P. 4. is not the genuine signature of William Lanehart as shown in the other exhibits I have shown you?

A. By a comparison; yes, sir.

Cross-Examination by Mr. Clark:

Q. You never knew William Lanehart in his life-time?

A. No, sir.

Q. And you never saw him write?

A. No, sir.

Q. Your opinion is based solely upon comparison?

A. Yes, sir; my opinion is based solely upon comparison.

Q. If the signature upon Exhibit P. 4. was his writing in lead pencil, and then after that the writer traced it in ink, it would not be a signature at all, it would simply be a tracing, would it not?

A. I suppose it would be called a tracing?

Q. And the tracing would not compare favorably with the standard signatures, which had not been so traced?

A. But I think—(interrupted.)

Q. Answer the question please, yes or no?

Court:—It is not a question which admits of an answer yes or no.

(Mr. Clark:)

Q. I will add to the question, the words "in your opinion?"

Court:—That does not require an answer yes or no—the witness may answer the question as he was proceeding to answer it, and then if it is not responsive I will strike it out.

A. In my opinion a pencil signature would show the characteristics of the hand-writing of the person who wrote it, and a traced signature over that, should also show those same characteristics.

Q. Would not that depend largely upon circumstances?

A. It might depend upon circumstances; yes, sir.

Q. Supposing a person is accustomed to writing his standard signature with a stub pen, and he made this tracing with a pointed pen; supposing he was accustomed to sitting upon a seat which was of ordinary height, giving him the free use of his arm, upon a flat table, and this tracing was made when he sat on a low rocking-chair writing upon an inclined plane, so that the weight of the arm would practically come upon the table; supposing that his arms and hands were numb and swollen and stiff

and cold; he had two overcoats on, and executing his will, would or would not these conditions tend to create an abnormal condition of things, and produce the very results which was produced there in his effort at tracing that signature?

A. It might somewhat; yes, sir.

Q. Are you prepared to say that it would not absolutely so alter the hand-writing, as to produce the result there produced?

A. It would alter the handwriting in some respects, but I think the characteristics would still be shown in the handwriting.

Q. The man is not writing, he is tracing—now how would he be able in tracing, to maintain the same characteristics?

A. Because, as I say, I think the pencil signature would show the characteristics and tracing anything should be nearly the same as the original.

Q. Yes—what are the characteristics, that is what do you mean by the characteristics; you have said that your opinion was based upon a comparison—now, do you mean to say that it was based upon a comparison and characteristics both, or upon comparison alone?

A. Well, upon comparison, and in one sense the characteristics of the genuine signature which have been shown me of Mr. Lanehart.

Q. What do you call characteristics?

A. Why certain forms, certain shadings in the writing, and the style of the writing, and the loops I should say in writing.

Q. Would not all these things which you have just made mention of, the form of the letters, the shading, and so on, be materially affected in the effort of the writer to copy a pencil hand-writing, under the circumstances I have named?

A. Not in the pencil hand-writing was it the same, or in the same form, as the original, as the genuine which were shown me. Of course I say that what little experience I have had, of traced names, they always exhibited a sort of tremble, they might not show it under the eye

so apparently, but a traced signature is something very hard to do.

Q. A traced signature is an abnormal signature, is it not?

A. If it is trying to follow another signature; yes, sir.

Q. And you cannot tell whether the traced signature is genuine or not, unless you can see the signature itself?

A. Well, if it follows the signature, under it, in an attempt to follow it, it should have the characteristics of the signature underneath it.

Q. That entirely depends on the flow of the ink, does it not, whether it covers the pencil mark or not?

A. No, sir; I don't think so.

Q. And it depends on how the pen is held?

A. It may depend somewhat upon how the pen is held.

Q. And it may depend upon the freedom of the hand of the writer, in handling the pen, would it not?

A. It depends upon that somewhat.

Q. Excepting you know, all these conditions, would it be possible to form any opinion, which would be at all reliable?

A. Well, I think it would be possible to form an opinion, because, as I have said, comparing it with the signature with the genuine signatures, I am of the opinion that the signature whether traced by the writer or not, should bear more of the characteristics of the genuine signature than this signature does.

Q. And do you find any standard signature of Mr. Lanehart, which runs up hill—(interrupted.)

A. The two endorsements on Exhibits P. 31. and P. 32. apparently, are on a straight line, these are the only two thatI notice. Now, they do not appear to run up hill in those two signatures.

Q. They do not appear to run up hill?

A. No, sir; they do not appear to run up hill.

Q. That is not one of the characteristics of Mr. Lanehart's hand-writing, running up hill, according to the standard?

A. According to the standards, that does not appear to be one of Mr. Lanehart's hand-writing characteristics

as they were shown me here where the endorsements are on the back of the checks. The signature there is apparently a very straight signature.

Q. Now, if the signature of Mr. Lanehart was a model signature, that is written after a model, you think it would not possess the same characteristics of the orginal signature?

A. I do not quite understand the question.

Q. I will withdraw it and put it another way—a person you said with your experience, in writing over a signature, in tracing over a signature—evidently you have been practising somewhat?

Mr. Dungan:—I object to the question, because I do not so understand the witness to speak of his experience in that respect.

Court:—No, he has not spoken of any experience of that character, that I have heard.

(Mr. Clark):

Q. Have you had any experience of that kind?

A. I have been looking it up more since the last trial, and I have had papers come into the office, where they have been traced, that is written over a pencil signature, but so far as to compare that—(interrupted.)

Q. Did you mean to say that you have had papers come into the office, where the signature was first written in pencil and then afterwards traced in ink?

A. We have had one or two papers that came to the office where the signature was first written in pencil and then traced over in ink.

Q. Do you know that the signature written first in pencil was the genuine signature of the person who traced it?

A. I did not know that, I only spoke of that for the purpose of saying that what little experience I have had in the tracing of a signature, that any tracing of a signature, will show the general characteristics of the writer, and also show that it is a traced signature, for the reason

that in following the line, it is very hard to follow it without making some small tremor of the hand, and it may be done so well, it might not show to the eye, yet if not, done so well, it will show.

Q. In tracing a signature, the success of making a good tracing depends very largely, upon the freedom with which the ink flows from the ink on to the paper, and the kind of pen used?

A. I don't know that it depends on the kind of pen used, it might depend on the flow of the ink, I think the flow of the ink would have considerable to do with it.

Q. If the flow of the ink is made sufficient, and the effort is made to cover a pencil signature with the ink, it does depend upon the kind of pen used very largely, does it not?

A. No, sir, I don't think it would depend upon the kind of pen used.

Q. You think one kind of pen would cover a pencil mark just as well as the other?

A. Well, a fine pen would make a fine stroke, not what I call a stub pen, but a stub pen, some of the strokes could be wider than others, but I think they would write over a pencil signature better than a fine pen.

Q. And in using a fine pointed pen in an effort to cover a pencil signature, the point of the pen making a finer stroke than a pencil mark, would it detract from the genuineness of the signature in the effort to cover the pencil mark, with an extra stroke of the pen?

A. I do not think it would.

Q. No—and by reason of heavier shading again, given in that way, or in blotting, then perhaps the characteristics might be altered, might they not?

A. I do not think very much, not in tracing a standard signature, that is a genuine signature.

Q. How is that?

A. I do not think the characteristics would be altered very much if a genuine signature was being traced, that is, the general signature or the original signature, if the lines were followed.

WILLIAM A. APGAR, sworn in behalf of the State.

Examined by Mr. Reger:

Q. Where do you live?

A. Somerville.

Q. And what is your business?

A. I am treasurer of the Somerville Dime Savings Bank.

Q. How long have you occupied the position of treasurer of the Dime Savings Bank?

A. Twelve years.

Q. What is the practice at the bank with reference to signatures presented to it?

A. All new depositors are required to give signatures upon a card.

Q. And what is necssary to draw those deposits?

A. The signature should compare with the original signature on the card.

Q. Whose business is it to pass upon the genuineness of the signatures presented on the checks or receipts or draftes presented at the bank?

A. It is my business.

Q. And that has been your business during the twelve years of your experience there?

A. Yes, sir.

Q. How frequently are you called upon to pass upon signatures?

A. Every day.

Q. How many accounts are on deposit at the bank?

A. Over 3,000.

Q. How many of those are active accounts?

A. Fully one-half of them.

Q. I show you certain exhibits in this case, one marked Exhibit P. 5 and others marked Exhibits P. 8 to P. 31 inclusive, on which the name or signature of William Lanehart appears, have you made an examination of those exhibits previous to this time?

A. I have.

Q. Have you made a careful examination?

A. I have.

Q. I show you also a document purporting to be the last will and testament of William Lanehart, heretofore marked Exhibit P. 4 and ask you whether you have examined the name "William Lanehart" attached to that document?

A. I have.

Q. Have you made a comparison between the exhibits marked P. 5 and the checks marked P. 8 to P. 31 inclusive, with the exhibit marked P. 4 just shown you?

A. I have.

Q. Have you compared the signature of "William Lanehart" to the checks, with the purported signature to Exhibit P. 4?

A. I have.

Q. Have you made a careful comparison?

A. Yes, sir.

Q. For what purpose?

A. For the purpose of determining as to the genuineness of the signature to Exhibit P. 4.

Q. And after having made a comparison, what is your opinion as to whether or not the signature attached to Exhibit P. 4 is genuine or not—Exhibit P. 4 being the so-called last will and testament of William Lanehart?

A. I do not consider that signature genuine?

Q. Have you made any comparison between the handwriting and the body of Exhibit P. 4 with the handwriting appearing in the name of William Lanehart attached to it?

A. I have made a partial examination.

Q. What is your opinion as to whether or not the person who wrote the body of the document marked Exhibit P. 4 wrote also the name "William Lanehart" attached to it?

A. There are characteristics in the body of the document to correspond with the characteristics of the signature attached to this document.

Q. Do you find similar characteristics?

A. I do.

Cross-Examination by Mr. Clark:

Q. Do you form your opinion with reference to the genuineness of the signature attached to Exhibit P. 4 solely upon comparison with these signatures, which were given to you as standards?

A. Characteristics—I judge from the characteristics of the two.

Q. What are the characteristics which you have in mind, upon which you base your conclusions?

A. The principal characteristic is—the genuine is different, which would raise the question instantly—(interrupted.)

Q. Is that the characteristic you principally rely upon?

A. That is the first characteristic that would strike the attention.

Q. You said the principal characteristic is that the genuine is different?

A. Yes sir, different and that raises the question instantly as to its genuineness.

Q. That is the principal one, is it?

A. Yes.

Q. Any other characteristics that you have in mind now?

A. There is the characteristic on the lift of the pen, that is similar in the body of the will.

Q. Anything else?

A. These are the principal characteristics that I have based my opinion on.

Q. Now, if this signature was first written in pencil and then traced in ink, whether or not there would be lifts of the pen more or less would depend very largely upon the freedom with which the ink went from the pen would it not, over the pencil marks?

A. The freedom of the ink would change somewhat, it would not change the characteristics.

Q. I have not asked you about the characteristics, I am asking you about the pen lifts now?

A. The flow of the ink would apparently make a pen

lift, but it would not be in the sense that you would call a pen lift.

Q. Well, supposing there should be some little fibre of the paper or something else, interfering with the flow of ink, that might occasion a pen lift?

A. That would cause a blot, I judge.

Q. It would cause a blot you think?

A. Yes sir, I think so.

Q. Could not the pen be lifted and the blot dried, and then the pen put back again on the paper, and then go on with the work?

A. Well, there are a great many possibilities.

Q. A blot is not a necessity at all then?

A. It is with some people.

Q. Have you had any experience at all in handwriting, where the effort was made to trace a pencil signature?

A. I have not.

Q. A pencil signature covered with ink, with a pen, is simply a picture, or a copy, is it not?

A. It is.

Court:—The witness says he has had no experience in that line.

(Mr. Clark):

Q. Have you had no experience with a signature first written in pencil and then covered with ink,—are you able to form any conclusion, which would be at all reliable with respect to the effect of such tracing upon a pencil signature?

A. I can form a conclusion.

Q. You can form a conclusion, yes, but my question is, whether you can form an opinion, which is of any reliability, owing to the fact of your want of experience?

A. In determining the genuineness of the signature?

Q. Yes, in determining as to the genuineness of a traced signature?

A. I can pick out the characteristics of a penciled signature.

Q. Provided the characteristics are not changed by reason of the effort made at copying?

A. If the copy is very wide marks, that would take away the characteristics.

Q. Yes—if the pen ceases to flow, so that there would have to be stops, and then lifting the pen again, and commencing over again, that would change the characteristics would it not?

A. Not the characteristics that I am judging these signatures by.

Q. Well, you spoke of the lift of the pen, and that is the reason I speak of that.

A. Of course these lifts of the pen would be modified somewhat by the flow of the ink and the paper.

Q. Now, the alignment would depend very largely upon the conditions of the writer at the time he wrote, where he sat and how he sat, the freedom with which he could use his arm and his ability as a copyist, in your opinion?

A. It would not take away the characteristics of a person's writing.

Q. You are talking about characteristics again, that is a big word, you have designated the characteristics upon which you rely, by way of alignment first, and pen lifts second—now do you mean to say that these characteristics may not be materially changed by the conditions of the writer at the time, and the conditions of the pen and the ink?

A. They would not be changed, so that you could not distinguish them.

Q. Having had no experience, you are willing to say that?

A. I am judging by two characteristics, I have had experience in judging from characteristics.

Q. Having had no experience with tracing a pencil signature, you still think that you are warranted in your conclusion that characteristics would appear, notwithstanding any conditions which might arise?

A. Well, sticking to the traced signature, I have had no experience whatever.

Re-Direct by Mr. Reger:

Q. Is this such a signature in which you think the characteristics would be destroyed by a tracing?
A. It would not.

RICHARD H. BROKAW, sworn in behalf of the State.

Examined by Mr. Reger:

Q. Where do you reside?
A. Bound Brook.
Q. How long have you lived there?
A. Twenty-five or thirty years.
Q. What was formerly your official position in the Borough of Bound Brook?
A. My former position?
Q. Yes?
A. I was Mayor of the Borough and am still.
Q. Oh, I did not know you were still Mayor, I knew there had been an election, and I did not know but there might have been a change?
A. Well, I am still Mayor.
Q. What has been your banking experience?
A. I have had more or less banking experience for about twenty-five years.
Q. In what capacity have you served in the banks?
A. I have served as cashier, and done special banking work of different characters.
Q. With what banks have you been connected?
A. I have been connected as cashier with the First National Bank of Bound Brook and the present Bound Brook National Bank.
Q. What is your present position with the Bound Brook National Bank?

A. Cashier.

Q. In the various offices which you have held, and in your banking experience, have you been called upon to pass upon signatures?

A. Yes.

Q. What is your practice in relation to signatures presented at the bank?

A. What is the practics?

Q. Yes?

A. We generally examine them to see whether they are genuine signatures.

Q. Are you daily called upon to make such an examination?

A. Yes sir.

Q. I show you certain exhibits, one marked Exhibit P. 5 and certain other checks marked P. 8 to P. 31 inclusive, and ask if you have examined the signature of William Lanehart, appearing upon those exhibits?

A. Yes, sir.

Q. I show you also a document purporting to be the last will and testament of William Lanehart, and ask you if you have examined the name "William Lanehart" attached to that which is Exhibit P. 4?

A. Yes, sir.

Q. Have you made an examination of those various exhibits more than once?

A. Once or twice.

Q. And has that examination been a careful one?

A. It has.

Q. Have you made a careful comparison between the Exhibits P. 5 and P. 8 to 31 inclusive which I have shown you with the exhibit P. 4?

A. I have.

Q. And have you compared the signatures of William Lanehart appearing upon those respective documents?

A. Yes, sir.

Q. After the careful comparison which you say you have made, what have you to say as to whether or not the name "William Lanehart" attached to the will marked Exhibit P. 4 is the genuine signature of William

Lanehart, based upon the standards previously shown you?

A. This exhibit here (indicating.)

Q. Yes, with that exhibit and the checks—(question read as follows)—after the careful comparison which you say you have made,what have you to say as to whether or not the name "William Lanehart" attached to the will Exhibit P. 4 is the genuine signature of William Lanehart based upon the standards previously shown you?

A. I would say that the signature based upon these signatures, (indicating) was not the signature of William Lanehart.

Q. Have you compared the signature on the will purporting to be the last will and testament of William Lanehart with the handwriting in the body of that will?

A. Yes, sir.

Q. After the comparison, what have you to say as to whether or not the person who wrote the body of the will also made the name "William Lanehart" attached to it?

A. My opinion is, that the man that wrote the body of the will, or that signed the will, wrote the body of the will, it seems to be the same character of writing.

Cross-Examination by Mr. Case:

Q. When did you examine the signatures that have just now been placed before you—when for the first time?

A. Before the former trial of the same case, I don't know exactly what date it was.

Q. You testified at the last trial?

A. Yes.

Q. Have you examined them between that time and this?

A. Yes, sir.

Q. When last did you examine them?

A. Today.

Q. Have you examined them before the period preceding the last trial and that examination made today?

A. I think not.

Q. Did you know William Lanehart in his lifetime?

A. I did not.

Q. Did you ever see him sign his name?

A. No, sir.

Q. So that your knowledge of his signature is merely that which is acquired from an examination of the standard produced before you?

A. Yes, sir.

Q. And in passing upon the genuineness of the disputed signature your opinion is based entirely upon the comparison of that signature with the standards, which were mentioned by the Prosecutor in his question to you?

A. Yes, sir.

Q. I understand that you gave it as your opinion and not as an absolute fact that the disputed signature is not that of William Lanehart?

A. That is my opinion, yes sir.

Q. Yes, that is your opinion?

A. Yes, sir.

Q. Now, if other signatures of William Lanehart should be produced to you, containing characteristics which are found in the disputed signature and not found in the signature submitted, would that alter your opinion as to the genuineness of the disputed signature?

Mr. Dungan:—I object to the question for the reason that the signatures ought to be produced if they are to be examined upon with other signatures.

Objection sustained.

(Mr. Case):

Q. What is there in the disputed signature which causes you to give, as your opinion, that it is not the genuine signature of William Lanehart?

A. The general characteristics of the writing.

Q. Of the what?

A. Of the forming of the letters and the general character of the signature.

Q. What do you mean by the general character?

A. Well, I mean the formation of the letters and the usual alignment of the signature.

Q. And what do you mean by the alignment of the signature, the difference of the letters from the base line drawn straight from the start to finish?

A. Yes, partly so.

Q. What else besides that?

A. I think that would be the larger portion of my estimation of it.

Q. What is the remaining portion?

A. Well, it would be the slant probably, or the shading of the letters that you might see in a person's signature.

Q. Then I understand you to say that you base your opinion upon the slant or shading of the letters, the distance of the letters from the base line and the formation of the letters?

A. Well, all these together make up the characteristics of the signature, and I judge the general character of the signature from what is supposed to be the genuine signature.

Q. Did I mention in that enumeration all the characteristics upon which you rely in forming your opinion?

A. I think so.

Q. What is the formation of the letters that in your opinion stamps this as not genuine?

A. Well, I don't know that I can analyze the signature or the letters, I take the general impression that was made upon my mind, from the forming of the same letters in the body of the will.

Q. I am not talking about the body of the will, I am talking about the signature.

A. Well, the signature as compared with the body of the will.

Q. Did you base your opinion upon a dissimilarity between the general appearance of the disputed signature and that of the standard?

A. A dissimilarity?

Q. Yes?

A. Between what is supposed to be the genuine signature and the other signature.

Q. Yes.

A. Yes, sir.

Q. Between what is between the disputed signature and the other signatures?

A. Well, it is the same thing, yes sir.

Q. Would not the writing of a name or the tracing of a name over a penciled original produce results which would tend to form the characteristics as found in the standard signatures?

A. If the tracing was over the standard signature.

Q. If the tracing was over the standard signature, a writing drawn over that?

A. If the tracing was over a standard signature, it would be probably the same as the standard signatures.

Q. Do you consider that the vim and speed of a signature is one of the characteristics?

A. The vim and speed.

Q. Yes?

A. Well, a signature might be written more speedily one time than another.

Q. Do you consider the strength of the signature as one of its characteristics?

A. Yes sir, it may be.

Q. And do you consider that the strength of the characteristics might be impaired by endeavoring to trace the writing over a pencil signature?

A. I do not know, sir.

Q. Have you had any experience, where signatures have been originally signed in lead pencil and then overdrawn in ink?

A. No sir, not to any extent.

Q. Do you feel that you are competent to pass upon the genuineness of an ink writing, drawn over a pencil signature?

A. An ink writing drawn over a pencil signature?

Mr. Reger:—I object to that question.

Objection overruled.

Q. (Question repeated). Do you feel that you are competent to pass upon the genuineness of an ink writing drawn over a pencil signature?

A. No, sir.

Re-Direct by Mr. Reger:

Q. Would or would not, in your opinion, an ink writing over a pencil signature, possess the same characteristics of the original penciled signature?

Mr. Case:—I object to this.

Objection sustained.

CALVIN D. McMURTRY, sworn in behalf of the State.

Examined by Mr. Reger:

Q. Where do you live?

A. Somerville.

Q. And what has been your banking experience?

A. About twelve to fourteen years all told.

Q. Where?

A. At the First National Bank, Somerville.

A. In what capacity?

A. General clerk, bookkeeper and all the departments, except cashier.

Q. You are also ex-Sheriff of the County of Somerset?

A. I believe so.

Q. During your banking experience have you been called upon to pass upon signatures?

A. Everyday of my banking experience, yes sir.

Q. I show you certain exhibits in this case marked Exhibit P. 8 to P. 31 inclusive, and ask you whether you have examined the signature of William Lanehart attached to these exhibits?

A. I have, yes sir, without going over them minutely.

Q. Have you made that examination more than once?

A. Yes, sir.

Q. I show you another exhibit marked P. 4, a document purporting to be the last will and testament of William Lanehart and ask you, have you examined the name "William Lanehart" attached to that document?

A. I have.

Q. Have you made a comparison with the name Wililam Lanehart attached to that document with the other exhibits marked P. 8 to P. 31 inclusive?

A. I have.

Q. After the comparison which you have made, what have you to say as to whether or not the name "William Lanehart" appearing upon the exhibit marked P. 4 is the genuine signature of William Lanehart, based upon the other standards shown you?

A. I don't think the same man wrote the two signatures.

Q. That is the signature to the will and the signatures to the checks?

A. No sir.

Cross-Examination by Mr. Clark:

Q. Have you had any experience with signatures first written in pencil and then traced over with ink?

A. No, sir.

Q. Are you competent to pass upon the genuineness of signatures written in that way?

Mr. Dungan:—I object to the question as incompetent.

Court:—The witness says he has had no knowledge whatever of that character, and therefore could not be competent.

The question will be excluded.

(Mr. Clark):

Q. Do you feel competent to pass upon a signature which has been traced over a pencil signature?

Mr. Dungan:—I make the same objection.

Court:—I sustain the objection upon the ground that this witness says he has had no experience whatever—so how could he be competent to testify as to this—his opinion would be of no value whatever.

Mr. Clark:—Then not having had any experience, with reference to a signature written in pencil, and afterwards traced in ink, if this signature had first been written in pencil, and afterwards traced oved in ink, are you of the opinion that it would be a genuine signature?

Same objection.

Objection sustained.

(Mr. Clark):

Q. Having had no experience with signatures written in pencil and afterwards traced in ink, if the signature attached to what is called the "Skillman will" marked Exhibit P. 4 was first written in pencil, and afterwards traced in ink, could you form any opinion then with reference to the genuineness of that signature?

Same objection.

Objection sustained.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

Mr. Clark:—I move to strike out all the testimony of this witness.

Court:—Motion denied.
Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Clark):

Q. Would the conditions of the writer, his physical condition, and his situation, with reference to the seat being high or low and the table on which he writes, and the fact that he was trying to trace a pencil signature, have anything to do with the handwriting which he produced, in your opinion?

A. It ought to.

Q. Now, is this a signature at all to that will, if it was traced?

Mr. Reger:—I object to the question on the ground that it is calling for a legal construction.

Question allowed.

A. I don't know.

Q. You don't know?

A. No, sir.

Re-Direct by Mr. Reger:

Q. Would you pay on that signature if it were presented at the bank?
A. No, sir.

Adjourned to Friday, November 29th, 1907, 9.45 A. M.

Transcript of stenographer's notes of evidence taken in the above entitled cause, before his Honor, THEODORE B. BOORAEM, Judge, and a Jury, at the Court House, in the City of Somerville, New Jersey, on the twenty-ninth day of November, 1907, at 9.45 A. M.

APPEARANCES:

MR. JOHN F. REGER, Prosecutor.

MR. NELSON Y. DUNGAN and MR. E. P. JOHNSON, Associated for the State.

MESSRS. CLARK & CASE, for the Defendant.

HENRY G. HERBERT, sworn in behalf of the State.

Examined by Mr. Reger:

Q. Where do you reside?
A. Bound Brook, N. J.
Q. What is your business or profession?
A. I am cashier of the First National Bank of Bound Brook.
Q. How long have you held the position of cashier of the First National Bank of Bound Brook?

A. Between seven and eight years, I think it is.

Q. Previous to that time had you had any banking experience?

A. About twelve years.

Q. So that altogether you have had twenty years experience?

A. It will be twenty years next May.

Q. As cashier of the First National Bank, are you called upon to pass upon the genuineness of signatures presented at the bank?

A. Very frequently.

Q. And have been during your years of experience?

A. Yes, sir.

Q. I show you Exhibit P. 5, and also checks marked Exhibits P. 8 to P. 31 inclusive, and ask you whether you have previously examined those exhibits?

A. I think so.

Q. Also the checks which I show you?

A. Yes sir, I think this is the same lot I have seen before.

Q. Have you made more than one examination of these exhibits?

A. Only one careful examination.

Q. When was that?

A. At the former trial in the Surrogate's court.

Q. And you have made an examination also at this trial?

A. A superficial examination.

Q. Have you examined the signature of William Lanehart attached to these exhibits?

A. I have.

Q. I show you a document purporting to be the last will and testament of William Lanehart and ask you, have you examined the name "William Lanehart" attached to that exhibit which is marked P. 4?

A. I have.

Q. Have you made a careful comparison between the name "William Lanehart" attached to that document, and the signature of William Lanehart to the other exhibits which I have shown you?

A. I have.

Q. From that comparison and assuming the signature of "William Lanehart" to Exhibit P. 5 and Exhibit P. 8 to P. 31 inclusive are genuines, what have you to say, as to whether or not, the name "Lanehart" attached to Exhibit P. 4 is the genuine signature of William Lanehart?

A. I should say it is not a genuine signature.

Q. Have you made a comparison of the handwriting in the name "William Lanehart" attached to Exhibit P. 4 with the handwriting of the body of the will?

A. I have, yes sir.

Q. After that examination, what is your opinion as to whether the person who wrote the handwriting in the body of the will also wrote the name "William Lanehart" attached to it?

A. I see some very striking resemblances there, and I think the same person wrote both.

Q. Will you point out some of those resemblances, upon which you base that opinion?

A. For one thing, I think the capital letter "W" in "William" shows strong characteristics of the person who wrote the body of the will.

Q. Anything further that you observed?

A. In the shading of the letters, I think it shows a strong resemblance.

Q. What have you to say as to the general style of the writing?

Mr. Clark:—I object to the question on the ground that it is leading.

Objection sustained.

(Mr. Reger:)

Q. Proceed then, Mr. Herbert, and point out any other resemblances that you observed.

A. The most striking to my mind is the capital letter

"W" and the shading of the letters. I do not attach much importance to not being of the same alignment.

Cross-Examination by Mr. Clark:

Q. In what respect does the capital letter "W" in the signature to the will so-called, marked Exhibit P. 4, resemble the capital letter "W" as embraced in the body of the will to your mind?

A. The lines are somewhat of the same curve.

Q. Which lines do you refer to?

A. The perpendicular lines.

Q. Anything else in the capital letter "W?"

A. That is the most striking characteristic that I noticed.

Q. What letters do you refer to when you speak of the shading?

A. The whole general thing.

(Court):

Q. That is in the name "Lanehart?"

A. Yes sir, in the name "Lanehart."

(Mr. Clark):

Q. Have you had any experience in writing or tracing a signature, which has first been written in lead pencil?

A. No, sir.

Q. If this signature was first written in lead pencil, then the writer took the pen and with the ink, tried to cover the lead pencil writing, would that in your opinion make any difference?

A. Any difference in what respect?

Q. In the appearance of the writing?

A. It undoubtedly would.

Q. And would or would not it, in your opinion, probably so change the appearance as to make the signature of such character that you, as cashier of the bank, would not pay it?

A. It might possibly.

Q. I suppose you are forming you opinion necessarily, in connection with your business as cashier, to know what you would do if such a signature to a check should be presented to you for payment?

A. Do you wish to know what I would do in a case of that kind?

Q. Yes?

A. Well, we would not pay such a check as that, without ascertaining what the unusual—(interrupted.)

Q. It is not a signature, is it, Mr. Cashier, it is practically a tracing?

A. I am not competent to answer that.

Q. You are not competent to answer whether it is a signature or a tracing?

A. Not without further examination.

Q. And not having had any experience with a signature written in lead pencil first, and then covered with ink, are you or are you not prepared to say what the effect of such a tracing would have upon a genuine signature?

Mr. Dungan:—I object to the question,that is exactly the class of question asked and ruled out heretofore.

Court:—That is the kind of question you allowed Mr. Clark to ask, and which was answered without objection. If the objection is not made promptly, and the answer is given, I shall allow the answer to stand.

A. I think it would modify the genuine signature somewhat.

(Mr. Clark):

Q. The extent of the modification I suppose you do not know, you cannot tell the extent of the modification?

A. No, sir.

Q. In your opinion, would the physical conditions of the writer, and the position in which he was placed, the

kind of pen he used, differing from the pen he generally used, have any effect at all upon the handwriting?

A. Does that call for a direct answer, "yes" or "no?"

Q. I am perfectly willing you should explain it in your own way, I think it calls for a direct answer, though?

A. My opinion would be, a person signing such an important document as a will, would take precautions—(interrupted.)

Mr. Clark:—That is not an answer to the question and I object to it.

Court:—The witness may complete his answer.

A. I would say, that before a man of ordinary intelligence would sign any such document as a will, he would take ordinary precautions to complete the matter.

Mr. Clark:—Now, your Honor, I move to strike out the answer as not responsive.

Court:—Motion granted, and the answer ordered stricken out.

(Mr. Clark):

Q. (Question repeated as follows): In your opinion, would the physical condition of the writer, and the position in which he was placed, the kind of pen he used, differing from the pen he generally used, have any effect at all, upon the handwriting?

A. It might possibly.

Re-Direct by Mr. Reger:

Q. Would the fact that a man was tracing his own pencil signature modify his signature to the extent which you find the disputed signature modified?

Mr. Clark:—I object to the question on the ground

that it is misleading, and on the further ground that it suggests the answer desired.

Court:—The question had better be modified, so that it is not subject to the objection that it is leading.

(Mr. Reger):

Q. To what extent do you think the fact that the man was tracing over his own signature would modify his signature?

A. I do not know whether I can answer it or not—it would modify it to the extent that it might have a more cramped appearance, more labored, but it would not destroy the characteristics of a man's handwriting.

Q. Do you find in the disputed signature the characteristics of Mr. Lanehart as shown by his genuine signature?

Mr. Clark:—I object to the question as leading, and also on the further ground that it is a re-examination of what has already been gone into by the Prosecutor.

Court:—I will permit the subject matter of the question, but not the question in its present form, which I think is objectionable.

(Mr. Reger):

Q. (Would the stenographer read the question)?

(Question read as follows): Do you find in the disputed signature the characteristics of Mr. Lanehart as shown by his genuine signature?

Mr. Reger:—I will withdraw that question.

Q. Do you find the characteristics of Mr. Lanehart's signature in the disputed signature?

Mr. Clark:—I object to that question also as leading.

Objection sustained.

(Court):

Q. What characteristic of Mr. Lanehart's signature do you find in the disputed signature, if any?

A. I do not know as I can point out any, I don't see any, I cannot point out any.

Q. You do not find them there?

A. No sir, I do not.

(Mr. Reger):

Q. Would the fact that a man was tracing his own signature, in your opinion, lead him to forget his style of handwriting?

Mr. Clark:—I object to that.

Objection overruled.

Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

A. I do not think so.

(Mr. Reger):

Q. Would a traced signature, in your opinion, bear the same characteristics of the genuine signature, which was traced?

Mr. Clark:—I object to that question as leading.

Objection sustained.

(Mr. Reger):

Q. What characteristics would there be in a traced signature, with reference to the signature, which was traced?

A. I think it would show the form of letters usually employed by the writer as regarding the roundness of the letters, the strokes.

Q. You have already said, that you do not find Mr. Lanehart's characteristics in the disputed signature—do you find any of the characteristics in the handwriting of the body of the will in the disputed signature?

A. In my opinion, I do.

Q. I call your attention to the letter "e" in the disputed signature, and ask you to compare it with the handwriting in the body of the will, and after that comparison, what have you to say, as to the similar characteristics?

A. The only characteristics I notice is the pen lift preceding the letter "h" which I find in the body of the will in the word "household."

Q. Do you find that to be a characteristic of the writer of the body of the will?

A. I do.

Further Cross-Examination by Mr. Clark:

Q. Never have had any experience, in examining signatures, which were first written in pencil and then traced in ink, are you able to state, with any degree of certainty, to what extent the characteristics would be changed?

A. No, sir.

Q. Might not the whole signature be so changed as to make it entirely different from what the original signature was, in consequence of the character of the pen used, the character of the ink, or the flow of the ink from the pen, or whether the flow of the ink was impeded in any way by anything getting in the pen?

Mr. Dungan:—I object to the question on the ground

that it is not proper cross-examination of anything, touched upon in the re-direct examination.

Question allowed.

(Mr. Clark):

Q. The situation of the writer, sitting in a low chair, with a stiff swollen hand, and numb?

A. I do not think it would destroy the entire characteristics of the writer.

Q. You do not think it would destroy it entirely?

A. No, sir.

Q. Supposing all of these things which I have mentioned, in connection with that writing, writing on an inclined table, and being accustomed to writing on a flat surface, would that make any change in the handwriting, in your opinion?

A. I don't think it would make any difference myself.

Q. Do I understand you to say you do not know that you are competent to answer?

A. No sir, I don't know that I am.

Further Re-Direct by Mr. Reger:

Q. Have you had any experience in seeing men write under unusual conditions?

A. Frequently.

Q. Have you ever seen a man write when he was intoxicated?

A. I have, or attempt it.

Q. Do you find the characteristics of the writer's signature were in the signature, after it was written?

A. I certainly did.

Further Cross-Examination by Mr. Clark:

Q. When you saw this man writing under difficult circumstances, you knew he was intoxicated, didn't you?

A. Yes.

Q. And you saw him write?

A. Yes sir.

Q. So you knew of your own knowledge that it was his writing?

A. Yes, sir.

Q. Therefore you did not have to examine it, for the purpose of ascertaining whether it did or did not contain the characteristics of his handwriting, when in a normal condition?

Mr. Reger:—I object to the question he didn't have to examine it.

Question withdrawn.

(Mr. Clark):

Q. You didn't have to examine it for the purpose of ascertaining whether it contained the same characteristics of his handwriting when in a normal condition?

A. I did, certainly, and I have paid the check in my bank signed in that way.

Q. You saw the man write the signature, and you knew that it was the man's signature that was written to that check, didn't you?

A. Well, I probably saw him to this extent, he would take a check and go to another desk and sign it, and then bring it to the desk, I did not see him actually write it.

Q. Then you did not know who wrote the signature?

A. I knew it was his signature, or I would not pay it.

Q. Did you know he was intoxicated when he wrote it?

A. I did.

Q. How did you know he was intoxicated when he wrote it?

A. I saw him, and I judged he was intoxicated from his actions, I did not see him get the drink, of course.

Q. You saw him go over to the desk, and do some writing?

A. Yes.

Q. But you didn't see him write it?

A. No, sir.

Q. You did not know what he wrote?

A. No, sir.

Q. You do not know whether he put that signature on the check or not?

A. I knew the signature, I knew he did it.

Q. How did you know it—how did you know he did it?

A. By what you call circumstantial evidence, I suppose.

Q. You did not know what he did write at the desk, did you?

A. No.

Q. And you did not know but that the signature was on the check when he came into the bank?

A. I am pretty sure it was not.

Q. You cannot tell absolutely?

A. Well, I can tell fresh writing from old.

Q. You cannot tell whether it is five minutes old or less than that, can you?

A. I don't know that I can judge such a short time as that.

Q. You did not know but that he put his signature on the check before he came to the bank, did you?

A. Not positively, no sir.

Further Direct-Examination by Mr. Reger:

Q. Where did this writer obtain the check you speak of?

A. He came to the window and asked for a bank check.

Q. You gave him a check?

A. Yes sir, one of our clerks gave him a check.

Q. And he brought that check back signed?

A. Well, I supposed so.

WILLIAM J. DEMOND, sworn in behalf of the State.

Examined by Mr. Reger:

Q. Where do you reside?
A. Somerville.
Q. What is your official position in the County of Somerset.
A. Surrogate.
Q. How long have you held that official position?
A. Since 1902.
Q. And you were the Surrogate in 1905?
A. Yes.
Q. Was the inventory of the estate of William Lanehart presented to you as Surrogate?
A. It was.
Q. By whom?
A. Mr. Skillman.
Q. The defendant here?
A. Yes, sir.
Q. Was it verified before you?
A. It was.
Q. By Mr. Skillman?
A. It was.
Q. When was it presented?
A. On May 29th, 1905.
Q. What was the amount of that inventory?

Mr. Clark:—I object to the question as incompetent.

Objection sustained.

Mr. Reger:—If your Honor please, it seems to me that it is competent on the question of motive. There must be a motive behind every crime. What that motive is, is always admissable it seems to me, and therefore we think we would have the right to show what the amount of this estate was, and show an attempt on the part of the defendant to obtain that property.

Court:—You have shown that there was an estate, and I do not think the amount of the estate is relevant at all, and I shall sustain the objection of the defendant.

Cross-Examination by Mr. Clark:

Q. Have you the proof with you?

A. No sir, just a memorandum I took from the record.

Mr. Clark:—Are the original proofs, may I ask, in the hands of the Secretary of State?

Mr. Reger:—I only know from what was said on the witness stand, that they were produced previous to this time, by Mr. Anderson and Mr. Spencer.

JOHN D. BARTINE, sworn in behalf of the State.

Examined by Mr. Reger:

Q. Where do you reside?

A. In Somerville, N. J.

Q. How long have you lived here?

A. Forty-two years on the 9th day of last August.

Q. What was formerly your official position in the County of Somerset?

A. The last official position that I held was Judge.

Q. How long did you hold that position?

A. Fifteen years.

Q. Do you know the defendant, William H. Skillman?

A. Yes, sir.

Q. When, with reference to the date of the death of William Lanehart, did you see him?

A. A few days after his death, I do not remember the exact number of days.

Q. Can you give it approximately?

A. Three or four days.

Q. Where did you see him?
A. I saw him in my office.
Q. Did he come there?
A. He did.
Q. What, if anything, did he show you at that time?
A. He showed me a paper, purporting to be the last will and testament of William Lanehart.
Q. Where were you at the time?
A. I was in my office.
Q. I show you a paper, marked Exhibit P. 4 in this case, and ask you to examine it and tell us whether or not that is the paper which he showed you?

Mr. Clark:—I would like to ask the Judge a question or two, before the question is answered, with your Honor's permission.

Court:—Upon what ground?

Mr. Clark:—If Mr. Skillman called there and he examined it there, as counsel, whatever occurred between them, as counsel and client is privileged.

Court:—That is right, but this question is simply as to whether he showed him a paper—he said that he showed him a paper, purporting to be the last will and testament of William Lanehart. You permitted him to ask that question, and to be answered without objection—now, he asks the witness to identify that paper, that I think is permissible. I agree entirely with you as to the application of the privilege to matters of this kind generally, but I do not think this particular question is wrong, and I will therefore allow the witness to answer it.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

A. This is the paper that he showed me.

Q. Did he show you an original paper or a copy?

A. This paper that I hold in my hand, the original paper.

Q. What did he say to you and you to him at that time?

Mr. Clark:—I object to the question on the grounds heretofore stated of privilege.

Court:—I cannot rule upon that objection at the present time the only thing I can do is to permit you to cross-examine Judge Bartine with a view of ascertaining the relations between him and Mr. Skillman at that time, whether in fact they were those of counsel and client.

Mr. Clark:—I will ask your Honor's permission to cross-examine the witness at this point.

Court:—You may do so.

Cross-Examination by Mr. Clark:

Q. Did you understand at the time that Mr. Skillman came, that he came to consult you as counsel?

A. I certainly understood it so at the time that the conversation was one between counsel and client.

Court:—The question will now be overruled and the objection sustained.

Mr. Reger:—That ruling applies as to what the conversation was?

Court:—Yes.

Re-Direct by Mr. Reger:

Q. Was this paper left in your possession at that time?

A. It was not.

Court:—I think the ruling should extend to transactions, as well as conversations.

Mr. Reger:—I thought this last question was in line with the questions previously admitted by the court.

Court:—I do not think the question is objectionable because the answer given can do no harm to the defendant, but I think we had better remain on safe ground.

(Mr. Reger):

Q. Was the paper subsequently shown to you by Mr. Skillman, at any other time?

Mr. Clark:—That is objectionable on the same grounds.

Court:—Yes.

Question overruled.

(No cross-examination.)

LAURA KELLOGG, recalled in behalf of the State.

Examined by Mr. Reger:

Q. How long did you reside with Mr. Lanehart?
A. About ten years or more.
Q. Was Mrs. Lanehart living during that time?
A. Yes sir, a part of the time.
Q. When did she die with reference to her husband's death?
A. Mrs. Lanehart die in May, 1901, just four years before my uncle's death.
Q. What immediate relatives did Mr. Lanehart leave him surviving at the time of his death?

Mr. Clark:—Objection, on the ground that the charge

is forgery, and it seems to me that we are limited in the evidence where the case is a criminal one to certain specific rules. We ought not certainly to go outside of the domain of what is absolutely necessary, in criminal cases, for the purpose of showing the guilt or innocence of the defendant. In other words, we are not called upon or required or obliged to allow evidence to be submitted, which draws upon imaginations of the jurors, and thus to induce them as well as anyone else to form a conclusion not based upon the facts which are the pregnant ones in the case, namely the handwriting. Now, whether Mr. Lanehart died with or without relatives, whether he had children or no children, whether he was absolutely without heirs, so that his property would escheat to the State, would make no difference whatever, with respect to the genuineness of this signature, in this contest. If this is a forgery, whereby the property should go to the State, it is a forgery nevertheless, and it does not mitigate the crime in the least. It does not paleate or excuse it in any degree. If it is not a forgery, even though he had died with children dependent upon his bounty, it would in no degree make this paper a forgery. That is if he did write this paper, would make it a forgery, nor affect their rights under this paper so far as to affect the defendant in the trial of this case. In other words, as everybody knows, the rules which govern the admission of the will, the probate, with respect to evidence that is admissible, or results which are assumed to relate to courts and lawyers, the evidence which is submitted, is of an entirely different character, to what is required here. There upon the admission of the will to probate, all these things can be gone into for the purpose of showing the relations of the testator and all that.

Court:—In other words, the question is, whether that is a will—that is the main issue there.

Mr. Clark:—Yes.

Court:—And here the issue is, whether it is a forgery and whether the defendant is guilty or not?

Mr. Clark:—That is the distinction which I had in my mind, I cannot make it any more clear than your Honor has done.

Mr. Reger:—Certain motives are known to govern and guide men in the disposition of their property. The law recognizes those motives and it says that when a will is produced which disregards the claims of persons dependent upon the bounty of the deceased, that such a will is an unnatural one, and must be viewed with suspicion. Crimes like civil matters may be proven by circumstances and as circumstances which the jury have the right to consider, in determining whether this is a true will of Mr. Lanehart or not, or whether it is false and forged, that the deceased had certain relatives, related to him by the ties of blood relationship, it seems to me, that is competent, and a proper circumstance upon which the jury may base their conclusion, and which they have a right to consider, in determining whether this is or is not the will of William Lanehart.

Mr. Dungan:—My idea is this, that suggests itself to me. It is not only to show that this signature in the mere matter of forgery, is a forgery—it is necessary to show not only that the defendant in this case made the signature—but it is necessary to show that William Lanehart did not make the signature? That in my mind, is an element entering into the proof of the State in this case, that Mr. Lanehart did not make the signature. Now, as has been suggested by the Prosecutor, circumstances going to make up the proof in the case, circumstantial evidence, as it is called, and known by that name, as a circumstance in the line of proof, that William Lanehart did not make his signature, may it not be shown by the circumstances of his having left kindred, blood kindred, kindred between whom and himself, those ties were strong, may not those things go to show as a circumstance, that Mr. Lanehart did not in fact, sign this will. That is not a circumstance which shows that the defendant himself did sign it, but it is a circumstance which is

necessary in the prosecution's proof to show that William Lanehart did not sign it—that is my point.

Court:—The objection will be sustained and the question overruled.

(Mr. Reger):

Q. Did you know of a last will and testament made by William Lanehart in existence at the time of his death?

Mr. Clark:—I object.

Court:—I think the question might be modified somewhat by inserting the word "purporting" to be the last will and testament of William Lanehart, before your uncle's death.

Q. Did you know of a paper purporting to be the last will and testament of William Lanehart in existence before your uncle's death?

A. I did not know of the last will or the will purporting to be the will of my uncle.

(Mr. Reger):

Q. Did you know of any will of Mr. Lanehart's in existence at the time of his death?

Mr. Clark:—I object.

Objection overruled.

Exception claimed.

Exception allowed.

(L.S.) THEODORE B. BOORAEM,
Judge.

A. I did.
Q. Where was that will?
A. In the Hopewell National Bank.
Q. How do you know that it was at the Hopewell National Bank?
A. It was kept there most of the time with other papers that belonged to my Uncle Will.
Q. Did you ever see those papers?
A. Yes, sir.
Q. Where?
A. At my uncle's home.
Q. Under what circumstances did you see them?

Mr. Clark:—Objection on the ground that it does not affect the question now before the court for consideration. The question here for determination is, whether this paper is or is not the proper signature of William Lanehart. It only attempts to prove by heresay evidence Mr. Lanehart's acts independent of this transaction.

Court:—The only objection I can see to this question is, whether she saw these papers—that is too general. I will permit the question, that being the sole ground of the objection.

Question allowed.

Exception claimed.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

A. My uncle frequently took his papers from the bank to his home to examine the insurance policies, notes, etc., and until he returned them he gave them to me to take care of for him.
Q. Was there among those papers a will?
A. Yes, sir.

Court:—You may fix the date of that.

(Mr. Reger):

Q. When did you see this paper?
A. Frequently, during the last few years of his life.
Q. Up until what time?
A. I remember that some of the papers were in the house in March, 1905, about two months before my uncle's death.

(Court):

Q. Some of the papers?
A. Yes, some of the papers.

(Mr. Reger):

Q. Did he at the time bring the papers from the Hopewell National Bank?
A. He did.
Q. Do you know how frequently between February 27th, 1905, and the time of his death he went to the bank?
A. No sir, I do not.
Q. Were you residing at Mr. Lanehart's house during the month of February, 1905?
A. I was.
Q. Have you had occasion to ascertain what Mr. Lanehart's whereabouts were on the 27th of February, 1905?
A. Yes, sir.
Q. Where was he on that day?
A. On the morning of the 27th of February, he called at the Asbury Farm near Skillman Station.
Q. In the morning?
A. Yes sir, in the morning of February 27th, 1905, he called at the Asbury Farm near Skillman Station to get a horse, which he had purchased a few days before, and in the afternoon of that day, he attended a sale at that farm.
Q. So that he practically spent the whole day there?
A. The greater part.

Q. Do you know what his whereabouts were on the following day?

A. The next day, the 28th of February, he went to Hopewell to pay for some things, the machinery, that he had purchased at the sale the day before.

Q. What kind of a day was that?

A. The 28th of February, my recollection is that it was cold.

Q. How was Mr. Lanehart clothed on that day?

A. Well, I cannot tell you exactly, Mr. Reger, but if it were cold he was dressed very heavily.

Q. What was his habit with reference to wearing heavy clothing?

A. He dressed very warm, he minded the cold a great deal, and usually wore two overcoats on very cold days.

Q. Did he have two overcoats on that day?

A. I cannot remember now positively, but I am under the impression that he had.

Q. You say he went to pay for some machinery?

A. Yes, sir.

Q. Do you know how he paid for it?

A. By check.

Q. I show you a check dated February 28th, 1905, payable to the order of John Asbury, $76, and signed "William Lanehart" and ask you whether or not that is the check which he gave that day?

A. Yes, sir.

Q. How do you know?

A. I fixed the stub of the check when he returned, and I also know his signature on that check.

Q. You entered the amount of the check on the stub?

A. Yes, sir.

Q. On his return?

A. Yes, sir.

Q. Do you know where he was on the following day?

A. No sir, I do not know, Mr. Reger.

Q. When did Mr. Lanehart die?

A. On the 11th of May, 1905.

Q. What time in the day?

A. Between midnight and 1 a. m.

Q. Had he been confined to the house, previous to that time?

A. He had not.

Q. What had he been doing the day before his death?

A. He worked in the field until about half past eleven and in the afternoon he worked in his garden and he went to the mill.

Q. When was the funeral held?

A. On the 13th of May, the funeral services was held on the 13th of May.

Q. On what day of the week was that?

A. On Saturday.

Q. And when was the interment?

A. On the following Monday, the 15th of May.

Q. Where was the interment?

A. At Amsterdam, N. Y.

Q. When was the body taken from home at Blawenburg?

A. On Monday morning, May 15th.

Q. Was there a public funeral?

A. Yes, sir.

Q. Was the defendant, William H. Skillman, at that funeral?

A. He was not.

Q. Did he ever give you any reason why he did not attend?

A. He did.

Mr. Clark:—Is that important, if your Honor please?

Court:—I cannot say until the reason is given.

(Mr. Reger):

Q. What was the reason?

A. He told me that he had to be away that afternoon.

Q. When did he tell you that?

A. A short time after my return from Amsterdam, N. Y., I cannot fix the date exactly.

Q. Were the other members of the defendant's family at the funeral?

A. Some of them I believe were there.

Q. Do you know whether they were all there or not?

A. No sir, I do not.

Q. Was Mr. Skillman present when the body was taken from the house?

A. He was not.

Q. Had you invited him to be present?

A. I asked him to come on Monday morning and help take my uncle's remains from the house.

Q. Who assisted in the removal of the body from the house?

Mr. Clark:—I object to the question unless it is important.

Court:—It is a harmless question, I will permit it—I cannot overrule a question simply because counsel thinks it unimportant.

A. Mr. William Duffield, Mr. John Hagerman, Mr. Charles Hagerman, Mr. Reed, the undertaker and his assistants.

Q. Were they neighbors, those persons who assisted?

A. Yes, sir.

Q. Was Mr. Skillman present at that time?

A. He was not.

Q. When did you first go to Somerville to offer the document known as Exhibit P. 4 in this case, and now lying before you, for probate?

A. On Wednesday, the 17th of May, 1905.

Q. When was the arrangement made?

A. On Friday previous to the 12th of May.

Q. The day before your uncle's funeral?

A. Yes sir, before the services.

Q. What did Mr. Skillman say to you at that time about the arrangement?

Mr. Clark:—I object to that because I do not know the materiality of it.

Court:—Question allowed. You have not shown that Mr. Skillman was present, I suppose that is assumed by the question?

Q. Was the defendant there at that time?
A. On Friday, the 12th—yes sir.

(Mr. Reger):

Q. What did Mr. Skillman say to you at that time about the arrangement?

A. He proposed, in order to save me a trip to Somerville, that he meet me here on Wednesday, the day I expected to return from Amsterdam, that we take the will to the Surrogate's and have it probated.

Q. Did you know at that time when you would return?

A. I knew I would return on Wednesday, I did not know what hour. I told him, however, I would leave Amsterdam the first train in the morning, and it would be probably noon before I reached here, and he said he would meet all the trains after the noon hour.

Q. And what time did you arrive?
A. About one o'clock, I believe.
Q. This was Wednesday?
A. Yes, sir.
Q. Did Mr. Skillman meet you?
A. Yes sir, he did.
Q. Where did he request you to go with him?
A. To Mr. Clark's office.
Q. For what purpose?
A. To see the will.
Q. Did you see the will there?
A. Yes sir, I did.
Q. Was the will read?
A. It was.
Q. Who read it?

A. Mr. Skillman read it to me.

Q. Was that the first you had seen of the will?

A. It was.

Q. Referring to Exhibit P. 4 before you?

A. Yes, sir.

Q. After the will had been read by Mr. Skillman, what statement or remark, if any, did he make to you?

A. He handed it to me, and showing me the signature he said, "That is Uncle's signature, is it not?"

Q. Did you at that time question the signature?

A. No, sir.

Q. Had anything been said about the signature at that time?

A. Nothing whatever.

Q. Had you made any remark about the contents of the well?

A. No, sir.

Q. Was the will probated on that day?

A. It was not.

Q. Why not?

A. Mr. Skillman told me that he was mistaken in regard to the number of days that must elapse between the death of my uncle and the time for probating the will, and that we would have to wait until ten or eleven days had elapsed.

Q. When did you again return?

A. On the following Monday, May 22nd.

Q. That was eleven days after your uncle's death?

A. I think so, yes sir.

Q. Was the will then offered for probate?

A. Yes.

Q. Was Mr. Skillman present then?

A. Yes.

Q. After you returned home to Blawenburg, a day or two later, who called at your house?

A. The next day, which was the 23rd, my uncle's sister, Mrs. Lanehart had a relative of hers, Miss Stanton, called.

Q. What time of day did they call?

A. I think it was about noon.

Q. Where did Mr. Lanehart's sister reside?

A. At Palm Beach, Florida.

Q. What was her name?

A. Mrs. William M. Lanehart.

Q. What was her christian name?

A. Mary—Mary Lanehart.

Q. How long did Mrs. Lanehart and Miss Stanton remain at the house?

A. I think it was about five o'clock when they left.

Q. Did you send for Mr. Skillman while they were there?

A. Yes.

Q. Did he come to the house?

A. Yes.

Q. Did he converse with Mrs. Lanehart?

A. Yes.

Q. What about?

A. Well, they talked for a considerable time about his fruit, he asked her questions about the south, I don't remember very much.

