

New Jersey Court of Errors and Appeals

In the Matter of The appeal from the decree affirming the order of the Orphans' Court of Union County, appointing Robert H. McAdams guardian of CATHERINE MORRISEY, a lunatic.	}	On appeal from Prerogative Court.
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BRIEF OF APPELLANTS

This appeal was taken from the decree of the Prerogative Court affirming an order of the Union County Orphans' Court appointing Robert H. McAdams guardian of Catherine Morrisey, a lunatic. Mr. McAdams was the nominee of the respondents, Annie Fleming, Frank J. O'Brien, and Leonard O'Brien a grand-niece and two grand-nephews, respectively, of the lunatic.

The appellants, Margaret McCahill, *et als.*, include all of the *nearest* relatives of the lunatic and the majority of the next of kin. They are two nieces and two nephews of the lunatic; the other appellants are two grand-nieces and one grand-nephew, respectively, and the lunacy pro-

ceedings were instituted by them (Case, pp. 9, 48).

On October 19th, 1917, two of the appellants applied to the Union County Orphans' Court for the appointment of either Clarence Kelsey, a lawyer, or William S. Bird, a business man, or the Summit Trust Company, as guardian of Catherine Morrissey. The proctor who had represented the lunatic on the lunacy proceedings was notified by letter that the application would be made, and he appeared and suggested to the Court that Robert H. McAdams be appointed guardian. The appellants objected to Mr. McAdams, and after stating their reasons for objecting, finally withdrew their application in order that they might file a new petition setting forth their objections to his appointment (Case, p. 10, line 3).

The proctor who had nominated Mr. McAdams was immediately notified by letter on the same day (October 19th), of the intention to file the new petition on October 26th; and, as soon as it was verified, a copy was sent to him (Case, p. 8e). The said proctor who had represented the lunatic then filed a petition on October 20th, 1917, on behalf of the respondents, Annie Fleming, Frank J. O'Brien and Leonard O'Brien, praying for the appointment of a guardian (Case, p. 20). Both applications were heard at the time the appellants filed their new petition on October 26th. The Court appointed Mr. McAdams on November 9th, 1917, and this appeal was taken from the decree of the Prerogative Court affirming the appointment.

I

The nominee of the respondents was not a "fit and discreet person" to be appointed guardian in the present case.

The statute provides that the Orphans' Court shall appoint "some fit and discreet person or persons" as guardian of the lunatic (2 Comp. Stat., p. 2782, sec. 1). "Fitness" in that sense is one who is adapted to act as guardian in the particular case before the Court. And "discreet" means one who is prudent, judicious and wise in avoiding errors.

Those qualifications are necessary in the appointment of a person to any fiduciary office whether a statute uses those terms or other terms or is silent as to the qualifications. The evidence and the objections show that Mr. McAdams was actively associated with the respondents who schemed to gain control of the lunatic and her property; that he and the respondents tried to keep the other relatives away from the lunatic and to keep them in ignorance as to her mental condition; that he assisted in contesting the lunacy proceedings despite the fact that even the witnesses for the respondents admitted the incompetency; that Mr. McAdams had borrowed money from the subject of the lunacy proceedings, and had used the mails to threaten the proctor of the appellants for attempting to ascertain the truth with respect to the mental condition of the subject.

The evidence and history showing those facts are as follows:

Mr. McAdams had been attorney for Mrs. Mor-

risey until about the year 1907, and he had borrowed \$1,500 from Mrs. Morrisey, giving her a mortgage which was eventually satisfied; but Mr. McAdams was somewhat uncertain as to whether or not it was paid by check (p. 181). During that period the mother of the respondents (Mrs. Grace O'Brien) was living with her. Mrs. Morrisey then arranged to have another branch of the family (the Kellys) keep house for her, and Mr. McAdams ceased to be her attorney (p. 173, lines 18-28; p. 177, lines 1-15; p. 53, lines 13-20; pp. 88-91). The Kellys kept house for Mrs. Morrisey until November, 1915, when the respondents virtually kidnapped Mrs. Morrisey while she was in a condition which rendered her incapable of knowing where she was (pp. 57, 89). She was taken to the home of one of the respondents, Frank J. O'Brien, until the Kellys could be dispossessed (pp. 62, 90). Mr. McAdams, who was attorney for Frank J. O'Brien (p. 173, line 30), helped to eject the Kellys, and pushed the daughter, a girl about 18 years of age, towards the door with his hands until her brother interfered (p. 90, lines 32-36; p. 177, lines 10-20). The respondent, Annie Fleming, then moved into Mrs. Morrisey's house with her family, and the respondent, Frank J. O'Brien, took charge of Mrs. Morrisey's property (pp. 64, 77).

Mr. McAdams also assisted the respondent, Annie Fleming, in keeping the other relatives from calling upon Mrs. Morrisey. The appellants were ordered out of the house by Mrs. Fleming (p. 78, line 9; p. 97, lines 1-40; p. 141, line 10; p. 146, line 17); and Mr. McAdams wrote to Mrs. McCahill and Mrs. Brown and to their attorney stating that they could only see Mrs.

Morrisey on business, and by making an appointment through him (pp. 13-17). And, although Mrs. Morrisey had been incompetent for several years as shown by the inquisition (p. 26, line 30), and by the admission of Dr. Prout, the medical expert called by the respondents themselves (p. 165, line 14), Mr. McAdams stated in his letters in June, 1917, that he had called upon Mrs. Morrisey and she was "thoroughly competent to take care of her own affairs" (pp. 13-15). A few days later he again wrote to Mrs. McCahill and Mrs. Brown stating that Mrs. Morrisey "does not desire to have anything further to do with either you or your attorney, and will positively refuse to make any appointment with you, or see you if you call" (pp. 15-16). Mr. McAdams either knew that Mrs. Morrisey was not "thoroughly competent" when he wrote the letters, or he did not interview her as stated in his letter, for all of the evidence and the inquisition showed that Mrs. Morrisey had been incompetent for several years prior to that time.

In the same month (June, 1917) Mr. McAdams wrote to the proctor of the appellants threatening to take steps against him if he persisted in causing inquiries to be made with respect to the mental condition of Mrs. Morrisey (p. 17). And on cross-examination he virtually admitted that he knows there is no law prohibiting an attorney from verifying statements of his clients or seeking the truth (pp. 178, 179); and yet he used the mails to threaten (p. 179, line 34). That conduct certainly was not "discreet." All of those letters were referred to in the petition objecting to the appointment of Mr. McAdams (pp. 13-17).

As a result of the actions of the respondents and Mr. McAdams in keeping the relatives from

seeing Mrs. Morrisey, it was necessary to obtain an order to permit Dr. Britton D. Evans to examine her (p. 24). On the day arranged for the examination, the physician of the respondents (Dr. Reiter, p. 172), sent word to Dr. Evans that Mrs. Morrisey was too ill to be examined (p. 158, line 22). And, although Dr. Reiter had not seen Mrs. Morrisey for several days and knew she was well enough to go out driving, etc. (p. 158, line 18; p. 159, line 25), he sent the message to Dr. Evans. But Dr. Evans nevertheless called and found Mrs. Morrisey sitting in a chair on the first floor in a fairly good condition considering her age and the heat (p. 108, line 14). The respondents, therefore, had the assistance of a lawyer and a doctor in trying to keep the other relatives in ignorance as to the mental condition of Mrs. Morrisey.

Furthermore, Mr. McAdams acted as counsel in contesting the lunacy proceedings despite the rule of the Court of Chancery prohibiting the clerk from practicing therein. He sat at the table with the proctor of record and suggested questions and consulted with him during the entire progress of the hearing (Case, pp. ~~11~~ 187). And while of course Mr. McAdams did not deliberately defy the rule of the Court of Chancery by filing a petition as solicitor of record, nor by addressing the commissioners nor by personally examining the witnesses on the inquisition, he took an active part as counsel in *contesting*, not in aiding the investigation of the truth. Any information which he deemed necessary could have been given to the proctor in his office or in some other way than actively participating in the proceedings. To say the least he was indiscreet in

doing indirectly what Rule 35 of the Court of Chancery prohibits being done directly.

All of the evidence was referred to in the objections presented to the Orphans' Court and the facts were properly before the Court (pp. 9-19).

In view of those uncontroverted facts showing the unusual interest and activity of Mr. McAdams, and his association with the respondents in acquiring possession of the lunatic and her property, how can it logically be said "that Mr. McAdams is fit to be appointed guardian of a lunatic is perfectly clear," in this particular case? Those facts show that Mr. McAdams is not adapted to act as guardian in this case, and therefore he is not "fit;" and he did not act prudently, and therefore he was not "discreet" in this case. The Courts are always governed and controlled by the "fitness" of a nominee even where a statute provides other qualifications. And the same principles governing the appointment of a person as an officer or representative of the Court in analogous cases, are applicable. A nominee for a guardian of an infant, or an administrator, or a receiver or any trustee, would not be appointed if he were shown to be unfit, even though the statute required other qualifications. Any unusual interest or bias is always a disqualifying element and renders a person "unfit." And objections to the appointment of a guardian are not unlike an application for the removal of a guardian. If these facts were shown on such an application it would disqualify a person from holding any of the offices mentioned.

Under those circumstances the objections of the appellants and nearest of kin should not have been disregarded, and their wishes should have

been followed. There was no objection to any of the nominees of the appellants and nothing to disqualify them.

“The nearest of kin of an idiot or lunatic, in the absence of special circumstances disqualifying them, are entitled to guardianship.”

1 Kocher's N. J. Probate Law, p. 778.

In *Hill's Case*, 55 N. J. Eq. 764, although the appeal was from the appointment of an administrator, the principle is the same as in the present case, the court said:

“It is of course true that the orphans' court could not pass by the next of kin and appoint strangers to the blood of the intestate without the consent of all the next of kin, or without proof that the non-consenting parties were unfitted for the office.”

And in *Read v. Drake*, 2 N. J. Eq. 78, where two applications for guardianship of minors were made, and where there were objections to Read, the nominee of the nearest of kin, and the other nominee (Drake) was appointed guardian, the Court reversed the appointment and said:

“I see no satisfactory reason to pass by the next of kin.”

In any event the nominee who was objected to by all of the nearest of kin should not have been appointed, especially in view of the evidence.

II

The appellants had not renounced.

The nearest of kin had not renounced their right to the guardianship, and even if the respondents had been relatives of equal degree it was necessary for them to give notice or obtain renunciations from the appellants.

“Where the application is made by one of several equally entitled, the applicant must either produce the renunciation and request for his appointment of all those equally entitled with him to the guardianship of such incompetent, or proof that at least ten days notice of his application has been served upon all such next of kin who are residents of the State of New Jersey, and that not less than ten nor more than sixty days, as the court may by order direct, has been given to such next of kin as reside without the State of New Jersey.”

2 Kocher's N. J. Prob. Law, p. 832.

In the present case the appointee was not nominated by any of the nearest of kin. No notice was given by the respondents, and the obvious purpose of the respondents in filing their petition on October 20th, was to have the appointment made before the appellants could present their new petition on the next motion day (October 26th), for despite the fact that on October 19th notice was given to the proctor of the respondents of the new application, the petition of the respondents was verified and filed the following day (October 20).

It was not necessary for the appellants to give notice of their application because they include all of the nearest of kin; but the Court should not have entertained the respondents' application without notice to or renunciation by the nearest of kin.

It is respectfully insisted that the decree of the Prerogative Court should be reversed and the appointment of Robert H. McAdams as guardian set aside.

Respectfully submitted,

HERBERT CLARK GILSON.

Of counsel with Appellants.

New Jersey Court of Errors and Appeals.

In the Matter of

The appeal from the decree affirming the order of the Orphans' Court of Union County, appointing Robert H. McAdams guardian of CATHERINE MORRISEY, a lunatic.

*On Appeal
from
Prerogative
Court.*

10

BRIEF FOR RESPONDENTS.

This is an appeal from the order of the Prerogative Court, affirming an order of the Union County Orphans' Court appointing Robert H. McAdams, guardian of Catherine Morrisey, a lunatic. 20

A commission in the nature of a writ *de lunatico inquirendo* was issued out of the Court of Chancery and Catherine Morrisey was adjudged a lunatic thereunder. Subsequently, a transcript of the proceedings was filed in the Union County Orphans' Court by the appellants, who applied for the appointment of one of three persons, none of whom are of kin to the lunatic, as guardian. 30

The respondents nominated Robert H. McAdams as such guardian, and the proctor for the appellants then informed the court that if such nomination would be considered, he would withdraw the appellants' petition, which he thereupon did. 40

The proctor for the respondents immediately gave notice in open court, in the presence and hearing of said proctor for the appellants, that a petition would be filed by the respondents and that application would be made to the Union County Orphans' Court on October 26, 1917, for the appointment of a guardian for said Catherine Morrissey, a lunatic.

10 On October 20, 1917, a petition was filed in the Surrogate's Court of Union County by these respondents, in accordance with said notice, and on October 26, 1917, a hearing was had thereon by the Union County Orphans' Court.

At the same time, the proctor for the appellants, who was then and there in attendance, submitted a new petition to the court on behalf of the appellants, and both petitions were taken under advisement by the court.

20 The same persons, all strangers to the lunatic, were again nominated for guardian by the respective proctors, and the court reserving decision, announced that the appointment would be made at the session of the court to be held one week later, on November 2, 1917.

On that date, in the presence of the proctors for the appellants and respondents, the court announced the appointment of said Robert H. 30 McAdams, as guardian of said Catherine Morrissey, a lunatic, and on November 9, 1917, an order was signed by the court, making such appointment, and fixing the amount of the guardian's bond at the sum of \$35,000.00.

A bond for that sum was subsequently, on November 12, 1917, approved by the Hon. James C. Connolly, Judge of the Union County Orphans' Court, and filed in the office of the Surrogate of the County of Union, and said Robert 40

From answer to petition of appeal from Orphans' Court to Prerogative Court, omitted from state of case

H. McAdams then took upon himself the performance of his duties as guardian of said Catherine Morrisey, a lunatic. (Case, p. .)

No evidence of any kind in support of the petition was taken either before the Union County Orphans' Court or in the Prerogative Court, and the matter was considered by the respective courts entirely upon the record as presented.

10

The statute prescribes the necessary qualifications of a guardian for a lunatic in the following language:

“And the said Orphans' Court is hereby directed and required, on further application for that purpose, to appoint some fit and discreet person or persons guardian or guardians of such idiot or lunatic.”²⁰
Comp. Stat., p. 2782, par. 1.

In 22 Cyc., 1139, the rule as to the eligibility and qualification of the appointee is stated as follows:

“Any competent person may be appointed guardian of an insane person. In choosing a guardian there is no rule of law which prefers relatives over strangers or the reverse, but the court will do whatever is best for the lunatic. If it appears that the heirs at law or next of kin of the party are most likely to protect his property from loss, one of these will be appointed; but it is discretionary with the court to appoint a stranger.”³⁰

40

On page 8 of the brief of appellants, a part of the first paragraph on p. 778, 1 Kocher's N. J. Probate Law, is cited. The attention of the court is respectfully directed to the remainder of that paragraph, which reads as follows:

10 “The court, however, is not bound to select the guardian from among the next of kin. The statute authorizes the appointment of “some fit and discreet person”; and, while the court will usually appoint one of the next of kin guardian, still when it appears for the best interests of the lunatic to select one other than the next of kin, the court has the power so to do.”

20 Hills case, 55 N. J. Eq. 764, and *Read v. Drake*, 2 N. J. Eq. 278, cited in the brief of appellants have no application to the case at bar. Hills case was an appeal from the appointment of an administrator, and *Read v. Drake* from the appointment of a guardian of minors.

30 It is admitted that in both of these cases, the next of kin were entitled to consideration. In the case at bar, however, the statute makes no mention of the next of kin. The court is directed and required on application for that purpose, to appoint some fit and discreet person guardian of such lunatic, and this is the only qualification prescribed. (See opinion of ordinary, p. 185 case.)

40 The proctor for the appellants, on page 3 of his brief, impugns the character of Mr. McAdams and challenges his fitness for appointment as guardian, but there is no evidence in

the case in support of the allegations made, nor does the record of the proceedings before the commission in lunacy, portions of which are quoted, in anywise justify the attack. The same allegations were made orally before the Orphans' Court and the Prerogative Court, both of which, after due consideration and careful deliberation, concluded that Mr. McAdams, who is the present Clerk in Chancery, was a fit and discreet person, within the purview of the statute, and he was accordingly appointed as guardian of the lunatic. 10

It is respectfully submitted that there is no reason to disturb the judgment of these courts and that the order appealed from should be affirmed.

WILLIAM D. WOLFSKEIL,
Proctor for Respondents 20

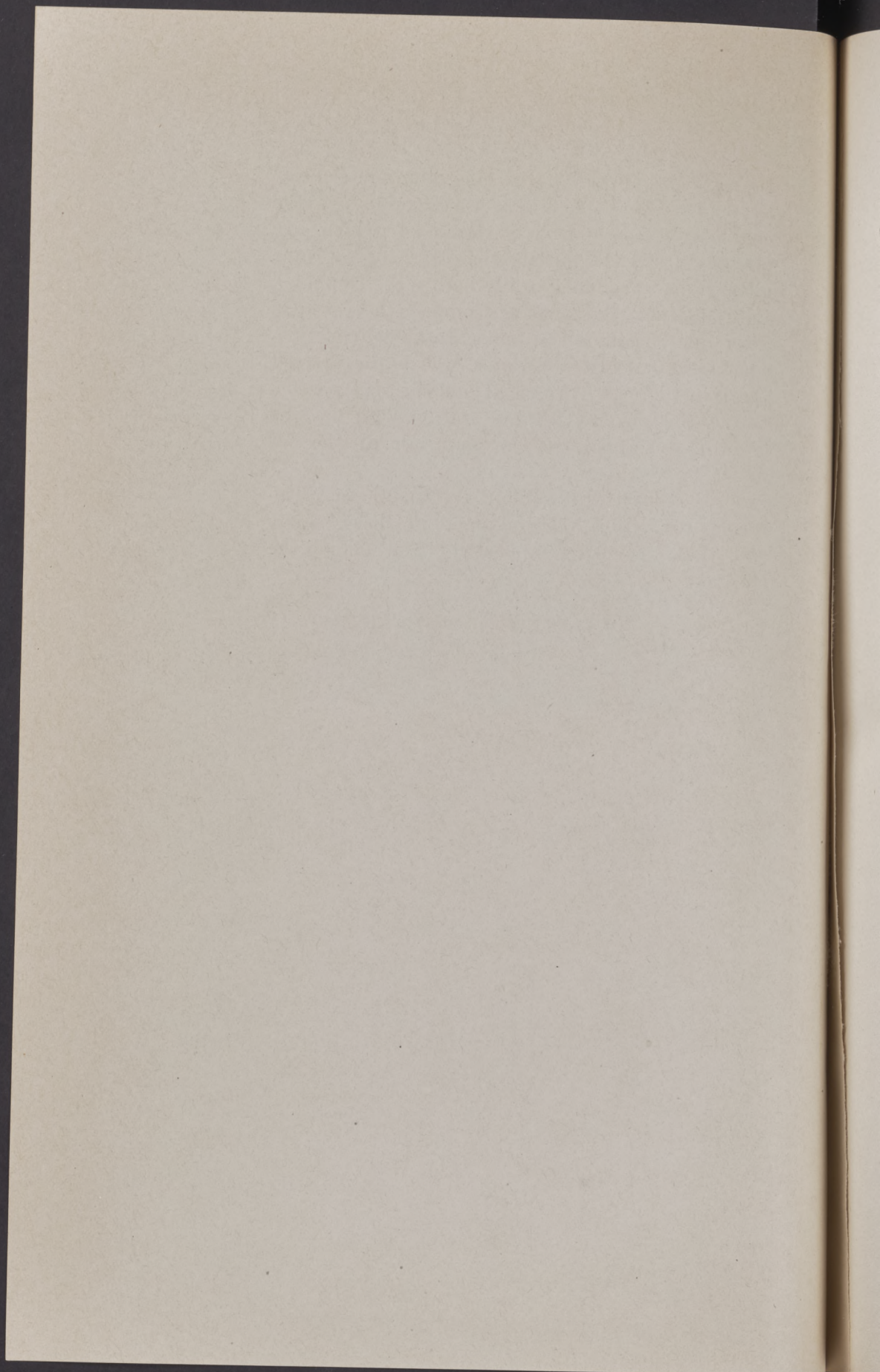
This case was noticed for argument on March 19, 1918, but by agreement was to be submitted on briefs.

The state of case, which was not served until March 15, 1918, does not contain the petition of appeal from the Orphans' Court to the Prerogative Court and the answer of the respondents thereto. These are essential parts of the record and unless the omissions are supplied, the dismissal of the appeal is moved.

Notice of the respondents' objections to the state of case and of this motion for dismissal has been given to the appellants.

William D. Wolfskeil

Proctor for Respondents.



NEW JERSEY
Court of Errors and Appeals.

IN THE MATTER OF THE APPEAL
FROM THE DECREE AFFIRMING
THE ORDER OF THE ORPHANS'
COURT OF UNION COUNTY, AP-
POINTING ROBERT H. MCADAMS
GUARDIAN OF CATHERINE MOR-
RISEY, A LUNATIC.

*On Appeal
from Preroga-
tive Court.*

Replying Brief of Appellants.

The omission in the state of case, of the petition of appeal and answer thereto in the Prerogative Court, objected to in the brief of respondents, has been corrected by inserting them in the state of case, at pages 190 to 197.

It was due to a misunderstanding on account of the failure of counsel for respondents to reply to the following letter, from which it was assumed that he had no objection to the omission, viz:

March 5, 1918.

“W. D. Wolfskeil, Esq.,
207 Broad street,
Elizabeth, N. J.

Re. *Catherine Morrissey.*

“Dear Sir:

“I herewith enclose three copies of my brief in the above stated matter.

“The state of case will probably be received from the printer within the next two or three days, and I will send you same as soon as I receive them.

It will be the same as the one used in the Prerogative Court, with the following exceptions:

“(a). Petition of appeal and answer on the present appeal, *instead of the ones to the Prerogative Court.*

“(b). Notice to produce, and letters of Robert H. McAdams to Mrs. McCahill and Mrs. Brown and to me, following answer to petition of appeal.

“(c). Decree affirming order of Orphans' Court.

“(d). Conclusions of Prerogative Court at the end of the state of case.

Yours very truly,
HERBERT CLARK GILSON.”

The delay in serving the state of case, also referred to in the brief of respondents, was due to the fact that the answer to the petition of appeal was not filed until March 2nd, 1918 (three days before the opening of the term; see p. 6) and therefore the printing could not be completed until after that time.

Respectfully submitted,
HERBERT CLARK GILSON,
Proctor for and of Counsel with
Appellants.

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Prerogative Court
of the
State of New Jersey

Notice of Appeal

(Served, January 26, 1918)

(Filed, January 31, 1918)

PREROGATIVE COURT OF NEW JERSEY 20

In the Matter
of
The appeal from the order af-
firming the order of the Or-
phans' Court of the County of
Union, appointing ROBERT H.
McADAMS guardian of Cathe-
rine Morrisey, a lunatic. 30

The petitioners and appellants, Margaret Mc
Cahill, Mary A. Kelly, Michael J. Kelly, Thomas
F. Kelly, Elizabeth M. Brown, Florence Springer
and Joseph Hughes, hereby appeal from the order 40
affirming the order of the Orphans' Court of Un-

Notice of Appeal

ion County, appointing Robert H. Mc Adams guardian of CATHERINE MORRISEY, a lunatic and dismissing the petition of appeal in the above stated matter, and from the whole and every part thereof, to the New Jersey Court of Errors and Appeals in the last resort in all cases.

10

Dated, January 25th, 1918.

HERBERT CLARK GILSON,
Proctor of Appellants.

I conceive there is good cause for appeal in the above stated cause.

HERBERT CLARK GILSON,
Of Counsel with Appellants.

20 Due and legal service of the within notice is acknowledged this 26th day of January, 1918.

W. D. WOLFSKEIL,
Proctor of Respondents.

Petition of Appeal

(Filed, January 28, 1918.)

NEW JERSEY COURT OF ERRORS AND APPEALS

10

In the Matter
of
The appeal from the order affirming the order of the Orphans' Court of the County of Union, appointing ROBERT H. McADAMS guardian of Catherine Morrissey, a lunatic.

To the Honorable the New Jersey Court of Errors and Appeal in the last resort in all causes: 20

The petition of Margaret Mc Cahill, Mary A. Kelly, Michael J. Kelly, Thomas F. Kelly, Elizabeth M. Brown, Florence Springer, and Joseph Hughes, the appellants in the above entitled matter, respectfully show that your petitioners find themselves aggrieved by the order made in the Prerogative Court of New Jersey, by his Honor, Edwin Robert Walker, Ordinary of the State of New Jersey, bearing date the 15th day of January, A. D., 1918, wherein your petitioners were appellants, and Annie Fleming, Frank O'Brien and Leonard O'Brien were respondents, in this respect, to wit: that the said order adjudges and decrees that the order of the Orphans' Court of the County of Union appointing Robert H. McAdams guardian of Catherine Morrissey, a luna- 30 40

Petition of Appeal

tic, be affirmed and that the petition of appeal be dismissed.

10 And your petitioners appeal from the said order of the Ordinary and from the whole and every part thereof, upon the ground that the same is erroneous and contrary to the law and the evidence which showed that the said Robert H. McAdams was not a fit and proper person for such guardian under the circumstances as disclosed by the evidence, and therefore the said order of the Orphans' Court of Union County should have been reversed, set aside and for nothing holden and one of your petitioners or their nominee appointed guardian in the place and stead of Robert H. McAdams.

20 Your petitioners therefore pray that the said order may be reversed and set aside and for nothing holden, and that one of your petitioners or one of the persons or the trust company nominated by your petitioners in the said Orphans' Court of Union County, be appointed guardian of the said Catherine Morrissey, a lunatic, in the place and stead of the said Robert H. McAdams, and that your petitioners may have such other relief as to this Honorable Court may seem meet.

30 HERBERT CLARK GILSON,
Proctor and of Counsel with Appellants.

Petition of Appeal

NEW JERSEY COURT OF ERRORS AND
APPEALS

<p style="text-align: center;">In the Matter of</p> <p>The appeal from the order af- firming the order of the Or- phans' Court of the County of Union, appointing ROBERT H. McADAMS guardian of Cathe- rine Morrisey, a lunatic.</p>	}	<p style="text-align: right;">10</p> <p>Acknowledgment of Service.</p>
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I hereby acknowledge service of a copy of the
Petition of Appeal in the above stated matter,
this 28th day of January, 1918.

20
WILLIAM D. WOLFSKEIL,
Proctor of Respondents.

Answer To Petition Of Appeal

(Filed, March 2, 1918)

NEW JERSEY COURT OF ERRORS AND APPEALS

10

In the Matter
of

The Appeal from the Order
Affirming the Order of the
Orphans' Court of the County
of Union, appointing ROBERT
H. McADAMS Guardian of
Catherine Morrissey, a lunatic.

20

The answer of Annie Fleming, Frank O'Brien and Leonard O'Brien, respondents, to the petition of appeal of Margaret McCahill, Mary A. Kelly, Michael J. Kelly, Thomas F. Kelley, Elizabeth M. Brown, Florence Springer, and Joseph Hughes, the appellants in the above entitled matter.

30

These respondents not acknowledging all or any of the matters which in the said petition of appeal are contained, to be true, for answer thereto, say and admit that a decree was made and entered in the Prerogative Court on the date and of the purport mentioned in said petition, but as to the substance and form thereof these respondents pray to refer thereto when the same shall be produced. And they are advised and believe that the said decree is just and equitable, and pray that the same may be affirmed, with costs to be adjudged to these respondents.

WILLIAM I. WOLFSKEIL,

Proctor for and Counsel,

with Respondents,

P. O. Address, 207 Broad Street,

Elizabeth, N. J.

40

Order of Affirmance

(Filed, January 15, 1918)

PREROGATIVE COURT OF THE STATE OF NEW JERSEY

<p style="text-align: center;">In the Matter of</p> <p>The Appeal from the Order of the Orphans' Court of the County of Union, appointng ROBERT H. MC ADAMS Guar- dian of Catherine Morrisey, a lunatic.</p>	}	<p>10</p> <p>On Petition. Decree on Affirmance.</p>
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This matter having been brought on to a hear- 20
ing on an appeal from the Union County Orphans'
Court, and Herbert Clark Gilson of counsel with
the appellants, and William D. Wolfskeil of coun-
sel with the respondents, having been heard, and
the questions brought up by said appeal having
been duly considered:

It is, on this fifteenth day of January, nineteen 30
hundred and eighteen, ordered, adjudged and de-
creed that the order of the Union County Or-
phans' Court appointing Robert H. McAdams
guardian of the said Catherine Morrisey, a luna-
tic, made on the ninth day of November, nineteen
hundred and seventeen, which is appealed from by
appellants, be and the same is hereby in all things
affirmed, with costs of appeal to be paid by the
appellants; and that the petition of appeal be dis-
missed.

E. R. WALKER,
Ordinary. 40

Notice to Produce

On Motion of
 William D. Wolfskeil,
 Proctor of Respondents.

Endorsed:

10 “Filed Jan. 17, 1918,
 Thomas F. Martin,
 Register.”

Notice to Produce

PREROGATIVE COURT OF NEW JERSEY

20	In the Matter of The Appeal from the Order of the Union County Orphans' Court appointing ROBERT H. McADAMS guardian of Cathe- rine Morrisey, a lunatic.	}	On Appeal.
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*To William D. Wolfskeil, Esq., Proctor of Re-
 spondents:*

30 SIR:

TAKE NOTICE that the appellants demand that you produce at the hearing of the appeal in the above stated matter, the following letters addressed and sent to you and signed by Herbert Clark Gilson, *viz*: Letter dated October 13, 1917, stating that he expected to apply to Judge Connolly for the appointment of a guardian on October
 40 19th, etc.

Letters Produced Pursuant to Notice

Letter dated October 16, 1917, enclosing copy of petition for appointment of guardian.

Letter dated October 19, 1917, stating that a new petition had been prepared setting forth the reasons for objecting to Mr. Mc Adams, and that it would be presented on October 26, 1917, etc. 10

Letter dated October 24, 1917, enclosing copy of the new petition.

Dated, January 8, 1918.

Yours &c.,
HERBERT CLARK GILSON,
Proctor of Appellants.

Letters Produced Pursuant To Notice 20

October
Thirteenth,
1917.

WILLIAM D. WOLFSKEIL, Esq.,
207 BROAD STREET,
ELIZABETH,
NEW JERSEY.

Dear Sir:

Re Catherine Morrisey. 30

I expect to apply to Judge Connolly for the appointment of a guardian in the above stated matter next Friday (19th instant), at 10 a. m. The application will be made upon the transcript of the proceedings in Chancery and a formal petition which I will have verified the early part of the week and send you a copy of same.

I shall suggest the name of Clarence Kelsey, 40

Letters Produced Pursuant to Notice

Esq., as the guardian. Mr. Kelsey is a lawyer and resides in Summit.

Yours very truly,
HERBERT CLARK GILSON.

10

October
Sixteenth,
1917.

WILLIAM D. WOLFSKEIL, Esq.,
207 BROAD STREET,
ELIZABETH,
NEW JERSEY.

20

Dear Sir: *In re Catherine Morrisey.*

I herewith enclose copy of petition for appointment of a guardian, application for which I shall make to Judge Connolly next Friday.

Yours very truly,
HERBERT CLARK GILSON.

30

October
Nineteenth,
1917.

WILLIAM D. WOLFSKEIL, Esq.,
207 BROAD STREET,
ELIZABETH,
NEW JERSEY.

40

Dear Sir: *Re Catherine Morrisey.*

Letters Produced Pursuant to Notice

I have prepared a new petition setting forth the same facts as the one used this morning, together with the reason for our objection to Mr. Mc Adams as guardian in the above stated matter, and I will present it and apply for the appointment of a guardian next Friday (26th instant), at 10 a. m. As soon as the petition has been verified, I will send you a copy of same. 10

Yours truly,
HERBERT CLARK GILSON.

October
Twenty-fourth,
1917.

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WILLIAM D. WOLFSKEIL, Esq.,
207 BROAD STREET,
ELIZABETH,
NEW JERSEY.

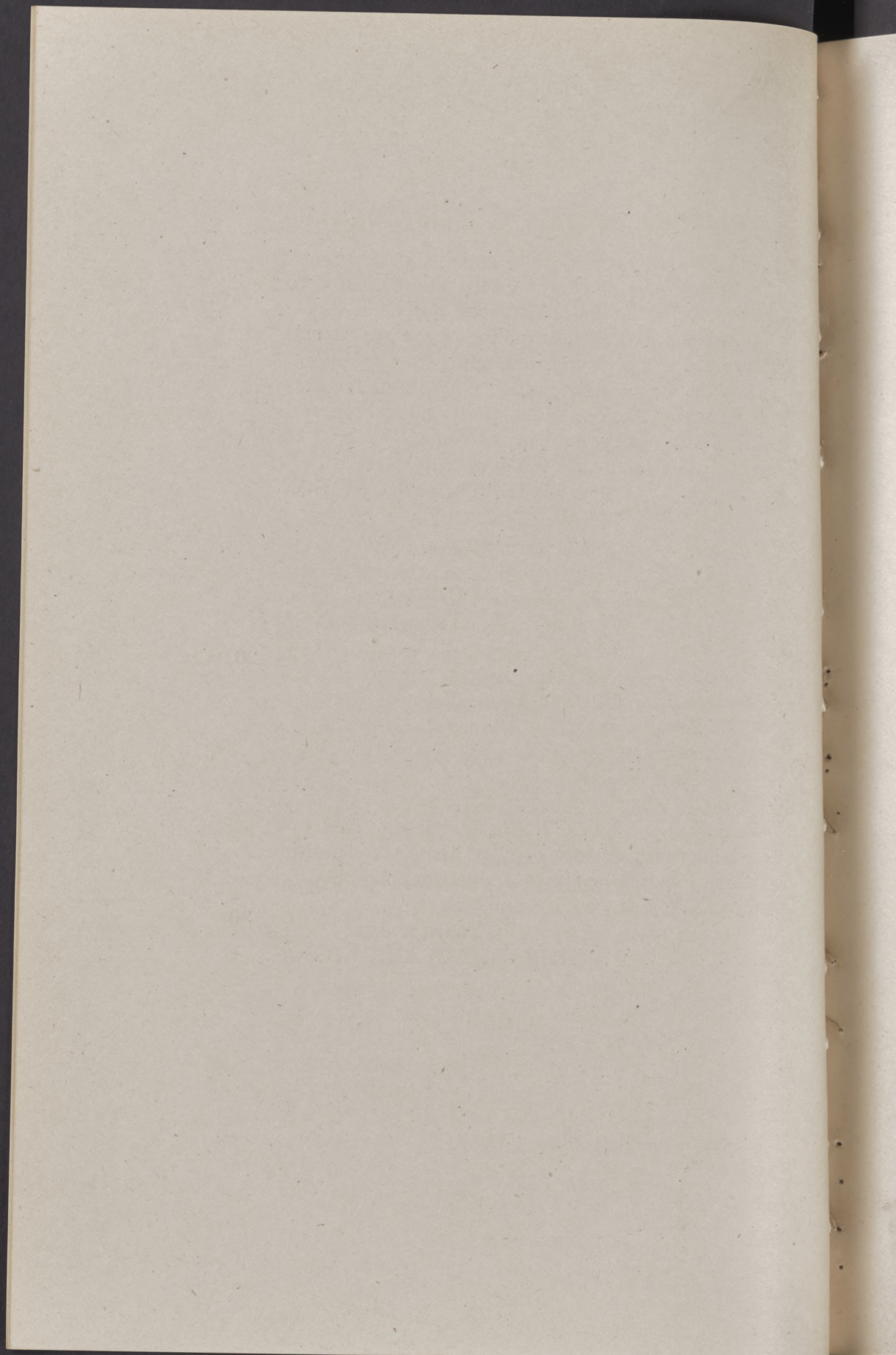
Dear Sir:

Re Catherine Morrisey.

I herewith enclose copy of the new petition which I shall present to Judge Connolly this Friday (26th inst.) at 10 a. m.

Yours truly,
HERBERT CLARK GILSON.

30



**Petition of Margaret McCahill, et
als**

(Filed, October 26, 1917.

UNION COUNTY ORPHANS' COURT

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In the matter
of
CATHERINE MORRISEY, a lunatic.

On Petition
for Appointment
of Guardian.

To Hon. James C. Connolly, Judge of the Or-
phans' Court of Union County:

The petition of Margaret Mc Cahill, Mary A. Kelly, Michael J. Kelly and Thomas F. Kelly, nieces and nephews and nearest relatives of Catherine Morrisey, and Elizabeth M. Brown, Florence Springer and Joseph Hughes, grandnieces and grandnephew of the said Catherine Morrisey, respectfully shows:

20

1. That upon the petition of your petitioners and other relatives of the said Catherine Morrisey, a decree, was made by the Chancellor of the State of New Jersey, on the 2nd day of October, A. D., 1917, decreeing that the above mentioned Catherine Morrisey is a lunatic and incapable of governing herself and her property.

30

2. That such decree confirmed proceedings which were held under a writ *de lunatico inquirendo*, issued out of the Court of Chancery of the State of New Jersey.

3. That a transcript of the proceedings in the Court of Chancery was duly filed in the Union County Orphans' Court in accordance with the statute in such case made and provided, on the 15th day of October, A. D., 1917.

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Petition of Margaret McCahill, *et als.*

4. That the only other relatives of the said Catherine Morrissey are Josephine Magnam, a grandniece, 27 years of age, Grace Kelly, a grandniece, about 23 years of age, of the City of Newark, in the State of New Jersey, Annie Flemming, a grandniece, 37 years of age, Frank J. O'Brien, a grandnephew, 32 years of age, and Leonard O'Brien, a grandnephew, 24 years of age, of Summit, New Jersey, Margaret Kelly, a niece, 60 years of age, of Newark, New Jersey, Irene Kelly, Joseph Kelly and James Kelly, grandniece and grandnephews, whose ages and residences are unknown to your petitioners, and the sons of Hugh O'Brien, deceased, a grandnephew, who are all over the age of 21 years, but whose residences are unknown to your petitioners.

5. That the said Catherine Morrissey is possessed of certain real estate consisting of six houses on the corner of Chestnut and Springfield Avenues, in the City of Summit, assessed and valued at the sum of \$15,000, and which are rented for \$1,140 per year; that the personal property owned by the said Catherine Morrissey consists of mortgages amounting to \$24,000, all at 6 per cent per annum, cash in bank amounting to about 136, and household furniture valued at about \$200.

6. That on October 19th, 1917, your petitioners, Margaret Mc Cahill and Elizabeth M. Brown, applied to this Court for the appointment of a guardian of Catherine Morrissey herein, which said application was temporarily withdrawn because the name of Robert H. Mc Adams was suggested for such guardian, by William D. Wolfskeil, who stated he represented the said Catherine Morrissey as her attorney. Your said petitioners suggested

Petition of Margaret McCahill, *et als.*

either Clarence Kelsey, a lawyer of this State for about 22 years, residing in Summit, N. Y., or William S. Bird, manager of the Business Men's Association of Summit, N. J., or the Summit Trust Company; and your said petitioners objected to the appointment of Robert H. McAdams because he has been personally interested in the estate of the said Catherine Morrisey and also because of his unusual activity in keeping your petitioners away from the said Catherine Morrisey and keeping them ignorant as to her mental condition as hereinafter particularly set forth, and as shown by the testimony. 10

7. At the hearing on the commission to enquire into the lunacy of Catherine Morrisey, the said Robert H. McAdams appeared with William D. Wolfskeil and consulted and conferred with the said Wolfskeil during the entire progress of the proceedings, although Rule 35 of the Court of Chancery provides 20

“The Clerk of the Court shall not practice either as a solicitor or as a counsellor, in the Court.”

It requires no citation of authorities nor argument for the position that the rule means *directly* or *indirectly*, and yet Mr. Mc Adams did practice in the Court of Chancery by actively participating in the lunacy proceedings. 30

8. The determination of the lunacy proceedings was that the said Catherine Morrisey had been of unsound mind without any lucid intervals, since July 3, 1916; and the physician called on behalf of Catherine Morrisey swore that in his opinion she 40

Petition of Margaret McCahill, *et als.*

had been mentally incompetent for the past 10 years. The evidence shows that the said Mc Adams had been attorney for the said Catherine Morrissey for a number of years, and at one time he had given her a mortgage on his property to
 10 secure the payment of a sum over \$1000; that in November, 1915, when Annie Flemming and Frank J. O'Brien, tried to eject Grace Kelly, a grandniece of Catherine Morrissey who was keeping house for her, the said Mc Adams went into the house and tried to eject Grace Kelly forcibly by pushing her with his hands; that after the said Grace Kelly was finally ejected in November, 1915, the said Annie Flemming and her family
 20 moved into the house and have lived with Catherine Morrissey since that time, and apparently on the advice of the said Mc Adams the said Annie Flemming and her husband have kept your petitioners and other relatives from seeing the said Catherine Morrissey, and the said Mc Adams wrote the following letters to your petitioners, Margaret Mc Cahill and Elizabeth M. Brown, and to their attorneys, *viz.*:

“June 12th, 1917.

30 Herbert Clark Gilson, Esq.,
 239 Washington Street,
 Jersey City, N. J.

Dear Sir:

40 Your communication of June 6th last addressed to Mrs. William Fleming, Springfield Avenue and Chestnut Street, Summit, N. J. *in re*, the question of visits of Mrs. Margaret Mc Cahill and Mrs. Elizabeth M. Brown to Mrs. Catherine Morrissey, has been turned over to me. I

Petition of Margaret McCahill, *et als.*

have called upon Mrs. Morrissey to ascertain her wishes in this matter, and as instructed by her to notify you that if either Mrs. Mc Cahill or Mrs. Brown has any business to transact, she has no objection to their making an appointment and calling to see her; otherwise she does not care to be annoyed by either of them with visits, such as they recently made. Furthermore, Mrs. Morrissey wishes it to be understood that she is thoroughly competent to take care of her own affairs, and if your clients have any complaints to make, they can make them direct to her. In addition, the action taken by Mrs. Fleming on the visits made by your clients, has Mrs. Morrissey's unqualified approval.

There is one reservation, however, Mrs. Morrissey desires to make, and that is, in case of a future visit from Mrs. Mc Cahill, she must refrain from the use of improper language while in her home.,

Very truly yours,
R. H. Mc ADAMS."

30

"June 23rd, 1917.

Mrs. Maggie Kelly McCahill,
154 East 50th Street,
New York City.

Dear Madam:

Your communication of June 18th, addressed to Mrs. Catherine Morrissey, Summit, New Jersey, has been forwarded to

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Petition of Margaret McCahill, *et als.*

10 me by her to answer. In your communication you state that Mrs. Morrissey has no objections to your visiting her. I assume that you are acting on the statement contained in my communication to Mr. Gilson, which is as follows:

'I have called upon Mrs. Morrissey to ascertain her wishes in the matter (your visit) and am instructed by her to notify you that if either Mrs. Mc Cahill or Mrs. Brown has any business to transact, she has no objection to their making an appointment and calling to see her.'

20 If, as above stated, you have any business to transact with Mrs. Morrissey, and will communicate the same to me, if it meets Mrs. Morrissey's approval, I will be glad to arrange with her for an appointment for you,

Very truly yours,
R. H. Mc ADAMS."

"June 23rd, 1917.

30 Mrs. Elizabeth M. Brown,
110 Bradhurst Avenue,
New York City.

Dear Madam:

Your communication of June 19th addressed to Mrs. Catherine Morrissey, Summit, New Jersey, has been forwarded to me by Mrs. Morrissey, with a request that I answer the same.

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Petition of Margaret McCahill, *et als.*

You rather misquote my instructions to Mr. Gilson, which are as follows:

'I have called upon Mrs. Morrissey to ascertain her wishes in the matter (your visit), and am instructed by her to notify you that if either Mrs. Mc Cahill or Mrs. Brown has any business to transact, she has no objections to their making an appointment and calling to see her,' 10

If, as above stated, you have any business to transact with Mrs. Morrissey, and will state the same, and it meets Mrs. Morrissey's approval, I will arrange with her for an appointment for you.

Very truly yours,
R. H. Mc ADAMS." 20

June 26th, 1917.

Mrs. Maggie K. Mc Cahill,
154 East 50th Street,
New York City, N. Y.

Dear Madam:

Since writing you a few days ago, I called to see Mrs. Morrissey in reference to the action of your Attorney, Mr. Gilson, in instituting an inquiry among the people of Summit reflecting upon the mental condition of Mrs. Morrissey. 30

These matters have been brought to her attention, and has caused her considerable annoyance, and she has instructed me to notify you that under the circumstances, she does not desire to have anything fur- 40

Petition of Margaret McCahill, *et als.*

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 ther to do with either you or your Attorney, and will positively refuse to make any appointment with you, or see you if you call. Furthermore, if these inquiries on your behalf or your Attorney's behalf continue, I am instructed to take whatever steps may be necessary to protect her from further annoyance by you or him.

Very truly yours,
 R. H. Mc ADAMS."

“June 26th, 1917.

20
 Mrs. Elizabeth M. Brown,
 110 Bradhurst Street,
 New York City.

Dear Madam:

Since writing you a few days ago, I called to see Mrs. Morrissey in reference to the action of your Attorney, Mr. Gilson, in instituting an inquiry among the people of Summit reflecting upon the mental condition of Mrs. Morrissey.

30
 These matters have been brought to her attention, and has caused her considerable annoyance, and she has instructed me to notify you that under the circumstances she does not desire to have anything further to do with either you or your Attorney, and will positively refuse to make any appointment with you, or see you if you call. Furthermore, if these inquiries on your behalf or your Attorney's behalf continue, I am instructed to take whatever

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Petition of Margaret McCahill, *et als.*

steps may be necessary to protect her from further annoyance by you or him.

Very truly yours,
R. H. Mc ADAMS."

10

"June 26th, 1917.

Herbert Clark Gilson, Esq.,
239 Washington Street,
Jersey City, N. J.

Dear Sir:

Mrs. Morrissey's attention has been called to the fact that you and your representatives have been making inquiries of the people of Summit reflecting upon the mental condition of Mrs. Morrissey, and her ability to pass upon who shall and shall not be admitted to her home. 20

These inquiries have caused Mrs. Morrissey considerable annoyance, and she has asked me to take whatever steps may be necessary to put a stop to them. I beg to notify you that if you persist in following your present method in connection with these inquiries, that I shall take steps to hold you accountable for the result of same. 30

Very truly yours,
R. H. Mc ADAMS."

The evidence on the lunacy proceedings also shows that your petitioners Mary A. Kelly, Michael J. Kelly, and Thomas F. Kelly,

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Petition of Margaret McCahill, *et als.*

10 were ordered out of the home of Catherine Morrisey by the said Flemmings when they called to see her. These actions in keeping your petitioners from seeing the said Catherine Morrisey, and the above mentioned letters, and the fact that the said Mc Adams disputed and contested the lunacy proceedings, despite the fact that the said Catherine Morrisey had been mentally incompetent for over a year, as shown by the said determination and the evidence to which your petitioners beg leave to refer, if it become necessary, show that the said parties, including the said Mc Adams, did everything within their power to keep the truth of the mental incompetency of Catherine Morrisey from becoming known.

20 Your petitioners are informed and believe, and the evidence shows, that the said Mc Adams also represents the said Flemmings and Frank J. O'Brien, and that they have had possession of the property of the said Catherine Morrisey since November, 1915. And the physician employed by the said Flemmings or O'Brien tried to keep Dr. Britton D. Evans from examining Catherine Morrisey by sending a message to him that she was dangerously ill when the fact was that Dr. Evans
30 found her in a normal condition physically, according to the evidence, and despite the fact that it was necessary to obtain an order of the Court of Chancery for such examination by Dr. Evans in view of the fact that the Flemmings would not permit anyone to see Catherine Morrisey.

40 Wherefore your petitioners pray that an order may be made by this Honorable Court appointing a guardian other than the said Robert H. Mc Adams, of the person and property of the said

Petition of Margaret McCahill, *et als.*

Catherine Morrissey, and that your petitioners may have such other and further relief as the nature of the case may require.

Herbert Clark Gilson,

Proctor of Petitioners.

MICHAEL J. KELLY.

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THOMAS F. KELLY.

MARY A. KELLY.

MAGARET Mc CAHILL.

ELIZABETH M. BROWN.

FLORENCE SPRINGER,

by Herbert Clark Gilson, Att'y.

JOSEPH HUGHES,

by Herbert Clark Gilson, Att'y.,

Petitioners.

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State of Pennsylvania, }
County of Lackawanna, } ss:

Mary A. Kelly, Michael J. Kelly and Thomas F. Kelly, being duly sworn on their respective oaths, each for herself and himself, according to law, say; that they are the persons mentioned in the foregoing petition and that the matters and things therein set forth are true to the best of their knowledge and belief.

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Subscribed and sworn to before me,
a Notary Public having authority
to take oaths and affirmations

in the State of Pennsylvania,

this 20th day of October, 1917,

M. B. Connor, Notary Public.

My Commission Expires March 9, 1919.

(Seal)

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Petition of Annie Fleming, *et als.*

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

10 Margaret Mc Cahill and Elizabeth M. Brown,
 being duly sworn on their respective oaths, each
 for herself, according to law, say; that they are
 the persons mentioned in the foregoing petition
 and that the matters and things therein set forth
 are true to the best of their knowledge and belief.

MARGARET McCAHILL.

ELIZABETH M. BROWN.

Subscribed and sworn to before me
 this 23rd day of October, 1917.

Clarence Linn,

Master in Chancery of New Jersey.

20

Petition of Annie Fleming, et als

(Filed, October 20, 1917.)

UNION COUNTY ORPHANS' COURT

30 In the matter of
 CATHERINE MORRISEY, a lunatic. } On Petition
 for Appointment
 of Guardian
 Petition.

To Hon. James C. Connolly, Judge of the Or-
 phans' Court of Union County

The petition of Annie Fleming, Frank O'Brien
 and Leonard O'Brien of the City of Summit,
 County of Union and State of New Jersey, re-
 40 spectfully shows:

Petition of Annie Fleming, *et als.*

1. That they are grandniece and grandnephews of Catherine Morrissey, and that upon the petition of Margaret McCahill and Elizabeth M. Brown, and other relatives of the said Catherine Morrissey, a decree was made by the Chancellor of the State of New Jersey, on the 2nd day of October, A. D. 1917, decreeing that the above mentioned Catherine Morrissey is a lunatic and incapable of governing herself and her property. 10

2. That such decree confirmed proceedings which were held under a writ *de lunatico inquirendo*, issued out of the Court of Chancery of the State of New Jersey.

3. That a transcript of the proceedings in the Court of Chancery was duly filed in the Union County Orphans' Court in accordance with the statute in such case made and provided, on the 15th day of October, A. D. 1917. 20

4. That the only other relatives of the said Catherine Morrissey are Mary A. Kelly, a niece, 62 years of age, Michael J. Kelly, a nephew, 57 years of age and Thomas F. Kelly, a nephew 60 years of age, of Carbondale, Pennsylvania, Josephine Magnam, a grandniece, 27 years of age, Florence Springer, a grandniece, 27 years of age, Joseph Hughes, a grandnephew, whose age is unknown to your petitioners, of New York City, New York, Margaret Kelly a niece, 60 years of age, Grace Kelly, a grandniece; about 23 years of age, of Newark, New Jersey, Irene Kelly, Joseph Kelly and James Kelly, grandniece and grandnephews, whose ages and residences are unknown to your petitioners, and the sons of Hugh O'Brien, deceased, a grandnephew, who are all over the age of 21 years but whose residences are unknown to your petitioners. 30
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Petition of Annie Fleming, *et als.*

5. That the said Catherine Morrisey is possessed of certain real estate consisting of six houses on the corner of Chestnut and Springfield Avenues, in the City of Summit, assessed and valued at the sum of \$15,000, and which are rented for \$1,140 per year; that the personal property owned by the said Catherine Morrisey consists of mortgages amounting to \$24,000, all at 6 per cent per annum, cash in bank amounting to about \$136, and household furniture valued at about \$200.

Wherefore your petitioners pray that an order may be made by this Honorable Court appointing a guardian of the person and property of the said Catherine Morrisey, and that your petitioners may have such other and further relief as the nature of the case may require.

FRANK J. O'BRIEN,
LEONARD H. O'BRIEN,
ANNA R. FLEMING,

Petitioners.

William D. Wolfskeil,
Proctor of Petitioners.

State of New Jersey, } ss:
County of Union,

Annie Fleming, Frank O'Brien and Leonard O'Brien being duly sworn on their respective oaths, according to law, say: That they are the persons mentioned in the foregoing petition and that the matters and things therein set forth are true.

ANNA R. FLEMING.
LEONARD H. O'BRIEN.
FRANK J. O'BRIEN.

Order Appointing Guardian

Sworn and subscribed before me
this 20th day of October, 1917.

John B. Walsh,
Master in Chancery,
of New Jersey.

A True Copy.
Geo. T. Parrot,
Surrogate.

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Order Appointing Guardian

(Filed, November 9, 1917.)

UNION COUNTY ORPHANS' COURT

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In the matter of The guardianship of CATHE- RINE MORRISSEY, a lunatic.	}	On Petition for Letters of Guardianship.
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This matter being opened to the Court by William D. Wolfskeil, proctor for petitioners, and it appearing that Catherine Morrissey, of the County of Union aforesaid, has been duly adjudged a lunatic by virtue of a writ *de lunatico inquirendo*, issued out of the Court of Chancery of this State and that a certified copy of such proceedings has been duly filed in the office of the Surrogate of the County of Union aforesaid, and it further appearing that the said Catherine Morrissey is possessed of personal property of the amount of twenty-four thousand dollars, and that the amount of the

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Order for Examination

income from the real property owned by her is eleven hundred and forty dollars per year, and that due notice of this application has been given to all persons in interest.

10 It is thereupon on this 9th day of November, 1917, ORDERED, that Robert H. Mc Adams be, and he hereby is constituted and appointed the guardian of the said Catherine Morrissey a lunatic as aforesaid, and that letters of guardianship be issued to him accordingly upon his entering into bond to the Ordinary in the sum of thirty-five thousand dollars, with condition prescribed by law, which said bond shall be first approved by this Court as to the form and sureties thereon.

JAMES C. CONNOLLY,
Judge.

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Order for Examination

(Filed, August 14, 1917)

IN CHANCERY OF NEW JERSEY

30

In the Matter of CATHERINE MORRISEY, alleged to be a lunatic.
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40 It appearing by petition that a commission in the nature of a *de lunatico inquirendo* has been entered in the above stated matter, and that Annie Flemming and William P. Flemming, with whom the said Catherine Morrissey is living, have

Inquisition

refused to permit any of the petitioners herein to see or talk with the said Catherine Morrissey;

It is, on this 14th day of August, 1917, ORDERED that the said Annie Flemming and William P. Flemming permit and allow Britton D. Evans, M. D., to examine the said Catherine Morrissey with respect to her alleged lunacy, and that she, the said Catherine Morrissey, permit and allow such examination. 10

E. R. WALKER,
C.

Inquisition

(Filed, September 15, 1917)

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IN CHANCERY OF NEW JERSEY

<p style="text-align: center;">In the Matter of CATHERINE MORRISSEY, alleged to be a lunatic.</p>	}	On petition.
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New Jersey, Union County, to wit:—An inquisition taken at Elizabeth, Union County, New Jersey, on the 14th day of September, nineteen hundred and seventeen, before Edward Maxson, Arthur E. Tator, M. D., and William F. Sonnekalb, commissioners, by virtue of a commission in the nature of a writ *de lunatico inquirendo*, issuing out of and under the seal of the Court of Chancery of the State of New Jersey, bearing 40

Inquisition

date at Trenton, the 19th day of July, nineteen hundred and seventeen to inquire of the lunacy of Catherine Morrissey, of Summit, Union County, New Jersey, in the said commission named, upon the oaths and solemn affirmations of good and

10 lawful men of said county, that is to say, upon the oaths of

John M. Clark,
 Peter Moss,
 Joseph Epstein,
 Jacob Meloth,
 Mahlon Morey,
 Lewis Green,
 John Weber,
 Fredk. Price,

20 S. Merchant Meeker,
 Harry Keys,
 William Rogge,
 Samuel Oldroyd.

who being duly summoned and charged upon their respective oaths say: that the said Catherine Morrissey, at the time of taking this inquisition is of unsound mind, and does not enjoy lucid intervals, so that she is not capable of the control and management of herself, her lands, tene-

30 ments, goods and chattels; and that she has been in the same state of lunacy since July 3d, 1916 last past and upward.

And the jurors aforesaid, upon their respective oaths aforesaid, further say, that they find that the said Catherine Morrissey, at the time of taking this inquisition, is seized of, and entitled to, all that certain tract of land and premises situate, lying and being in the City of Summit aforesaid, bounded and described as follows:

Inquisition

FIRST TRACT:—Beginning on the Westerly corner of a street known on the map of Hugh O'Brien as "Chestnut Street" which runs from Springfield Avenue (leading from Summit to New Providence) in a Southwesterly direction to the road leading from Springfield to Chatham, thence along said Springfield Avenue in a Westerly direction sixty-six feet and three inches (66 feet 3 inches); thence in a Southwesterly direction at right angles or nearly so to said road, one hundred and sixty feet and ten inches (160 feet 10 inches); thence in an Easterly direction to Chestnut Avenue twenty-five feet and nine inches (25 feet 9 inches); thence along said Chestnut Avenue in a Northwesterly direction or nearly so, one hundred and seventy-two feet and eight inches (172 feet 8 inches) to the point or place of Beginning, and being known as Lot numbered nineteen (19) on a certain map entitled "Revised map of building sits situate at Summit, Union County, New Jersey, the property of James Riere, Esq., surveyed and drawn October 1865, by Thomas Hughes, C. E. Morristown, revised June 1896, and filed at the office of the Clerk of Union County, and being the same premises conveyed to the said Catherine Morrisey by Hugh O'Brien *et ux* by deed dated December 12th, 1871, and recorded in the office of the Clerk of Union County, in Book 65 of Deeds at pages 366 etc.

SECOND TRACT:—Beginning on the South side of a road or street leading from Summit to New Providence and a distance of sixty-six feet and three inches (66 feet 3 inches) from the Northwest corner of Chestnut Avenue on the fence of David Morrisey lot (1) thence along side said lot in a Southerly direction one hundred and sixty feet and ten inches (160 feet 10 inches); (2)

Inquisition

thence in a Westerly direction or nearly so forty-five feet (45 feet); (3) thence in a Northerly direction one hundred and fifty feet (150 feet); (4) thence Easterly forty-five feet (45 feet) to the place of Beginning. Being the same premises as
 10 those conveyed to the said Catherine Morrissey by Atwood L. De Coster, special master, by deed dated August 3d, 1908, and recorded in the office of the Clerk of Union County, in Book 510 of deeds, at pages 279 etc.

and that the issues and profits of the said tract of land and premises are of the yearly gross value of \$1,140.00; and also that the said Catherine Morrissey has not alienated any lands or tenements during her unsoundness of mind aforesaid,
 20 to the knowledge of the said jurors.

And the said jurors, upon their respective oaths aforesaid, further say that the said Catherine Morrissey is, at the time of taking this inquisition, also possessed of or entitled to the following cash and securities and personal property, to wit:

	Cash in First National Bank of	
	Summit	\$ 136.14
30	Mortgage of Annie Murray ...	5,356.00 at 6%
	“ “ Eliza Blair	6,000.00 “
	“ “ Ellen Murray	1,950.00 “
	“ “ John P. Murphy ..	2,500.00 “
	“ “ Annie Murray ...	2,600.00 “
	“ “ John Peterson <i>et ux</i>	2,000.00 “
	“ “ Annie A. Martin &	
	hus.	200.00 “
	Mortgage of Bridget C. Murray	400.00 “
	“ “ John J. McGrath .	3,000.00 “
	Household furniture	200.00 “
40		<hr/>
		\$24,342.00

Inquisition

And lastly, that Mary A. Kelly, 62 years of age, Margaret McCahill, 62 years of age, Michael J. Kelly, 57 years of age, and Thomas F. Kelly, 60 years of age, nieces and nephews, and Elizabeth M. Brown, 39 years of age, Josephine Magnam, 27 years of age, Florence Springer, 27 years of age, Margaret Kelly, 60 years of age, Annie Flemming, 37 years of age, Frank J. O'Brien, 32 years of age, Leonard O'Brien, 24 years of age, and the sons of Hugh O'Brien, deceased, all over 21 years of age, grandnieces and grandnephews, are the only and nearest heirs of the said Catherine Morrisey. 10

In testimony whereof, as well the said commissioners as the jurors aforesaid, have to this inquisition set their hands and seals the day and year first above written. 20

JNO. M. CLARK,	(Seal)
JOSEPH EPSTEIN,	(Seal)
P. J. MOSS,	(Seal)
JACOB MELOTH,	(Seal)
MAHLON MOREY,	(Seal)
JOHN P. WEBER,	(Seal)
FRED V. PRICE, JR.,	(Seal)
S. MERCHANT MEEKER,	(Seal)
HARRY KEYS,	(Seal)
WILLIAM A. ROGGE,	(Seal)
SAMUEL J. OLDROYD	(Seal)
LEWIS GREEN.	(Seal)

30

Edward Maxson, (Seal)
 Wm. F. Sonnekalb, (Seal)
 Arthur E. Tator, M. D., (Seal)
 Commissioners.

Decree in Lunacy

IN CHANCERY OF NEW JERSEY

(*Filed, October 2, 1917*)

10	<p style="text-align: center;">In the Matter of CATHERINE MORRISEY, alleged to be a lunatic.</p>
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Upon opening this matter to the Chancellor this day by Herbert Clark Gilson, solicitor for and of counsel with the petitioners, and it appearing that the commission awarded in this matter has been duly executed, and returned into this Court, with an inquisition thereto annexed, taken before Edward Maxson, William F. Sonnekalb and Arthur E. Tator, M. D., commissioners in the said commission named, and bearing date the 14th day of September, A. D., 1917, by which the jurors who passed upon that inquiry have found that the said Catherine Morrissey, of the City of Summit, in the County of Union, was, at the time of taking that inquisition, a lunatic and of unsound mind, and does not enjoy lucid intervals, so that she is not capable of the government of herself, her lands, tenements, goods and chattels; and that she has been in the same state of lunacy since the 3d day of July, A. D., 1916; and at the time of taking said inquisition she was seized of, or entitled to, real and personal estate, as is mentioned in the said inquisition;

It is, thereupon, on this 2d day of October, A. D., 1917, ORDERED AND DECREED by the Chancellor,

Decree in Lunacy

that the said proceedings be in all things confirmed; and that the Clerk of this Court transmit to the Orphans' Court of the County of Union, a certified copy of all proceedings in the case, agreeably to the statute in such case made and provided.

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AND IT IS FURTHER ORDERED, that the sum of twenty dollars be and the same is hereby allowed to Edward Maxson, Master in Chancery, and the sum of ten dollars to William F. Sonnekalb, Commissioner, and the sum of ten dollars to Arthur E. Tator, Commissioner, and the sum of two hundred and fifty dollars to the solicitor of the petitioners, for their services in the foregoing matter, the same to be taxed in the costs and to be collected and paid out of the estate of said lunatic.

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E. R. WALKER.

Respectfully advised,
 Bayard Stockton,
 A. M.