Q. How long did they thus converse?

A. I really do not remember just how long.

Q. Some length of time?

A. Yes, sir.

Q. What did Mr. Skillman then say?

A. He told her that he was executor of her brother's estate, but supposed she would like to know about it, and if they were any questions she wished to ask him, she was at liberty to do so.

Q. Did she ask him questions?

A. Yes, sir.

Q. What did she say to him?

A. She asked him if she was remembered in the will—do you want the reply?

Q. Yes, you may state what was said.

A. He told her that she was not, that none of the blood relatives were remembered. She asked him who was mentioned, and he told her "Mrs. Duffield and Mrs. Reed and Mrs. Van Orden" and I mentioned Mr. Stryker's

name, and I think she asked him how much Uncle Will left her, and he told her he could not tell her exactly.

Q. When Mr. Skillman told her that she was not mentioned, what did she say to him?

A. She said that she could not understand the change, that her brother had told her that he was going to remember her, and she was very much surprised, and she said she would have the matter investigated, she asked him if there was a lawyer in Hopewell she could get, and he told her "no," and I think he told her to come to Somerville, or words to that effect.

Q. Was anything said about another will?

A. Yes.

Q. What was it?

A. Well, I cannot remember exactly, she seemed to know about the other will, and there was something said about who wrote it.

Q. Yes, go on?

A. But I haven't a really distinct recollection of just what the conversation was just now.

Q. Was anything further said about the contents of it?

A. I think not, Mr. Reger.

Q. Did Mr. Skillman know who wrote it?

A. Who wrote the "Race" will?

Q. Yes.

A. No sir, I think he turned and asked me.

Q. Did you know?

A. Yes.

Q. Did you at that time tell who wrote it?

A. I did.

Q. Who?

A. Mr. C. D. Ackerly, of New York.

Q. He was the gentleman here on the witness stand at the first day of this trial?

A. Yes, sir.

Q. Did the defendant say anything to Mrs. Lanehart about his interest under the will?

A. He did not.

Q. How long did Mrs. Lanehart and Miss Stanton remain there in this conversation?

A. Well, it was about five o'clock when they left, I cannot tell just what time this part of the conversation took place.

Q. Did Mr. Skillman remain until they had gone?

A. Yes, he left after they did.

Q. What did he say, if anything, after they left?

A. Oh, I was crying and worrying, and he said I should not worry, she would never come back, that would be the last of her.

Q. That would be the last of her?

A. Yes sir, she would never come back, that would be the last of her.

Q. I show you a paper, a petition offered for the Surrogate and marked Exhibit P. 1 in this cause, and ask you whether or not that is the petition which was made the day you came to Somerville with Mr. Skillman?

A. Yes, sir.

Q. And that was subscribed by Mr. Skillman in your presence, was it not?

A. Yes, sir.

Q. When was the inventory made?

A. On the 25th day of May.

Q. Were you present at that time?

A. Yes sir, I was with the appraisers in the house, I did not follow them outside.

Q. Was Mr. Skillman with the appraisers outside?

A. Yes, sir.

Q. Who made the arrangement for the funeral of your uncle?

A. I did.

Q. Who made the arrangement to take the body to New York City?

A. I did, with the assistance of the funeral director.

Q. Did Mr. Skillman assist in these arrangements?

A. No.

Q. In what way did your uncle hold his pen in writing?

A. He held it with the penholder pointing from the shoulder.

Q. I think you have testified to that already?

A. Yes sir.

Q. And you illustrated how it was held?

A. Yes, sir.

Court:—Yes, that is in the evidence.

(Mr. Reger):

Q. Did you ever see your uncle trace his signature in pencil and then write it in ink?

A. No sir, I never did.

Q. Did he have any difficulty in writing his signature, without tracing?

A. Did he have any difficulty writing his signature without tracing?

Q. Yes.

A. No, sir.

Q. I show you certain exhibits marked from P. 8 to P. 31 inclusive and ask you whether or not you saw your uncle write his name to any of those (handing witness paper)?

A. Yes—do you want me to tell which checks?

Q. No, just examine them, so that you may testify to it.

Court:—She had better identify the checks she saw him sign.

A. P. 10, P. 11, P. 13, P. 14, P. 15, P. 17, P. 18—I am not sure about P. 20. I remember the circumstances under which the check was filled in and signed, but I cannot possibly say that I saw Uncle Will sign it.

Q. Very well, go on.

A. P. 23, P. 24, P. 26, P. 21, P. 19 and P. 9.

Q. Are the body of these checks in your handwriting?

A. All but one, the one which I was not sure about.

Q. Are they dated on the day on which they were signed?

A. Yes, sir.

Q. How long have you been familiar with your uncle's signature?

A. During the last four years of his life positively, and previous to that I corresponded with him probably ten years at different times when I was not there.

Q. So that your familiarity with his handwriting has extended over a period of ten or fourteen years?

A. Yes sir, that is handwriting.

Q. Yes.

A. Oh, I remember Uncle Will's writing ever since I was twelve or fourteen years old I remember seeing letters which he wrote to my father.

Q. And you have been familiar with his signature for ten or fourteen years?

A. Yes sir, I think so.

Q. I show you a paper, purporting to be the last will and testament of William Lanehart marked Exhibit P. 4 and ask you whether or not, from your own knowledge of your uncle's signature, of the signature of William Lanehart, and from the comparison between the signature to those checks which you saw him sign, and the other checks you have testified to that is or is not the genuine signature of William Lanehart?

A. In my opinion it is not.

Q. Do you think William Lanehart ever wrote that?

A. I do not think my Uncle Will ever wrote that.

Q. To your knowledge, did Mr. Skillman ever transact any business for Mr. Lanehart?

Mr. Clark:—I object.

Objection sustained.

Q. Do you know whether or not Mr. Skillman ever transacted any business for Mr. Lanehart?

Mr. Clark:—I object.

Mr. Dungan:—That might refer to this very document.

Court:—I will permit the question to be answered, yes or no.

A. No, sir.

(Mr. Reger):

Q. Subsequent to your uncle's death, did you ever have any conversation with Mr. Skillman about the writing of this will, Exhibit P. 4?

A. Yes, sir.

Q. When did you have a conversation with him?

A. On Friday morning, the 12th of May.

Q. Subsequent to that time did you have any conversation about the writing of the will?

A. Well, I cannot recall an occasion just now, I don't know whether I understand your question clearly or not.

Q. Subsequent to that time (the 12th of May) did you have any conversation about the writing of the will?

A. I do not recall an occasion now.

Q. Did he ever tell you whether or not he received compensation for the writing of this will?

A. He did.

Q. When did he tell you that?

A. Well, some time after the will was probated, he told me Uncle Will had given him two dollars for writing the will.

Q. After the will was probated did you go with Mr. Skillman to the Hopewell National Bank?

A. Yes, sir.

Q. Did you go in the bank with him?

A. No.

Q. Why not?

A. He requested me to stay outside, with his horse, saying that perhaps it was afraid of the trolley.

Q. Do you know for what purpose he went in the bank?

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A. To present the letters of administration and secure the papers that were there.

Q. Did he bring those papers out with him?

A. Yes, sir.

Q. Who are the persons named in the will, Exhibit P. 4?

A. Mrs. William Duffield.

Mr. Clark:—The will speaks for itself.

Court:—That is true, but the question relates to the identity of a person that is who they are, whether they are actual persons or what their relations to the decedent was.

(Mr. Reger):

Q. Where does Mrs. Duffield reside?

A. In Blawenburg, she is a neighbor of my uncle's.

Q. Was she a relaive?

A. No, sir.

Q. Where does Mrs. Reed reside, who is mentioned in the will?

A. She also resides in Blawenburg, she was a friend of my uncle Will's.

Q. Were Mrs. Reed and Mrs. Duffield at your uncle's house after his death and before the funeral?

A. They were there very soon after he passed away.

Q. Who is John S. Van Orden who is mentioned in the will?

A. He was formerly pastor of the Dutch Reformed Church in Blawenburg, and a very warm friend of my Uncle Will's.

Q. Did he preach the funeral?

A. Yes, sir.

Q. Did Mr. Skillman know that he was to preach the funeral?

A. Yes.

Q. Did Mr. Skillman know that Mrs. Reed and Mrs.

Duffield were present at your house, after your Uncle's death?

A. Yes sir, I think he did, I think Mrs. Reed was there the morning that Mr. Skillman called.

Q. Who was Mrs. Stryker, mentioned in the will?

A. Mrs. Stryker was a very old friend of uncle's as well as one whom he had known tweny-five or thirty years.

Q. Did she come to the house?

A. She did, she left New York immediately after receiving my telegram announcing my uncle's death.

Q. Did they come to the house while Mr. Skillman was there?

A. Mrs. and Dr. Stryker came while Mr. Skillman was there.

Q. They are the only persons named in the will, except yourself and Mr. Skillman?

A. Yes.

Q. Are any of them relatives of Mr. Lanehart?

A. No.

Q. Do you remember a conversation of Mr. Skillman on the road, subsequent to the probate of the will, in which pencil marks were mentioned?

A. I do.

Q. Where had you previously been?

A. The day before I met him on the road, I had been to Somerville—(interrupted.)

Q. Where in Somerville?

A. I had been to the Surrogate's office.

Q. Had you at that time examined the signature to Exhibit P. 4 then?

A. I had.

Q. Did you observe at that time the pencil mark?

A. I did.

Q. Did you speak to Mr. Skillman about them when you met him on the road?

A. Yes, sir

Q. What did he say about the pencil marks, if anything?

A. He said, "could anyone have gone into the Surro-

gate's office and put these marks around the signature." And I said, "yes, I think such a thing was possible." And he said, "well, if anyone could have done that, what could their object have been."

Q. "If anyone could have done that, what could their object have been"—is that your answer?

A. "If anyone did that, what could their object have been?"

Q. Do your remember another conversation in reference to pencil marks, in which Elva Skillman was mentioned?

A. No sir, I do not.

Q. Do you remember any other conversation in which the testimony of Elva Skillman in relation to pencil marks was mentioned?

A. In conversation with Mr. Skillman?

Q. Yes?

A. No, I recall none in which Elva was mentioned.

Q. Won't you refresh your recollection just a moment about that?

A. I remember a conversation with Mr. Skillman in which he spoke of the pencil mark, and spoke of a conversation that he had with his son, "Ed."

Q. No, I don't mean that?

Mr. Reger:—I ask that that be stricken out.

A. Oh yes, I do.

Q. Do you know when that conversation occurred that you now recall?

A. Yes sir, I do, I know exactly when.

Q. When was it?

A. It was in July, 1906, a year ago last July.

Q. And what was said by Mr. Skillman to you at that time?

A. He said, "Miss Kellogg, my Elva is a very conscientious girl," and he said, "Mr. Clark had difficulty in making her say that she saw Uncle Will use the lead pencil, the day the will was signed, in signing his name."

Q. Whenever in your testimony you have referred to "Uncle Will" or "uncle," to whom do you refer?

A. To Mr. William Lanehart.

Q. Who composed his family at the time of his death?

A. Himself and myself.

Q. Did he have a wife and children living?

Court:—She has already testified that his wife was dead.

(Mr. Reger):

Q. Were there any children?

A. No sir.

Cross-Examination by Mr. Clark:

Q. I show the witness Exhibit P. 2 being the affidavit annexed to the will, signed "William H. Skillman and Laura Kellogg," sworn to May 22nd, 1905, before Mr. Spencer, Deputy Surrogate, and ask the witness if that is her proper signature (handing witness paper)?

A. Yes, sir.

Q. That oath was administered to you in due form, so that you knew the contents of it, at the time you signed it?

A. I suppose so.

Q. How many times have you seen this paper marked Exhibit P. 4 before you made that affidavit?

A. I saw it in your office, on the 17th of May, 1905.

Q. And then again on the 22nd of May?

A. I think I must have seen it there, yes sir.

Q. Amsterdam, N. Y. is how far—that is how many hours journey from Blawenburg is it?

A. From Blawenburg?

Q. Yes, about?

A. We left Blawenburg about seven o'clock in the morning, and reached Amsterdam about three in the afternoon, but we probably waited about an hour and a half in New York, maybe a little longer.

Q. So it took from seven a. m. to three in the afternoon to arrive at your destination?

A. Yes, sir.

Q. What time was the funeral in the morning?

A. The funeral service was on Saturday afternoon May 13th, at 2.30 P. M., I think.

Q. And the removal of the body was seven o'clock on Monday morning?

A. Yes sir, May the 15th.

Q. I show you a paper with two steel pens attached, and ask you if you recognize those pens, as being those which you produced in the Orphan's Court, in the trial of the Lanehart will case?

A. I do.

Q. Were they or not the kind of pens Mr. Lanehart used in writing?

A. They were.

Q. And these were produced by you as an exhibit in that case?

A. Yes.

Q. As showing the pens with which he wrote?

A. Yes.

Mr. Clark:—I asked that these pens be marked for identification.

Marked D. 2 for identification.

Q. Miss Kellogg, you say that in the month of March, 1905, about two months before Mr. Lanehart's death, you saw him have some papers in his house, which were ordinarily kept in the Hopewell National Bank?

A. Yes.

Q. And the reason you assume that he brought them from the bank was because he ordinarily kept them there, and after a while he returned them again?

A. Yes sir, I know he went to Hopewell and got them.

Q. Did you go with him when he went to Hopewell?

A. On that occasion?

Q. Yes?

A. I cannot recall.

Q. Now, at this time, a period of over two years, are you able to state with certainty what the papers were?

A. Yes.

Q. You can state?

A. Yes.

Q. How do you know what they were?

A. How do I know now what they were?

Q. Yes, how do you know now what they were, what he had in his possession in March, 1905?

A. I saw the papers and I knew for what purpose he got them from the bank, and I remember it.

Q. Then by reason of the conversation which you had with him, you remember what papers he got, and you knew that he was going for them?

A. No sir, I did not say I had any conversation with Uncle Will, I said I saw the papers, and I knew what the business was that he was going to transact, and I knew that he had to have those papers, and I remember it now.

Q. The way you knew the business he was going to transact was from what he did tell you, was it not?

A. I saw the business transacted, and really had a hand in it.

Q. You saw the business transacted, you say—you say that on the 27th of February he was at the Asbury place, and got a horse in the morning, and in the afternoon he went to the sale?

A. That is correct.

Q. And on the 28th of February he went to Hopewell?

A. Yes, sir.

Q. Did you see Mr. Skillman on that day?

A. Yes, sir.

Q. Where did you see him?

A. Where did I see Mr. Skillman on the 28th of February?

Q. Yes—did you accompany your uncle to Hopewell on the 28th of February?

A. No.

Q. Did you accompany him anywhere on the 28th of February?

A. To my recollection, no.

Q. Did you see Mr. Skillman on the 28th of February, at your uncle's house?

A. No sir, no, I did not, when you first asked me the question, I was under the impression that he called that day, but I am wrong, he was not there on the 28th of February.

Q. Did your uncle and you subsequent to that time, and before the 1st of March or about the 1st of March, drive over to Hopewell?

A. I really cannot tell you, Mr. Clark, no sir.

Q. Do you remember, in consequence of your not going with your uncle, that day, what kind of weather it was on the 28th of February?

A. It was probably cold.

Q. Well, was not that the very reason you did not go, because it was so cold, and your uncle declined to allow you to expose yourself?

A. It may have been, Mr. Clark, I do not feel that my recollection of it is good enough to answer positively

Q. You were sworn in the Orphan's Court, were you not?

A. Yes, sir.

Q. And you were asked about the weather on the 28th of February (I refer to page 585) and did you not state "I know it was cold?"

A. I really cannot remember, Mr. Clark.

Q. Were you not asked this question, "did you accompany him to Hopewell on February 28th?" and you answered, "no?"

A. I do not remember the question nor the answer to which you refer.

Q. Were you not asked this question, "why did you not go," and did you not answer, "he would not let me?"

A. Are you asking me if I remember that?

Q. Yes.

A. No sir, I do not remember it now.

Q. (Reading). "Q. Why didn't he let you go?

"A. He would not allow me to go, because it was too cold to ride that distance"—do you recollect that now?

A. I do not recollect it now.
Q. That was on what day of the week, do you remember?
A. 28th day of February?
Q. Yes?
A. I think that was on Tuesday.
Q. Now, on the next day did your uncle go to Brophy's store?

Court:—Is that the 29th of February?

Mr. Clark:—The next day—it may be either the 29th of February, or 1st of March, whether it was Leap Year or not, I do not remember, but it was the next day, Wednesday?

A. I cannot tell you, Mr. Clark.
Q. Didn't you go with him that day to Brophy's store?
A. I do not remember.

Q. And were you not on the examination in the Orphan's Court, asked these questions: "Q. Do you know where he went on Wednesday?

"A. Yes.
"Q. Where?
"A. Brophy Brothers store.
"Q. How do you know that?
"A. I went with him.
"Q. How do you know you went with him?
"A. I remember very distinctly going with him, I remember a circumstance that occurred on the way there.
"Q. Go on?
"A. I had hardly gotten in the sleigh, when it began to snow, and I staid in, and when we got inside the lane, we met Mr. Skillman, who was on his way home, and Uncle Will made an appointment to be at Mr. Skillman's

house in a day or two to transact some business"—do you remember that?

A. I remember a circumstance very similar to that, since you have refreshed my memory, but as to the time I cannot recall it.

Q. Such a circumstance did actually occur?

A. Yes.

Q. And shortly after the Asbury sale?

A. I really cannot say about that, Mr. Clark.

Q. That was the fact, that such a circumstance did occur?

A. Yes, sir.

Q. And if you stated in your examination before the Orphan's Court that that was on the Wednesday succeeding the 28th of March—(interrupted.)

A. February you mean.

Q. If you stated in your examination before the Orphan's Court, that that was on Wednesday succeeding the 28th of February, was that correct or not?

Mr. Dungan:—I object to the question, because she says she has no recollection as to the time.

Court:—I think the proper course would be for you to introduce affimative proof to contradict the statement of the witness and rest on that.

Mr. Clark:—I was refreshing her recollection and taking her own clear statement, one she then made, and ask her whether they were correct or not, if she says it is not correct, then I can offer contradictory proof.

Court:—Does she not say that she does not recollect the affair?

Mr. Clark:—She says that she does not recollect, but in the transcript of her evidence in that case, it is so recorded, and now I ask her, and say that being the case,

that her evidence is so recorded, being so recorded, I ask her whether it is correct or not?

Court:—She says she does not recollect whether it was on that day or not. You can show that she gave a statement, on that trial, inconsistent with her present statement. Then it would be proper for you to prove that she did make that statement. You do not mean to say that because a witness says that she does not recollect making a statement that you must have her say that she did not make the statement, before you would be permitted to contradict the witness, do you?

Mr. Clark:—Yes.

Court:—If she says she does not recollect, she may be contradicted by showing that she has made the statement, you do not have to show that she did not make that statement—she says that she does not recollect making it. You will be permitted to show that she has made that statement in contradiction of her present testimony.

Q. When Mrs. Lanehart and Miss Stanton called on the 23rd of May, they were there how long?

A. As I recollect they came there about noon, and staid until about five o'clock.

Q. Did they take luncheon at your house?

A. Yes.

Q. Did they stay over night with you?

A. No, sir.

Q. Do you know where they staid over night?

A. Well, not positively, I have been told where they staid.

Q. Were they there with a public conveyance?

A. No.

Q. How far was it from the station?

A. A mile and a half I think from Skillman Station.

Q. Did you invite them to remain over night?

A. Yes.

Q. The interview between Mr. Skillman and Mrs.

Lanehart, so far as Mrs. Lanehart was concerned, was quite exciting, was it not?

A. She seemed very much excited.

Q. And a great deal was said, there was a great deal of talk?

A. Yes, sir.

Q. And you have not pretended to give anything like the language or views, nor an account of what really occurred?

A. No sir, I cannot remember it all.

Q. Now, before Mr. Skillman came, Mrs. Lanehart had had some talk with you, had she not?

A. Yes, sir.

Q. And you felt it was important that Mr. Skillman should come there, so that he could do the talking, instead of you?

A. I thought it was his duty to be there, to do the talking.

Q. And you sent for him and he came?

A. Yes sir, I did.

Q. You say Mr. Skillman was there the day of the death of your uncle?

A. Yes.

Q. What time did he arrive in the morning?

A. About ten o'clock, I think.

Q. And you and he then had a talk about the funeral?

Mr. Reger:—I object to the question, nothing has been testified on direct examination as to any conversation at that time.

Court:—You have opened up the subject of a general conversation with the defendant, after the death of the decedent, I shall therefore permit this examination. You have shown by your direct examination by this witness, facts tending to prove, as you claim, the general attitude of the defendant towards Mr. Lanehart, and towards this witness, from the time after his death, down to a time subsequent to the burial of Mr. Lanehart, and the probate of this will, you have gone into these matters with some

detail, you have been allowed to detail conversations with the defendant.

Mr. Reger:—On special occasions.

Court:—I think now the defendant is entitled to go into all conversations, and actions during that time that you have examined this witness upon. You may proceed, Mr. Clark.

(Mr. Clark):

Q. And you and he then had a talk about the funeral?
A. I told him what my plans were, so far as I had made them then.
Q. You knew at that time that Mr. Skillman was not a strong man, did you not?

Mr. Reger:—I object to that as immaterial and irrelevant.

Question overruled

A. I have never known him as a strong man.

(Mr. Clark):

Q. And did not he on that occasion, say in substance, I do not remember the words that he would do anything he could to assist, and tendered his services?
A. He offered his services.
Q. And did you not tell him that you practically had made your arrangements as to the funeral?
A. That I cannot say.
Q. Now, did not Mr. Skillman offer to attend as bearer?
A. No, sir.
Q. And did you not say you had arranged not to have any bearers, or words to that effect?
A. No sir, he never offered to attend as a bearer, I asked him to come to the house on Monday, and assist

in carrying my uncle's remains from the house—(interrupted.)

Q. Didn't he say he was coming, and did you not, on the next day,—didn't he on Sunday say that he would come, and on Saturday you said that you had concluded to dispense with bearers?

A. I didn't see him on Saturday.

Q. Well, on Sunday?

A. I did not see him on Sunday.

(Court):

Q. But he said he would come?

A. Yes, sir.

(Mr. Clark):

Q. But had you asked him to be a bearer, and he said he would come?

A. Yes, sir.

(Court):

Q. When was that?

A. On Thursday.

(Mr. Clark):

Q. Didn't you see him on Friday?

A. Yes sir, I sent for him to come to the house.

Q. Then you had a conversation with him in relation to the funeral again?

A. No sir, I do not know that I did.

Q. Didn't you tell him then that you had concluded to dispense with bearers?

A. No sir, I don't think so.

Q. You don't think so?

A. No, sir.

Q. Didn't you say you had dispensed with bearers?

A. I don't remember.

Q. You didn't have any bearers, did you?

A. Yes sir, we had John Hagaman and Charles—(interrupted.)

Q. I understand—the gentleman you named Daniel Hagaman and some other gentleman carried the body to the hearse?

A. Yes, sir.

Q. Did they go with you to Amsterdam, N. Y.?

A. No, sir.

Q. That was on Monday?

A. Yes, sir.

Q. There were no bearers at the funeral on Saturday, were there?

A. No, sir.

Q. Now, the number of checks which were presented here, were signed by William Lanehart, to your personal knowledge, because they were filled in by you, and therefore you positively know about them?

A. Yes, sir.

Q. And you say you have been familiar with your uncle's handwriting ever since you were twelve or fourteen years old?

A. Yes, sir.

Q. By the way, changing the subject for a moment—didn't Mr. Skillman loan you money to attend the burial of your uncle, at Amsterdam, N. Y.?

A. He insisted that I should take some money.

Q. To bear the expenses?

A. Yes sir, but I did not use it, I returned it.

Q. You took it, though?

A. Yes sir, I took it, but I did not need it.

Q. But you took it?

A. Yes.

Q. And you returned it?

A. Yes, certainly.

Q. During the last four years of his life, you lived with him almost continually, I understand you to say?

A. Yes, sir.

Q. His usual method was to write with a pencil instead of a pen, was it not?

A. Writing letters.

Q. He found it easier to write with a pencil than with a pen, did he not?

A. Yes, sir.

Q. And as a matter of fact, his almost sole use in using a pen, was when he signed checks, was it not?

A. And addressed envelopes?

Q. When he signed checks and addressed envelopes?

A. Yes, sir.

Q. And you quite often addressed his envelopes?

A. Yes sir, sometimes.

Q. The reason for that was that it was very difficult for him to write with a pen, is that correct?

A. It was not as easy for him, as to write with a lead pencil.

Q. In writing with a lead pencil, he wrote with quite a fluent hand, didn't he?

A. What I consider quite a fluent hand, yes sir.

Q. And in writing with a pen, it was slow and somewhat cumbersome?

A. He wrote slower, more laboriously.

Q. You examined Exhibit P. 4 at the time it was offered for probate in the Orphan's Court, of Somerset county, did you not?

A. Well, I suppose I did.

Q. And you were sworn upon the appeal, which was taken from that probate and a trial subsequently held before the Orphans' Court, commencing January 29th, 1906?

A. Yes sir, I do not remember the date but I know I was sworn at the time of the will contest.

Q. The stenographer's notes which we have identified here, mention that day, and therefore I assume it is correct—you were then asked to examine the signature to that paper, were you not, (you will find the evidence on page 580)?

A. Yes, sir.

Q. And you had examined it before you were asked to do so, and you examined it again when on the witness stand?

A. I did examine it, before I was on the witness stand, at that time, surely.

Q. You examined it?

A. I looked at it, I did not make what I would call an examination.

Q. You looked at it?

A. Yes, I looked at it.

Q. And then you examined it on the witness stand?

A. It was shown to me when I was on the witness stand, I don't know that I examined it specially.

Q. Were you not asked this question—"Have you examined the signature to what is called the "Skillman will" referring to Exhibit P. 4"—and did you not answer —"Yes, sir?"

A. I do not recollect.

Q. It is a fact, at any rate, you had examined it before you were asked that question?

A. I had looked at it.

Q. Now were you not asked "Whether or not that was the handwriting of Mr. Lanehart in your opinion" and did you not answer, "It is?"

A. Yes, sir.

Q. And were you not asked: "Q. Have you ever seen his writing like that"—and did you not answer—"I have?"

A. His writing, but I did not say I ever saw his signature like that.

Q. I asked you whether or not—(interrupted.)

Court:—She has answered the question.

(Mr. Clark):

Q. Were you not asked "how frequently"—and did you not answer—"it is safe to say, I saw it quite often in that shape"—did you not so testify?

A. That I do not recollect.

Q. Do you mean to say that is not so?

A. Oh, no sir, I am not contradicting it, but I say I do not recollect the question or the answer.

Q. Were you not asked this question—"What was his condition at that time"—and did you not answer—"he was nervous, his hands were swollen, he was not well at all?"

Mr. Reger:—I object to the examination on the ground that the question does not relate to any time.

Court:—I think the time should be fixed.

(Mr. Clark):

Q. At times that he wrote, when his handwriting was like that attached to the will Exhibit P. 4, were you not asked that question, and did you not answer?

A. What was the question again?

Q. Were you not asked this question, "What was his condition at that time," and did you not answer, "He was nervous, his hands were swollen, he was not well at all" —did you not so testify?

A. Oh, I do not recollect that question or the answer.

Q. Were you not asked this question "In writing without a line, how was his writing affected"—and did you not answer—"he could not write straight, unless he wrote on a line"—did you so testify?

A. That was the fact, but I do not remember that question being asked, or the answer I gave.

Q. Were you not asked this question, "How would he write if he did not write with a line, which way would his writing go" and did you not answer, "Uphill?"

A. I do not remember.

Q. What was the fact as to that?

A. He did not write straight, unless he followed a line.

Q. How long was your uncle ill?

A. Previous to his death?

Q. Yes, how long was he ill?

Mr. Reger:—I object to the question as not being cross-examination. There was nothing said on direct-examination about any illness, this is not cross-examin-

ation, there was no question asked, whatever, about the condition of the health of Mr. Lanehart.

Court:—You asked her as to whether she was ill the day before he died.

Mr. Reger:—Yes, the day before he died, but I did not ask her how long he was ill before he died.

Court:—And she said, "No he was not ill the day before he died, he worked in the field."

Mr. Reger:—This question relates to some other time, if it relates to that time, then I have no objection to it.

Court:—I understand it to relate to that time.

Q. (Question read as follows): How long was he ill before he died?

Court:—I suppose that is the objection that there has not been any foundation laid for a cross-examination of this kind, it is not shown that he was ill at all. The Prosecution brought out the fact that he was not ill, on a specific time you must confine your question also to that specific time.

Question withdrawn.

Q. What disease did your uncle die from?

A. Heart failure.

Q. How long had he been troubled with that disease, how many years?

A. Well, perhaps seven years, I think he was first troubled with it, when he lived in Plainfield.

Q. And during those seven years, he was under treatment more or less, all the time for heart trouble, was he not?

A. Yes, sir.

Q. There were times when these attacks were very bad?

A. They were worse sometimes than others.
Q. And then he became very nervous, would he not?
A. Yes, sir.
Q. And he also had attacks of indigestion?

Mr. Reger:—I object to this as not cross-examination.

Court:—It was shown that he died suddenly between twelve and one o'clock on the 11th of May and that he had not been sick that day at all. Now the inference to be drawn is that he died unexpectedly from some obscure disease. It seems to me that the defendant can combat that evidence, and show that he did not die from an obscure disease, and that the disease was known to them before the time of his death.

Mr. Dungan:—They are going into other diseases, than the diseases he died from.

Court:—I will admit the evidence.

A. Yes, sir.

(Mr. Clark):

Q. His hands and feet would swell, and be numb, would they not?
A. Yes, sir.
Q. And he would have very short breath on these occasions?
A. Yes.
Q. And this was especially so, during the last winter of his life, was it not?
A. Yes, I think it was.
Q. He could not lace his shoes without help, could he?
A. There were times when he could not.
Q. He could not put on his collar and necktie at times, without help?
A. He frequently could not.

Q. And the common practice was to wear woolen socks and woolen clothes at night, when he went to bed?

A. Yes, sir.

Q. Now, his nervous condition, from your experience, when his hands were stiff and numb, it did affect the use of his feet and hands, didn't they?

A. Yes sir, I think so.

Q. And when he was in that state, it was hard for him to use his hands, was it not?

A. Yes, sir.

Q. Those heart troubles, with which he was afflicted, varied, I suppose, at times, sometimes very much worse and sometimes better?

A. Yes, sir.

Q. Would or would not any business affairs worry him, and at times bring on these troubles?

Mr. Dungan:—I object to the question. I object to counsel's going into the symptoms of the disease, I think it is objectionable to go into them in detail, it is immaterial and irrelevant.

Question allowed.

A. Well, I think so.

(Mr. Clark):

Q. Anything that required special thought or attention would bring on spells of this kind?

Mr. Reger:—I object to this question on the ground that it is calling for the conclusion of the witness.

Court:—I suppose in both of these questions, the use of the word "would" is objectionable.

Question withdrawn.

Q. Well, did anything that required special thought or attention bring on spells of this kind?

Mr. Reger:—I make the same objection.

Objection overruled.

A. Yes sir, I think so.

(Mr. Clark):

Q. And when these spells were on it would be very difficult for him to hold a pen or pencil, would it not?

A. I believe it would, yes sir.

Q. I show you some checks and an envelope, and ask you to examine them, with a view to determining as to the checks, in whose handwriting is the signature thereto attached, and I wish you would lay them down so that we will get them in the order they are not, and we can then have them marked in that way, as they seem to be in regular order?

A. You are speaking of the signature?

Q. Yes—I show you a check dated July 1st, 1903, and ask you upon examination whose signature that is attached to that check?

A. My Uncle Will's.

Q. Is there any doubt about that at all?

A. No, sir.

Mr. Clark:—I ask that that check be marked for identification.

Marked D. 3 for identification.

Q. I show you another check dated February 27th 1903,and ask you whose signature that is attached to that check?

A. My Uncle Will's.

Q. There is no doubt about that at all?

A. No, sir.

Mr. Clark:—I ask that that check be marked for identification.

Marked D. 4 for identification.

Q. I show you a check dated March 24th, 1903, and ask you whose signature that is attached to that check?
A. My Uncle Will's.
Q. No doubt about that at all?
A. No, sir.

Mr. Clark:—I ask that that check be marked for identification.

Marked D. 5 for identification.

Q. I show you a check dated April 11th, 1903, and ask you if you will examine the signature to that check, and after such examination, say in whose handwriting it is?
A. Yes sir, that is my Uncle Will's.

Mr. Clark:—I ask that that check be marked for identification.

Marked D. 6 for identification.

Q. I show you a check dated July 16th, 1903, and ask you whose signature that is attached to that check?
A. My Uncle Will's.

Mr. Clark:—I ask that that check be marked for identification.

Marked D. 7 for identification.

Q. I show you a check dated September 25th, 1903, and ask you whose signature that is attached to that check?
A. My Uncle Will's.
Q. In whose handwriting?

A. The signature?
Q. Yes.
A. My Uncle Will's.
Q. All the signatures which you have testified to, are in his handwriting?

Mr. Clark:—I ask that that check be marked for identification.

Marked D. 8 for identification.

Q. I show you a check dated October 2nd, 1902, and ask you whose signature that is attached to that check?
A. My Uncle Will's.
Q. And signed by him personally?
A. Yes, sir.

Mr. Clark:—I ask that that check be marked for identification.

Marked D. 9 for identification.

Q. I show you a check dated October 21st, 1903, and ask you whose signature that is attached to that check?
A. My Uncle Will's.

Mr. Clark:—I ask that that check be marked for identification.

Marked D. 10 for identification.

Q. I show you a check dated October 27th, 1903, and ask you whose signature that is attached to that check?
A. My Uncle Will's.
Q. In his proper handwriting?
A. Yes, sir.

Mr. Clark:—I ask that that check be marked for identification.

Marked D. 11 for identification.

Q. I show you a check dated March 16th, 1904, and ask you whose signature that is attached to that check?
A. My Uncle Will's.

Mr. Clark:—I ask that that check be marked for identification.

Marked D. 12 for identification.

Q. I show you a check dated March 16th, 1904, and ask you whose proper handwriting is the signature attached to that check?
A. My Uncle Will's.

Mr. Clark:—I ask that that check be marked for identification.

Marked D. 13 for identification.

Q. I show you a check dated May 7th, 1904, and ask you in whose handwriting is the signature attached to that check?
A. My Uncle Will's.

Mr. Clark:—I ask that that check be marked for identification.

Marked D. 14 for identification.

Q. I show you an envelope, addressed to "Wm. Lanehart, Palm Beach, Lakeworth, Fla." and ask you in whose handwriting is the address upon that envelope?
A. My Uncle Will's.

Mr. Clark:—I ask that that envelope be marked for identification.

Marked D. 15 for identification.

Q. All the signatures attached to the checks which you

have just passed upon, are the proper handwriting of William Lanehart, your uncle?

A. Yes, sir.

Q. Now, I show you a letter dated September 13th, 1899, in pencil, and ask you whose handwriting is that letter?

Mr. Dungan:—I object to the question because of the remoteness of the communication. Exhibits offered by the Prosecutor were objected to that were only two years from the date of the will, and they were objected to, because of their remoteness.

Court:—I shall not exclude this letter on that account, that is a question for the jury to determine.

A. It is in my uncle's handwriting.

Mr. Clark:—I asked that that letter be marked for identification.

Marked D. 16 for identification.

Q. I show you a letter dated June 4th, 1902, in pencil, and ask whose handwriting is that letter in?

A. My Uncle Will's.

Q. And the signature attached there, is his signature?

A. I suppose it is, but it does not look like it.

Q. Is there any doubt in your mind?

Mr. Reger:—I object to that.

Court:—The answer will stand, she says the body is in his handwriting, but that the signature does not look like it.

(Mr. Clark):

Q. Have you any doubt but that it is in his handwriting?

Mr. Reger:—I object on the ground that she has already answered the question by saying that it does not look like it.

Objection overruled.

A. Well, I think that is Uncle Will's.

Mr. Clark:—I ask that that letter be marked for identification.

Marked D. 17 for identification.

Q. I show you a letter written in pencil, dated December 10th, 1904, and ask you whether the handwriting in that letter, as well as the signature, is or is not in the handwriting of William Lanehart?

A. Yes sir, it is.

Mr. Clark:—I ask that that letter be marked for identification.

Marked D. 18 for identification.

Q. I show you a letter dated January 12th, 1905, and ask you whether that is not also the pencil handwriting of William Lanehart, the body of the letter as well as the signature? (Handing witness paper.)

A. Yes, sir.

Mr. Clark:—I ask that that paper be marked for identification.

Marked D. 19 for identification.

Q. I show you a letter dated April 8th, 1905, written in pencil, and ask you if that is not also the proper handwriting of William Lanehart, both including the body of the will and the signature in pencil (handing witness paper)?

A. Yes sir.

Mr. Clark:—I ask that that letter be marked for identification.

Marked D. 20 for identification.

Q. I show you a letter dated April 25th, 1905, and ask you whether that is not likewise a letter written in pencil by William Lanehart and signed by him also in the same way (handing witness paper)?

A. Yes, sir.

Mr. Clark:—I ask that that letter be marked for identification.

Marked D. 21 for identification.

Q. I think the first letter I showed you, I did not ask you whether it was signed by William Lanehart—all these letters which I have shown you, were in the proper handwriting of William Lanehart in pencil, and signed by him also in pencil, were they not?

A. Yes, sir.

Q. You were asked, whether you knew what the business relations of Mr. Lanehart and Mr. Skillman were, if he had ever transacted any business for Mr. Lanehart, I think that was the question propounded by the Prosecutor in substance, and your answer was "you did not know of any," as I remember it—their social relations were very friendly, were they not?

Mr. Reger:—I object to the question as not cross-examination—I asked her as to business relations, not as to social relations.

Question allowed.

A. They were friendly.

(Mr. Clark):

Q. Did you not on the contrary say in the Orphans'

Court, when you were asked to state what they were to your own knowledge, did you not answer and say "they were extremely intimate?"

A. I do not remember the question or the answer.

Q. Is it not a fact, that they were "extremely intimate?"

A. They were friendly.

Court:—What time are you referring to, Mr. Clark?

Mr. Clark:—To the last three or four years preceding his death.

Q. I will say during the last two or three years preceding his death?

A. Am I to answer the question?

Q. Yes, answer the question—were they not extremely intimate during the last two or three years preceding Mr. Lanehart's death?

A. They were friendly.

Q. Did you not often during the last two or three years of Mr. Lanehart's lifetime, visit the Skillman house with your uncle?

A. Yes, sir.

Q. Were not his relations with Mr. Skillman in that way as a neighbor more intimate than with any other neighbor in that community?

Mr. Reger:—I object to that as not cross-examination, and on the further ground that it is immaterial and irrelevant.

Objection overruled.

A. Well, no, I hardly think so, Mr. Clark, he went to Mr. Van Orden's very often, and he went to Mrs. Duffield's very often.

Q. And where else?

A. During the last year or two, he went to Mr. John Hagaman's.

Q. Mr. Van Orden and Mrs. Duffield lived within a

short distance of him—two or three hundred yards away?

A. Their land adjoins my uncle's, I don't know the distance exactly.

Q. Yes, their residences were very close by?

A. Yes, sir.

Q. You spoke of Mrs. Duffield as being a neighbor whom he visited—did Mr. Lanehart ever board there with Mrs. Duffield—board there—make that his home?

A. No, sir.

Q. Mrs. Duffield and Mrs. Reed you said, were neighbors, and particular friends, I understood you?

A. Yes, sir.

Q. Where did Mrs. Dr. Stryker live during the last two or three years of your uncle's life?

A. In New York City.

Q. Do you know what class of physician she was, to what school she belonged?

Mr. Reger:—I object to the question as immaterial.

Court:—I shall sustain the objection, it has not been shown that she was a physician yet.

(Mr. Clark):

Q. Was Mrs. Stryker a physician?

Mr. Reger:—I object to the question as immaterial and irrelevant.

Question withdrawn.

(Mr. Clark):

Q. Was the "doctor," the title "Dr." belonging to Mrs. Stryker, or to Mr. Stryker?

Mr. Reger:—I object to that as immaterial and irrelevant.

Court:—I will permit a question, "Was Mrs. Stryker a physician?"

(Mr. Clark):

Q. Was Mrs. Stryker a physician?
A. Yes, sir.
Q. Did she ever attend your uncle for his illness?
A. She prescribed for him at different times.
Q. Was her prescription for medicine?

Mr. Reger:—I object to that as immaterial and irrelevant.

Question allowed.

A. Why, sure.

(Mr. Clark):

Q. Had Mrs. Dr. Stryker ever lived in that vicinity?
A. To my knowledge, no sir.
Q. Of your knowledge?
A. No.
Q. Don't answer this question until it is ruled upon—were you not with Mr. Lanehart at Mr. Skillman's house sometime in January, 1905, on a Sunday?

Mr. Reger:—I object to the question as not being cross-examination, it was not referred to in the testimony of the Prosecutor.

Question withdrawn.

Re-Direct by Mr. Reger:

Q. You have testified that the relations between Mr. Lanehart and Mr. Skillman were friendly, did you or not in the year immediately preceding Mr. Lanehart's death, hear Mr. Lanehart express his suspicions of Mr. Skillman?

Mr. Clark:—I object to the question as leading.

Objection sustained.

Q. What conversation, if any, did you have with Mr. Lanehart in which he expressed a mistrust of Mr. Skillman?

Same objection.

Objection sustained.

Q. Did you have any conversation with Mr. Lanehart in the year preceding his death, in relation to Mr. Skillman?

A. Yes.

Q. What was the conversation?

Mr. Clark:—I object to the conversation.

Question allowed.

Exception claimed.

Exception allowed—sealed accordingly.

(L.S.) THEO. B. BOORAEM,
Judge.

A. In relating to my Uncle Will, a number of derogatory things concerning Mr. Skillman, I mentioned—(interrupted.)

Court:—No don't mention what you said.

(Mr. Reger):

Q. What you said to Mr. Lanehart and what he said to you?

Court:—No, I think that is going too far, she says she had a conversation with her uncle in which she related

a number of derogatory things, or in which she made certain statements to him—I will exclude those statements.

A. My Uncle Will said there is no doubt that William H. Skillman burned his barns.
Q. Give the whole conversation?
A. In order to get the insurance money.

(Mr. Reger:)

Q. Did he say whose barns?

Mr. Clark:—I object, I do not think the witness ought to be permitted to testify to anything except the conversation as stated.

Objection sustained.

(Mr. Reger):

Q. When was this conversation?
A. It was between the 1st of January and the time of Uncle Will's death, I cannot place it exactly.
Q. The 1st of January, what year?
A. 1905, the last year of Uncle Will's life.
Q. You testified in your direct examination that you think the signature to Exhibit P. 4 was not the genuine signature of Mr. Lanehart—on your cross-examination you were asked, "whether you had not at a previous trial, expressed the opinion that it was a genuine signature"—had you or not, at the time of the first trial, made a careful comparison of the disputed signature with the genuine signature of William Lanehart or not?

Mr. Clark:—I object to the question as leading and on the further ground that it is not the proper way to get the information desired.

Question overruled as leading.

(Mr. Reger):

Q. What is the reason for your change of opinion, such as you have expressed?

A. I had not made a careful examination, nor had I compared it carefully with what I know to be the genuine signature up to that time.

Q. Have you since made such a comparison?

A. Yes.

Q. When?

A. On three occasions, the 1st was December, 1906, and then in the spring of this year 1907, and again this week.

Q. And is the opinion which you have now expressed based upon those comparisons?

A. It is.

Q. And what is that opinion?

A. That the signature to the disputed document is not my Uncle Will's signature.

Q. Did you ever know of his signing a check or legal document with a pencil?

A. No sir, never.

Q. Did you ever know him first to write his name in pencil and then trace it with ink?

A. No, no, I never did—never.

Q. Was his condition of health ever such as to make that necessary?

A. I never knew it to be.

Q. Was he during the last winter of his life, confined to his bed?

A. No.

Q. Or to his room?

A. No.

Q. How many times did he have a physician during that winter?

A. Three times.

Q. Were any of the attacks, such as you have spoken of, as affecting him nervously immediately before or after the 1st of March, 1905?

A. No.

Q. Did he have any physician about those times?
A. No.
Q. You testified upon your previous examination you had testified that you saw him write when he wrote poorly, do you mean that you had ever seen him write a signature that looked like the signature to this disputed document?

Mr. Clark:—I object as leading.

Objection sustained.

(Mr. Reger):

Q. What did you mean when you said you had seen him write poorly, did you refer to his writing or his signature?
A. To the writing.
Q. Are the signatures to the exhibits which were shown you numbered from P. 8 to P. 31 inclusive, a good illustration of Mr. Lanehart's signatures?

Mr. Clark:—I object.

Question allowed.

A. Yes sir, they were.
Q. What was Mr. Lanehart's mental condition during the last winter of his life?
A. His mind was always perfectly clear.

Further Cross-Examination by Mr. Clark:

Q. A the time you were on the witness stand in the will contest, it appears by the record, that there were exhibits shown you, there numbers, five to twenty inclusive—I now show you Exhibits No. 5, 6, 8, 10, 11, 13, 14, 15, 7, 17, as they are marked on the exhibits in that case —I wish you would examine these papers, being checks,

and tell me if they are not the checks which were signed by William Lanehart?

Mr. Reger:—I object to the question, because the question says that the record shows such and such things. Now, there is no record of that case in evidence from which counsel can ask such a question.

Court:—He asks the witness whether these particular checks, exhibits in a previous case were signed by William Lanehart.

Mr. Dungan:—I object to it on the further ground that it is not cross-examination.

Mr. Clark:—I will show you that it is proper cross-examination.

Question withdrawn.

Q. Were you not asked on the trial in the Orphans' Court upon the appeal of the Lanehart will contest, this question—"I show you a lot of checks, marked as exhibits on behalf of proponents, numbers five to twenty inclusive, and ask you whose signature is attached to these checks" —and did you not answer—"they are all Uncle Will's" —I now present to you these checks, and ask you whether you did not then say, after an examination that they were all your uncle's signatures?

Court:—She has already identified these checks in this case.

Mr. Clark:—You have already identified these checks as being the proper signatures of William Lanehart?

Court:—The court will assume that.

Mr. Reger:—I object to the examination on the ground that there is nothing in the re-direct examination upon which to base this re-cross-examination.

Court:—I cannot find any such re-direct examination.

Mr. Clark:—She says that her reason for changing an opinion is, that she had not made any examination by the way of signatures.

Question allowed.

(Mr. Clark):

Q. Did you not examine all these checks, and compare them with the signature in the will, before you replied to the question in the Orphans' Court, "That you believed the signature attached to the will was the signature of your Uncle Will?"

A. I have had no means of making a careful examination and comparing them with the signature in dispute, so as to say they are the genuine signature of my Uncle Will's.

Q. Did you not in my office, in the presence of Mr. Skillman and myself, Jerry Skillman and William Ely, examine these checks, just previous to the examination in the Orphan's Court, with a view of passing upon the genuineness of the signature of William Lanehart to these checks?

A. I positively do not remember it, Mr. Clark.

Q. And did you not then and there, say that you were entirely satisfied, that Mr. Lanehart had written the signature to that will?

A. I do not remember, as I say, before I made no careful examination, nor did I compare it with what I knew to be my uncle's genuine signature, nor have I any recollection of ever having done so?

Q. That may be so now—but you knew at the time of the preparing of that trial, and during the trial, that the question for consideration was the question of the forgery of your uncle's name to that will, did you not?

A. Yes.

Q. You did have your attention called to the genuine-

ness of signatures, made by your uncle, did you not, before you testified?

A. I presume so, but I really do not recall it.

Q. You testified then, with that knowledge, that you believed it to be your uncle's signature?

A. I did not say I have any knowledge.

Mr. Reger:—I object to this evidence—what knowledge, the question is obscure.

Mr. Clark:—With the knowledge that she obtained by examination as well as her own individual knowledge, which she had of William Lanehart's handwriting.

Mr. Dungan:—I object to the evidence then if that question embraces both these reasons.

(Mr. Clark):

Q. Did you not testify at the trial to the signature to this will, as the proper signature of William Lanehart, not only from your knowledge of his signature as shown to you by checks at that time, but also by reason of your knowledge of his handwriting, as you had seen him write?

Mr. Dungan:—I object to the question because she does not say that she testified from her own knowledge of other signatures. She says she does not recall whether she saw other signatures or not. Now, if the question is limited to her knowledge of Mr. Lanehart's handwriting, that is not objected to.

Court:—She is asked now whether she did not at the former trial, give the testimony which is now admitted she did give, with a certain degree of knowledge of the signature of William Lanehart—I think this is proper examination and I will allow the question to be answered.

Mr. Dungan:—The ground has not been covered, I think, your Honor.

Court:—No, I don't thnk it has been properly covered by the cross-examination, but I will take the evidence.

A. I testified that I believed it to be my Uncle Will's signature at that time, but after making a careful examination and comparison—(interrupted.)

Mr. Clark:—I object to any further answer.

Witness:—I haven't finished my answer yet.

Mr. Clark:—You have answered the question.

Q. Were you not asked on cross-examination in the trial of the Lanehart will case, this question (page 635) Mr. Dungan then examining you, and propounding the questions: "Q. You have testified that in your opinion, the signature to the Skillman will," Exhibit P. 1, that being this will, "is the signature of William Lanehart,"—I asked you whether you arrived at that conclusion by the same process of reasoning?"

"A. I presume so.

"Q. I ask you whether, placing the signature with the signatures of exhibits numbers five to twenty-seven, you would say that the signature to the disputed will, has the same appearance and general characteristics of Mr. Lanehart's signature?

"A. I think it has."—Were not these questions and answers propounded and given by you on that occasion?

A. I do not know.

ABRAHAM P. STRYKER, sworn in behalf of the State.

Examined by Mr. Reger:

Q. Where do you live?

A. Near "Skillman's," N. J.

Q. Were you acquainted with William Lanehart in his lifetime?

A. I was, yes sir.

Q. Do you know the defendant, William H. Skillman?

A. Yes, sir.

Q. After Mr. Lanehart's death, did you or did you not at any time have a conversation with Mr. Skillman, about a paper purporting to be the last will and testament of William Lanehart?

A. While I was down at Mr. Skillman's house, yes sir.

Q. When was this?

A. Well, I could not say exactly when I was there, it was probably the last of May or the first of June or some time along there.

Q. Either the last of May or the first of June?

A. Yes, sir.

Q. State what Mr. Skillman said to you on that occasion?

(Court):

Q. The last of May or the first of June of what year?

A. I presume it is 1905.

Q. This was after Mr. Lanehart's death?

A. Yes sir, after Mr. Lanehart's death, the same spring that Mr. Lanehart died.

Mr. Clark:—Does it refer to the will?

Mr. Reger:—It does.

Mr. Clark:—Let it show that.

Court:—The question was "after Mr. Lanehart's death, did you or did you not at any time have a conversation with Mr. Skillman about a paper, purporting to be the last will and testament of William Lanehart," and the witness answered, "Yes," and then he was asked, "When was it," and he answered, "that he could not say exactly when he was down there but it was probably the last of May or the first of June, some time along there. And then I asked him what year and he said he presumed it was 1905. Now, the question is, "State what Mr. Skillman said to you on that occasion?"

A. I don't know as I had a real conversation about that, but I was there on some other business, and this was brought up and mentioned at the time.

(Mr. Reger):

Q. What did he say at that time in relation to this will?

A. Well, as he was rustling through some papers, to find a catalogue of the A. I. Wright Co., of Philadelphia, I went over to see about some bee-hives, and he took out a long envelope out of one of the pigeon-holes in his desk there, and he says, "Abe, this is what the Blawenburg people will raise the devil about, I have used all precautions in writing this will, and I don't intend for all hell to change it."

Q. Was there any other conversation at that time about this will?

A. Not a thing, no sir, that is all that was said, and we went on with our business, that I was down there for, and that was about the bee-hives.

Cross-Examination by Mr. Clark:

Q. This was the last of May or the first of June?

A. About that time, yes sir.

Q. And he took a paper out of the envelope?

A. No, he just took out a long envelope out of the pigeon-hole.

Q. He took a long envelope out of a pigeon-hole?

A. Well, I know it was out of his desk, I would not say where he took it from exactly.

Q. No reference had been made about a will before he took the envelope out of the desk?

A. Not a word.

Q. And no reference was made about a will, after he took the paper out of his desk?

A. No sir, he just said what I have told you he said when he took that paper out of the desk, he showed me the long envelope and that was what he said.

Q. Now, repeat what he said?

A. He said, "Abe, this is what the Blawenburg people will raise the devil about, I have used all precautions in writing this will, and I don't intend for all hell to change it."

Q. Now you were sworn here at the trial of this cause, at the last time it was tried, were you not?

A. Yes, sir.

Q. Is not this what you then testified to, "Abe, this is what the Blawenburg people are making such a fuss about?"

A. I don't recall any such testimony at all.

Q. Is not that what you said at that time?

A. I don't know, sir, I don't think it is.

Q. Do you say you did not say it that way?

A. Well, I would not say positively whether I did or not.

Q. If you did say it that way, was it true or not?

Mr. Reger:—I object to that—the evidence that he gave then will speak for itself.

Court:—I think that speaks for itself, if he said it in that way you have laid the foundation for a contradiction, and you may show that he used different language, in reciting that conversation then, then he does now, and then that would be a question for the jury.

(Mr. Clark):

Q. Has your recollection been refreshed by anything that happened since the last trial with respect to that conversation?

A. Not a word

Q. Which would be most likely to be correct, the recollection as manifested by your evidence then, or the recollection you have of it now?

Mr. Reger:—Same objection.

Court:—I think that is a question for the Jury, he said that nothing has occurred since that time to refresh his recollection.

Question withdrawn.

(Mr. Clark):

Q. Your statement at the last trial, having been made in the month of April last, which was nearer the time that you heard the conversation than now, in November, my question is whether your recollection is as definite and clear now as it was then about it?

Mr. Dungan:—I object to the question on the ground that he has testified on the best of his recollection, undoubtedly everybody does, and that is all that can be expected.

Court:—I think there is sufficient modification in the question to make it permissible, I will allow the question to be answered.

A. I don't know but what it is just as clear now as it was then.

(Mr. Clark):

Q. Do you profess to give the precise words he used on that occasion, now?

A. I think so, yes sir.

A. You think so?

A. Yes, sir.

Q. Did you give the precise words that he used on the last trial?

A. I think I did.

Re-Direct by Mr. Reger:

Q. Were or were not the words used at the last trial, the same as you have used here today?

A. I think just the same, Mr. Reger.

Further Cross-Examination by Mr. Clark:

Q. You mean by that according to the best of your recollection?

Mr. Dungan:—I object.

Question allowed.

A. I think it is, yes sir.

(Mr. Clark):

Q. If you did use different language, and that statement having been made at a date near the time when the conversation occurred, would you be willing to say that the language you then used was not correct?

Mr. Dungan:—I object to the question on the ground that he says he did not make the other statement, and this question is not predicated upon an assumption that he did make another statement, and I object to it on the further ground that his examination has gone far enough

for counsel on the other side to deny the present statement, the statement that he here makes, that is, that a foundation has been laid for a contradiction.

Mr. Reger:—I have the stenographer's notes here, if you would like to see them.

Mr. Clark:—Yes I would.

Court:—The notes are not in evidence at all, and I will rule upon the question if you insist upon it.

Mr. Clark:—I do not insist upon it, your Honor.

Court:—I shall sustain the objection on the ground that the hypothesis is negatived by the positive statement of the witness in his direct-examination.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(State Rests.)

(Opening for the defendant by Mr. Case.)

EDWARD SKILLMAN, sworn in behalf of the defendant.

Examined by Mr. Case:

Q. You are a son of William H. Skillman?
A. Yes.
Q. How old are you?
A. Thirty-three, I believe.
Q. Where do you live?
A. Home.

Q. With your father?

A. Yes, sir.

Q. Have you always lived with your father?

A. Yes, just about—I was away from home about eighteen months.

Q. You have lived at home during the last three years?

A. Yes.

Q. Did you know William Lanehart in his lifetime?

A. Yes sir, I did.

Q. Have you known him since he lived in Blawenburg?

A. Yes, sir.

Q. Do you know how long that was about?

A. Nearly all the time that he lived at Blawenburg.

Q. What do you know of the friendship existing between your father and Mr. Lanehart?

A. Very friendly.

Q. How was that manifested?

A. Why he came down very often, that is what I was basing my opinion on, to see my father.

Q. What have you to say as to the frequency of Mr. Lanehart's visits to your father's house?

A. Well, he was down there very often, one week I know he was down there four times during the week, of course, that was an exception.

Q. What have you to say about his bringing people to your father's place?

A. He almost always brought his company down, and he was down there very frequently with a lot of company.

Q. Do you remember the day when this will was executed?

A. I do.

Q. Do you recollect seeing Mr. Lanehart at your father's house some time before that?

A. Yes, sir.

Q. Something has been said with reference to a memorandum being made on a certain day between the middle and the latter part of January, do you remember that day?

Mr. Reger:—I object to the question as leading.

Objection sustained.

(Mr. Case):

Q. Do you remember a prior occasion when Mr. Lanehart was at your father's place?
A. I do.
Q. Having a consultation with him near the wagonhouse?
A Yes, sir.
Q. What, so far as you know, took place or was said that day—can you fix the time of that visit?
A. I can.
Q. As nearly as you can, fix it?
A. Somewhere about the latter part of January.
Q. Do you remember the day of the week?
A. I do not.
Q. Sunday was it not?

Mr. Reger:—I object to the question as leading.

Question withdrawn.

(Mr. Case):

Q. Who was there at that time, who came with him?
A. Miss Kellogg.
Q. She came with him?
A. Yes, sir.
Q. They drove over?
A. Yes, sir.
Q. Where did Miss Kellogg remain while she was at the farm?
A. In the house.
Q. Where was your father and Mr. Lanehart?
A. Standing in front of the wagonhouse.
Q. Standing in front of the wagonhouse?
A. Yes, sir.

Q. And where were you?

A. I was on my way up to the wagonhouse—no, no I was coming up the lane when I saw them there.

Q. Tell us what you saw?

A. As I was on my way up to the wagonhouse, I saw my father and Mr. Lanehart standing there, and as I neared them, I saw my father have a pencil and paper in his hand, and Mr. Lanehart says—(interrupted.)

Q. Did you see Mr. Lanehart talking to your father?

A. I heard him talking to my father, yes sir.

Q. Do you know whether your father did anything by reason of Mr. Lanehart's talking to him?

A. He stood there with the pencil and paper in his hand.

Q. What doing?

A. Writing.

Q. What did Mr. Lanehart say?

Mr. Reger:—I object to that.

Question allowed.

A. He says, "look here Skillman, I want you to write that as I want it or not at all, I want you to thoroughly understand that not one of my blood relatives will ever get a damned cent of my money."

Q. Did you hear anything further said that you recollect, by Mr. Lanehart?

A. No, sir.

Q. Where were you at this time?

A. I was just about up to them.

Q. You were just about up to them.

A. Yes, sir.

Q. Did Mr. Lanehart have any conversation with you?

A. Yes, sir.

Q. In the presence of your father?

A. Yes, sir.

Q. Was it with reference to the matter of the will or concerning other matters?

A. It was in reference to the spraying business.

Q. Did you notice what it was upon, that your father was writing?

A. It was on a piece of paper, about the size of an envelope.

Q. Have you the paper?

A. No, sir.

Q. I hand you a paper, with pencil writings upon it, and ask you if you recognize that paper?

A. It was a piece of paper about that size.

Q. What was a piece of paper about that size?

A. The paper that he was writing on.

Mr. Clark:—I ask that that paper be marked for identification.

Marked D. 22 for identification.

Q. Was Mr. Lanehart at your father's house between that date and the date on which the will was executed, so far as you remember?

A. Yes, sir.

Q. He was?

A. Yes sir, I think so.

Q. Do you know the state of your father's health between that time and the time of the execution of the will?

A. Father was miserable all the winter.

Q. You say that you remember the day on which the will was executed—where were you at the time Mr. Lanehart came that morning?

A. I do not know, sir.

Q. You don't know where you were?

A. No, sir.

Q. When did you see Mr. Lanehart?

A. After I went into the house.

Q. That is the morning on which the will was executed?

A. Yes, sir.

Q. Do you know what time in the morning it was when you went in and found Mr. Lanehart there?

A. Towards the middle of the forenoon, I don't know exactly the time, no sir.

Q. Do you know how long Mr. Lanehart had been there when you went in?

A. No, sir.

Q. Did you go in the house alone?

A. No.

Q. Who went in with you?

Q. Mr. Ely.

Q. Where had you met Mr. Ely?

A. Out at the post, where he was tying his horse.

Q. Near the post, near your house?

A. Yes, sir.

Q. Mr. Ely had driven in?

A. Yes sir, he was just tying his horse.

Q. What was the occasion of your going into the house?

A. I was talking to Mr. Ely a little while before, when he was tying fast, for a minute, and he mentioned—(interrupted.)

Q. Don't tell us what he said—what took place, what was the occasion of your going into the house?

A. I had no occasion whatever, only I simply went in with Mr. Ely as he went in.

Q. You went in with Mr. Ely?

A. Yes, sir.

Q. Who was in the room that you went into?

A. Mr. Lanehart, my father, my brother and my sister.

Q. What is your brother's name?

A. J. W. Skillman.

Q. Jeremiah?

A. Yes, sir.

Q. What is your sister's name?

A. Elva.

Q. Do you remember the weather of that day?

A. I particularly know that it was a winter's day.

Q. Cold?

A. Yes, sir.

Q. I wish you would go on and state what occurred after you went into the house?

A. I had been in the house a few minutes, and Mr. Lanehart said "Well, Skillman, what about that will, we must fix that up, as I am in a hurry." And pa says, "All right," and Mr. Lanehart sat down to the desk, and my father handed him a pen, and he took the pen and transferred it to his left hand—(interrupted.)

Q. What was said with reference to the order with which the signature should be made, do you know?

Mr. Reger:—I object to that.

Objection sustained.

Q. Go on?

A. And he reached around and took a lead pencil out of the desk, and wrote his name in lead pencil, and then he picked up the pen and wrote his name with the pen, and then he said, "Well, what about the witnesses?"

Q. Yes, go on?

A. And my brother and Mr. Ely witnessed the will.

Q. Do you know which signed first, Mr. Ely or your brother?

A. I think my brother did, but I would not be positive.

Q. Well, go on?

A. And after they witnessed the will, he says, "Well, I am in a hurry, I must be going," and he went out of the house. My father went with him, and Mr. Ely and my brother went out, and after they were out, I thought it was queer—(interrupted.)

Mr. Reger:—I object to the witness stating what his thoughts were.

(Mr. Case):

Q. What did you do?

A. I went to the desk and examined the signature.

Q. Why did you examine the signature?

A. Why as I had never seen a will executed before, and I wondered why he first signed it in lead pencil—(interrupted.)

Mr. Reger:—I object to the witness stating that "he wondered why he first signed it in lead pencil" and ask that that part of the answer be stricken out.

Mr. Clark:—I think it is a good reason.

Court:—Motion granted and the latter part of the answer ordered stricken out.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Case):

Q. You did look at the signature, however?
A. I did, yes sir.
Q. What did you do?
A. I examined the signature.
Q. Where was the paper?
A. Lying on the desk.
Q. Where it had been signed?
A. Yes, sir.
Q. Were you alone there?
A. No, sir.
Q. Who was with you?
A. My sister, Elva.
Q. Did she examine the will, too?
A. She did.
Q. What did you find?
A. We found the lead pencil marks in the signature.
Q. What have you to say with reference to their partial concealment by the ink?

Mr. Dungan:—I object to the question as leading.

Question withdrawn.

(Mr. Case):

Q. Go on and explain what you found?

A. I found the lead pencil marks in the signature, in some places they were covered with ink and in other places they were not, I found the signature written at the bottom of the page where there were no lines, it was written in a trembling hand, and running uphill.

Q. Was your father there at that time?

A. He was not.

Q. When next did you see him?

A. A few minutes after when he came in the house.

Q. Where were you when he came in?

A. In the room.

Q. Still examining the will?

A. It was just previous to his coming in, we examined the will.

Q. Was your father's attention called to the will?

Mr. Dungan:—I object to that as leading.

Question withdrawn.

(Mr. Case):

Q. State what was done after your father entered the room?

A. We examined the signature?

Q. Who?

A. My father and I.

Q. Why did your father examine the signature, if you know?

Mr. Dungan:—I object to that.

Objection sustained.

Q. What was the occasion of your father's looking at the signature?

Mr. Dungan:—I object to that, it is the same question exactly, only in another form.

Question allowed.

A. Why, I called his attention to it—(interrupted.)

Mr. Dungan:—I object to that—the question was "What was the occasion of his father looking at the signature," not what the witness did, and I object to it as not responsive.

Objection sustained, and the answer ordered stricken out.

(Court):

Q. Just state what took place?

A. We took the will to the window and examined the signature.

Q. You and your father?

A. Yes, sir.

Q. What took place there at the window?

A. We had a conversation there in regard to the signature.

Q Who had?

A. My father and I.

Q. Yes, and what was the nature of the conversation?

Mr. Dungan:—I object to the question as immaterial and irrelevant.

Objection sustained.

(Mr. Case):

Q. What was the conversation?

Mr. Dungan:—I object.

Objection sustained.

Mr. Case:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

Court:—I understand Mr. Lanehart was not present at that time.

Mr. Case:—He was not present.

Q. To what part of the will did the conversation relate?

Same objection.

Same ruling.

Mr. Case:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Case):

Q. How long did this conversation last?

Mr. Dungan:—Same objection.

Objection overruled and question allowed.

A. Only a few seconds.
Q. And what was then done with the will?
A. I believe my father put it in the desk, I do not recollect what he done with it really.

Q. I hand you a paper, which is marked, "Last will and testament of William Lanehart," and is also marked as an exhibit in this case, P. 4, and I will ask you if you have ever seen that paper before?

A. I have, yes sir.

Q. Do you know the signature attached to it?

A. I do.

Q. Whose signature is it?

A. "William Lanehart's."

Q. Is that the signature you saw attached to that paper on the day in question?

A. It is.

Q. And is that the document that was signed at that time?

A. Yes sir.

Cross-Examined by Mr. Reger:

Q. You did not read the contents of the will at that time, did you?

A. No, sir.

Q. You say Mr. Lanehart occasionally brought his company to your house, they came down to see the fruit trees, didn't they?

A. That was one of the attractions, I presume, yes sir.

Q. Mr. Lanehart was interested in fruit growing, was he not?

A. Somewhat, yes sir.

Q. And your father had a fruit farm?

A. We have, yes sir.

Q. This visit what you speak about, when you saw Mr. Lanehart at the wagonhouse, was some time in January, you say?

A. I think it was the last of January, yes sir.

Q. And that is as nearly as you can fix it?

A. I think so, yes sir.

Q. Didn't you testify on a previous trial that it was after the holidays some time in January, about the middle I think?

A. Possibly I did, yes sir.

Q. And that is correct, is it?

A. The last of January would be after the holidays, would it not, Mr. Reger?

Q. Would that be about the middle?

A. I think I testified it was somewhere about the middle or towards the last of January.

Q. Didn't you say, "Yes, sir, somewhere about the middle of January?"

A. Possibly.

Q. And it may have been at that time?

A. From the middle to the last, yes sir.

Q. You say your father was miserable during a part of the winter, he was able to go out, was he not?

A. Yes sir, he was out sometimes.

Q. And occasionally went to Skillman and Hopewell, didn't he?

A. I don't know about him going to Hopewell.

Q. Well, to Skillman?

A. Possibly, he did, I don't know that he did not.

Q. He was not confined to the house?

A. Oh, no sir, not all the time, no sir.

Q. You say you saw your father have a paper in his hand at the wagonhouse?

A. I did, yes sir.

Q. Was that an envelope?

A. It was a piece of paper about the size of one, Mr. Reger.

Q. Was it a piece of paper or was it an envelope?

A. I won't be positive which it was.

Q. You will not be positive?

A. No, sir.

Q. Then you don't know which it was?

A. No sir, I cannot say positively which it was.

Q. Did you not on a previous trial of this indictment in speaking of this memorandum, say that it was written on the back part of an envelope?

A Possibly, I did.

Q. Were you not then asked, "Was it an envelope,"

and did you not answer, "It was written on the back part of an envelope?"

A. Possibly, I did.

Q. Is that the fact?

A. I would not be positive, as I said a few minutes ago, which it was.

Q. Were you not on a previous trial asked this question, "What else was on the envelope," and you answered, "I don't know, I did not examine it,"—did you make that answer?

A. I do not recall it at present.

Q. Were you not asked this question, "Do you know what address was on it," and did you not answer, "I do not?"

A. Possibly I did.

Q. Were you not asked this question, "Was it an envelope that had been used," and did you not answer, "Yes?"

A. Possibly I did.

Q. Were you not asked this question, "And one which your father had received," and did you not answer, "Yes sir, as far as I know, it was?"

A. Possibly I did, I do not recall at present, whether I did or not.

Q. Were you not asked this question, "Had it been opened," and did you not answer, "It had?"

A. I do not recall whether I did or not.

Q. You say that Mr. Lanehart came down to see your father occasionally, did he come between the time in January when you saw him at the wagonhouse, and the time when you say this will was executed?

A. Yes sir, I think he was there several times.

Q. Do you know how many times?

A. I do not.

Q. Can you give the number?

A. Oh, no sir, I could not.

Q. Well, was it four or five times?

A. It may have been.

Q. At the trial in the Orphan's Court, you did not testify that you heard Mr. Lanehart say, "I want you to

write it as I want it or not at all, I want you to thoroughly understand that not one of my blood relatives will get a damned cent of my money," did you?

A. I certainly think I did.

Q. At the Orphan's Court?

A. I think so.

Q. You did?

A. I am under that impression that I did, yes sir.

Q. Did you see Mr. Lanehart the day that the will was executed, before you went into the house?

A. No, sir.

Q. You did not see him come to the house?

A. No sir, I did not.

Q. Where were you at that time?

A. I do not know.

Q. Where had you been before that morning?

A. Oh, around the place, doing my morning's work, I could not tell where.

Q. Where was Mr. Ely when you first saw him?

A. Tying up at the post by the house.

Q. And you had some talk with him there?

A. Oh, yes sir, just talked a second while tying.

Q. Did you see Mr. Lanehart's carriage there that he had come with?

A. I did.

Q. Where was that?

A. Tied at one of the posts.

Q. Tied fast?

A. Yes, sir.

Q. Where was Mr. Lanehart when you went into the room?

A. He was seated there in the room.

Q. Did you sit down?

A. I don't think I did.

Q. Are you quite sure about that?

A. Yes sir, I am quite sure.

Q. In what part of the room were you?

A. Standing by the stove.

Q. Where was Mr. Ely?

A. He stood by the stove, also.

Q. By the side of you?
A. No, sir.
Q. Where was your sister, Elva?
A. She was seated in one corner of the room.
Q. Which corner?
A. The southeast corner, I think.
Q. Where was your brother, Jeremiah?
A. I believe he was on the couch.
Q. What part of the room is that in?
A. The northerly part of the room.
Q. The north?
A. Yes sir, the north.
Q. On which side of the room is the desk?
A. On the west side.
Q. The west side?
A. Yes, sir.
Q. The west side of the room you say the desk is?
A. Yes.
Q. Where was you father?
A. Why, he was by the writing desk when I went in.
Q. Seated?
A. Oh, yes sir.
Q. Did he afterwards get up?
A. He did when Mr. Lanehart took his seat by the desk.
Q. Mr. Lanehart took the seat he had occupied?
A. Which my father had, yes sir.
Q. Did you testify in relation to Mr. Lanehart's hands?
A. I don't recall that I did possibly I did.
Q. While the signature was being made, was there any conversation had about it?
A. Not that I recall, no sir.
Q. When Mr. Lanehart took the pencil, did he make any comment about it?
A. I didn't hear any.
Q. Did he give any reason for using pencil?
A. Why, no sir, I didn't hear any comments about it.
Q. Did your father say anything to him about the use of a pencil?

A. Not that I heard.

Q. Did the witnesses say anything to him about the use of a pencil?

A. Not that I heard.

Q. Did Mr. Lanehart say anything about the contents of the will, while you were in the room?

A. Not a word.

Q. Did he read the will over?

A. Not while I was present.

Q. You say when you looked at the will you observed that the signature was written uphill in a trembling hand and at the bottom of the page? 10

A. Yes, sir.

Q. These characteristics of the signature have been talked about in your family often, haven't they?

A. Oh, perhaps they have.

Q. That has been the subject of conversation a good many times?

A. Possibly it has been talked about several times.

Q. After the time the will was signed, when did you next see the document? 20

A. After that day you refer to?

Q. Yes, after that day?

A. Not until I saw it in Mr. Clark's office, somewhere about the time of the Orphans' Court trial, the trial at the Orphans' Court.

Q. And that trial began in January of the following year, did it not?

A. I don't recollect, somewhere along in the winter time, I don't recollect exactly when it was. 30

Q. So between the day when the will was signed, and the time in January when you saw it, you had not seen it?

A. Oh, no sir.

Q. Between those times, had or had not the character of this signature been talked over at your home?

A. It possibly has, I don't recall exactly as to that.

Q. Was the will in one sheet or two sheets?

A. Why, it was in two sheets.

Q. Were they fastened together?

A. I don't recollect whether they were or not. 40

Q. Who signed the will first?
A. I think my brother did, I won't be positive, though.
Q. Before Mr. Lanehart?
A. He did.
Q. Before Mr. Lanehart?
A. Oh, no sir, not before Mr. Lanehart signed it.
Q. You mean then as a witness?
A. Mr. Lanehart signed first and then my brother.
Q. What kind of a lead pencil was this that was used?
A. Oh, I don't know.

Re-Direct by Mr. Case:

Q. Do you know when it was that the will was executed, that is the time of the month and the month?
A. Not exactly, no sir.
Q. As nearly as you can tell, when was it?
A. I am under the impression that it was the forepart of March, either the last of February or the first of March, I cannot be positive which.
Q. And the Prosecutor was asking you, whether the chairs were first vacated by your father, and afterwards occupied by Mr. Lanehart when he signed the will—what kind of a chair was it?
A. Why, a very low rocking-chair.
Q. And you said that the writing-desk—what kind of a writing desk was it?
A. One of those old-fashioned writing-desks—very high, quite high, one of those old-fashioned writing-desks.
Q. With a lid to let down?
A. Yes.
Q. What supports the lid when down?
A. An off-set in the desk.
Q. When the lid was down it formed the writing part of the desk?
A. Yes.
Q. Was it level with the floor or on a slant?
A. Oh, it was on a slant quite slanting.
Q. Can you give approximately the width of this writ-

ing shelf, I don't mean from one extreme side to the other, but the writing surface from front to rear?

A. Well, 15 or 18 inches, I should judge.

Q. Do you know anything about Mr. Lanehart's physical condition on that day?

A. He didn't appear to be well, he was rubbing his hands somewhat.

Q. Rubbing his hands?

A. Yes sir.

Q. Do you know anything about the manner in which he was clothed, his overcoats and wearing apparel? 10

A. No sir, I didn't take no particular notice.

Q. Do you know what pen was used by Mr. Lanehart that day?

A. My father's fountain pen.

Q. I hand you a pen which was marked for identification P. 130, and ask you if you know what that pen is?

A. It looks like the one as near as I can recollect it.

Q. Did it belong to your father?

A. Yes sir, as far as I can tell, it looks like it. 20

Re-Cross by Mr. Reger:

Q. The desk and the chair that was used, are the desk and chair that was used by your father?

A. Yes, sir.

Q. For writing at the desk?

A. Oh, yes sir, my father always used it.

Q. Did not Mr. Lanehart say, the day that he was at your house, and on which you say this will was executed, 30 that he was feeling better on that day than on the previous day?

A. Oh, no, I didn't hear him say so.

Q. Do you say he did not say that?

A. No sir, I don't say that he did not, I say that I did not hear him.

40

ELVA SKILLMAN, sworn in behalf of the defendant.

Examined by Mr. Case:

Q. You are the daughter of William H. Skillman?
A. I am.
Q. Do you live at home?
A. I do.
Q. Have you always lived at home?
A. Yes, sir.
Q. How old are you?
A. Twenty-eight.
Q. Did you know William Lanehart in his lifetime?
A. I did.
Q. And during the last years of his life, how frequently was he accustomed to visit at your home?
A. Oh, very often
Q. How frequently, as near as you can tell?
A. Sometimes two or three times a week.
Q. Who did he come to see?
A. He came to see father.
Q. Do you remember the day Mr. Lanehart was there for the purpose of executing a will?
A. I do, I well remember it.
Q. Where were you when he came into the house?
A. I was in the sitting-room.
Q. State what conversation passed between you and Mr. Lanehart, so far as you remember, after he came in?
A. Between Mr. Lanehart and I?
Q. Yes?
A. When he entered the room, he spoke to me in the usual way, "Hello, little girl, how are you?" And then he began to converse with father.
Q. And then he began to what?
A. To converse with father.
Q. Who else was in the room besides yourself, and your father, and Mr. Lanehart?
A. My brother, Jerry.
Q. That is the time Mr. Lanehart came in?

A. Yes, sir.

Q. Will you tell us what else was said, after the morning greetings?

A. He made a few comments.

Q. Meaning who—you say "he," do you mean Mr. Lanehart?

A. Yes sir, Mr. Lanehart made a few comments about the weather, and other things that I cannot recall, and then he says, "Skillman, have you finished writing that document?" And father said "Yes," and he went to his writing desk, and got a document, and handed it to Mr. Lanehart.

Q. That was the document that was afterwards signed?

A. Yes sir, the will.

Q. What did Mr. Lanehart then do?

A. He put on his glasses and took the will and read it or he had it long enough to read it all over, and then he says "Skillman, this is written according to my orders."

Q. What next?

A. Then they began to talk about who should be witnesses. Mr. Lanehart suggested my two brothers, and my grandmother, and my father says, "No, that would be too much Skillman," and then their was something said about a neighbor, Mr. Abrams.

Q. A Mr. Abrams?

A. Mr. Eli Abrams, and just at that time, Mr. Lanehart saw someone driving up the lane, and he said, "Who is that?" And my father looked out and said, "Why it is William Ely." And Mr. Lanehart said, "Won't he do for a witness?" And my father said, "Yes," and he went to the door and he called him in.

Q. Who called him in?

A. Father.

Q. How soon after that did Mr. Ely come in?

A. Very soon.

Q. Do you know what he did between the time he was called and the time he came in?

A. I don't think he did very much, he came in in such a short time.

Q. Who came in with him?

A. My brother, Edward.

Q. State what occured after that time as nearly as you can?

A. Mr. Ely came in, and spoke about to all of those in the room, in the usual manner, greeting them, and very soon Mr. Lanehart says—he says, "Skillman, what about that document, or we will fix that document up." I think that is the way he worded it, and he says—(interrupted.)

Q. Yes, go on, what next?

A. He says, "Ely, I want you to put your name to a paper for me," and Mr. Ely said, "What paper?" he said, "My death warrant?" and then Mr. Lanehart said, in a joking way, "If it is not it ought to be." And then seriously he said "No, Ely, it is my will, I want you to witness my will."

Q. Go on, what was next done or said?

A. Mr. Lanehart asked father if it mattered who should witness first, and father said, "No, I don't know as it does," or something of that kind. And then Mr. Lanehart turned to my brother Jerry and he said, "Jerry, sign this for me." And Jerry did so, and he signed the will. And then Mr. Lanehart turned to Mr. Ely and said, "Step up like a man and put your name to this," and Mr. Ely did so.

Q. Did you see Mr. Lanehart sign the will?

A. I did.

Q. Where were you sitting?

A. On the southeast corner of the room.

Q. After the will was signed and witnessed, how long did Mr. Ely and Mr. Lanehart remain?

A. Just a short time.

Q. Do you remember whether Mr. Lanehart had an overcoat on or not?

A. I do, yes sir.

Q. What about an overcoat?

A. He had two overcoats on.

Q. Two overcoats—did he take them off?

A. No, sir.

Q. Did he say anything about taking them off?

A. He said he hadn't time.

Q. Do you remember whether he made any complaint or what he said about his health at that time?

A. He said he was not well.

Q. Did he say what his trouble was?

Mr. Reger:—I object to the question as leading.

Question withdrawn.

(Mr. Case):

Q. What did he say with reference to that?

A. In regard to his health?

Q. Yes?

A. I cannot recall just what he said, Mr. Case, he spoke of not being well.

Q. Can you give us the substance of what he said?

A. No sir, he implied that he had been miserable.

Q. Did you notice anything with reference to his physical condition?

A. Yes sir, his hands were swollen I noticed, and he complained of his hands, and he kept rubbing them as if they were numb.

Q. You say you noticed they were swollen?

A. Yes, sir.

Q. And he complained of them?

A. Yes, sir.

Q. Will you show us how he rubbed them, if you can?

A Something in this manner (illustrating.)

Q. After he went away, what did you notice about the will, did you know where it was?

A. It laid on the desk.

Q. Where it was signed?

A. Yes, sir.

Q. After Mr. Ely and Mr. Lanehart had gone, who were in the room?

A. Brother Edward and myself.

Q. Anybody else?

A. Not at that time.

Q. State what occurred after that time?

A. Brother and I had some curiosity in seeing a will, and—(interrupted.)

Mr. Dungan:—I object to the answer as not responsive and we have nothing to do with this lady's curiosity, and I therefore ask that the answer be stricken out.

Court:—The answer ordered stricken out.

(Mr. Case):

Q. What occurred?

A. Brother and I had some curiosity to see it, and we went—(interrupted.)

Court:—The last answer was stricken out where the witness spoke of her curiosity and this must share the same fate.

(Answer ordered stricken out.)

(Mr. Case):

Q. What did you see?

A. We saw the signature.

Q. Did you see the will?

A. Yes, sir.

Q. Had you ever seen a will before?

A. I had not, no sir.

Q. And what did you notice, if anything, about the signature?

A. I noticed it being written in a trembling hand, running uphill, written at the bottom of the page, where there were no lines.

Q. Did you notice anything else.

A. I noticed pencil marks around some of the letters?

Q. You noticed pencil marks around some of the letters?

A. Yes, sir.

Q. Do you know what letters they were?

A. As I recall, round the letter "a" and the "t," plainly around the "t."

Q. Plainly around the "t?"

Q. Was there anything said between you and your brother about the signature at that time?

A. Yes sir, we spoke about it.

(Court):

Q. Round the "a" and the "t" you saw the pencil marks?

A. Yes sir, plainly around the "t."

(Mr. Case):

Q. I wish that you would examine this document which I now hand you, marked Exhibit P. 4, and tell me how the signature of it compares with what you saw signed that day by Mr. Lanehart?

A. It is the same signature that I saw signed that day by Mr. Lanehart.

Q. How do you identify that this is the same signature you saw that day?

A. I identify it by the writing, the shape of the letters, the *trembliness* of it, the running uphill, and it is written down where there is no lines.

Q. Do you recognize the document as being the document that was signed there that day?

A. Yes sir, I do, it was in father's writing.

Q. And you observed the same writing that day that you now see?

A. I did.

Q. What do you know about the relations existing between your father and Mr. Lanehart as to their friendship?

Mr. Dungan:—I object to the question in that shape, because it is improper to testify to relations existing between her father and Mr. Lanehart at the same time.

Court:—The testimony was admitted without objection before.

Mr. Dungan:—I know it was, there ought to have been an objection made to it, I shall admit it.

Question allowed.

A. Extremely friendly, the best of terms.

Q. What was your habit as to going to Mr. Lanehart's house?

A. I frequently called there on Mr. Lanehart and his niece, Miss Kellogg.

Q. Do you know anything about the number of visits made by Mr. Lanehart to your house between the middle or latter part of January, and the time the will was executed?

A. I know he was down frequently.

Q. He was there frequently?

A. Yes, sir.

Q. And do you recall a visit by him with Miss Kellogg on a Sunday in the middle or the latter part of January?

A. I do.

Q. Where did Miss Kellogg stay while they were there?

A. In the house.

Q. Do you know where Mr. Lanehart was during the time he was there?

A. Out doors for a while with father.

Q. Your father was out with him?

A. Yes, sir.

Q. Did I ask you if you knew about when it was that the execution of the will took place?

A. When?

Q. Yes, do you know?

A. About when, not exactly.

Q. As nearly as you can tell?

A. The last of February or possibly the first of March.

Q. Have you any way of fixing that time in your mind?

A. No sir, only towards spraying time.
Q. And do you know what kind of a day it was?
A. I think it was a cold day, Mr. Case.
Q. Was there snow?
A. Some snow on the ground, I think.
Q. The chair upon which Mr. Lanehart sat, while he was signing the will, do you now what kind of a chair it was?
A. Yes sir, it was a low, rickety, rocking-chair.
Q. And below the usual height of chairs?

Mr. Reger:—I object to the question as leading.

Objection sustained.

(Mr. Case):

Q. How did the chair compare with the usual height of chairs?
A. It was quite some lower.
Q. And the desk, what kind of desk was it?
A. An old-fashioned, high writing-desk, with a book-case above.
Q. A book-case above?
A. Yes, sir.
Q. What kind of shelf had it?
A. You mean for writing?
Q. Yes, a shelf to write on?
A. The lid that let down, and it was the writing shelf.
Q. Making a writing space of how wide, about?
A. About twelve or fifteen inches, I should think, or something like that.
Q. When the lid was lowered for use, was it level or on a slant?
A. Quite slanting.
Q. I show you a paper marked D. 22 for identification, and ask you if you know what that paper is?

Mr. Reger:—I object to the question—the paper speaks for itself.

Question withdrawn.

(Mr. Case):

Q. Have you ever seen that paper before?
A. I have.
Q. Where did you see it?
A. I saw it lying on the ink-well of my father's writing desk..
Q. When, if you remember, with relation to the execution of the will?
A. Before the execution of it.
Q. Do you remember how long before the execution of it?
A. No sir, a few days, not exactly.

(Court):

Q. Did you read the contents of the will, when you and your brother were looking at it, after your father had gone out of the house?
A. No sir, I did not.
Q. Have you ever read the contents of the will, before the death of Mr. Lanehart?
A. No sir, indeed.

Cross-Examined by Mr. Reger:

Q. When you say you saw that paper some time after or before the execution of the will, did you read the paper at that time?
A. What paper?
Q. The paper that has just been shown you.
A. No sir, I did not read it.
Q. You did not?
A. No, sir.
Q. Did you read anything on it?
A. No sir, I did not read it, but glancing at it—(interrupted.)
Q. Answer the question—you did not read anything on it, you say?

A. I did not stop to read it, but I saw a word or two on it.

Q. You say you were seated in the sitting-room, on the southeast corner of the room, when this will was signed, is that correct?

A. Yes sir, it is—southeast do you say?

Q. Yes?

A. That is correct, yes sir.

Q. How large a room is that?

A. I cannot tell you how large, quite a good-sized room.

Q. Fifteen feet square?

A. I cannot tell you, I never measured it.

Q. Was there at that time a stove in the room?

A. There was, in the centre.

Q. In the centre of the room?

A. In the centre of the room.

Q. And in what part of the room was the desk?

A. On the west side.

Q. Standing against the wall or in the room?

A. Right against the wall.

Q. So that at that time you were on the opposite of the room from the desk, were you not?

A. Not opposite the desk, no sir.

Q. You were on the opposite side of the room?

A. Not at the opposite side, I was in the corner.

Q. You were at the southeast corner?

A. I was at the southeast corner of the room.

Q. And the desk was on the west side?

A. It was.

Q. And the stove was between?

A. No sir, not between me and the desk.

Q. It was not?

A. No, sir.

Q. Was not the stove in the middle of the room?

A. It was.

Q. Did the lid of the desk open down into the room, did it drop down?

A. It dropped down, yes sir.

Q. It was that sort of a desk?

A. Yes, sir.

Q. Was there a chimney in the room?

A. Not in the sitting room, no sir.

Q. Where did the pipe of the stove go?

A. The pipe went up through the ceiling into a chimney in the room above the sitting room.

Q. Did Mr. Lanehart read the will?

A. He did.

Q. Had there been some conversation between your father and he previous to that?

A. Previous to reading the will?

Q. Previous to reading the will.

A. A slight conversation.

Q Did he unbutton his overcoat?

A He unbuttoned the outer overcoat, he had two on.

Q. Did he unbutton the other one?

A. I don't think he did, I don't recall it now.

Q. You are sure about the unbuttoning the outer coat?

A. I am, yes sir.

Q. Have you told us all that was said in the room at that time, between Mr. Lanehart and your father?

A. As near as I recall.

Q. And you were there during all the time that Mr. Lanehart was there?

A. I was there during the entire execution of the will.

Q. And during all the time that Mr. Lanehart was there?

A. Yes, sir.

Q. Did not Mr. Lanehart say at that time that he was feeling better than on the day previous?

A. I do not recall his saying it.

Q. Do you say that he did not say that?

A. I don't say that he didn't say it, I say I do not recall it.

Q. Where was Mr. Ely when he was first noticed?

A. He was coming up the lane when he was first noticed.

Q. How long is the lane from the house?

A. I don't know, sir.

Q. To the road?

A. A few hundred yards perhaps and maybe not so far as that, I cannot say.

Q. He was so far away that he could not be recognized at first, was he?

A. No.

Q. I understood you to say that someone asked who that was coming up the lane?

A. Mr. Lanehart asked who it was.

Q. And your father went to the window, didn't he?

A. He did.

Q. Do you know whether Mr. Ely tied his horse after he came up?

A. I don't know that he did, no sir.

Q. What was going on in the room before Mr. Ely came in?

A. I cannot recollect what was going on just before that.

Q. You don't remember anything that occurred then?

A. Not just exactly before he came in, no sir.

Q. Who was sitting at the desk?

A. No one was sitting at the desk when Mr. Ely came in.

Q. Who had been seated at the desk?

A. None that I remember.

Q. Hadn't your father been seated at the desk?

A. Not that I remember of.

Q. The desk was a desk commonly used by your father was it not?

A. It was.

Q. Did you not say on your previous examination, "Father told Mr. Lanehart it looked like Mr. Ely, he recognized him when he drew near the house?

A. Possibly I did.

Q. So then he was not recognized at first, is that correct, he was not recognized at first?

A. Father said he thought it was Ely when Mr. Lanehart asked him who it was.

Q. What was the date of the signing of this will?

A. I do not remember the exact date.

Q. What is your recollection of the time?

A. I cannot tell the positive date.

Q. Did you not say in your direct examination here, that it was the latter part of February or the first of March?

A. I believe I did.

Q. Didn't you say in your testimony in the Orphans' Court that it was the middle of February?

A. I did, but I corrected it after.

Q. How were you able to correct it, if you did not know what time it was?

A. Well, I thought afterwards.

Q. You say now you don't know what time it was?

A. I haven't testified any time to a positive time, to a positive day.

Q. You corrected your testimony, after talking with the other members of the family, and your father, didn't you?

A. I did not, I corrected it that day while I was on the witness stand.

Q. When did you next see this will, after the day on which it was executed?

A. On the day that I appeared during father's trial in the Orphans' Court.

Q. When was that?

A. I don't know, Mr. Reger, the exact time, it was the same year, wasn't it?

Q. I am asking you when it was?

A. I don't know, I kept no record of the trial.

Q. Was it not in the February of the following year?

A. I really cannot say when it was.

Q. Between the day when the will was signed, and the time when you testified, you had not seen the will?

A. I had not, no sir.

Q. And that was about a year?

A. I believe it was about a year or something like that.

Q. And you remember there were pencil marks about the "A" and about the "T" during all that time?

A. I did.

Q. The fact that it was written in a trembling hand at

the bottom of the page and ran uphill, you also remembered?

A. I did.

Q. These facts have been talked over among the members of your family, a number of times, haven't they?

A. They had been talked over sometimes, yes sir.

Q. And these characteristics of the signature had been discussed a number of times?

A. It had been discussed, it was natural that they should be discussed.

Q. Were these sheets pinned together at the time the will was signed?

A. I think not

Q. Didn't you say on the trial in the Orphans' Court that the sheets were pinned together?

A. I don't recall that I did.

Q. Were you not asked this question, "Were the sheets pinned together," and did you not answer, "No sir?"

A. I do not remember that I did.

Q. Do you say that you did not so testify?

A. I do not say that I did not, no sir.

Q. Were you not also asked this question, "Are you sure about that," and did you not answer, "I am sure?"

A. I don't recall the question or the answer.

Q. Were you not asked this question, "Did you observe the pin holes in the paper at that time," and did you not answer, "I did not?"

A. I do not remember the question.

Q. Were you not asked this question, "Look at the paper now, and see if you see any pin holes there," and did you not answer, "I do not see anything that I could call pin holes,"

A. I do not recall it, Mr. Reger.

Q. What did Mr. Lanehart have on his hands, when he came there that day?

A. I think he had on a pair of mits and a pair of gloves.

Q. Are you sure about that?

A. He had on two pairs of gloves or mits of some kind, because he commented on having on two pairs.

Q. Were you not asked on the trial in the Orphans' Court this question, "Did he have any gloves on, when he came in," and did you not answer, "I do not remember?"

A. I do not think I did, Mr. Reger.

Q. You say you did not so testify in the trial in the Orphans' Court?

A. I do not think I testified so.

Q. On the trial in the Orphans' Court, referring to the date of the execution of this will, were you not asked this question (page 246) "Was it February or March?" and did you not answer, "It was in February?" (Question) Of what year? (Answer) 1905. (Question) Are you sure about that? (Answer) Certainly I am sure, it was 1905. (Question) Are you sure it was 1905? (Answer) That would be about one year ago, this 28th of February. (Question) Are you sure it was about one year ago? (Answer) It was not the last of February, it was about the middle of February.—Were not these questions asked you, and did you not so answer?

A. I do not recall now, just what questions were asked me.

Mr. Clark:—I think it is proper to say that the witness said she corrected her statement afterwards while on the witness stand.

Mr. Dungan:—She said so, but we have not been able to find it in the testimony, and if the other side can, they had better bring it out, that is the reason we are bringing it out now.

Q. Were you not asked this question, "What makes you sure it was not February? (Answer) "Spraying the trees, father was getting ready to spray the trees, and they usually spray about the first of March. (Question) Why do you think it was in the middle of February? (Answer) Because I know it was not the last, and it was not the first. (Question) How do you know it was not the first? (Answer) I know papa was preparing to spray

about the middle of February, at that time he was ordering his material to spray with. (Question) That is the reason you know it was about the middle of February, have you any other reason for fixing that time? (Answer) I have not.—Were not these questions asked you, and did you not so answer?

A. I remember some of the questions, but as I have repeatedly said, I corrected the time.

Q. What correction did you make?

A. The last of February to the first of March, I think, if I recall correctly.

Q. When did you make that correction?

A. During the same trial, here, in the witness chair, no sir, it was in the Orphans' Court.

Q. You say that Mr. Lanehart rubbed his hands when he came in that day, show us how he did that again, please?

A. Something like this (illustrating).

Q. You say you did not read the writing in the body of the will, on the day it was executed, is that so?

A. I did not.

Q. You did not?

A. No, sir.

Q. And the only thing you recognize it by is then, the characteristics of the signature that you have just mentioned?

A. Yes sir, and because I saw Mr. Lanehart writing.

Q. Yes, you have said that.

A. Yes, sir.

Q. You have been asked to stretch the truth about the lead pencil, haven't you?

A. I have not Mr. Reger, positively.

Q. During the argument on the trial in the Orphans' Court, did you not have a conversation with Miss Kellogg, in which she said, referring to the testimony she had given at that time," I have not been asked to deviate from the truth," and did you not reply, "Well, I cannot say as much as that, us youngsters were asked to stretch the truth."

A. Positively no.

Q. You did not say that to Miss Kellogg?
A. I did not, no sir.

Re-Direct by Mr. Case:

Q. Your attention has been called to the stove in the room where the will was executed, did that interfere at all with your observation with what Mr. Lanehart did at the desk, in executing the will?
A. No sir, there is not an obstacle in the room.
Q. What did you see?
A. I saw him write his name slowly with a pencil, and then trace it over very slowly with ink.
Q. Do you know where he got the lead pencil?
A. Out of father's desk, I think he had several there.
Q. Did you see what it was with which Mr. Lanehart signed the will?
A. With a fountain pen.
Q. I show you this Exhibit P. 130, for identification and ask you if you recognize that?
A. Yes sir, I think that is the same fountain pen of father's.
Q. Is that your father's fountain pen?
A. Yes sir, I am very sure it is.

Mr. Case:—I offer this pen in evidence.

Mr. Reger:—I object to the offer, it is not shown where this pen has been since that time, and it is not shown that it is in the condition it was at the time she says it was used, and certainly that is over two years ago.

Mr. Clark:—It was marked for identification for the State.

Court:—If it has not been put in evidence by the State, I will allow it to be put in by the defense, it is one of the original Skillman exhibits, is it not?

Mr. Dungan:—Yes.

Court:—It was originally in the possession of the defense, and you called for it to exhibit it to Mr. Kinsley, did you not?

Mr. Dungan:—We did.

Court:—That puts it in evidence, that is the unquestionable rule, where a document or anything else is called for, by the other side, and it is produced to them, that puts it in evidence. I will admit the exhibit.

Marked Exhibit D. 23.

Mr. Case:—I now offer in evidence the paper heretofore marked D. 22 for identification, being the pencil memorandum of directions for the drawing of the will.

Court:—I exclude the offer.

Exception claimed.

Exception allowed.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Case):

Q. How far are you able to identify this paper, as the paper which you saw in your father's desk?

Mr. Reger:—I object.

Objection sustained.

(Mr. Case):

Q. You said in cross-examination, that you only read a word or two on this paper, or rather on the paper which

you saw lying on your father's desk by the ink-well—did you read enough of it to identify this paper, as the paper you then saw?

Mr. Dungan:—I object.

Objection sustained.

(Mr. Case):

Q. What did you read on the paper at that time?

Mr. Dungan:—I object, she said she did not read any of it.

Court:—She said she didn't read any of it, but she glanced at it and saw a word or two.

Objection sustained.

(Mr. Case):

Q. What was the word or two that you saw, or what did you see on the paper?

Mr. Dungan:—I object to the question—the first part of the question would be correct, "What is the word or two you saw," following the cross-examination, but it is objected to because of the latter part of the question, "Or what did you see."

Question allowed.

A. I saw "fifty Mrs. Duffield, ditto Reed."

Court:—The paper has not been offered again.

Mr. Clark:—No, the offer has not been renewed.

Cross-Examination by Mr. Reger:

Q. On your previous trial, were you not asked referring to this exhibit D. 22 for identification, this paper, "And where was the paper at that time?" And did you not answer, "Lying in a pigeon hole in father's desk, on top of the ink-well." (Question) "On top of the ink-well?" (Answer) "Yes, sir." (Question) "Did you read it?" (Answer) "I did not." (Question) "You do not know what was on it?" (Answer) "No."—were those questions not asked you, and did you not answer as therein recited?

A. I do not recall that I said, I positively did not know anything that was on it.

Q. You did not testify at all about this paper on the trial in the Orphans' Court, did you?

A. I do not remember whether there was anything asked me about it or not, in the first trial.

Mr. Case:—I want to offer in evidence now, the papers heretofore marked for identification by the defense, D. 3 to D. 21, inclusive.

Court:—They may be marked in evidence.

Marked exhibits D. 3 to D. 21, inclusive.

WILLIAM H. ELY, sworn in behalf of the defendant.

Examined by Mr. Clark:

Q. Where do you live?

A. Harlingen, N. J., Somerset County.

Q. What is your business?

A. Farmer.

Q. What is your age?

A. I am a man of forty-four years, near forty-five, will be forty-five the last day of this month.

Q. Did you know William Lanehart in his life-time?

A. I did; yes, sir.

Q. How long had you known him?

A. I knew him for a number of years, I should judge ten or twelve years, that he lived that long in and around Blawenburg, I formed his acquaintance shortly after he came there.

Q. Do you know William H. Skillman?

A. Yes, sir.

Q. Do you know him now?

A. Yes, sir.

Q. How near to Mr. Lanehart did you live?

A. About two and a half miles away.

Q. How near to Mr. Skillman do you live?

A. Oh, about a mile, or a mile and a quarter, or something like that from him.

Q. Do you know, or do you remember the Asbury sale?

A. Yes sir.

Q. Do you know what day of the month that was?

A. No, sir; I do not, I was at the same, but I don't remember the date of it.

Q. Do you remember seeing Mr. Lanehart there that day?

A. Yes, sir; I saw him there, and I was talking to him.

Q. Now I show you this paper heretofore marked exhibit P. 4, and ask you to look at it, and say if you have ever seen that paper before (handing witness paper)?

A. Yes, sir; I have seen it before.

Q. The signature "William Lanehart" attached to that paper, did you ever see that before?

A. Yes, sir.

Q. When did you first see it?

A. The first time I saw it was the day I fixed my name to it, as a witness.

Q. Who wrote that signature, William Lanehart?

A. William Lanehart did.

Q. How do you know he wrote that signature?

A. Because I saw him.

Q. Just tell what the circumstances there were, attend-

ing the writing of that paper, or the writing of that signature to that paper?

A. Well, the circumstances is, that he wrote it while I was standing by the stove.

Q. How did you happen at Skillman's that day?

A. Well, I drove in there, how I happened to go there that day, I don't know, whether I had any particular errand, or whether I just called to see one of the boys, a friendly call, I don't know, but I know, that as I drove in Mr. Skillman called me in the house.

Q. Do you remember how near that was to the time of the Asbury sale?

A. No, sir; I do not.

Q. Do you know when it was about?

A. No, sir; it was the last part of the winter I know.

Q. You don't know whether it was—when it was, with reference to the Asbury sale?

A. No, sir; I do not.

Q. Whether before or after?

A. No, sir; I cannot say positively now whether it was before or after the Asbury sale.

Q. You say Mr. Skillman called you in, and you went into the house—who did you first see there?

A. I first saw Ed.

Q. After seeing him, did you have a conversation?

A. Yes.

Q. And you and he went into the house then, did you?

A. Yes, sir.

Q. State who you saw, when you went into the house?

A. I saw Mr. Lanehart, William H. Skillman, Elva Skillman, Jerry Skillman, and I wont say positively, whether Mrs. Skillman was in there or not, I cannot say positively as to that.

Q. You don't know, whether Mrs. Skillman was in there or not?

A. No, sir; I cannot say positively, she might have been in while I was there or not, I cannot say as to that.

Q. Did you observe anything peculiar about Mr. Lanehart, with reference to his health, or was there anything said by him, about his health at that time?

A. I do not remember particularly.

Q. You don't remember about that?

A. No, sir.

Q. After you got in, state what took place?

A. Well, I don't know, that there was anything particular, there was the regular common place remarks, same as one person would pass to another, when they meet on a cold morning, I don't remember the exact wording of it.

Q. Well, after that?

A. He requested me to sign his will as a witness.

Q. What did he say about it?

A. Well, as near as I can remember, it was words to this effect, anyhow, that he had been making his will, and he wanted me to sign it as a witness, or to be a witness to it, and I agreed, or I said I would.

Q. Then what was done?

A. Why he proceeded to fix his signature to the paper.

Q. Did you observe the length of time he was occupied in signing?

A. He spent a good deal of time in writing his name; yes, sir.

Q. Where were you at the time?

A. I was standing at the stove.

Q. And where was he?

A. At the desk.

Q. State in what kind of a chair?

A. A rocking-chair, I think it was, I am not sure though.

Q. And you were standing by the stove?

A. Yes, sir.

Q. Did you watch him while he was writing, or did you stand there (interrupted.)

Mr. Reger:—I object to that as leading.

Question withdrawn.

(Mr. Clark):

Q. State what occurred?
A. I stood there until he got through writing.
Q. Who wrote then?
A. Jerry signed next, I think.

(Court):

Q. What did you see?
A. I saw him writing on this paper.

(Mr. Clark):

Q. You saw him writing?
A. Yes, sir.
Q. And how close were you to it, how many feet from him about?
A. Well, as close as I am to you or a little closer perhaps.

(Court):

Q. Would you say about eight feet away?
A. Yes.

(Mr. Clark):

Q. Where was he with reference to you, in what direction?
A. He was left angles to me.
Q. With his back to you or side?
A. Sort of sideways.
Q. His side was towards you?
A. Yes, sir; he was on the left side towards me.
Q. His left side was towards you?
A. Yes, sir; his left side was towards me.
Q. After he had finished the writing, you say Jerry signed first?
A. Yes, sir.

Q. And then what?

A. Then I did, I signed it.

Q. Now, state what was said about the will?

A. Why I don't remember particularly what was said, he asked me to sign it, and I did.

Q. You have said that he said before this time, that he was going to make his will, and he wanted you to be a witness?

A. Yes, sir.

Q. And then he signed it?

A. Yes, sir.

Q. And then you both signed it?

A. Yes, sir.

Q. And then what occurred after that?

A. I don't know, he acknowledged it to be his will, I know that.

Q. And then what—anything else that you are aware of, or can recall?

A. I don't remember of anything in particular.

Q. Now after that, was done, what was done with the paper?

A. It was left lying on the desk, the last I saw of it, it was lying on the desk.

Q. You said you recognized that as the signature, which Mr. Lanehart wrote that day—I wish you would state what there is about it, which enables you to so identify it?

A. Well, it was a very poor job, and I thought it was an awful long time it took him to do it.

Mr. Dungan:—I object to what the witness thought and I move that the answer be stricken out.

Motion granted.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Clark):

Q. When did you form that conclusion?

Mr. Reger:—Same objection.

Objection sustained.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Clark):

Q. At the time you say the signature was put there, was there anything peculiar about it, that attracted your attention—the time you saw the signature?

A. Well, I noticed that the name was written at the bottom of the page, where there was not any lines, it was not written straight it was running up-hill.

Q. I wish you would look at that paper, and tell me whether there is any doubt in your mind, as to that being the paper that you saw Mr. Lanehart sign at that time?

Mr. Reger I object to that.

Question withdrawn.

(Mr. Clark):

Q. How do you know that is the paper, to which Mr. Lanehart signed his name?

Mr. Reger:—I object to the question on the ground that it has already been answered.

A. I don't know as I can explain it any more fully than

I did before, in the answer I gave, when I said I saw him write it.

(Court):

Q. As to that paper?
A. Yes, sir.

(Mr. Clark):

Q. After you all had signed the paper, how long were you in the room after that?
A. A very short time.
Q. And who was in the room at the time the paper was executed?
A. I think Edward was in there, yes, Edward was there and Jerry was there, and Elva was there and Mr. William H. Skillman was there, myself and Mr. Lanehart were all there.
Q. How long were you in the house altogether, about Mr. Ely?
A. Well, not over five minutes, I don't think, I was not there very long.

Cross-Examination by Mr. Reger:

Q. How did you happen to go to Mr. Skillman's house that day?
A. I am under the impression I was in a sleigh, I would not say positively, but I am under the impression that I went up there in a sleigh.
Q. Did you tie your horse before you went into the house?
A. Yes, sir; they wont stand.
Q. Did you see "Ed." outside?
A. Yes.
Q. Did you have some talk with him?
A. Yes, sir; I spoke to him, I forget what I said, we passed some commonplace remark together.
Q. Have you ever witnessed wills before, Mr. Ely?

A. Yes, sir.

Q. You are familiar with the requisites of a witness to a will?

A. Well, I never witnessed very many, I witnessed one once before.

Q. You have told us everything you observed that day, have you, in reference to the execution of this will?

A. Well, I have answered all the questions that have been asked me, to the best of my knowledge and understanding.

Q. And have you told us everything you observed there, with reference to the execution of the will?

A. As far as I remember; yes, sir.

Q. You were a frequent visitor at the Skillman house, are you not?

A. Well, quite frequent.

Q. And you and Mr. Skillman are quite intimate friends, are you not?

A. Oh we are neighborly.

Q. Did you read the will that day, when Mr. Lanehart was signing it?

A. No, sir; I never have read it.

Q. You don't know what the contents of that will was?

A. No, sir; I do not.

Mr. Case:—I offer in evidence the two pens that have been heretofore marked D. 2 for identification.