Testimony

IN CHANCERY OF NEW JERSEY

10	In the Matter of CATHERINE MORRISEY, alleged to be a lunatic.	}	Proceeding to enquire into the question of her mental capacity.
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Transcript of stenographer's notes of evidence, taken in the above entitled matter, before a Commission and a Jury, in the Union County Court House, City of Elizabeth, New Jersey, on the fourteenth day of September, A. D. 1917, at 10:00 a. m.

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Appearances:

Herbert Clark Gilson, Esq., for the petitioners.
 Wm. D. Wolfs Keil, Esq., for the alleged lunatic.

Commission

Edward Maxson, Esq.,
 Wm. F. Sonnekalb, Esq.,
 Arthur E. Tator, M. D.

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A Jury having been empanelled, and found satisfactory to both sides, they were sworn.

Edwin J. O'Brien, sworn as stenographer.

Mr. Gilson: I would like to make an opening if the Commissioners will allow me to.

Commissioner Maxson: I assume that is proper.

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Testimony

Mr. Gilson opens the case to the Jury, as follows:

May it please the Commission, and Gentlemen of the Jury, as I intimated when I was asking some questions, this is what is legally known as a proceeding in a nature of a proceeding "*De Lunatico Inquirendo*"; that is a Latin term for the proceeding to enquire into the mental capacity of the subject, Mrs. Morrisey. It is called, popularly, a lunacy proceeding, but it does not necessarily mean that the person is a lunatic in the popular sense of the word. It means that the person is so mentally deficient by reason of old age or some other reason, that he or she is not capable of managing herself and her property. Of course, a proceeding of this kind is rather an unpleasant duty for all of us to perform, but it is absolutely necessary and has been known to the law as long as law has been known, for the purpose, of course, of preserving and conserving and taking care of property as well as the person of the subject. Of course, you can see that there may be circumstances in connection with all of us that might make it necessary for some relative to have a guardian appointed for those purposes. And this proceeding is for that purpose, to take care of Mrs. Morrisey and take care of her property and have it properly and capably managed in a disinterested way so as to conserve her interest and the interests of those who come after her, and we shall prove facts, as I understand from the statements made to me by the witnesses, which will show that Mrs. Morrisey is around eighty-five to ninety years of age that she has a very poor memory; that there are a great many de-

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Frank D. Abell—Direct

10 tails which I will not recite now because it will only take up an unnecessary amount of time; a great many details which go to show that Mrs. Morrisey is not capable of taking care of herself and the property in the way that they should be governed and managed. We will prove this by medical evidence of Dr. Britton D. Evans of the State Hospital, who will testify as to what his opinion is with respect to her mental capacity. That is, expert testimony. That testimony of a medical mind together with the facts recited by the lay witnesses we think will show beyond any question that Mrs. Morrisey is of unsound mind to the extent of not being capable of managing her property.

20 Now I would like to call the officials of the banks first so as not to take up any more than necessary of their time. I will call them out of order. Ordinarily I suppose it would be proper to call them last, but I do not want them sitting around here and, if there is no objection, I will call them at this time.

Just before that witness, I want to introduce in evidence the proof of service of the notice required by the statute on Catherine Morrisey.

30 Proof of notice entered in evidence and marked Exhibit P-1.

FRANK D. ABELL, produced (out of his order) as a witness on behalf of the Petitioners, being duly sworn on his oath, according to law, saith:

Direct-examination by Mr. Gilson:

Q. You are the cashier of the First National

Frank D. Abell—Direct

Bank of Morristown? A. No; I represent the cashier. Mr. Van Doren is of very advanced age.

Q. And in compliance with a subpoena have you produced a true copy of the account of Catherine Morrisey in that bank? A. I have.

Mr. Wolfskeil: He represents? In what capacity does he represent? Is he a friend working in the store around the corner? 10

Mr. Gilson: You will have a chance to examine him.

Mr. Wolfskeil: I do not think his qualifications are established.

Mr. Gilson: I have not offered that in evidence.

Q. In what way do you represent the cashier?

A. I am manager of the safe deposit department and had charge of the accounts of the bank at the time of this; I was supervisor of this account at the time. 20

Q. Same bank? A. Yes, sir.

Q. How old a man is the cashier? A. Mr. Van Doren is eighty-three years old.

Q. Has he any assistant? A. Assistant cashier, Mr. Cory.

Q. And are you familiar with this particular account? A. Yes, sir; I had the supervision of the account at the time. 30

Q. While it was running? A. Yes, sir.

Q. And you say you have a true copy of that bank account with you? A. Yes, sir; I have.

Q. Did you make this copy? A. I did.

Mr. Gilson: I offer this copy of the bank account in evidence.

Copy of bank account entered in evidence and marked Exhibit P-2.

Frank D. Abell—Direct

Q. As I understand this account, it was closed on July third, 1916? A. July third, 1916, yes.

Q. Opened October sixth, 1909? A. In June twenty-second, 1909.

Q. Oh, that is on this side? A. Yes.

10 Mr. Gilson: I will just read this generally to the jury. (Reading Exhibit P-2 to the Jury.)

Mr. Wolfskeil: I want to make an objection to anything more than the bare statement by the witness as to the extent and amount of the property of Mrs. Morrissey. This inquisition is not for the purpose of delving into what became of the property or what she has not got. The Commission, as I take it, and as laid down in Dickenson's Chancery Practice: "The witnesses are then examined both as to the fact of the lunacy and as to who are the nearer heirs, and the nature and extent of the real and personal estate, as directed in the commission. The object of the inquiry as to the value of the estate is for the purpose of fixing the amount of the bond of the guardian, when appointed." Now it is immaterial what became of it, or what was done with it, or anything in connection with the details of the account. The witness testifies there is nothing in that bank. That is the end of that; I respectfully submit.

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Mr. Gilson: Well, this copy of the account is in evidence, and I certainly have a right to read to the Jury anything that is in evidence. That is an elementary rule of evidence.

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Frank D. Abell—Direct

Commissioner Maxson: This was admitted without objection.

Mr. Wolfskeil: I have no objection if the Commission wishes to take up the time to go into it, but I simply call the attention of the Commission to the fact that the object of the commission is to establish the lunacy and the extent of the property. If there is no property there, what is the use of going into it? I just want to save time. 10

Mr. Gilson: I would like to say one more word in opposing this objection, that is, it may develop that when this account was closed, it was not closed by Mrs. Morrissey, but by somebody having a power of attorney. And it may be pertinent as to whether she managed that account properly at the time it was closed, so it is evidential on any of the issues involved here. And I agree with Mr. Wolfskeil that the purpose is not to go prying around on a fishing expedition to see what has become of the property in this proceeding. But I offer to show the amount of the estate at that time and to show it was closed out, and it was closed out by someone who had a power of attorney and not by her. 20 30

Mr. Wolfskeil: I object to the offer of any such evidence as you have offered, on the ground it is not within the province of this inquisition to inquire what became of the property, only to inquire what property is there.

Commissioner Maxson: The Commission holds that at the present time it is not relevant to the inquiry to discuss this 40

Frank D. Abell—Direct

account. But they do hold, however, that in the event of there being any question of her use of this money later on, which may enter into the question of whether she was of sound mind or unsound mind, then it is admissible.

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Mr. Gilson: That is the very reason I suggested to the Commission when I put this witness on the stand I was calling him out of order. In other words, I was calling him before I proved that there was a power of attorney given to some of the banks—I am not sure whether it was in this bank or not—but I offer now to prove that was the situation.

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Mr. Maxson: Your purpose is to discuss before the Jury the question of those separate items of account with relation to her manner of control of her account, going to show whether she was of sound or unsound mind?

Mr. Gilson: Partly.

Commissioner Maxson: Well, if you can connect that up, I assume we will admit the testimony subject to your connecting it up in that manner.

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Mr. Gilson: I purpose doing that. And, furthermore, there is a case in this state which holds that we have a right to go not only into the questions Mr. Wolfskeil has stated, but the further questions as to the persons by whom this Mrs. Morrissey is surrounded, and who are managing her estate. We have a right to go into it; so that for that purpose this would be admissible.

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Frank D. Abell—Direct

Commissioner Maxson: Well, but it seems to me that you must first show that she is of unsound mind before you can go into the question of the people who surrounded her.

Mr. Gilson: That is true, but I said I 10 called this witness out of turn before I called the other witnesses. I didn't want to have him waiting around.

(Reading Exhibit P-2 to the Jury.)

Q. And it was closed by withdrawal of \$2,095.-47, is that correct? A. \$2,095.47.

Q. Do you know whether there was a power of attorney given by Mrs. Morrissey, purporting to be given by Mrs. Morrissey to your bank? A. I am quite sure there was not. 20

Q. Have you any way of telling who drew that check of \$2,095.00? A. Yes. At the time she closed out that account, we demanded that Mrs. Morrissey come there in person. I think someone, her niece, generally came with her. But at the time a young man—I do not know whether he was a lawyer, or what capacity he occupied in the case. He seemed to be an advisor or interested in her affairs, and he wanted to know if a signed check filled in properly was paid would we honor it, and I told him no, considering her advanced age, and that her handwriting was becoming very shaky, owing to her eyesight we would have to have her in person, if it was possible to bring her. As I recall the case, on July third, or whenever it was that account was closed, she was brought up by automobile and I went out and filled in the check in her name and in my presence she signed the check. 30 40

Frank D. Abell—Direct

Q. Before that time had there been any question about her signature to checks?

10 Mr. Wolfskeil: I object. I do not think it is material to go into the details. Here is the evidence as to her account which she closed out herself on July third, 1916.

Mr. Gilson: The purpose of that is if banks and business people did not think it was safe to accept her signature, it has something to do with the question as to what a layman would think with respect to her mental capacity.

Mr. Wolfskiel: But the bank did accept her signature.

20 Commissioner Maxson: In order to make proof of what people thought about her signature, do not you think the opinion of people who were passing on the signature would be the best evidence?

30 Mr. Gilson: The facts would present a situation from which the Jury might draw inferences, reasonable inferences as to whether she was managing her estate in such a way that she was capable and in such a way that business people and banks would recognize it.

Commissioner Maxson: The Commission rules that testimony out at this time in the way it is offered. That is to say if the proponent of this commission seek to prove what the opinion of people is with respect to Mrs. Morrissey's mental condition, and part of their opinion arises from what they knew of her bank account and the way she signed her checks, why I think

Frank D. Abell—Direct

that is admissible. But I think the way it is offered now it is secondary evidence, that is to say, it is more or less hearsay.

Mr. Gibson: I will reframe the question. It is only splitting hairs on the way the inquiry is framed. 10

Q. In your opinion, Mr. Abell, as a business man, and a man connected with that bank, was Mrs. Morrisey, at the time of the closing of this account, capable of managing that account in the ordinary way of a depositor in your bank? A. Well that is a rather difficult question to ask—to answer, at least. She was a woman of very advanced age, and whether it was from physical weakness or on account of her sight she was probably not as active as a person would be. But, still, just as you would expect from a woman past eighty; and I used to explain things pretty thoroughly to her. It was my part to wait on her. I always looked out for Mrs. Morrisey when she came in person and in company with her niece. And I should say at that time she was just as well as the majority of people at that advanced age. 20

Q. Well, you were somewhat afraid to honor her check without having her present, which was a very unusual thing? A. No, it is not unusual in banking, particularly with people who are of advanced age and unaccustomed to writing. There is sometimes discrepancies in the handwriting of people of advanced age, or even of people of middle age that are not accustomed to writing generally, but still the characteristics remain the same, and we prefer on large amount on an inactive account to have the presence of the person withdrawing the money. 30 40

Frank D. Abell—Cross

Q. You found her memory somewhat deficient, didn't you? A. I didn't go far enough into it. I didn't have any occasion to test her memory.

Mr. Gilson: That is all.

10 CROSS-EXAMINATION by Mr. Wolfskeil:

Q. Mr. Abell, you went out and interviewed her personally on the day she closed that account, didn't you?

By a Juror: Q. I want to ask who the money was handed to? The balance of this money? Who received it? A. My recollection is rather poor about that whether it was handed personally to Mrs. Morrissey. If she signed the check and withdrew it personally it would be handed personally
20 to her. If the check was certified it would be handed to her. But as I recollect the thing the automobile was conducted up to the curb in front of the bank and I came out, and she was in company of this young man, and I am quite sure her niece was there at the time, but that I could not be positive about; I couldn't swear to that.

By Commissioner Maxson: Q. Do you see that young man in Court? A. No, I do not think I do.

30 Q. You don't remember his name? A. That I am not sure; no, I don't.

Q. What kind of a looking man was he? A. He was a man of medium height, weighed about one hundred and thirty-eight to forty pounds; rather pale complexion; dark hair.

Q. Smooth face? A. Smooth face, yes.

Q. About how old? A. I should say possibly in the neighborhood of thirty-two to thirty-four years old.

Frank D. Abell—Cross

By Mr. Wolfskeil: Q. Did you go out and see her personally and get her signature to the check?

A. I did, yes. I won't make it a positive statement. Whenever she had occasion to come to the bank I either interviewed her either in the ladies' waiting room—

Q. You have testified positively a young man came in to permit her to close out her account, and you insisted on having her brought there? A. Yes, sir. 10

Q. And she came? A. Yes, sir.

Q. And you went out and saw her personally? A. Yes, sir.

Q. And took her signature to the check? A. Yes, sir.

Q. You said that awhile ago? A. Yes, sir. 20

Q. That is so, isn't it? A. To the best of my knowledge and belief it is.

Q. You explained to her what the effect of signing that check would be, didn't you? A. Yes, sir.

Q. Did she tell you she wanted to draw her money? A. Yes.

Q. She knew what she wanted, didn't she? A. Apparently so; yes.

Q. Excepting that she was an elderly woman, she seemed to be able to tell you what she wanted, and get what she wanted? A. She did. 30

Q. You didn't have any question as to her mental condition then, did you? A. None whatever.

Q. You did not think you were dealing with somebody who was not able to attend to her own affairs? A. Practically, yes.

Q. Mentally? A. Mentally, I would hesitate about saying that.

Frank D. Abell—Re-direct

Q. Do you mean to say, sir, that you did not consider that this woman was able to attend to her business and receive the two thousand dollars from here? A. I didn't.

10 Q. Didn't you consider she was able? A. I did.

Q. Certainly. Then except for her advanced age, you considered her able to attend to that banking business, didn't you? A. Yes, I did.

Q. And you believed you were justified in dealing with her as a woman who was able to attend to her own affairs and paying her that large sum of money on her request? A. We wouldn't have given it to her if she hadn't.

20 Q. (Question repeated by the stenographer.)
A. We did.

Q. I mean you, yourself? A. I did.

Mr. Wolfskeil: That is all.

Q. And that was on July third, 1916? A. July third, 1916, yes, July third, 1916.

RE-DIRECT-EXAMINATION by Mr. Gilson:

30 Q. Now, if there was not any doubt in your mind with respect to her mental capacity due to old age or something else, why did you explain to her the effect of drawing the check? A. As I recollect, the gentleman that came there—I thought that man there was the fellow—

Q. Isn't that him? A. Yes. I think you are the gentleman came with Mrs. Morrisey at the time?

40 Q. That is Mr. Fleming. (Question repeated by the stenographer): "Now, if there was not any doubt in your mind with respect to her mental capacity due to old age or something else, why

Frank D. Abell—Re-direct

did you explain to her the effect of drawing the check?" A. Because there was some doubt.

Q. As to her mental capacity? A. Not to her mental capacity?

Q. Mental understanding with respect to the effect of that check? A. No. The gentleman that came at the time recited some instances which naturally made us—gave me this impression or gave the bank the impression that things were not just exactly as they should be, and under those circumstances our safeguard was to pay the money in person, and that is why we demanded her presence. 10

Q. But there was a doubt in your mind with respect to her mental capacity to some extent? A. I can't say that there was any more than you would expect from a person of that advanced age. 20

Q. You qualify. Isn't that just as you said a few minutes ago; you would hesitate to say or give an opinion with respect to what her mental capacity was on account of old age? A. I can't say I would put it in that light. I would simply say on account of her advanced age, and elements that had transpired from what this gentleman who came had told us.

Q. People who surrounded her? A. Well, I might say, yes. 30

Q. Well, now, will you tell us, Mr. Abell, what you meant by saying a few minutes ago, in answer to Mr. Wolfskeil's question, that you would hesitate to give an opinion with respect to her mental capacity at the time that check was drawn? A. Well, because I think this: it is a very difficult thing for a layman to pass on a person's mental 40

William Schultz—Direct

condition, particularly when they get to the advanced age of eighty; they might be physically incompetent, and yet mentally competent.

Q. So that there was a doubt, if there was not, you would not hesitate to give your opinion?

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Mr. Wolfskeil: I object as leading.

Mr. Gilson: I withdraw it.

RE-CROSS-EXAMINATION by Mr. Wolfskeil:

Q. After seeing her you were satisfied that you were justified in paying her two thousand dollars? A. I was.

Q. On her request? A. I was.

Mr. Wolfskeil: That is all.

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Mr. Gilson: That is all. I am calling this (the next) witness a little out of turn too.

WILLIAM SCHULTZ, produced as a witness, on behalf of the petitioners, being duly sworn on his oath, according to law, saith:

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Direct-examination by Mr. Gilson:

Q. You are the tax receiver for the City of Summit, Mr. Schultz? A. Yes, sir.

Q. And you have the records with you in compliance with a subpoena served upon you, with respect to the property standing on the books assessed to Catherine Morrisey? A. I have.

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Q. Will you just turn to that please? A. That property is not in the name of Catherine Morrisey.

William Schultz—Direct

Q. It is in the name of the estate of David Morrisey, deceased. A. D. D. Morrisey estate.

Q. You knew them of course? A. No, I didn't.

Q. You knew of them? A. Yes, I knew of them.

Q. They kept that hotel on the corner of Springfield and Chestnut Avenue, Summit, for a great many years. A. Yes, sir; I know that. 10

Q. And that David Morrisey was the husband of Catherine Morrisey? A. No, I never knew him.

Q. You knew Catherine Morrisey is the widow of David Morrisey? A. That I know.

Q. Will you tell us what property stands in that name and the assessed value of it? A. This is the property known from numbers one to nine, Chestnut Avenue it is lot 178 by 100 and it is a row of six two-story frame houses and a shed; assessed at \$15,800.00. Was that reduced by the Commissioners of the Tax Board, or Commissioners of Adjustment or something? A. No. That is the figures made by the assessors. 20

Q. Is that all the property standing on the books of Summit in the name of David Morrisey estate? A. That is all.

Q. Is there any property at all standing in the name of Catherine Morrisey? A. There is another Catherine Morrisey in Summit. Another property by that name in Summit. 30

Q. Not the same property? A. No.

Q. Not the same Catherine Morrisey? A. No.

Q. That is the widow of William Morrisey? A. Yes, sir.

Mr. Gilson: That is all.

Mr. Wolfskeil: No questions.

Mary A. Kelly—Direct

MARY A. KELLY, produced as a witness, on behalf of the petitioners, being duly sworn on her oath, according to law, saith:

Direct-examination by Mr. Gilson:

- 10 Q. Miss Kelly, where do you live? A. Carbondale, Pennsylvania.
- Q. What street? A. Sixty-two Second day of next month.
- Q. With whom do you live in Carbondale? A. With my brother in our own home.
- Q. Which brother is that? A. Thomas.
- Q. And you have another brother, Michael? A. Married.
- Q. He lives in Carbondale, too? A. Yes, sir.
- 20 Q. Do you know Catherine Morrissey of Summit? A. Well, I certainly do. My own aunt.
- Q. She is your own aunt? A. She is my own aunt; my father's youngest and last surviving member of that family.
- Q. Who are her nearest relatives? A. Well, I and my two brothers, and Mrs. McCall.
- Q. That is Mrs. McCahill? A. Yes, sir. And Joseph and Mary Kelly, who are not here. They are all her own nephews.
- 30 Q. You and Mrs. McCahill are the only nieces, and your brothers Thomas and Michael are the only nephews living, is that right? A. Yes. Those are the only nephews; but there is another niece and nephew, Joseph Kelly and Mary Kelly.
- Q. Are they alive? A. They are alive, but I don't know where.
- Q. You don't know where they are? A. Brooklyn, or some place.
- 40 Q. Are those the nearest relatives of Catherine Morrissey? A. Those are the nearest relatives.

Mary A. Kelly—Direct

Q. And then there are some grand-nieces, and grand-nephews, are there not? A. Yes, sir.

Q. Who are they? A. Her grand-nieces?

Q. Yes, her grand-nieces and grand-nephews?
A. Well, Frank O'Brien would be a grand-nephew, and Leonard O'Brien would be a grand-nephew, and Mrs. Anna Fleming would be a grand-niece. 10

Q. Yes? A. And Mrs. Brown would be a grand-niece.

Q. How about Josephine? A. Magnan? Who do you mean?

Q. She is a sister to Mrs. Brown; you know her? A. Yes.

Q. She is a grand-niece? A. They are grand-nieces; yes. 20

Q. And Florence Springer, that is another sister of Mrs. Brown? A. Yes; and Grace Kelly is another grand-niece.

Q. Grace Kelly is the daughter of James Kelly?
A. My brother.

Q. Who died in Mrs. Morrissey's house? A. Who died in Mrs. Morrissey's house; was buried from there. He didn't die there; he was buried from there.

Q. How about Irene Kelly? A. She is a grand-niece. 30

Q. How about Mame Kelly? A. Mamie Kelly? That would be Mary Kelly maybe, Joseph Kelly's sister.

Q. She would be a grand-niece then? A. She would be a full niece; Mame Kelly would.

Q. This one you referred to a minute ago, Mary? A. I don't know where she is.

Q. And Joseph Hughes? A. Joseph Hughes? 40

Mary A. Kelly—Direct

Q. You don't know him? A. (Witness nods head negatively.)

Q. Do you know James Kelly? A. James Kelly?

10 Q. The one that is alive now? A. No. There is no James Kelly alive I don't think. There is Edward Kelly and Frank Kelly would be grand-nephews.

Q. And Hugh O'Brien, who is he? A. He would be a grand-nephew if he is living. I don't know anything about him, but there is such people.

Q. How old a woman is Mrs. Morrissey? Catherine Morrissey? A. Well, she must be between eighty and eighty-five, if not more. I wouldn't just know if she was more.

20 Q. She has lived in Summit quite awhile? A. I stayed with her five months when I was fifteen years old, and I stayed with her one year when I was eighteen years old. She wrote for me to come and stay with her, she wasn't well.

Q. And then after you were eighteen years of age did you visit her more or less? A. Regularly; regularly.

Q. About how often? A. Well, not less than every two years and sometimes every year.

30 Q. What was her husband's name? A. David Morrissey.

Q. And when did he die? A. He died in ninety-one.

Q. 1891. Did she ever have any children? A. She had one son living and he died.

Q. Did she ever have any other children? A. Two children buried when they were very young.

Q. How old was the first one when she died?
A. I couldn't say how old the first one was.

Mary A. Kelly—Direct

Q. An infant? A. I don't think much more. I don't think it was much more than an infant. I have forgotten, it was so long ago.

Q. This son you speak of, how old was he? When did he die? A. He wasn't quite twenty-one.

Q. When did he die, do you remember? A. 10
No; I haven't got the date.

Q. Was it one year ago or ten years ago or what? A. It is about twenty-two years ago, as near as I can think.

Q. After Mrs. Morrisey's husband died who kept house for her? Who lived with her? A. After he died?

Q. Right after he died, yes? A. Well, I think James O'Brien did and his wife. 20

Q. That is Ann O'Brien? A. No. She would be Grace O'Brien, I think. I think they were the next.

Q. Was she the mother of Frank O'Brien? A. Yes.

Q. And they did live with Mrs. Morrisey, and keep house for her for sometime after the death of her husband? A. Yes.

Q. About how long did they live with her and keep house for her? A. I couldn't just say. 30

Q. One year or more? A. Oh, more.

Q. More than ten years? A. I wouldn't say; I don't just know.

Q. And after they moved away, did they? A. Yes, sir.

Q. And after they moved away who kept house for Mrs. Morrisey? A. This Joe Kelley and Mary Kelley who are not here.

Q. And that is the father of Grace Kelley? A. No. He comes later. 40

Mary A. Kelly—Direct

Q. Then they kept house for her awhile? A. Yes.

Q. About how long? A. Well, I don't think they kept house more than two years, yet I wouldn't be certain.

10 Q. After that who kept house for her? A. After that she wanted my brother and I to come and take our mother, and we wouldn't come. And she said she could not ask my brother James because he was in a good position and she could not disturb him. But he did go, sorry to say. He was there about two years, and he was buried from there and his family remained there about seven years after.

20 Q. That is James Kelley's widow and his daughter? A. Yes, sir; they remained there.

Mr. Wolfskell: I have not any objection to all this family history being related, but I do not think we are touching upon the question of the lunacy of this woman. I object to all this ramification on the ground it is not material what happened sixty years ago down to date.

Commissioner Maxson: What is the purpose of it?

30 Mr. Gilson: The purpose of it is for information; to get an intelligent idea of what the situation is at the present time you have got to have a history of the case. Now I am going to show in the orderly way leading up to it, exactly what took place there, and what the condition of Mrs. Morrissey's mind has been, gradually, from a certain period up to the present time.

40 No doctor, no layman, no lawyer can tell

Mary A. Kelly—Direct

the history without some history in the case.

Commissioner Maxson: The Commission will admit that evidence for that purpose, to prove the history of the case.

Mr. Gilson: I will cut it short.

10

(Question and answer repeated by the stenographer.)

Q. How long did they remain there, Miss Kelly? A. Well, my brother died in 1908 I think, and in 1915 I called there in August and made a visit. I stayed three or four or five days, and in November I got a telegram saying "come,"—on the eighth of November saying "come as soon as possible," signed by Mrs. Grace O'Brien.

Q. That is Frank O'Brien's wife? A. His 20
mother.

Q. His mother? A. Of course, I said to my brother, "I can't go tonight, and Kate must be dead or dying," but I didn't understand why I got a telegram from Grace O'Brien, because they were not friends.

Mr. Wolfskeil: I object to the witness' ramifications of thought.

Commissioner Maxson: Strike that out. Confine yourself as much as you can to 30
your associations with Mrs. Morrisey, will you?

A. You don't want me to tell why I came there?

Commissioner Maxson: No. That is not necessary.

What you know about Mrs. Morrisey and the people who were associated with her?

A. Well, I came and I found—Frank O'Brien met me at the station and I said "Is Aunt Kate dead?" "No," he said, "she is O. K. in our 40

Mary A. Kelly—Direct

house." I said, "I must send a message back to my brother saying so," and he went with me and I sent the message. I went up to O'Brien's and there was my aunt. And I asked how she got up there, and they said they took her up there, and after she got up there she lost her mind.

10 Q. Is that what Frank O'Brien told you? A. They told me—

Mr. Wolfskeil: I ask that be stricken out.

Mr. Gilson: I object to it being stricken out.

Commissioner Maxson: What Frank O'Brien told this witness is not proper.

20 Mr. Gilson: Here is the situation: On November 1915 Mrs. Morrisey was kidnapped out of a friend's house by the O'Briens and Flemings who now live with her. But after kidnapping her and taking her to their own home, due to her mental condition, known to the people who took her at that time, they admitted to this witness she was out of her mind.

30 Mr. Wolfskeil: I object to your statements on the ground that they are improper to make at this time. Your statements about kidnapping. I say you have no right to make those statements in the presence of the Jury.

Mr. Gilson: I am going to prove it. I am telling the Court what I am going to prove.

40 Commissioner Maxson: I do not think statements or offers to prove are proper. Of course any argument relating to the admission of this evidence is proper.

Mary A. Kelly—Direct

Mr. Gilson: That is my argument, that this Frank O'Brien said to Mrs. Kelly, "We have taken Mrs. Morrissey, or your aunt—"

Commissioner Maxson: I do not think it is proper to state what he said. That is 10 part of the proof that you are going to offer. I think that is the objection of counsel. You are stating something you are going to prove in words before the jury.

Mr. Gilson: No. The witness is about to say what Frank O'Brien said to her.

Commissioner Maxson: Tell the Commission how that is relevant.

Mr. Gilson: To show that the person who took Mrs. Morrissey clandestinely, if you 20 like that word better.

Mr. Wolfskeil: There is no evidence she was taken.

Mr. Gilson: We are not bound in a proceeding of this kind by the strict technical rules of evidence. Of course, that is well known. What I am trying to find out from this witness is what took place in November, 1915, when she was called down here by a telegram from one of her relatives, 30 to show Mrs. Morrissey was in this condition and she was known to be in this condition by the people who took her away, and who subsequently moved into her house.

Commissioner Maxson: Personally, without conferring with my colleagues, I cannot see how any statement made by Frank O'Brien to this witness, or anybody 40

Mary A. Kelly—Direct

else is relevant, unless you show some conspiracy, and he is one of the conspirators.

Mr. Gilson: I will go about it in a different way to save time.

10 Q. With whom is Mrs. Morrissey living at the present time? A. With the Flemmings when I called there in her own home in April.

Q. 1917? A. 1917.

Q. Do you know whether Frank J. O'Brien has anything to do with Mrs. Morrissey or her affairs?

A. Well, I think he has.

Mr. Wolfskeil: I object. The witness does not say she knows.

A. Yes, I know; I went to the bank. The First National and I said at the bank.

20 Mr. Wolfskeil: I object to what you said at the bank.

Commissioner Maxson: Do not tell what anybody told you at this bank. You can only testify to those things you know.

A. I went to Mrs. O'Brien—

Mr. Wolfskeil: I object.

A. (Continuing.)—she said she sent for me—

Mr. Wolfskeil: I object.

A. (Continuing)—she was afraid she was going
30 to have another spell.

Mr. Wolfskeil: I object and ask it be stricken out from the record, what Mrs. O'Brien told her.

Commissioner Maxson: You strike that out, that part she relates about what somebody told this witness, as hearsay.

Q. When you came down from Carbondale, in response to this telegram, you saw Mrs. Morrissey in O'Brien's home? A. Yes.

Mary A. Kelly—Direct

Q. And what was her condition when you saw her in that home? A. She didn't know me at all. She didn't know where she was. I slept with her that night, and I never closed an eye until three o'clock in the morning, when I got up and said to Mrs. O'Brien— 10

Mr. Wolfskeil: I object.

(Testimony repeated by the stenographer.)

A. I said—

Mr. Gilson: I will not press that.

Q. Do you know how your aunt got there in the O'Brien home? A. Only what Mrs. O'Brien told me.

Q. Did your aunt ever tell you? A. She hadn't power enough to tell me; she wouldn't know. 20

Q. Did you ask her? A. I did.

Q. What did she say? A. She asked who was that woman; "she is Grace O'Brien," she didn't know her.

Q. That was— A. In Grace O'Brien's house.

Q. That was the mother of Frank O'Brien? A. Yes, sir.

Q. And he lived there with his mother, Grace O'Brien? A. Yes, sir, he did.

Q. And you say that Grace O'Brien told you how— 30

Mr. Wolfskeil: I do not care if she did say so.

Mr. Gilson: Let me finish the question.

Mr. Wolfskeil: The unfortunate part of it is, if the Court please, that Mr. Gilson puts this in the mouth of the witness and in the ears of the jury, and it is manifestly improper. The framing of his question as he has begun shows that. 40

Mary A. Kelly—Direct

Commissioner Maxson: How can we rule on it until the question is asked? I do not consider we have strict powers of a Court here; we are here to make an inquiry.

10 Mr. Wolfskeil: I do, if your Honor please. You are selected as a Master in Chancery for the reason that you, with your legal training have the power of the Court. The rules provide that a Special Master be selected. The custom has always been to appoint a Special Master.

Commissioner Maxson: I think it is only proper we hear the question.

20 Mr. Wolfskeil: I do not mean to be captious, but it seems to me that is so manifestly improper.

(Question repeated by the stenographer.)

Mr. Wolfskeil: And he said "And you say that Mrs. O'Brien told you," and he intends to get what Mrs. O'Brien told her and get her repetition of what she told her.

Mr. Gilson: You are assuming something that is not so. I am going to say that Mrs. O'Brien told you something with respect to how Mrs. Morrisey got there?