Mr. Dungan:—I object to the offer becase they are their own exhibits and on the ground that they have not been sufficiently identified by Miss Kellogg, in order to have them marked as exhibits.

Court:—I will reserve my ruling, until the next session.

Adjourned to November 30th, 1907.

New Jersey State Library

Transcript of stenographer's notes of evidence taken in the above entitled cause, before his Honor, THEODORE B. BOORAEM, Judge, and a Jury, at the Court House, in the City of Somerville, New Jersey, on the thirtieth day of November, 1907, at 9:45 p. m.

APPEARANCES:

MR. JOHN F. REGER, Prosecutor.

MR. NELSON Y. DUNGAN and MR. E. P. JOHNSON, Associated for the State.

MESSRS. CLARK & CASE, for the Defendant.

JEREMIAH SKILLMAN, sworn in behalf of the defendant.

Examined by Mr. Case:

Q. You are a son of William H. Skillman?
A. Yes.
Q. And do you reside with your father on his farm?
A. I do.
Q. How long have you lived there?
A. I have always lived home.
Q. How old are you?
A. Thirty-seven.
Q. Did you know William Lanehart in his life time?
A. I did.
Q. For how long a time did you know him?
A. Well, about as long as he lived there, and longer.
Q. Do you know approximately, how long he lived at Blawenburg?
A. No sir, it was a long term of years.
Q. I understand there was a period when he removed from Blawenburg to Plainfield?
A. Yes.

Q. And he then returned to Blawenburg subsequently to that time?

A. Yes, sir.

Q. Do you remember the day when Mr. Lanehart was at your house, when the paper purporting to be his last will and testament was executed?

A. Yes, sir.

Q. Where were you when he came there?

A. In the house.

Q. In your house, you mean?

A. Yes.

Q. Did you remain in the house all the time he was there or did you go out after he came in and before the will was executed?

A. No, I staid in while he was there.

Q. What room of the house were you in when he came?

A. The sitting-room.

Q. Was it into the sitting-room that he came?

A. Yes, sir.

Q. By "he" you mean Mr. Lanehart?

A. Yes, sir.

Q. Who was there when Mr. Lanehart came in besides you?

A. Father and sister Elva.

Q. Can you tell us what hour in the day it was, about, that Mr. Lanehart came there?

A. Well, sometime about the middle of the forenoon.

Q. What do you call about the middle of the forenoon?

A. Oh, about nine o'clock or somewhere about there.

Q. Do you know how he came, whether in a sleigh or a carriage?

A. No sir, I don't remember.

Q. When Mr. Lanehart came, did he come into the room alone or was someone with him?

A. I think he came in alone.

Q. After he came into the room, what conversation passed between him and the members of the family, as nearly as you can recall?

A. Well, I cannot recall the little details, but at any

rate after he came there, a few minutes, he said, "Skillman, I came down to fix up that will, I explained to you why I didn't come when I was to come."

Q. And what further did he say—did he make any remarks about witnesses?

Mr. Reger:—I object to the question as leading.

Question withdrawn.

Q. What did he say?

A. He said, "Who are we going to have for witnesses, what is the reason some of the boys or some of the family cannot act as witnesses?" Father says, "I think it would be just as well if we should send and get some of the neighbors," and while they were talking Mr. Lanehart looked out of the window, and he says, "Who is that going up the lane?" And someone, I think it was my sister says, "That it was Mr. Ely." And then Mr. Lanehart said, "Why cannot we use Ely as a witness?" and father says, "We can." So father went to the door and called Mr. Ely in.

Q. Go on, what then was said or what then took place?

A. Mr. Ely came in and Mr. Lanehart said to him, "Ely I want you to do me a favor." Mr. Ely says, "All right." And Mr. Lanehart sat down to the desk and—(interrupted.)

Q. Did he say what the favor was he wanted Mr. Ely to do for him?

A. Yes, he said he had been making a will, and he wanted Mr. Ely and one of the boys to sign as a witness.

Q. Go on?

A. And he signed his name.

Q. Mr. Lanehart signed his name?

A. Yes sir, he signed it with a pencil and then he took a pen.

Q. Go on?

A. And then he says, "Jerry, you come up and sign," and after I had signed, he says, "Now, Ely, step up here and do as you promised."

Q. Did Mr. Ely then sign?

A. He certainly did.

Q. After Mr. Lanehart had signed the will, what did he say?

A. He said, "Fellows, this is a will that I have been making, and I have asked you fellows to sign it as witnesses."

Q. I show you a paper, purporting to be the last will and testament of William Lanehart marked Exhibit P. 4, and ask you how that compares with the document you saw executed that day?

A. That is certainly the one.

Q. This is the one?

A. Yes, sir.

Q. Do you identify the signature?

A. I do.

Q. Whose signature is it?

A. That is Mr. Lanehart's signature.

Q. Is it the signature you saw him put on there that day?

A. Yes sir, it is.

Q. How do you know that is Mr. Lanehart's signature?

A. I saw him put it there.

Q. How near were you to him when he put the signature on there?

A. Oh, just a few feet, close enough so that I could have touched him with my hand.

Q. And you spoke of his using a pencil, what did you see him do with the pencil?

A. I saw him write with it.

Q. What did he do with the pencil if you saw him write with it?

A. After he used the pencil he took the pen up.

Q. What did he do with the pen?

A. He wrote his name with it.

Q. Do you know what kind of a pen it was?

A. It was a fountain pen.

Q. I hand you a pen marked Exhibit D. 23 and ask you ever saw that pen before?

A. It looks very much like it.

Q. Like what?

A. The pen I saw Mr. Lanehart use.

Q. Where did the pencil come from that you saw Mr. Lanehart use?

A. Out of the desk.

Q. Do you know anything as to Mr. Lanehart's condition of health on the morning on which this will was executed?

A. Well, he complained that he was not feeling as well as he liked to feel, he was complaining about his hands bothering him.

Q. What did he complain about his hands, do you know?

A. He said his hands were stiff and they had the appearance as though they were swollen.

Q. And do you know what clothing he wore that day in the way of wraps?

A. No sir, I cannot say positively what he had on in the way of clothing, only I know he was very much bundled up.

Q. Where did Mr. Lanehart sit when he signed the will?

A. In the rocking-chair in front of the desk.

Q. How did the height of that rocking-chair compare with the usual height of chairs?

A. It is rather low.

Q. And the desk was what kind of a desk?

A. One of those old-fashioned high desks.

Q. Describe it as nearly as you can?

A. Well, it is one of those old-fashioned book-cases, with a wide slanting lid to it, there is a lid there that drops down.

Q. And what supports the lid when it is down?

A. Why a portion of the desk.

Q. That which forms the lid, when the desk is closed, forms the writing surface when the desk is opened?

A. Certainly it does.

Q. Is it level or slanting?

A. It slants.

Q. Do you know how wide the lid is for writing purposes, when the lid is opened?

A. I should judge it is somewhere from fifteen to eighteen inches wide.

Q. And what is the relative height of the lid when down for writing purposes, low or high?

A. High.

Q. How do you know that the signature which you observed a few moments ago, is the signature which you saw Mr. Lanehart attach to that paper, on the day on which the will was executed?

Mr. Reger:—I object to the question on the ground that he has already testified to that.

Court:—He testified that he knows it because he saw him sign it.

(Mr. Clark):

Q. How do you know that the signature which you observed a few moments ago, is the signature which you saw Mr. Lanehart attach to that paper, on the day on which the will was executed?

A. Well, I saw him write it there, and it was not written straight.

Q. What do you mean, the signature?

A. Yes sir, and it was at the bottom of the sheet of foolscap paper, on a space where there is no lines.

Q. Do you know where the paper itself came from, the material upon which the will is written?

A. Yes sir, I do.

Q. Where did it come from?

A. I took father over to the Harlingen school meeting and he sent me out to the store after some paper, Brooks' store.

Q. Did you get that paper there?

A. Yes, sir.

Q. What was your father's position that he should require that paper?

Mr. Reger:—I object to that question as immaterial.

Court:—Do you propose to show that this paper was purchased for this special occasion?

Mr. Case:—No not for this special occasion.

Objection sustained.

(Mr. Case):

Q. You, however, purchased the paper?
A. Yes sir, I did.
Q. How much paper did you purchase at the time you made the purchase?
A. I think it was half a dozen sheets.
Q. Foolscap or legal cap?

Mr. Dungan:—I object to the question as immaterial, the paper is here.

Court:—The paper is in evidence.

Objection sustained.

(Mr. Case):

Q. Had any of it been used before the occasion of the will being written?

Mr. Dungan:—I object to the question as immaterial.

Question withdrawn.

(Mr. Case):

Q. What was done with the paper after you purchased it?
A. I took it to the school house to my father.

Q. What was the use your father put the paper to?

Question withdrawn.

(Mr. Case):

Q. What did he do, with reference to forming a back on which you write?

A. He put it on one of those files, and just took a knife and cut the paper apart.

Q. That is, slipped through from side to side the entire paper you had purchased?

A. Yes, sir.

Q. What kind of file is it you describe?

Mr. Dungan:—I object to the question as immaterial.

Court:—I think you have gone as far as you ought to go.

Question withdrawn.

(Mr. Case):

Q. Will you tell us as nearly as you can when it was that the will was executed?

A. Well, somewhere about the first of March.

Q. And how do you fix the time?

A. Well, our rule at home, is to get ready to go to spraying, somewhere about the first of March, spraying the fruit trees, and it was about that time.

Q. Have you much spraying to do?

A. Yes, sir.

Q. How much?

A. 18,000 to 20,000 trees to go over.

Q. And the day on which the will was executed, do you remember whether on that day what kind of a day it was?

A. It was a pleasant day.

Q. And can you describe it further than that, as to the quality of the weather?

A. No sir, I don't know that I can.

Q. Now, what inspection, if any, did Mr. Lanehart make of the will before he signed it?

A. Why father had handed it to him, and he looked it over, and after a bit he says, "That is all right, it is according to orders."

Q. After the will was executed, who was the first to leave the room?

A. I am inclined to think Mr. Ely and I went out first.

Q. You are not sure about that?

A. No, sir, I am not, we went out together, and I would not be positive whether I went out first or not.

Q. Do you know how long a time it took Mr. Lanehart to sign the will?

A. No, sir.

Q. What can you tell us with reference to the length of time?

A. Well, it took him longer than it usually does.

Q. Usually does for what?

A. To write his name.

Q. Do you know whether the will was at that time in two separate pieces of paper or whether they were fastened together?

A. It was in two pieces.

Q. Are you certain of that?

A. Yes, sir.

Q. Now, as Mr. Lanehart sat at the desk, did he sit square, facing the desk?

A. Oh, no sir.

Q. What was his position?

A. A little side-ways, he had to catch the light from the windows.

Cross-Examination by Mr. Reger:

Q. Where in the room, is the desk at which this will was signed?

A. On the west side.

Q. And in what part of the room were you?

A. On the north.

Q. Were you seated or standing?
A. Standing most of the time.
Q. Most of the time?
A. Not all of it.
Q. What part of the time were you standing?
A. I was standing when I wrote my own name, sure.
Q. You wrote your name standing up?
A. Yes sir, I did.
Q. Were you not seated on a couch?
A. Yes.
Q. Not when you were signing your name, but previous to that?
A. Yes, I had been previous to that.
Q. On the north side of the room?
A. Well, north, or you might say pretty near the northwest corner.
Q. The northwest corner?
A. Not in the corner, of course, but further towards the west than the east.
Q. And you were seated there while Mr. Lanehart was signing his name?
A. Yes sir, right almost by his elbow.
Q. I understood you to say that the desk was on the west side of the room?
A. It is, it is not in the center of the room on the west.
Q. Where is the stove?
A. Well, it is pretty nearly in the center.
Q. Was your father seated at the desk previous to the time when Mr. Lanehart was seated there?
A. Yes sir, he had been there some of the time.
Q. Was that your father's desk?
A. Yes, sir.
Q. And the desk which is commonly used by your father?
A. Yes sir, it is.
Q. And also the chair?
A. Yes sir.
Q. Were these files of paper that you spoke of, on the desk?

A. The file was not on the desk at that time, no sir, the paper was there, but the file was not.

Q. I understood you to say this paper, this foolscap paper, was placed on the file on the desk?

A. Oh, no sir.

Q. You did not say that?

A. No, sir.

Q. Was that file kept on your father's desk or not?

A. No, sir.

Q. Where was it kept?

A. That file he generally kept in the bottom of it, and used it for school purposes.

Q. Where did he keep it?

A. He kept it in a portion in the desk, some of the time.

Q. Did you ever see the paper in his desk, after the time you purchased it?

A. Oh, I paid no attention to his paper.

Q. You did pay no attention to it?

A. No, sir.

Q. Did you see the paper after you purchased it?

A. Well, I certainly saw the portion that the will was written on.

Q. Yes, you have testified to that—did you not testify on the previous trial, of this indictment, "I cannot say positively that I saw him sign his full name, with the pencil?"

A. Possibly I did, I saw him writing with a pencil.

Q. You said that—you have also testified that Mr. Lanehart read the will over, I think?

A. Yes, sir.

Q. Do you know for what purpose Mr. Ely came to your house that day?

A. Nothing in particular, that I am aware of.

Q. Did Mr. Lanehart read the will over after Mr. Ely came?

A. No sir, before Mr. Ely came in.

Q. Did he read it aloud?

A. No, sir.

Q. Did you hear the will read?

A. Oh, no.

Q. At no time?

A. No, sir

Q. At the time you signed the will as a witness, did you observe any pencil marks about the signature?

A. No sir, I didn't look.

Q. You remember that you didn't look, do you?

A. Well, I mean that I did not look for such a thing as pencil marks, I saw him write his name.

Q. Yes, you were not looking for such a thing as a pencil mark—is that right, that is what you said—is that so? 10

A. I saw him write his name.

Q. Answer the question—you were not looking for pencil marks?

A. I saw writing there, yes sir.

Q. Now, answer the question, yes or no—you were not looking for pencil marks?

A. I didn't see anything in the way of extra pencil marks, no. 20

Q. After the day on which this will was signed, as you say, you did not see it until you attended at the Orphans' Court, did you?

A. Yes sir, I think so.

Q. When did you next see it?

A. A short time before the trial was called.

Q. A short time before?

A. Yes, sir.

Q. About a week before, was it not?

A. I cannot say what the length of time was, but it was before the trial. 30

Q. And that was about a year after the day on which it was signed, as you say?

A. No sir, it was a considerable time, I don't recall what the time was now.

Q. And between that time—between the time it was signed and the time when you saw it, just before the trial of the Orphans' Court, you had talked over with your father that this signature was at the bottom of the page, had you not?

40

A. I had, yes sir.

Q. And that it ran uphill, hadn't you?

A. Certainly.

Q. And that it was written in a trembling hand, hadn't you?

A. Certainly, we talked that over in the family.

Q. That had been the subject of conversation a number of times, hadn't it?

A. Yes sir, we talked it over perhaps a number of times.

Q. You say that you think his hands were swollen, how was that indicated?

A. They looked to be unusually large.

Q. Did you observe that at the time?

A. I certainly did.

Q. Had you observed his hands before that time?

A. Yes sir, there had been times, when it was noticeable.

Q. What did he do with his hands that day?

A. He rubbed them.

Q. So as to attract your attention?

A. He was rubbing his hands.

Q. Show us how he did that?

A. Well, like a person whose hands were numb and cold (illustrating.)

Q. You say the pen used was a fountain pen?

A. I did.

Q. Were you not asked on the trial in the Orphans' Court this question, (page 158), "Do you know whether it was a fountain pen or not," and did you not answer, "No sir, I don't?"

A. Well, possibly I did.

Q. Were you not, on the trial in the Orphans' Court, asked these questions and did you not answer as I indicate: (Question) "Did you not write with the same pen he did?" (Referring to Mr. Lanehart), and did you not answer, "Yes, sir." (Question) "Sure about that?" (Answer) "I think so." (Question) "And didn't Mr. Ely write with the same pen?" (Answer) "That I don't know there were other pens there." (Question) "Was it a steel

pen or gold pen, or what kind of a pen was it?" (Answer) "I don't know what it was, I never looked at the pen to see." Were not those questions asked you, and did you not so answer?

A. I do not recollect.

Q. Do you say you did not so answer to those questions?

A. No sir, I do not say I did not.

Q. Were you not asked this question, referring to the pen, "Was it one that was on the desk, or did your father get it from some other place, and did you not answer, "It was one of the pens he keeps in the desk, I think?"

A. Yes sir, I think possibly I answered that way.

Q. Referring to your testimony, relative to the rubbing of Mr. Lanehart's hands, were you not in the trial in the Orphans' Court, asked these questions, (page 155): "What was his condition of health that day, from anything he said, I mean anything you could see?" And did you not answer, "He said he was feeling better that day than what he had previous to that?"

A. Well, possibly I did, I cannot recollect.

Q. Mr. Lanehart did say that, didn't he?

A. I do not recollect whether he did or not?

Q. Did you not so testify in the Orphans' Court?

Mr. Case:—I object to the question on the ground that it has already been answered.

Objection sustained.

Q. Referring to the execution of the will (page 160) were you not asked this question, "You have witnessed other wills for your father, have you not? A. "Yes sir." Did you not so testify?

Mr. Clark:—I object.

Court:—How is that contradictory of anything?

Question excluded.

(Mr. Reger):

Q. Were you not asked, referring to the execution of this will, on the trial in the Orphans' Court: (Question) "What month was it?" and did you not answer, "The month of February"—did you not so testify?

A. Well, I do not recall, it was somewhere about the first of March, is about what I—(interrupted.)

Q. The question is, did you so testify?

A. I do not recall that I set any date.

Q. Were you not asked this question, "Some time in the month of February?" and did you not answer, "Yes?"

A. I do not recall.

Q. Were you not asked this question, "How do you know it was not in the month of March?" And did you not answer, "Because we were getting ready to spray and we started to spray about the first of March"—did you not so testify?

A. I do not remember.

Q. Were you not also asked on the trial in the Orphans' Court, with reference to the time of the execution of the will, this question, "How long was this before you began to spray," and did you not answer, "Well, I don't know exactly." (Question), "Would you say one week or ten days or what time?" and did you not answer, "I cannot tell you but it was some time in February, and it was not the fore part of February, sometime later." (Question) "You are sure it was before the first of March?" and did you not answer, "Yes, sir?"

A. I do not remember.

Q. Were you not asked this question also, "About how long before you commenced to spray was it that Mr. Lanehart came and signed this will?" and did not you answer, "That I do not know, some little time, it was not within a day or two, it was longer than that"—did you not so answer?

A. I do not remember.

Q. Were you not asked this question, "As long as a week?" and did you not answer, "Possibly a week or two,

it might have been over a week, it was somewhere along there"—did you not so answer?

A. I do not remember, whether I did or not, Mr. Griggs asked so many questions in that line.

Q. Referring to the execution of this will and the length of time it took Mr. Lanehart to sign it, were you not asked on cross-examination on the trial in the Orphans' Court this question (page 168): "Give your best judgment of the length of time that was?" and did you not answer, "Just a short while, I don't know how long it was,"—did you not so answer?

A. Possibly I did.

Q. Were you not also asked this question at that time, "Give your best judgment, as to the length of time?" and did you not answer, "I could not guess, you must not get a fellow guessing on minutes?"

A. I do not remember.

Q. Were you not, on the trial in the Orphans' Court, asked this question, referring to the execution of the will (page 186) "Q. You stated in Mr. Griggs examination that you did not see Mr. Lanehart making a mark with a pencil, you supposed he was writing his name with a pencil, after his name was signed, did you observe any pencil marks?" and did you not answer "No sir, I did not?"

A. Possibly I did.

Q. Were you not asked this question, "Q. Did you call your father's attention at that time to any pencil mark?" and did you not answer, "No?"

A. No sir, I do not think I said anything to my father about pencil marks being there at that time.

Q. Is it not a fact that during the time it was being signed you remained on the sofa or lounge during the whole time?

A. Well, supposing I was, I was right there.

Q. Answer the question, is not that a fact, that you were on the sofa or lounge during all the time the will was signed?

A. While Mr. Lanehart signed his name?

Q. Yes, you were?

A. I think I was.

Q. Assuming that to be a diagram of the room in which this paper was signed, the desk you say was on the west side (handing paper to witness)?

A. Yes, sir.

Q. And the lounge on the north side?

A. Yes, the desk was standing pretty near to this corner, and the head of the couch pretty near to this corner, and if a person was on this end here, he could look right over a man's arm writing at the desk.

Q. I understood you to say that Mr. Lanehart was turned when writing his name?

A. Well, sitting sideways to the desk.

Q. How was he sitting at the desk?

A. Well, for instance, this was the desk to the west of the room, and this was the lid of it here (indicating) and the light came from the south and a person naturally, and we always do, anyone that sits at the desk, sat a little sidewise so as to get the light.

Q. Fix your chair and show us how it was?

A. Something in this form (illustrating.)

(Court):

Q. Where were you, with reference to Mr. Lanehart, when he was sitting at the desk?

A. I was sitting on the couch, and the head of the couch came up opposite to the lid of the desk.

Q. You were sitting partially behind him?

A. Yes sir, partially so, but I could see right over his arm.

Q. Then by reason of his turning sideways you could see him write?

A. Yes, sir.

Re-Direct by Mr. Case:

Q. Do I understand that the couch was at right angles to the desk—the desk standing in one direction and then the couch in another direction (indicating)?

A. Yes, sir.

Q. And then you would have been at his right side, if Mr. Lanehart had directly faced the desk?

A. Yes sir, it would have been to his right.

Q. Do you know when the spraying that spring was begun?

A. No, sir.

Q. Was it the same that year as other years, so far as you know?

Court:—He said he did not know.

(Mr. Case):

Q. What is the rule during the spraying time, with reference to the time when spraying begins?

Mr. Dungan:—I object as immaterial.

Objection sustained.

(Mr. Case):

Q. Have you any fixed rule as to the time you prepare for spraying?

A. Well, about the first—(interrupted.)

Mr. Dungan:—I object.

Question withdrawn.

Q. Have you any fixed rule?

A. Yes.

Q. What is that rule?

Mr. Dungan:—I object.

Question allowed.

A. About the first of March.

Q. You were asked by the Prosecutor, certain questions concerning the cross-examination in the Orphans' Court proceedings, with reference to the kind of pen—were you not asked this question upon cross-examination, "Q. Did he (referring to Mr. Lanehart) dip the pen in the inkstand?" and did you not reply, "I don't remember whether I did or not, I certainly did, if it was not a fountain pen, and I do not recall which it was?"

Mr. Dungan:—I object.

Question allowed.

A. I did.

Q. You were asked certain questions by the Prosecutor, concerning what you had said in the previous trial in cross-examination with reference to your observation as to pencil marks, and what you said concerning them—were you not asked these questions in the same connection on cross-examination (page 187): "Q. Did you tell your father at that time, that you supposed Mr. Lanehart had first written his name with a pencil?" and did you reply, "Yes, I said that." (Question), "And when did you tell him that?" (Answer). "Well, I think it was that afternoon, or the following afternoon, I would not be positive about that." (Question), "What did you say to him?" (Answer), "Well, I don't know the exact words, my father and brother had an argument on the subject, and I took my brother up, because I had seen Mr. Lanehart have a pencil."

Mr. Dungan:—I object for the reason that it would be a class of testimony that was not competent in this trial, and because the witness was asked, not as to whether certain things were facts or not, but whether he did not, in the trial below, testify to certain things. Now he says in fact that he did not, that is he says, that he did not remember them or that he thinks he did not, or does not remember, one or the other. Then it seems to me that a re-direct examination should be limited to the

particular question, or certainly to the particular subject matter, about which he testified below.

Court:—You are quite correct so far as that goes, but no objection up to this time has been made to the cross-examination. The proper method is to call upon the person by whom you contradict the testimony of this witness to explain the testimony that he gave at another trial. On that ground I shall have to sustain the Prosecutor if insisted upon. I think you are entitled to prove all that was said relative to the alleged contradictory statement, whether you can prove it now by this witness, is another question. I shall overrule the question.

Exception prayed.

Exception allowed—sealed accordingly.

(Mr. Case):

Q. You were asked by the Prosecutor, whether you had previous to the day of the execution, noticed the condition of Mr. Lanehart's hands, and you said there were times when the swelling were noticeable, I wish you to tell us what you mean by "there were times"—do you mean that the condition varied as to his hands?

A. Yes.

EDWARD SKILLMAN, recalled in behalf of the defendant.

Examined by Mr. Clark:

Q. Do you remember any occasion after the will was executed, when a conversation occurred between your father and Mr. Lanehart?

A. I do.

Q. And when was this?

A. About the fore part of April, the year he died.

Q. Where was it?

A. At our place.

Q. Where were they?

A. They were in the wagon. The wagon was standing in the lane right opposite to the well.

Q. Did you hear that conversation?

A. I did.

Q. I wish you would state what they were talking about?

Mr. Dungan:—I object. My objection is, that it must be entirely immaterial, and cannot affect the issue in this cause, because the conversation took place a month after the alleged execution of the will.

Mr. Reger:—It is not a part of the res jesta, and may contain declarations of the testator, and I understand declarations are not admissible, either before or after the death of the testator, where the issue is one of forgery.

Court:—The rule is, that you cannot use the declaration to prove the guilt of a party, but you can use declarations of a decedent to prove the innocence of a defendant. I will admit the conversation.

A. Mr. Lanehart says, "Now Skillman, you see why I cut my Florida sister off, as nearly every letter I get from her, she is raising hell with me for living with Laura," and then he used some pretty strong language, and says, "What is it of her business, if I live with forty women; by the way she is writing me she is coming up to pay me a visit before long, and if she treats Laura like she is used to doing, when she is up there, I shall kick her out of the house, and board her over to Miss Annie's across the road,"—she is now Mrs. Reed.

(Mr. Clark):

Q. The strong language she used, I do not ask you to repeat the language, but what character was it?

A. Profane language.

Cross-Examination by Mr. Reger:

Q. You did not testify to this conversation on the trial in the Orphans' Court?

A. No, Mr. Reger.

Q. You did not testify to that conversation on the last trial of the indictment?

A. No, Mr. Reger.

Q. And you did not testify to that conversation when you were on the stand yesterday?

A. No sir, the question was not asked me, Mr. Reger.

Q. You testified in both of the other cases, did you not?

A. I certainly did.

Mr. Case:—The exhibits introduced last evening and marked Exhibits D. 3 to D. 21 inclusive, were of course introduced only for the purpose of the comparison of the handwriting, that is the purpose for which they are introduced.

Mr. Dungan:—There was no limitation in there offer, they are there for anything that there is on them, they are not offered for any particular purpose, but for any purpose that they can be used for.

Court:—If there is anything in the checks or exhibits that is irrelevant, counsel may consult and by agreement it may be eliminated.

Mr. Clark:—The letter I have particular reference to. At the time the letters were handed to me to examine the witness on the stand, I did not know anything of the contents of them, Mr. Case did, and thought they were relevant, and I examined the witness as well as I could, and solely as their being Mr. Lanehart's handwriting. The subject matter of the letters is not intended to be read.

Court:—That can be covered up or instruction can be

given to the jury by the court as to the portion they need not read.

Mr. Clark:—Yes sir, I suppose so.

Court:—I shall have to read the letters and if counsel will hand them over to me I will read them tonight.

Mr. Dungan:—I have a typewritten copy of the letters and I will hand it to your Honor anl you can read them much easier.

Court:—Yes, that will be better.

GERTRUDE SKILLMAN, sworn for the defendant.

Examined by Mr. Clark:

Q. You are a daughter of William H. Skillman?
A. Yes Mr. Clark.
Q. Have you any objection to telling your age
A. No, I am thirty-three.
Q. What is your business?
A. I am thirty-three years of age, and I am a professional nurse.
Q. Where are you employed?
A. In New York principally.
Q. How long have you been engaged in that vocation?
A. I have been a graduate four years.
Q. Have you lived at home since that time?
A. Not permanently, I have been home several months in the year.
Q. Did you know William Lanehart in his lifetime?
A. Yes, Mr. Clark.
Q. How long had you known him before his death?
A. Eighteen or twenty years.
Q. And until you graduated from the institution as a

professional nurse, where did you make your home and stay most of the time or part of the time?

A. Well, I was two years in training, but previous to that I was at home.

Q. Then for the last six years of his lifetime, you were away most of the time?

A. Yes, sir.

Q. And preceding that six years you were living at home?

A. Yes, sir.

Q. How well were you acquainted with Mr. Lanehart before you left home?

A. Well, I knew him as a school girl and I saw him frequently at home.

Q. At your father's house?

A. Yes, sir.

Q. After you left home did that acquaintance continue or end?

A. No sir. I knew him later.

Q. When and how?

A. I had several letters from him, I had a testimonial from him, or a letter of recommendation, I don't know what you might call it, and I saw him once, when I was in the training school in New York.

(Court):

Q. After you left home?

A. Yes, sir.

(Mr. Clark):

Q. Did he ever visit you in New York?

A. No sir, only at the training school with Dr. Stryker on one occasion.

Q. Do you remember the last call he made upon you prior to his death?

A. Well, I saw him at home before he died, that is the last I saw him.

Q. That was late in the fall?

A. Yes sir, that was late in the fall.
Q. As he died in the succeeding May?
A. Yes, sir.
Q. Did you have any conversation with him then?
A. Yes sir, I did.
Q. Go on and state what the conversation was—this was in the fall preceding his death in May?

Mr. Dungan:—I object to the question as being too remote.

Objection sustained.

(Mr. Clark):

Q. Did you have any talk with him at that time, about his physical condition?

Mr. Dungan:—I object to the question as immaterial and irrelevant.

Court:—I do not think a conversation which occurred in November is irrelevant to the issue we are now trying. If you desire simply to show the general condition of the patient at that time as to his physical health, I do not think I would exclude it, but you are going into a conversation which may relate to matters of defense and I do not think such conversations in the fall preceding his death would be relevant at the present stage of the examination.

Mr. Clark:—I propose to connect the conversation with a subsequent conversation just before his death, in which he repeated practically everything that he said before.

Court:—I think you can lay a proper foundation for it.

(Mr. Clark):

Q. Did you subsequently have another conversation with him shortly before his death?

Mr. Dungan:—I object to that question, she is testifying about the last time she saw him now.

Question withdrawn.

(Mr. Clark):

Q. Did you subsequently have any communication after the conversation you had with him in the fall, and shortly preceding his death?

A. Yes sir, I had a letter from him in the spring before he died.

Q. Where is that letter?

A. It is destroyed.

Q. And was that letter written in ink or pencil?

A. In pencil.

Q. Can you tell the substance of that letter?

Mr. Dungan:—We object to that.

Court:—I do not think the loss or destruction of the letter has been sufficiently proven or in such a way as to permit the introduction of the contents in evidence.

Mr. Clark:—Is there any way of producing it?—(interrupted.)

Mr. Dungan:—I object.

Question excluded.

(Mr. Clark):

Q. How was it destroyed?

A. I presume I tore it up and threw it in the waste-basket, that is the way I usually do with letters.

Q. Have you made any search for it?

A. No, sir.

Q. Why haven't you made any search for it?

Mr. Dungan:—I object to that as immaterial.

Question excluded.

(Mr. Clark):

Q. Do you keep your letters?

Same objection.

Same ruling.

(Mr. Clark):

Q. Do you know whether the letter is in existence or not?

A. Why, I think I can say that it is not, I do not save my letters.

Q. You don't save any letters?

Mr. Dungan:—I object to the question as leading.

Objection sustained.

(Mr. Clark):

Q. Do you save any letters?

Same objection.

Objection sustained.

(Mr. Clark):

Q. Why do you say you do not save letters?

Same objection.

Objection sustained.

Mr. Clark:—I submit your Honor this evidence is competent.

Court:—This witness has not testified that the letter is destroyed, she says she usually destroys her letters, and she also testifies that she has not made any search for it. Unless you can produce better evidence than this, of the loss or destruction of the letter, I shall decline to admit the contents in evidence.

Mr. Clark:—Very well, if your Honor will permit me, I will withdraw the witness and have her make a search for it this afternoon.

Mr. Reger:—I think the evidence of the witness should be exhausted at this time. We do not think it proper that she should be recalled for that purpose. The rule is that the witness should be exhausted at the time she is on the stand, unless good reasons are given.

Court:—Mr. Clark states that his reason for withdrawing the witness was to enable her to make a search this afternoon for the letter. I suppose there is nothing to prevent Mr. Clark withdrawing the witness, no legal rule that prevents him as far as I now.

JENNIE OPDYKE, sworn in behalf of the defendant.

Examined by Mr. Case:

Q. Where do you live?
A. At a place known as Opdyke Mill.

Q. In Somerset County?
A. Yes, sir.
Q. In what township?
A. Montgomery township.
Q. "Opdyke Mills" is named after some of your people?
A. My folks.
Q. Who was your father?
A. Williamson Opdyke.
Q. And you now live with your brother?
A. Yes, sir.
Q. What is his name?
A. Williamson Opdyke.
Q. Were you acquainted with Mr. Lanehart in his lifetime?
A. I was.
Q. Did he come to your house some times?
A. Occasionally.
Q. And when last, with reference to Mr. Lanehart's death, was he at your house, if you remember?
A. About the first of April.
Q. About the first of April?
A. Yes, sir.
Q. What year?
A. 1905.
Q. What part of the season?
A. We were just beginning to have pleasant days.
Q. Do you know about how long it was before Mr. Lanehart's death?
A. About two months or six weeks.
Q. And where were you in your house when Mr. Lanehart came?
A. We were not in the house.
Q. You were where?
A. We were on the veranda.
Q. Sitting there.
A. Yes, sir.
Q. Mr. Lanehart sat down by you on the porch?
A. Yes, sir.

Q. Was there anything said at that time by Mr. Lanehart with reference to his will?

A. Yes.

Q. What was the cause of his making that conversation?

Mr. Dungan:—I object to that as leading.

Question excluded.

(Mr. Case):

Q. What occurred at that time?

A. Mr. Skillman passed by.

Q. Mr. Skillman passed by?

A. Yes, sir.

Q. In the road?

A. Yes, sir.

Q. And what did Mr. Lanehart say?

Mr. Reger:—I object to the question unless it is shown that it is somewhat connected with this document in dispute.

Mr. Case:—We will show that.

Court:—I shall allow the question with that understanding, and shall strike out the answer if it is not competent.

(Mr. Case):

Q. What did Mr. Lanehart say?

A. "There goes friend Skillman"—(interrupted.)

Mr. Dungan:—I object and move that the answer be stricken out as not responsive.

Court:—We will wait until we have the whole of the answer.

(Court):

Q. Go on?

A. He says, "I think a whole lot of that man, he is white all through," he said, "I trust him further than any man I know."

Q. Go on?

A. He says, "To show you how much I think of him, I just got him to write my will, and when I die, he will get a large share of my property."

Q. Was there anything said by him in that connection, that you remember, at that time?

A. No.

Q. When first did you mention the circumstance of this conversation?

Mr. Dungan:—I object.

Question withdrawn.

Cross-Examination by Mr. Dungan:

Q. Does your place adjoin that of Mr. Skillman?

A. No sir.

Q. How far does Mr. Skillman live from your place?

A. Less than a mile.

Q. The relations between the brother with whom you live and Mr. Skillman have always been extremely friendly, have they?

A. I suppose.

Q. Mr. Skillman has been a frequent visitor at your house?

A. Occasionally.

Q. And your brother goes there?

A. Occasionally.

Q. They exchange farm work, do they?

A. No sir, they do not.

Q. They have frequent exchanging in money matters, do they not?

Mr. Clark:—I object to the question as immaterial.

Objection sustained.

(Mr. Dungan):

Q. Had Mr. Lanehart ever been at your place before?
A. Yes, sir.
Q. How often?
A. Not very often.
Q. You were not a witness, you did not testify in the trial in the Orphans' Court, did you?
A. No, sir.
Q. You did not testify at the last trial of Mr. Skillman, did you?
A. No, sir.
Q. And when was your attention called to the fact that this visit of Mr. Lanehart's occurred in April, 1905?
A. I simply remember it.
Q. By what do you remember it?
A. It was only a short while before his death.
Q. When did he die?
A. I think it was in the spring of 1905, I think so.
Q. When in the spring of 1905?
A. I don' know, sir, exactly when, in June I think.
Q. Do you remember the weather of the spring of 1905, do you remember what kind of weather it was?
A. No, sir.
Q. The spring of 1905 was a very late spring, was it not?
A. I do not remember.
Q. And it was cold until in May in 1905, was it not?
A. I am sure I do not remember.
Q. Do you remember the spring of this year?
A. Not particularly.
Q. What kind of weather was the spring of this year?
A. I do not remember.
Q. It was cold until June, was it not?
A. I do not know, sir.

Q. And the weather in the spring of 1905 was very similar, was it not?

A. I do not know, sir.

Q. What time of the day was it that Mr. Lanehart was at your place?

A. I am not positive, but I think it was in the afternoon.

Q. What time in the afternoon?

A. Oh, I don't know, sir.

Q. What fixes in your mind the thought that it was in the afternoon?

A. Because I was out there, sitting on the porch there in the afternoon.

Q. Did you sit on the porch every afternoon?

A. I generally do.

Q. At that time of the year?

A. If it was a pleasant day.

Q. Will you sit on the porch this afternoon?

A. If we have a pleasant day I would.

Q. That is the only circumstances now that you have to remind you of the time of day, was it?

A. I do not remember exactly what kind of day it was.

Q. How frequently has Mr. Lanehart been to your house?

A. I cannot answer that exactly.

Q. Did he come to visit you?

A. No sir, he came on business with my brother.

Q. Where was your brother at this time?

A. I don't know where he was.

Q. Has Mr. Lanehart ever talked with you about his business affairs prior to this time?

A. I do not recall that he did.

Q. Did he talk to you about any of his other business affairs at this time?

A. I do not recall that he did.

Q. Did he tell you even the business he came to see your brother about?

A. Yes sir, he did.

Q. Did he talk about his other business affairs?

A. This is a matter between my brother and he.
Q. In which you were interested in any way?
A. No, sir.
Q. Had your brother seen him then?
A. No sir, not that day?
Q. Was your brother home that day or not?
A. I do not remember.
Q. How do you know he had not talked to him that day?
A. He was waiting to see him.
Q. Did he subsequently talk with your brother that day?
A. I do not remember.
Q. All you remember about the whole circumstance is just what you have detailed, what Mr. Lanehart said to you?
A. No sir, I remember he talked about Mr. Skillman's fruit farm.
Q. What did he say about that?
A. About having the finest fruit orchards.
Q. What else?
A. He said he had the finest fruit orchards this side of California.
Q. What else?
A. I cannot remember all the conversation.
Q. Have you given us word for word of the conversation that Mr. Lanehart had with you about the will and Mr. Skillman?
A. Yes sir, as near as I can remember.
Q. Just tell that again, just repeat what he said?
A. From where?
Q. Just repeat what he said about Mr. Skillman?
A. He said, "There goes friend Skillman, I think a whole lot of that man," he says, "He is white all through" and he said, "I *would* trust him *sooner* than any *other* man I know." And he said, "To show you how much I think of him, I *have* just got him to write my will, and when I die, he will get a large share of my property."
Q. To whom did you tell that?
A. To no one.

Q. Haven't you told it to anyone until you told it to the court today?

A. Yes.

Q. Who?

A. I told it to Mr. Skillman.

Q. When did you tell it to Mr. Skillman?

A. This past summer.

Q. And to whom have you told it since?

A. I don't know that I have told it to anyone, possibly my brother.

Q. Have you not repeated that to anyone since you told it to Mr. Skillman in the summer?

A. I don't remember that I have.

Q. Have you repeated it to yourself?

A. I don't know that I have.

Q. Have you repeated that to anyone from the spring of 1905 to the summer of 1907?

A. I don't remember that I did.

Q. Had you repeated it to yourself from the spring of 1905 to the summer of 1907?

A. I simply remember it.

Q. Did you write it down anywhere?

A. I don't know that I did.

Q. So that at that time and now, after two and a half years, you are pretending to remember the exact words used by Mr. Lanehart, are you?

A. I don't say they were the exact words, but as near as I can remember I said.

Q. You don't know the exact words used by Mr. Lanehart?

A. I know the exact words he used about the will.

Q. And you remember that without repeating them to anyone or even to yourself for two and a half years?

A. I remember them.

(Court):

Q. Have you visited Mr. Skillman's house after Mr. Lanehart's death?

A. No, sir.

Q. Had either of you been to Mr. Skillman's house after Mr. Lanehart's death?

A. I think so.

Q. How frequently have the members of Mr. Skillman's family been to your house between the spring of 1905 and the summer of 1907?

A. I cannot tell you that.

Q. Did you know at the time of the trial in the Orphans' Court, in relation to this will, did you know about it then?

A. Did I know about the trial?

Q. Yes, did you know about the trial in the Orphans' Court, in relation to this will?

A. Yes sir, I knew about the trial.

Q. Did you know about the trial of this indictment last spring when it was going on?

A. Yes, sir.

Re-Direct by Mr. Case:

Q. Why did you tell anyone about Mr. Lanehart?

Mr. Dungan:—I object to that as immaterial and irrelevant.

Objection sustained.

Q. What is your physical condition, Miss Opdyke?

Mr. Dungan:—I object to that as immaterial.

Court:—I think I shall permit this witness to explain if she can, why she did not make this statement to anyone prior to 1907, in view of the questions the court has asked her in regard to her knowledge of the Orphans' Court trial, and the indictment, I think I would be in error in excluding it.

Question withdrawn.

(Mr. Case):

Q. Why did you not tell of this circumstance of Mr. Lanehart's words to you before last summer?

A. Because I had a dread of being brought into the case.

Q. What was your dread?

Mr. Dungan:—What was your dread?

Question allowed.

A. I have a weak heart.

Adjourned to Monday, December 2nd, 1907, at 9.45 A. M.

Pursuant to adjournment, the parties and counsel met at the Court House, in the City of Somerville, N. J., on Monday, the 2nd day of December, 1907, at 9.45 A. M., and the following evidence was taken before his Honor THEODORE B. BOORAEM, Judge, and a Jury.

APPEARANCES:

MR. JOHN F. REGER, Prosecutor.

MR. NELSON Y. DUNGAN and MR. E. P. JOHNSON, Associated for the State.

MESSRS. CLARK & CASE, for the Defendant.

JAMES DUFFIELD, sworn in behalf of the defendant.

Examined by Mr. Clark:

Q. Where do you live?

A. Hopewell.

Q. How long have you lived there?

A. I have lived in Hopewell about six years, well hardly yet.

Q. You are a son of Mrs. William Duffield?

A. Yes, sir.

Q. Did you know William Lanehart in his lifetime?

A. Yes, sir.

Q. How long have you known him?

A. Well, I was acquainted with him from the time he moved into Blawenburg.

Q. How long did that acquaintance continue?

A. Well, I suppose as long as he lived in Blawenburg.

Q. When did you last see Mr. Lanehart?

A. A few days before he died.

Q. Where?

A. Along the road.

Q. Along the road you say, where along the road?

A. He was just crossing from the north to the south side of the road, to go up his walk to his house.

Q. And how were you going?

A. I was on a wheel.

Q. Did anything occur at that time?

A. We came so close together that I jumped off the wheel and we stood there and talked for a while.

Q. State what conversation passed between you?

Mr. Dungan:—I object to that as incompetent and immaterial.

Question withdrawn.

(Mr. Clark):

Q. Did you have any conversation at that time in relation to his having made a will or what disposition he had made of his property?

A. He mentioned three names, that he said would be better off when he was gone.

Q. Tell us what he said.

A. The conversation, I suppose—well, I probably talked to Mr. Lanehart altogether in the neighborhood of fifteen or twenty minutes, as near as I can remember. Of course, he started in first in the conversation, by asking where I had been, and what I was doing, and I told him that I was in the poultry business for C. S. Jordan & Co. at that time—(interrupted.)

Mr. Dungan:—I object to that as immaterial and not responsive.

Objection sustained.

(Mr. Clark):

Q. Now, you said that you had a talk with him for a few minutes, go on, until you come to this conversation about the will?

A. Well, he asked me if I was going to stay to my mother's to dinner and I said, "I will"—(interrupted.)

Mr. Dungan:—I object to the answer, the statement of the witness in relation to a will would be admissible, any other conversation between the witness and Mr. Lanehart is not admissible.

Objection sustained.

(Mr. Clark):

Q. You said what?

A. "Have you been up there, and he said, "Yes, I have just come from there—(interrupted.)

Mr. Dungan:—I object as not responsive to the question and I move than the answer be stricken out.

Motion granted, and the answer ordered stricken out.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Clark):

Q. Go on and state that part of the conversation, touching his property, what he said about his property?
A. Well, then I was on a lady's wheel—(interrupted.)
Q. State that part of the conversation touching his property, what he said about his property, never mind anything else?
A. And just as I started away, after he said he had been up there, he said, "She will be better off, and Mr. Skillman and Laura, too, when I am gone," those were the last words I ever heard Mr. Lanehart speak.
Q. Who did he mean by "she?"

Mr. Dungan:—I object to that as immaterial and irrelevant.

Question allowed.

A. He meant my mother.

(Mr. Clark):

Q. Was there any other conversation there between you and Mr. Lanehart?
A. Well, I don't know of any conversation between Mr. Lanehart and me particularly, well, I have heard him say—(interrupted.)

Mr. Dungan:—I object to this line of evidence as immaterial.

(Mr. Clark):

Q. Did you ever hear him make any remark with

respect to his intention with regard to his blood relatives by way of leaving them any property?

Mr. Dungan:—I object to the question as immaterial and incompetent.

Objection sustained.

(Mr. Clark):

Q. Did you ever hear him talk about what his intentions were, with respect to leaving any of his blood relatives any of his property?

Mr. Dungan:—I object to the question on the ground that there is no time fixed and I object to it as being too indefinite.

Objection sustained.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Clark):

Q. Had you in the last year or two of Mr. Lanehart's life, or during the last year of his life, had any conversation with him, in relation to what disposition he was going to make of his property, with respect to his relations?

Mr. Dungan:—I object to the question as immaterial and irrelevant.

Objection sustained.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Clark) :

Q. Did you have any talk with him the last year of his life, as to what he was going to do with his property?

Mr. Dungan :—Same objection.

Objection sustained.

Mr. Clark :—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Clark) :

Q. Did you have any talk with him in the last year of his life in respect to his relatives, whether they would or would not be benefited by his death?

Same objection.

Same ruling.

Mr. Clark :—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Clark) :

Q. When next preceding the conversation which you have mentioned did you have a conversation with Mr. Lanehart?

A. I could not tell.

Q. You cannot tell, what do you mean by that?

Mr. Dungan:—I object.

Objection sustained.

Q. Well, was it withing a few months, or a year or more or less?

A. Well, I have often met Mr. Lanehart—(interrupted.)

Mr. Dungan:—I object to that for the same reasons heretofore given.

Question allowed.

Q. (Question read as follows): Well, was it within a few months, or a year, or more or less?

A. Well, I know I was talking with Mr. Lanehart in about October before he died, October or November before he died.

Q. The last October that he lived?

A. Yes sir, the last October or November.

Q. Did you have any conversation with him at that time in relation to his intentions with respect to his property, or how he intended to leave it?

Mr. Dungan:—I object to the question as being too remote, it is prior to the date of the alleged will.

Court:—You may answer that question, yes or no.

A. No.

(Mr. Clark):

Q. Were you present at any time, in which you talked with anybody else about it?

Mr. Dungan:—I object to that as immaterial and also as being too indefinite and remote.

Objection sustained.

Court:—You may put your question, so that it is limited to a definite time, and I will then rule it.

(Mr. Clark):

Q. Did you, during this month of October, preceding his death, hear any conversation between Mr. Lanehart and anybody else?
A. Yes, sir.

Mr. Dungan:—I object to the question for reasons already given.

Court:—I will allow that question.

A. Yes, sir.

(Mr. Clark):

Q. In that conversation at which you say you were present in the month of October preceding his death, did Mr. Lanehart then say anything about his intentions with respect to leaving his relations any of his property, and if so, what did he say?

Mr. Dungan:—I object for reasons already given.

Court:—I shall sustain the objection on the ground that it is not germain to the present inquiry, and it relates to a time, prior to the date of the making of the will in dispute.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

Further Cross-Examination by Mr. Reger:

Q. The Mrs. William Duffield you have referred to is named in this so-called "Skillman will," is she not?

A. I have heard so, yes sir.

Q. And she was not named in what is called as the "Race" will, was she?

A. Not that I know of, no sir.

Q. You are a particular friend of Mr. Skillman's, are you not?

A. Not particularly so, no sir.

Q. You came to court with him this morning, did you not?

A. I started before he did.

Q. You came to Somerville with him, didn't you?

A. I had to come on the same train.

Q. Where did you go when you came to Somerville this morning?

A. Well, we went over there to the hotel.

Q. Did you have a drink?

A. No, sir.

Q. How long did you remain at the hotel?

A. About three minutes.

Q. Was Mr. Skillman with you at the hotel?

A. Yes sir, he went in, too.

Q. And from there, where did you go?

A. To Mr. Clark's office.

Q. And how long were you at Mr. Clark's office.

A. Well, we was in there until we thought it was time to come here.

Q. Did you come directly from Mr. Clark's office to the court?

A. No.

Q. Where did you go?

A. To the saloon or hotel.

Q. Did you have a drink?
A. No.
Q. Where did you go?
A. Down in the basement.
Q. And from there you came directly to the court?
A. Yes, sir.
Q. Who was with you the second time you were there at the hotel?
A. Mr. Skillman.
Q. Didn't you go with Mr. Skillman to a hotel in Bound Brook?
A. Yes, sir.
Q. Didn't you have something to drink then?
A. No, sir
Q. Did Mr. Skillman have something?
A. I don't know that he did.
Q. And therefore you have been three times this morning, to the hotel with Mr. Skillman?
A. Yes, sir.

Further Re-Direct by Mr. Clark:

Q. How did you come from Bound Brook here, by trolley or train?
A. By the trolley.
Q. Where did you board the trolley, at Bound Brook?
A. Right in front of the hotel.
Q. Where did you wait for the trolley?
A. At the hotel.

(Court):

Q. Did you testify in the last trial of this cause?
A. No, sir.
Q. Did you testify in the Orphans' Court trial?
A. No sir, this was the first time I was ever down to the Court House to testify in my life.

ABRAHAM B. MOSHER, sworn for the defendant.

Examined by Mr. Clark:

Q. You are a physician?
A. Yes, sir.
Q. And practicing where?
A. At Griggstown, N. J.
Q. How long have you been a practitioner?
A. For twenty-seven years, ever since 1879, or 1880.
Q. From what institution are you a graduate?
A. The University of the City of New York, now called the University and Bellevue.
Q. Did you know William R. Lanehart in his lifetime?
A. Yes, sir.
Q. Did you attend him as a physician?
A. Yes, sir.
Q. When was your last attendance upon him?
A. Well, it was in 1895 sometime.
Q. 1895?
A. No sir, 1885.
Q. 1885—that would be twenty-two years ago?
A. Oh well, it was about 1905.
Q. 1905?
A. Yes sir, about in January.
Q. And what was his ailment?
A. He had heart trouble and stomach trouble, and general debility, senile debility, a debility from age.
Q. How was he affected, physically affected by these troubles?
A. Well, his circulation was weak—(interrupted.

Mr. Dungan:—I object to this line of examination, to their going into this, if January, 1905, was the last time Dr. Mosher attended Mr. Lanehart, I object to it as immaterial, as to the execution of this will, which was about the last of February.

(Court):

Q. What was the last time you visited Mr. Lanehart before his death?
A. He used to come to see me at the office.
Q. When?
A. Why along in the winter of 1905.
Q. What time in the winter?
A. All through the winter.
Q. What was the last time he came to see you, or what was the last time you saw him?
A. I cannot say exactly.

(Mr. Clark):

Q. How long before his death?

Mr. Dungan:—I object to that as the witness has already said that he could not say.

Question withdrawn.

(Mr. Clark):

Q. Do you know when he died?
A. No sir I do not.
Q. He died on the 11th of May, 1905?
A. Yes?
Q. When, with reference to that time did you see him?
A. I saw him six weeks or so before that, that was the last time.

Court:—I will permit the question as to his condition the last time he saw him, which he says was six weeks before his death.

(Mr. Clark):

Q. What was his condition at that time?
A. He had stomach trouble, and he had cold extrem-

ities, weak circulation, and heart trouble—stomach and heart trouble.

Q. What kind of heart trouble, and what kind of stomach trouble?

A. It was a reflex trouble, from the stomach, was the heart trouble, it was similar angina pectoris, you might call it angina pectoris, the stomach would affect the pneumo gastric nerve and the reflex action of the pneumo-gastric nerve would affect his heart.

Q. How was he affected by way of angina pectoris, what is the meaning of that?

A. It is a neurosis of neuralgia of the heart, the synonym is neuralgia of the heart.

Q. How does that neuralgia of the heart affect a person, how did it affect him physically?

A. It gave him a weak circulation, it produced odema of the feet and hands and a swelling of the hands and feet, and general weakness, a general bad feeling, a feeling of being ill.

Q. These attacks, this neuralgia of the heart, did he have it all the time, or did he have attacks of it?

A. He had attacks of it.

Q. What was the affect of these attacks?

A. Well, they would make him very weak.

Q. How long had he been in that condition?

A. He must have been in that condition four or five years or more.

Q. How many years did you treat him?

A. Well, I don't remember, I only treated him a few years, the latter part of his life.

Q. During the last years of his life?

A. Yes sir, during the last years of his life, I was not acquainted with him before.

Q. How many years did you treat him during the latter part of his life?

A. I should judge three years, four years or five years.

Q. Explain how neuralgia of the heart affects the patient?

Mr. Dungan:—I object to that as immaterial.

Objection sustained.

(Mr. Clark):

Q. Angina pectoris is angina pectoris, is it not?
A. Yes.
Q. The symptoms of angina pectoris are alike in all cases?
A. Yes sir, I can give you the symptoms if you wish them.
Q. What effect did this particular disease have upon this particular patient?

Mr. Dungan:—I object to the question, because it has been asked and answered already.

Court:—The answer related to the first of April, 1905, I will permit the question.

A. It affected his general condition, he complained of the neuralgia and of the trouble with his hands, and of his feet, and he complained that he could not use his hands or his feet very readily.
Q. And how long would these attacks last?
A. Well, they would recur probably every month or six weeks, or two months.
Q. What evidence would there be of their coming on, that is as to suddenness, I am speaking of now?
A. Well, I think it was due to stomach trouble, and he would have attacks of acute indigestion, and then he would come and complain to me about his not being able to digest his food properly.
Q. Were these attacks of acute indigestion sudden, or was it more or less continuous?
A. It was continuous, it was due to some disease of the stomach, some organic disease of the stomach, catarrhal condition of the stomach, and at times, it would be aggravated.

Q. When aggravated, what would be the effect?

A. It would affect his hands and his feet.

Q. How rapidly would he overcome these attacks?

A. Well, in a week or ten days, sometimes it would last about a week or ten days.

Q. And how often did you see him?

A. Well, I could not tell you exactly, he would come to the house whenever he had one of these attacks, he would come and see me, sometimes he would come once a month or once in three weeks.

Q. You mean then that you did not see him after he visited you, after having one of these attacks?

A. He came to see me, I did not visit him very often.

Q. When did he come to see you, with reference to his attacks?

A. Well, he would—(interrupted.)

Mr. Reger:—I object to the question, the witness cannot testify to that because he has already said that he did not see him when he had the attack.

Question allowed.

A. He would come down or he had someone to drive him down, he would not drive himself, and he would tie up his horse, at the barn, and walk down to the house, and he would sit there awhile, and then he would see me, and then I would go on about my other work, and he would sit there and talk to the family somewhat.

(Mr. Clark):

Q. What I want to ascertain was, how soon after you treated him for any one of these attacks, you would see him again?

A. Well, I said about in three weeks or a month.

Q. Now, were you the physician for William H. Skillman?

A. Yes?

Q. How long have you been his physician?

A. For twenty-seven years.

Q. And how long have you been the physician for Mrs. Skillman?

A. For twenty-seven years.

Q. Do you remember Mr. Skillman's condition of health, during the spring of 1905—the spring and winter of 1905?

Mr. Dungan:—I object to that as immaterial.

Court:—What is the purpose of this question?

Mr. Clark:—This will was prepared in 1905, and by the evidence it appears that Mr. Lanehart called at the home of Mr. Skillman, in the month—I think it was some time in January of 1905, if I remember correctly, and left instructions to write the will; and the will was not prepared until some time later, and I want to show by this physician, what Mr. Skillman's physical condition was during that time, whether he was well in body or confined to the house, or what it was that his condition was, at that time, and whether the doctor was attending him during that time, and that is the reason why the will was not prepared at an earlier date. And I also want to show by this evidence, that Mr. Skillman could not go to M. Lanehart's to execute the will, and thus that it was necessary for Mr. Lanehart to go to Mr. Skillman's. And I also want to show that Mr. Skillman's condition of health was following the trial in the Orphans' Court, and to ascertain the doctor's opinion as to the advisability of his being a witness during that trial, or as to the advisability of Mr. Skillman's being a witness in this trial, but the preliminary inquiry is, as to what instructions were given in 1905 in relation to the execution of the will.

Mr. Dungan:—The first part of the argument fails because, according to their own testimony, Mr. Lanehart came to the Skillman house, and gave the direction at Mr. Skillman's house, and further the will, accord-

ing to their evidence was executed at the Skillman house, and there is no need for contradiction by the State of that, except as it contained in the general testimony in the case, we therefore submit that it is entirely immaterial and irrelevant.

Objection sustained.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Clark):

Q. Dr. Mosher, do you remember the trial of the Lanehart will case, in the Orphans' Court of this county?

Mr. Dungan:—I object to that as immaterial.

Question allowed.

A. Yes sir, I think I remember about it.
Q. You were a witness, were you not?
A. Yes, sir.
Q. After that trial was over, did you attend Mr. Skillman as a physician?

Mr. Dungan:—I object to the question as immaterial.

Objection sustained.

(Mr. Clark):

Q. Have you advised Mr. Skillman about the propriety of his being a witness in this case?

Mr. Dungan:—I object to that as immaterial.

Objection sustained.

(Mr. Clark):

Q. Did you advise that he should take the witness stand?

Mr. Dungan:—I object to the question as immaterial.

Objection sustained.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Clark):

Q. What is Mr. Skillman's physical condition with respect to being able to undergo an examination in the trial of this cause?

Mr. Dungan:—I object to that as immaterial.

Objection overruled.

A. I think that it would make a physical wreck of him, he is now coming up here today, and he has got a cold, and he is not harly able to come. He has got a cold coming up here now, and his general condition is not good, he is nervous, and he has kidney trouble, and lung trouble, and a weak heart, and I don't think he could stand the wear and tear and excitement of an examination on the witness stand, in such a grave case as this.

(Mr. Clark):

Q. Have you examined Mrs. Skillman, the wife of Mr. Skillman?

A. Yes, sir.

Q. When did you examine her last?

A. Yesterday.

Q. What is her physical condition in respect to her ability to come here and appear in this trial and be examined in the case?

Mr. Dungan:—I object to that as immaterial.

Question allowed.

(Mr. Clark):

Q. Go on and tell the result of your examination yesterday?

Q. I went to see Mrs. Skillman yesterday and I found her in what I consider a very critical condition, she had an attack of angina pectoris the day before, and she was also suffering from it then, she had a constriction in the breast, a difficulty of breathing, with pain in the shoulder, she had neuralgia in the hand, and a premonition of sudden death then.

Mr. Dungan:—I object to the latter part of the answer as not responsive.

Court:—The latter part of the answer will be stricken out, that is the portion referring to the premonition.

Cross-Examination by Mr. Dungan:

Q. You were a witness in the previous criminal trial?

A. Yes.

Q. You were then asked as to the dates when Mr. Lanehart visited you, were you not?

A. Yes, I guess so.

Q. You never visited Mr. Lanehart at his house, did you?

A. Yes.

Q. When?

A. I visited him on the 12th of February at his house.

Q. Is that the only time you ever visited him at his house?

A. I think I was at the house at other times.

Q. What year was that?

A. 1905.

Q. You were asked on the previous trial, whether you kept a record of calls and visits?

A. Yes, sir.

Q. You then stated you did?

A. Yes sir, I keep a record of calls and visits, I keep a record of that.

Q. Have you that record with you?

A. No.

Q. You were asked to produce that record, were you not?

A. No, sir.

Q. You knew that record was called for, didn't you?

A. No, sir.

Q. The record was called for in the previous trial, was it not?

A. Yes, sir.

Q. I called for the record in the trial in the Orphans' Court, didn't I?

A. I don't remember.

Q. You did not produce it, however?

A. No, sir.

Q. You did not bring the record here today with you, did you?

A. No sir, I was not asked to bring it.

Q. You mean you were not asked by the side which subpoenaed you here?

A. No sir, I was not asked to bring it by anybody.

Q. You were asked about your record in both previous trials, were you not?

A. I was asked—if I remember aright, I was asked here if I had my books with me, and I said I could not bring the day book and the ledger, and I was not in the habit of carrying them around, and that is the answer I gave.

Q. And that is the reason now, because you are not in the habit of carrying them around?

A. Yes, sir.

Q. Do you know anything about Mr. Lanehart's handwriting?

A. No, sir.

Q. You never saw his handwriting?

A. No, sir.

Q. You say that you visited him on the 12th of February?

A. That is the way the book states it, that is all I know, I make twenty or thirty calls a day, and that is three or four years ago.

Q. And that is all you remember?

A. What I see on the book.

Q. And you have thirty or forty people call at the house each day, don't you?

A. Well, now, that is my business.

Q. I am asking you the question, whether it is your business or whose business it is, and the court will direct you to answer the question.

Witness:—Must I answer the question, Judge?

Court:—You must answer the question.

A. Well, I don't have thirty or forty calls every day at the house.

(Mr. Dungan):

Q. How many do you usually have?

A. I have some ten to twenty calls on my books every day.

Q. Have you examined your books in reference to the calls made upon you by William Lanehart?

A. Yes, sir.

Q. And what do the books show?

A. One call.

Q. What is the date of that call?

A. As I told you before in 1905, the 12th of January.

Q. On the 12th of January now?

A. Yes sir, January or February.

(Court):

Q. Which is it?

A. January.

(Mr. Dungan):

Q. But before you said February?

A. I meant January.

Q. That is the only things your books show, is it?

A. Yes, sir.

Q. How do you know William Lanehart called upon you the first of April?

A. I said along in April, along in April, about the first of April.

Q. Well, how do you know that?

A. I know that he called there in April, and it was because he always paid me for his calls, and at that time, I didn't keep a cash book, I keep a cash book now, but I didn't keep a cash book then, and made no account of that —(interrupted).

Q. The only way you remember the call in January or February, 1905, at the house, was because your books say so?

A. Yes sir, that is all.

Q. You have no record showing any other calls in 1905 by Mr. Lanehart, or by Mr. Lanehart at your house. have you?

A. No, sir.

Q. And I want to know now, what fixes in your recollection that he made a call there in April?

A. Well, because he was calling every month for a while right along there.

Q. Now, was not that in May?

A. He may have called in May also.

Q. About the middle of May, say?

A. He might have called in the middle of May.

Q. And then in June?

A. I don't remember.

Q. Well, about the middle of June?

A. I don't remember, and I ain't going to say anything I don't know.

Q. When, before the 12th of February or the 12th of February, 1905, was it you called upon him?

A. I don't know.

Q. Did you ever call upon him before that time?

A. I think I did.

Q. You are not certain about that?

A. I am not certain about the date, no sir.

Q. When before that time did he call upon you at your house?

A. I don't know, sir.

Q. In April, 1905, when you think he called upon you, what was his condition then?

A. Just the same as it always was.

Q. That is, he was well as usual?

A. Just the same, that is he was sick, as usual, not as well as usual, but sick as usual.

Q. Sick as usual?

A. Yes, sir.

Q. When Mr. Lanehart would come to you, and was as sick as usual, would he ever state that he was feeling better that day or not?

A. No sir, he would say he was feeling worse, that is the reason he came to see me, if he had been feeling better he wouldn't have come.

Q. And when Mr. Lanehart came to see you and said that he was feeling better, if he did so, he did so because he was actually feeling better, was not that it?

Mr. Clark:—I object to that.

Question allowed.

A. He never came to me and said that he was feeling better, whenever he came to me, he was always feeling

worse, and that was the reason he came, because he was feeling worse, he never came to me and said that he was feeling better and I never said that when he came he said he was feeling better, I said he was feeling worse, not better.

Q. Always feeling worse when he came to see you?

A. Always feeling bad when he came to see me, he would not come to see me until he felt bad, he had no occasion to come to see me if he was not feeling bad.

Q. It is of some importance to know whether or not you saw Mr. Lanehart more than the two times in 1905, that you speak of—will you refresh your recollection, if you have any way of dong so, and state how many times you saw Mr. Lanehart in the year 1905?

A. I cannot tell you.

Q. Did you see him more than those two times, that is in January and in April?

A. Well, I cannot tell.

Q. Did you see him in April?

A. I think I did, yes sir—yes sir, I did.

Q. You think you did, by what do you fix it, that is what we are trying to find out, how you fix it?

A. Because he came there to see me in April.

Q. He came because he came, that is the only reason?

A. Yes sir, that is the only reason that I have.

Q. Yes, we are here because we are here?

A. That is all, it is no use asking that anyway.

Re-Direct by Mr. Clark:

Q. When Mr. Lanehart called at your house, and made a cash payment was there any entry made on your book?

A. No sir, I didn't keep a cash book then, at that time, I didn't keep a cash book, but now I am keeping a cash book of these records, but at that time I didn't keep a cash book.

(Court):

Q. What date did you say you visited his house in 1905?

A. I think it was on the 12th of January.

Q. And when was the last time he called on you?

A. I could not tell you that, he called on me after that I know.

GEORGE W. ANDERSON, sworn in behalf of the defendant.

Examined by Mr. Clark:

Q. What position do you hold in the office of the Surrogate of this county?

A. Deputy Surrogate.

Q. How long have you held that position?

A. Since May, 1905.

Q. Have you the custody of the petitions of appeal?

A. I have, in connection with the Surrogate.

Q. From the decree of the Surrogate to the Orphans' Court in this Lanehart will case, with the amendments to the same—have you got that?

Mr. Dungan:—I object to that as immaterial.

Court:—He may state whether he has them or not.

A. I have them.

(Mr. Clark):

Q. Will you produce them?

A. (Produces and hands to counsel).

Q. Are these the papers which you now produce?

A. They are.

Mr. Clark:—I offer in evidence the petition of appeal filed August 4th, 1905.

Mr. Dungan:—I object as immaterial and irrelevant.

Mr. Clark:—My point is, that the petition of appeal shows that Mr. Race had knowledge several months in advance that the Skillman will, so-called, had been filed in the office of the Surrogate, at that time, or within a few days he also filed the Race will, that is the will he had charge of. And he also testified at that time or about that time, that he made an examination of what is called the "Skillman will," and that his opinion then was, that the "Skillman will" was a forgery. He also testified that he was the cashier of the Hopewell National Bank and as such he was competent to pass upon signatures, and he also speaks as an expert upon that handwriting. It appears to me, that his acts were not consistent with the opinions he expressed, and that the opinions therefore were after-thoughts.

Court:—I shall sustain the objection.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM.
Judge.

Mr. Clark:—I also offer the amendment to the petition of appeal, filed May 12th, 1907, which shows them for the first time that they set up forgery months after the first petition of appeal.

Same objection.

Court:—That will be excluded and the objection sustained.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

GERTRUDE SKILLMAN, recalled in behalf of the defendant.

Examined by Mr. Clark:

Q. When you were on the witness stand on Saturday last, you were asked if you had made an examination or search for the letter which you said you had received, from Mr. Lanehart in the spring of 1905—since that time have you made a search for the letter?

A. Yes sir, I have looked for it, but have not found it.

Q. What search did you make for it?

A. I have looked thoroughly in the only place where it would be, and that is in my writing desk.

Q. Where is your writing desk?

A. My writing desk is at home at present.

Q. What sort of a writing desk is it?

A. Just a lap writing desk.

Q. What has been your success?

A. I have not found it, and therefore I feel sure that I must have destroyed it.

Q. I wish you would state now, what that letter said, with reference to the conversation you had with Mr. Lanehart in the preceding fall?

Mr. Reger:—I object to the question as immaterial and irrelevant and also on the further ground, because it is in the fall of 1904, extremely remote, long prior to the alleged execution of this will and therefore could not have had any bearing upon it—I object to it, because certainly it is too remote.

Mr. Clark:—The letter was received in the spring of 1905, and the conversation occurred in the fall of 1904.

Court:—I shall exclude the conversation, but I will admit this question which has reference to the letter.

A. He told me that he had made his will, and that he had cut off his blood relatives, and left father some of his property.

(Mr. Clark):

Q. Did he refer in the letter to the conversation of the fall before?

A. He said he had done as he said he would do, the fall before when I saw him.

(Court):

Q. This was in the letter?

A. Yes, sir.

(Mr. Clark):

Q. What else was said in the letter?

A. Well, I don't recall that he said anything more about the will, but he gave me a recommendation then to Dr. Baldwin, who was living in the city and I gave it to him.

(Mr. Clark):

Q. When was that?

A. It was in the spring of 1905.

Q. As near the date as you can give it?

A. The last of March or the first week in April, I cannot say just when.

Q. Was anything said in the letter in relation to Miss Kellogg, and if so, what?

A. I don't think there was anything said about her.

any more than his blood relatives did not approve of his personal affairs.

Cross-Examination by Mr. Reger:

Q. Where at your house at Blawenburg did this conversation take place in the fall?

A. I don't know where, whether it was in the house, or whether it was outside, I don't remember just where the conversation took place.

Q. You don't remember whether it was at your house or Mr. Lanehart's house?

A. Oh, it was at our house.

Q. Where in your house, did it take place?

A. I don't remember.

Q. You have no recollection as to where it took place have you?

A. I don't remember.

Q. Who was present?

A. I don't remember that.

Q. If it was in the fall of 1904, it was probably in the house, was it not?

A. I presume so.

Q. You have no recollection as to who else was present at that time?

A. No, sir.

Q. And that is the only conversation you had of this nature?

A. Yes, sir.

Q. Did you not in testifying on the previous trial of this indictment, say, and was not this question asked "Did you ever have any conversation with him (referring to Mr. Lanehart) in which he spoke of the disposition he intended to make of his estate?" and did you not answer, "Yes"—and then were you not asked, "What did he say and when did he say it—in the first place, where did he speak about your father, when did he speak about it?" and did you not answer, "In the fall of 1904, before he died," and were you not asked, "Where?" and did you not answer, "In New York City," and then were you

not asked, "Whereabouts in New York City?" and did you not answer, "I lived at 686 Lexington avenue, and he went there," and then were you not asked, "Was he there?" and did you not answer, "Yes,'—were not these questions asked you on the last trial of this indictment, referring to this conversation, and did you not answer as I have read it to you?

A. I don't remember.

Q. You don't remember?

A. No, sir.

Q. You did not testify as to this conversation, or as to this letter on the trial in the Orphans' Court, did you?

A. Was that the first trial?

Q. Yes?

A. No sir, I was not present.

Mr. Clark:—I object to this cross-examination, because this evidence would not have been received in the Orphans' Court, whether it had been testified to or not, and I therefore move to strike out this evidence.

Motion denied.

(Mr. Reger):

Q. Did you have any correspondence with your family about the trial, which was then in progress?

A. Yes sir.

Q. Where were you in January and February, 1905?

A. I think I was working.

Q. Where?

A. I do not remember now whether it was in New York or on Long Island.

Q. It was either in New York or Long Island?

A. I think it may have been but I do not remember, I do not keep any record.

Q. And you have no recollection?

A. I have no recollection as to which place I was in.

Q. Have you been away from home continuously during the last four or five years?

A. No sir, I am home several months each year.

Q. What months?

A. I try to be home in the summer months, that is I make visits home between the cases that I have.

Q. When were you home during the year 1905?

A. I do not remember.

Q. You don't remember?

A. No, sir.

Q. You were home during the summer, were you not?

A. I don't know whether I came home in June or whether it was later.

Q. If you came home in June how long did you remain?

A. I do not remember that.

Q. You have no recollection of that?

A. No, sir.

Q. Don't you know what time you went back to the city?

A. No sir, I do not.

Q. Was it as late as November?

A. I don't remember.

Q. Was it as late as January?

A. Oh, I went back before that, but as I say I make visits between the cases I have, and I do not remember when I came home.

Q. And when you were home during the summer of 1905, you talked with your family about the case, did you not?

A. Yes, sir.

Q. And after you returned to the winter of 1905-1906, you corresponded with your family about it, did you not?

A. Yes, sir.

Q. You knew when the trial was in progress in the Orphans' Court, did you not?

A. Yes, sir.

JEREMIAH SKILLMAN, recalled in behalf of the defendant.

Examined by Mr. Clark:

Q. I show you a file with foolscap on it, and ask you, how does that compare with the kind of file you spoke of as used by your father (handing witness file)?

A. It looks very much like it.

Q. Well, how was the paper fastened that you spoke of?

A. It was put on the file in this way (indicating), and then father took his knife and run it through and cut the paper apart in this way (indicating).

Q. Show me how?

Mr. Dungan:—I object to that as immaterial.

Objection sustained.

Court:—You say your father had this file?

A. Yes.

Q. You may show how the sheets were cut?

A. (Illustrates).

(No Cross-Examination).

Mr. Clark:—I offer the file and the foolscap in evidence.

Mr. Dungan:—I object to it as immaterial, and as being a mere illustration.

Objection sustained.

Mr. Clark:—I would like to have it marked for identification in some way.

Court:—It may be marked for identification.

Marked D. 24 for identification.

LAURA KELLOGG, recalled in behalf of the defendant.

Examined by Mr. Clark:

Q. What kind of surface did the table have or the writing stand, whatever it was, on which your uncle, Mr. Lanehart was accustomed to writing?

A. A smooth leather surface.

(No Cross-Examination).

CLARENCE E. CASE, sworn in behalf of the defendant.

Examined by Mr. Clark:

Q. What is your business or profession?

A. I am a counsellor-at-law, practicing at Somerville.

Q. How long have you been practicing?

A. Since 1903, I think.

Q. Did you at any time examine what is called the "Skillman will," marked Exhibit P. 4, with reference to pencil marks and the glazing on the paper?

A. I did.

Q. When?

A. My examination was made either just at the time of the first Orphans' Court proceedings, or just prior to that time, in the preparation for the trial.

Q. Have you any idea as to dates?

A. It was February, 1906, or prior to that time, just prior to that time, I think, my examination of the will was made with reference to the marks of glazing or marks of abrasion, and was made shortly subsequent to

the time of the charge of forgery as made against the will, and just how long after that time my examination was made, I do not know, but it was just shortly after the charge of forgery was made against the will, and as I remember that time, it was about six or seven months after the will was probated.

Q. Did you use anything more than the naked eye?

A. I used a magnifying glass.

Q. What did you discover with reference to the abrasions or erasures on the "Skillman will" so far as relates to the signature?

A. I could find no abrasions or erasures except what would be caused by the handling of the paper, what that would indicate.

Q. What did you find with reference to the glazing?

A. The signature seemed to be in its natural condition.

Q. Did you at any time examine the will produced by Mr. Race?

A. The signature to that will?

Q. Yes?

A. Yes, sir.

Q. When was that examination had?

A. Either the 8th of September, 1905, or a day or two prior to that time.

Q. For what purpose, did you make that examination?

A. Well, I made the examination down in the Surrogate's office, and the purpose of the examination was to inspect the signature.

Q. What did you discover in relation to the pencil marks at that time in respect to the signature?

A. I found pencil marks on the signature on the letter "W."

Q. I wish you would indicate where and how?

A. Well, I haven't the exhibit here, but there were distinct pencil marks accompanying the strokes of the letter "W" very close to the pencil marks, as though a person had had or used a pencil there, in forming the letter "W," of course that was only a conclusion on my part.

Cross-Examination by Mr. Dungan:

Q. Had you ever had any previous experience in examining signatures?

A. Previous to this time?

Q. Yes?

A. I have done a great deal of examining in connection with the "Skillman" trial, I do not know that I have had any prior experience.

Q. You say your first examination was made in September, 1905, and that was the first examination of any paper, I mean under a microscope?

A. Well, as nearly as I can tell you, it was about that time my first examination was made.

Q. Have you ever had any previous experience in examining handwriting, or handwritten signatures in pencil or ink, on papers, under a microscope?

A. Not that I remember just now.

Q. And between the time of the examination of the signature to the "Race will" and the time of the examination of the "Skillman will" had you had any experience?

A. Between the time I examined the signature to the "Race will?"

Q. Between the time of your examination of the signature to the "Race will" and the time you examined the signature to the "Skillman will" had you had any experience?

A. They were practically contemporaneous, I mean by that, the examination of the "Skillman will" was made very soon after the examination of the "Lanehart will" or about the same time.

Q. The examinations you have testified to, relating to the signatures to the "Race will" and to the "Skillman will" were practically made at the same time?

A. Yes sir, very nearly so.

Q. Prior to that time you had had no experience in examining paper, ink or pencil writings, under a microscope?

A. I do not remember any.

Q. The magnifying glass you used—how many diameters did it magnify?

A. I cannot tell you about that, it is a magnifying glass I inherited with the desk, when I came to that office, and I cannot tell you that, I have the desk yet.

Q. When you spoke of a microscope, or when I spoke of a microscope, I should have said magnifying glass—then you had never had any previous experience with the use of a magnifying glass, as to the examination of paper writings, signatures or marks, pencil or ink marks?

A. I should have said that I used in connection with that glass, a glass which I used in connection with my study of botany, I used that glass also in connection with the magnifying glass that I spoke of.

Q. How many diameters did that glass magnify?

A. I cannot tell you.

MARY M. STEELE, recalled in behalf of the defendant.

Examined by Mr. Clark:

Q. In your examination by the Prosecutor, you were asked with reference to testimony that had been given in the Orphans' Court proceeding, and I wish to ask you some questions with reference to that, and also with reference to matters which were not testified directly in that examination?

Mr. Dungan:—I object to this.

Court:—I will rule upon it when there is a question to rule upon—there has been no question asked that I could make a ruling upon.

(Mr. Clark):

Q. Was not Miss Kellogg asked this question, "I asked you to compare the signatures to those exhibits

numbers 9, 10, 11, 12, 13, 14, 15, 19, 20, 24 and 25, with those of exhibits numbers 5, 6, 7, 8, 16, 17, 18, 21, 22, 23 and 27, and see whether they do not correspond and possess the same general characteristics"—which question was answered as follows, "I am not at all competent to make a comparison, I am not an expert by any means?"

Mr. Dungan:—I object to the question as not being proper rebuttal, nor is it proper cross-examination at this time, as no foundation was laid for it in their previous cross-examination, so that they might deny it here.

Question allowed.

A. That is correct as you read it.

Mr. Dungan:—I thought my statement referred to the signature itself, when I said what I did say, she had given a different opinion.

(Mr. Clark):

"Q. Then why did you testify that the last lot of signatures are Mr. Lanehart's signatures?

"A. I know they are his signatures.

"Q. How do you know it?

"A. I hardly know how to answer that, I may perhaps illustrate. If I look at a photograph of you, I do not know how I know it was you, or your photograph, unless I said it looked like you, the face resembles your face.

"Q. Where have you heard that suggestion?

"A. I never heard it, that is original.

"Q. That is original?

"A. Yes.

"Q. And that is the only way in which you are able to identify these signatures in the last lot of checks mentioned as the signatures of William Lanehart, is it?

"A. I know they are Uncle Will's signatures"—were those questions and answers so given?

Mr. Dungan:—I object to that as not rebuttal or cross-examination of anything brought out in the direct examination.

Question allowed.

A. They are.

Q. Were these question asked and the answers given as follows:

"Q. That is the only way, the way you explained, if you should see a photograph of some person, you would know that was the person?

"A. Yes, sir.

"Q. And you are unable to give any of the details of Mr. Lanehart's signature?

"A. By the details you mean the characteristics?

"Q. Yes—you have testified that in your opinion the signature to the "Skillman will," Exhibit P. 4, is the signature of William Lanehart; I ask you whether you arrived at that conclusion by the same process of reasoning?

"A. I presume so." Is that correct?

A. That is correct.

Q. Were these questions and answers given:

"Q. I ask you whether, placing that signature with the signatures of Exhibits numbers 5 to 27, you would say that the signature to the disputed will has the appearance and general characteristics of Mr. Lanehart's signature?

"A. I think it has." Is that correct?

A. That is correct.

Q. And were these questions and answers given:

"Q. When did you ever see Mr. Lanehart's writing look like that?

"A. When he was nervous.

"Q. Have you any sample of it?

"A. Any sample of his writing?

"Q. Any samples of Mr. Lanehart's writing when it looked like that?

"A. I have no samples, whatever.

"Q. You cannot produce a signature of Mr. Lanehart's which looks like that of the "Skillman will" can you?

"A. I have no samples and therefore I cannot produce any." Is that correct?

A. That is right.

Q. Were these questions and answers given:

"Q. The signatures that were made looking like that were they on checks?

"A. No, I think not.

"Q. Did you say that you had seen signatures of William Lanehart's looking like that, or handwriting of William Lanehart that looked like that or both?

"A. Both.

"Q. Where?

"A. At his home, Blawenburg.

"Q. Were they to checks?

"A. I don't think so.

"Q. To legal documents?

"A. I do not recall ever having seen his name to legal documents, outside of this one." Is that correct?

A. That is right.

Q. And were these questions and answers given:

"Q. You say you have not seen his name like that signed to checks?

"A. I did not say so positively.

"Q. You say Mr. Lanehart could not write straight, without a line, did you ever see him write without a line?

"A. Yes." Is that correct?

A. That is right.

Q. And were these questions and answers given:

"Q. To what?

"A. On paper.

"Q. And you said when he wrote without lines, he wrote uphill?

"A. Yes.

"Q. And was that a general characteristic of his writing, without lines?

"A. Yes.

"Q. He never wrote straight, when he wrote without lines?

"A. I do not think he did, sometimes when he wrote on lines, he could not keep on the lines.

"Q. And he never wrote straight, without lines?

"A. I think not." Is that correct?

A. That is right.

Q. And were these questions and answers there given:

"Q. How long has it been since he could not write straight without lines?

"A. I just noticed it particularly during the last four years of his life, because I was with him more than ever before.

"Q. You have noticed that peculiarity for four years?

"A. I think so, yes." Is that correct?

Mr. Dungan:—I object to the question because it is going beyond the scope of a proper cross-examination.

Court:—I think the last portion goes beyond the statements that Miss Kellogg made, that she had not made any comparison of that kind, of the signatures. That is not contradictory in anything that she said, so far as I am able to recall, I shall therefore sustain the objection.

(Mr. Clark):

Q. On page 585, of the evidence before you, I call your attention to the testimony of Miss Kellogg, with reference to her uncle's going to Hopewell, and the nature of the day following the 28th of February, 1905, were these questions not asked Miss Kellogg:

"Q. It is said that the next day—the evidence having been concerning the 28th of February, 1905—he went to Hopewell, do you know anything about that?

"A. Yes.

"Q. Do you know what time he returned from Hopewell?

"A. No, I do not think he was gone very long.

"Q. What time did he return from the Asbury sale.

"A. About five o'clock—(interrupted).

Mr. Dungan:—I object to that—that apparently is not what you want, Mr. Clark.

Question withdrawn.

(Mr. Clark):

Q. Were these questions and answers given then:

"Q. On the 28th of February, the day he went to Hopewell, do you remember what kind of a day it was, as to the weather?

"A. I think it was cold that day colder than the previous day"—did she so state? I refer you to page 585? What is the correct date there?

A. The second figure is blurred so that it is hard to distinguish just what it is.

Q. Have you any recollecton as to what Miss Kellogg testified to on that subject?

A. As nearly as I can tell from the record, it is the 28th—if I had a glass I could tell more certainly.

Q. The previous testimony is with reference to the Asbury sale?

A. That is true, yes sir.

Q. (Reading). "I think it was a cold day, colder than the previous day," was that her answer?

A. It was.

Q. (Reading): "Q. Why did you have that impression?" "A. I fully expected Uncle Will would be sick, standing out all day at the Asbury sale." Was that her answer?

A. Yes.

Q. (Reading): "Q. State what you know about the weather of the next day?" "A. I know it was cold." Is that "cold?"

A. Yes sir, it is.

Q. (Reading): "Q. Did you accompany him to Hopewell on February 28th?

"A. No.

"Q. Why didn't you go?

"A. He would not let me.

"Q. Well, you say he would not let you, why wouldn't he let you, why wouldn't he let you go?

"A. He would not allow me to go, becaus it was too cold to ride that distance." Is that correct?

A. That is true.

Q. (Reading): "Q. Do you know where he went on Wednsday?

"A. Yes.

"Q. Where?

"A. Brophy Brothers store.

"Q. How do you know that?

"A. I went with him.

"Q. How do you know you went with him?

"A. I remember very distinctly going with him, I remember the circumstance that happened on the way there?

"Q. Go on.

"A. I had hardly gotten in the sleigh when it began to snow, and I staid in, when we got outside the lawn, we met Mr. Skillman, he was on his way home, and my Uncle Will made an appointment to be at Mr. Skillman's home in a day or two to transact some business." Are they not the questions and answers given by Miss Kellogg at that time?

A. That is true.

Q. On Miss Kellogg's examination in the Orphans' Court proceedings as found on page 590 of the book before you, was she asked this question:

"Q. Do you know of the regard in which Mr. Skillman was held by Mr. Lanehart and the relations between them?

"A. Yes.

"Q. State what they were, state what they were from your own knowledge?

"A. They were extremely intimate." Is that correct?

A. That is true.

Q. I call your attention to page 173 of the book before you in the examination of Jeremiah Skillman—were these questions and answers as follows: Was Jeremiah Skillman asked, referring to the pen used by Mr. Lanehart: "Q. Did he dip the pen—(interrupted).

Mr. Dungan:—I object to the question, on the ground Jeremiah Skillman was their own witness.

Objection sustained.

(Mr. Case):

Q. I call your attention to a statement which you made heretofore in this same proceeding, wherein you stated that Mr. Skillman had testified in a previous trial—(interrupted).

Mr. Dungan:—I object to that on several grounds—first, that the examiner has no business to repeat for the purpose of emphasis, before a jury, a matter which the court has already ruled upon—distinctly her testimony was about Mr. Skillman, and they have their opportunity to cross-examine when she was on the stand before, and she is now their own witness, and I contend, your Honor, that they have no right to go into that matter further.

Mr. Case:—The general nature of the testimony is this: I wish to show by this witness, what the language, as used by her was, with reference to the directions which she testified were given by Mr. Lanehart to Mr. Skillman, what they really were, and whether the directions, as detailed by this witness, were not a conclusion in her own mind, as to what they were.

Court:—By this witness?

Mr. Case:—By this witness.

Court:—This witness has not shown any knowledge on the subject, she only recalls some testimony that she says Mr. Skillman gave, that is all that she has undertaken to do. I shall sustain the objection.

Mr. Case:—What is the objection to?

Court:—To permitting any further testimony on the question of Mr. Skillman said—that I shall exclude.

Mr. Case:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(No Cross-Examination).

GERTRUDE SKILLMAN, recalled in behalf of the defendant.

Examined by Mr. Clark:

Q. You were asked on cross-examination, about the place where the conversation with Mr. Lanehart and yourself took place and you said you did not know whether it was outdoors or in the house, but the inference was, that it took place at Blawenburg—have you any means of testifying with any greater certainty than before, as to where the conversation took place?

Mr. Reger:—I object to the question on the ground that the witness was examined and gave her testimony on that point.

Court:—She may have had her recollection refreshed.

(Mr. Clark):

Q. Have you had your recollection refreshed by anything as to that?

Court:—I suppose the witness might be given an opportunity to correct anything that she has found out she has incorrectly stated before.

A. Yes sir, I have had my memory refreshed.

(Mr. Clark):

Q. State where the conversation occurred?

A. The conversation occurred in New York City at the place where I boarded.

Cross-Examination by Mr. Dungan:

Q. What has refreshed your recollection?

A. A letter which I wrote to Mr. Clark over a year ago.

Q. That is the only thing that has refreshed your recollection?

A. Yes, sir.

Q. A letter which you wrote to Mr. Clark?

A. Yes, sir.

Q. Where did that conversation take place?

A. At my boarding place in Lexington avenue, New York.

Q. Did you not testify here on Saturday, that the only time you ever saw Mr. Lanehart in New York, was at the training school?

A. Yes sir, but I had forgotten about this time.

(Court):

Q. Referring to the conversation which you say you had with your family on the subject of the Lanehart will and the contest and trial relating thereto, did you state to your family during any of these conversations the contents of the letter you had had from Mr. Lanehart and the conversation you had had previously?

A. Not until the second trial.

Q. Not until the second trial?

A. Yes sir, I did not think it of any importance.

(Defendant Rests.)

HOBART B. HALL sworn in behalf of the State.

Examined by Mr. Reger:

Q. Where do you reside?

A. Brooklyn, N. Y.

Q. What is your profession?

A. A law stenographer.

Q. Were you the stenographer who took the testimony in the previous trial of this indictment?

A. I am.

Q. Did you take that testimony?

A. I did.

Q. I ask you to refer to the testimony of Edward Skillman referring to a memorandum said to have been made by William H. Skillman, the father of the witness, at the wagon-house-, with reference to the questions asked and the answers made by the witness.

"Q. Was it an envelope?
"A. It was written on the back part of an envelope.
"Q. What else was on the envelope?
"A. I don't know.
"Q. Do you know what address was on it?
"A. I do not.
"Q. Was it an envelope that had been used?
"A. Yes.
"Q. And one which your father had received?
"A. Yes sir, as far as I know, it was.
"Q. Had it been opened?
"A. It had"—were those questions asked and answers made?

Mr. Clark:—I object to the questions because they are not contradictory of the defendant, they are not denied by the witness, Edward Skillman. I also object to the questions on the ground that all the evidence should be read to the witness, referring to that subject matter—the witness said on the trial that he did not remember whether it was an envelope or not.

Question allowed.

A. Yes, sir.

(Mr. Reger):

Q. Did he so testify?
A. Yes, sir.
Q. Now, I ask you to turn to the evidence of Elva Skillman on the previous trial of this indictment—was Elva Skillman sworn as a witness?

A. She was.

Q. I ask you to turn to her testimony, and I will ask you whether these questions were asked and answered—you referred to a memorandum which was said to have been made at the wagonhouse by her father, Mr. Skillman, and which she saw on the desk at the house—and then this question was asked her: "Q. And where was the paper at that time?

"A. Lying in a pigeon-hole of father's desk, on top of the ink-well.

"Q. On top of the ink-well?

"A. Yes.

"Q. Did you read it?

"A. I did not.

"Q. You don't know what was on it?

"A. No"—did she so testify?

Mr. Clark:—I object to the questions, for the reasons that the object of Elva Skillman's testimony in that regard was for the purpose of identifying the memorandum to offer it in evidence, the proof failed, and therefore the memorandum was not permitted to be received in evidence. In addition to that this evidence does not contradict Elva Skillman in that regard, the questions asked were not with respect to the contents of the memorandum, with a view to admit that as evidence in the case, the contents, but with the view to admit the memorandum itself as evidence, it was for the purpose of showing such knowledge of the memorandum so that she could identify that paper and thus permit the paper to be offered in evidence, but her evidence failed to disclose such knowledge and the court overruled the offer as immaterial, and as not germain to anything now before the court, and I object to it for these reasons, and also on the ground that it is not contradictory of anything testified to by Elva Skillman.

Court:—Did not the Prosecutor say to Miss Skillman, did you not testify in the former trial to this effect?

Mr. Clark:—No sir he did not refer to the pigeon-hole at all, she only testified that she saw the paper on the ink-well on the desk.

Court:—She said that she did not read it, but she saw some of the words on it.

Mr. Clark:—But she does not show enough knowledge of this paper to identify it so that it could be admitted in evidence.

Court:—That is not the question now. The question now is, whether a foundation has been laid to contradict her testimony with a view of affecting her credibility. I understand that the Prosecutor asked her whether she did not testify in the previous trial that she did not know the contents of that paper, and she testified that she did not.

Mr. Clark:—How is the evidence important or material in any aspect of the case?

Court:—I shall allow the question.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

(Mr. Reger):

Q. Were those questions asked and did she so answer?

A. They were asked and she did so answer.

Q. I ask you to refer to the testimony of Gertrude Skillman—was Gertrude Skillman sworn as a witness at that time in that trial?

A. She was.

Q. At that trial on the previous trial of this indict-

ment were these questions asked and did she answer as indicated:

"Q. Referring to a conversation with Mr. Lanehart, in reference to the contents of his will, did you ever have any conversation with him in which he spoke of the disposition he intended to make of his estate?

"A. Yes.

"Q. What did he say and when did he say it?

"A. In the fall of 1904, before he died.

"Q. Where?

"A. In New York City.

"Q. And whereabouts in New York City?

"A. I live at 686 Lexington Avenue, and he went there.

"Q. Was he there?

"A. Yes, sir."—were those question asked and did she so answer?

Mr. Clark:—I object to the question as not being a contradiction of anything testified to by Miss Skillman.

Court:—Miss Skillman has been called and corrected her testimony as to that, I shall therefore sustain the objection.

Cross-Examination by Mr. Clark:

Q. What memorandum was Miss Elva Skillman testiing about, do you know?

A. My remembrance is, that it was a memorandum of a will which—(interrupted.)

Mr. Reger:—I object unless the witness is tesifying from his notes.

Question allowed.

A. My remembrance is, that it was a memorandum of a will which Mr. Skillman had made, at some suggestions of Mr. Lanehart.

(Mr. Clark):

Q. Was that memorandum admitted in evidence?

Mr. Dungan:—I object to that as immaterial and incompetent.

Objection sustained.

(Mr. Clark):

Q. What was done with the memorandum?

Same objection.

Question withdrawn.

(Mr. Clark):

Q. Did Miss Skillman say in her testimony anywhere, that she had not read any portion of that memorandum?

Mr. Reger:—I object to that.

Question allowed.

A. I could not say for certain.

(Mr. Clark:)

Q. You have a way to find out, have you not?
A. Yes, sir.
Q. Then do so and tell us?
A. I will read her testimony.

RECESS.

(Mr. Clark):

Q. Can you answer the question I asked before recess?
A. I have looked over her testimony, I was obliged

to do so rather rapidly, but I can say in the testimony, the copy that I have of it, I have read it, and I can say that she did not say that according to my report, she did not read it.

Q. Did Miss Skillman say in her testimony anywhere, that she had not read any portion of that memorandum?

A. She did not say so.

(Court):

Q. What did she say on that subject, if anything?

A. I have marked two or three places, and I can refer to them and read what she said.

Q. Did she say that she read any portion of it?

A. No, sir; I think not.

(Mr. Clark):

Q. Did she say that she did not read any portion of it?

A. She spoke to that effect, according to the memorandum which I have just read.

MARY M. STEELE, recalled in behalf of the State.

Examined by Mr. Reger:

Q. In the trial of the Orphans' Court, proceeding, you took the testimony, as you have testified—I ask you to refer to the testimony of Elva Skillman as found on page 248 of that record—was she asked this question, "Q. Where the sheets pinned together (referring to the will purporting to be the last will and testament of William Lanehart marked Exhibit P. 4 in this case), and did you not answer, "No, sir?"

A. Yes.

Q. Was she asked, "Did you observe the pin holes in the paper at that time"—and did she answer, "I did not."

A. Yes, sir.

Q. Was she asked, "Look at the paper now, and say

if you can see any pin holes there"—and did she answer, "I do not see anything that I can call pin holes?"

A. She did.

Q. Referring now to page 258 of the record, and referring to what Mr. Lanehart had upon his hands, on the day when this will is alleged to have been executed, was she asked, "Did he have any gloves on when he came in"—and did she answer, "I do not remember?"

A. That was her answer.

Q. Referring now to page 246 of the record now before you, and referring to the time when this alleged will was executed, did she testify, "It was about the middle of February?"

A. She did.

Cross-Examination by Mr. Case:

Q. Wee those her words, Miss Steele, "It was the middle of February?"

A. The words are, "It was about the middle of February."

Q. Where do you see that?

A. It was the fourth line from the bottom of page 246 of the record.

Q. And she was asked, "What makes you sure it was in February"—and she replied, "spraying the trees, father was getting ready to spray the trees, and they usually spray about the first of March," didn't she so testify?

A. (reading) "Spraying the trees, father was getting ready to spray the trees, and they usually spray the trees about the first of March"—yes, sir.

Q. And was she not asked—on page 266 of the record, this question—"Do you now say that will was executed before the 27th day of February, 1905?"

A. She was asked that question.

Q. And did she not reply, "I cannot swear that it was?"

A. She does.

Q. And was she not asked, "You have sworn very dis-

tinctly, that the will was executed about the middle of February"—and did she not reply—"I said as near as I could recall," is that correct?

A. That is right.

Q. And was she not asked, "And that it was not executed in the last part of February, do you now say it was executed prior to the 27th day of February, 1905?

"A. I said as near as I can recall, it was executed about the middle of February, it might have been a few days before, or a few days after, that is the best answer I can give"—did she so testify?

A. That is right?

Mr. Reger:—I forgot to ask a few questions of this witness about the testimony of Jeremiah Skillman, I will do so now, if I may be permitted.

Court:—You may do so.

Further Direct by Mr. Reger:

Q. Referring to page 155 of the record, was Jeremiah H. Skillman, on the trial in the Orphans' Court, asked this question: "Q. What was his condition of health that day, from anything he said, I mean anything you could see?"

A. It was.

Q. And did he answer: "He said he was feeling better that day than what he had previous to that?"

A. He did.

Q. Now, referring to page 158 of the record, was he there asked, "Do you know whether it was a fountain pen or not," referring to the pen used in connection with the execution of the will?

A. He was.

Q. And did he not answer, "No, sir, I don't?"

A. He did.

Q. Was he asked, "Did you write with the same pen he did," and did he answer, "Yes, sir?"

A. (Reading): "Did you write with the same pen he did," yes sir.

Q. You find it so in the record?

A. Yes, sir.

Q. Was he asked, "And did not Mr. Ely write with the same pen?"

A. He was.

Q. And did he not answer, "That I do not know, there were other pens there?"

A. He did.

Q. And was he not asked, "Was it a steel pen, or gold pen, or what kind of a pen was it," and did he not answer, "I don't know what it was, I never looked at the pen to see?"

A. That is the question and the answer, as they appear here.

Q. Now, referring to page 166 of the record, did he there testify that the papers of the alleged will were pinned together?

A. The question was asked, "But you observe the papers were not pinned together at the time you signed, is that true?" and he answered, "yes, sir."

Q. That is what he said?

A. Yes, sir.

Q. Now, referring to page 161 of the record, did he there testify that the alleged will was signed in February?

A. (Reading): "What month was it in?" "The month of February."

Q. That is what he said?

A. Yes, sir.

Cross-Examination by Mr. Case:

Q. Was he not asked, "You are sure it was before the first of March," and did he not answer, "Yes, sir." "Q. And the reason is that you commenced to spray the fruit trees on the farm about the first of March?" "A. Yes, sir?"

A. That is right.

Q. They testified that the reason they fixed the date was because it was prior to the spraying, which took place about the first of March?

A. Yes, sir.

Q. Now, on page 173 of the record he was asked, "Did he dip the pen in the ink-stand," and did he answer, "I do not remember whether I did or not, I certainly did if it was not a fountain pen, and I do not recall which it was?"

A. The question and answer so appear.

Q. Now, on page 155 of the record, concerning the statement of Mr. Lanehart's health, directly preceding the question the Prosecutor put to you, was not this question asked of Jeremiah Skillman, "What conversation passed between Mr. Lanehart and the rest of the family, as near as you can remember, upon his reception," and did he not answer, "Well, he spoke of the weather, he told us he had not been feeling well?"

A. That is right.

SPENCER W. WHITLOCK, sworn in behalf of the State.

Examined by Mr. Dungan:

Q. Where do you live?

A. Blawenburg.

Q. How far from Mr. Lanehart's residence?

A. About a mile and a half I should think.

Q. Were you at the Asbury sale on February 27th?

A. No sir, I was not.

Q. Do you remember the date of that sale?

A. I remember the sale very well.

Q. When, with reference to that sale, did you see Mr. Lanehart?

A. Mr. Lanehart bought some machinery at that sale, and two or three days after he came by my place, he was in the farm wagon, and he had been with the grist to Mr. Stout's mill, and he stopped in to see me on his way

home, in reference to getting some extra for the machinery that he had bought.

Q. Do you run the machinery?

A. I was an agent at that time.

(Court):

Q. When was this?

A. Two or three days after that sale, it was in the same week.

(Mr. Dungan):

Q. What was the condition of his health at that time?

Mr. Clark:—I object to the question on the ground of its not being rebuttal.

Question allowed.

A. So far as I could see, Mr. Lanehart was as well as usual, he was chatty and jolly, I didn't see anything the matter with him, his physical condition seemed to be about as usual.

Q. You were well acquainted with him?

A. I was well acquainted with him.

Q. And had seen him a great many times prior to that?

A. Yes sir, I had seen him a great many times.

(No Cross-Examination).

LAURA KELLOGG, recalled in behalf of the State.

Examined by Mr. Reger:

Q. Were you familiar with your uncle's correspondence during the latter years of his life?

A. Yes, sir.

Q. What connection did you have with it?

A. I wrote a great many of his letters, and saw, I think, nearly all of his letters, I was usually with him when he received them, he would not receive his mail at the office in Blawenburg, we drove to Stoutsburg to get it, and he usually had the lines in his hand and would hand his correspondence over to me to read to him, and we very frequently read it on the way home.

Q. Did you know who his correspondents were?

A. Yes, sir.

Q. Did you know of any correspondence he had with Gertrude Skillman?

A. I know of none.

Q. If he had had such correspondence would you or would you not have known it?

Mr. Clark:—I object to that.

Objection sustained.

(Mr. Reger):

Q. Do you know of his having written to her in the spring of 1905?

A. I do not.

Q. Do you know whether he did or did not?

A. He did not, I am sure.

Mr. Clark:—I object to the answer and move to strike it out.

Court:—I think that this is an answer that this witness is incapable of making. It has not been shown that she was with Mr. Lanehart all the time, and the most she can say is, that she knows of no correspondence between Mr. Lanehart and Gertrude Skillman, and leave it to the jury whether her knowledge of the business affairs of Mr. Lanehart is such, that she could have known. I shall sustain the objection and order the answer stricken out.

(Mr. Reger:)

Q. Do you know Miss Jennie Opdyke?

A. No sir, I am not acquainted with her.

Q. What were the relations existing between Mr. Lanehart and Miss Opdyke?

A. He had a speaking acquaintance.

Q. Were there any confidential or intimate relations between them?

Mr. Clark:—I object to the question on the ground that it is calling for a conclusion of the witness.

Objection sustained.

(Mr. Reger:)

Q. Did you ever know of Mr. Lanehart's calling at the Opdyke house?

A. I did not.

Q. Did he ever call there socially?

A. No, sir.

Q. Do you know of any business relations between them?

A. I know of none.

Q. You say you have kept your uncle's cash account?

A. I did.

Q. What do you know of the relations existing between Mr. Lanehart and James N. Duffield?

A. There was no relationship whatever existing between them for Uncle Will cared nothing at all for the man.

Mr. Clark:—I object to the answer and I move to strike it out as not responsive, especially the latter part of the answer.

Court:—I think the answer ought to be stricken out.

Q. What do you know of the relations existing between Mr. Lanehart and James N. Duffield?

A. I know there were no relations whatever.

Q. Were they at all friendly or intimate?

A. No sir, they were not intimate, Uncle Will tolerated the man because of the feeling he had for his father and mother.

Q. Was it Mr. Lanehart's habit to talk of his private affairs to other persons?

Mr. Clark:—I object to that as immaterial.

Objection sustained.

(Mr. Reger):

Q. How old was Mr. Lanehart?

A. He was seventy-eight years old the week before he died.

Cross-Examination by Mr. Clark:

Q. How do you know that Mr. Lanehart never called socially at the Opdyke's?

A. If he had called there, I would have known it, I know who his friends were, and where he called.

Mr. Clark:—I object to the answer, and move to strike the answer out as not responsive.

Motion denied.

Q. Do you know that Mr. Lanehart never called at the Opdyke's?

A. I am sure that he never did.

Q. My question is. do you know that Mr. Lanehart never called at the Opdyke's?

A. Yes sir, I know that he never did.

Q. How do you know?

A. Because I am sure that he never did.

Q. That is your reason—because you are sure?

A. How am I to know anything?

Q. You did not go with him everywhere, did you?

A. I went with him whenever he was going to call anywhere—well perhaps there were a few places that I did not go with him when he went on business, but that is all.

Q. You never went with him when he went to see the brother of Miss Opdyke, did you?

A. He never went there.

Q. How do you know?

A. I am sure of it.

Q. You are sure he never went there, because you didn't go with him, is that it?

A. I am sure he never went there, he always told me where he went if I was not with him.

Q. From what he told you, you are sure he was not there, is that it?

A. That is a good basis for the opinion I have expressed.

Q. And you relied upon his statement as to where he went?

A. Yes sir, and I had good reason to.

Q. Now, with regard to the conversation with James N. Duffield, you relied upon his statement about that also, did you?

A. About his relations with Mr. Duffield?

Q. With regard to the conversations with Mr. Duffield, you relied upon your uncle's statement to you for that also, did you?

Mr. Reger:—I object to that as irrelevant.

Question withdrawn.

(Mr. Clark):

Q. Do you know that he never had a talk with James N. Duffield?

A. I know that he did have talks with James N. Duf-

field, but only at his mother's home, when he could not avoid it.

Q. You did not know what he said to him, did you?

A. When I was with him there, I did.

Q. And if you were not there you could not know what he said to him?

A. Not unless he told me.

Q. And what he told you when you were not there, you only know from what he told you?

A. Yes, and I know he told me right.

Q. I suppose what you mean, Miss Kellogg, is this, that your relations with Mr. Lanehart were of such a character that you think you would know generally with whom he talked, and about what he talked, is that what you mean?

A. I did know.

Q. You knew even though you were not present at the conversation, you would know the conversation, and whether the conversations reported were or were not truly stated?

A. To me, I mean the conversations truly stated to me.

Q. No, you know by reason of your relations with your uncle, so that you are willingly to swear positively that certain things did not take place between your uncle and other people, although you were not present, and do not know anything about them, except what he told you, is that not so?

A. I don't know whether I understand that or not, it does not appear at all clear to me.

Q. By reason of what your uncle told you, you concluded that certain things which you did not hear, conversations at which you were not present at the time, if said, could not have been said, is that so?

A. I concluded that what my Uncle Will told me about things that had occurred, were true.

Q. And you depend on his statements entirely?

A. Not in every case, no sir.

Q. When you were not present?

A. Yes.

Q. He never told you about any conversation with Miss Opdyke, did he?

A. No, because he never had any.

Q. You swear to that?

A. Yes.

Q. Miss Opdyke says he was there to see her brother upon some business—(interrupted).

A. She was mistaken.

Q. Miss Opdyke says he was there and she had a conversation with him?

A. She is mistaken.

Q. You say that although you were not there?

A. I am sure of it.

Q. Are you so sure, that you know it is not so?

A. Yes sir, because my Uncle Will would not talk with other people about his business unless he was very intimate, very friendly.

Re-Direct by Mr. Reger:

Q. And that is the reason you feel sure about it?

A. Yes sir, I know they were not intimate friends, not particular friends, they were only speaking acquaintances, and it was not my uncle's habit to tell people about his business, he was of a diffident retiring nature, and he did not publish his affairs to the world in that way.

JOHN A. HAGEMAN, sworn in behalf of the State.