30 A. Yes, sir; and she told me that is why she sent for me.

Mr. Wolfskeil: I object.

Commissioner Maxson: You must not testify to what someone told you under any circumstances, because that is not evidence. No one except Mrs. Morrisey, whose mental condition is being inquired into. Whatever she told you is proper. Nothing else.

40 Mr. Gilson: On that question I would like to be heard. And that is, we have shown,

Mary A. Kelly—Direct

and purpose to show that Mrs. Morrissey now is surrounded by Frank J. O'Brien, the son of Mrs. Grace O'Brien and the Flemings, and that the Flemings are living with her. That it is impossible, because of those surroundings, for any relative to get near her to talk to her or get into her house. And that condition arose because Frank J. O'Brien and the Flemings took her clandestinely out of her house, when she did not know where she was or who she was surrounded with, and took her to the O'Brien home. I submit anything said by the O'Briens under those circumstances is binding, and is legal evidence. If it is not legal evidence, of course, we fall by introducing illegal evidence. And I am perfectly willing to take the responsibility, and I stand here insisting that that is legal evidence. That any admissions made by those people who took her—

Mr. Wolfskeil: It would be if the O'Briens and these people were under indictment for conspiracy, but they are not. That is not the question before the Commission and Jury: the only question before the Commission and Jury is: Is Mrs. Morrissey sane or insane? And it does not make any difference what these allegations of conspiracy are; it does not make any difference who she was surrounded by. The only question for the Commission and Jury to decide is is she insane and incapable of managing her affairs.

Mary A. Kelly—Direct

Commissioner Maxson: Yes. How about this question, of what somebody said about the way she lived or about what happened, that offer, how is that evidence

10 Mr. Gilson: That is material. Of course, everybody will agree to this, there are exceptions to every rule. It is a rule of evidence that hearsay evidence is not admissible, what one person said to another, who who is not a party to that proceeding, but there are exceptions, and here is the exception. When a party or privy makes a statement that is hearsay evidence in one sense but it is an exception to that rule. Here is a man who is a privy to a transaction we say is part of the transaction of this Court—

20

Commissioner Maxson: These people whose testimony you seek to prove by this evidence, are not parties in this proceeding.

Mr. Gilson: They are in a sense, because the issues before this Commission and Jury are who are those people surrounding—

Mr. Wolfskeil: No, I deny it strenuously.

Mr. Gilson: I can cite a case.

30

Commissioner Maxson: I think the Commission is strictly limited by the instructions of the Court, as contained in the Commission. The Commission says: (Reading commission). Of course it goes on, but it seems to me that is the gist of this commission. We are to find out what her mental condition is and what her property is. And if you can cite us any authorities which justifies us in admitting hearsay evidence on

40

Mary A. Kelly—Direct

those questions, we should like to hear them.

Mr. Gilson: The authority I cite is the case of Collins, reported Three C. Green, page 253 (Equity Report), where it is held that a proceeding—it goes into the question that you have just recited there for a proceeding of this kind; goes into those questions, but furthermore that it is an inquiry with respect to the persons by whom the alleged lunatic is surrounded and their conduct. That is what the case holds. If that is true, then this testimony is admissible. 10

Commissioner Maxson: Let us see what the case holds. Can't you go on with another line of testimony. 20

Mr. Gilson: Yes.

Q. Now, Miss Kelly, when you got there in November, 1915, and stayed all night with your aunt, how long did you stay in Summit? A. Well, I slept with her that night and I stayed— when she got up in the morning she didn't know me. She asked me where she was, and she asked who that woman was, and I told her— I tried to explain that she was James', her nephew's wife. I don't know her, she said. She said, "Who are you?" I said, "I am Mary Ann Kelly. Your brother's daughter." "I don't know you, darling," she said. And she took my face like that and kissed me. And she said, "I don't know anything, I have no memory." I said, "I see that, Aunt Kate." And I helped her dress while I think she could do that herself; she came down stairs and didn't know my brother. And I and Mrs. O'Brien were there and she didn't 40

Mary A. Kelly—Direct

know either one of us. She asked my brother who he was.

Mr. Wolfskeil: The question was how long did you stay in Summit? A. I stayed in Summit nine days.

10 Q. During those nine days how often did you see her? A. After I slept with her and after I found out what I was brought there for I was so stunned and dazed I went down to Kelly's to find out what had happened.

Q. That is where Mrs. Morrisey had been living? A. That was her home.

Q. When you got down there to Kelly's who were living in her home, that was the corner of Chestnut and Springfield avenues? A. Yes, sir.

20 Q. Were they still in that house? A. They were still in that house.

Mr. Wolfskeil: I object on the ground it is immaterial.

Commisioner Maxson: That is not of any moment, is it?

Q. Did Mrs. Morrisey go back to the house while the Kellys were still living there, and during the nine days you were there? A. Not while I was there. I went up one day and asked her to come home, and I stood at the door and rang three
30 time; I must have stood there ten minutes before I was let in. When I went in I said, "Aunt Kate, I come here to have you come down home." And she said, "I am not going home." And Mrs. O'Brien she said to me—

Mr. Wolfskeil: Who? A. Mrs. O'Brien.

Mr. Wolfskeil: Mrs. Grace O'Brien? A. Mrs. Grace O'Brien.

40 Mr. Wolfskeil: I object to what Mrs. O'Brien said to the witness.

John D. Hood—Direct

Commissioner Maxson: Can't you proceed without asking questions that will elicit any hearsay evidence?

Mr. Gilson: Yes. I would like to withdraw this witness and call Mr. Hood, while you are determining this question. It is just to let him get away. 10

(Witness withdrawn temporarily.)

JOHN D. HOOD, produced as a witness, on behalf of the Petitioners, being duly sworn on his oath, according to law, saith:

Direct-examination by Mr. Gilson: 20

Q. Mr. Hood, you are cashier of the First National Bank of Summit? A. I am.

Q. And you have the account of Catherine Morrisey with that bank? A. We have.

Q. Here in Court? You have produced it in compliance with the subpoena? A. I have.

Q. Will you just turn to it, please? A. (Witness does so). Here is that copy of the full account, and also the copy of the account of Frank J. O'Brien, as attorney for Catherine Morrisey which covered a very short period. I have certified them. I have sworn to it. But I haven't taken any acknowledgment if you want it. 30

Q. Those papers you have produced are the loose leafs of the ledger, the original account of Catherine Morrisey? A. A copy of the account.

Q. A copy of the account covering the entire period of the account? A. (Witness nods his head affirmatively). 40

John D. Hood—Direct

Q. And also the account of Frank J. O'Brien as attorney of Catherine Morrisey from February seventeenth, 1916? A. Correct.

Q. January twentieth, 1916, to June seventh, 1917, is that correct? A. Correct.

10 Mr. Gilson: I offer—

Mr. Wolfskeil: What are the dates of Mrs. Morrisey's account?

Mr. Gilson: I offer these in evidence. The account was opened—

Q. When was the account opened? A. Account was opened May 2nd, 1905. Still continues in Mrs. Morrisey's name.

Q. Still continues in Mrs. Morrisey's name?

Mr. Gilson: I offer these in evidence.

20 Mr. Wolfskeil: No objection.

Accounts marked in evidence as Exhibit P-3.

Q. You can leave these copies here? A. Yes.

Q. Was a power of attorney given by Mrs. Morrisey to draw on this account?

Mr. Wolfskeil: If you know? A. They were.

Mr. Wolfskeil: Do you know of your own knowledge? A. I know.

30 Q. Will you just state the circumstances under which that power of attorney was given? A. Why, it was given simply that Frank O'Brien should act for Mrs. Morrisey in the collection of certain rents which were deposited with us subject to his withdrawal for repairs and other expenses.

Q. And that was rent of the premises Springfield and Chestnut Avenue, Summit? A. Mrs. Morrisey's property.

Q. Mrs. Morrisey's property in Summit? A. Mrs. Morrisey's property in Summit.

John D. Hood—Direct

Q. Mr. O'Brien took that power of attorney to you? A. Yes, sir.

Q. Did you accept that power of attorney? A. We did; we accepted it.

Q. At whose suggestion was the power of attorney given? 10

Mr. Wolskeil: If you know.

A. On our demand before the account was opened. We demanded that the power be on with us. And the reason for the account being closed was that the power was filed with us was not quite satisfactory. It was not on one of our own forms which were demanded in all cases, and we insisted it should be one of our own blanks. And Mr. O'Brien objected to doing that, and the account was closed. 20

Q. Did he subsequently agree to have a power of attorney executed by Mrs. Morrissey on your own blank? A. No, he didn't.

Q. Wasn't one given? A. One was given which we held and used during the time of that account; it was a property drawn power; no question about that.

Q. Didn't you have one of your own form drawn? A. We did. And given to him to have executed. 30

Q. Is that the one you speak of now? A. No. I can produce the power of attorney which was given to us. And it was carried during the—

Q. This one you have produced is the one under which you recognized his signature? A. It is.

Q. Is it your own form? A. That is not our own form.

Q. Was it after this one that you produce was given, that you had the one on your own form ex- 40

John D. Hood—Direct

10 executed? A. After accepting that our Board decided it was proper we should have it in proper shape; in little better shape on one of our own blanks. And we asked Mr. O'Brien to have one filled out in substitution of this, which he refused to do, and we closed the account.

Q. And this one on your blank was never executed? A. Was never executed.

Commissioner Maxon: Can you state, shortly, what the objection was to this form? A. Our Board felt it was proper that the signature would be acknowledged before a notary that we knew personally, and also that it cover, as our blanks do, more explicitly just what that power would cover; more generally than this blank which was
20 filled out did.

Mr. Gilson: I offer this in evidence.
Power of attorney.

Mr. Wolfskeil: No objection to this being received in evidence.

Power of attorney entered in evidence and marked Exhibit P-4.

Mr. Gilson reads Exhibit P-4 to the Jury.

30 Mr. Wolfskeil: The account is closed under this Power of Attorney. I object on the ground it is too irrelevant, for the purpose of saving time. The fact of its being given.

Mr. Gilson: All I want in it is was a general power of attorney to collect rents.

Mr. Wolfskeil: And it is closed now.

Mr. Gilson: Yes, and to draw monies on this account.

John D. Hood—Cross

Mr. Wolfskeil: And it is now closed, the bank has refused to recognise it any further. And it is now closed.

Mr. Gilson: Yes. That Power of Attorney was witnessed by Anna R. Fleming and Robert H. McAdams.

10

A. Yes. And you will see below here we requested our own notary there, Arthur W. Hicks, to go down and take an acknowledgment which he did.

Q. That was given on December 16th, 1915? A. Correct.

Q. This bank account which was opened May 2nd, 1915 was with a deposit of two thousand dollars? Is that correct? A. This is correct.

Q. And I notice that from January 1st, 1909, to May 27th, 1909, there was a balance running from twenty odd thousand dollars up to twenty-two thousand dollars, is that correct? A. Correct.

Q. At the present time the balance is how much? A. \$136.14.

Mr. Gilson: Cross-examine.

CROSS-EXAMINATION by Mr. Wolfskeil:

Q. This power of attorney, do you know when it was delivered to the bank? A. No; I haven't any positive record of that.

30

Q. Was it about the time of its date or later? A. About the time that the account was opened. If not at the same time, then within a very short time after.

Q. Before you recognized that power of attorney or did any business under it you insisted that Mrs. Morrissey acknowledge her signature before a notary? A. We did.

40

John D. Hood—Re-direct

Q. Was that done on this paper? A. That was done on this paper.

Q. Who is the notary public took the acknowledgment of Mrs. Morrisey? A. Mr. Arthur N. Hicks.

10 Q. Is he connected with your bank? A. Not at all.

Q. Is he a gentleman you have confidence in? A. Yes.

Q. And are acquainted with? A. Yes, sir.

Q. Did you send him there to Mrs. Morrisey? A. We sent him there.

Q. You sent him there? A. Yes, sir; we did.

Q. And he signed his name to that paper as having acknowledged it on what date? A. February 9th, 1916.

20 Q. You had confidence to place in his statement to believe it was all right when you got it back with his signature on, didn't you? A. We did.

Q. And you believed when it came back that Mrs. Morrisey was capable of attending to her affairs on the day that the notary examined her and took her acknowledgment? A. That settled the question with us.

30 Q. What is the date of that? A. February 9th, 1916.

Q. February 9th, 1916; do you know Mr. Hick's signature? A. I do.

Q. Is that it? A. That is correct.

Mr. Wolfskeil: That is all.

RE-DIRECT EXAMINATION by Mr. Gilson:

Q. There had been some question prior to that

John D. Hood—Re-cross

time with respect to Mrs. Morrissey's signature, and her capacity to draw checks? A. Up to that time we had the idea—we felt as though it was absolutely necessary we have somebody we know go down there and take that acknowledgment. The only thing as an act of precaution. 10

Q. And that was on account of your suspicions with respect to her mental capacity? A. Well, it was rather a general idea that—I don't know that we questioned her mental capacity exactly. We knew she was under the influence of others and in a woman of that age we felt very conservative and proper in having it done up in such shape that we could tie up to it definitely by a man we knew.

Q. And that man was Mr. Hicks? A. Mr. Hicks. 20

Q. Her signature had been getting more or less uncertain? A. Very, very.

Q. And there was some doubt in your mind when her signature would come in on a check? A. Yes.

Mr. Gilson: That is all.

RE-CROSS-EXAMINATION by Mr. Wolfskeil:

Q. Mr. Gilson called your attention to some particular date in the account a while ago. I ask you to look about 1915, say June or July, 1915, and tell me what the balance was? A. What date do you want? 30

Q. July 1st, 1915. A. July 1st, the balance was \$503.36.

Q. July 1st, 1915? A. Correct.

Q. Now down January 1st, 1917, tell me what the balance is? A. Balance was \$3081.99. 40

John D. Hood—Re-cross

Q. And what was it on July 6th, 1916? A. \$2838.90.

Q. It has been a changing account all the time, hasn't it? A. Yes, it has.

10 Q. One more question. Are you familiar with Mrs. Morrissey's signature? A. I am.

Q. Is that her signature? A. I would say that was Mrs. Morrissey's signature.

Q. Written quite plainly and full? A. It is,—

Q. It is very legible, isn't it? A. It is legible, yes. But there was just that question in our minds we insisted on having it acknowledged.

Q. It looks like her signature to you? A. Yes, sir; it looks like her signature to me.

Q. And it is plainly written? A. Yes.

20 Q. And still you wanted to make absolutely certain? A. Absolutely sure.

Q. And that is the reason you wanted to have it acknowledged? A. Yes, sir.

RE-DIRECT-EXAMINATION by Mr. Gilson:

Q. A part of your duties was to pass on the signatures of depositors? A. It was.

Q. And that has been part of your duties for a number of years? A. It has.

30 Q. As cashier in connection with that bank? A. Yes.

Mr. Gilson: That is all.

RE-CROSS-EXAMINATION by Mr. Wolfskeil:

Q. What was the date of that power of attorney? A. The power is witnessed the 16th day of December, 1915.

John D. Hood—Re-cross

Q. And what is that date of the acknowledgment? A. The date of the acknowledgment is February 9th, 1916.

Q. Tell me how much money there was in that account in December 16th, 1915 on the date of the power of attorney? A. December 16th, 1915? 10

Q. The date of the power of attorney. How much money was there in that account? A. \$831.54.

Q. No, that is five hundred, isn't it? A. Eight hundred. You want December 16th.

Q. December 16th. A. That would be prior to December 21st, \$831.54.

Q. On December 21st, a few days after the account, it was reduced to \$498.16? A. Correct.

Q. So you didn't recognize this power of attorney at all after it was acknowledged, did you? A. 20
This power of attorney, to make clear, was given primarily not in connection with Mrs. Morrisey's savings account, but on the account opened on our books by Frank J. O'Brien, attorney for Catherine Morrisey. I have given you a separate statement of that account.

Q. Then do I understand then that nothing was done with this account by virtue of this power of attorney? A. Nothing. 30

Q. That is the account that still stands in Mrs. Morrisey's name? A. Yes.

Q. I am referring now to the account that was in Mrs. Morrisey's name? A. Yes.

Q. Does that show any drafts recently? A. It shows a withdrawal on July 21st of this year, 1917 of three thousand dollars.

Q. That withdrawal had to be with the signa- 40

John D. Hood—Re-cross

ture of Mrs. Morrisey didn't it? A. Mrs. Morrisey; yes, sir.

Q. You paid that check with her signature on it?

A. We did; to Miss Morrisey.

Q. To her personally? A. To her personally.

10 Q. Did you see her personally? A No; our teller.

Q. On July 24th, 1917?

Mr. Gilson: I object to that. He said the money was paid to Mrs. Morrisey, personally, but he didn't see Mrs. Morrisey. The teller did. And he didn't see her.

Commissioner Maxon: Do you say it was paid to her personally of your own knowledge, or because somebody told you so?

20

A. Based entirely on my teller's statement to me.

Commissioner Maxon: Strike that out.

Q. Were you in the bank at the time? A. I was not there at the time.

Q. That was just two months ago—less than two months ago on July 24th, 1917 that her check was honored? A. Yes, sir.

Q. Did you see the check? A No.

30 Q. But her account shows the draft? A. But her account shows the draft.

Q. And from the way this account was kept you would not pay out except on her own check? A. Exactly.

By Mr. Gilson: Q. What was the balance on November 10th, 1915, Mr. Hood? A. November 10th.

40

Mary A. Kelly—Direct

Q. About; yes? A. It would be \$831.54.

Mr. Wolfskeil: No further questions.

MARY A. KELLY, resumed:

10

Direct-examination (Continued) by Mr. Gilson:

Mr. Gilson: Now I press my question as to what Mr. O'Brien, Frank J. O'Brien said to Miss Kelly on her arrival from Carbondale in response to the telegram from Mrs. O'Brien, with respect to the condition of Mrs. Morrisey and how she got in his home instead of being in her own home.

20

Mr. Wolfskeil: I object on the ground grounds I mentioned before.

Commissioner Maxson: The commission rules that out for the present.

Q. What is the condition of Mrs. Morrisey's eyesight?

Mr. Wolfskeil: I object too on the ground it is not material to the issue. The question is the condition of her mind; not her eyesight.

30

Mr. Gilson: The purpose is to show that Mrs. Morrisey's eyesight is so poor she does not know when she signs her name whether it is a check for one dollar or one thousand dollars or any amount. She has one glass eye and cannot see very much out of the other. And she is deaf and a very feeble person.

40

Mary A. Kelly—Direct

Commissioner Maxson: We will overrule the objection.

10 Mr. Wolfskeil: I object on the further ground the witness is not qualified to testify as to the condition of her eyesight. She is not an expert.

Commissioner Maxson: That is a different objection; I sustain that.

Mr. Gilson: I withdraw that.

Q. Has Mrs. Morrisey two normal eyes?

Mr. Wolfskeil: I object on the ground the witness is not qualified to state what a normal eye is.

Q. Well, two normal eyes? A. No, she wasn't; not in August, 1915.

20 Q. Has she two natural eyes? A. No; she has a glass eye; she took it out the night when going to bed and put it in in the morning.

Q. Do you know what the condition of her eyesight out of the other eye is, with respect to anything she has told you about how she could see out of that eye?

Mr. Wolfskeil: I object on the ground it is not competent.

30 Commissioner Maxson: I think that is clearly competent, whatever she told the witness.

Q. She told you she couldn't see anything? A. she felt worse for her eyesight than she did for her memory.

Q. She told you she couldn't see anything? A. She told me she couldn't. A shadow only.

Q. Shadow? A. Yes.

40 Q. Did she ever tell you anything about her hearing? A. Her hearing?

Q. Yes. A. No; she didn't.

Mary A. Kelly—Direct

Q. You don't know from the way you had to talk to her whether she could hear well or not?

Mr. Wolfskeil: I object. This witness is not qualified to give an opinion as to the condition of her hearing.

Commissioner Maxon: The commission overrules the objection by a divided opinion. 10

Mr. Gilson: The purpose of it is the breaking down of all her faculties including her mind, from old age.

Mr. Wolfskeil: I object to the statement of counsel.

Commissioner Maxson: Gentlemen of the Jury, you pay no attention to what counsel says here. You are to determine the question on what the witnesses sworn here before you say. 20

Q. What was the condition of her hearing, with respect to the way you had to talk to her? A. You talked loud to her and sometimes you told her two or three times what you said.

Q. And with respect to her memory, do you know anything which would show what her memory was in August, 1915, when you visited her? A. I do. 30

Q. What was that occurrence, Miss Kelly? A. She gave me— I put a few questions to her and she gave me an article and when I handed it back to her she said, "What is this"? and I told her, and she said, "I didn't know I gave it to you, darling."

Q. What was the article? A. It was a bank book.

Mary A. Kelly—Direct

Q. It was a bank book; and how long was it between the time she handed it to you and the time you handed it back to her? A. About an hour.

Q. About an hour? A. Yes, sir.

10 Q. Did she hand it to you for any specific purpose? A. She told me I could take it to the bank and find out how much was in it.

Q. Did she know what was on it? A. No, she didn't. She didn't know one figure from another. She didn't know what she had in it.

Q. Did anything happen in November when you came down to see her, showing what the condition of her memory was? A. Yes; she didn't know me and she didn't know where she was.

20 Q. Did she remember James Kelly? A. Not at all.

Q. Wait a second. (Continuing) with whom she lived for several years? Did she remember he was dead? A. She didn't remember him at all, living or dead. She didn't remember that he lived with her or died with her.

Q. And he and his family lived with her for a number of years? A. A number of years.

Mr. Gilson: That shows why I brought out this testimony.

30 Mr. Wolfskeil: I object.

Mr. Gilson: I want to justify myself.

Commissioner Maxson: Do not make statements of fact you intend to prove before the jury.

Q. Did she remember your brother Thomas? A. No; she didn't; nor my brother Mike.

40 Q. Nor your brother Mike. And do you know whether they visited her almost every year for a great many years? A. Every year.

Mary A. Kelly—Direct

Q. Didn't remember them? A. No.

Q. Did she remember she had a child who died?

A. Yes.

Q. She remembered him? A. Yes.

Q. Did she remember his name? A. I think she did. 10

Q. Did she remember her husband's name? A. She has never talked of him.

Q. In April or May, of 1917? A. April.

Q. April. That is this year? A. Yes, sir.

Q. You came down to visit your aunt? A. Yes, sir.

Q. Where did you find her then? A. I found her in the kitchen.

Q. I mean in what house? A. Oh, it would be in her own house, yes. 20

Q. That is not the house in which you had seen her in November when you came down? A. No, sir.

Q. With whom was she living at that time? A. In April?

Q. Yes, in April, 1917? A. In her own house with Mr. Fleming and Mrs. Fleming.

Q. And that is Ann R. Fleming? That is Annie Fleming, isn't it? A. Yes, sir.

Q. Who were with you in April, 1917, when you called on her? A. My niece and her husband. 30

Q. What are their names? A. Frank Simmerl, and Josephine.

Q. Did Mrs. Morrisey know you? A. No, she didn't.

Q. What did you say to her and what did she say to you at that time? A. I asked her how she was and she said she was fine, and I got talking to her and Mrs. Fleming told me to leave. 40

Q. Mrs. who? A. Mrs. Fleming.

Mary A. Kelly—Direct

Q. Mrs. Fleming is the sister of Frank J. O'Brien, isn't she? A. Yes, sir.

Q. Yes? A. And I said "I am not saying anything. I am just explaining to Aunt Kate." She stood up then, and said "Get out of my house." I said "Is it your house?" She said "Yes." I said "Did Aunt Kate give it to you?" She said "Yes." I said "Poor Aunt Kate couldn't give you anything," and Mr. Fleming came in, and she said to him "This is Mary Ann Kelly." And he said to me to leave.

Q. This is this man here? A. Yes, sir. And he said to me to leave. And Aunt Kate commenced crying. And I said "That is three times, so we will go." And we left.

20 Q. Did you ever hear of your aunt after that? A. Never.

Q. Was anything said about your aunt making a will? A. No, sir.

Q. Your aunt had a brother named Michael Kelly? A. Yes, sir.

Q. You knew him? A. Yes, sir; I did know him.

Q. Do you know where he died? A. I only know what they told me.

30 Q. Who told you? A. His daughter and my aunt.

Q. Did your aunt ever tell you? A. Yes, sir.

Q. Where did she tell you he died? A. I think Ward's Island, but I won't be certain. But on an island.

40 Q. Did she ever tell you whether he was metally unsound? A. Well she talked about him and talked about how he was taken there and died there.

Mary A. Kelly—Direct

Q. He was taken to Ward's Island as an insane patient, wasn't he? A. Yes, sir.

Q. And your aunt told you that? A. Yes, sir.

Q. About when did he die, do you remember?
A. I think he is dead between thirty and thirty-two years. I would not be just certain. 10

Q. Were you present at the time of the birth of your aunt's child? The boy? A. I was in my aunt's home, but the child was born in my Aunt Ann's home in Brooklyn, New York. She went there.

Q. Did you see her about that time? A. Yes, sir.

Q. What was her condition about that time? A. Well, after the birth and after she got home she was taken very ill and she had what they called a "stroke." 20

Q. A stroke? A. That is when her eye became affected.

Q. How long ago was that, about? A. I was eighteen years old then. And I am sixty-two. Subtract it. I can't say.

Mr. Wolfskeil: Forty-four years ago?

A. Yes, sir.

Q. Did Mrs. Morrissey ever say anything to you with respect to her feelings toward the Flemings and O'Brien's? A. Yes, she did. 30

Mr. Wolfskeil: I object on the ground it is not material to the issue.

Commissioner Maxson: Isn't that the same question?

Mr. Gilson: No. Did Mrs. Morrissey say anything to this witness with respect to her feelings toward the O'Briens and Flemings with whom she was surrounded. 40

Mary A. Kelly—Direct

Mr. Wolfskeil: I object on the ground it is immaterial.

The Court: I think we should take everything she said for what it is worth.

Q. What did she say with respect to her feelings
10 toward the Flemings and O'Briens?

Mr. Wolfskeil: When?

Mr. Gilson: I will fix the time.

A. She didn't like Mrs. O'Brien; she hadn't spoken to Mrs. O'Brien in twelve or fourteen years as near as I can think. She wouldn't let the coach be drove by Mrs. O'Brien's house when my brother visited there. That was the same on the Flemings; and she even criticized them.

Q. What did she ever say to you about the
20 Flemings? A. I don't think that she ever said anything particular about the Flemings.

Mr. Wolfskeil: I object unless counsel fixes the time. He said he would, but he hasn't.

Q. When did she say this about Mrs. O'Brien with whom she had not talked for twelve years? When did she tell you that? A. She told me that for years back.

Q. Now, in your opinion, from what you know
30 of your aunt, and what you have seen of her, and your talks with her, what is your opinion with respect to her capacity to govern and manage herself and her property? A. I don't think she was at all capable and Frank O'Brien himself said to me—

Mr. Wolfskeil: I object.

A. (continued)—that she wasn't—

40 Mr. Wolfskeil: I object.

Commissioner Maxson: One minute. Do not tell that.

Mary A. Kelly—Cross

Q. What is your opinion, outside of what Frank O'Brien's opinion was? A. Don't think she was.

Q. How long has she not been in a mental condition capable of managing herself and her property?

Mr. Wolfskeil: I object on the ground 10
that it has not developed that the witness is qualified to answer that question. Her period of observation has not been continuous. She has visited the old lady at periodical intervals about one year apart, and the last visit was November, 1915, and the next one she testified was April, 1917.

A. August 1915.

Mr. Wolfskeil: August and November, 1915, and then again now until May, 1917. I 20
submit she is not competent to testify.

Commissioner Maxson: The Commission will take this testimony and leave the question to the Jury to say what the testimony is worth, taking into consideration the facts about her observation.

Q. How long a period, Miss Kelly, would you say from your observation of your aunt, has she been in that condition of not being capable of governing and managing herself and her property? 30
A. Well, about three years I first noticed it.

Mr. Gilson: Cross-examine.

CROSS-EXAMINATION by Mr. Wolfskeil:

Q. You made an affidavit on the petition in this case, didn't you? A. Yes, sir.

Q. And on that affidavit you said "I am sixty years old, and one of the petitioners herein. I 40

Mary A. Kelly—Cross

am one of Catherine Morrissey's nieces and a beneficiary in her Will? A. Yes, sir.

Q. Do you know when that Will was made you are a beneficiary under? A. I only know by being told.

10 Q. When were you told? A. It was made nine years ago this month.

Q. I see. A. As near as I know.

Q. Nine years ago this month? A. As near as I know.

Q. So you are quite satisfied your aunt was in good shape at the time she made that will? A. Nine years ago?

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

20 Q. You are an interested party in this proceeding? A. I am not worrying over it at all. I am not at all interested in the will; never gave it a thought.

Q. When you visited your aunt I think you said in April of this year, you went to her own house in Summit? A. Yes, sir.

Q. And you had a talk with your aunt? A. Yes, sir; a very short talk.

Q. What did you say to her? A. What did I say to her? I asked her how she was.

30 Q. What did she say? A. She said she was well.

Q. Did she look well? A. Well, she did. She looked well.

Q. What did you say to her? A. What did I don't just remember what I said next. But I know I did say to her, Mrs. Fleming didn't allow me to talk, but I did say to her, I said "Aunt Kate, I am only explaining why I sent that card. When I sent that card saying Mrs. Fleming, if Aunt

Mary A. Kelly—Cross

Kate should be taken sick, send for me, as it was my aunt's desire I should be present whenever she dies.

Q. What did Mrs. Fleming say in reply to that? A. She said "All right, dear."

Q. Did she understand what you were saying to her? A. Sometimes. 10

Q. What else did you say to her then? To Mrs. Morrissey, I mean? A. I didn't have no chance to say anything else.

Q. Then you did not say anything else to her? A. No, I don't think I said anything else to her. Only I said was that any harm, Aunt Kate?

Q. What did Aunt Kate say to that? A. No, dear.

Q. She understood you? A. Apparently she did. 20

Q. Apparently she did; your conversation was intelligent with her. Now the row between you and the Flemings came after that, and you were ordered out of the house? A. No. I was ordered out when I began talking to Aunt Kate.

Q. Your Aunt Kate cried about that? A. Yes.

Q. She seemed to know what she was doing? A. Almost anyone would know that.

Q. She seemed to know what she was doing? A. I don't know. 30

Q. She cried? A. Yes.

Q. Why did she cry? A. I imagine she didn't have any power of herself; if she did, she wouldn't allow us to be put out.

Q. She cried because you were being put out? A. I suppose so; that is what we thought; that is how it looked.

Grace Kelly—Direct

Q. Do you know whether or not there was a contagious disease in the building of Mrs. Morrisey at the time you went there in April of this year? A. Mrs. Fleming said her children had measles.

10 Q. And the house was quarantined? A. She didn't say so.

Q. And wasn't that the reason you were ordered out of the house? A. She didn't say so. We knew nothing of it.

Mr. Wolfskeil: All right.

20 GRACE KELLY, produced as a witness, on behalf of the Petitioners, being duly sworn on her oath, according to law, saith:

Direct-examination by Mr. Gilson:

Q. Miss Kelly, you are the daughter of James Kelly? A. Yes, sir.

Q. And Margaret Kelly? A. Ann Kelly.

Q. What? A. Ann Kelly.

Q. Ann Kelly. Step-daughter of Margaret Kelly? A. Yes, sir.

30 Q. And you live—and you are a grand-niece of Catherine Morrisey? A. Yes, sir.

Q. Your father was—A. A nephew.

Q. What? A. A nephew to Mrs. Morrisey.

Q. And your father and his family lived at Mrs. Morrisey's house at the corner of Springfield and Chestnut Avenue, Summit, and kept house for her a number of years? A. Yes, sir.