Examined by Mr. Reger:

Q. Where do you live?

A. At Hopewell, now.

Q. Where formerly did you live?

A. For a little over thirteen years, near Blawenburg, adjoining the farm of Mr. Skillman.

Q. Did you know William Lanehart?

A. Yes, sir.

Q. How long had you known him?

A. Well, about thirteen years, quite a little while.
Q. Do you know James N. Duffield?
A. Yes, sir.
Q. Do you know what the relations between Mr. Lanehart and James N. Duffield were?

Mr. Clark:—I object to the question as not rebuttal.

Question allowed.

A. Yes, sir.

(Mr. Reger):

Q. What were these relations?

Mr. Clark:—I object.

Question withdrawn.

(Mr. Reger):

Q. What were those relations, friendly or unfriendly?

Mr. Clark:—I object to that as immaterial and as not rebuttal.

Question allowed.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

A. Not friendly.

(Mr. Reger:)

Q. They were not friendly?
A. Yes, sir.

Q. How do you know?

A. From the conversations that I had with Mr. Lanehart.

Q. When was this conversation?

A. As near as I can remember, within the last—within a year before the time of his death?

Q. What did Mr. Lanehart say at that time?

Mr. Clark:—Same objection.

Question allowed.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

A. "I have no use for the man"—do you want all of it?

(Mr. Reger):

Q. Yes, go ahead?

A. I have no use for that man, he is a shirk, there is no dependence can be put on him."

Q. Do you know the relations existing between Mr. Lanehart and Mr. Skillman, the defendant, within the last year of his life?

A. Yes sir, I do.

Q. Were they friendly, or unfriendly?

Mr. Clark:—I object to the question as not rebuttal and also on the ground that the question is leading.

Court:—The question is objectionable, on account of its leading, the question should be "What were their relations?"

(Mr. Reger):

Q. What were their relations?

Mr. Clark:—I object to that.

Question allowed.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

A. I would not consider them altogether friendly, he thought something of Mr. Skillman, on account of his fruit, he was talking a good deal about his fruit, etc.

Q. About what?

A. He talked a good deal to me about his success as a fruit grower and so forth.

Q. Where did you live with reference to Mr. Lanehart?

A. About a mile and a half or a mile and a quarter from his place.

Cross-Examination by Mr. Clark:

Q. The relations between you and Mr. Skillman are not friendly, are they?

A. Why, I speak to the man when I see him.

Q. Answer the question please—are the relations between you and Mr. Skillman friendly or otherwise?

A. I consider them friendly.

Q. You consider them friendly when you speak to him?

A. Yes.

Q. And anyone you consider friendly, if you speak to them?

A. Yes, sir.

Re-Direct by Mr. Reger:

Q. Did you have any conversation with Mr. Lanehart in which he expressed his feeling against Mr. Skillman?

Mr. Clark:—I object to the question as leading.

Objection sustained.

(Mr. Reger:)

Q. You have testified as to the relations between Mr. Skillman and Mr. Lanehart, upon what do you base your opinion, as you have expressed it?

Mr. Clark:—I object to the question on the ground that it has already been asked and answered.

Question allowed.

A. Well, different conversations that we have had together at different times.

(Mr. Reger):

Q. In these conversations, did Mr. Lanehart express a distrust or suspicion of Mr. Skillman?

Mr. Clark:—I object to the question as leading.

Objection sustained.

(Mr. Reger):

Q. What did Mr. Lanehart say in his conversations?

Mr. Clark:—I object to the question as not rebuttal.

Question allowed.

Mr. Clark:—Prays exception.

Exception allowed—sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

Court:—You are to confine yourself to the last year of the life of Mr. Lanehart.

A. You want the last year.

(Court):

Q. Yes?
A. I cannot say such a great deal about the last year, but he told me at different times—(interrupted).

Mr. Clark:—I object—he must confine himself to the last year.

(Mr. Dungan):

Q. What is your answer—you say he told you at different times—what?

Mr. Clark:—During the last year?

A. Yes.

(Mr. Dungan):

Q. Now, during the last year, you say he told you different times—now what did he tell you?
A. That he did not think Mr. Skillman was altogether straight in his way of doing business.
Q. He told you that on different occasions?
A. Yes, sir.
Q. Were you intimate with Mr. Lanehart?
A. Yes sir, I was.

Cross-Examination by Mr. Clark:

Q. You were intimate with Mr. Lanehart, the same way that you were friendly with Mr. Skillman, were you?

A. I did not consider it that way.

Q. Now, when did you, during the last year, have a conversation with Mr. Lanehart about Mr. Skillman, and tell us where it was?

A. I had one, at one time, in his house.

Q. When was it?

A. As near as I can remember—I know there was snow on the ground—it was in January, I think.

Q. What year?

A. The year he died.

Q. Who was there?

A. My wife was there and Miss Kellogg was there.

Q. Do you know who commenced the conversation?

A. Him and I—I don't know which one.

Q. Were you discussing your neighbors generally?

A. No, sir.

Q. Were you discussing Mr. Skillman particularly?

A. No, sir.

Q. It was just a passing remark.

A. I suppose you would call it that, yes sir.

Q. Was there any other time that you remember of, during the last year of his life, that you had a similar conversation with him?

A. Not particularly, no sir.

LYDA K. HAGEMAN, sworn in behalf of the State.

Examined by Mr. Dungan:

Q. Where did you live in 1904 and 1905?

A. We lived at Blawenburg.

Q. Did you know William Lanehart?

A. Yes, sir.

Q. Was he a frequent visitor at your house?

A. No.

Q. How often did he come to your house?

Mr. Clark:—I object to the question as not rebuttal.

Question allowed.

A. He never came.

Q. You visited him?

A. No.

Q. Did you ever hear a conversation with Mr. Lanehart and William H. Skillman?

A. At our place I have heard him mention him.

Q. My question referred to William Lanehart, not William H. Skillman?

A. Oh, Mr. Lanehart?

Q. Was Mr. Lanehart a frequent visitor at your house?

A. Oh, yes sir.

Q. And did you frequently visit his house?

A. Very, for the last few years.

Q. During the last year prior to Mr. Lanehart's death, did you hear him talk about William H. Skillman, the defendant in this cause?

A. No, I don't remember.

Q. Did you at any time hear him talk about Mr. Skillman?

A. I think I have heard him mentioned, when he was talking about his fruit trees, about his spraying them, and in no other way.

Q. You were present with your husband in January when your husband testified to visiting Mr. Lanehart—were you at Mr. Lanehart's house then?

Mr. Clark:—I object to the question as leading.

Question withdrawn.

(Mr. Dungan):

Q. Are you deaf?
A. Yes, sir.
Q. Do you hear ordinary conversations?
A. Why yes, I have only been so very deaf for the last year or so.
Q. Prior to the last year of Mr. Lanehart's life, or for a year prior to his death, did you hear him talk about William H. Skillman?

Mr. Clark:—I object to the question as being too remote.

Objection sustained.

(Mr. Dungan):

Q. During the last year of his life, did you hear a conversation with Mr. Lanehart about Mr. Skillman?
A. I don't remember.

(No Cross-Examination).

(State Rests).

Mr. Clark:—I want to offer the petition of appeal and the amendments thereto that have been marked for identification.

Court:—They have already been offered, and they were ruled out as evidence, it was marked for identification for convenience. I said I would admit these papers as evidence if they contained evidence contradictory to the statements of witnesses examined in court, but I would not admit the papers in evidence for the purpose of showing the conduct and actions on the part of the appellant in the Orphans' Court. In other words, the evidence cannot be offered for the purpose of affecting the prosecution in any other way, other than by affecting the

credibility of the witnesses. I admitted it at the last trial, under the supposition or apprehension that they did contain statements that contradicted the statements of other witnesses. Now, I understand counsel to offer them for the purpose of showing that the witness, Mr. Race, did not allege in his first petition of appeal, his belief that the will was a forgery. If I am wrong in my understanding on the purpose of the offer, I am willing to be corrected by counsel.

Mr. Clark:—The court is correct, that it was offered for the purpose stated, but that is not all, it is offered for the purpose of contradicting Mr. Race. It contradicts Mr. Race in that he said this will was a forgery, and he has testified that he formed that opinion in June, 1905, two weeks after the death of the decedent.

Court:—You did not so state it in that way before. I will hear counsel as to whether this paper, in any way contradicts or offects the credibility of Mr. Race. I will say now, that as far as I can see the matter, that is the only purpose for which the paper could be offered in evidence.

(Further Argument).

Court:—The petition of appeal from the order of the Surrogate, admitting the last will and testament of William Lanehart to probate, filed by Mr. John A. Race, is a petition that is not verified by the petitioner, and is signed by his proctor. The record shows that the attention of Mr. Race was not directed to any statement contained in this petition filed, and signed by his proctors at the time of his cross-examination and therefore it becomes unnecessary for me to rule upon the question as to whether or not, the statements in that petition are contradictory of the statements made, by the petitioner on the stand as a witness in this case. Therefore the order will be excluded on the ground that counsel did not call the witness's attention to the document, and ask him

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whether he authorized the statements, or whether they were made without his wish or knowledge.

CASE CLOSED.

(Argument).

Mr. Clark:—I object to the comments of Mr. Reger concerning the contents of the letters which were offered by us being the letters written by Mr. Lanehart to his sister, Mrs. Lanehart—the letters are only offered for the purpose of proof as to the handwriting and for no other purpose.

Court:—I do not understand it so. The letters were offered, and then afterwards counsel attempted to limit the extent of the offer and in ruling on that, I said that I could not limit it except so far as I could exclude irrelevant remarks upon the letters.

Mr. Clark:—All the evidence of the case is that this is the handwriting of William Lanehart.

Court:—The letters are in evidence. It does not appear even that these letters were written to his sisters, so far as the court has investigated—they were addressed to a person named "Mary" but there is no proof as to whom the letters were written to.

Adjourned to December 3rd, 1907, 10.15 A. M.

December 3rd, 1907, 10.15 A. M.

(Argument continued.)

CHARGE TO THE JURY.

By HON. THEODORE B. BOORAEM:

Gentlemen of the Jury:—The defendant has been indicted for forging a document, dated the twenty-seventh day of February, 1905, alleged to be the last will and testament of William Lanehart now deceased, and for uttering the will to which the forged signature was attached.

To support this indictment, the State must prove facts sufficient for that purpose, by evidence beyond a reasonable doubt. A reasonable doubt would exist when the judgment of the Jury, after a careful review of all the evidence in the case, finds itself unconvinced of the guilt of the defendant. If such a doubt exists, you are bound to give the benefit of it to the defendant, but you are not bound to give him anything but the benefit of just such a doubt.

The defendant is charged with forgery. Forgery is the fraudulent making or altering of any writing to the prejudice of another's rights, or with the intention to prejudice such rights.

The defendant is also charged with uttering that forgery. To utter a forgery means to offer it. But the mere proof that the defendant offered the instrument alleged to be forged, is not enough. The State must go further and show that he offered it, knowing it to be forged. To constitute the uttering and publishing of a forged instrument, therefore, there must be a representation of its genuineness, for such representation need not be made by express words, it might be indirectly made, and be evidenced by the action and conduct of the defendant. In fact the essence of both of these offences, forgery and the uttering of forgery, is the intent to defraud. An intent to defraud, or to deceive, constitute their chief ingre-

dients. There must be an intent to defraud some person but it is not necessary that any person should in fact be defrauded, nor that anyone should be in a state to be defrauded. Nor is it necessary that the defendant could in fact defraud any particular person, if the probable consequences of his act, be to defraud, for in this case, it will, in contemplation of the law, constitute the offence.

You should also remember, and you are hereby instructed, that where the law makes a given act a crime, it also infers a criminal intent from the commission of the act itself. The act constituting the crime may also be inferred from facts and circumstances as they are disclosed in the evidence before you.

There have been in this case some references to a civil trial, in another court, relating to the validity of this alleged will of William Lanehart, which the defendant is, in this indictment, charged with forging and uttering.

The jury should remember, and are now instructed by the Court, that a judgment in a civil suit, recovered against the defendant in a civil action, is not admissible, even as *prima facie* evidence of the existence of the facts adjudicated by it, as the rules of evidence to be applied to the issue in civil and criminal cases differ. In civil cases the plaintiff succeeds in proving his case by a preponderance of evidence; in criminal cases, the burden rests upon the State to prove the criminal act beyond a reasonable doubt.

In view of the testimony of certain witnesses produced on the part of the State, as experts, who have given their opinion as to whether the disputed signature to the Lanehart will, is genuine, and as to who wrote that signature, it is proper that I should state to you something in regard to the weight and degree of credibility of such testimony.

Expert testimony is permitted by the law, in cases where the subject matter of inquiry is such that inexperienced persons are not likely to prove capable of forming a correct judgment upon it, without such assistance, but the Jury should always remember that such testimony, so far as it represents only the opinion of the witness,

is weak and uncertain, and of a lower degree of certainty than the testimony of witnesses who testify to facts, and should in every case be received and weighed with great caution, but when the reasons for the experts' opinions are stated and these appear to be based upon facts, which the Jury are capable of perceiving and the significance of which they can understand, such testimony becomes of value, and assists in enabling the Jury to gather the truth of the subject of inquiry, and becomes more convincing, the greater the number of facts pointed out, as the basis of the opinion. The Jury must draw their conclusions from the facts pointed out to them, in the course of the testimony, in considering the weight, and force of this evidence.

I have now instructed you gentlemen, as to the law that is to be applied by you to the present case. It is your right, and it is your duty, to decide for yourselves all disputed questions of fact, according to the evidence produced before you, but it is also my duty, and my right, to comment upon the evidence produced before you, in this case, at least for the purpose of presenting the facts adduced at the trial in their logical and orderly sequence, and this I now propose to do.

It is in the testimony and uncontradicted, that the writing in the body of the paper, purporting to be the last will and testament of William Lanehart, and dated the twenty-seventh day of February, 1905, and written on both sides of a sheet of foolscap paper, together with the writing in the attestation clause, on another sheet of paper, both of which are now detached from the other, are in the handwriting of the defendant William H. Skillman.

It is also in the testimony and uncontradicted, that this writing remained in the defendant's possession after its execution, until Mr. Lanehart's death, when it was offered for probate in the Surrogate's office of the County of Somerset, by the defendant, and by the Surrogate admitted to probate, as the last will and testament of William Lanehart.

If, therefore, the signature to this document was

forged, and the fact of that forgery was known to the defendant at the time he offered the will for probate, he is guilty of the counts in the indictment, charging him with uttering a forged document, and that, whether or not, he was the person who actually committed the forgery, and without any proof of any intent to defraud any particular person, for it is sufficient to prove that the defendant committed the act charged with an intent to defraud.

The first question therefore, for you to determine, Gentlemen of the Jury, is this—is the signature attached to the alleged will of William Lanehart, the proper signature of William Lanehart, or is it a forged signature? If you find, as a matter of fact, that the signature is a genuine signature, and so affixed to that will by William Lanehart, your duties, of course, are at an end, as you must find the defendant "Not Guilty."

If, however, you find that the signature is forged, then you must go further and ascertain who committed the crime of forgery, in forging that signature, and who, knowing it to be a forged document, uttered it.

On the question as to whether the signature is a genuine signature of William Lanehart or otherwise, there have been a number of witnesses produced, and examined on the part of the State. These witnesses include persons in various walks of life, and in various business professions and pursuits. They include a number of persons who testify that they knew William Lanehart, and are familiar with his signature, and its characteristics. These witnesses testified also that they have examined a number of signatures of Mr. Lanehart which have been sworn to as genuine, and which I shall hereafter refer to as "Standards," and have compared them with the disputed signature. All these witnesses, without exception, say from their knowledge of Mr. Lanehart's handwriting, and its characteristics, and from their comparison of the standards with the signature attached to the disputed document, that the latter is not the genuine signature of William Lanehart. The persons so testifying are people who have done business with Mr. Lanehart, who have

seen him sign checks, write letters, and who have received letters from him. Among them is a lady, Miss Laura Kellogg, who lived with Mr. Lanehart for many years, and was living with him at the time of his death, and was accustomed to keep his books of account, and who frequently saw him write, and in whose handwriting is the body of some of the checks which have been offered as standards. She says without any hesitation that it is her belief that this signature is not the signature of William Lanehart, although she admits that at a previous trial in the Orphans' Court, she had been under the impression that the signature was Mr. Lanehart's signature, and had so expressed her opinion in Court, and has given to you the reasons why she then expressed that opinion, and why she has since changed her mind on that subject.

Mr. James L. Griggs, a counsellor-of-law of this Court, who acted as attorney for Mr. Lanehart, at times in his lifetime, is another witness. All of these witnesses have seen Mr. Lanehart write his name, and they have compared the disputed signature with the standards, and all testify, without exception, that the signature attached to this will is not the genuine signature of William Lanehart.

In addition to these witnesses, are the experts, Albert L. Osborn and William J. Kinsley, who testified to having made a careful examination and analysis, both of the signature attached to the disputed document and of the signatures attached to the standards, and both of whom testify from such examination that in their opinion, the signature to the disputed document, namely, the will, is a forgery, written by the same hand that wrote the body of the will.

You have heard the reasons given by these last two witnesses, that I have referred to, for their opinions, and you must judge from those reasons, whether they are the proper basis for an opinion for you to form as to the defendant's guilt. Without reviewing in detail, all that has been said by these two expert witnesses, as to what forms the basis of their expressed opinions, it will be sufficient

to say that they point out to you divergencies in the formation of the characters, and the shape of the letters, in the standards containing the genuine signatures of William Lanehart, and in the disputed signature. They distinguish as to the position in which the pen was held in making the two signatures. In the genuine signature they say that the pen was held so that pressure could be exerted, and the shaping of the letters made from left to right. They point out divergencies in the slant, that is to say, in relation to the base line of the two signatures, the standards and the disputed; also to divergencies in the spacing, that is to say, in the relation of the letters to each other; also in the alignment, namely: in the relation of the letters to the base line, which divergencies they claim exist in the two classes of signatures. They point, in this connection, to the endorsement on two checks offered as standards, which contain William Lanehart's genuine signature, when the same was not made with the assistance of a line, as was the case with most of the standards, and explain to you that the signatures so written, without the aid of the line, present a straight base line, quite different from the signature in the disputed document. They show differences in the proportion of the letters "W" and "L," claiming that the "W" in the disputed document is too small in proportion to the "L," as compared with the same letters in the standard signatures. They also point out what they claim are significant divergencies in the pen lifts, in the two signatures, and show what they say are characteristics, which characteristics are lacking in the disputed signature. They point to the difference beween the small "m" and large "W," in the abbreviation of the first name of the signature of William Lanehart, showing that in the standard signatures the small "m," after the capital "W," is much higher up than the small "m" in the disputed signature. They also say that the capital "L" in the last name on the standards is well beyond the small "m" in the abbreviated first name—that is to the right—while in the disputed document, a large part of that "L" is underneath the small "m," that is to say, to the left. They also point

out to you a distinctive difference, as they claim, in the final flourish, after the letter "t," in the name "Lanehart." One of these witnesses told you that in his opinion there has been pencil marks made underneath the signature which pencil marks had been written over with ink, and that there are abrasions on the paper, which reveal themselves under the stereopticon microscope, and which are, in his judgment, evidence of erasure. It is also stated by this witness, that the writer of the disputed signature must have held his pen with the handle pointing over the right shoulder, while in the standard signatures, the pen was held away from the shoulder. You will remember that Miss Kellogg stated that the latter was the way in which her uncle signed his name. These witnesses say that the standard signatures indicate a fluent movement, while the signature in the disputed document, is stiff and artificial. In other words, that the standards are proper signatures, while the disputed is a drawing.

Gentlemen of the Jury, you must examine these various documents that have been offered in evidence, and make your own comparison between the various standards and the disputed signature, and conclude from that examination whether or not, the divergencies these witnesses have pointed out to you, in fact, exist or not, and from this and all the testimony in the case, you must determine whether the disputed signature is, or is not, the genuine signature of William Lanehart. In other words, whether the signature is forged or not.

If you find that the signature is not in fact the genuine signature of William Lanehart, but it is a counterfeit, and forged signature, then the next question for you to determine is, who committed this crime?

Here again you have evidence given both by the experts referred to, and others who have testified as to their familiarity with signatures and handwriting, such as bank cashiers, and other public officials, that the same person who wrote the signature of William Lanehart in the disputed will, wrote the body of the will. If you believe that testimony, gentlemen, then you must find the defendant guilty of forgery, as charged in the indictment.

as it is admitted that the body of the will and the attestation clause were written by the defendant in his own handwriting. He himslf is said to have testified to this fact, at a previous trial in the Orphans' Court, and no denial of this testimony has been made, and the defendant's own witnesses have testified to the fact that Mr. Skillman had written the body of the will, and the attestation clause.

You have heard the reasons given by these witnesses, that the same hand wrote the body of the will and the signature. Whether those reasons are sufficient to convince you, is for you and not the Court to decide. Upon that point, the responsibility rests upon you, gentlemen, and upon you alone. These facts have been pointed out to you by the experts in detail, and with much force. Particular emphasis you will recall, was laid, both on the peculiar character of the capital "L's" and the little "e's" in the standard signatures of the defendant, the body of the will and the disputed signature, and also on the peculiar pen lifts after the small "e," and also on the fact that the defendant and the writer of the disputed signature, held the end of the pen-holder towards his right shoulder.

I will leave with you now, gentlemen, the question on the subject of handwriting or the evidence given by the various witnesses and pass on to a review of the other evidence in the case, which you must carefully consider and which, not bearing upon opinions as to handwriting, but upon other facts and occurrences, must be considered by you, with great care, and be given such weight as in your judgment you believe the facts warrant.

The testimony shows that this will, called throughout the case the "Skillman will," was executed some time about the first of March, 1905, and that Mr. Lanehart, the alleged testator, died on the eleventh day of May, in the same year.

At the time this will was executed there was another will in existence, lying in Mr. Lanehart's box in the Hopewell National Bank. This will has been introduced in evidence, or permitted to be introduced in evidence,

for two purposes; first, as supplying a standard of the genuine signature of William Lanehart, and secondly, for the purpose of showing that a testamentary disposition of Mr. Lanehart was, at the time of the making of the Skillman will, in existence, and remained in existence up to the time, and after the date of the death of William Lanehart. It is not in vidence, as to its contents, Gentlemen of the Jury.

This will that I have referred to as remaining in the Hopewell National Bank, remained there during the entire period, from the date of the execution of the Skillman will, down to a date subsequent to the death of Mr. Lanehart, and the evidence shows that Mr. Lanehart on several occasions visited the bank and examined his papers, among them being this will.

It also appears that on at least one occasion the papers were brought to his house, in Blawenburg, and there examined by him, and remained in his possession for a short time.

It also appears that this will was not destroyed, cancelled, revoked, or in any way repudiated by Mr. Lanehart. That is a circumstance which it is proper for you, Gentlemen of the Jury, to consider in determining the issues involved in this case. Considering the situation and the circumstances, it is for you to say whether Mr. Lanehart would have been likely to have left that will uncancelled and unrevoked, in the possession of Mr. Race, when he a number of times had had it called to his attention in the examination of his papers, and had had it in his house, at Blawenburg, before his death.

There are some other things in the evidence that I desire to call your attention to, for your serious consideration. The will, that is alleged to be forged, makes Miss Kellogg and the defendant, executrix and executor. Miss Kellogg states that the defendant met her after the funeral, on her return from Amsterdam, N. Y., and showed her this will, and used this language, "That is uncle's signature, is it not?" And Miss Kellogg says, "I had not at that time, nor had anyone else, made any

question about the signature, I had made no comments on the contents of the will."

You must also consider among other things, and I am only speaking of those that occur to me, but you must of course consider and view the whole of the evidence, the statement of the defendant to Miss Kellogg, that he had received two dollars for drawing this will, also the language that the defendant used after Miss Kellogg had told him that she had observed the pencil marks on the will. The defendant said, "Could any one have gone into the Surrogate's office, and put those marks around the signature," and I said, "Yes, I think such a thing was possible." And he said, "Well, if any one did that, what could their object have been?"

I call your attention to this particularly in view of the claim of the defense, that there had been a pencil mark signature, prior to the tracing by William Lanehart, over that pencil mark with ink.

And then there is the conversation which Miss Kellogg says she had with the defendant about his daughter, Elva, in July, 1906. Miss Kellogg says that the defendant said to her, "My Elva is a very conscientious girl, and Mr. Clark had difficulty in making her say, she saw Uncle Will use the lead pencil the day the will was signed in signing his name."

And also to the conversation which Abraham P. Stryker says that he had with the defendant after Mr. Lanehart's death, in which the defendant, he says, showed him a document, and said, "Abe, this is what the Blawenburg people will raise the devil about, I have used all precautions in writing this will and I don't intend for all hell to change it."

I call your attention, gentlemen, to these statements by Miss Kellogg. First, because of what significance you may attach to the statements, because of the meaning you may deduce from the language used by the defendant, and also because that testimony has been given in the court room by Miss Kellogg, at the trial of this case, and it is not denied. The testimony that has been given by Mr. Stryker, is also not denied, and if this has to you any

significance, or any meaning, that is of importance in determining the issues in this case, the fact that the testimony was given in the presence of the defendant, and is not denied by him, may create in your mind an inference that the conversations related by Miss Kellogg, and by Mr. Stryker, as having taken place between the defendant and these two witnesses respectively, are true conversations.

In view of the statement that the peculiar relations between Mr. Lanehart and Mr. Skillman and Mr. Lanehart and the Skillman family, indicating a large degree of intimacy, create a presumption (which you may consider in determining this case, and may properly consider, I think) that the making of this will and the giving of this sum of money, by Mr. Lanehart to the defendant, was the natural outcome of the kindly feeling, trust and confidence that Mr. Lanehart had for the defendant; you may consider also whether the statement that Miss Kellogg made at this trial, that her uncle said, shortly before his death, and between January first and the date of his death, "There is no doubt that William H. Skillman burned his barns to get the insurance," and also his statement to John A. Hagaman, "that he did not think Skillman altogether straight in his way of doing business,"—indicate that degree of confidence and trust and faith, that is claimed existed.

The defense proceeds upon the fact, which they allege took place, that Mr. Lanehart in executing this will, first wrote his name in lead pencil, and then traced it in ink, (the tracing over the lead pencil signature, accounting for the peculiarity abnormal phenomena of the signature) claiming that it is in fact the genuine, but abnormal signature of William Lanehart. To establish the fact that the will was executed under these circumstances, and to explain why it was so executed, the defense relies upon a number of things. First, upon the testimony of witnesses who were present, it is claimed, at the time that the will was executed. Secondy, on pencil marks which it is claimed were then upon the will, and were shown at the time of the offering of the will for pro-

bate, and which the State's witnesses testified existed, and thirdly, upon the physical condition of Mr. Lanehart at the time of the will's execution—the last as explaining why the signature is written in this peculiar way, and lastly, to support and fortify the defense, there have been introduced in evidence declarations made by Mr. Lanehart to various persons, subsequent to the time of the execution of the will.

I will take these up in their order.

Edward Skillman, who is a son of the defendant, and lives with him, says, that he heard a conversation between Skillman and Mr. Lanehart, on the Skillman place, some time prior to the date of the execution of the will, which conversation was being conducted near the wagon-house, as I recall it, and in which Mr. Lanehart is alleged to have used this language: "Look here, Skillman, I want you to write that as I want it or not at all. I want you to thoroughly understand, that not one of my blood relatives will ever get a damned cent of my money." He says that subsequent to this conversation and some time about the first of March—none of the witnesses are clear as to the exact date, but it was subsequent to the 27th day of February, of course, that the will was executed in his presence, and in the presence of other witnesses. He gives this account of the execution of the will. He says, "He (referring to Mr. Lanehart) sat down at the desk, and my father handed him a pen, and he took the pen and transferred it to his left hand, and he reached around and took a lead pencil out of the desk, and wrote his name in lead pencil. Then he took the pen and wrote his name with the pen." He says, that on a further examination of the will, after his father had gone out, he saw the pencil marks on the will in the signature, but says that in some places they were covered with ink.

He also says that at the time of this conversation, that he heard his father have with Mr. Lanehart, his father had in his hand a piece of paper, upon which he had been writing, and he identified a piece of paper which was produced here, but not admitted in evidence,

as being a piece of paper that looked like the piece of paper he saw in his father's hand. You have heard his testimony in this case, and you have had read to you the testimony on the trial of a former trial on this indictment against the defendant, in which this witness testified somewhat more in detail, as to just what he saw in his father's hands. In that trial he said that it was an envelope, that was opened, and it had been used, and had been used by his father. It is for you, Gentlemen of the Jury, to compare the testimony on this subject, in this trial, with the testimony shown to have been given in the previous trial, and if you believe the testimony of the witness who testified that such evidence was given in the former trial, you may consider properly whether these contradictions, if they be contradictions, affect the credibility of the testimony of this witness.

The same witness, referring to a declaration subsequently made by Mr. Lanehart, says, that this language was used by him, and used by him after he had made this will. He said to Edward Skillman, so the witness says, "You see now, why I cut my Florida sister off, she is raising hell because of my living with Laura," and then he says he used profane language. And then said "it is not any of her business if I am living with a dozen women." This is a declaration among others, which I shall comment upon later, from which if it were made, it might be inferred by you that the testator meant to indicate that he had made the will which Edward Skillman had testified he had made, and for that purpose, it seems to me that it is important that you should consider what I might call the intrinsic evidence of the truthfulness of this specific statement, and consider what the obvious meaning of this language, if it were used, means, what significance the reference to Miss Kellogg had, coming from Mr. Lanehart, and whether there is anything in this case, that would justify you in believing, from the evidence that you have heard, and the witnesses that you have seen on the stand, that Mr. Lanehart would have made such a reference to Miss Kellogg.

Another witness, Elva Skillman, another daughter

says that she saw the will signed by Mr. Lanehart, that it was signed in her presence, and in the presence of the witnesses she says she saw him sign it first with pencil and then with ink, and that she noted the pencil marks while the will was lying on the desk after it was signed.

She also refers to the memorandum, the same memorandum that I have mentioned in referring to the testimony of Edward Skillman, which you remember was not introduced in evidence. She said that she saw a memorandum, describing it, the way she did, as a piece of paper, or an envelope, I do not recollect which, lying on her father's desk, after the execution of the will. She says that while she did not read this memorandum, she glanced at it, and saw some of the words on it, and you will recollect she repeated two or three words, and figures, which she said she saw, and therefore must have read on this piece of paper. You have had shown to you by the testimony of Mr. Hall, the stenographer in the former trial, that this witness swore at the previous trial, on this indictment, that she had not read the contents of the memorandum and did not know the contents. It is for you, Gentlemen of the Jury, if you believe Mr. Hall's testimony, to consider whether that contradiction, if it be a contradiction, in your mind, has any weight or importance, in affecting the credibility of this witness.

The son, Jeremiah Skillman, also testifies to the fact that he was present and saw Mr. Lanehart sign his name with pencil first, and then with the pen. These witnesses are all of them witnesses to the will, and so far, the children of the defendant, and you have a right to consider that relationship in weighing the credibility of their testimony on these subjects.

The other witness who was present, and who was a witness actually to the will, by writing his name to it, was a neighbor and friend of William H. Skillman. He testified that he saw William Lanehart sign his name, slowly, to the will. He does not testify that he saw him use a pencil, nor that he saw any pencil marks. You have heard the room described, you have heard who were

present at the meeting, you have perhaps some knowledge of the size and character of the room and the nature of the furniture therein, and it must be for you, Gentlemen of the Jury, to judge whether, if these three witnesses, the children of the defendant, saw Mr. Lanehart use a pencil and use it in the way it has been described, William H. Ely, if he actually saw Mr. Lanehart sign the will in ink, which is a question for you to determine, could have failed to have seen the use of the pencil—and in this connection I think I should call your attention to the condition of the sheets composing the will in its entirety, as the same is presented at this trial. The two sheets of the will are detached. The entire will is written in the handwriting of the defendant, and is on one sheet of paper, written on both sides. The signature is at the bottom of the second page, below the ruled lines on one side of the one sheet. The attestation clause, the clause which the witnesses sign, is also in the handwriting of the defendant, and is on a separate sheet of paper. And it is somewhat uncertain, from the evidence in the case, whether the witnesses to the will, have given you to understand that the will at the time that it was signed by Mr. Lanehart, was attached or detached, at any rate, there is no evidence I say, of there having been any connection between the two sheets of paper, other than by the use of a pin. Whether such a circumstance afforded an opportunity for the substitution of a sheet of a paper, containing the will part of the document, in place of that originally executed, if such a will were executed, is a question for you to consider.

The witnesses, who were present at the execution of the will, with the exception of Mr. Ely, all say that the pencil was used at the time the will was signed by Mr. Lanehart, and they all say, they saw pencil marks after the execution of the will, and they all say, including Mr. Ely, that the defendant was present at the time the will was signed. Under these circumstances, if you believe these facts to be true you may inquire whether the defendant would have been surprised at the pencil marks, at the Surrogate's office, when Miss Kellogg called his

attention to that fact if he had known that the signature was written in pencil,, or had seen it written in pencil, and known that the pencil marks were observed by his three children on the will.

Miss Kellogg also says, that in all her experience of her uncle's business matters and methods, she never knew him to sign an important document with a lead pencil, and then trace it over with ink.

There is another matter of intrinsic evidence that you may consider for what it is worth, and that is the relative relations of the abbreviation in the word "William" and the capital "L" on the standard signatures of "Lanehart," and on this disputed signature—and in considering the relation between these, you should compare the lead pencil signatures of Mr. Lanehart introduced in evidence by the defense and see whether or not it be true, as has been testified before you, that in the standards, both those in ink and in pencil, the small letter "m" is high up towards the top of the letter "W," with the large letter "L" removed from under the small "m" and to the right thereof; and whether in the disputed signature the small "m" is not connected with the capital "W" lower down, and whether the loop of the capital "L" does not come in towards the left under the small letter "m." If you find from an examination of these documents that such is the fact, it would be proper for you to inquire whether, if a pencil signature, a genuine pencil signature, by Mr. Lanehart, with the small "m" well up to the top of the capital "W" and the capital "L" well to the right, and not under the small "m," had been attached to the disputed document, a tracing in ink would have brought the small "m" lower down and over the loop of the capital "L."

A third element in the defence is the physical condition of William Lanehart, as explaining why he signed this will in lead pencil, in the way he did. Dr. Mosher was called and he says that Mr. Lanehart had heart trouble, and some stomach trouble, and that the result was that at certain times he had severe attacks which were attended by symptoms of stiffness and swelling of the members. The witnesses for the defense who say they were present

at the time the will was executed tell you that such symptoms of stiffness and swelling existed at the time the will was signed. Dr. Mosher says on oath, that he did not attend Mr. Lanehart between January 12th and April 1st, in a professional capacity, and he also says that whenever Mr. Lanehart had one of these attacks, he came to his office, or sent for the doctor to secure relief by his medical assistance. Laura Kellogg says that Mr. Lanehart did not have any of these attacks between February 27th and March 1st, and Mr. Whitlock says that he saw him about March first, and he was as well as usual. So this is the testimony which you may fairly consider, in order to determine whether or not, the statements by these witnesses, that Mr. Lanehart was in such a physical condition, that he would necessarily adopt the plan of using a pencil to make his signature, to such an important document, as the will, is true or not.

I now come lastly to the declarations, said to have been made by Mr. Lanehart, to various persons as to the contents of his will. On that subject I should say a word of caution. These declarations are competent for the purpose of establishing innocence in a criminal trial but are to be received and weighed with great care, because they are of a class of declaration which cannot in the nature of things, be denied, and you are left entirely to the statements of the persons relating such conversations, and such declarations, to determine whether or not, they are true. There is no one in existence, to come and deny them, and there is no way in which they can be denied or proved, except by the word of the person telling them, from the intrinsic evidence of their truth and veracity, or from the circumstances surrounding the declarations, at the time the declarations were made.

The first statement I call your attention to is, a statement said to have been made to a daughter of the defendant, Gertrude Skillman. She says that Mr. Lanehart had said to her, in a letter written after the execution of the will, that he had made his will, and cut his blood relatives off, and left her father some property. "He said he

had done as he said he would do, the Fall before, when I saw him."

This statement was made some time, according to Miss Skillman, in the year 1905. She said that she knew of a contest going on, shortly after the death of Mr. Lanehart, over the probate of Mr. Lanehart's will, and that she had made frequent visits to her family, and on these visits had talked over the question of Mr. Lanehart's will, and the contest about it, and that she had frequent correspondence with them, but did not tell any of her family, about the receipt of this letter, or about this conversation, until about the time of the previous trial on this indictment. She also says that the letter is lost she cannot produce it. She says, and it appears in the evidence, that she testified as to the contents of this lost letter at a previous trial, and when asked on this trial, as to where the letter was, and whether she had searched for it, she said, "No, she did not search for it," and she was then withdrawn from the stand, and afterwards recalled, and then stated that "she had made a search since the last session of the Court, and had searched her desk, and found that it was not there. Do you believe that story under those circumstances? It is for you, Gentlemen of the Jury, to determine, whether you believe the daughter of the defendant is telling the truth or not, in regard to this communication of Mr. Lanehart's to her.

Miss Opdyke, a neighbor of the defendant, and acquaintance, it appears says that some time in April, 1905, she had this conversation with Mr. Lanehart. Mr. Lanehart said to her, on seeing Mr. Skillman pass along the road, "there goes Friend Skillman. I think a whole lot of that man. He is white, all through. I would trust him further than any man I know. To show you how much I think of him, I have just got him to write my will, and when I die, he will get a large share of my property." She says that she never said anything to the defendant about this conversation, until the summer of this year, nor has she ever told this story to anyone else. She says she knew of the trial in the Orphans' Court, and of the

trial on the former indictment, and in spite of these trials, which she knew of, she did not tell of this occurrence and she gives her reason for it as being, because of her condition of health, she did not desire to go to Court, and testify, and therefore concealed this conversation from the world. This conversation occurred, according to Miss Opdyke's story, two years and eight months ago, in April, 1905, and she repeats the story with an exactness that indicates that her recital is intended to be a statement exactly of what Mr. Lanehart said. She says in fact, that she remembers the exact words he used, when he referred to the will, and Mr. Skillman's getting a large share of his property when he died. She shows that she remembers the exact words, that she used in her direct examination, by repeating them verbatim, without the slightest mistake, on cross-examination. I leave the question to you, Gentlemen of the Jury, with the comment that it is for you to determine whether you believe this story or not, and if you believe this story, do you believe it referred to the execution of the will that has been introduced in evidence in this case, for all these are facts which you are to consider.

I should perhaps, in this connection, call your attention to the fact that Miss Kellogg says that Miss Opdyke and Mr. Lanehart, were not at all intimate, and that Mr. Lanehart was a reticent man, and also to the fact that Miss Kellogg says that she knows of no letter written by Mr. Lanehart to Miss Skillman, or of any correspondence carried on between them. Of course, Gentlemen, that is negative testimony. The same comments may be made with regard to the conversation alleged to have taken place, between James N. Duffield, and Mr. Lanehart.

The defendant in this case has not offered himself, as a witness in his own behalf. He was not bound to do so. The law does not compel him to do so. In not testifying, he is exercising his indubitable right as a citizen of this State, and I do not say to you that in this case, his failure, standing by itself, to testify in his own behalf, can create any inference against him. Counsel has seen fit to explain to you why he could not testify in this case,

and has produced a physician who testifies before you, that Mr. Skillman could not have testified in this case, without great danger to his health. By placing that evidence in the case, the defendant has made it a matter for you to determine, if you regard it as relevant or bearing on the case, whether or not he is incapacitated in the way that has been testified to by Dr. Mosher, and whether or not, the reason given by Dr. Mosher, for the failure of his patient to testify in this case, is the real reason or not. You must judge from the doctor's testimony, and from what you have seen of the defendant in the court-room, as to what inference, if any, can be drawn from the testimony of Dr. Mosher.

In considering your verdict in this case, you will carefully consider the testimony of each witness, and in determining the weight of the testimony and the degree of credibility that you are to accord to each witness, you will consider their manner and conduct on the stand, their relationship, and degree of friendliness or the contrary, to the defendant, and the motives underlying their testimony, so far as they can be gathered from their actions, and testimony, as witnesses, and after that examination, come to a conclusion in this case, which will satisfy you and your consciences, that you have performed faithfully, in the sight of God and man, the duty which you have imposed upon yourselves, by taking your oaths as Jurors.

EXCEPTIONS TO CHARGE.

We desire to except to that part of your Honor's charge, touching upon the evidence in relation to the William Lanehart's signature upon the will. The evidence of the experts was, that this was traced, or at least there was a model signature, from which this signature was taken. Your Honor made no reference to that in your Honor's charge, nor said anything to indicate that the signature did not compare with any model signature.

Exception allowed and sealed accordingly.

(L.S.) THEO. B. BOORAEM,
Judge.

We also desire to except to your Honor's charge, as follows:

"Considering the situation and the circumstances, it " is for you to say whether Mr. Lanehart would have " been likely to have left that will uncancelled and un- " revoked, in the possession of Mr. Race, when he a " number of times, had had it called to his attention, in " the examination of his papers, and had had it in his " house, at Blawenburg, before his death."

Exception allowed and sealed accordingly.

(L.S.) THEO. B. BOORAEM,
Judge.

We also desire to except to that portion of your Honor's charge, as follows:

" You must also consider among other things, (and " I am only speaking of those that occur to me, but you

" must of course consider, and view the whole of the evi-
" dence) the statement of the defendant to Miss Kellogg,
" that he had received two dollars for drawing this will,
" also the language that the defendant used after Miss
" Kellogg had told him that she had observed the pencil
" marks on the will. The defendant said 'could anyone
" have gone into the Surrogate's office, and put those
" marks around the signature,' and I said, 'Yes, I think
" such a thing possible.' And he said, 'Well, if anyone
" did that what could their object have been?"

" I call your attention to this particularly, in view of
" the claim of the defense, that there had been a pencil
" mark signature, prior to the tracing by William Lane-
" hart, over that pencil mark with ink."

" And then there is the conversation which Miss Kel-
" logg says she had with the defendant, about his daugh-
" ter, Elva, in July, 1906. Miss Kellogg says that the
"defendant said to her, 'My Elva is a very conscientious
" girl, and Mr. Clark had difficulty in making her say,
" she saw Uncle Will use the lead pencil the day the will
" was signed, in signing his name!"

" And also to the conversation which Abraham P.
" Stryker says that he had with the defendant, after Mr.
" Lanehart's death, in which the defendant, he says, show-
" ed him a document, and said, 'Abe, this is what the
" Blawenburg people will raise the Devil about, I have
" used all precautions in writing this will, and I don't
" intend for all Hell to change it.' "

" I call your attention, Gentlemen, to these statements
" by Miss Kellogg. First, because of what significance
" you may attach to the statements, because of the mean-
" ing you may deduce from the language used by the de-
" fendant, and also because that testimony has been given
" in the court-room by Miss Kellogg, at the trial of this
" case, and it is not denied. The testimony that has been
" given by Mr. Stryker, is also not denied, and if this has
" to you any significance, or any meaning, that is of im-
" portance in determining the issues in this case, the fact
" that the testimony was given in the presence of the
" defendant, and is not denied by him, may create in your

"mind an inference that the conversations related by "Miss Kellogg, and by Mr. Stryker, as having taken "place, between the defendant and these two witnesses, "respectively, are true conversations."

Exception allowed and sealed accordingly.

(L.S.) THEO. B. BOORAEM,
Judge.

We also desire to except to that portion of your Honor's charge which is as follows:

"In view of the statement that the peculiar relations "between Mr. Lanehart and Mr. Skillman, and Mr. "Lanehart and the Skillman family, indicating a large "degree of intimacy, create a presumption (which you "may consider in determining this case, and may prop-"erly consider I think); that the making of this will "and the giving of this sum of money, by Mr. Lane-"hart to the defendant, was the natural outcome of the "kindly feeling, trust and confidence, that Mr. Lanehart "had had for the defendant; you may consider also "whether the statement that Miss Kellogg made at this "trial, that her uncle said, shortly before his death, and "between January first and the date of his death, 'There "is no doubt that William H. Skillman burned his barns "to get the insurance,' and also his statement to John A. "Hagaman, 'that he did not think Skillman altogether "straight in his way of doing business'—indicate that "degree of confidence and trust and faith, that is claim-"ed existed."

Particularly calling your Honor's attention to the fact that no indication was given by your Honor to the jury that these statements could not be contradicted by evidence of any living person, notwithstanding, similar comments were made by your Honor as to certain of the de-

fendant's witnesses, as for instance Miss Opdyke, and others.

Exception allowed and sealed accordingly.

(L.S.) THEO. B. BOORAEM,
Judge.

We also take an exception to your Honor's charge as follows:

"He (Edward Skillman) also says that at the time of "this conversation, that he heard his father have with "Mr. Lanehart, his father had in his hand a piece of "paper upon which he had been writing, and "he identified a piece of paper which was pro- "duced here, but not admitted in evidence, as "being a piece of paper that looked like the piece of "paper he saw in his father's hand. You have heard "his testimony in this case, and you have had read "to you the testimony on the trial of a former trial on "this indictment against the defendant, in which this "witness testified somewhat more in detail, as to just "what he saw in his father's hands. In that trial he said "that it was an envelope, that was opened, and it had "been used, and had been used by his father. It is for "you, Gentlemen of the Jury, to compare the testimony "on this subject, in this trial with the testimony shown "to have been given in the previous trial, and if you be- "lieve the testimony of the witness who testified that such "evidence was given in the former trial, you may con- "sider properly whether these contradictions, if they be "contradictions, affect the credibility of the testimony "of this witness."

Exception allowed and sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

We also desire to except, on the ground that your Honor's comments attached to the statement made by Edward Skillman are unwarranted, to your Honor's charge as follows:

"Edward Skillman, who is a son of the defendant, and "lives with him says, that he heard a conversation be- "tween Skillman and Mr. Lanehart, on the Skillman "place, some time prior to the date of the execution of "the will, which conversation was being conducted near "the wagon-house, as I recall it, and in which Mr. Lane- "hart is alleged to have used this language: 'Look "here, Skillman, I want you to write that as I want it or "not at all. I want you to thoroughly understand, that "not one of my blood relatives will ever get a damned "cent of my money.' He says that subsequent to this "conversation and some time about the first of March— "none of the witnesses are clear as to the exact date, but "it was subsequent to the 27th day of February, of "course, that the will was executed in his presence, and in "the presence of other witnesses. He gives this account "of the execution of the will. He says, 'he,—referring "to Mr. Lanehart,—sat down at the desk, and my father "handed him a pen, and he took the pen, and transferred "it to his left hand and he reached around and took a "lead pencil out of the desk, and wrote his name in lead "pencil. Then he took the pen and wrote his name with "the pen.' He says, that on a further examination of "the will, after his father had gone out, he saw the pencil "marks on the will in the signature, but says that in some "places they were covered with ink."

Exception allowed and sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

We also desire an exception to your Honor's remarks, made as to the evidence of Elva Skillman, in relation to the memorandum, on the ground that there is nothing in

the evidence to show that Miss Skillman, may or may not have read a word or two of that memorandum. She said she did not read it, and I think the fair way to have presented it to the Jury, would have been to leave it by saying she did not read the whole of it, that she only read a word or two of it.

Your Honor's language is as follows:

"She also refers to the memorandum, the same memo-
10 "randum that I have mentioned in referring to the testi-
"mony of Edward Skillman which you remember was
"not introduced in evidence. She said that she saw a
"memorandum, describing it, the way she did, as a piece
"of paper, or an envelope, I do not recollect which, lying
"on her father's desk, after the execution of the will.
"She says that while she did not read this memorandum,
"she glanced at it, and saw some of the words on it,
"and you will recollect she repeated two or three words,
"and figures, which she said she saw, and therefore must
20 "have read on this piece of paper. You have had shown
"to you by the testimony of Mr. Hall, the stenographer
"in the former trial, that this witness swore at the pre-
"vious trial, on this indictment, that she had not read
"the contents of the memorandum, and did not know the
"contents. It is for you, Gentlemen of the Jury, if you
"believe Mr. Hall's testimony, to consider whether that
"contradiction, if it be a contradiction, in your mind,
"has any weight or importance, in affecting the credibil-
"ity of this witness."

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Exception allowed and sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

We also desire to except to your Honor's statement in the same connection that the memorandum was not introduced in evidence.

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Exception allowed and sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

We also desire to except to your Honor's charge wherein your Honor says: "It must be for you, Gentle-
" men of the Jury, to judge whether, if these three wit-
" nesses, the children of the defendant, saw Mr. Lanehart
" use a pencil and use it in the way it has been described,
" William H. Ely, if he actually saw Mr. Lanehart sign
" the will in ink, which is a question for you to determine,
" could have failed to have seen the use of the pencil."
The fact being that there is no evidence to show that Mr. Ely did or did not see the pencil or did or did not see the pencil being used.

Exception allowed and sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

We also desire to except to that part of your Honor's charge where the attention of the jury was called to the conversation between Mr. Skillman and Miss Kellogg wherein your Honor says:

" Under these circumstances, if you believe these facts
" to be true, you may inquire whether the defendant
" would have been surprised at the pencil marks, at the
" Surrogate's office, when Miss Kellogg called his atten-
" tion to that fact, if he had known that the signature was
" written in pencil, or had seen it written in pencil, and
" known that the pencil marks were observed by his three
" children on the will."

The fact being that there is no evidence to show anywhere either in this or any other trial that Mr. Skillman ever said that he saw the pencil used. On the contrary,

he says that he did not see such a thing on the former trials and in fact does not remember anything about it.

Exception allowed and sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

We also desire an exception to that part of your Honor's charge wherein your Honor refers to the testimony of Dr. Mosher.

" Dr. Mosher says on oath, that he did not attend Mr. " Lanehart between January 12th, and April 1st, in a pro- " fessional capacity, and he also says that whenever Mr. " Lanehart had one of these attacks, he came to his office, " or sent for the doctor to secure relief by his medical " assistance."

Exception allowed and sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

We also desire to take an exception that your Honor just prior to commenting upon the evidence of Miss Gertrude Skillman and Miss Opdyke cautioned the jury with reference to their statements in the following language:

" I now come lastly to the declarations, said to have " been made by Mr. Lanehart, to various persons as to " the contents of his will. On that subject I should say " a word of caution. These declarations are competent " for the purpose of establishing innocence in a criminal " trial but are to be received and weighed with great " care, because they are of a class of declaration which " cannot in the nature of things, be denied, and you are " left entirely to the statements of the persons relating " such conversations, and such declarations, to determine " whether or not, they are true. There is no one in exis-

" tence, to come and deny them, and there is no way in " which they can be denied or proved, except by the word " of the person telling them, from the intrinsic evidence " of their truth and veracity, or from the circumstances " surrounding the declarations, at the time the declara- " tions were made."

Exception allowed and sealed accordingly.

(L.S.) THEO. B. BOORAEM,
Judge.

We also desire an exception to that part of your Honor's charge in which your Honor refers to the relations existing between Mr. Lanehart and Miss Opdyke as testified to by Miss Kellogg, our point being that such evidence was illegal and therefore incompetent. Your Honor's charge is as follows:

" I should perhaps, in this connection, call your atten- " tion to the fact that Miss Kellogg says that Miss Op- " dyke and Mr. Lanehart were not at all intimate, and " that Mr. Lanehart was a reticent man, and also to the " fact that Miss Kellogg says that she knows of no letter " written by Mr. Lanehart to Miss Skillman, or of any " correspondence carried on between them. Of course, " Gentlemen, that is negative testimony. The same com- " ments may be made with regard to the conversation " alleged to have taken place, between James N. Duffield " and Mr. Lanehart."

Exception allowed and sealed accordingly.

(L.S.) THEO. B. BOORAEM,
Judge.

We further desire to except to your Honor's charge as last quoted in so far as it reflects upon the testimony of Mr. Duffield.

Exception allowed and sealed accordingly.

(L.S.) THEO. B. BOORAEM,
Judge.

We also desire to except to your Honor's remarks in relation to the failure of William H. Skillman's going on the stand.

"The defendant in this case has not offered himself "as a witness in his own behalf. He was not bound to "do so. The law does not compel him to do so. In not "testifying, he is exercising his indubitable right as a "citizen of this State, and I do not say to you that in this "case, his failure, standing by itself, to testify in his own "behalf, can create any inference against him. "Coun-"sel has seen fit to explain to you why he could not tes-"tify in this case, and has produced a physician who testi-"fies before you, that Mr. Skillman could not have testi-"fied in this case, without great danger to his health. "By placing that evidence in the case, the defendant has "made it a matter for you to determine, if you regard it "as relevant or bearing on the case, whether or not he is "incapacitated in the way that has been testified to by "Dr. Mosher, and whether or not, the reason given by "Dr. Mosher, for the failure of his patient to testify in "this case, is the real reason or not. You must judge "from the doctor's testimony, and from what you have "seen of the defendant in the court-room, as to what "inference, if any, can be drawn from the testimony of "Dr. Mosher."

Exception allowed and sealed accordingly.

(L.S.) THEO. B. BOORAEM,
Judge.

We further desire an exception to that part of your Honor's charge wherein reference is made to the statements of witnesses testifying as to the signature on the

ground that the charge was misleading in that it stated the evidence of the witnesses to be that the signature presented was not the signature of Mr. Lanehart, wherein in fact they simply gave it as their opinion that the signature presented was not the signature of Mr. Lanehart. The language of your Honor's charge in that respect is as follows:

"On the question as to whether the signature is a genuine signature, of William Lanehart or otherwise, there have been a number of witnesses produced, and examined on the part of the State. These witnesses include persons in various walks of life, and in various business professions and pursuits. They include a number of persons who testify that they knew William Lanehart, and are familiar with his signature, and its characteristics. These witnesses testified also that they have exam ined a number of signatures of Mr. Lanehart which have been sworn to as genuine, and which I shall hereafter refer to as "Standards," and have compared them with the disputed signature. All these witnesses, without exception, say from their knowledge of Mr. Lanehart's handwriting, and its characteristics, and from their comparison of the standards with the signature attached to the disputed document, that the later is not the genuine signature of William Lanehart. The persons so testifying are people who have done business with Mr. Lanehart; who have seen him sign checks, write letters, and who have received letters from him. Among them is a lady, Miss Laura Kellogg, who lived with Mr. Lanehart for many years, and was living with him at the time of his death, and was accustomed to keep his books of account, and who frequently saw him write, and in whose handwriting is the body of some of the checks which have been offered as Standards. She says without any hesitation, that it is her belief that this signature is not the signature of William Lanehart, although she admits that at a previous trial in the Orphans' Court, she had been under the impression that the signature was Mr. Lanehart's signature, and had so

" expressed her opinion in Court, and has given to you " the reasons why she then expressed that opinion, and " why she has since changed her mind on that subject."