Grace Kelly—Direct

Q. What period did that cover? A. About seven.

Q. About seven years? A. Or more.

Q. From—up to what date? A. It will be two years this December that we are away from there.

Q. That would be December, 1915? A. Yes, 10
sir.

Q. And have not seen your aunt since that time, have you? A. No, sir; since that time.

Q. Your aunt had a glass eye? A. Yes, sir.

Q. And she could not see much out of the other eye? A. She had a cataract on the other.

Q. Cataract on the other? A. Yes, sir.

Q. Did she drink quite a little? A. Well, yes, she did.

Q. Was she feeble or was she not feeble, physically? A. Well, at times she wasn't well and at other times she was. 20

Q. And she had a friend by the name of Mrs. Rooney, who lived across the street? A. Yes, sir.

Q. And she used to visit her quite often? A. Well, up to about a year back.

Q. A year before you left. A. Yes, sir.

Q. When she went over did she go over there alone or did some body accompany her? A. I 30
accompanied her across the road, so the cars, machines wouldn't hit her, and I waited for her to return.

Q. And then you would go back to your house and wait in the window watching for her to come out? A. Yes, sir. And then I would go back to my house and wait in the window watching for her to come out.

Q. And then when you saw her coming what 40

Grace Kelly—Direct

would you do? A. I went out to meet her and took her by the arm to bring her home.

Q. How was her memory during the last few months or years before you left there? A. It was poor.

10 Q. Did she remember her relatives? A. Some; and some not.

Q. What other things did she forget which impressed you with the fact that her memory was poor? A. Tell her one thing five minutes and she would forget it the next.

Q. And how long a period did that cover? A. Noticed it for more than a year back.

Q. Year from December, 1915? A. Yes, sir.

20 Q. Do you know from anything she said to you what were her feelings toward Frank J. O'Brien?

Mr. Wolfskeil: I object.

Q. Before December, 1915?

Mr. Wolfskeil: I object on the ground it is not material what her feelings towards Frank J. O'Brien were.

30 Commissioner Maxson: Doesn't it go to show what her mental condition is? You may be able to show she had no reason to have any animus against him, or rather the Petitioner might show that.

Mr. Wolfskeil: I have no objection to it going in.

Commissioner Maxson: I think anything she said during a period not too remote from this inquiry—

Mr. Wolfskeil: This is more than two years ago.

40 Mr. Gilson: We can show she has been in this condition for ten years with lucid intervals.

Grace Kelly—Direct

Mr. Wolfskeil: You won't, though. You won't try to, because the will is only nine years ago.

Commissioner Maxson: The Commission overrules the objection.

Q. What did she say to you with respect to what her feelings toward Frank O'Brien were? A. Well, at times she seemed to like him and again she didn't. 10

Q. Did anything occur in that house or in your presence by Frank J. O'Brien? A. Why, he brought Aunt Kate to put me out.

Q. With respect to your Aunt Kate signing any paper for Frank O'Brien, and then saying anything to you of what she thought of it afterwards? A. No. 20

Q. Didn't he call at your house afterwards—

Mr. Wolfskeil: I object to the leading statement you are making.

Commissioner Maxson: Do not suggest.

Mr. Gilson: Will you let me get my question in full before you object?

Q. (Question repeated by the stenographer)—For the purpose of having your aunt sign a paper, or did he not call? A. In regards to a paper? I have no recollections of it. 30

Q. Did your aunt ever say anything to you about signing a release of some debt that Frank O'Brien's mother owed her. A. Frank O'Brien's mother; yes.

Q. Did she ever say anything to you with respect to what she thought of Frank O'Brien having got her to sign that paper? A. Yes.

Q. What did she say? A. She said they were both rogues. 40

Grace Kelly—Direct

Q. Who? A. Frank O'Brien and his mother.

Q. When was that? A. She said that up to about a week before.

Q. A week before she left? A. Yes, sir.

Commissioner Maxson: When did you leave?

10 A. Why two years ago; she was taken from us by Frank O'Brien's sister, Miss Fleming.

Commissioner Maxson: We just asked the date when you left. It was over two years ago?

A. Two years this December.

Q. What were the circumstances—withdraw that. Shortly before you left was your aunt living in your house with you? A. We made our home with her.

20 Q. You made your home with her? A. Yes, sir.

Q. And when you left there was she still living in your house with you? A. No, sir.

Q. How long had she been away? A. They had her about five or six weeks.

Q. Under what circumstances did she go away from that house and go to the O'Brien house? A. She went across the road and got a check—do I have to go into details?

30 Q. Yes? A. She got a check like this evening. And she went across the road to Rooney's. She got a check about noon next day for a paper she was about to foreclose, and I told the little boy I didn't think she could accept the checks because she had the papers up in the lawyers. I went across the road to Rooney's and called her and I asked her would she accept the check, and she said "sure, if it is money." She came across
40 the road and I gave it to her, and she told me "call up Kentz, and get back the papers." I asked her

Grace Kelly—Direct

what she had done with the check she got last night and she disremembered.

Q. Didn't remember? A. No, sir; I asked her did she leave it in Rooney's and she wasn't sure; we looked all over the room and the dining room. She went across to Rooney's and was gone quite awhile and I followed. And I called up the hall and asked Mrs. Rooney was Aunt Kate there. And she said yes. I went up and asked did she see the check, and she said yes. 10

Mr. Wolfskeil: Asked who? Aunt Kate?

A. Aunt Kate, and she said that she had given it to Frank O'Brien the night before.

Q. Then you left her in Rooney's? A. No, she was coming home with me and Mrs. Fleming came out of the parlor door where she was in the house and she said "Just a minute, I want to talk to Aunt Kate. I naturally never thinking she would bring her home as she said she would, instead of returning her to my home, she took her out the backdoor in an automobile and I haven't seen her until the day she came with Frank O'Brien and McAdams and Ann Fleming and ordered me out in the presence of lawyer Walsh. 20

Q. When were those people there and ordered you out? A. I disremember. . 30

Q. How many days after Mrs. Fleming took Mrs. Morrissey away from the Rooney house? A. O'Brien was like a little dog down every night wanting us out. The only thing I can compare him to.

Q. That night did anybody call at your house and tell you you had to go out? A. O'Brien; said he would put me in the street.

Q. What? A. O'Brien said he would put me in the street. 40

Grace Kelly—Direct

Q. Said he would put you in the street? A. Yes, sir.

Q. And did anybody take possession of any room there that night in your house? A. Yes; Fleming and O'Brien and a couple of rowdies.

10 Q. This man sitting at the table? A. Yes, him.

Q. And they came in there and what did you say to them? A. Lawyer Walsh ordered them out.

Q. Lawyer Walsh represented you? A. Yes, sir.

Q. What did they say? A. Wouldn't go.

Q. Did they stay there? A. They camped all night and lawyer Walsh subpoenaed them in the morning and had them arrested.

20 Q. They camped there all night? A. Yes, sir.

Q. Did you order them out? A. What was the use of talking to anybody didn't have ears?

Q. Did you lock them in? A. I locked them in the dining room and kept the rest of the house to myself.

Q. Did anybody try to push you out of the rooms? A. McAdams. But no, that was another time.

30 Q. The next time? A. McAdams came with a kind of Italian detective from Newark with Aunt Kate and his guard and they put me out.

Q. Did anybody put hands on you? A. McAdams shoved me.

Q. Did anybody interfere? A. My brother who is in Texas.

Q. What did he do? A. He went to take my part.

Q. Did anybody take the safe away? A. Yes, sir.

Grace Kelly—Direct

Q. That was Mrs. Morrisey's safe? A. Yes, sir.

Q. Who took that? A. That was taken the day she wasn't taken; O'Brien and the Summit Express.

Q. O'Brien came back and took the safe away? A. He hired the Summit Express. 10

Q. What was the condition of this room after those people had stayed there all night? A. Cigarette butts and bread crumbs.

Q. While you lived with Mrs. Morrisey you would do some things for her in connection with her business affairs? I mean you knew generally about where she had investments or one thing or another? Do you remember about how many mortgages she had? A. I did at the time. 20

Q. Do you remember now? About, I mean? Whether there were several or just one or two? A. Quite a number; she must have had six or seven.

Q. Yes. And do you remember—I withdraw that. Strike it out.

Q. Did Mrs. Morrisey remember when she would receive interest on these mortgages? A. Sometimes; other times not.

Q. Now, from your observation, what, in your opinion, was Mrs. Morrisey's condition with respect to being capable or incapable of managing or controlling herself or her property? 30

Mr. Wolfskeil: When?

Q. Up to the time—at the time you left there? A. Sometimes she was all right and again she was not.

Q. Sometimes she was not capable? A. No.

Q. Why? A. She forgot.

Mr. Gilson: That is all. 40

Grace Kelly—Cross

CROSS-EXAMINATION by Mr. Wolfskeil:

Q. Miss Kelly, when Frank O'Brien, or rather —when the different people came there to order you out of the house Mrs. Morrissey was with them, wasn't she? A. No, only the last.

10 Q. Well, the last time when you were put out she was with them? A. Yes, sir.

Q. And she didn't object to your being put out, did she? A. Well, she didn't know. O'Brien had her by the arm.

Q. Judge McAdams was there? A. Yes, sir.

Q. And Chief Galatian, the County Detective, he was there, wasn't he? A. Yes, sir.

Q. And that is the Italian you are talking about? A. He looked like one. I thought he was.

20 Q. Chief John A. Galatian, the County Detective? A. Whatever you want to call him.

Q. Didn't you ask Mrs. Morrissey whether these people could put you out? A. Lawyer Walsh asked Mrs. Morrissey could I see her alone.

Q. And didn't Mrs. Morrissey say "Yes, I want you put out?" A. No; she said I was a disgrace to her.

30 Q. She said you were a disgrace to her? A. Yes.

Q. And after that while she was there you were put out, weren't you? A. No.

Q. You got out as a result of being told to get out there? A. Certainly.

40 Q. There was an agreement made there between you and Mrs. Morrissey and your attorney, Mr. Walsh, that if you would be permitted to stay there ten days you would go out peaceably, isn't that so? A. Mrs. Morrissey wasn't there. She was in the parlor.

Grace Kelly—Cross

Q. Mrs. Morrisey's representatives were there, weren't they? A. Yes, sir.

Q. And as a result of that agreement you stayed for about ten days and then moved out? A. Six days.

Q. You moved out yourself? A. Have it "put out." 10

Q. Beg pardon? A. Have it "put out."

Q. Who put you out? A. Mrs. Morrisey's representatives.

Q. Yes. Mrs. Morrisey was present, wasn't she? A. She was in the parlor, do you call that present?

Q. And you went out yourself six days after the time you were "put out," isn't that right? A. I suppose so. 20

Q. Mrs. Morrisey wasn't there when you went out six days after? A. No.

Q. Neither was Judge McAdams? A. No.

Q. And the County detective was not there? A. No.

Q. And nobody was there excepting you and your own people when you went out? A. Yes, sir.

Q. You went out as a result of the agreement that you would move out within ten days? A. Yes, sir. 30

Q. And wasn't your aunt present,—is it your aunt, Mrs. Morrisey; your grand-aunt; was she present at the time you made the agreement that you would move out within ten days? A. If you call another room. You are after saying she was.

Q. Was the door open between? A. I couldn't tell you. 40

Grace Kelly—Re-direct

Q. How did she come to go in the other room?

A. O'Brien took her in.

Q. Did you ask your aunt to prevent them from putting you out? A. No; sir.

10 Q. Did you appeal to her in anyway? A. No, sir.

Q. She didn't tell them to stop when they told you to get out? A. No.

Q. She heard it? A. Most likely.

Q. She just said you were a disgrace to her when you did appeal to her? A. She said don't talk to her.

Q. She said "don't talk to me. You are a disgrace to me." Isn't that so? A. (Witness nods head affirmatively).

20 Q. And that was at the same time they told you to get out? A. After that.

Q. After they told you to get out she said "Don't talk to me, you are a disgrace to me?"

A. Yes, sir.

Mr. Wolfskeil: That is all.

RE-DIRECT-EXAMINATION by Mr. Gilson:

Q. Did she say why? A. No; she wasn't let to talk to me.

30 Q. Who wouldn't let her? A. O'Brien took her by the arm in the other room.

Q. Is she a woman or not who is easily influenced by the persons with whom she happens to be?

A. Yes.

Q. Tell us why you say that. A. Because if you said anybody was nice she would side in with you. And if you talk to her and run anybody down she was with you.

40 Mr. Gilson: That is all.

Mr. Wolfskeil: That is all.

Margaret McCahill—Direct

MARGARET McCAHILL, produced as a witness, on behalf of the Petitioner, being duly sworn on her oath, according to law, saith:

Direct-examination by Mr. Gilson:

Q. You are a first niece of Mrs. Catherine Morrisey of Summit? A. Of Summit. 10

Q. How old are you? A. I am sixty-two.

Q. And you live with your husband? A. I reside with my husband.

Q. And three children at 154 East Fiftieth Street, New York City. Do you know how old Irene Kelly is?

(Question repeated by the stenographer.) A. I don't know.

Mr. Wolfskeil: This is the correct list of the ages as we understand it. 20

Q. How old is Mamie or Mary Kelly, do you know? A. I couldn't tell you anything about them.

Q. Do you know what the age of Joseph Kelly is? A. No, I don't.

Q. Well, how old is your aunt Catherine Morrisey? A. Well, I should judge her to be about eighty-seven.

Q. And you have known her how long? A. All my life. 30

Q. Did you visit Catherine Morrisey shortly after November, 1915, when she was living at the corner of Chestnut and Springfield Avenue, in Summit? A. I visited her, but I think that was 1916. November, 1916.

Q. That was last November? A. Yes.

Q. This last November? A. Yes; that will be two years this coming November. 40

Margaret McCahill—Direct

Q. That will be 1915. A. Maybe I made a mistake.

Q. Before that how often would you visit your aunt? A. I visited my aunt about twice a year; my daughter and I.

10 Q. For how many years? A. For the last four years, I guess, steady.

Q. And before that had you visited her all your life more or less? A. Yes; now and then.

Q. Did you ever stay all night? No. Only once. When I took my children when they were small. I stayed all night with her.

Q. This time you visited her shortly after November, 1915, with whom was she living? Who was keeping house for her? A. The Flemings.

20 Q. Had they been keeping house long for her do you know? A. That was in November; they were only shortly after going in with her.

Q. Grace Kelly and her mother had kept house—A. For nine years before that, or ten years I believe.

Q. Did you notice anything about your aunt with respect to her memory in 1915? A. She didn't know me. She couldn't bring her memory to know me or understand what I was saying.

30 Q. Had you noticed that her memory was poor before that time? A. Yes. It was failing.

Q. How long? A. Well, from the first time I went there almost with my children.

Q. Gradually? A. Gradually coming; I could see it.

Q. And in November, 1915, it was very bad? A. Very bad, I hadn't any chance to talk to her.

40 Q. Why? A. Because Mrs. Fleming would pull her out of the room. Carried her right out of

Margaret McCahill—Direct

the room. I couldn't talk to my aunt. I went there on a friendly visit to talk to her but I could not talk to her. She took and carried her out of the room.

Q. Did you go to the room where she was carried to say good-bye to her? A. No. She wouldn't let me. 10

Q. Who would not let you? A. Fleming. Mrs. Fleming.

Q. Shortly after that did you visit her again? A. I did, in the spring.

Q. But before that? A. Before that—

Q. Just a week or two after November did you go back again? A. I went shortly after.

Q. Could you talk with your aunt that time? A. No. She didn't know me at all. Her memory was gone. 20

Q. Did Mrs. Fleming say anything to you? A. No, she didn't say anything to me. But she cast up things about my father, long ago, and I don't remember just now what it was.

Q. Could you talk very well with your aunt? A. I couldn't talk very well with my aunt. She couldn't understand what I said. I said "What is the trouble," and she said her eyes; she was blind in one eye and she couldn't see out of the other. I asked her why she didn't have it treated. 30

Q. Did you try to talk with your aunt alone out of the presence of Mrs. Fleming? A. Oh, I couldn't get a chance.

Q. Did you try to? A. I couldn't get a chance; she never left the room. She watched me as if I was going to take her with me.

Q. The following spring did you call there again? A. I did. 40

Margaret McCahill—Direct

Q. That was the spring of 1916. Could you talk with your aunt that time? A. She didn't know me. I had great trouble for her to know me. When I entered the room I said I was Manie Kelly from New York, and she said she didn't know me. But, she said, She would go home with me. She repeated it twice. I said, "Well, Aunt Kate, I will take you some day." But when Mrs. Fleming heard that she took her out of the room again from me and I couldn't talk to her again any more.

10 Q. How did she take her? A. She took her by the shoulder, and my aunt she didn't say anything; she is like a child. She has no memory. I couldn't bring us to her memory.

20 Q. Now later in June, did you try to call on or see your aunt? A. I did in June.

Q. What result? A. Well, about the same.

Q. Did you see her? A. I did see her.

Q. What was her memory at that time? A. It wasn't any better. It was even worse.

Q. Then again in June, later on, did you try to see her again? A. I did, sir.

30 Q. With what result? A. She wasn't any better; I couldn't make her understand anything I said; her memory was completely gone.

Q. Did you have any—receive any letter from her attorney? A. Yes.

Q. Or try to see her after that? A. I received a letter from lawyer McAdams.

Q. I mean did you try to see Mrs. Morrissey after that last time you told us of? A. No, what was the use?

Q. Why not? A. I couldn't go. She wouldn't let me in.

Margaret McCahill—Direct

Q. How do you know? A. Once was enough to be insulted.

Q. Once was enough to be insulted? A. She carried her away from me; she wouldn't let me see her.

Q. Who wouldn't let you see her? A. Mrs. Fleming. 10

Q. Did anybody ever tell you you could not see your aunt again without making a business appointment? A. I had a letter from attorney saying I couldn't go to see her. If I had any business to transact he would have to be with me.

Q. That was a letter from Mr. McAdams? A. That was a letter from Mr. McAdams.

Q. And was that in reply to a letter which you had sent to your aunt? A. Yes. 20

Q. And was that a registered letter, or not? A. I didn't hear that.

(Question repeated by the stenographer).

A. I sent a registered letter but the card came back.

Q. You have got the card back from the registered letter? A. I got the card, but I don't know what to say about that writing on it whether she done it or not. I can't say, whether she signed it or not. I don't see how a woman who had no eyesight could sign it or see it. 30

Q. From your observations, what is your opinion with respect to Mrs. Morrisey's capacity for governing and managing herself and her property?

Mr. Wolfskeil: I object—

A. I think she is not capable and any way—

Mr. Wolfskeil: —On the ground the witness—

Margaret McCahill—Direct

A. —(continuing) she is influenced by others.

10 Mr. Wolfskeil: I object on the ground that the witness is not capable of answering the question intelligently because she has not shown she has had any discussion with her, with reference to her business affairs or her property. She simply made the general statement she observed herself and her memory.

Commissioner Maxson: I overrule the objection. As I said before, isn't it for the Jury to say, Mr. Wolfskeil, having listened to the testimony, what their opportunities for observation have been; and then determine what the value of their conclusion is?

20 Mr. Wolfskeil: I agree with you thoroughly, Mr. Maxson, but I wanted to get an objection on the record because it seems to me the testimony was improper.

Q. I show you a registry receipt and ask you if that is the one you have just referred to in your testimony? A. Well, I haven't got my glasses and I can't see.

Q. Where are your glasses? A. I didn't bring them; I didn't think I wanted them.

30 Q. Can't you see your name up there? A. Oh, yes.

Q. Is that the card you just got back from the letter you sent? A. It looks like it Mr. Gilson.

Q. Is this the letter you have just referred to from Mr. McAdams in reply to this letter? A. Can't you see this letter? Can't you see it is on his stationery and signed?

40 Mr. Gilson: I offer in evidence this receipt which Mrs. McCahill has identified

Margaret McCahill—Direct

as the receipt for her letter, and I also offer in evidence this letter from Mr. McAdams.

A. Will you let me see that card now, Mr. Gilson?

Mr. Gilson: There isn't any question about it. 10

Mr. Wolfskeil: Oh, yes; there is a very decided question about it. What does she know about it?

A. I can see it; but this does not look like it. That is too plain.

Q. I am not asking you if this is Mrs. Morrissey's signature; I am asking you if that is the card you got back from the letter you registered?

A. It doesn't look like it. I wouldn't say. 20

Q. You got a card? A. Yes, sir.

Q. Same color? A. Yes, sir.

Q. Same name? A. Yes, sir.

Q. And it was addressed to you? A. Yes, sir.

Q. And this is it? A. That must be it.

Q. It came through the mail; and about when was it? A. Shortly.

Mr. Wolfskeil: If you want the letter itself produced, it is the best evidence, why don't you tell us so? I will produce the letter. 30

Mr. Gilson: I offer in evidence a letter from the witness, Mrs. McCahill, to Mrs. Morrissey, dated June eighteenth, 1917, which was registered and also the registry receipt, for that letter.

Letter entered in evidence and marked Exhibit P-5.

Registry receipt for the same entered in evidence and marked Exhibit P-6. 40

Margaret McCahill—Cross

Mr. Gilson: And the reply to that letter from Mr. McAdams.

Mr. Wolfskeil: No objection to all of them going in together.

10 Letter from Mr. McAdams entered in evidence and marked Exhibit P-7.

Mr. Gilson reads Exhibits P-5, P-6, and P-7 to the Jury.

A. That is correct.

Q. Now did you communicate with Mrs. Morrissey or with Mr. McAdams about any business you wanted to see her about? A. No; I didn't know the gentleman.

Q. You never tried to communicate with your aunt after that? A. Never; never.

20 Q. What in your opinion is Mrs. Morrissey's condition—mental condition with respect to the governing and managing of herself and her property? A. She cannot see and she has no memory; her memory is completely gone.

Q. And how long has that condition lasted; memory gone? A. About four years ago I noticed it. You mean the last time?

Q. No, I mean altogether? A. About four years.

Mr. Gilson: Cross-examine.

30

CROSS-EXAMINATION by Mr. Wolfskeil:

Q. When did you write her this letter, Mrs. McCahill, on the date that is on it? June eighteenth, 1917? A. That is it. I guess it is on it. I wrote it.

40 Q. At the time when you wrote it you didn't have any question as to your aunt being able to understand the letter, did you? A. I know it would be read to her and she would understand it maybe.

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Q. You knew if it was read to her she would understand it? A. She might.

Q. You thought she would? A. She might.

Q. Did you think she would understand it? A. (Witness nods head negatively).

Q. When you wrote the letter? A. What say? 10

Q. Did you think Mrs. Morrissey would understand the letter you were writing to her? A. I didn't think for a minute she would ever get it.

Q. Answer the question. Did you think Mrs. Morrissey would understand the letter you were writing to her in June, 1917? A. I didn't think she would understand it.

Q. What did you write it for? A. Just to try her. See if I would get an answer.

Q. Then you had a doubt as to whether she would be able to understand it or not? A. From the way I seen her and the way she acted to me I didn't think she would understand it. 20

Q. And yet you wrote it. And wrote it as a test to see whether she would understand it or not? A. Yes. We all have to be tested.

Q. Didn't you write because your lawyer told you to write it? A. My lawyer told me nothing.

Q. Weren't you under the advice of Mr. Gilson at the time you wrote it? A. I done it myself without any advice from Mr. Gilson. 30

Q. Wasn't Mr. Gilson acting as your attorney before June eighteenth, 1917? A. In June do you want to know?

Q. Before June eighteenth, 1917? A. I don't think so; I don't know.

Q. Hadn't you consulted Mr. Gilson about your family troubles and the Morrissey affairs before you wrote this letter? A. Now, wait until I see. Oh, no; oh, no, I don't think so. 40

Margaret McCahill—Cross

Q. Didn't you see Mr. Gilson about June sixth, 1917, and didn't Mr. Gilson write a letter to the Flemings at your request on June sixth, 1917? A. Yes, he did.

10 Q. Then you had seen Mr. Gilson before June eighteenth, 1917? A. Yes; I might have; I might have.

Q. Your attorney produced a letter that you received from Judge McAdams, which was written to you on June twenty-third 1917; did you receive another letter from Judge McAdams after that one? A. Wait until I see. I just can't remember.

Q. Under date of June twenty-sixth, Mr. Gilson?

Mr. Gilson: Yes; do you want that?

20 Mr. Wolfskeil: I think it ought to be produced along with the others.

Mr. Gilson: Offered it in evidence.

Letter entered in evidence and marked Exhibit P-8.

Q. You received that letter from Judge McAdams, Mr. Gilson has just handed me? A. Yes.

30 Q. And you read it? "Since writing you a few days ago I called to see Mrs. Morrissey in reference to the action of your attorney, Mr. Gilson, in instituting an inquiry among the people of Summit reflecting on the mental condition of Mrs. Morrissey. These matters have been brought to her attention and have caused her considerable annoyance; and she has instructed me to notify you that under the circumstances, she does not desire to have anything further to do with either
40 you or your attorney, and will positively refuse to make any appointment with you or to see you

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if you call. Furthermore if these inquiries on your behalf or your attorney's behalf continue I am instructed to take whatever steps may be necessary to protect her from further annoyance by you or him." You read that? A. Yes, sir; read it.

10

Q. And you turned the letter over to Mr. Gilson? A. I don't know what I done with it.

Q. He just handed it to me so you must have given it to him. And you haven't done anything further to see Mrs. Morrissey after that? A. No.

Q. Are you mentioned in that will as a beneficiary? A. No.

Q. Are you mentioned in that will Mrs. Kelly spoke about, made nine years ago? A. Nine 20 years ago they were made.

Q. You are not? A. I had nothing to do with wills, I couldn't tell you. What I don't know I can't say.

(Answer repeated by the stenographer.)

Q. Have you reason to believe you are in it?

(Question repeated by the stenographer).

A. What is it?

Q. Have you reason to believe you are men- 30 tioned in the will as a beneficiary? A. I don't know; I don't know anything about it. I could not say.

Q. Do you think you are? A. No; I couldn't say. I have never let that run in my mind whether I was mentioned in the will or not. She wasn't so flush as to be making wills.

(Answer repeated by stenographer.)

Q. Your reason for believing that Mrs. Mor- 40

Dr. Britton D. Evans—Direct

risey was not able to attend to her own affairs was because she had poor eyesight and failing memory? A. What say?

Q. Your reason for believing that Mrs Morrisey was not able to attend to her own affairs was because she had poor eyesight and failing memory? A. Yes, sir.

Q. Your own memory is none too good, is it? A. Is is all right, but it is the hearing.

Q. Your hearing is not very good, is it? A. No.

Q. Your eyesight does not seem to be very good, Mrs. McCahill? A. It is all right when I take the glasses same as anybody else.

Q. You don't remember some of these things that have been asked? A. Yes, I remember; I told that and nothing else. That is what I took my oath, to tell the truth.

Mr. Wolfskeil: That is all.

Adjourned until 2 p. m. this afternoon.

Afternoon session, 2 p. m.

30

DR. BRITTON D. EVANS, produced as a witness, on behalf of the Petitioners, being duly sworn on his oath, according to law, saith:

Direct-examination by Mr. Gilson:

Q. Doctor Evans, you are a practicing physician and surgeon in this state? A. I am.

Q. And when and where were you graduated?

A. Graduated from the College of Physicians and Surgeons, Baltimore, 1885.

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Dr. Britton D. Evans—Direct

Mr. Wolfskeil: We will admit the Doctor's qualifications.

Commissioner Maxson: It is not necessary to qualify Dr. Evans as an expert.

Mr. Wolfskeil: We will admit his qualifications.

10

Mr. Gilson: I would like to qualify him.

Commissioner Maxson: If counsel has admitted that he is qualified to testify as an alienist?

Mr. Gilson: Yes, but the jury does not know about that. I would like to get that on the record for the purpose of the jury.

Q. You are medical director of the New Jersey State Medical Hospital? A. I am.

A. And that is an hospital for insane people? 20
A. Chiefly.

Q. Chiefly. A. Almost exclusively I might say.

Q. And there are a great many patients in that hospital? A. Over twenty-seven hundred.

Q. And how long have you been connected with that hospital? A. More than twenty-five years as Medical Director.

Q. Do you know Catherine Morrisey of Summit? A. I do.

Q. Did you examine her on August twentieth, 1917? A. I did. 30

Q. Examined her at her home in Summit?
A. I suppose it was her home. Corner of Chestnut Street and Springfield Avenue; Chestnut and Springfield Avenues, I believe.

Q. And who were present at that time? A. Mr. Fleming and his wife.

Q. Now will you just tell the Court and jury what kind of an examination you made of Mrs.

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Dr. Britton D. Evans—Direct

Morrisey at that time and what your opinion is with respect to her mental conditions? A. I proceeded to examine Mrs. Morrisey by observing her manner of conduct and her ability to answer questions and to respond to inquiries as to herself and her family and her affairs. I
10 found her to be a very elderly woman; a woman very much advanced in age. To judge from her general appearance, eighty years of age or more. And she was sitting in a large chair on the first floor of the building and was apparently alert, somewhat agitated. I assumed that her agitation was like that of most people who were confronted with a stranger. I asked her her age and she hesitated and turned to Mr. Fleming
20 as if for some assistance. At first she said she didn't know but guessed she was about forty, but Mr. Fleming said to her "Now, Aunt Kate, you must think that over. You know that is not your correct age." And between the two it was elicited or she said she was about eighty-five. I asked her as to whether she was married and she said yes. I asked her when she was married and she could not recall the time of her marriage. I asked her as to the date of
30 her birth, and she could not tell me the date of her birth. I asked her as to the name of her husband and she said "Kelly." I asked her his first name and it took her considerable length of time to remember his first name, and with some assistance. I think Mr. Kelly mentioned the first syllable.

Q. Mr. Fleming? A. Mr. Fleming mentioned the first syllable, and she then said Fergus
40 Kelly.

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Q. Fargus Kelly? A. F-a-r-g-u-s is the way I presume it is spelled. I asked her about if she had any children, and she said yes, two. I asked her if they were living or dead and she said dead. And I then asked her their names and she hesitated very much on the matter of their names but with some little assistance from— I didn't know their names and of course could not assist her in recalling their names—with some assistance from Mr. Fleming she finally got the names, I suppose, correct. I didn't know them and consequently I am not in a position and was not in a position to verify them. But Mr. Fleming said the final names she gave were correct. I asked their ages. 10

Q. What were the names she said? A. She didn't give the names, and I have a note somewhere here as to what she said were the names. In fact, I don't recall myself exactly what she said because of her having to be assisted in their names I didn't make note of it. I asked the ages at which they died and she was unable to give the ages except with assistance, and called for assistance. I asked her what was the extent of her property and she said, after studying sometime, two lots and I have four—five houses. And I asked her where they were located and she told me right around us, and this house she was in was part of it, I said "Who collects your rents?" And she said, "They paid them all right." I said "When do your rents become due?" And she said "Well, the papers are about here or somewhere. Get the papers, James." She called Mr. Fleming James, I think. "I want him to get the papers, they 20 30 40

Dr. Britton D. Evans—Direct

show everything," she says. And I said it was unnecessary to get the papers. I afterward asked her about if the rents came due at the same time, and she again wanted to refer to the papers, but I think Mr. Fleming said "Aunt
 10 Kate you know about that." And she said "Yes." "You are always asking when the rents are due, if they will come in, and what has been done about them." I asked her—I am embodying both examinations in summing this matter up to get this matter in concrete or tangible form.

Q. Your second examination was on August 28th, 1917? A. On August 28th. And she was in the same room and occupied, I think, the same chair. Her general physical condition seemed fairly good for a woman of
 20 her age, and she was ready to answer questions as best she could, but she hesitated when I asked her the questions and was incapable of answering them as a rule, practically all of them, until she was assisted, except such questions, as "How do you feel today?" and she would answer that "I feel quite well." I had learned from some source that she knew Martin Van Beuren, in fact had been in some capacity associated with
 30 his family, and I asked her if she knew him and she said "Oh, indeed I do." I said "Did you ever live with him or in his family," she said she had. I said "Where did he live?" And that she could not recall except by assistance. Mr. Fleming told her "Now, Aunt Kate, you know. Why don't you tell the doctor?" And he gave her the first syllable and she then told me that he lived at a place known as Kinderhook. The examination seemed to rather tire
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Dr. Britton D. Evans—Direct

her, but I on this occasion asked her about her husband, mentioned his name, and the name "Kelly" came up, and after that she said, "Oh, the Kellys; I put them out; they didn't treat me fairly." I think she said didn't treat her fair and took her money from her. 10

Q. Were both of the Flemings present at both of your examinations? A. Yes; she seemed to be getting nervous. Not very nervous, but I thought the examination was tiring her and her mental condition was so clear to me that I thought it was unnecessary to prolong the examination.

Q. Now when you say that her mental condition was so clear to you do you mean that you had formed your opinion? A. That it was clear 20 to me as to her mental condition.

Q. What was your conclusion with respect to her mental condition? A. That she was suffering from a serious impairment of memory and consequent impairment of reasoning power, and that she was suffering from what is commonly known as "senile dementia."

Q. That is what a layman would call a breakdown of the mental faculties? A. As a result of old age. I may say, I elicited no insane delusions. If she had insane delusions I didn't observe any. She had a misconception of facts because of a lack of memory of facts. Her failure to present the situation seemed not because of a diseased condition which creates false ideas, false insane ideas, but that her mind or mental condition or mental integrity had been involved by the diseased process such as come along in numerous cases in very advanced age in people around eighty or sometimes younger; and some- 30 40

Dr. Britton D. Evans—Direct

times not until when they are ninety or one hundred.

Q. Would you say that she was of sound or unsound mind? A. At the time I saw her on my visits, my examinations, she was of what I would say of unsound mind.

10 Q. What is your opinion with respect to her capacity to govern herself and her property? A. I am of the opinion at the times I saw her that she would not—didn't have sufficient soundness of mind, mental grasp, to look after herself or her property.

Q. Is that a condition which would be likely to be lucid at intervals or not? A. I have seen cases of persons suffering from senile dementia who had intervals which seemed to me quite clear, and where they comprehended temporarily their environment, and understood the propositions—general propositions, simply propositions very well, but as a rule senile dementia when fully, developed has few, if any lucid intervals.

20 Q. Is she likely to improve or not? A. In my opinion she will not improve mentally.

Q. Will she get worse, in your opinion, gradually? A. I think it will be a gradual progressive deterioration or breaking down further in the loss of memory. I have said in my general statement that she was what we call disorientated as to time; she was not as to place. That is, she was not able to tell the day of the week, or the time of day like you would expect a sane person to do so. She knew that she was at her home and that she was with Mr. and Mrs. Fleming and exhibited affectionate consideration

30 40 for them.

Dr. Britton D. Evans—Direct

Q. Now on August twentieth, the first time you visited her what was her physical condition?

A. Her physical condition, it was warmer; the whether was warmer and her physical condition did not seem to be as strong as it did on the twenty-eighth.

Q. Did you notice anything abnormal about her eyes? A. Yes. I noticed that one eye was artificial or glass, and that when she turned one way and the other that the eye didn't move and that the musculation, or the influence of the muscles like in a normal eye was not exhibited; in fact the matter came up and I saw it at once, but it was generally admitted, and I think I mentioned to her something about her sight. I asked her about reading and she said she could not see to read. The other eye had been operated on, I learned, and it had every evidence of having been, because she had a very powerful glass on it which magnified the pupil and made it quite clear that it was far from the normal eye, and she said she could not read on account of her eyes.

Q. She said she could not read even with that powerful glass? A. She said she could not.

Q. Do you know whether there was any trouble with her hearing? A. I didn't test her hearing. She seemed to hear what I said to her. I stood close to her and I think probably I spoke very clear and distinctly as I usually do to elderly people. And the fact she might have had some impairment of hearing and it might not have been disclosed and the fact that a person might have been totally deaf with a perfectly clear patient, made it unessential to test her as to

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Dr. Britton D. Evans—Cross

her hearing. If her symptoms or general conditions as I tested her had been such as to make the case obscure or throw any doubts in my mind about her case I would have gone into the little technical examinations of reflexes, and the
 10 ear and eye and co-ordination of the muscles and all those things, but it seemed unnecessary and almost cruel to subject her to any such examination as that.

Q. Well, now, would a woman in that condition be easily influenced or not by the people who surrounded her? A. In her present condition I would say she would be readily influenced by those about her and kind to her. And in fact most old people would be, but a
 20 person in her condition would be. Not always so, though; I have seen persons suffering from the same order of disease who were extremely stubborn, and not tractable in any sense, even to their relatives and others, and tractable and manageable by strangers. There is no fixed rules on that line.

Q. But those are exceptional cases, aren't they? Ordinarily they are easily influenced? A. Senile dements are easily influenced, especially
 30 when they have delusions, they are especially easily influenced, because if they have delusions of a special trend, say, for, instance, that certain people were of great importance to them, and they of importance to them, or they were superior beings, why then she would be especially under their influence. Senile dements who conceive the idea of marrying, which is not uncommon, very old women want to marry some boy, or will want to marry a boy; very old men will become in-
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Dr. Britton D. Evans—Cross

fatuated with and want to marry some young girl, as is well known and not necessary for me to state, because you see accounts of that sort of alliances or attempted alliances spoken of every day in the current press.

Q. Do you know, or did Mrs. Morrisey act as if her statement with respect to the Kellys was a delusion or not? A. I had no way of proving that, whether it was a delusion or not. I could have only verified that by asking somebody else. She said they hadn't treated her right. That they had taken means or taken her money away from her. In fact she became somewhat excited and agitated when that subject came up. And said that they took money from beneath her pillow and that she had put them out; something to that effect. I asked her where they were. At first she said somewhere in Summit, and later on she said she thought they were in Irvington.

Q. Did she mention their first names? Or just the "Kellys?" A. She didn't mention the first names according to my best recollection.

Mr. Gilson: Cross-examine.

CROSS-EXAMINATION by Mr. Wolfskeil:

Mr. Wolfskeil: We have no questions to ask Dr. Evans.

Mr. Gilson: They do not care to cross-examine you.

Mr. Wolfskeil: That was not necessary at all.

Commissioner Maxson: Has any of you gentlemen on the jury any questions to ask Dr. Evans?

Mary Ann Kelley—Direct

Juror No. 5: Q: Do you think she was in the habit of drinking intoxicants? A. I have nothing on which to predicate that fact as to—nothing from her conduct nor from what she told me personally.

10 By Mr. Gilson: Q. Would that aggravate her condition or relieve it or what? A. It would be—there is a certain personal equation enters into persons drinking alcohol. Some people it seems to brace up if given in moderation; certainly aggravates if given to excess in any case of senile dementia.

20 Q. Did you take into consideration the fact that there was insanity in her family at all, or didn't you know that? A. I didn't take that into effect, because if there had been and she had shown a perfectly clear mind it would not have affected my opinion; if there had not been and she had shown a very much deranged mind it would not have affected my opinion. I went upon the proposition that I was there to find her mental condition as it was presented to me at those examinations. She showed no evidence of any drink nor was there any smell of liquor upon her that came to me, to my notice. I am not in a position to say that she hadn't a dram or had one,
30 but I did not discover it.

Mr. Wolfskeil: No questions.

MARY ANN KELLY, re-called:

Direct-examination by Mr. Gilson:

40 Mr. Gilson: I renew my question having

Mary Ann Kelley—Direct

proved that Catherine Morrissey is not in a state of sound mind and that she is surrounded by Frank O'Brien, and the Flemings. I renew my questions that was ruled out before on the ground that I hadn't proved unsound mind. The question is: 10

Q. When you came down in answer to that telegram from Mrs. O'Brien and from Frank O'Brien to his house, what did he say to you with respect to the mental condition of Mrs. Morrissey?

Mr. Wolfskeil: I object. The proof is she was not of sound mind on August 20th and August 28th. There is not one scintilla of proof that she was not of just as sound mind as Mr. Gilson or your Honor or myself on the date this lady saw her. Therefore I object. 20

Mr. Gilson: There is evidence and very strong evidence by other witnesses on the stand covering a period of long before 1915, up to the spring—of lay witnesses up to the spring of 1915.

Commissioner Maxson: The Commission votes to overrule the admission; and sustain the objection. 30

Q. Did Frank J. O'Brien tell you at that time or ask you at that time to help to put Grace Kelly and her family out of the house? A. Yes, he did.

Mr. Wolfskeil: I object.

Q. Do not answer when there is an objection.

Mr. Wolfskeil: On the ground it is not material. The question as to this wo- 40

Mary Ann Kelley—Direct

man's present soundness or unsoundness of mind is not denied. What this somebody told this lady is not material. I understand the Commission sustains my objection.

10

Mr. Gilson: Yes, sir; it is on a different theory. That is on a theory that Mrs. Morrisey was not acting for herself as intimated on cross-examination by questions of counsel; that she was directed by Frank J. O'Brien. Now I purpose showing that Frank J. O'Brien was the one that directed the ejecting them out of that house. I want to show that Frank J. O'Brien was the one who threw the Kelly branch of the family out of the house.

20

Commissioner Maxson: Of course, we are going to rule, after the discussion with my colleagues, that any statements made by Frank O'Brien or any other of that family in the presence of Catherine Morrisey personally, whose mental condition is being inquired into, is admissible; provided she was present and heard the statements. But we are going to sustain the objection with regard to any testimony of anything that was said when she was not present and not in her hearing.

30

Q. Was Mrs. Morrisey present on any of these occasions when Frank J. O'Brien talked to you?

A. No, she wasn't.

Q. When you had this bank book for three or four hours, as you testified this morning, did you notice what the bank balance—or do you know what the bank balance was? A. Well, I asked

40

Mary Ann Kelley—Direct

Grace O'Brien that morning to let me see the bank books and also the mortgage. She was very slow about that. And I asked her the third time before she gave them to me. And she took them down and said I cannot go through these; I said give them to me.

10

Mr. Wolfskeil: I object.

Q. Just what you found on those bank books or conversations with Catherine Morrissey. What was the bank balance at that time when you had the bank books for three or four hours? A. \$3100.00 on the Morrissey Bank Book, and between seven hundred and eight hundred on the First National Bank of Summit. I don't just know the figures.

Mr. Wolfskeil: Now, Mr. Gilson, your bank statements show all that without wasting all this time with this witness.

20

Q. Do you know what the mortgages were at that time? A. I did just then and I took them down.

Q. You can't tell us now? A. I remember some of them.

Q. Well, the amount, do you know generally the total amount of the mortgages at that time?

A. Oh, it was seventeen or eighteen thousand dollars, I think.

30

Q. Seventeen or eighteen thousand dollars?

A. I think so. I won't be too sure of that.

Mr. Gilson: Cross-examine.

Mr. Wolfskeil: No questions.

Mr. Gilson: That is all.

40

Thomas F. Kelley—Direct

THOMAS F. KELLY, produced as a witness, on behalf of the Petitioners, being duly sworn on his oath, according to law, saith:

Direct-examination by Mr. Gilson:

10 Q. You live with your sister, Mary Ann Kelly, in Carbondale, Pennsylvania? A. Yes, sir.

Q. And you are first nephew to Catherine Morrisey of Summit? A. Yes, sir.

Q. Did you visit your aunt in Summit very often? A. Once a year.

Q. Once a year for how many years? A. For the last twelve years.

Q. When was the last time you visited her?

A. The seventh—sixth or seventh of last September; a year ago this month, 1916.

20 Q. 1916? A. Yes, sir.

Q. What was the condition of her memory at that time? A. Well, I went up there and I found her sitting in the orchard, along with Mrs. Fleming and I approached her and stretched my hand out and she didn't happen—whether her attention was drawn somewhere else or not she didn't recognize me. I said "Aunt, don't you know me?" She said "No. Who are you?" I said "I am Tom Kelly from Carbondale." Then she spoke to me, and I stood there; that was all she said for awhile. I wasn't asked to sit down. I said to Mrs. Fleming "Do you know who I am?" She said, "Yes, you are Tom Kelly." There was a bench just above my hand and I sat on it and there was no more remarks made.

30 Q. How long were you there altogether? A. 40 Twenty minutes.

Thomas F. Kelly—Cross

Q. Did your aunt recognize you after you told her who you were? A. Well, she did and she didn't. She couldn't remember me.

Q. Before that did she remember you, the visit before that? A. Well, I didn't ask her at that time.

Mr. Gilson: Cross-examine.

10

CROSS-EXAMINATION by Mr. Wolfskeil:

Q. When was this, Mr. Kelly? A. Sixth or seventh of September, 1916.

Q. Sixth or seventh of September, 1916? A. Sixteen; yes, sir.

Q. When was the time you were there before that? A. On the fourth of August, 1915.

Q. She knew you then, all right? A. Well, she did and she didn't. 20

Q. In 1915? A. In 1915 she was very delirious.

Q. How long were you there that time? A. I spent the night.

Q. You spent the night? A. Yes, sir.

Q. Have any talk with her? A. Well, I did; yes.

Q. Talk with her about her affairs? A. No, sir.

Q. About the relatives? A. My own relatives on my father's side, I did. 30

Q. She didn't remember them? A. She didn't remember my father.

Q. She didn't remember your father; she remembered the others you talked about? A. She remembered my sister who got down off the stand and she didn't remember us.

Q. She did and she didn't? A. She did and she didn't; she couldn't place us. 40

Thomas F. Kelly—Cross

Q. You didn't see her between August fourth, 1915 and September sixth, 1916? A. I have not.

Q. And on September sixth, 1916 you only saw her for twenty minutes? A. Twenty minutes. I got a cool reception, that is the reason I shut it out.

10 Q. When did you see her before August fourth, 1915? A. That was seventeenth or eighteenth of August, 1914.

Q. August seventeenth or eighteenth, 1914. How do you remember these dates so accurately; did you mark them down? A. I take my vacation from the first of August to September.

Q. And you remember it by the fact you took your vacations? A. I visited her on my vacations.

20 Q. And once a year you visited her? A. Once a year practically is what I called on her.

Q. You only stayed a few minutes most times? A. That was the shortest one.

Q. Last one? A. The last one.

Q. You haven't seen her since then? A. No.

Q. When you went in on September fifteenth, what did you say or do? A. I says "How do you do, Aunt Kate."

30 Q. What did she say? A. She didn't say nothing.

Q. Well, what next? A. Until I made myself known and she stretched her hand.

Q. After you told her who you were did she know who you were? A. She did.

Q. And she stretched out her hand? A. Yes, sir.

Q. What happened then? A. I stood there and I said to Mrs. Fleming and she said yes.

Michael J. Kelly—Direct

Q. What happened between you and Mrs. Morrissey? A. Nothing else.

Q. And you didn't say anything to her? A. Not when I was leaving; I got too cold a reception.

Q. It was because you had a cold reception from the Flemings you didn't say anything more to Mrs. Morrissey? A. Yes, sir. 10

Q. But she knew you and you sat down for twenty minutes? A. I sat down for twenty minutes.

Mr. Wolfskeil: That is all.

RE-DIRECT-EXAMINATION by Mr. Gilson:

Q. How old are you? A. Sixty-one years of age. 20

MICHAEL J. KELLY, produced as a witness, on behalf of the Petitioners, being duly sworn on his oath, according to law, saith:

Direct-examination by Mr. Gilson:

Q. You are a brother to Mary Ann Kelly? A. Yes, sir. 30

Q. And you live in Carbondale, Pennsylvania? A. And I live in Carbondale, Pennsylvania.

Q. How old are you, Mr. Kelly? A. Fifty-seven years.

Q. You are a nephew to Catherine Morrissey of Summit? A. Yes, sir.

Q. Have you visited her? A. Yes, sir.

Q. For how many years? A. The last twelve years. 40

Michael J. Kelly—Direct

Q. And about how often? A. Well, I visited her every year about, until the last two years, since 1915.

Q. You haven't visited her since 1915? A. No use.

10 Q. Why? A. Well, with the rest put out.

Q. And the last time you called on your aunt, where was she? A. The last time?

Q. Yes? A. She was in Grace O'Brien's.

Q. And that was the time when you came down and your sister came down? A. That is the time we got a telegram to come.

Q. And did you see your aunt at that time? A. Yes, sir.

Q. What was her condition? A. Well—

20 Q. Did she know you? A. I have so many objections talk—can I start when I arrived?

Q. No, you better just answer the questions. Did she know you? A. No, sir.

Q. She didn't? A. No, sir.

Q. Do you know why she didn't? A. No, I don't think the woman could really see and she hadn't brains enough to know who I really was.

Q. What made you think she didn't have memory enough? Did you talk to her? A. Why certainly.

30 Q. What did you say to her? A. I said "Hello, Aunt."

Q. What did she say? A. She looked at me and said "Oh!" She rubbed her face and she said "Who are you?" I said "I am your nephew, Aunt. I am your brother's child, Pat Kelly's"

Q. She didn't know you? A. She didn't know me. She didn't know her brother.

40 Q. What did you say to her then? A. I didn't say no more that evening.

Michael J. Kelly—Direct

Q. What did you say the next time you talked to her? A. I went to bed and in the morning—I was tired—in the morning I came down and my aunt was sitting in the room about the same place she was before. I asked aunt how she was, and she said she felt kind of well. I said, “Aunt, this is your nephew, Mike Kelly. Do you know me?” And she was silent for a long time and she said “I don’t know you.” I said “It is your brother’s child, Pat Kelly’s.” and I said “You know your brother, Pat Kelly?” And she sighed for a long time again and she said “I don’t know.”

Q. Did you have any other talk with her after that? A. I talked with her there. These questions I asked her about she asked me a couple of questions herself; Aunt did. Aunt asked me, she said, “where am I?” I told her she was in Grace O’Brien’s house. She was silent for awhile and she said “Who is them two women there.” There is folding doors between. I said “That is my sister, Mary Kelly, and Grace O’Brien.” She says to me, she says, “How far am I away from my home?” I told her as near as I could four or five or six blocks. She asked me who lived in her home. I told her my brother’s children who had lived with her for seven or more years; I don’t know exactly how many. She paused for awhile, and she said “Take me home.” I said “I can’t do it; Grace O’Brien won’t leave me.”

Q. Is that all that you said to her? A. That is all I said to her or she said to me.

Q. And then did you go home shortly after that? A. I left in about a half an hour after. I won’t say how long, only a short time after.

Michael J. Kelly—Cross

10 Q. What in your opinion was your aunt's condition so far as her mental capacity is concerned with respect to managing and governing herself and her property at that time? A. Oh, she couldn't govern nothing. She could not even govern herself, because if she could govern herself she wouldn't be in the O'Briens' possession because she wouldn't allow me ten years ago or eight years ago to drive by the house in even a rig.

Q. O'Briens' property? A. She had such a hatred for them. She wouldn't let me go by the O'Briens' property.

20 Q. Frank O'Brien is a grand-nephew of Catherine Morrissey, and Mrs. Fleming is a grand niece, that is it, isn't it? Did Mrs. Morrissey tell you at that time anything about putting the other Kelly family out of the house? A. Mrs. Morrissey?

Q. Mrs. Morrissey. Did she say anything to you about putting the Grace Kelly family out? A. No. Mrs. Grace O'Brien did. Wanted me to put her out. I heard—

Mr. Wolfskeil: I object.

Mr. Gilson: Cross-examine.

30 CROSS-EXAMINATION by Mr. Wolfskeil:

Q. You were very willing to tell it, even if I did object, to let the jury hear it. A. There is sometimes I sat down there and I didn't hear what you said up here.

Q. Don't you hear what I am saying now? A. Yes, now.

40 Q. It might be evidence of senile dementia? When was the last time you were at Mrs. Morrissey's house? A. In 1915.

Michael J. Kelly—Cross

Q. What time in 1915? A. I didn't keep track of the time of day.

Q. What month in 1915? A. November.

Q. You don't know the date? A. We came on the ninth, and it was tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth. You 10
can have them all.

Q. You can't remember them all? A. Oh, maybe I can.

Q. You weren't there all those days? A. It was all them days.

Q. That is another evidence of senile dementia; lack of memory? A. That is all right.

Q. When you got to that house that day,—or was it night? Which was it, day or night you got to the house? A. You don't suppose we went in 20
the night, do you?

Q. Was it day or night? A. It was day.

Q. What time of day? A. I didn't keep track of the time.

Q. Can't you tell whether it was morning or afternoon? A. It was in the morning.

Q. What part of the morning? A. I didn't keep track of the time.

Q. Did you travel all night to get there? A. No. 30

Q. What time did you leave your home? A. We didn't leave our homes. We left Grace O'Brien's.

Q. Then you came from your home to Grace O'Brien's? A. No, I didn't say we came from our home to Grace O'Brien's.

Q. How did you get to Grace O'Brien's? A. We came the day before.

Q. The day before. What time did you leave 40

Michael J. Kelly—Cross

Grace O'Brien's to see your aunt? A. My aunt it Grace O'Brien's.

Q. Oh, well, now, what time did you see your aunt then? A. I didn't keep track of the time. It was in the evening.

10 Q. It was in the evening? A. Yes, sir; but I can't gauge no certain time for it.

Q. You were there all day and didn't see her until the evening? A. I didn't say I was there all day.

Q. Sir? A. I didn't say I was there all day.

Q. Where did you spend the night? A. I spent it at Grace O'Brien's.

Q. Did you see your aunt before you went to bed that night? A. Yes, sir.

20 Q. What time did you get to the house? A. I don't know; it was in the evening.

Q. What time did you leave your home that day? A. I left eleven o'clock.

Q. Well, when you saw your aunt in the evening what did you say to her? A. I asked, "how are you. Aunt, how are you."

Q. What did she say? A. She didn't know me.

Q. Did she say anything? A. She stood up and after awhile I said "Don't you know me, Aunt?"

30 Q. When you said how are you. Didn't she answer that question? A. No.

Q. No answer at all? A. No; she didn't answer.

Q. What did you say next? A. I said "Aunt, don't you know me?"

Q. Repeated the same question? A. I repeated to her who I was and what I was to her.

40 Q. Did you speak loud to her? A. No, I didn't you? A. Yes; I knew that for years.

Michael J. Kelly—Cross

Q. You knew she was hard of hearing? A. No, I didn't know whether she was or not.

Q. Did you speak loud to her A. No, I didn't know.

Q. Did you speak loud to her? A. Just about the way I am speaking to you.

Q. I don't wonder she could not hear you because I am having considerable trouble. What did you say to her next after you said "Don't you know me?" A. I related who I was to her. 10

Q. What did you say? A. Ain't I telling you what I said.

Q. I want to know again. A. Ain't I telling you. I said I was relating what I was to her.

Q. You were relating what you were to her? A. Yes, sir.

Q. When you were relating what you were to her what did she say to that? A. She didn't answer at all. 20

Q. And you spoke in a low tone about the same as you are now? A. Just about the same as I am now.

Q. Did you finally make her understand who you were? A. No, sir.

Q. Could not do it? A. No, sir.

Q. Yet after a little while she told you several things? A. No. She told me nothing. 30

Q. Well, your memory is getting worse, Mr. Kelly, you told us a little while ago she asked you "Where am I." A. She asked those questions.

Q. And then she said "Who are those two women?" A. Yes.

Q. Didn't she? A. Yes, sir.

Q. And she said—"How far am I away from my home?" Didn't she? A. Yes, sir. 40

Michael J. Kelly—Cross

Q. She knew she wasn't in her own home? A. She didn't ask me that this evening.

Q. It was a different time she asked you? A. That was next day.

Q. You had this conversation with her next day? A. Yes, sir.

Q. She knew she wasn't in her own home? A. She asked me next morning whose home she was in.

Q. Did she know you then? A. No.

Q. What was her object then in asking you? A. I don't know.

Q. She asked you who was apparently a stranger to her, whether she was in her own home or not. A. She asked me whether she was in her own home.

Q. Then she asked you all those other questions, "how far am I away from my home?" A. Yes, sir.

Q. And "who lives in my house?" A. Yes, sir.

Q. And she told you to take her home? A. She asked me to take her home.

Q. She didn't know you? A. She didn't know me.

Q. And yet she was going to entrust herself to you to take her home, is that right? A. I suppose; when she asked me to take her home.

Q. You saw her how often up to 1915? A. I seen her for the last—well, about every year up to the last two years she was taken.

Q. Up to 1915? A. Up to 1915.

Q. Did you see her every year? A. About every year.

Q. What do you mean by "about every year?" Did you skip some years? A. No, I don't suppose I did. I didn't keep no record.

Frank G. Simrell—Direct

Q. Let us get down to that. You were there in November, 1915? A. Yes, sir.

Q. When were you there before that? A. I was there about a year before.

Q. In what month? A. I couldn't exactly say. I didn't keep track.

Q. Well, before that what time were you there? A. I was about there every year.

Q. And that is the best answer you can give? A. That is the best.

Q. You don't remember particularly? A. I remember it was in the summer, and that is about all. Late in summer. July, August or September. These were my vacations and I would take a run down. I didn't keep track of it.

Mr. Wolfskeil: That is all.

Mr. Gilson: That is all.

By Mr. Wolfskeil: Q. You haven't seen her since that time in November, 1915? A. No, I wouldn't be let to see her.

Q. Did you try? A. No, sir.

Q. Then you do not know whether you would be let see her or not? A. The rest weren't, so what was the use of me going?

30

FRANK G. SIMRELL, produced as a witness, on behalf of the Petitioners, being duly sworn on his oath, according to law, saith:

Direct-examination by Mr. Gilson:

Q. You live in Pennsylvania? A. Scranton, Pennsylvania.

Q. Scranton, Pennsylvania, and you are married and live with your wife? A. Yes, sir.

40

Frank G. Simrell—Direct

Q. And she is here in Court? A. Yes, sir.

Q. You are no relative to Catherine Morrisey?

A. No relation, only by marriage.

Q. Entirely disinterested, witness? A. Yes, sir.

10 Q. Were you present with Mary Ann Kelly, and Michael Kelly? No, Mary Ann Kelly in April, 1917? A. April twenty-sixth.

Q. When she called on Catherine Morrisey in—

A. Yes, sir.

Q. Did you hear any conversation between Miss Kelly and Mrs. Morrisey with respect to any relationship between them? A. Yes, sir; I did.

20 Q. What was it? A. I heard Catherine Morrisey ask Mary Ann Kelly who she was. And she told her, and she also said she didn't know Michael Kelly, which is Mary Ann's brother, and I didn't pay much attention to what was going on, just sat there talking to the wife alongside, heard a few words now and then, didn't pay any particular attention to what was going on. A couple of times Mrs. Fleming got up and she put in two or three words now and then, and every once in a while—she ordered us out.

Q. Who? Mrs. Fleming ordered you out? A. Mrs. Fleming ordered us out.

30 Q. How many times? A. She ordered us out once and then a few minutes after, maybe fifteen or twenty minutes after she ordered us out again.

Q. Then did you go? A. No, we didn't go then. Pretty soon Mr. Fleming came in. In fact, before Mr. Fleming came in she called her brother up on the telephone and told him that Mary Ann Kelly from Carbondale was there and wanted to know if he was coming home. Shortly after she tele-
40 phoned, her own husband walked in.

Frank G. Simrell—Cross

Q. That is, Mr. Fleming? A. Mr. Fleming, and as soon as Mr. Fleming opened the door, before he had a chance to take his hat off, I don't think he had his hat off yet, when she said "This is Mary Ann Kelly from Carbondale," and she started to chew there about something. I wasn't paying much attention to what she was chewing about, but she was talking about Mary Ann Kelly from Carbondale to her husband, and she got calling—she wasn't calling, but she was saying different things, and Mr. Fleming says—or she said to Mr. Fleming that she wanted Mary Ann Kelly and my wife and myself to leave the house. And Mr. Fleming spoke up and he said "I don't want to have any trouble and Miss Kelly, if you please, you had better go."

10

20

Q. What did Mrs. Morrissey— A. When Mr. Fleming said that, Mrs. Kelly got up and said "Come on, we'll go." and we left there.

Q. What did Mrs. Morrissey do, if anything? A. Mrs. Morrissey cried during the conversation.

Mr. Gilson: Cross-examine.

CROSS-EXAMINATION by Mr. Wolfskeil:

Q. Why did she cry, do you know? A. I can't say why she cried.

30

Q. Have you any opinion on it? A. No, sir; I haven't.

Q. Was it because you were being put out? A. I suppose it was.

Q. Did she want you to stay? A. I suppose she wanted us to stay and she couldn't defend herself by telling her to stay.

Q. The house was under quarantine at that time, wasn't it? A. Not as I know of.

40

Frank G. Simrell—Cross

Q. Wasn't there a sign on the door? A. No, sir.

Q. Wasn't there sickness of the children? A. Yes, sir.

Q. Do you know what it was? A. I heard.

10 Q. What did you hear? A. I heard it was quarantine sickness.

Q. What was it? A. I heard it was measles. There was no sign on the house and nobody told us the house was quarantined.

Q. You heard afterwards it was quarantined? A. Yes, sir.

Mr. Gilson: Q. How long afterwards? A. While we were there. Mrs. Fleming told us; she said "I don't want you here, because my children are sick with the measles." And she didn't tell us to get out on account of the children being sick or the house being quarantined. And there was no sign on the house; the two children laying there on the cots.

20

Q. Wasn't there a sick child on the couch where you were talking at the time? A. Yes, sir.

Q. Where all this loud talk was going on at the time? A. Yes, sir. We wanted to go into the kitchen and Mrs. Fleming pushed Miss Kelly out.

30 Q. What relation are you to Mrs. Morrisey? A. I am no relation to Mrs. Morrisey at all.

Q. What relation is your wife to Mrs. Morrisey? A. Well, her father is a nephew, and I married—

Q. So she is a grand-niece to Mrs. Morrisey? A. Yes.

Mr. Wolfskeil: That is all.

Josephine Simrell—Cross

JOSEPHINE SIMRELL, produced as a witness, on behalf of the Petitioners, being duly sworn on her oath, according to law, saith:

Direct-examination by Mr. Gilson:

Q. You are the wife of Frank J. Simrell? A. 10
Yes, sir.

Q. And you live with him in Scranton, Pennsylvania? A. Yes, sir.

Q. Your father was a nephew or grand-nephew to Catherine Morrisey? A. Nephew.

Q. And you were present when your husband and Mary Ann Kelly were there in April of this year? A. Yes, sir.

Q. Did Mrs. Fleming order Mary Ann Kelly out of the house? A. Yes, sir; she did. 20

Q. How many times? A. She said it once and we sat there for awhile, and she said it again and told us to get out, and Mr. Fleming came in and told us he didn't want no trouble, to get out, and the third time we left.

Q. What did Mrs. Morrisey do? A. She cried.

Q. Did anyone tell you there was any measles or anything like that in the house? A. Yes, sir; Mrs. Fleming got up crazy and said "My children are sick; I want no trouble." 30

Q. Was there any quarantine notice on the door of the house? A. It was no quarantine.

Mr. Gilson—Cross-examine.

CROSS-EXAMINATION by Mr. Wolfskeil:

Q. Do you recognize that writing? A. Yes, sir.

Q. Did you write that letter? A. Yes, sir. 40

Elizabeth M. Brown—Direct

- Q. Read it all over, please; read the whole letter through. A. (Witness does so.)
- Q. You wrote that? A. Yes, sir.
Mark it for identification, please?
Letter marked D-1 for identification.
- 10 Q. You are what relation to Mrs. Morrisey?
A. Grand-niece.
- Q. Did you know the house was under quarantine when you were ordered out? A. No, sir.
- Q. Do you know whether one or two of the children were sick with measles? A. I knew there was children on the couch.
- Q. In the room there where the talk was going on? A. Yes, sir.
- Q. You knew the children were sick? A. Yes, but Mrs. Fleming started the talking.
- 20 Q. You knew they were sick? A. Yes, sir.
- Q. You didn't go when Mrs. Fleming told you to go out? A. Why, no.
- Q. You waited until the husband came and ordered you out? A. Why, yes.
- Mr. Wolfskeil: That is all.

30 ELIZABETH M. BROWN, produced as a witness, on behalf of the Petitioners, being duly sworn on her oath, according to law, saith:

Direct-examination by Mr. Gilson:

- Q. Mrs. Brown, you are the wife of William W. Brown? A. Yes, sir.
- Q. And live with him and your children in New York? A. Yes, sir.
- 40 Q. And you are also a grand-niece to Catherine Morrisey? A. Yes, sir.