Exception allowed and sealed accordingly.

(L.S.) THEO. B. BOORAEM,
Judge.

We desire also to except to your Honor's charge, wherein your Honor failed to charge as requested, "The fact that the defendant did not testify cannot be considered as evidence against him."

Exception allowed and sealed accordingly.

(L.S.) THEO. B. BOORAEM,
Judge.

We now desire to take a general exception to the whole of your Honor's charge.

Exception allowed and sealed accordingly.

(L.S.) THEO. B. BOORAEM,
Judge.

EXCEPTIONS TO REFUSALS TO CHARGE.

We except to your Honor's charge in that your Honor did not charge in the language of our request as follows:

I. While it has appeared from some of the evidence produced to the jury, in the trial of this indictment that a civil trial has been had in another Court relative to the validity of the alleged Will of William Lanehart, which the defendant William H. Skillman is in this indictment charged with forging, yet the jury in this case are not to consider in any manner the result of such other trial in any other Court for the reason that in such other trial different rules of evidence necessarily prevailed, other and different evidence was received and an entirely different question was at issue.

Exception allowed and sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

We except to your Honor's charge in that your Honor did not charge in the language of our request as follows:

II. In all criminal trials there is always a presumption of the innocence of the defendant, which is strong in proportion to the heinousness of the offense.

Exception allowed and sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

We except to your Honor's charge in that your Honor did not charge in the language of our request as follows:

III. In order to justify a verdict of guilty in this case the jury must be satisfied from the evidence, and that beyond any reasonable doubt, not only that William Lanehart did not write the disputed signature, but that William H. Skillman, the defendant, did write it.

Exception allowed and sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

We except to your Honor's charge in that your Honor did not charge in the language of our request, as follows:

IV. In order to justify a verdict of guilty in this case it is required that the proof produced in support of the charge shall amount not merely to a preponderance of evidence as in trials not criminal in nature, but shall satisfy the mind of the juror that beyond any reasonable doubt the defendant is guilty.

Exception allowed and sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

We except to your Honor's charge in that your Honor did not charge in the language of our request, as follows:

V. The defendant is not bound to satisfy the jury that he is not guilty for the law presumes him to be innocent and he is entitled to the benefit of every reasonable doubt. If it were a fact that a Probate Court had refused to admit this Will to probate, that fact could be in no wise allowed to weigh against the defendant in this trial.

Exception allowed and sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

We except to your Honor's charge in that your Honor did not charge in the language of our request as follows:

VI. The evidence that William Lanehart did not write the disputed signature is largely if not wholly circumstantial while some of the evidence given that he did write it is direct and positive and in order to reach a verdict of guilty the jury must be satisfied beyond a reasonable doubt from the evidence produced before them at this trial that the witnesses who have testified that they saw William Lanehart write the disputed signature, did not tell the truth.

Exception allowed and sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

We except to your Honor's charge in that your Honor did not charge in the language of our request as follows:

VII. In weighing evidence the rule is elementary that conflicting testimony must be reconciled without imputing wilful perjury to any witness unless that conclusion is unavoidable.

Exception allowed and sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

We except to your Honor's charge in that your Honor did not charge in the language of our request as follows:

VIII. If witnesses come unimpeached in veracity and

general integrity, if they depose with characteristics of fairness in their particular narrations, the fact must be received or there is an end of all judicial enquiry, and the fact that a witness may be interested does not deprive his testimony of the probative force demanded by the rule.

Exception allowed and sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

We except to your Honor's charge in that your Honor did not charge in the language of our request as follows:

IX. The opinion of experts, based on comparison alone, is evidence of low degree and has been regarded by eminent judges much too uncertain, even when only slightly opposed, to afford a safe foundation for a judicial decision.

Exception allowed and sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

We except to your Honor's charge in that your Honor did not charge in the language of our request as follows:

X. The testimony even of a deeply interested party, if prima facie credible, must in virtue of its intrinsic force outweigh any amount of counterproof consisting of opinion merely.

Exception allowed and sealed accordingly.

(L.S.) THEODORE B. BOORAEM,
Judge.

We except to your Honor's charge in that your Honor did not charge in the language of our request as follows:

XI. The opinion of experts, however skillful they may be, are weaker in degree of certainty than the direct evidence of witnesses who testify that they saw the signature written.

Exception allowed and sealed accordingly.

(L. S.) THEODORE B. BOORAEM.
Judge.

We except to your Honor's charge in that your Honor did not charge in the language of our request as follows:

XII. The testimony of a witness who speaks from his own personal knowledge is more satisfactory than the testimony of another who speaks of matters which lie in opinion only. If a witness swears that he was present and saw William Lanehart sign the disputed document, his evidence ought to outweigh the statement of another (both witnesses being equally credible) who testifies that he is acquainted with the signature or handwriting of the alleged signer and that he does not believe the signature was genuine.

Exception allowed and sealed accordingly.

(L. S.) THEODORE B. BOORAEM.
Judge.

We except to your Honor's charge in that your Honor did not charge in the language of our request as follows:

XIII. A signature admittedly not an average signature, written under unusual circumstances, with the writer physically incapable of writing a normal signature, renders the opinion of experts of little value touching the same.

Exception allowed and sealed accordingly.

(L. S.) THEODORE B. BOORAEM.
Judge.

We except to your Honor's charge in that your Honor did not charge in the language of our request as follows:

XIV. Opinion evidence not based on invariable operation of natural laws or on mathematical calculation is subject to liability of error; on the other hand there is no possibility of error when a witness testifies that he has not committed forgery.

Exception allowed and sealed accordingly.

(L. S.) THEODORE B. BOORAEM.
Judge.

We except to your Honor's charge in that your Honor did not charge in the language of our request as follows:

XV. A witness testifying to an opinion is more likely to be mistaken than a witness who testifies to a fact.

Exception allowed and sealed accordingly.

(L. S.) THEODORE B. BOORAEM.
Judge.

We except to your Honor's charge in that your Honor did not charge in the language of our request as follows:

XVI. Suspicious circumstances attending the execution or production of the alleged will are not in themselves sufficient to convict the defendant.

Exception allowed and sealed accordingly.

(L. S.) THEODORE B. BOORAEM.
Judge.

We except to your Honor's charge in that your Honor did not charge in the language of our request as follows:

XVII. Mere suspicious circumstances surrounding or attending the production or execution of the disputed document, will not over come the presumption that the defendant is innocent, nor will any amount of evidence of mere suspicious circumstances shift the burden of proof from the state to the defendant.

Exception allowed and sealed accordingly.

(L. S.) THEODORE B. BOORAEM.
Judge.

We except to your Honor's charge in that your Honor did not charge in the language of our request as follows:

XVIII. The verdict rendered here will not establish or set aside the will. No legacies mentioned in the will, would be paid upon a verdict of not guilty, nor refused payment if the verdict were guilty.

Exception allowed and sealed accordingly.

(L. S.) THEODORE B. BOORAEM.
Judge.

We except to your Honor's charge in that your Honor did not charge in the language of our request as follows:

XIX. The fact that the defendant did not testify, cannot be considered as evidence against him.

Exception allowed and sealed accordingly.

(L. S.) THEODORE B. BOORAEM.
Judge.

We except to your Honor's charge in that your Honor did not charge in the language of our request as follows:

XX. The issue of fact in this case involves a charge of forgery. In such cases there is always a presumption of innocence, which is strong in proportion to the heinousness of the offence.

Continental Ins. Co. vs. Jachinchen.
110 Ind. 59, 63.
10 N. E. Rep. 636.
59 Am. Rep. 194 quoted in.
17 Cyc. P. 76, note 35.

Exception allowed and sealed accordingly.

(L. S.) THEODORE B. BOORAEM.
Judge.

We except to your Honor's charge in that your Honor did not charge in the language of our request as follows:

XXI. The value of expert evidence in respect to hand writing depends upon the following among other considerations.

The manner of the expert on the witness stand.

Does he impress the jury as a fair, unbiased witness, giving fair answers to all questions propounded by both sides, or does he show a bias or prejudice in favor of the side for which he is testifying?

Does his evidence partake of the part of an advocate; going into a lengthy exposition when not required in order to answer the questions?

Does his evidence impress the jury with fairness?

Does the evidence he gives or matters he refers to carry an abiding conviction that he is right as against the positive evidence of others who say they saw this signature written; identifying it as the same signature which William Lanehart attached to the paper now before the Court?

If the opinion evidence against the signature is to overcome the positive statements of the witnesses who say they saw it written and now identify it as the same then all of these witnesses must be guilty of perjury; their stories must be wholly manufactured.

Before the jury arrives at such conclusions, it is proper to say: to them that the rule is,

That in matters of opinion, expert witnesses are to be distrusted.

In matters of fact to be credited: the degree of credit being governed by circumstances, namely the probability of the transaction, whether the evidence is contradicted or not, and especially the tone in which the evidence is given.

It has been held that "Hardly any weight is to be given to the evidence of what are called scientific witnesses; they come with a bias on their minds to support the cause in which they are embarked."

Tracy Peerage C1. 154, 190. If an expert shows by his manner and tone that he "comes on the stand to swear in favor of the party calling him" his evidence should be scrutinzed closely before the evidence of those who say they saw the signature written is allowed to be outweighed.

Opinion evidence, based on employment, called to support the side employing it, rendered in a manner showing bias, no difference how honest the man giving the opinion may be, should be looked upon with a degree of disfavor when combatted by those who swear positively from their own eyesight to have been witnesses to the transaction which the opinion evidence seeks to overcome.

The evidence in support of the genuineness of the signature is given to those who say they saw it written.

That a lead pencil was first used, then traced in ink.

That is was observed by some of these witnesses closely immediately after Mr. Lanehart left the house.

That some dispute or question touching the lead pencil marks was raised. That they now identify this paper

and this signature as the one written by Mr. Lanehart that day.

Do they tell the truth?

Before the jury can say their evidence is untrue, there must be evidence which warrants such disbelief.

If a witness testifying in support of a disputed signature is plainly guilty of perjury unless his testimony is true, the argument in favor of his testimony as against the testimony of witnesses who may be honestly mistaken, is the most powerful argument that can be presented to a Court or jury.

McGregor vs. Topham, 3 H. L. 132.

Statements, supporting these witnesses who testify to the genuineness of the writing, made by Mr. Lanehart to others than the witnesses to the will, have been admitted in evidence on this trial. Such statements would not have been admissible in the Orphans' Court proceeding and the fact that such proof was not presented in that Court should have no bearing with the jury in this case. This is a case of another character and a different rule obtains relating to the admission of evidence.

Any statement made by Mr. Lanehart to any one after this paper was alleged to have been executed, which would go to show that he had made such a paper is proper evidence for the purpose of showing that the writing alleged to be a forgery was not a forgery but a writing which he practically admitted to have made.

Miss Opdyke says she had a conversation with Lanehart a few weeks before his death; that the defendant happened to pass by; that Mr. Lanehart then said that Mr. Skillman was his friend, that he thought very much of him that he'd trust him, and to show how much he thought of him he just got him to write his will and when he died he (Skillman) would get a large part of his estate.

This evidence if it had been known and offered in the Orphans' Court proceeding could not have been legally admitted.

Here it is competent.

Did Mr. Lanehart say this to the witness? She says

he did—that she did not tell it until last summer after the preceding trial of this case—the reason she did not tell it was she had heart trouble and did not want to get mixed up with the case.

You have seen her upon the witness stand, observe her manner and heard her upon examination and cross-examination.

She was told this story by Mr. Lanehart or she was not.

If she was it is ture.

If not then it must be false.

What motive would impel this woman to come here and tell this story if untrue?

This you have a right to consider in weighing her evidence. If you can find nothing to show she has an interest in the case, nothing to show a purpose other than tell the truth, it will be for you to say how far you will be warranted in disbelieveng it.

Her evidence if believed corroborates the evidence of the witnesses who say they saw Mr. Lanehart sign this paper in the following particulars.

1. Skillman did write a will for Lanehart.

2. Lanehart did in that will give Skillman a large portion of his estate.

3. The will was prepared only a short time before this conversation.

There is another character of evidence presented here testifying to the hand writing of Mr. Lanehart by their knowledge of it during his life time and comparing such hand writing with the signature to the will.

Another class not having any knowledge of his hand writing during his life time but being accustomed to pass upon hand writing by comparing the standard signature with the signature to the alleged will and thus expressing an opinion derived upon comparison.

You have heard their evidence. Only one witness appears to have had any experience in hand writing traced on a pencil signature.

He thinks it not the same. It is his opinion by comparison only.

He thinks the characteristics not the same.

The expert thinks the person who wrote the signature to the will had a model signature of William Lanehart before him at the time he tried to simulate it.

Now how far will a jury be justified in accepting the opinion of this witness against the positive statements of those who say they saw Mr. Lanehart write it?

This is for you to say—would it be safe to follow the opinion of this witness against the positive testimony of those who say they saw the signature written by Lanehart, remembering too in that connection the statement made by Miss Opdyke in regard to what Mr. Lanehart told her which in a manner corroborates their story.

If the jury believe this witness is honest in his opinion, that is not enough; they must go further and say that this opinion overcomes the positive statements of the other witnesses before a conviction could follow upon this evidence.

The other class of evidence, either having knowledge of the hand writing of Mr. Lanehart in his life time or obtaining knowledge by comparison, consists of witnesses who have no experience in writing under the circumstances here alleged by the State—viz. first in pencil, then tracing in ink.

Having had no experience; of how much weight should their testimony be given against the positive statements of those present and saw the writing done.

The jury must say whether they think it would be safe to convict a defendant upon the evidence.

If the jury believe the paper was signed by William Lanehart they must find a verdict for the defendant.

If the jury are in doubt whether the paper was signed by William Lanehart they must find the defendant not guilty.

Many of the expert witnesses on hand writing called by the State, particularly the bank employees, testified that they had had no experience in judging the genuineness of pen signatures written over a pencil original. It has been testified by the two main experts for the State that the signature in question is a tracing over a pencil

writing; it has also been testified by witnesses for the defence that William Lanehart first wrote his name in pencil and then overwrote the pencil signature with ink. If you find the signature was first written in pencil and then in ink over the pencil marks, you will need to discard all the expert evidence of such of the expert witnesses as had had no experience in judging signatures of that kind.

Exception allowed and sealed accordingly.
(L. S.) THEODORE B. BOORAEM,
Judge.

New Jersey Supreme Court.

THE STATE OF NEW JERSEY,
Defendant in Error,
vs.
WILLIAM H. SKILLMAN,
Plaintiff in Error.

In Error.

Joinder in Error.

And hereupon afterwards, to wit: On the sixth day of February, in the year of our Lord one thousand nine hundred and eight, the said The State of New Jersey by John F. Reger, Prosecutor of the Pleas of the County of Somerset, attorney for The State of New Jersey, comes into Court and says that there is no error in the record and proceedings aforesaid, or in giving the judgment aforesaid, and prays here, that the Court here, may proceed to examine as well the record and proceedings aforesaid, as the matter aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed, etc.

JOHN F. REGER,
Attorney for and of Counsel with Defendant in Error.

ASSIGNMENT OF ERRORS.

And now at this day the plaintiff in error assigns the following causes of error.

I. Because the Supreme Court sustained the verdict and judgment of the Somerset County Court of Quarter Sessions, WHEREAS, the same is in error and should be set aside.

II. Because the Court permitted the following questions to be answered with reference to the so-called Race Will.

ORVILLE B. ACKERLY:

(a). Q. "When did you write that will for him?" (P. 27).

(b). Q. "I'll show you a paper, and ask you to examine it, and tell us whether or not, that is the paper you then wrote for him?" (P. 28).

(c). Q. "What is the date of that will?" (P. 28).

(d). Q. "Kindly state to the court the circumstances, under which the signature was made by William Lanehart?" (P. 30).

JOHN N. RACE:

(e). Q. "What papers did you have in your possession belonging to Mr. Lanehart at the time of his death?" (P. 78).

(f). Q. "And when was that will and those papers placed in your possession? I am speaking of the will which was in your possession at the time of his death, more particularly?" (P. 79).

(g). Q. "After the will was placed in your possession you say, two or three years prior to his death, how long did it remain in your possession?" (P. 80).

(h). Q. "What was done with the will which was in your custody after Mr. Lanehart's death?" (P. 83).

(i). Q. "I show you a paper heretofore offered in evidence and marked Exhibit P. 5, which is endorsed, 'Last will and testament of William Lanehart,' and dated November 28, 1902, and ask you to look at that, and tell us whether that is the paper which was in your possession at the time of Mr. Lanehart's death—is that the paper?" (P. 84).

(j). Q. "What was your connection with the will which has just been shown to you?" (P. 86).

LAURA KELLOGG:

(k) Q. "Did you know of any will of Mr. Lanehart's in existence at the time of his death?" (P. 312).

(l). Q. "Under what circumstances did you see them?" (P. 313).

III. Because the Court refused to strike from the record the following with reference to the Race Will:

ORVILLE B. ACKERLY:

(a). Q. "What was done with the document, after he had signed it?"

A. "We signed as witnesses and he took it away with him." (P. 32).

(b). The answer made by John N. Race, "No further than I was one of the executors," given in answer to the question, "What was your connection with the will which has just been shown to you?" (P. 87).

IV. First—Because the Court allowed in evidence

a series of photographs marked in groups (the inclusive numbers being duplicated) as follows:

P. 69 to P. 81 inclusive (Page 123).
P. 82 to P. 92 inclusive (P. 123).
P. 93 to P. 102 inclusive (P. 124).
P. 103 to P. 107 inclusive (P. 125).

the said photographs being reproductions of the disputed will, the disputed signature, the attestation clause of the disputed will and of standard signatures, the said reproductions being of the same size as the originals, and the originals being already in evidence.

Second—Because the Court allowed in evidence a series of photographs marked in groups (the inclusive numbers being duplicates) as follows:

P. 108 to P. 112 inclusive (Page 125).
P. 113 to P. 116 inclusive (P. 126).
P. 117 to P. 120 inclusive (P. 127).
P. 121 to P. 125 inclusive (P. 128).
P. 126 to P. 129 inclusive (P. 128).

the said photographs being reproductions of various individual letters in the disputed signature, enlarged twenty-four diameters, there being no similar photographs of a standard signature or any portion thereof introduced for the purpose of comparison.

V. Because the Court made the following rulings during the testimony of Miss Mary M. Steele on her cross-examination as to certain statements which she testified in her direct testimony had been made by William H. Skillman in the Orphans' Court proceedings.

a. The Court allowed the following question to be interrupted and did not allow the same to be answered:

> Q. And then did he testify as follows: "Q. Now what were the points, the directions which he gave you, of which you made a memorandum?"
>
> "A. That was in that document I showed you here this morning, I still have it in my pocket.
>
> "Q. That is what I am now asking you for?
>
> "A. Do you want the document?
>
> "Q. Give your statement as to what his directions were?

"A. As to what I put down in the memorandum? That is what I drew the will from, I went on and drew it from the memorandum he had given me.

"Q. You are entitled to use the memorandum, if you wish to do so?

"A. I will have to, he wished Mrs. Dr. Stryker" —interrupted.

b. The Court made limitation on the witness's answers by the following ruling:

Court:—"The question will be limited to the conversation or statement or instructions given by Mr. Lanehart between the date of the first instructions and the date of the death of Mr. Lanehart. In other words, no testimony will be allowed as to the contents of the memorandum that was made on the day of the first visit, when the first instructions were given, and when the defendant has said that he wrote on the back of an envelope or letter or piece of paper, standing in front of his wagon house on that day."

"I made my announcement, in response to the request of the State—confine your answer to the conversation, subsequent to the wagon house incident, nothing as to the wagon house incident must be referred to.

c. On an objection by the Prosecutor to the following question:

Q. " 'Mrs. William Duffield $50; he wished Miss Laura Kellogg to have one-half of his estate, after the above and the expenses were taken out, and the balance he wished to give to myself. The Blawenburg church was to receive their present salary until his estate was settled, the present salary which he was then paying; he wished me to advise and consult with Miss Kellogg, as to the disposition of the money which she would receive, those were the points which I jotted down. Then he told me to go

on and draw the will up in the near future as soon as I could.'

"Were not those the directions which you referred to in your testimony, and in connection with his drawing the will in the near future, and as soon as he could," the Court ruled as follows, thus limiting the question and answer:

"The objection will not be sustained, but the witness will be directed to state, whether or not the defendant at the trial stated that such instructions were given by William Lanehart to him, at a time subsequent to the transaction at the wagon house that you have just testified to, yes or no."

d. The Court did not permit the witness to answer the following question:

Q. "What were his words at the wagon-house, concerning 'hurry up?' "

e. The Court did not permit the witness to answer the following question:

Q. "Now what are those directions?"

VI. Because the Court permitted Calvin D. McMurtry on cross-examination to answer the following question:

Q. "Having had no experience with signatures written in pencil, and afterwards traced in ink, if the signature attached to what is called the 'Skillman will' marked Exhibit P. 4, was first written in pencil, and afterwards traced in ink, could you form any opinion then with reference to the genuineness of that signature?"

VII. Because the Court refused to strike out the testimony of Calvin D. McMurtry, a witness introduced as an expert.

VIII. Because the Court permitted Laura J. Kellogg to answer the question, "What was the conversation?"

the witness having just testified that she had had a conversation with Mr. Lanehart in the year preceding his death in relation to Mr. Skillman, Mr. Skillman not having been present at the time.

IX. Because on the direct examination of William Ely in reference to the executing of the disputed signature, the following question being asked, "You said you recognized that as the signature which Mr. Lanehart wrote that day—I wish you would state what there is about it which enables you to so identify it" and the answer being given "Well, it was a very poor job and I thought it was an awful long time it took him to do it" the Court thereupon struck the entire answer from the record.

X. Because the Court on the direct examination of William Ely the next question being, "When did you form that conclusion?" did not permit the witness to answer the question.

XI. Because the Court did not permit Dr. Mosher to answer the following question:

Q. "Do you remember Mr. Skillman's condition of health, during the spring of 1905—the spring and winter of 1905?"

XII. Because the Court permitted John A. Hageman to answer the following question, "What were those relations, friendly or unfriendly?" the relations referred to being those between Mr. Lanehart and James N. Duffield.

XIII. Because the Court permitted the said John A. Hageman after testifying that the reason he knew the relations between Mr. Lanehart and Mr. Duffield were not friendly was from a conversation he had with Mr. Lanehart, to answer the following question, "What did Mr. Lanehart say at that time?"

XIV. Because the Court charged as follows:

a. "Considering the situation and the circum-
" stances, it is for you to say whether Mr. Lane-
" hart would have been likely to have left that will
" uncancelled and unrevoked, in the possession of
" Mr. Race, when he a number of times, had had it
" called to his attention, in the examination of his
" papers, and had had it in his house, at Blawenburg,
" before his death."

b. The Court charged as follows:

" You must also consider among other things,
" (and I am only speaking of those that occur to
" me, but you must of course consider, and view the
" whole of the evidence) the statement of the de-
" fendant to Miss Kellogg, that he had received two
" dollars for drawing this will, also the language
" that the defendant used after Miss Kellogg had
" told him that she had observed the pencil marks
" on the will. The defendant said 'could anyone
" have gone into the Surrogate's office, and put
" those marks around the signature,' and I said,
" 'Yes, I think such a thing was possible.' And he
" said, 'Well, if anyone did that, what could their
" object have been'?"

" I call your attention to this particularly, in view
" of the claim of the defense, that there had been a
" pencil mark signature, prior to the tracing by Wil-
" liam Lanehart, over that pencil mark with ink."

" And then there is the conversation which Miss Kel-
" logg says she had with the defendant, about his daugh-
" ter Elva, in July, 1906. Miss Kellogg says that the
" defendant said to her, 'My Elva is a very conscientious
" girl, and Mr. Clark had difficulty in making her say,
" she saw Uncle Will use the lead pencil the day the will
" was signed, in signing his name.' "

" And also to the conversation which Abraham P.
" Stryker says that he had with the defendant, after Mr.
" Lanehart's death, in which the defendant, he says,

" showed him a document, and said, 'Abe, this is what " the Blawenburg people will raise the Devil about; I " have used all precautions in writing this will, and I " don't intend for all Hell to change it.' "

" I call your attention, Gentlemen, to these statements " by Miss Kellogg. First, because of what significance " you may attach to the statements, because of the mean- " ing you may deduce from the language used by the " defendant, and also because that testimony has been " given in the Court-room by Miss Kellogg, at the trial " of this case, and it is not denied. The testimony that " has been given by Mr. Stryker, is also not denied, and " if this has to you any significance, or any meaning, " that is of importance in determining the issues in this " case, the fact that the testimony was given in the pres- " ence of the defendant, and is not denied by him, may " create in your mind an inference that the conversations " related by Miss Kellogg, and by Mr. Stryker, as having " taken place, between the defendant and these two wit- " nesses, respectively, are true conversations."

c. The Court charged as follows:

" The defendant in this case has not offered himself, " as a witness in his own behalf. He was not bound to " do so. The law does not compel him to do so. In not " testifying, he is exercising his indubitable right as a cit- " izen of this State, and I do not say to you that in this " case, his failure, standing by itself, to testify in his " own behalf, can create any inference against him. " Counsel has seen fit to explain to you why he could not " testify in this case, and has produced a physician who " testifies before you, that Mr. Skillman could not have " testified in this case, without great danger to his health. " By placing that evidence in the case, the defendant has " made it a matter for you to determine, if you regard " it as relevant or bearing on the case, whether or not he " is incapacitated in the way that has been testified to by " Dr. Mosher, and whether or not, the reason given by " Dr. Mosher, for the failure of his patient to testify in " this case, is the real reason or not. You must judge

" from the doctor's testimony, and from what you have " seen of the defendant in the Court room, as to what " inference, if any, can be drawn from the testimony of " Dr. Mosher."

XV. Because the Court refused to charge the following defendant's requests:

(a) "The evidence that William Lanehart did " not write the disputed signature is largely if not " wholly circumstantial while some of the evidence " given that he did write it is direct and positive and " in order to reach a verdict of guilty the jury must " be satisfied beyond a reasonable doubt from the " evidence produced before them at this trial that the " witnesses who have testified that they saw William Lanehart write the disputed signature, did not " tell the truth."

(b) "In weighing evidence the rule is elementary that conflicting testimony must be reconciled " without imputing wilful perjury to any witness " unless that conclusion is unavoidable."

(c) "The testimony of a witness who speaks " from his own personal knowledge is more satisfactory than the testimony of another who speaks of " matters which lie in opinion only. If a witness " swears that he was present and saw William " Lanehart sign the disputed document, his evidence " ought to outweigh the statement of another (both " witnesses being equally credible) who testifies " that he is acquainted with the signature or handwriting of the alleged signer and that he does not " believe the signature was genuine."

(d) "The verdict rendered here will not establish or set aside the will. No legacies mentioned " in the will, would be paid upon a verdict of not " guilty, nor refused payment if the verdict were " guilty."

(e) "The fact that the defendant did not testify " cannot be considered as evidence against him."

XVI. Because the court permitted John A. Hageman to answer the following question, "What were their relations?" referring to the relations between Mr. Lanehart and Mr. Skillman.

XVII. Because the Court after John A. Hageman had testified that he based his opinion as to the relations between Lanehart and Skillman upon conversations which the witness had had with Lanehart, permitted the said John A. Hageman to answer the following question, "What did Mr. Lanehart say in his conversations?"

XVIII. Because the Court charged as follows:

"In view of the statements that the peculiar relations between Mr. Lanehart and Mr. Skillman, and Mr. Lanehart and the Skillman family, indicating a large degree of intimacy, create a presumption (which you may consider in determining this case, and may properly consider I think), that the making of this will and the giving of this sum of money, by Mr. Lanehart to the defendant, was the natural outcome of the kindly feeling, trust and confidence, that Mr. Lanehart had for the defendant; you may consider also whether the statement that Miss Kellogg made at this trial, that her Uncle said, shortly before his death, and between January first and the date of his death, 'There is no doubt that William H. Skillman burned his barns to get the insurance,' and also his statement to John A. Hageman, 'that he did not think Skillman altogether straight in his way of doing business'—indicate that degree of confidence and trust and faith, that is claimed existed."

CLARK & CASE,
Attorneys and of Counsel
with Plaintiff in Error.

Service of the within assignments of errors acknowledged this thirtieth day of July, 1908.

JOHN F. REGER,
Prosecutor of Pleas.

Filed August 3, 1908.

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New Jersey Court of Errors and Appeals.

THE STATE OF NEW JERSEY, *Defendant in Error,* *vs.* WILLIAM H. SKILLMAN, *Plaintiff in Error.*	In Error. Points for Defendant in Error.

Points relied on by the defendant in error to sustain the conviction.

1. The facts admitted in evidence concerning the document known as the Race Will were proper circumstances for the consideration of the jury in determining the question of the truth or falsity of the alleged forged will. The will was also admissible as exhibiting a standard signature of William Lanehart and to identify the owners of the property attempted to be bequeathed and devised by the alleged forged will.

2. The photographs offered in evidence on behalf of the State were properly admitted for the purpose of enabling the witnesses to illustrate their testimony; to enable the court, jury and witnesses during the trial to compare the genuine writings of the deceased with the disputed signature to the alleged false will; to show pencil marks about the disputed signature and a disturbance of the fiber of the paper,

indicating an attempt at erasure; and for other lawful purposes.

3. The cross-examination of the witness, Mary M. Steele, was properly confined by the Court to the matter and to the time covered by the examination in chief.

4. The reasons for the objection to the testimony of Miss Laura Kellogg, to which exception was taken, were not stated. The evidence given by Miss Laura Kellogg relative to a conversation with the deceased was proper as a qualification of the evidence called out from the witness in her cross-examination. It was also proper as negativing the recitals in the alleged forged will. The testimony of John A. Hagaman was proper in rebuttal of the evidence offered on behalf of the defendant, and also proper as negativing the recitals in the alleged forged Will. There was no error in the charge of the Court in reference to said testimony.

5. The evidence of the defendant's physical condition during the spring and winter of nineteen hundred and five, was altogether irrevelant and immaterial, and was not admissible.

6. The evidence given on the direct examination of the witness, James N. Duffield, was improperly admitted in behalf of the defendant over the objection of the State, and the testimony of John A. Hagaman, offered by the State in rebuttal of Duffield's testimony, was admissible in the discretion of the Court.

7. That portion of the charge of the Court referred to in Assignment of Error as 14A, was supported by the testimony, was a proper comment by the Court on the testimony and was not erroneous in law.

8. The comment of the Court upon the failure of the defendant to testify in that portion of the charge referred to in the Assignment of Error as 14B and C was lawful and warranted by the evidence.

9. The request to charge referred to in the Assignment of Error as 15B would not have been a proper instruction of the Court, because it would have invaded the province of the Jury. The request had no application to the evidence in the case, and the refusal of the Court to charge as requested was not error.

10. The request to charge referred to in the Assignment of Error as 15C, if given, would also have invaded the province of the jury, who are the sole judges of the weight of testimony and the credibility of witnesses and the refusal of the Court to so charge was not error.

11. The request to charge referred to in the Assignment of Error as 15E was sufficiently covered by the instructions of the Court, and the refusal of the Court to so charge was not error.

12. Many of the errors assigned by the defendant and referred to in defendant's points for argument are not based upon proper exceptions as no reasons were given at the trial for the exceptions taken.

13. If any errors were committed either in the admission or exclusion of evidence or in the charge of the Court they were neither harmful nor prejudicial to the defendant and constitute no ground for reversal.

New Jersey State Library

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY, *Defendant in Error,* *vs.* WILLIAM H. SKILLMAN, *Plaintiff in Error.*	Sur Indictment for Forgery and Uttering. In Error.

BRIEF FOR DEFENDANT IN ERROR.

William H. Skillman, the defendant, was tried before the Somerset County Court of Quarter Sessions and a jury on an indictment charging the forgery and the uttering of a paper writing purporting to be the last will and testament of William Lanehart, deceased, and was found guilty of the uttering.

Under the provisions of this alleged false will which is set out in the indictment and may be found on pages 7 and 8 of the printed case, the defendant would receive one-half of the residuary estate to the exclusion of the brothers and sisters of the deceased, who were the natural objects of the testators bounty and who had been provided for under a previous will known as the "Race Will."

POINT 1.

THE SECOND AND THIRD ERRORS ASSIGNED ARE THAT THE TRIAL COURT PERMITTED CERTAIN QUESTIONS TO BE ANSWERED WITH REFERENCE TO THE SO-CALLED "RACE

WILL," AND REFUSED TO STRIKE FROM THE RECORD CERTAIN TESTIMONY IN RELATION THERETO.

The "Race Will" was executed by William Lanehart at the office of Orville B. Ackerly in New York City, November 28, 1902. By this will the testator made a number of specific bequests to friends and relatives (one being a bequest of three thousand dollars to his sister, Mary J. Lanehart), and directed that the residue be divided equally among his brothers and sisters and appointed John N. Race and Laura Kellogg executors.

The facts put in evidence by the State relative to this Race Will were that such a paper had been executed, the time when and the place where it was executed, and that it had not been destroyed by the testator previous to his death,

The fact that there was another will of William Lanehart in existence at the time of his death, which the testator had not destroyed, although he had had an opportunity to do so, was a circumstance pointing to the falsity of the disputed will. The charge in the indictment was the forging and uttering of a paper, purporting to be a will, which the evidence shows was not produced until after the alleged testator's death. The mouth of the only person who could prove by direct and positive evidence the falseness of this document was closed and the crime could not be proven by direct evidence. Circumstantial evidence therefore had to be relied on or the crime would go unpunished.

In the reception of circumstantial evidence great latitude must be allowed. The jury should have before them every fact which will enable them to elucidate the transaction and to come to a satisfactory conclusion. However remote or insignificant a fact may be, if it tends to establish a probability or improbability of a fact in issue, to make it more or less probable it is admissible.

Ency. of Evidence, Vol. 3, Page 110.

This is particularly true where fraud is alleged for positive proof of fraud can seldom be had.

Ibid Page 121.

The charge is that this paper is not the genuine will of Wm. Lanehart, that it is fraudulent; i. e., a forgery. The alleged testator is dead and cannot testify. Any circumstances which tended to show the improbability of this being the testator's will were proper.

Mr. Lanehart was a man of intelligence and experience, and it is not probable that he would fail to destroy a previous will which made an entirely different disposition of his estate than the later paper. If he had decided to cut off all his relatives he would have been likely to disguise what his previous testamentary intentions had been. Having made the radical change contemplated by the alleged false will he would have felt the importance of destroying his previous will. This might not have been the case if only slight changes in the testamentary provisions had been made.

In Schouler on Wills, par. 242, under the head of "Character of the evidence to establish fraud or undue influence," the writer says: "So, too, it is admissible to prove that former wills or former testamentary plans embodied a different purpose as tending to show whether or not the testator has understandingly and of his own free will changed his settled plans in favor of the present arrangement.

The same issues as are now presented were raised in the Prerogative Court on the appeal from the order of the Orphans' Court holding this will to be a forgery. The Ordinary, (Chancellor Magie) in his opinion affirming the order of the Orphans' Court commented upon the contents of the Race Will and evidently considered the radically different provisions of the two papers as a circumstance to be

weighed in determining the falsity or genuineness of the disputed document.

See the opinion of the Ordinary on file.

In the case of Boylan ads. Meeker, 4 Dutch p. 321-325-331-432 the execution of previous wills by the testator was considered in the opinion of the Court.

In the Gordon case 5 Dick. page 397, a prior will was admitted in evidence and its contents were reviewed at some length in the opinion of the Court.

The indictment charges that the forging and the uttering was with intent to defraud Mary J. Lanehart, Elizabeth Long, Maud B. Eaton, Willis A. Voorhees, Lorenzo D. Lovell, Mary F. Stryker, Mary N. Axtell, Simeon Lanehart, John Lanehart, Margaret Lanehart, and John N. Race, beneficiaries and executor under the said Race Will, who it is claimed are the persons entitled to the estate of the said testator and who are therefore defrauded by the false and forged will.

The insistment of the State is that this will was admissible in support of the allegations of the indictment that the persons named therein were defrauded by the alleged false will, and to identify the owners of the property attempted to be taken.

Writings that are true legal documents are admissible in evidence on an indictment for forgery if they serve to explain the true location of the title of the property, to identify the true owners to the property, and to form a predicate for further evidence of the falsity of the alleged transfer of the same.

Ency. of Ev., Vol. 5, p. 857.

The will was also admissible as exhibiting a standard signature of William Lanehart.

The answers to the questions here assigned for error are not set out, *and in several instances no reason was given for the objections made.*

Where exception was taken to the refusal of the Court to strike out answers, the answers were responsive to the questions and no objection was made before the answer was given. The motions to strike out came too late.

POINT 2.

THE FOURTH ERROR ASSIGNED IS THAT THE COURT ADMITTED IN EVIDENCE CERTAIN PHOTOGRAPHS OF THE DISPUTED AND GENUINE WRITINGS.

These photographs were taken by Albert L. Osborne, an expert photographer of handwriting. The lenses with which they were taken had been certified to be accurate by the Government Bureau of Standards at Washington, and the photographs were proven to be exact reproductions of the originals.

The alleged false will was written on both sides of a sheet of foolscap paper, and the signature was at the bottom of the second sheet. The attestation clause and the signatures of witnesses were on a separate and detached sheet. The handwriting in the body of the will and attestation clause was admittedly that of the defendant.

The photographs were offered to enable the handwriting experts to illustrate to the jury the characteristics of the defendant's handwritings as found in the body of the will and attestation clause and in certain letters offered in evidence. This was necessary as twelve men could not all have before them the original document. Photographs are constantly used in court for purposes of illustration and there can be no more objection to permitting a handwriting witness to illustrate his testimony by using photographs than to permit witnesses to point out on photographs the place where a crime was committed or

I give and bequeath to Mrs Joseph. D. H. Reed fifty dollars.

I give and bequeath to Mrs William Duffield of Blairsburg fifty dollars

I give and bequeath to the Lady known as Laura Kellogg — My Niece — one half of all the Money derived from the Settlement of My Estate. and request her to consult and advise with her Co-Executor as to the best and safest investment of said Money

The balance of the Money derived from My Estate I give and bequeath to My friend William H Stillman. and Earnestly request him to advise and look after the interests of the said Laura Kellogg.

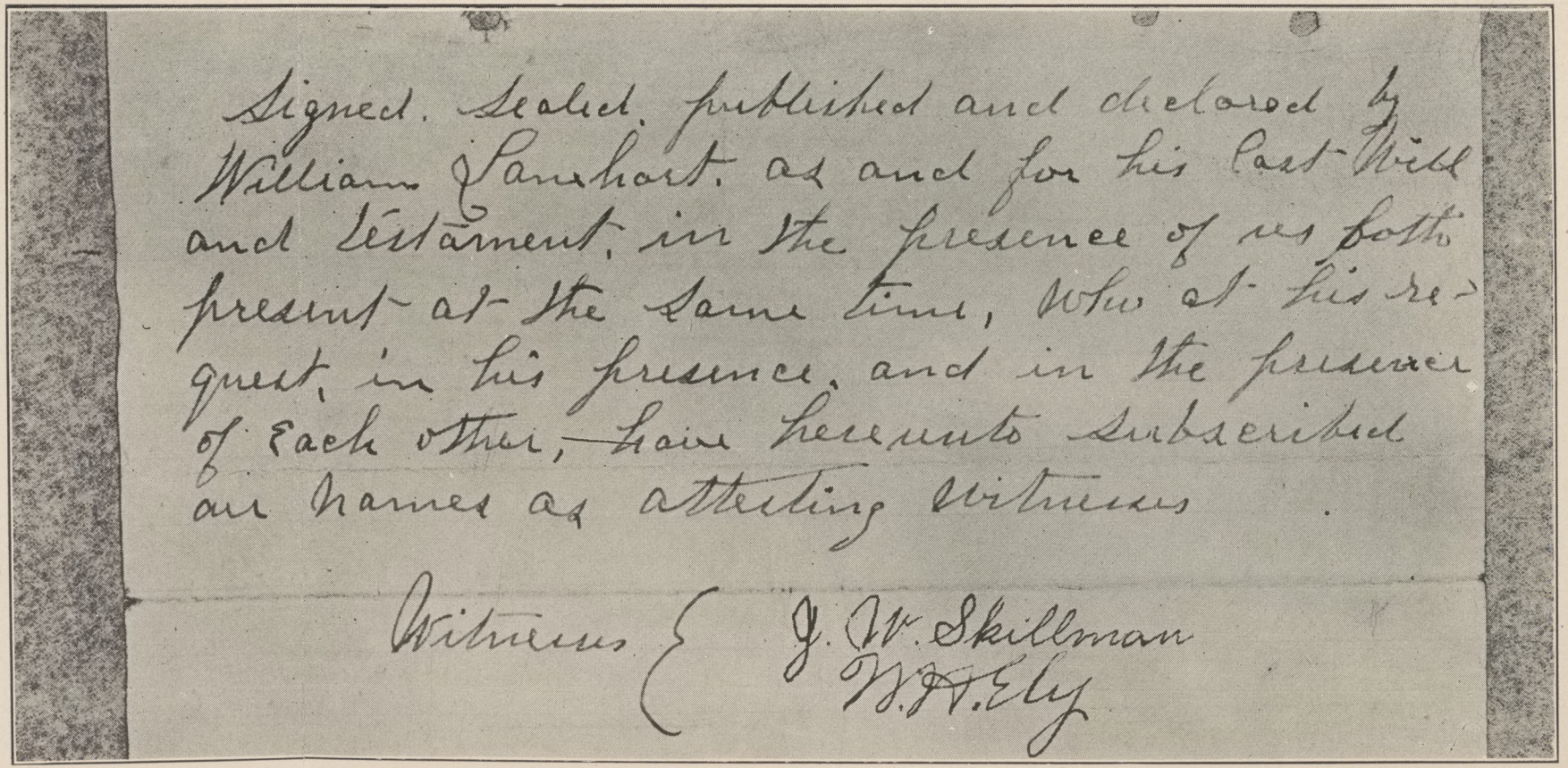
I hereby Nominate and appoint the said William H Stillman. and the said Laura Kellogg as My Executor and Executrix of this My Last Will and Testament: and request that both he and she be allowed to qualify without security other than his and her own personal bonds.

I wish My Executors to pay unto Blairsburg Church the same Salary I now have agreed to pay. until the Settlement of My Estate is made

Witness My hand and Seal this twenty seventh day of February. 1905

Wm Lanehart

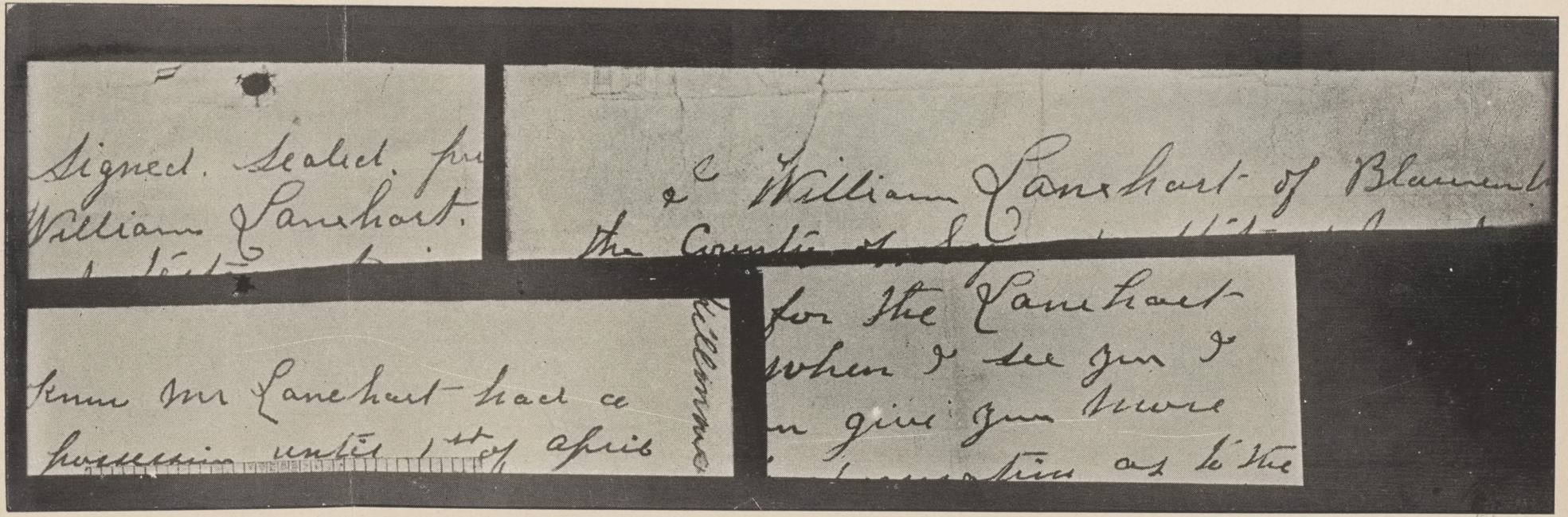
Copy of Photographs Exhibits P. 82 to 92, inclusive, showing second page of alleged forged will including the disputed signature, and exhibiting characteristics of the defendant's handwriting.



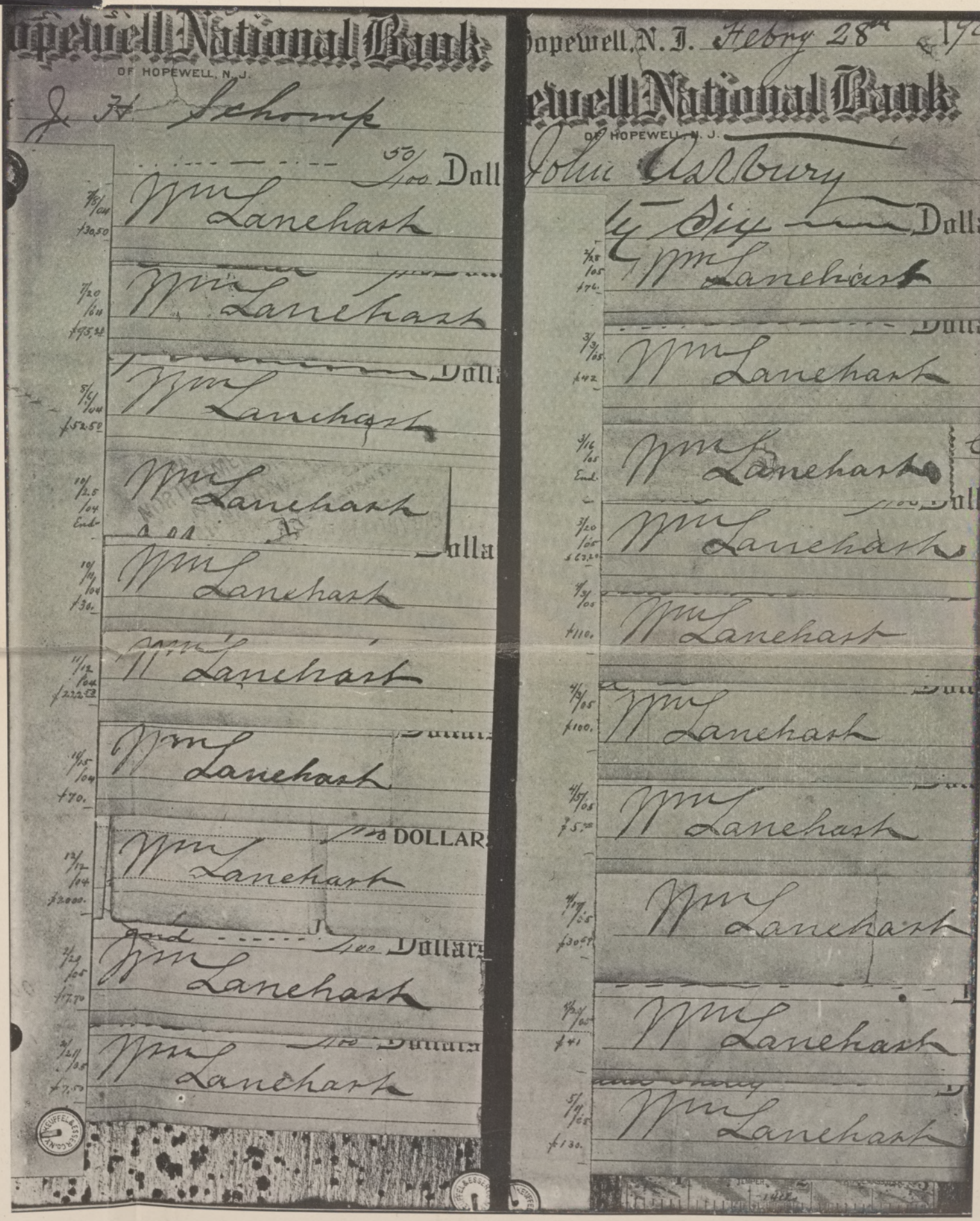
Signed. Sealed. published and declared by William Lanehart. as and for his Last Will and Testament. in the presence of us both present at the same time, who at his request. in his presence. and in the presence of Each other, have hereunto subscribed our names as attesting Witnesses.

Witnesses { J. W. Skillman
W. H. Ely

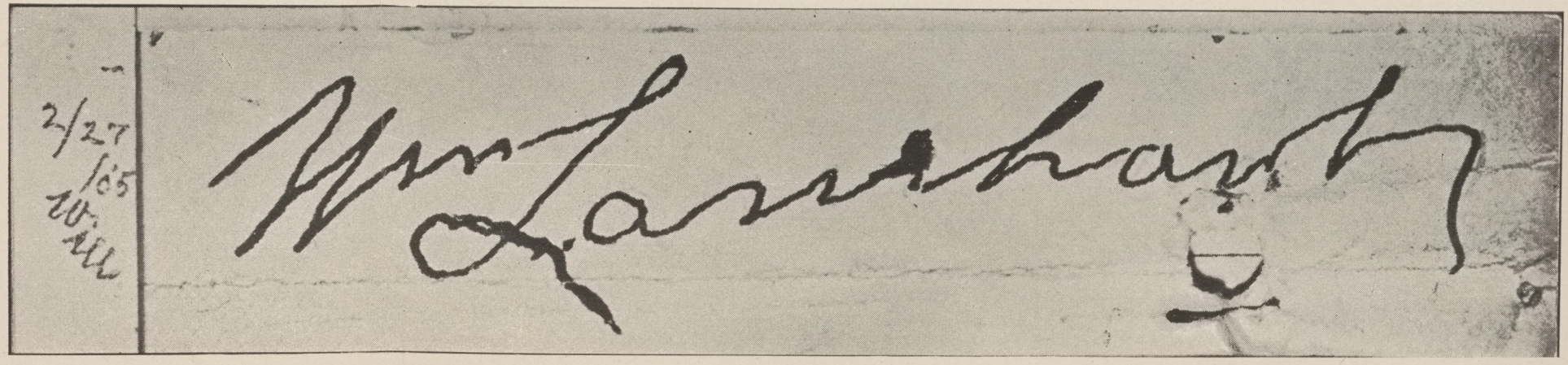
Copy of photographs, Exhibits P. 103 to P. 107, inclusive, showing attestation clause of the alleged forged will, which contains the word "Lanehart" in defendant's handwriting and exhibits his characteristic small "e."



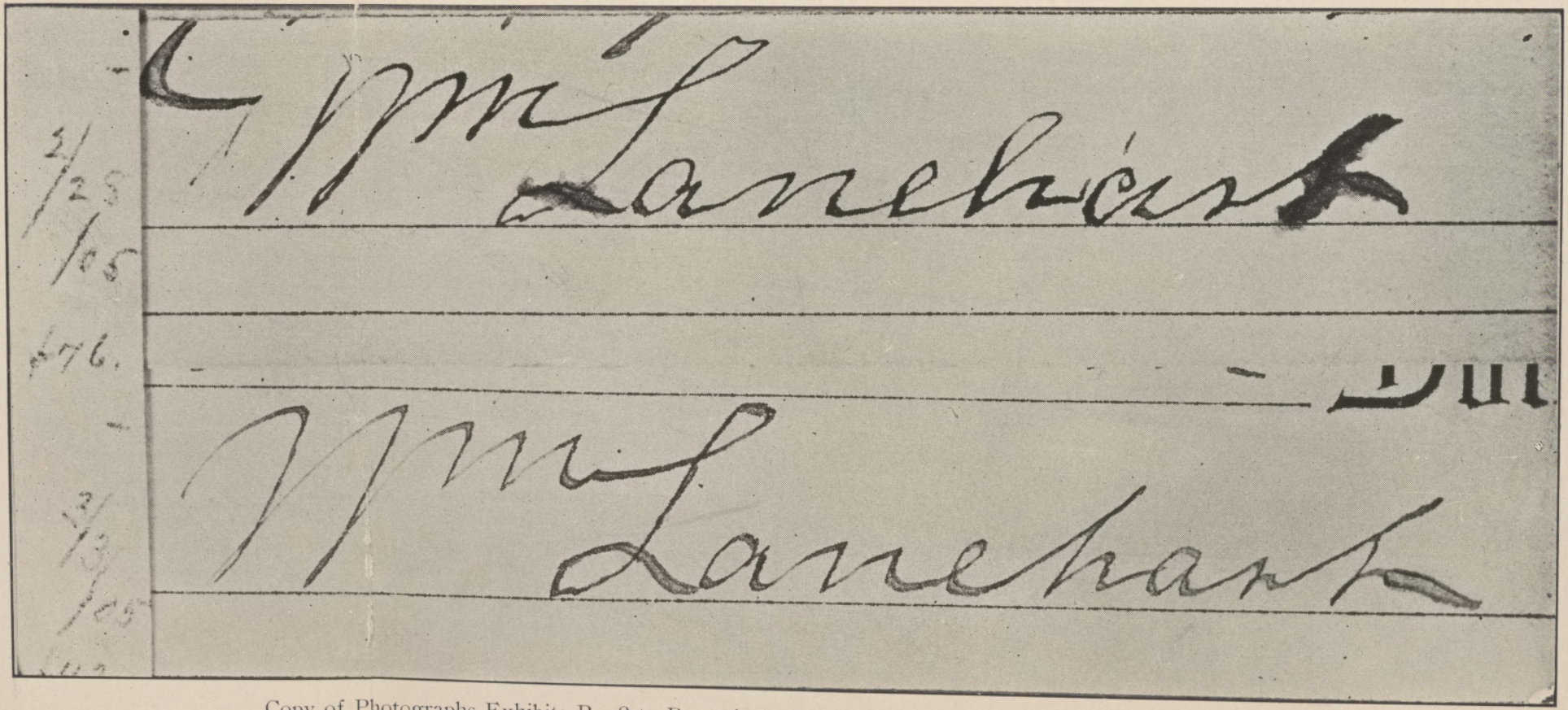
Copy of Photographs, Exhibits P. 35 to P. 38, inclusive, showing the word "Lanehart" as written by the defendant twice in the alleged forged will and twice in letters.