Elizabeth M. Brown—Direct

Q. And what was your mother's name? A. Mary Kelly, her maiden name.

Q. Mamie Kelly? A. Mary Kelly, my mother's maiden name. My mother's married name was Mary McLoughlin.

Q. In March of this year, 1917, did you call to see Catherine Morrisey? A. Yes, sir. 10

Q. Did you see her? A. No, I was denied admission.

Q. When you went to the house did you see anybody there? A. Yes. I knocked at the door, and the lady answered the door. When she answered the door I didn't know who she was. And I inquired if Mrs. Morrisey lived there. She said, "Yes, she does." I said, "Is she at home?" She said, "Yes." I said "Can I see her?" She said "Yes." So she started from the door to call Mrs. Morrisey, and she comes back and says to me— 20

Mr. Wolfskeil: I object what this lady told you; it was not in the presence of Mrs. Morrisey.

Mr. Gilson: That is competent, I contend, on this ground that is where she lived; she was trying to gain access to Mrs. Morrisey, and if Mrs. Fleming kept her from seeing her— 30

A. Yes—

Commissioner Maxson: How is the fact that these people prevented this witness from seeing Mrs. Morrisey relevant to the issue?

Mr. Gilson: I want to show the exclusion of all the other relatives was not by Mrs. Morrisey at any time, but always by the 40

Elizabeth M. Brown—Direct

10 [Flemings and O'Briens. They have kept control of her; they have kept everyone out of the house. And I want to show here is a grand-niece they kept away, ordered them out. They had the lawyer, not Mrs. Morrisey, as we will show, had a lawyer write them a letter they couldn't see her. And as showing she is surrounded by people who excluded everybody else concerned as a relative or interested in any way.

Mr. Wolfskeil: I still object on the ground it is not relevant. It is not material to the issue in any sense at all what somebody told this lady.

20 Commissioner Maxson: It seems to me it goes back to the same question we have been discussing.

Mr. Gilson: It does.

Commissioner Maxson: We have decided to rule out any statements made to anyone of these witnesses by anybody, unless in the presence of Catherine Morrisey.

Q. Was Mrs. Morrisey within hearing when you had this conversation with Mrs. Fleming? A. No.

30 Commissioner Maxson: My colleague suggests you can reach the same conclusion by finding out whether she got in or not.

Mr. Gilson: You cannot reach the same conclusion, because it is a very important—

A. I had to make a second visit before I got in.

Q. Did you get in the first time? A. No, I didn't get in the first time.

40

—Elizabeth M. Brown—Direct

Q. Why didn't you? A. Because I wasn't allowed.

Q. Who wouldn't allow you? A. I suppose if I tell you they will object.

Q. No. Who wouldn't allow you? A. Mrs. Fleming.

Q. How did she keep you out? A. I started to tell you— 10

Q. Well, tell us now. Who kept you out by words or act. A. As I said I told her who I was.

Q. Did she keep you out by words or act? A. She kept me out.

Q. Did she bar that door by her body or some act, or did she do it by some words? A. She shut the door.

Q. She shut the door in your face? A. Yes, 20
sir.

Q. Did she say anything? A. No, she couldn't say anything. The door was shut.

Q. Did you go back there another time? A. Yes. I went back there the same day. I was followed. They sent a boy to follow me when I left the premises.

Q. You went back the same day? A. Yes, sir.

Q. And then did you see Mrs. Morrissey? A. I seen Mrs. Fleming keeping her under cover so she couldn't come out to see me, through the window. 30

Q. What did you do? A. I went away and walked to the corner and came back again to try to make an appointment when I could see her and I finally got a very indefinite answer from another lady in charge, she said she would find out—

Mr. Wolfskeil: I object to what anybody else said.

Elizabeth M. Brown—Direct

Q. Did you make the appointment to see her?

A. Yes, sir.

Q. Did you go back later? A. Yes, sir.

Q. Did you see her later? A. Yes, sir.

Q. Who was present? A. Another party in the
10 room.

Q. Who? A. Mr. Fleming.

Q. Mr. Fleming? A. Yes, sir.

Q. Was Mrs. Fleming present at that time?

A. She came in a few minutes.

Q. Did you have a conversation with Mrs. Morrisey at that time? A. Yes, sir.

Q. About how long? A. Until I was interrupted.

Q. Well, about how long? A. Well, about five
20 minutes.

Q. What did you say to Mrs. Morrisey and what did she say to you? A. I went over and spoke to her and embraced her and told her who I was. She said that she knew me but she didn't know my mother.

Q. Did you tell her who your mother was? A. Yes, sir.

Q. What did she say about that? A. She just looked at me in amazement.

Q. You say you were interrupted? A. Yes,
30 sir.

Q. By Mrs. Fleming? A. No, not necessarily by Mrs. Fleming; Mr. Fleming gave a private shake of his hand to Mrs. Fleming to take her out of the room.

Q. Did Mrs. Fleming take her out of the room? A. Yes, sir.

Q. Where did she take her to? A. To the kitchen.
40

Elizabeth M. Brown—Direct

Q. Did you go there to see her? A. Yes, sir; I did. Mrs. Morrisey cried.

Q. Would Mrs. Fleming let you see her in the kitchen? A. No, sir; I knocked on the door and she opened it open about that much. And she said "you can't come in no more." I said "I want to say good-bye to aunt Kate," and she said "You can't come here no more," and she slammed the door in my face. 10

Q. Did you go out then? A. I went out.

Q. From what you saw of Mrs. Morrisey at that time, what is your opinion with respect to her capacity to manage herself and her property?

A. Well, I don't think that she is competent.

Q. Why? A. Well, from what I seen of her it was very short; my interview was very short, and my mother was her own niece, and when she knew me and didn't know my mother could she be sane or competent to tell me she knew me and didn't know my mother? Wouldn't she have to know my mother as a niece before she would know me? 20

Q. Do you know whether she is easily influenced? A. I should think she was from judging from what I could see.

Q. At those visits you have just told us about? A. Yes, sir. 30

Q. After that did you write a letter to Mrs. Morrisey to try to make an appointment to see her? A. Yes, sir.

Q. And you registered the letter? A. Yes, sir.

Q. Will you produce that letter?

Mr. Wolfskeil: Certainly.

Q. That is the receipt you got for that letter? A. Yes. 40

Elizabeth M. Brown—Cross

Mr. Gilson: I offer this receipt in evidence.

Mr. Wolfskeil: Well, the letter itself is—
Mr. Gilson: And the letter.

10 Registry card entered in evidence and marked Exhibit P-9.

Letter entered into evidence and marked Exhibit P-10.

(Mr. Gilson reads Exhibits P-9 and P-10 to the Jury.)

Q. Now, in reply to that letter you received this letter, did you, from Mr. McAdams? A. That is the reply to that; this one here.

Q. And then you received both of these letters from Mr. McAdams? A. Yes.

20 Mr. Gilson: These letters are exactly like the ones written to Mrs. McCahill. I offer these two letters in evidence.

Two letters marked in evidence respectively as Exhibit P-11, and Exhibit P-12.

CROSS-EXAMINATION by Mr. Wolfskeil:

Q. You had already consulted Mr. Gilson at the time you wrote this letter? A. Yes, sir.

30 Q. And this letter was written as a result of your talking this case over with him? A. I don't know as it was. I used my own judgment. No one ever leads me.

Q. What did you consult a lawyer for? A. I consider that my own private affairs.

Q. You thought enough of your lawyer to mention his name in this letter to your aunt? A. I don't know as I did, at the time.

40

Elizabeth M. Brown—Cross

Q. You did, though? A. Yes, sir; I did.

Q. You expected your aunt to read this letter, didn't you? A. Yes, sir; I certainly did.

Q. That was your object in writing to her? A. Yes, sir.

Q. And you knew if she read it she would be able to understand what was in it? A. I wasn't sure. 10

Q. You thought so? A. No, I didn't think so.

Q. What did you write it for? A. Just to draw my own conclusions.

Q. How could you draw any conclusion? A. After I got an answer back.

Q. If you wrote that letter to her and didn't expect her to be able to understand it when she got it? A. If she didn't understand it I knew she would not answer it; if she did understand it she would have answered it and she would have signed the card which she did. 20

Q. You wrote in the hope or expectation she would understand it? A. I don't know; that is a question.

Q. Was this letter written after the time you had called at the house there and were put out as you say, or "had the door shut in my face?" A. Yes, sir. I certainly would not write it beforehand. 30

Q. Have you seen her since the time you were put out of the kitchen on that day? A. Have I seen it?

Q. Have you seen her since the time you were put out of the kitchen on that day? A. No.

Q. Your opinion as to her capacity to manage her business is such as was formed on the day the kitchen door was shut in your face? A. No, 40

Elizabeth M. Brown—Cross

not on that day, I didn't form it on that day at all.

Q. You formed it before that? A. No, sir.

Q. When did you form it? A. Not yet.

10 Q. You said a little while ago you did not think she had any capacity to manage her own affairs?

A. She don't when she don't write her own letters.

Q. You haven't any opinion on the subject yet?

A. That is why I am here.

Q. The reason you formed this opinion you refer to is because she recognized you and could not remember that your mother was her niece?

A. No, I didn't form that opinion.

Q. That is what you said a little while ago? A. I said she must not be right.

20 Q. For the reason she could recognize you? A. You would have to know your father before you know your brother.

Q. I say, the reason you form this opinion was because she recognized you and could not recognize your mother? A. She said she recognized me.

Q. Is that the reason for your opinion? A. Not altogether.

30 Q. What other reason have you got for that opinion? A. Well, several.

Q. Do you want to let it go at that? A. Just suit yourself.

Mr. Wolfskeil: I am well pleased if you let it go at that, "several."

That is all.

Mr. Gilson: That is all.

William W. Brown—Direct

WILLIAM W. BROWN, produced as a witness, on behalf of the Petitioners, being duly sworn on his oath, according to law, saith:

Direct-examination by Mr. Gilson:

Q. You are the husband of the last witness, Mr. Brown? A. Yes, sir. 10

Q. And were you present—did you call to see Mrs. Morrisey? A. Yes, sir.

Q. When? A. Well, it was the early part of March of the present year.

Q. And did you see her? Did you get in to see her? A. (Witness nods head negatively.)

Q. Why? A. Well, the reason was that is one thing I am the bone of contention, and why these 20 proceedings is brought for the reason nobody could get in to her. My wife called—I suppose it will be objected to same as the other ones were—

Q. Don't testify to anything except what happened and what conversation you had with Mrs. Morrisey or in her presence. A. Mrs. Morrisey's presence? It was right in the next room to her. What do you consider her presence? Does she have to be in the same room?

Q. No: she has to be in hearing distance! A. 30 That's all right. Go ahead; shoot.

Q. Was she in hearing distance? A. Yes, sir.

Q. Go ahead. A. My wife called there and found out when Mrs. Catherine Morrisey wrote—it seems a long time ago my wife wrote from Vermont.

Q. Tell us what conversation took place, Mr. Brown, at the time. Not what your wife had done, 40

William W. Brown—Cross

writing letters to Vermont or anything else. Just tell us what took place at this conversation? A. She called there to see Mrs. Morrisey.

Mr. Wolfskeil: Who called there?

A. My wife.

10 Mr. Wolfskeil: I object.

A. I called there. I was with her.

Mr. Wolfskeil: That is different.

A. I called there and I asked if Mrs. Morrisey was in. Mrs. Morrisey was in. Could we see Mrs. Morrisey? We could. Who will I say called? The Browns. All right. Who is the Browns? They are nieces. Well, you can't come in. And there was no quarantine on the door or nobody sick. And we left.

20 Q. This was in March of this year? A. Yes, sir; that was the last of this March.

Q. Is that all of the conversation? A. Yes. We could not get it. We couldn't see her.

Q. And you only made that one visit there? A. No; I made the second visit.

Q. Did you go back with your wife a second time? A. Yes, sir.

Q. Did you go in the house the second time?

A. I didn't; my wife did.

30 Mr. Gilson: Cross-examine.

CROSS-EXAMINATION by Mr. Wolfskeil:

Q. Did you see Mrs. Morrisey with your own eyes? A. No.

Q. Then you don't know whether she was in the next room or not? A. Yes, I do, because my wife spoke to her through closed—

Q. You don't know. Did you see her? A. My wife ain't talking to herself.

40

Mary Neary—Direct

Q. Did you see her yourself? A. No.
Mr. Wolfskeil: That is all.

RE-DIRECT-EXAMINATION by Mr. Gilson:

Q. He is speaking about the second visit and you are talking about the first visit. Did you see Mrs. Morrissey on your first visit? A. No. 10

Mr. Wolfskeil: Did you see her on your second visit?

A. No.

Mr. Wolfskeil: I am talking about both visits then.

MARY NEARY, produced as a witness, on behalf of the Petitioners, being duly sworn on her oath, according to law, saith: 20

Direct-examination by Mr. Gilson:

Q. You are a daughter of Mrs. McCahill, and niece to Catherine Morrissey? A. Grand-niece.

Q. You are the niece—or your mother is the niece? A. Certainly.

Q. You were present with your mother in the spring of this year. A. Yes, sir. 30

Q. When she called on Mrs. Morrissey. What was the conversation between—did Mrs. Morrissey know you at that time? A. She didn't know me. My mother introduced me as her daughter.

Q. Had Mrs. Morrissey ever seen you before that? A. Certainly.

Q. How many years had she known you? A. She had seen me that preceding fall.

Mary Neary—Direct

Q. And you visited there with your mother before that? A. Yes, sir.

Q. For a number of years, didn't you? A. On and off.

Q. When you were very small you were out
10 there with your mother and stayed all night? A. Yes, sir.

Q. And Mrs. Morrissey didn't know you in March of this year? A. (Witness nods head negatively.)

Q. What was the conversation between your
mother and Mrs. Morrissey at that time? A. Well,
when they first went in she told her who she was.
Aunt Kate cried and kissed her and sat down and
held her hand and in the course of the conversa-
20 tion she said "I will go home with you." So my
mother said "Well, sometime when I come I will
take you." So they sat there and they talked over
different matters and family affairs and different
things. And then Aunt Kate said to Mrs. Flem-
ing, "Well, how about treating?" So Mrs. Flem-
ing said "Well, Jimmie,"—I think she men-
tioned the boy's name—"will be in soon." So in
the course of five or ten minutes Aunt Kate ask-
ed for a drink of water.

30 Q. A little louder. A. So in the course of five
or ten minutes Aunt Kate asked for a drink of
water, so Mrs. Fleming said "James will be in
soon." Mrs. Fleming never got up to get her a
drink of water. So about five minutes later she
got up and took Aunt Kate out of the room.

Q. How did she take her out? A. She gets up
and took her by the shoulder, and said "come
40 on." Aunt Kate said nothing but went with her.

Mary Neary—Cross

Mother said "I will go too." "No, you don't go," she said—

Q. Who said? A. Mrs. Fleming. Mother said "Why?" She said "I guess I will have something to say about this. You don't go." And she pulled Aunt Kate out of the door and slammed the door and left us sitting in the dining room. 10

Mr. Gilson: Cross-examine.

CROSS-EXAMINATION by Mr. Wolfskeil:

Q. How long was your visit? A. Why, about an hour or so.

Q. And during all that time your mother and Mrs. Morrisey held a conversation? A. Exactly.

Q. Talked about relations, you say? A. Talked 20 about relations, yes. Her father was Mrs. Morrisey's brother.

Q. Ordinary conversation between two ladies? A. You know what ladies' conversations are as well as I do.

Q. They kept up a continual talk about their affairs for an hour? A. Mother was the chief spokesman.

Q. Mrs. Morrisey put in her word now and then too? A. Occasionally. 30

Q. She could hear all right? A. Certain times mother had to repeat.

Q. She understood it? A. Not always she didn't understand it.

Q. She talked about family affairs? A. Mother done the talking.

Q. And Mrs. Morrisey done her part of it? A. Very little. 40

Frank J. O'Brien—Direct

Q. That conversation lasted about an hour? A. No, that conversation took about half an hour, and they took another half an hour for the boy to come in and serve the refreshments.

10 Q. You weren't ordered out, were you? A. No, a hint's as good as a kick.

Q. When was that? A. In the early spring; early April.

Q. You went to see her once in the spring? A. Yes, sir; April of this year.

FRANK J. O'BRIEN, produced as a witness, on behalf of the Petitioners, being duly sworn on
20 his oath, according to law, saith:

Direct-examination by Mr. Gilson:

Q. Mr. O'Brien, you are Frank J. O'Brien? A. Yes, sir.

Q. The son of Mrs. Grace O'Brien? A. I am.

Q. And you have had something to do with the management of Catherine Morrissey's property?

A. I have.

30 Q. How many tenants are there therein that property on the corner of Springfield and Chestnut Avenues? A. Well, there is only one on the corner of Springfield and Chestnut Avenue.

Q. I mean the property running from the corner of Chestnut on the corner of Springfield? A. There is about nine.

Q. And what are the monthly rents? A. Why, they run from ten to eleven dollars.

Frank J. O'Brien—Direct

Q. Apiece? A. Yes, sir. They varied when we got in there. Some said they were only paying nine dollars; so I don't know just what the rents are there now.

Q. You collect them? A. No, sir; I don't collect them. She goes out and gets her own rents. 10

Q. You had been collecting them? A. For awhile.

Q. How much were they then? A. Ten to eleven.

Q. How long did you collect them? A. I only collected them—I didn't collect all the rents. Aunt Kate would go and get the rents herself.

Q. How long did you collect some of them? A. Why just for a short while.

Q. That does not mean a thing. Was it one day or one week, or one month or one year or how long? A. Probably might have been three or four months. Only just when I would go down there; she would send me after them. If I didn't go she would go herself. 20

Q. You collected some mortgages for her? A. No, sir.

Q. Have you tried to? A. No, sir; I have not.

Q. Have you been going around demanding payment of mortgages? A. No, sir; I did not. 30

Mr. Wolfskeil: Where would be the relevancy of this I do not see.

Mr. Gilson: I want to show what the property is.

A. The mortgages are there. That is all you have to look for. There is the mortgages all there.

Mr. Wolfskeil: I do not see this line of testimony is competent, and I object to it.

Commissioner Maxon: How is it competent, Mr. Gilson? 40

Frank J. O'Brien—Direct

Mr. Gilson: It is necessary, absolutely necessary to show what property the subject is in possession of; what receipts she is entitled to in the way of rents and income; where her money is invested in mortgages. If this witness has any knowledge with respect to any personal property, where it is, where it is invested.

10

Mr. Wolfskeil: That is different.

A. There isn't any I know of.

Mr. Wolfskeil: That is different, but you asked him if he went around and tried to collect some mortgages.

Mr. Gilson: I insist that is proper to show whether he did.

20

Commissioner Maxon: I assume if he did collect it, it is competent, I think.

Q. You say you didn't collect it? A. Why, no.

Q. Did you try to collect any? A. No.

Q. Did Mrs. Morrissey ever ask you to collect any mortgages? A. No.

Q. Do you know what mortgages Mrs. Morrissey owns? A. Why, I think there is seven or eight there. We have the mortgages right here.

30

Q. Do you know what they are? A. Do I know where they are?

Q. Do you know what they are? A. I couldn't tell you off hand.

Mr. Wolfskeil: Aren't they on the record?

Mr. Gilson: Yes.

Mr. Wolfskeil: Then, if the Commission please, I insist that the best evidence is the record.

40

Mr. Gilson: We are not required to produce a record for purposes of this kind.

Frank J. O'Brien—Re-direct

Mr. Wolfskeil: I will admit what is on the record. You need not get the books. The only purpose for getting the amount of the property is for the purpose of fixing the bond.

Commissioner Maxson: Cannot you gentlemen get together for the question of the amount of the estate? 10

A. We can do it in a minute.

Mr. Wolfskeil: And it is only for the purpose of fixing the bond.

Mr. Gilson: That is all, then.

CROSS-EXAMINATION by Mr. Wolfskeil:

Q. Mr. O'Brien, did you say Mrs. Morrisey collected her own rents? A. Yes, she has. 20

Q. Up to what time? A. Why, she goes in now and collects rents.

Q. She goes in now? A. Yes, sir; if she hasn't got something to do.

Q. When did you collect the last rent? A. About a year ago.

Q. About a year ago? A. I am not there all the time; I haven't got the time, and that is the reason why that power of attorney was dropped, because I haven't got the time. 30

RE-DIRECT-EXAMINATION by Mr. Gilson:

Q. Why did you get that power of attorney then? A. Simply because she sent after me. I didn't go looking for it.

Q. You engineered this whole thing, didn't you? A. No, sir. She sent a party after me. 40

Frank J. O'Brien—Re-direct

Q. When? A. And met me in a private house right across the street.

Q. When Mary Ann Kelly came down from Carbondale? A. Yes.

10 Q. Didn't you tell her that Catherine Morrisey was out of her mind and you had taken her to your mother's home, and you wanted her to help in putting the Grace Kelly family out of the house?

A. No, sir; I told her nothing of the kind. If she was out of her mind, why did she send for me? She said her bank books were being manipulated.

Q. Do you deny you told Mary Ann Kelly that? A. Yes. And there is another statement in there I will deny. There's a whole lot of them in there I will deny.

20 Q. You don't deny you took the safe out of there? A. I don't deny that; and I took that on Mrs. Morrisey's word.

Q. You won't deny you went there with these men and stayed there all night? A. No, I will not.

Q. And you were engineering that affair, weren't you? A. On her word; it was with her permission I done it.

Mr. Gilson: That is all.

Mr. Wolfskeil: That is all.

30 Mr. Gilson: Now I offer in evidence the proof of service of the notice on Ann Fleming, and William P. Fleming to produce Mrs. Morrisey at this proceeding.

Mr. Wolfskeil: The physician who attends Mrs. Morrisey is in Court for the purpose of testifying before the Commission and the Jury that Mrs. Morrisey's physical condition is such that it is impos-

Dr. Walter Anderson Reiter—Direct

ible to produce her here. He has been waiting all day for this.

Notice entered in evidence and marked Exhibit P-13.

10

DR. WALTER ANDERSON REITER, produced as a witness, on behalf of the Alleged Lunatic, being duly sworn on his oath, according to law, saith:

Direct-examination by Mr. Wolfskeil:

Q. Doctor, you are a physician? A. Yes, sir.

Q. Practicing? A. Yes.

Q. Where is your office and place of practice? 20

A. Ten Summit Avenue, Summit, New Jersey.

Q. You are acquainted with Mrs. Catherine Morrisey? A. Yes, sir.

Q. Is she a patient of yours? A. Yes, sir.

Q. When did you see her last? A. Yesterday.

Q. Is she under your constant care? A. Yes, sir.

Q. Will you please explain to the Commission and Jury whether or not it is possible to bring her here? A. I don't think it is possible to bring Mrs. Morrisey in Court for the reason that she is suffering with Bright's disease as well as chronic heart trouble, and that is associated with a high blood pressure. During the last two or three months she has been under tremendous nervous strain on account of this trouble which has been brought up. And she is very easily excitable, and bringing her out and taking her—inflicting her into such a thing as this might suddenly cause 40

Dr. Walter Anderson Reiter—Direct

a collapse and that is the condition which she is in now.

Q. And under your advice you say it is not proper to produce her here in Court? A. No, it is not proper.

10 Q. I understood you to say that during the last two or three months this condition has asserted itself. Do you know the cause of it? A. Her chronic interstitial Bright's disease and chronic heart trouble was something long standing. The last two or three months she has shown some mental excitement possibly caused from the present trouble, which has been going on for the last two or three months, and which she has knowledge of.

20 Q. What do you mean by present trouble? A. This investigation of this estate.

Q. And these proceedings, do you mean? A. And these proceedings.

Q. How long have you been her attending physician? A. Since May, 1916.

Q. And during that time you have seen her frequently or otherwise? A. Well, from May until—from May, 1916 until July, 1917 I saw her possibly on the average of once or twice a month.

30 Q. What was her physical and mental condition then? A. Her physical condition at that time showed chronic interstitial nephritis, associated with a high blood pressure.

Q. How about her mental condition? A. Her mental condition was fair considering a woman of her age.

(Answer repeated by the stenographer.)

A. Of course, she had, at all times, knew me. I
40 was never treating her at any time for any ner-

Dr. Walter Anderson Reiter—Cross

vous trouble or mental trouble, so I had no reason for directly investigating that side of her physical condition.

Q. You spoke of her during that whole period time and time again? A. I spoke to her and talked to her and at all times she knew me. She kept fairly good records of her account with me. Could tell when I saw her before. 10

Q. Did she pay you? A. She paid me and sometimes Mrs. Fleming paid me.

Q. When did you first notice a failing in her mental condition? A. I will have to consult my lists of visits. The visits became very much increased in frequency during the last two or three months; about the middle of June

Q. Since the eleventh of June you noticed it? A. This year. 20

Q. This year. And you first noticed her failing mental condition then? A. I first noticed her excited mental condition; her mentality was very much excited.

Q. June sixteenth? A. June sixteenth.

CROSS-EXAMINATION by Mr. Gilson:

Q. When you spoke of this trouble you don't know whether it is because of these proceedings or whether it is because the Flemings kept her relatives away from her; that kind of trouble, do you? A. I have only assumed the cause of her excited condition was due to this present trouble because she mentioned it two or three times, and she had the name "Kelly" continually on her mind and always thinking of it. 30

Q. Had a sort of a delusion, didn't she? A. Yes—no, I won't say she had a delusion. 40

Dr. Walter Andreson Reiter—Cross

Q. That seemed to be the thing was on her mind? A. That seemed to be the thing was on her mind.

Q. Now, you know she goes out riding right along, don't you? A. Yes, sir.

10 Q. Flemings have her out riding in an automobile right along? A. Yes, sir.

Q. Had her out within the last day or two? A. I don't know.

Q. Don't you know she was out as recently as this Tuesday? A. I don't know.

Q. Don't know that. But she is in a condition where she could go out riding? A. Why, about a week ago I told Mr. Fleming I thought she might be able to take short rides, but certainly not long rides. About a week or two weeks. I am not certain as to what date I told him that.

20

Q. You remember that on August twentieth you sent word to Dr. Evans that Mrs. Morrissey was in a very dangerous condition and asked him to postpone his examination from that day? A. I didn't say she was in a very dangerous condition. I said she was in a condition which I thought it would be best not to bother her.

Q. And you heard him testify this morning she was in good condition when he went there on that day? A. Possibly I wasn't.

30

Q. You don't agree with him then? A. In regard to her physical condition?

Q. In regard to her physical condition on August twentieth when he made the examination? A. Why, I said her condition as far as I know and from my observation that she was not in exceedingly good physical condition.

40

Dr. Walter Andreson Reiter—Cross

Q. Who was it requested you to ask Dr. Evans to postpone his visit on August twentieth? A. I received notice indirectly through my office, and who requested it there I don't know because I was busy with the draft examination.

Q. Don't you know it was either O'Brien or Fleming? A. No, sir; I don't. I simply received that message and my message was carried indirectly. 10

Q. They would like to have Dr. Evans' examination postponed? A. Yes, sir.

Q. And that is the reason you asked it? A. That they would? No, that I would.

Mr. Gilson: That is all.

Mr. Wolfskeil: That is all. That is the explanation for the non-appearance of Mrs. Morrisey and it is in the discretion of the Commission and the Jury to waive that. 20

By Mr. Gilson: Q. When did you see Mrs. Morrisey last? A. Yesterday; yesterday morning.

Q. Sitting up in a chair? A. She was sitting in the chair. She has most of the time since I have seen her.

Q. And she was in the same condition yesterday when you saw her as she has been right along?

A. She was in the same condition as she has been during the past few weeks, I should say about the same. 30

Fifth Juror: Q. Is Mrs. Morrisey fully aware of the friction between the relatives? A. Yes.

Q. She is? A. Yes. She was fully aware—I am not testing Mrs. Morrisey as to her mental condition. She was fully aware, she understands there is this trouble brewing, and she knows what it is, she thinks it is after her money. 40

Dr. Walter Andreson Reiter—Cross

Q. She has spoken to you about it? A. Yes, sir; she has spoken to me numerous times about it; and particularly the last two months. That is, June sixteenth.

By Mr. Wolfskeil: Q. Doctor, the Flemings
10 give her proper care and attention?

Mr. Gilson: I object to that, unless he is there how can he tell?

Commissioner Maxson: I suppose it has got to be assumed he knows if he testified to that, and that is a matter of cross-examination.

Mr. Gilson: I insist on an answer yes or no, if he knows.

Q. Do you know whether or not they gave her
20 proper care and attention? A. Yes.

Mr. Gilson: Now, I desire to cross-examine.

Special CROSS-EXAMINATION by Mr. Gilson:

Q. How do you know that, Doctor? A. I know it from the fact of how they carry out my instructions in regard to my treatment.

Q. You are not present to see whether they
30 carry out your instructions, are you? A. I am not living there constantly, but as far as my knowledge and I am able to know in the times I have visited her she apparently receives treatment and the things are gotten that I order. And every time I have seen her she has always been given excellent care.

Q. You are talking now with respect to medical care? A. Medical care and also—

Q. Getting the medicine you prescribe and do-
40 ing the things you suggest? A. Yes, sir.

Dr. Walter Andreson Reiter—Cross

By Mr. Wolfskein: Q. How about her personal condition as to cleanliness and so forth? A. I find nothing to say there is anything uncleanly about her condition, the way she is cared for. I have seen nothing at any time.

Q. Is her present physical condition such that she requires personal care and attention or not? A. She has required medicine. 10

Q. I mean as to dressing and undressing and things of that character? A. Oh, yes. She requires some care apparently. She is helped to put on her clothes at all times. I never seen her helped to put on her clothes, but I should say she would require it.

Q. As to her hair and bathing and things of that sort? A. Yes, sir; I should say she needs help. 20

Q. Does she look attended to or otherwise? A. Yes, sir.

By Mr. Gilson: Q. You do not pretend to be an expert on mental disorders? A. No, sir; not at all.

Q. And you are not here to give any testimony on mental diseases? A. Not at all.

By Mr. Wolfskein: Your opinion is she first showed signs on June sixteenth, 1916, according to your notes? A. Yes, sir; she first showed signs. 30

Q. Of failing—mental impairment? A. Yes, sir.

Mr. Wolfskein: That is all.

Mr. Gilson: I think that is the Petitioner's case.

Mr. Gilson: The list of mortgages:
Ann Murray, \$5556.00; Ann Murray, 2600.-
00; Ellen Murray, 1950.00; Bridget Cullen
Murray, 400.00; John P. Murphy, 2500.00; 40

Dr. Walter Andreson Reiter—Cross

John J. McGrath, 3000.00; John Peterson, 2000.00; Eliza Blair, \$6000.00; Ann Martin, 200.00.

10

Commissioner Maxson: Is that all of the estate? What is the approximate amount of the estate?

Mr. Wolfskeil: As I understand it there is real estate with about fifteen thousand dollars or thereabouts, and this list of mortgages, we have just given Mr. Gilson, a little balance in the bank, a little personal effects she has in her house.

Commissioner Maxson: The testimony as to that is the real estate assessed at fifteen thousand dollars?

20

Mr. Wolfskeil: Yes, sir.

Commissioner Maxson: Is that a fair valuation?

Mr. Wolfskeil: No, we think it is high but let it go at that. It was actually reduced about one thousand dollars about a year ago on appeal. It is a property formerly used for hotel purposes.

Dr. Thomas Prout—Direct

DR. THOMAS PROUT, produced as a witness, on behalf of the Alleged Lunatic, being duly sworn on his oath, according to law, saith:

Direct-examination by Mr. Wolfskeil:

Mr. Gilson: I will admit the doctor's qualifications to testify as an expert on mental disorders. 10

Q. Doctor, you maintain a sanitarium in Summit? A. I do.

Q. And you specialize in nervous complaints? A. In nervous and mental diseases.

Q. Have you very many patients under your constant care? A. My patients mostly at the present time are of nervous character.