Copy of Photographs, Exhibits P. 68 to P. 81, inclusive, showing 20 genuine signatures; 10 prior and 10 subsequent to the date of the alleged forged will.



Copy of Photographs, Exhibits P. 39 to 47, inclusive, showing the disputed signature enlarged.



Copy of Photographs Exhibits P. 48 to P. 57, inclusive, showing two genuine signatures of William Lanehart, written near the date of the alleged forged will.

where an accident happened, for in these instances they jury may also be permitted to view the premises in person.

The most common use of photographs as evidence is to enable witnesses to make their testimony clearer and to enable juries to understand it better. For these purposes, photographs are used in making comparisons of handwriting and in illustrating descriptions of localities.

A. & E. Ency. of Law, 2nd Ed., Vol. 22, p. 774.

"Photographic copies and photographic magnified copies of documents and signatures alleged to be forged or altered and of documents and signatures admitted or proved to be genuine and properly admitted in evidence for other purposes may be presented and used on the trial for the purpose of enabling witnesses the better to detect and point out differences between the two, and of enabling the jury better to ascertain by inspection whether there are any differences; and if so what."

Frank vs. Chemical Nat. Bank of N. Y., 5 Jones & Spencer (N. Y.) page 26.

In the case of Goldsboro vs. The Central R. R. Co. of N. J., 31 Vr. p. 49 on page 51 the Court said, "As evidence, photographs have been held as admissible upon the question of *identity* and *comparison* of handwriting."

The signature "Wm. Lanehart" to the disputed will, was irregular in outline, was out of alignment, was written with care and attention to detail and showed evidences of having been traced over lead pencil, there being delicate pencil marks about some of the letters. It departed from the characteristics of Wm. Lanehart's genuine signatures, *and possessed a number of the peculiarities of the defendant's handwriting as found in the body of the will.*

One purpose of the introduction of the photographs was to illustrate these various characteristics and peculiarities.

The photographs of the body of the will and attestation clause were used for the purpose of exhibiting to the jury the qualities of defendant's handwriting, and to afford them the opportunity to analyze it and compare it with the disputed signature, thus enabling them to see the marked similarity in the capital "W's," the capital "L's" and the small "e's" in the body of the will and attestation clause, and in the disputed signature and to observe the numerous pen lifts in the will, which were characteristic of the defendant's handwriting, but which were not characteristic of William Lanehart's handwriting.

Some of these photographs were offered for the purpose of showing pencil marks about the disputed signature which at the time of the trial had been almost obliterated by handling.

Photographs properly verified are admissible to prove the contents of documents charged to have been forged where the same have become illegible.

Enc. of Ev., Vol 9, page 779.

Others were offered to enable the jury during the progress of the trial to make a comparison between the genuine signatures and the disputed signature on testimony then being given.

In the Gordon Will Case, 50 N. J. Eq., page 397-423, the Court compared photographic copies of disputed and genuine signatures.

Still others of the photographs were enlarged to show a disturbance of the fibre of the paper evidencing an attempt at erasure and to show the cold, dead, lifeless character of the strokes in the disputed sig-

nature, which, when magnified, exhibit a carefully drawn appearance and were evidently made with great attention to detail.

Where the genuineness of signatures is called in question, and they are compared with signatures admitted or proved to be genuine, enlarged photographs of the compared signatures are admissible in evidence.

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United States vs. Ortez, 176 U. S. 422.
Lucco vs. U. S., 23 How. (U. S.) 515-530.
Ency. of Ev., Vol. 9, 779.
17 Cyc. 414.

In Marcy vs. Barnes, 16 Gray page 161, an action on a promissory note, the genuineness of the maker's signature was in issue. Magnified photographic copies of defendant's genuine signature and of the disputed signature proved to be accurate in all respects excepting only as to size and color were held to be admissible in evidence. The Court said: *"The magnified copies of the genuine signatures of the defendant and of the disputed signature which were submitted to the inspection of the jury, were, we think, in connection with the testimony of Mr. Southworth admissible in evidence. Assuming it to be true, as he testified, which yet was a fact first to be considered and determined by the jury that the copies were accurate in all respects excepting only in relation to size and color they were capable of affording some aid in comparing and examining the different specimens of handwriting which were exhibited on the trial. It is not dissimilar to the examination with a magnifying glass. Proportions are so enlarged thereby to the vision that faint lines and marks as well as the genuine characteristics of handwriting, which perhaps could not otherwise be clearly discerned and appreciated, are thus disclosed to observation and afford additional and useful means of*

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making comparisons between admitted signatures and one which is alleged to be only an imitation."

Photographs and enlarged copies of disputed handwriting and of handwriting admitted or proved to be genuine used in comparison are admissible and proper to be submitted to the jury.

Rowell vs. Fullers Estate, 59 Vt. 688, 10 Atl. Rep. p. 853.

Photographic pictures when shown to be correct resemblances of the person or thing represented are competent as evidence.

Cowley vs. People, 83 N. Y. p. 464.

The photographs were proved to be accurate reproductions of the originals and there is no proof to the contrary. Being accurate and the originals also being given to the jury with the photographs during their deliberations it is impossible that any harm could have come to the defendant from their use.

The testimony of the photographer, Albert L. Osborn, was to the effect that these photographs when enlarged presented the same aspect as if the signature had been viewed through a magnifying glass.

It is not error to permit the jury to use magnifying glasses in examining papers admitted in evidence and to carry the glasses with them when retiring.

Hatch vs. State, 6 Tex. App. 384.

In the case of Frank vs. Chemical National Bank, 5 Jones and Spencer (N. Y.) page 26 photographic magnified copies of the disputed documents were objected to. The Court in holding them admissible said: "The administration of justice profits by the progress of science and its history shows it to have been almost the earliest in antagonism to popular delusions and superstitions. The revelations of the mi-

croscope are constantly resorted to, in protection of individual and public interest. It is difficult to conceive of any reason why in a court of justice a different rule of evidence should exist, in respect to the magnified image, presented to the eye by the lens in the microscopist's instrument, from that which applies to the same image, presented in the lens in the photographer's camera, and permanently delineated upon sensitive paper. Either may be distorted or erroneous through imperfect instruments or manipulation, but that would be apparent or easily proved. If they are relied upon as agencies, for accurate mathematical results in mensuration and astronomy, there is no reason why they should be deemed unreliable in matters of evidence. Wherever what they disclose can aid or elucidate the just determination of legal controversies, there can be no well-founded objection to resorting to them."

See also First Nat'l Bank vs. Wisdom, 111 Ky. p. 135.

These photographs were introduced in evidence on both trials of the defendant and if enlarged photographic copies of genuine writings would have revealed the same unnatural features as are shown in the photographs excepted to that fact might have been demonstrated by any photographer called on behalf of the defendant. No such evidence however was produced. Some of the genuine signatures were also enlarged.

POINT 3.

THE FIFTH ASSIGNMENT OF ERROR IS DIRECTED TO THE EXCLUSION BY THE COURT OF CERTAIN TESTIMONY ATTEMPTED TO BE ELICITED UPON THE CROSS-EXAMINATION OF MISS MARY M. STEELE, A WITNESS PRODUCED ON BEHALF OF THE STATE, BUT THE REASONS FOR THE EXCEPTIONS TAKEN WERE NOT STATED.

Miss Steele was the stenographer who reported and transcribed the testimony taken in the Somerset County Orphans' Court in a contest over the probate of the will here alleged to be false and forged, and in which contest the Court set aside the order of the Surrogate admitting the said paper to probate and held that the signature attached thereto was not the genuine signature of Wm. Lanehart. The State anticipating that the defendant might not be placed upon the stand called the stenographer to prove certain statements and admissions of the defendant relative to the issue, made by him when sworn as a witness in the Orphans' Court.

These statements and admissions as proven by the witness on her direct examination were as follows: That the alleged false will was in the handwriting of the defendant (p. 176); that the directions for the writing of the will were given about the middle of January, nineteen hundred and five (p. 176); that the will was not signed by the testator until two or three days after February twenty-seventh (p. 176); that between the time when the directions for the writing of the will were said to have been given and the time when it was said to have been signed, several weeks later, the testator had requested the defendant several times to "fix up and to draw it as soon as he could" (p. 177); that the will remained in the defendant's custody and possession after it was said to have been signed until presented for probate by the defendant and that during that time no one had seen it except the defendant until taken by him to Somerville to offer it for probate (p. 177); that he did not attend the funeral of the alleged testator and the reasons given by him for not so attending (p. 177); that the time when the will was offered for probate was the first day the law would permit it (p. 178).

On cross-examination of the witness, much of the testimony given by the defendant in the Orphans' Court was sought to be introduced by reading long

excerpts from the stenographer's notes having no relevancy to the questions asked on direct examination, and then interrogating the witness whether the defendant had not so testified.

Upon the direct examination the witness was interrogated as to the time *when* the defendant had said the directions for the writing of the will were given.

The questions excepted to (a), (b), (c), (d), (e), called for the defendant's statement as to *what* those directions were.

On direct examination the defendant's statement in the Orphans' Court was also proven as to what had been said by the testator to the defendant with reference to the will between the time when the directions were alleged to have been given and the time when the will was alleged to have been signed; namely, that the defendant had been told to hurry and fix the will up.

The questions excepted to (a), (b), (c), (d), (e), also sought to draw out directions for the writing of the will alleged to have been given by the testator to the defendant on another occasion and were therefor rightly excluded and the testimony limited to the time covered by the examination in chief.

The testimony of the witness upon her direct examination with reference to statements and admissions about certain matters made by the defendant during his examination in a previous trial would not make admissible on cross-examination his statements about other matters not referred to by the witness in her direct examination.

In Frick v. Kabaker, 116 Ia. 494 at p. 505, the Court said: "*One Robinson, the stenographer, who took the evidence in the probate court on proceedings to discover property in the possession of defendant, was called as a witness to testify as to certain statements made by defendant on that occasion. The defendant objected to this evidence and complained of*

*the court's ruling denying him the right to call out on cross-examination all that was said by defendant on that occasion. There is no merit in the contention. * * * The reporter was called, and testified to certain admissions said to have been made by defendant. This was admissible as primary evidence. * * * The cross-examination called for other and independent statements made by the witness, and the Court correctly denied it.''*

The admissions testified to by the witness were not part of a conversation but even though that had been the fact other portions of the conversation which did not in any way explain or qualify the admissions proven would not be admissible.

"Where part of a conversation with a party to the action or his agent has been given in evidence by the opposite party any other or further part of the conversation which will in any way explain or qualify that given may be proved in reply; *but portions of the conversation not thus connected with that proved are not made admissible.*

Platner vs. Platner, 78 N. Y. page 90.

All of Miss Steele's direct testimony should be read to understand the Court's rulings. The statements and admissions of the defendant testified to by the witness on direct examination are as follows (p. 176, 177, 178):

Examined by Mr. Reger.

Q. Where do you live?
A. Somerville.
Q. What is your profession?
A. A lawyer.
Q. Are you also a stenographer?
A. I am.
Q. Did you take the testimony in the Orphan's Court on the trial of the appeal from the probate of the last will and testament of William Lanehart?

A. I did.

Q. When was that testimony taken?

A. I could not say certainly, Mr. Reger, the notes will show.

Q. You may refer to your notes (handing book to witness) and tell us when the testimony so taken was taken?

A. It was commenced on the 29th of January, 1906.

Q. Did you take all the testimony that was taken in that trial.

A. I did.

Q. And on that trial, was the defendant William H. Skillman, sworn as a witness?

A. He was.

Q. I show you a paper purporting to be the last will and testament of William Lanehart, deceased, and ask you whether that was an exhibit at that time?

A. It was.

Q. Was the defendant William H. Skillman shown that paper, and asked in whose handwriting it was?

A. He was.

Q. What was his answer?

A. "It is mine, excepting the signature," I would not say that those were his exact words, but that is his testimony.

Q. Did he at that time, testify when the directions for the writing of that will was given?

A. He did.

Q. When did he say those directions were given?

A. Between the middle and latter part of January, 1905, he thought the latter part of January.

Q. Did he at that time say when the will was signed?

A. He did.

Q. When did he say it was signed?

A. Two or three days after the 27th of February, the day it was dated.

Q. Did he say whether he had seen Mr. Lanehart,

between the time when the directions for the writing of the will was given, and the time the will was signed?

A. He did.

Q. Did he testify what Mr. Lanehart had said to him, with reference to the will?

A. Yes.

Q. What did he say?

A. He said he did not think he had given him any directions except to draw the will, as soon as he could fix the will up.

Q. Did he say whether Mr. Lanehart had referred to the will, between the time when the directions were given and the time when the will was written?

A. Yes, in this way, to fix up and to draw it as soon as he could.

Q. How many times was this said to him.

A. He gave no definite number.

Q. Did he say it was more than once?

A. Several times I think.

Q. That Mr. Lanehart had told him to go ahead and fix it up several times?

A. Yes.

Q. What, if anything, did he testify as to what was done with the will after it was signed?

A. He said he kept it in his possession, after it was signed until after Mr. Lanehart's death.

Q. And where did he then bring it?

A. Up to Somerville, to Mr. Clark's office.

Q. Was he able at that time to testify to the date of Mr. Lanehart's death?

A. Not certainly, no sir.

Q. What did he say with reference to that?

A. He said he thought it was in the second week in May, that he did not remember the date, or that someone had told him the date—he believed it was the 12th he did not know of his own positive knowledge, but he knew neither the day of the week, or the day of the month.

Q. Did he say whether or not the will, after it was signed, had been seen by anyone else?

A. He said no one had seen it, from the time it was signed, until after Mr. Lanehart's death.

Q. And that it was in his possession during all that time?

A. Yes, sir.

Q. Did he say whether or not he was at the funeral of Mr. Lanehart?

A. He said he was not at the funeral.

Q. Was he asked why he did not attend the funeral?

A. He was.

Q. What did he answer?

A. He said he was ill, that he could not walk there, and the carriage was full, the carriage in which his family went.

Q. Did he say where he was the day of the burial?

A. He admitted where he was, yes sir.

Q. Where?

A. In Somerville.

Q. When did he say the will was admitted to probate, with reference to the time that the law allowed?

A. The first day.

Q. The first day the law would permit?

A. Yes sir, the first day that his counsel had told him it could be filed, he said nothing about the law further than that.

Q. Was he asked, if he had taken the will to Judge Bartine and showed it to him?

A. Yes.

Q. What did he say with reference to that?

Mr. Clark:—I object as immaterial and irrelevant.

Question allowed.

Mr. Clark:—I will ask your Honor for an exception.

Exeption allowed—sealed accordingly.
(L.S.) THEODORE B. BOORAEM,
Judge.

A. He said he had not shown Judge Bartine the original, it was a copy he had shown the judge.

Q. Was he asked to examine the will at the time of the trial, while he was on the witness stand, for pencil marks?

A. Yes, sir.

Q. What did he say, as to whether or not he saw pencil marks?

A. He said he had not seen any, and he could not see any that morning.

From the reading of the foregoing testimony it is apparent that the evidence excluded would not in any way qualify or explain the admissions testified to by the witness on her direct examination, and the iteration and re-iteration of the same questions could have had but one object, that of emphasizing and magnifying before the jury defendant's statement of the directions given him for drawing the disputed will, which directions he said he committed to paper and which paper would have been the best evidence of what those directions were. This paper though identified by the defendant's daughter, Elva Skillman (p. 395-406) and testified to by the defendant's son, Edward Skillman (p. 373 and 381-2) was not offered in evidence but was withdrawn after Elva Skillman had identified it (p. 406 bottom of page.)

The effort seems to have been to get before the jury the effect of certain selected portions of the defendant's testimony given in the previous trial which were favorable to him without subjecting him to a cross-examination in this trial which would have developed the incriminating features of his testimony. The defendant was present and might have testified.

THE QUESTION SET FORTH IN THE SIXTH ASSIGNMENT OF ERROR WAS PROPERLY EXCLUDED AS IT CALLED FOR AN OPINION OF THE WITNESS WHICH HIS CROSS-EXAMINATION PREVIOUS THERETO SHOWED HE WAS NOT QUALIFIED TO GIVE.

NO REASON WAS GIVEN FOR THE MOTION ON WHICH THE SEVENTH ASSIGNMENT OF ERROR WAS BASED, NOR WAS THAT PART OF THE TESTIMONY SOUGHT TO BE STRICKEN OUT POINTED OUT TO THE COURT. The exception seems to be frivolous.

The denial of a motion to strike out incompetent evidence admitted on a jury trial without objection is not error. The remedy of the party is to ask for instructions of the jury to disregard it.

Platner vs. Platner 78 N. Y., page 90.

POINT 4.

THE EIGHTH ASSIGMENT OF ERROR IS THAT THE COURT PERMITTED THE WITNESS, LAURA KELLOGG, TO TESTIFY TO A CONVERSATION WITH MR. LANEHART SHORTLY BEFORE HIS DEATH IN WHICH MR. LANEHART MADE CERTAIN STATEMENTS WHICH WERE DEROGATORY TO THE DEFENDANT.

No reason is given for the objection upon which this exception is based.

An exception to the admission of evidence which fails to show the ground of the objection will not be considered on error.

State vs. Hendrick et als., 41 Vr. page 41.
Donnelly vs. State 2 Dutch, page 463.
Mooney vs. Peck 20 Vr., page 232.
Oliphant vs. Brearley 25 Vr. page 521.
New Jersey Zinc Co. vs. Lehigh Zinc Co. 30 Vr. p. 189.

Miss Kellogg was called as a witness by the State and on cross-examination over the objection of the Prosecutor she was examined at some length, on the relations existing between Mr. Lanehart and the defendant and the state of Mr. Lanehart's feeling for the defendant (p. 352-353).

The statement to which exception was taken was proven by the witness to have been made by the deceased between the 1st day of January, 1905, and the date of his death which was May 11, 1905. The disputed will bears date February 27, 1905.

This evidence was called out on the re-direct examination of the witness. On her direct examination the State did not attempt to prove the mental attitude of Mr. Lanehart toward the defendant nor the character of the relations existing between them.

The State did offer to show that there had never been any business transactions between them to the knowledge of the witness but the offer was overruled p. 324 l. 30.

The questions were as follows:

"Q. To your knowledge, did Mr. Skillman ever transact any business for Mr. Lanehart?

Mr. Clark:—I object.

Objection sustained.

Q. Do you know whether or not Wm. Skillman transacted any business for Mr. Lanehart?

Mr. Clark:—I object.

Mr. Dungan:—That might refer to this very document.

Court:—I will permit the question to be answered, yes or no.

A. No, sir.''

It will be observed that the question was as to whether the witness had any knowledge on the subject and that the answer was no, the Court thus limiting the answer of the witness.

On cross-examination the witness was permitted to testify as follows, p. 352:

Q. You were asked, whether you knew what the business relations of Mr. Lanehart and Mr. Skillman were if he had ever transacted any business for Mr. Lanehart, I think that was the question propounded by the Prosecutor in substance, and your answer was, ''you did not know of any,'' as I remember it—their social relations were very friendly, were they not?

Mr. Reger:—I object to the question as not cross-examination—I asked her as to business relations, not as to social relations.

Question allowed.

A. They were friendly.

(Mr. Clark:)

Q. Did you not on the contrary say in the Orphan's Court, when you were asked to state what they were to your own knowledge, did you not answer and say ''they were extremely intimate?''

A. I do not remember the question or the answer.

Q. Is it not a fact, that they were ''extremely intimate?''

A. They were friendly.

Court:—What time are you referring to Mr. Clark?

Mr. Clark:—To the last three or four years preceding his death.

Q. I will say during the last two or three years preceding his death?

A. Am I to answer the question?

Q. Yes, answer the question—were they not extremely intimate during the last two or three years preceding Mr. Lanehart's death?

A. They were friendly.

Q. Did you not often during the last two or three years of Mr. Lanehart's lifetime, visit the Skillman house with your uncle?

A. Yes, sir.

Q. Were not his relations with Mr. Skillman in that way as a neighbor more intimate than with any other neighbor in that community?

Mr. Reger:—I object to that as not cross-examination, and on the further ground that it is immaterial and irrelevant.

Objection overruled.

A. Well no, I hardly think so, Mr. Clark, he went to Mr. Van Orden's very often, and he went to Mrs. Duffield's very often.

Q. And where else?

A. During the last year or two, he went to Mr. John Hageman's.

As a qualification of the testimony elicited by the cross-examination over the objection of the State with reference to the friendliness of the defendant toward the defendant the following questions were asked:

Re-Direct by Mr. Reger:

Q. You have testified that the relations between

Mr. Lanehart and Mr. Skillman were friendly, did you or not in the year immediately preceding Mr. Lanehart's death hear Mr. Lanehart express his suspicions of Mr. Skillman?

Mr. Clark:—I object to the question as leading.

Objection sustained.

Q. What conversation, if any, did you have with Mr. Lanehart in which he expressed a mistrust of Mr. Skillman?

Same objection.

Objection sustained.

Q. Did you have any conversation with Mr. Lanehart in the year preceding his death, in relation to Mr. Skillman?

A. Yes.

Q. What was the conversation?

Mr. Clark:—I object to the conversation.

Question allowed.

Exception claimed.

Exception allowed—sealed accordingly.
(L.S.) THEO. B. BOORAEM,
Judge.

A. In relating to my Uncle Will, a number of derogatory things concerning Mr. Skillman, I mentioned—(interrupted.)

Court:—No don't mention what you said.

(Mr. Reger.)

Q. What you said to Mr. Lanehart and what he said to you?

Court:—No, I think that is going too far, she said she had a conversation with her uncle in which she related a number of degrogatory things, or in which she made certain statements to him—I will exclude those statements.

A. My uncle Will said there is no doubt that William H. Skillman burned his barnes.

Q. Give the whole conversation?

A. In order to get the insurance money.

(Mr. Reger:)

Q. When was this conversation?

A. It was between the 1st of January and the time of Uncle Will's death, I cannot place it exactly.

Q. The 1st of January, what year?

A. 1905, the last year of Uncle Will's life.

The witness on cross-examination having expressed her opinion generally as to the character of the relations existing between the two men, it was proper for the state on the re-direct examination to inquire more fully into that relationship.

Where a witness has been examined touching transactions held with a deceased person it is not error for the court to allow opposing counsel to cross-examine the witness in regard to the same subject matter.

Lydia Pinkham Veg. Med. Co. vs. Gibbs.
108 Ga. p. 138.—33 S. E. 945.
Hendrick vs. Saier 124 Mich. 86 82 N. W. 879.

Under the rule allowing the liberal cross-examination it is competent for one party on cross-examination to ask the witness about a matter his adversary had called out on direct examination whether it was material or not.

Ency. of Ev. Vol. 3, p. 821.

The same rule should apply on re-direct examination to new matter brought out on cross-examination.

The state of mind of the deceased toward the defendant could only have been known by the witness from the words and actions of Mr. Lanehart. She having been cross-examined as to the mental attitude of the deceased toward the defendant the State very properly asked her what expressions she had heard the deceased make indicative of his state of mind and feeling toward the defendant. The line of questions asked clearly shows the purpose of the inquiry.

Evidence of the relations friendly or otherwise existing between two persons is necessarily based upon a state of mind which can only be revealed by words and actions. When the character of these relations are in issue, the words, and actions which manifest the state of the mind become competent. So, in an inquiry as to an existing mental condition the statements of a deceased person are admissible.

In the case of Rusling vs. Rusling, 9 Stew p. 603, Justice Dixon speaking for the Court of Errors and Appeals (p. 608), said: *"In order to show the testator's mental state at any given time, his declarations at that time are competent, because the conditions of the mind are revealed to us only by its external manifestations, of which speech is one."*

This evidence was also admissible to negative the recitals in the will. The witness in the answer which is assigned as error testified that Mr. Lanehart had told her only a short time before his death that there was no doubt that Wm. H. Skillman had burned his barns to get the insurance. If Wm Lanehart believed the defendant capable of such a crime he certainly did not have that degree of confidence in him which is suggested by the recitals in the will.

The clause of the disputed will which gives to the

defendant one-half of the residuary estate is as follows:

"The balance of the money derived from my estate I give and bequeath to my friend, William H. Skillman, and earnestly request him to advise and look after the interests of the said Laura Kellogg."

The defendant is here designated as the "friend" of the testator. The evidence excepted to was therefore proper for the additional purpose of negativing the statement that the defendant was the "friend" of the testator.

The case of Breck vs. State, 4 Ohio Cir. Ct., page 160, is directly in point.

The syllabus of that case is as follows:

1. "In a criminal action for forging a will, the will claimed to be forged containing recitals of facts, the truth or falsity of those facts may be shown as bearing upon the question of the genuineness of the will.

2. Where these recitals are of the feelings of the claimed testate, *her acts and declarations may be introduced to show that her feelings were not those recited in the alleged will.*

3. It is not necessary that she should have said directly that her feelings were not those recited in the alleged will. *Declarations which are the natural expressions of feelings, inconsistent with such a state of feeling as is recited in the will are admissible to disprove the recital.* For instance, the recital in the alleged will being that Mary E. Breck was her "only true friend on earth," it is admissible to show that she said she considered said Mrs. Breck "a scheming and dangerous woman."

The court in discussing the competency of these declarations on page 180, said, "The statements so far as they showed the mental condition of Mrs. McDonald (the testatrix) were proper for the purpose of negativing the statement of those feelings and conditions as recited in the will.

The judgment of the Circuit Court was afterwards affirmed by the Supreme Court without opinion.

The same rule was followed in a similar case, Corbett vs. State, 5 Ohio Cir. Ct., p. 155., also affirmed by the Supreme Court without opinion.

The statement of the testator to Miss Kellogg was indicative of his feeling toward the defendant *and was only offered when the state of his feeling in that respect had been put in issue by the evidence drawn out on cross-examination* and was competent for that purpose.

The Judge in his charge limited the effect of the testimony to that issue (p. 535.) After instructing the jury that they might properly consider the evidence offered by the defense to prove that the relations existing between Wm. Lanehart and Skillman and between Mr. Lanehart and the Skillman family were intimate and also the claim "that the making of this will and the giving of this sum of money was the natural outcome of the kindly feelings, trust and confidence that Mr. Lanehart had for the defendant" told them that they might also consider in that connection the statements of the deceased testified to by Miss Kellogg and John A. Hageman.

It may be argued that these statements did not indicate anything as to the character of the relations existing between the men. If they did not, then no harm could have come to the defendant for the jury were not instructed to consider these declarations for any other purpose.

A person may conceal his real feelings concerning the nature of his testamentary disposition, but it would be a strange friendship which would prompt or permit a man to make disparaging statements about one whom he considered his true friend. Expressions indicative of *friendliness* might sometimes be made to deceive but no real friend will give ex-

pression to sentiments tending to bring reproach upon the object of his affections.

Declarations of a deceased person are admissible to prove the state of mind of the declarant and are not limited in their probative effect to the "mental capacity" of the declarant. The great weight of authority does not support such a narrow limitation.

Mr. Elliot in his work on Evidence Vol. 3, p. 2694, in discussing the admissibility of such declarations, says: "Declarations made at the time of the execution of the will may be admissible as part of the res gestae or declarations at other times may be admissible as the best evidence of a particular fact, in some instances, or *to show the testators motives and state of mind.*"

In Bush vs. Bush 87 Mo. p. 480 it was held that such declarations are inadmissible as evidence of the facts mentioned in such declarations but were admissible when the condition of the testators mind is the point of contention, or it becomes material *to show the state of his affections.*

The same rule was laid down in a very able opinion in the case of Gibson vs. Gibson 24 Mo. 227-234.

Wherever the bodily or mental feelings of an individual are material to be proved, the usual expressions of such feelings made at the time in question are also original evidence. If they were the natural language of the affection, whether of body or mind, they furnish satisfactory evidence and often the only proof of its existence.

Greenleaf on Ev. Sec. 102.

Again in Marx vs. McGlynn 88 N. Y. 357 p. 374 the Court said apropos of such declarations:

"They are competent only as bearing upon the condition of the mind of the testatrix, at the time of the execution of the will. Such memoranda or declarations, whether made before or after the execution of a will are competent as bearing upon the testator's mental capacity. They are also competent as bearing upon the condition of the testator's mind with reference to the objects of his bounty. *They may be given in evidence for the purpose of showing his relation to the people around him,* and to the persons named in his will as beneficiaries. They are however entitled to no weight, in proving external acts, either of fraud or undue influence."

In the recent well considered case of Hobson vs. Moorman (Tenn.) 3 L. R. A. (N. S.) p. 749, the authorities on this question are reviewed and the rule is laid down that while anti-testamentary declarations are not admissible as substantive evidence of undue influence they are admissible to illustrate the mental capacity of the testator and his susceptibility to influence and *also to show the state of his feelings for others.*

The Court after reviewing the authorities said: P. 759:

"In our opinion the great weight of authority confirms the rule announced by the circuit judge in his instructions to the jury that such previous declarations are always admissible for the purpose of illustrating the mental capacity of the testator and his susceptibility to extraneous influence *and also to show his feelings, intentions and relations to his kindred and friends,* but such declarations are not admissible as substantive exidence of undue influence."

The question decided by the Court of Errors and Appeals in the case of Rusling vs. Rusling 9 Stew,

603 as shown by the syllabus was that the declarations of the testator respecting previous occurrences which are alleged to have exerted the influence *are not evidence to prove or disprove such occurrences.*

In the case of Boylan ads. Meeker 4 Dutch p. 274 considerable evidence was offered to show that the testator at different times spoke of the devisee (Boylan) in very disparaging terms (p. 323-324) and this evidence was considered and commented upon in the opinion of the Court. Other cases in point are:

Crowson vs. Crowson 172 Mo. 691 72 S. W. 1065.
In re Townsend 122 Iowa p. 246 255-97 N. E. 1108.
See also Schouler on Wills, par. 243.
Zibble vs. Zibble 131 Mich. 655, 92 N. W. 348.

In the cases cited it will be observed that a distinction is made between the admissibility of such declarations as substantive evidence of the fact of undue influence and as evidence of the declarants state of mind and feeling.

Under Point 4 error is also alleged in the admission of the testimony of John A. Hageman, which alleged error is assigned in the 16th and 17th Assignment of Errors.

This evidence was offered by the State to rebut the evidence offered by the defendant to show the relations existing between Mr. Lanehart and the defendant. The evidence offered by the defendant for this purpose purported to be statements made by Mr. Lanehart in his lifetime to the witnesses, and the evidence offered by the State in rebuttal was of the same character but was not offered until the issue of such relationship had been raised by the defendant.

At least two of the witnesses on behalf of the defense had been permitted to testify to the alleged friendly relations existing between the defendant and Mr. Lanehart.

(See testimony of Edward Skillman, page 370; and testimony of Elva Skillman, page 393).

Four other witnesses for the defense were permitted to testify to statements alleged to have been made by Mr. Lanehart as to his testamentary intentions and the state of his feelings.

Gertrude Skillman, a daughter of the defendant, was permitted to testify to the contents of a letter which she said she had received from Mr. Lanehart in the spring of 1905 (p. 441) (p. 478) and also to a conversation in the fall of 1904 p. 478, which she said took place at Blawenburg, although on a previous trial she had testified that it occurred in New York City (p. 480) and which she was afterwards called to correct.

Miss Jennie Opdycke, a friend of the defendant, was permitted to give an alleged statement of Mr. Lanehart to her in the spring of 1905 about which she had spoken to no one for over two years, p. 446, in which she said Mr. Lanehart had expressed a friendship for the defendant and told her something of his testamentary intentions.

James Duffield, another witness for the defense, was also permitted to testify to a statement alleged to have been made to him by Mr. Lanehart about his testamentary intentions. (p. 453-454).

Edward Skillman, a son of the defendant, was permitted to testify to an alleged declaration of Mr. Lanehart bearing upon his relations with his sister, although these relations were not in issue. (p. 436-437).

Certain letters which may be said to be declarations of the deceased written to this same sister were also introduced in evidence by the defense, the sentiments expressed in which however, were quite contrary to the sentiments expressed by Mr. Lanehart in the alleged declaration, testified to by Edward Skillman and which tended to prove the contentions of the State. These letters were offered

generally without any limitation upon their use. Afterward counsel for the defendant (p. 437) moved that the contents be excluded but as no purpose had been stated at the time they were offered the Court held them properly in evidence. One of the letters written about the time of the alleged declaration detailed by Edward Skillman is as follows:

At Home, April 25, 1905.

Dear Mary:—

Your letter of the 19th is at hand, I am sorry you are not going to stay here only a short time and what is still worse you do not tell me when you are coming. Will you please tell me within a week of the time you will be here. I have heard Clara is coming North this summer, if she does bring her with you from Arlington. We shall have lots of company from the city and do not want any of them here when you're with us. Now don't fail to name the time. I have not seen or heard from Miss Kenyon but will look for her all the time until she does come. Write soon.

Yours, etc., WM. LANEHART."

From the foregoing recitals of testimony offered and admitted on the part of the defendant, it will be seen that the whole fabric of the defense was largely woven out of the declarations imputed to the deceased.

After all these declarations of the deceased offered in evidence by the defense it would be a strange rule indeed which would permit the defense thus to prove declarations of the deceased and preclude the State from rebutting it. In view of the testimony of Miss Opdyke, that Mr. Lanehart thought a good deal of Skillman and believed him to be "white all the way through," the testimony of both John A. Hageman and Laura Kellogg was entirely proper. (p. 519).

THE ANSWER TO THE QUESTION MENTIONED IN THE NINTH ASSIGNMENT OF ERROR STATES A CONCLUSION OF THE WITNESS AND THE OPERATION OF HIS OWN MIND BUT NO FACT WHICH WAS RESPONSIVE TO THE QUESTION. THAT IT WAS SO UNDERSTOOD BY COUNSEL FOR THE DEFENDANT IS EVIDENCED BY THE QUESTION SET FORTH IN THE TENTH ASSIGNMENT OF ERROR.

The answer was clearly not responsive and no reason was given for the exception taken on the motion to strike out.

POINT 5.

THE BASIS OF THE ELEVENTH ASSIGNMENT OF ERROR IS A QUESTION PUT TO DR. MOSHER RELATIVE TO THE CONDITION OF HEALTH OF THE DEFENDANT DURING THE WINTER AND SPRING OF NINETEEN HUNDRED AND FIVE. THIS EVIDENCE WAS ENTIRELY IRRELEVANT AND IMMATERIAL.

The testimony of other witnesses for the defendant showed that the defendant was not confined to the house during the time in question, but was able to go out (see p. 380 and 466) and therefore must have been able to prepare the will. If the defendant's witnesses tell the truth, Mr. Lanehart went to the defendant's house to execute it after having made an appointment on the road to do so.

In view of this testimony the question excepted to was properly over ruled.

POINT 6.

THE TWELFTH AND THIRTEENTH ASSIGNMENTS OF ERROR ARE DIRECTED TO THE ADMISSION OF EVIDENCE REGARDING THE RELATIONS EXISTING BETWEEN WM. LANEHART, THE DECEASED, AND JAMES N. DUFFIELD, A WITNESS CALLED BY THE DEFENSE TO PROVE A CONVERSATION WHICH DUFFIELD SAID HE HAD HAD WITH MR. LANEHART IN WHICH IT WOULD APPEAR THAT MR. LANEHART

HAD TAKEN THE WITNESS INTO HIS CONFIDENCE TO A MARKED DEGREE.

The evidence was offered to show that the relations existing between Mr. Lanehart and the witness Duffield were of such a character as to make it exceedingly improbable that the confidential talk testified to, ever took place, and also to show Mr. Lanehart's state of mind and feeling toward the said witness, as evidenced by his statements to the witness, John A. Hageman.

The State insists that the statement purporting to have been made by the deceased and testified to by the witness Duffield was incompetent to disprove the alleged forgery.

The declarations of an alleged testator upon the issue forgery vel non which make for or against the disputed paper are not admissible in evidence.

Gordon's Case, 5 Dick, p. 397.
Boylan ads. Meeker 4 Dutch, p. 274.
Rusling vs. Rusling, 9 Stew, p. 603.
Lynch vs. Clements, 9 C. E. Gr. 431.
Kitchell vs. Beach, 8 Stew. Eq. 446.
Pemberton's Case, 13 Stew. Eq. 528.
Middleditch vs. Williams, 18 Stew. Eq. 726.

The evidence of the witness being incompetent, the defendant could not have been harmed by any attack on his credibility.

The objection offered to the testimony of Hageman was that it was immaterial and not rebuttal. If immaterial no harm was done the defendant. If not rebuttal, the court might, nevertheless, in its discretion admit it; and that discretion is not reviewable except in case of gross abuse.

No other reason for the exception taken was stated.

POINT 7.

THE FOURTEENTH ASSIGNMENT OF ERROR IS THAT THE COURT ERRED IN ITS CHARGE TO THE JURY.

The error assigned in paragraph (a) of this fourteenth assignment of error is directed to that portion of the judge's charge which recites the evidence of Laura Kellogg in relation to the so-called Race Will, which remained unrevoked at the time of Mr. Lanehart's death.

The testimony of Miss Kellogg on this point was as follows (pages 312-314):

Q. Did you know of any will of Mr. Lanehart's in existence at the time of his death?

A. I did.

Q. Where was that will?

A. In the Hopewell National Bank.

Q. How do you know that it was in the Hopewell National Bank?

A. It was kept there most of the time with other papers that belonged to my Uncle Will.

Q. Did you ever see those papers?

A. Yes sir.

Q. Where?

A. At my uncle's home.

Q. Under what circumstances did you see them?

A. My uncle frequently took his papers from the bank to his home to examine the insurance policies, notes, etc., and until he returned them he gave them to me to take care of for him.

Q. Was there among those papers a will?

A. Yes, sir.

Question by Court:—You may fix the date of that.

Q. When did you see that paper?

A. Frequently during the last few years of his life.

Q. Up until what time?

A. I remember that some of the papers were in the house in March, 1905, two months before my uncle's death.

Q. Some of the papers?

A. Yes sir, some of the papers.

Q. Did he at that time bring the papers from the Hopewell National Bank?

A. He did.

The language of the judge's charge is quite in conformity with the testimony of the witness.

POINT 8.

PARAGRAPHS (B) AND (C) IN THE FOURTEENTH ASSIGNMENT OF ERROR ARE EVIDENTLY DIRECTED TO THE COMMENT OF THE COURT UPON THE FAILURE OF THE DEFENDANT TO TESTIFY IN HIS OWN BEHALF.

In paragraph (b) the court after quoting the testimony of certain witnesses as to statements made by the defendant said that if those statements had any significance or any meaning that was of importance in determing the issues of the case, the fact that the testimony was given *in the presence of the defendant* and was was not denied by him, might create in the minds of the jury an inference that the conversations referred to as having taken place between the defendant and the witnesses, were true conversations. *It will be observed that the Court did not say that the failure of the defendant to testify in this connection might raise any inference of his guilt.*

In the portions of the charge to which exception was here taken, the Court commented upon the failure of the defendant to deny the incriminating statements which he had made, and which were testified to by Miss Kellogg and Abraham P. Stryker.

The first conversation testified to by Miss Kellog, took place in the office of defendant's counsel, Mr. Clark, where Miss Kellogg was taken by the defendant, immediately on her return from the interment of the body of the alleged testator, which occurred at Amsterdam, New York.

The testimony is as follows: (p. 318-319).

Q. Did Mr. Skillman meet you?
A. Yes, sir; he did.
Q. Where did he request you to go with him?
A. To Mr. Clark's office.
Q. For what purpose?
A. To see the will.
Q. Did you see the will there?
A. Yes, sir; I did.
Q. Was the will read?
A. It was.
Q. Who read it?
A. Mr. Skillman read it me.
Q. Was that the first you had seen of the will?
A. It was.
Q. Referring to Exhibit P. 4, before you?
A. Yes, sir.
Q. After the will had been read by Mr. Skillman, what state or remark, if any, did he make to you?
A. He handed it to me, and showing me the signature, he said, "That is Uncle's signature, is it not?"
Q. Did you at that time question the signature?
A. No, sir.
Q. Had anything been said about the signature at that time?
A. Nothing whatever.
Q. Had you made any remark about the contents of the will?
A. No, sir.

Another statement of the defendant testified to by

Miss Kellogg and referred to by the Court was as follows: (p. 325).

Q. Did he ever tell you whether or not he received compensation for the writing of this will?

A. He did.

Q. When did he tell you that?

A. Well, some time after the will was probated, he told me Uncle Will had given him two dollars for writing the will.

Still another conversation testified to by Miss Kellogg, took place subsequent to the probate of the will and after pencil marks had been discovered about the signature (p. 327-328).

It was as follows:

Q. Do you remember a conversation of Mr. Skillman on the road, subsequent to the probate of the will, in which pencil marks were mentioned?

A. I do.

Q. Where had you previously been?

A. The day before I met him on the road, I had been to Somerville (interrupted.)—

Q. Where in Somerville?

A. I had been to the Surrogate's office.

Q. Had you at that time examined the signature to Exhibit P. 4 then?

A. I had.

Q. Did you observe at that time the pencil marks?

A. I did.

Q. Did you speak to Mr. Skillman about them when you met him on the road?

A. Yes, sir.

Q. What did he say about the pencil marks, if anything?

A. He said, "Could anyone have gone to the Surrogate's office and put these marks around the signature?" And I said, "Yes, I think such a thing was possible." He said, "Well if anyone could

have done that, what could their object have been?''

Q. ''If anyone could have done that, what could their object have been''—is that your answer?

A. ''If anyone did that, what could their object have been?''

Another conversation testified to by Miss Kellogg occurred over a year later and after the testimony had been taken in the Orphan's Court proceedings. The testimony follows—p. 328:

Q. Do you know when that conversation occurred that you now recall?

A. Yes, sir, I do; I know exactly when.

Q. When was it?

A. It was in July, 1906, a year ago last July.

Q. And what was said by Mr. Skillman to you at that time?

A. He said, ''Miss Kellogg, my Elva is a very conscientious girl.'' And he said, ''Mr. Clark had difficulty in making her say that she saw Uncle Will use the lead pencil, the day the will was signed, in signing his name.''

The conversation testified to by Abrahm P. Stryker, occurring shortly after the probate of the will to which reference was made in the charge of the Court, is as follows (p. 365):

(Mr. Reger):

Q. What did he say at that time in relation to this will?

A. Well, as he was rustling through some papers, to find a catalogue of the A. I Wright Co., of Philadelphia, I went over to see about some bee-hives, and he took out a long envelope out of one of the pigeon holes in the desk there, and he says, ''Abe, this what the Blawenburg people will raise the devil about, I

have used all precautions in writing this will, and I don't intend for all hell to change it."

None of these statements were denied and it is alleged there was error in the charge of the Court, wherein it was said that the fact that they were not denied by the defendant, might create an inference that the conversations were true. Such an inference is natural, it is common sense, and there is no rule of law in New Jersey which prevents a jury from drawing such an inference or prohibits a judge from commenting upon it.

In the case of Parker vs. State, 32 Vr., p. 308, already cited, Chief Justice Magie after saying that the silence of the accused would justify a strong inference that he could not deny the charges, further said:

"Such an inference is natural and irresistible. It will be drawn by honest jurymen and no instructions will prevent it. Must a Court refrain from noticing that which is so plain and forcible an indication of guilt? In my judgment there is no rule of law requiring it. The rights of the accused are not invaded or denied by proper comment on his silence."

See also State vs. Cleves, 59 Me. 298.
State vs. Bartlett, 55 Me. 200.

As to the matter quoted in paragraph (c) it may be said that the defendant did not testify although present in court advising with his counsel during the entire trial which lasted over a week. A physician, Dr. Mosher, was called and endeavored to explain the reason why the defendant did not testify. It was therefore proper for the court to call to the attention of the jury the evidence of the witness, Dr. Mosher. The court's comments upon this testimony is not error under the decided cases in this State.

It will be observed that the Court did charge

(page 543, line 30) that the defendant was not bound to offer himself as a witness in his own behalf and that "In not testifying he is exercising his indubitable right as a citizen of this State; and, I do not say to you that in this case his failure standing by itself to testify in his own behalf can create any inference against him."

THE FIFTEENTH ASSIGNMENT OF ERROR IS BASED ON THE REFUSAL OF THE COURT TO CHARGE AS REQUESTED. THE FIRST REQUEST IS FOR AN INSTRUCTION THAT "THE JURY IN ORDER TO REACH A VERDICT OF GUILTY MUST BE SATISFIED BEYOND A REASONABLE DOUBT THAT THE WITNESSES WHO HAVE TESTIFIED THAT THEY SAW WILLIAM LANEHART WRITE THE DISPUTED SIGNATURE DID NOT TELL THE TRUTH."

A novel request indeed. Witnesses are often mistaken. This request would eliminate from the consideration of the jury the possibility of mistake on the part of a witness.

The Court charged plainly (p. 526, line 20) that the burden rested upon the State to prove the criminal act beyond a reasonable doubt. No other instruction on reasonable doubt was necessary.

In this case the witnesses who testified that they saw Wm. Lanehart write the disputed signature could not identify it with the signature which they saw made except to say that it was written at the bottom of the page, ran uphill and was in a trembling hand, all of which might be true of the signature which they saw made yet which does not disprove the forgery. The will itself was on one sheet of paper. The attestation clause and the signatures of the witnesses were on another sheet. Nothing could be easier than to substitute for the first sheet another sheet containing the false signature, which would undoubtedly possess the characteristics of which they testified if it had been copied.

Attention is called to the fact that no less than

16 witnesses called by the State testified to the falsity of the disputed signature, *while not a single witness was produced by the defence, expert or non-expert, who testified that the signature was genuine, excepting of course* the Skillman children and Ely, who attempted to identify the signature with the one they saw made.

Two of the State's witnesses, Wm. J. Kinsley and Albert L. Osborn, are among the leading handwriting experts in the country. They had each made a careful and scientific and miscroscopic examination of the disputed signature and testified very positively that it was a forgery, and that the same hand which wrote the body of the will also wrote the disputed signature. Among the others who so testified were officers of banks (three of them cashiers), and men of character and standing in the community; county officials, accustomed to passing upon the genuiness of signatures; business men, who had had business dealings with Mr. Lanehart, had corresponded with him, were familiar with his handwriting and his method of doing business; and lastly Miss Kellogg, who had been his constant companion for several years, assisted him in his business, attended to his correspondence and doubtless knew more about his affairs than any other person. She admitted that on the first trial in the Orphan's Court, she had expressed an opinion that the disputed signature was genuine and gave the reason why she had changed her mind, namely, that she had never had the opportunity previous to the first trial to make a careful comparison of the disputed with the genuine signatures, except as they were shown to her on the witness stand. The fact that Miss Kellogg in testifying on behalf of the State, was testifying against her own interest, the bequest to her under the disputed will being much larger than under the Race Will, gives additional weight to her evidence.

In view of this testimony of sixteen witnesses un-

impeached that the disputed signature is a forgery, the jury may either have believed that the witnesses for the defence were mistaken or that they were not telling the truth. It was not error for the Court to refuse to charge in the language of the request.

In the case of Schmidt vs. North Jersey Street Ry. Co. in this Court, decided February 24, 1908, the Court said, "The charge correctly stated the rules of law applicable to the case and it was not error for the judge to refuse to apply those rules to conditions of fact postulated by the defendant's counsel.

See also Christenson vs. Lambert, 38 Vr. 341.

POINT 9.

Another request to charge to which exception is taken is as follows:

"In weighing evidence the rule is elementary that conflicting testimony must be reconciled without imputing wilful perjury to any witness unless that conclusion is unavoidable."

This request to charge was not that the jury should *endeavor* to reconcile the testimony, but that they *must* reconcile it without imputing perjury to any witness unless that conclusion was unavoidable.

The meaning of this request is that the jury must believe all witnesses, if possible, and must not conclude any conflicting testimony to be false if such a conclusion can be avoided.

Such an instruction would surely violate the rule that the jury are the sole judges of the credibility of witnesses, and would make the Court invade the province of the jury.

But even assuming that such an instruction would be a correct statement of the law, it was properly refused for it had no relevancy to the case in hand.

A large number of witnesses testified that the signature was not genuine, and their testimony was corroborated by a strong chain of circumstances; other witnesses testified that the signature was genuine. If this instruction had been given, it would have been utterly impossible for the jury to reconcile this testimony, and yet acquit the defendant. The defendant therefore could not have been prejudiced by the refusal to charge as requested.

Instructions should be framed with reference to the circumstances of the case on trial and not be expressed in abstract and general terms.

Sacketts Instructions to Juries, p. 15.
McQuillan Instructions to Juries, par. 67-69.

The case of Rickerson vs. State, 78 Ga. p. 15, cited with disapprovel in the opinion of the Supreme Court does not appear to be a well considered case.

In a later Georgia case is was held error for the Court to charge "It becomes your duty to believe that witness who has the least inducement to swear falsely and the best means of knowing the facts about which he testifies.

Hudson vs. Best, 104 Ga. 131.

And in a still later Georgia case it was again held error to instruct the jury that "if there is a conflict between the witnesses in what they have sworn before you, it is your duty to reconcile that conflict if you can do so; but if you cannot do so then you should believe that witness or those witnesses who have the best opportunity of knowing the facts about which they testify and the least inducement to swear falsely.

Southern Mut. Ins. Co. vs. Hudson, 113 Ga. 434.

It is not proper to charge that the jury should

endeavor to reconcile the evidence with the theory of defendant's innocence.

Blashfield Instructions to Juries, par. 270.

When the evidence of witnesses in a case on trial is in conflict, it is the province of the jury to determine which of it is to be taken as true; to determine the credibility of the witnesses and in which direction the weight of evidence exists.

Faulkner vs. The Paterson Ry Co., 36 Vr., p. 181.

An instruction as to the credibility of the witnesses and the weight and effect of their testimony is properly refused—especially where it attempts to cast suspicion and doubt upon the testimony of any particular witness.

McKeon vs. C. M. & St. P. Ry. Co., 35 L. R. A., p. 252.

The defendant was not prejudiced by the failure to charge as requested and therefore cannot complain.

P. L. 1898, p. 915, Sec. 136.
Ganz vs. State, 31 Vr., p. 488.
State vs. Simon, 42 Vr. 142.
Clawson vs. State, 30 Vr. 434.

POINT 10.

Assignment of Error 15C is that the Court refused to charge that the testimony of a witness who speaks from his own personal knowledge is more satisfactory than the testimony of another who speaks of matters which lie in opinion only, and that the testimony of a witness who was present and who saw the testator sign the disputed document should outweigh the statement of another witness who testifies that he is acquainted with the signature and does not not believe it to be genuine. This request was properly refused.

An instruction of the Court that the testimony of one witness or one class of witnesses is more satisfactory than another, would be equivalent to an instruction that the testimony of such witness or witnesses was more truthful than another.

Whether the testimony of one witness is more satisfactory or more truthful than that of another must be determined by the jury from all the facts and circumstances, and whether both witnesses are equally creditable is a question solely for the jury to determine.

Assignment of Error 15D is that the Court refused to charge that the verdict rendered would not establish or set aside the will, and that no legacies mentioned in the will would be paid upon a verdict of not guilty, nor refuse payment if the verdict were guilty. This request was also properly refused as there was no evidence in the case which required any such instruction, and the matters set forth in such request were not within the issue tried.

POINT 11.

THE COURT WAS NOT REQUIRED TO INSTRUCT THE JURY AS REQUESTED IN PARAGRAPH (E). THE MATTER CONTAINED IN THIS REQUEST TO CHARGE WAS AMPLY COVERED BY THE COURT'S INSTRUCTION AND THE COURT WAS NOT BOUND TO ADOPT THE LANGUAGE OF THE REQUEST.

A judge is not required to adopt the form, or the words, or the collocation of phrases, in which a request to charge is framed; and on a request embracing several distinct legal propositions, if any one of the set be improper, a general exception to the refusal to charge will be unavailable.

Gardner vs. State, 26 Vr. p. 17.
Cliver vs. State, 16 Vr., p. 46.
Consolidated Traction Co. vs. Hight, 30 Vr., p. 577.

Consolidated Traction Co. vs. Chenowith, 29 Vr., p. 416.

The 18th Assignment of Error is evidently directed to the comments of the Court upon the evidence. This is not assignable as error.

It is not erroneous for the judge presiding at a criminal trial to make to the jury such comments and suggestions respecting the evidence as judicial discretion may dictate.

State vs. Valentine, 42 Vr. 553.

That the Court in its charge to the jury argued the facts in the case or gave a partial view of the evidence against the prisoner constitutes no legitimate ground of error or of a bill of exceptions.

Donnelly vs. State, 2 Dutch., p. 463.

A judge has an undoubted right to make such comments upon the testimony as he thinks necessary or proper for the direction of the jury. He may intimate an opinion as to the weight of the evidence or call the attention of the jury to any matter in the cause affecting the credibility of a witness.

This is also a matter of judicial discretion and not subject to review in error.

Bruch vs. Carter, 3 Vr., p. 554.
See also State vs. Simon, 42 Vr., p. 142.
Foley vs. Loughraw, 31 Vr. 464.
Newark Passenger Co. vs. Block, 26 Vr. 605-614.
Engle vs. State, 21 Vr., p. 272.
Smith vs. State, 12 Vr. 370 (385).

No error prejudicial to the defendant was committed and the judgment should be affirmed.

JOHN F. REGER,
Prosecutor of the Pleas.