Q. Yes? A. I formerly had eight years experience with the insane at Morris Plains. 20

Q. Under Dr. Evans? A. Under Dr. Evans, yes, sir.

Q. And in association with him? A. Yes, sir.

Q. How long have you been a physical? A. Upward of twenty-five years.

Q. Are you acquainted with Mrs. Morrisey? A. I am.

Q. When did you first see her? A. I saw her first in November, 1915; early in November. 30

Q. November, 1915. Let me ask you when you last saw her? A. I can't say definitely. I casually called in there.

Q. Can't you approximate it? Within a month? Six weeks? A. In July; I think it was late in July.

Q. Late in July? A. Yes, sir.

Q. What was her condition when you last saw her so far as her mental capacity was concerned? 40

Dr. Thomas Prout—Direct

A. Well, as compared with the first time I saw her—

Q. No, the last time. What was her mental condition? A. I didn't make a thorough-going examination, but she had evidently deteriorated some, since I saw her later.

10 Q. When you last saw her in the end of July she was suffering from Senile Dementia? A. Yes.

Q. No question about that? A. No.

Q. When had you observed her prior to the last time you saw her when you saw this condition? A. I had observed her in November and in January. In November, 1915, and in January and February, 1916.

Q. What was her condition in February, 1916?

20 A. Her condition in February, 1916, was in very pronounced contrast to her condition when I saw her the other day.

Mr. Gilson: I object to this line of testimony. The question is what is her condition now. It is admitted now she was sane and in sound mind at one time. And our contention is at the present time and that is admitted by Dr. Prout.

30 Mr. Wolfskeil: Is that your contention? All you want to show, only the present time?

Mr. Gilson: Yes, sir.

Mr. Wolfskeil: What time do you fix?

Mr. Gilson: That is for the jury to say.

Mr. Wolfskeil: If you say it is from the present that will end the case.

Mr. Gilson: I withdraw the objection.

40 Q. In your opinion when did her condition of senile dementia begin? In other words when was

Dr. Thomas Prout—Direct

the line of sanity and insanity, or rather sanity and senile dementia crossed? A. That is a very difficult thing to say. Of course, in this condition, as Dr. Evans testified to, we see lucid intervals appearing occasionally, in these senile cases, and it is a very difficult thing to mark the line definitely in a woman of her years. I think she has been evidently showing, from time to time, senile changes from the witnesses who have testified here, for the last ten years anyhow. But during that time, of course, there have been variations in her condition, so that there have been definitely to my certain knowledge, periods that could be compared as lucid periods. 10

Q. Well, from what date would you say that her condition reached the present one that she is incapable of attending to her own affairs. From your own observations of her, doctor, will you put some date on it? How about February, 1916? A. In February, 1916, she was in comparatively good condition. 20

Q. Was she capable of attending to her personal affairs? A. She seemed at that time capable of attending to her personal affairs.

Q. Did you make an examination of her with a view of ascertaining whether or not she could attend to her business affairs? A. Yes, sir. 30

Q. In February, 1916? A. In February, 1916; yes, sir.

Q. What day? A. There were two or three examinations during that period. One was in January, and I think I saw her twice in February, early in February, and then at another time in February.

Q. Was she able to attend her affairs then with reasoning power and ability? A. She was. 40

Dr. Thomas Prout—Direct

Q. No doubt of that in your mind? A. There was no doubt of that at that time.

Q. That was February, 1916? A. That was February, 1916.

10 Q. Did you see her later than that when she was capable of attending to her affairs? A. I didn't see her again until late in July.

Q. 1917? A. 1917. And that was in marked contrast to the conditions existing before.

Q. So, sometime between February, 1916, and July, 1917— A. A marked deterioration had set in and it was showing itself very positively.

20 Q. The bank officials of the Morristown National Bank had her acknowledge a paper—where is that acknowledgment? That is February 9, 1916; a Notary Public took her acknowledgment to her paper; that is about the same date you examined her? A. About that period.

Q. And then she was competent to attend to her affairs in your opinion? A. In my opinion, yes, sir.

(Discussion between counsel regarding alleged Notary's acknowledgement).

30 Commissioner Maxson: The legal effect of that paper will result from what appears on that paper itself, but the witness from the bank did testify that he sent this man who was an official to pass on this signature in some way.

Mr. Gilson: Yes, but he did not take any acknowledgment or any affidavit and it shows on the face of it he didn't do either.

40 Mr. Wolfskeil: I admit all that. I said it was the Notary's certificate. And it is a certificate for what it is worth. It is signed

Dr. Thomas Prout—Direct

by a man who was sent there by the officers of the bank and who put a date on it and acknowledged the signature.

Mr. Gilson: I would like the Court to rule on it and say whether it is a Notary's certificate or not. He has given the impression that has been formally and solemnly sworn to and acknowledged, and a Notary's certificate is on that paper. 10

Commissioner Maxson: Gentlemen, you must pay no attention to these arguments of counsel. You have heard the testimony of the witnesses who came from the bank, with respect to this paper. You can look at the paper and see the signature on it, and the date, and that sort of thing, and then with your recollection of the testimony determine what the value of this paper is 20

Mr. Gilson: I would like a legal ruling, and I think I am entitled to it, as to whether it is an affidavit or acknowledgment. He says it is a certificate.

Mr. Wolfskeil: I do not say it is either an affidavit or acknowledgment.

Commissioner Maxson: It is not technically either an affidavit or acknowledgment, because it is not in the form required by the custom; by the statute. 30

Mr. Wolfskeil: I cheerfully admit all that. And I never claimed it was either.

Q. Then, so there will be no doubt about this. On February ninth, the date when this Arthur W. Hicks, whom the bank testified was a Notary Public, was sent up to get Mrs. Morrisey's acknowledgment to this paper, on that date do you know 40

Dr. Thomas Prout—Direct

whether or not she was capable of attending to her business affairs? A. About that time she was capable.

Q. You know that? A. Yes, sir.

10 Q. Did you hear Mr. Hood, the Cashier of the First National Bank of Summit, give his testimony this morning? A. I did.

Q. You are not able to say, though, doctor, at what date between February, 1916, and July, 1917, that she reached her present condition? A. It is impossible to set the line definitely. I think it has been a gradual process.

20 Q. Could you approximate? There is a year and four months about. A. It is a year and four months since I saw her; it would be very difficult to approximate.

Q. You have heard the testimony as to her having been acquainted with the proceedings that have been brought here? A. Yes, sir.

Q. And the testimony of her personal physician to the effect that since she has learned of those proceedings she has become excited and nervous? A. Yes, yes.

30 Q. Will you say whether in your opinion her present condition in its accentuated shape could be brought on by that excitement or by excitement similar to that? A. I think her present condition—in her present condition of mind she would be rather easily excited by anything that came into her “ken,” that she chanced to feel was not harmonious to her interests, of course.

Mr. Wolfskeil: Cross-examine.

Dr. Thomas Prout—Cross

CROSS-EXAMINATION by Mr. Gilson:

Q. That condition of senile dementia would not be brought on by a proceeding of this kind, would it? A. No.

Q. That is a breaking down of the mental faculties? A. No, I was just speaking of the excitement. A condition which we characterize as "senile excitement" sometimes. 10

Q. Senile dementia would not be caused by any such proceeding as this? A. No, sir.

Q. That is a general breaking down from old age, or some other cause? A. Yes.

Q. You say you found in February, 1916, that Mrs. Morrisey was in very good condition mentally? A. Yes.

Q. At whose request did you examine her at that time? A. Judge McAdams asked me to see her. 20

Q. And it was for the purpose of determining whether she could make a will, or not, wasn't it? A. Yes, sir; it was.

Q. And on behalf of the O'Briens and Flemings? A. I don't know who it was on behalf of.

Q. You can't say at that time when you made the examination in February, 1916, whether or not that was one of those lucid intervals that happen in a case of this kind? A. Something had happened to render the old lady lucid over that period because she was very much better than she was at the previous examination I made in November. 30

Q. She had senile dementia before February, 1916? A. Yes. She gave evidence of senility undoubtedly. Evidences of the changes of old age before that time. 40

Dr. Thomas Prout—Re-direct

Q. She was in very bad shape in November, 1915, when you saw her? A. November, 1915, she was in very bad shape.

Q. Mentally? A. Mentally.

10 RE-DIRECT-EXAMINATION by Mr. Wolf-
skeil:

Q. What was the November, 1915, condition produced by, do you know? A. I can't say definitely, but I made some inferences and from my subsequent examination.

Q. What were they? A. I understood that the old lady had been taking quite a good deal of alcohol before that time.

20 Q. Before 1915? A. Yes, sir; that time and before and I assumed that was a factor in the condition of her mind.

Q. Did she tell you she had been taking alcohol? A. Yes, sir.

Q. Did she tell you where she got it? A. She said it had been given to her by the people she had been living with.

Q. Did she tell you who that was? A. She said the Kellys.

30 Q. When did the Flemings take charge of her, do you know? It was after November, 1915? A. It was after November; yes, sir. On my first examination, if I remember rightly it was at the house of the O'Briens, and it was after that.

Q. When you examined her in February, 1916, where was she? A. She was with the Flemings.

Q. And was she in a condition—in her own home? A. In her own home.

40 Q. Was her condition one which showed she had been indulging in alcohol to excess then? A. She

Robert J. McAdams—Direct

was not. She was strikingly better. I was somewhat amazed.

Q. Wasn't it a fact that her lucid condition or better condition had been brought about by normal living and abstaining from alcohol? A. I believe that it was.

Q. And sometime between November, 1916, and February, 1916, the Flemings got charge of her? A. Yes, sir.

10

RE-CROSS-EXAMINATION by Mr. Gilson:

Q. After February, 1916, there wasn't such a great improvement? A. Sometime after February.

Q. She ran down again? A. She seemed to have done so. I haven't seen her since.

20

Q. That was not due to liquor, was it? A. I don't know. I can't say definitely what the exciting cause has been, but she had run down a good deal, unquestionably, so that she is in very poor condition at present.

Mr. Gilson: That is all.

Mr. Wolfskeil: That is all, doctor.

ROBERT J. McADAMS, produced as a witness, on behalf of the Alleged Lunatic, being duly sworn on his oath, according to law, saith:

30

Direct-examination by Mr. Wolfskeil:

(Witness withdrawn).

Dr. Walter Anderson Reiter—Cross

DR. WALTER ANDERSON REITER, recalled:

Direct-examination by Mr Wolfskeil:

Q. Doctor, you are attending physician to Mrs. Fleming? A. Yes.

10 Q. When did you see her last? A. Yesterday.

Q. What is her physical condition? A. Mrs. Fleming is very much excited and aroused over all these proceedings, and she is in a more or less hysterical condition, and I have seen her two or three times within the last week in which she has required some sort of a sedative and I deem she isn't in any proper condition to appear here.

20 Q. Is it on your advice she isn't here? A. It is on my advice she isn't here, and likewise she has a very sick child.

CROSS-EXAMINATION by Mr. Gilson:

Q. You knew she was under subpoena by me to come here? A. No, sir.

Q. Didn't she tell you that yesterday? A. No, sir.

Q. Why did you go to examine her yesterday?

30 A. I was called around to see her and see her child yesterday. And I was also called around and I just got home. I was called around before I went away to see her five or six days ago, and I saw her in bed.

Q. You knew this proceeding was on when you went around to examine her? A. I knew the proceedings were to come off today. I didn't know she was under subpoena or anything like that. They told me not to appear, and for that reason I
40 advised her not to appear.

Robert McAdams—Direct

Q. You advised Mrs. Fleming and also Mrs. Morrisey not to appear here today? A. Yes, sir.

ROBERT McADAMS, re-called:

10

Direct-examination by Mr. Wolfskeil:

Q. You are an attorney and counsellor at law practicing and living in the City of Elizabeth? A. I am.

Q. And acquainted with the Jury. Are you acquainted with Mrs. Morrisey? A. Quite well.

Q. Have you acted for her in a professional capacity? A. Off and on for a number of years.

Q. For about how long a time? A. Since I have been practicing law, 1900. 20

Q. Seventeen years? A. With an exception of about seven years while the Kellys were in possession of her property.

Q. Excepting seven years while the Kellys were in possession of her property. When the Kellys got out you were back again to advise her? A. I was recalled; yes, sir.

Q. Who called you? A. I believe Mr. Gibby and Mr. O'Brien came to my office and consulted me in reference to the question of the arrest of some parties who had been in possession of the Morrisey property over night, and I went to Summit in reference to that matter and then was called to see Mrs. Morrisey at Mrs. O'Brien's home. 30

Q. Never mind the details unless Mr. Gilson wants to go into them on cross-examination. You saw Mrs. Morrisey at that time; how long ago was that? A. That was November, 1915. 40

Robert McAdams—Direct

Q. From that time down you have seen her more or less frequently? A. I have seen her on an average of at least once a month.

10 Q. For what purpose did you see her? A. I have been called there for different purposes in connection with her estate, and correspondence with Mr. Gilson, and correspondence with Mrs. McCahill, and Mr. Brown, and the rest of the relatives.

Q. Did you talk to Mrs. Morrisey at the time you went there? A. I did.

Q. Was she or was she not able to discuss her business affairs? A. She was able to discuss them and take care of them.

Q. Did she? A. Yes, sir; she did.

20 Q. Did she give you instructions as to the conduct of her affairs? A. Positive instructions.

Q. Did she ask your advice as to the conduct of her affairs? A. The first thing Mrs. Morrisey wanted me to do was institute a case against the Kellys.

Q. That was November, 1915? A. For alleged misappropriation of funds.

30 Q. In February, 1916, the date Dr. Prout just testified to? A. I saw Mrs. Prout (?) on several occasions, and on two occasions in the presence of Dr. Prout the time he was making an examination of her.

40 Q. What is your opinion, as a layman, as to her condition mentally, so far as her ability to transact her personal or business affairs was concerned? A. Mrs. Morrisey on those occasions was able to state with a considerable amount of clearness, the property that she owned; the tenants in her property; the persons whose property she

Robert McAdams—Direct

held mortgages on; the amounts in general in her bank and in the savings bank, and designate specifically the parties to whom she wanted to leave her property, and on a number of occasions she had instructed me as to the collection of rents, the amounts were due; notes that were outstanding. And I had conversations with tenants in her presence relating to those matters, and she was fairly able to transact those affairs. 10

Q. Before or after February, 1916? A. That was during January, February, and March, down until a recent period.

Q. How recent? A. Within the last six weeks Mrs. Morrisey has not been in a condition to intelligently discuss her affairs.

Q. When was the last date that you had an intelligent discussion with Mrs. Morrisey in relation to her business affairs? A. Well, I would be—I can't say definitely, but to be safe I would say a period of two months to two and a half months ago. 20

Q. Will you fix the month by the calendar? A. Either the latter part of June or the first part of July.

Q. Of this year or last year? A. This year.

Q. Nineteen hundred seventeen? A. Nineteen hundred seventeen. 30

Q. Did you see her in the latter part of June, 1917, or first part of July, 1917? A. I did.

Q. And discuss with her business affairs? A. I did.

Q. Was she or was she not able to discuss her business affairs intelligently with you at the end of June or the beginning of July, 1917? A. She was. 40

Robert McAdams—Cross

Q. And did she or did she not? A. She did.
Mr. Wolfskeil: Cross-examination.

CROSS-EXAMINATION by Mr. Gilson:

10 Q. Judge McAdams, you know that Dr. Prout considered that she had been suffering from senile dementia for some time before that, didn't you? A. No, I don't.

Q. Don't you know that? A. No.

Q. Didn't he go there at your direction? A. He did.

Q. Didn't he report to you? A. He didn't report she was suffering from senile dementia.

Q. Didn't he tell you she had been in November, 1915, but she had recovered to a marked degree?

20 A. No, he didn't.

Q. You had no such opinion that Dr. Prout—
A. I don't understand Dr. Prout said she was suffering from senile dementia excepting that in the sense she is an old lady, and senile dementia is likely to set in on an old person and there is a breaking up of the faculties to a certain extent, but the senile dementia he is talking about has not impaired Mrs. Morrissey's faculties, or made her unable to attend to her affairs.

30 Q. Don't you remember he said in his opinion she had been suffering from this condition for ten years with lucid intervals? A. I understood him to say she may have been suffering from senile dementia for a period of ten years.

40 Q. And you knew while you transacted all this business with Mrs. Morrissey he had reported she was in that condition with lucid intervals? A. I didn't. He had never made any such report as that.

Robert McAdams—Cross

Q. Do I understand that you were attorney to Mrs. Morrisey up to the time that the Kellys went in to live with her? A. I was.

Q. And then that you were not, during those seven or nine years, you were not attorney for Mrs. Morrisey? A. That is correct.

10

Q. And then when they were put out or went out that either the O'Briens or Flemings sent for you? A. I think Mr. O'Brien came to my office with an attorney to consult me in reference to some of their affairs.

Q. And Judge you took quite an active part in putting the Kellys out? A. I did.

Q. You went up there personally? A. I did.

Q. Went into the house with the constables and with the Flemings and O'Briens? A. We knocked for admission and Miss Kelly came out.

20

Q. And when you told Miss Kelly to get out of the house she said she wouldn't do it, didn't she? A. She said she wanted to send for her mother who was away at that time.

Q. And you said no, and attempted to push her out of the room? A. No. I wasn't in the room.

Q. Didn't go in the house? A. I was in the court between the two buildings at that time.

Q. When I took this matter up you wrote me a letter, didn't you? A. I did.

30

Q. And I show you that letter and ask you if that is not it? A. It is.

Mr. Gilson: I offer that in evidence.

Letter from Judge McAdams to Mr. Gilson entered in evidence and marked Exhibit P-14.

(Mr. Gilson reads Exhibit P-14 to the Jury).

40

Robert McAdams—Cross

Q. What did you mean by holding me accountable? A. The letter speaks for itself.

10 Q. I would like to know. A. To hold you accountable for the circulation of rumors by making inquiries of town tradesmen and other people in the City of Summit either personally or by your agent which was reflecting on Mrs. Morrissey's reputation at that time which had never been questioned.

Q. Hadn't been questioned? A. No.

Q. You will agree it was my duty to verify what my clients told me by making inquiries around in the neighborhood? Won't you? A. I will agree if I first agree to the premise. I don't know the premise existed.

20 Q. Presuming my clients told me what they told on the witness stand?

Mr. Wolfskeil: What bearing has this on the question of Catherine Morrisey's sanity?

30 Mr. Gilson: I want to know what proceedings Judge had in mind when he wanted to hold me accountable for the inquiries; furthermore I want to prove Judge McAdams has taken unusual interest in this case for some reason, by being very active and trying to frighten me off by a threatening letter, and I would like to know why he has been so active.

Mr. Wolfskeil: I object; that is not cross-examination.

Commissioner Maxson: There is no question before the Commission and the Jury now.

Robert McAdams—Cross

Q. What did you mean by holding me accountable? Taking steps? What proceedings were you going to take? A. Well—

Q. What proceedings did you have in mind to take against me, to hold me accountable referred to in your letter?

10

Mr. Wolfskeil: I object on the ground it is not proper cross-examination. The letter is not in evidence on the part of our side, of the respondent, if you please. It is something that is injected into my case by Mr. Gilson, and he is cross-examining Judge McAdams on a phase of his own case. It is not proper cross-examination.

Mr. Gilson: I have a right to find out what the interest of the witness is. It is an unusual one.

20

A. I am perfectly willing to answer the question.

Commissioner Maxson: I think so, on that phase of it.

A. I don't know as I had a definite line of action laid out in my mind at the time I wrote that. But I purposed taking whatever steps might have been necessary if the occasion arising would make it my duty to go along the lines indicated in the latter.

30

Q. You knew there is no proceeding known to the law. A. Well, assume then for the arguments sake I did it for the very purpose you said.

Q. You knew there is no proceeding known to the law you could take to stop me from making inquiries to verify those statements as to her mental condition? A. I told you before—

40

Robert McAdams—Cross

Q. Did you? A. I told you before if I agreed to your premise I would agree to your general proposition.

Mr. Wolfskeil: Did you ever hear of champerty and maintenance?

10 Q. Did you have that in mind? A. I told you I had not outlined any definite action I would take except to protect the interest of Mrs. Morrisey if it were necessary and take whatever proceedings were necessary.

Q. You meant that as a threat, didn't you?

20 Commissioner Maxson: I do not think this testimony is competent except to show bias of this witness. That is, he is interested. Now the fact that he made a threat against you, does that show it?

Mr. Gilson: It shows how he took an interest in this case; that he went to the ends of threatening me. And I want to show that, if the case goes up, his interest in the case and his threat against me. The letter says he would take some proceeding. I do not know of any that he could take against me for inquiring.

30 Q. Now, you also had a mortgage against Mrs. Morrisey, didn't you? A. Against Mrs. Morrisey?

Q. What? A. No.

Q. You held a mortgage made by Mrs. Morrisey, didn't you? A. Not to the best of my recollection and belief.

Q. Assigned by Mrs. Morrisey? She owed you money? A. Not to my knowledge, excepting possibly for services at some time.

40 Q. That was secured, wasn't it? A. When was it? Maybe I can answer it.

Robert McAdams—Cross

Q. It was a mortgage recorded in Book 185 of Mortgages of Union County, at page 156 for fifteen hundred dollars? A. I think you will find that Mrs. Morrissey loaned me fifteen hundred dollars at that time.

Q. Cancelled February twenty-sixth, 1903, is that right? A. Yes. You will find Mrs. Morrissey didn't owe me anything. I owed her fifteen hundred dollars. 10

Q. It was a mortgage by you to her? A. Yes, sir; I think so.

Q. And that was cancelled by you on account of services rendered by you to her? A. No, sir; it was paid.

Q. Did you pay it? A. Positively paid it; yes, sir. 20

Q. By check? A. I believe; yes; undoubtedly by check.

Q. By your own check? A. By my own check.

Mr. Gilson: That is all.

Mr. Wolfskeil: There was a letter marked for identification when Mrs. Simrell was on the stand; she identified the letter. I desire to read it and offer it in evidence.

Mr. Gilson: Let me see it, will you please? 30

(Scrutinizes it).

No objection.

Letter heretofore marked D-1 for identification, entered in evidence and marked Exhibit D-1.

(Mr. Wolfskeil reads Exhibit D-1 to the Jury).

Mr. Wolfskeil: Nothing further. 40

Charge

Commissioner Maxson: Do you gentlemen want to sum this up?

10 Mr. Wolfskeil sums up to the Jury: "We admit and acknowledge that Mrs. Morrissey's condition today is one that justifies the appointment of a guardian for her person and her property." (Continuing).

Mr. Gilson sums up for the Petitioners.

Charge

20 COMMISSIONER MAXSON (Charge to Jury):
Gentlemen of the Jury: Your province is to determine all these questions of fact. There is not any question of law here, left for this Commission to determine. You must take the testimony of all the witnesses with a view to their personal interest, their chances of observation, and determine what its weight is, and having determined that you must find the date.

The only contested question here is the date when Catherine Morrissey became in such a mental condition that she was not able to look after her affairs.

30 Consider the testimony of the experts both of them very well-known, I suppose, to all you gentlemen, either personally or by reputation. Consider the testimony of each one of the witnesses with a view, as I have said, to their chances to observe this woman, and then determine whether their conclusion, based on their observation, is correct.

40 It is admitted that Mrs. Morrissey has senile dementia at the present time and the only thing for you to determine is when that condition be-

Verdict

came so bad that she was not responsible, that is, to say, that a good contract could not be made with her because she did not know what she was doing, and it is of some importance, as you can see, to the future for you to determine the proper date, for when any of these transactions, any of these mortgages she may have made, any documents she may have executed come in question, your determination will then be referred to to ascertain whether she was mentally sound at the time she did these things. So consider it carefully and return your verdict. 10

(#5) Juror: We have nothing to do with fixing the amount of the estate?

Commissioner Maxson: No. I believe it is admitted on the record. 20

I am asked to charge you again. There is only one point in dispute, and that is the date when she became mentally incompetent.

(Charge finished at 5:08 p. m.)

5:18 p. m. Jury returns to the Court Room.

VERDICT

Commissioner Maxson: Gentlemen, are you all present? 30

Foreman: Yes.

Commissioner Maxson: Have you determined on your verdict?

Foreman: We have.

Commissioner Maxson: If so, let the foreman state it. 40

Verdict

Foreman: Gentlemen, we find Mrs. Catherine Morrisey of the City of Summit of sound mental condition until July third, 1916.

10 Mr. Gilson: I understand the verdict is not that she was of sound mind, but that her unsound mental condition has continued since that time.

Foreman: We were just to decide the date when she became unsound in mind.

Commissioner Maxson: When she became in a mental condition such that she was not able to look after her person or affairs. And you find that what date?

Foreman: Up until July third, 1916.

Mr. Wolfskeil: I would like to ask if the Jury means she was of unsound mind on July third?

20 Foreman: Of sound mental condition until July third, 1916.

Conclusions Of Prerogative Court

(Filed February 15, 1918.)

NEW JERSEY PREROGATIVE COURT

<p style="text-align: center;">In the Matter of The Appeal from the Orphans' Court of the County of Union, appointing ROBERT H. Mc- ADAMS, Guardian of Catherine Morrisey, a lunatic.</p>	}	<p style="text-align: right;">10</p> <p style="text-align: right;">On Appeal, &c. MEMORAN- DUM.</p>
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On appeal from the Union County Orphans' Court. 20

On final hearing.

Mr. Herbert C. Gilson, for appellants.

Mr. William D. Wolfskiel, for respondents.

Walker, Ordinary.

This is an appeal from an order of the Union county orphans' court appointing Robert H. McAdams, Esquire, gaurdian of Catherine Morrisey, a lunatic.

Catherine Morrisey having been adjudged a lunatic under a commission in the nature of a writ *de lunatico inquirendo* issued out of the court of chancery, a transcript of the proceedings in that court was duly filed in the Union county orphans' court, which court, by order, duly appointed Robert H. McAdams, Esq., who is the present clerk in chancery, guardian of the lunatic. There was a contest over the guardianship in the orphans' court between relatives of the lunatic. 40
Certain of them filed a petition praying for the

Conclusions Of Prerogative Court

10 appointment of a guardian other than Mr. McAdams, upon grounds set forth in the petition. The salient ones being that Mr. McAdams had been attorney for the lunatic for a number of years and had been active in keeping the petitioners away from her and keeping them ignorant as to her mental condition, and, also because, on the hearing under the commission, Mr. McAdams appeared with Mr. Wolfskeil and consulted and conferred with him during the progress of the proceedings; and they invoke rule 35 of the court of chancery, which provides that the clerk of the court shall not practice either as a solicitor or as a counsellor in the court, as a reason why Mr. McAdams' appointment should be reversed.

20 Whether practicing in the court of chancery as solicitor or counsel by the clerk in chancery in a lunacy proceeding, would disqualify the clerk afterwards from being appointed guardian of the lunatic by the orphans' court it is not necessary to decide, because what was done by Mr. McAdams in this case was not practicing in the court. Mr. McAdams had been counsel for the subject of the inquisition. He did not file the petition for
30 the commission nor address the commissioners nor examine witnesses upon the taking of the inquisition. This was admitted by counsel for appellants. What he did he had a right to do and properly did, namely, to consult with counsel who was conducting the proceedings and give him information which he possessed, and which presumably aided in the proper development of the petitioner's case.

40 Counsel for the relatives who objected to the

Conclusions Of Prerogative Court

appointment of Mr. McAdams asked leave to take depositions in this court to show that Mr. McAdams was active at the counsel table at the hearing before the commissioners and jury. This I denied, not only because the matter of taking testimony in this court on appeal is discretionary with the Ordinary, but also because counsel admitted, as above stated, that Mr. McAdams had not addressed the commission or the jury or examined any witnesses, and, of course, the record discloses that he was not the solicitor of the petitioners. As I remarked before, the only thing he did was what anyone possessed of facts bearing upon the case was privileged to do, namely, assist counsel in developing the case. 10

The appellants placed reliance on the case of *Read v. Drake*, 2 N. J. Eq. 78. It was there decided that under the act of 1820 (*Rev. Laws*, 784) the mother or next of kin were given a preference and were entitled, if they desired it, to the appointment of guardian of minors under fourteen years of age, and could not be passed by except upon some satisfactory objection made and sustained before the court. That case has no application to the one at bar. That involved the appointment of a statutory guardian for an infant. This case involves the appointment of a statutory guardian for an insane person. The provision which here governs is to be found in the act concerning idiots and lunatics, *Comp. Stat. p. 2781, § 1*, which provides that in case of lunacy found the Chancellor shall cause to be transmitted to the orphans' court of the county of the lunatic's residence, a certified copy of the proceedings and the orphans' court is directed and required, on application 20 30 40

Conclusions Of Prerogative Court

for that purpose, to appoint some *fit and discreet* person guardian of such lunatic. It will be observed at a glance that the only qualification here required is the appointment of a *fit and discreet* person. That Mr. McAdams is fit to be appointed guardian of a lunatic is perfectly clear, and that he is a discreet person I think is equally apparent. That he possessed the qualifications of fitness and discretion was decided by the orphans' court, and there is nothing in the record which suggests any reason why the discretion exercised by the orphan's court in making the appointment should be overturned.

I am of opinion that the order appealed from should be affirmed, and that will be the order.

PETITION OF APPEAL.

Filed November 28, 1917.

PREROGATIVE COURT OF NEW JERSEY.

IN THE MATTER OF THE APPEAL
FROM THE ORDER OF THE OR-
PHANS' COURT OF THE COUNTY
OF UNION, APPOINTING ROBERT
H. MCADAMS GUARDIAN OF
CATHERINE MORRISEY, A LUNA-
TIC.

*Petition of Ap-
peal.*

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*To Hon. Edwin Robert Walker, Ordinary of the
State of New Jersey:*

The petition of appeal of Margaret McCahill, Mary A. Kelly, Michael J. Kelly, Thomas F. Kelly, Elizabeth M. Brown, Florence Springer and Joseph Hughes, respectfully shows:

1. Your petitioners are nieces, nephews, grand-nieces and grand-nephew, respectively, of Catherine Morrisey, a lunatic, of the City of Summit, in the County of Union and State of New Jersey.

30

2. On September 14th, 1917, the said Catherine Morrisey was adjudged to be a lunatic, under a writ de lunatico inquirendo, instituted by your petitioners and other relatives of the said Catherine Morrisey; and by a decree of the Court of Chancery of New Jersey, entered on October 2d, 1917, the said proceedings were confirmed; that a transcript of the said proceedings was filed in the Union

40

PETITION OF APPEAL

County Orphans' Court on October 15th, 1917, in accordance with the statute in such case made and provided.

- 10 3. On October 19th, 1917, your petitioners, Margaret McCahill and Elizabeth M. Brown, presented their petition and applied to the Union County Orphans' Court, for the appointment of a guardian of the said Catherine Morrissey, a lunatic, and when Robert H. McAdams was nominated for such guardian, by the proctor who had represented the said lunatic on the proceedings aforesaid, your said petitioners withdrew their application in order that a new petition setting forth their reasons for objecting to the appointment of the said Robert H. McAdams, might be presented.
- 20 4. On October 26th, 1917, your petitioners on this appeal filed their petition and applied for the appointment of a guardian, other than the said Robert H. McAdams, and set forth in said petition their reasons for objecting to the appointment of the said McAdams as such guardian, and requested the appointment of either Clarence Kelsey, a lawyer of this State, or William S. Bird, manager of the Business Men's Association of Summit, N. J., or the Summit Trust Company, as such guardian.
- 30 A petition was also presented at the same time by the proctor who had represented the said lunatic on the lunacy proceedings, on behalf of Annie Fleming, Frank J. O'Brien and Leonard O'Brien, grand-niece and grand-nephews, respectively, of the said Catherine Morrissey, praying that a guardian be appointed; and the said proctor again nominated Robert H. McAdams for such guardian.
- 40 5. On November 9th, 1917, the said Union County Orphans' Court made an order appointing

PETITION OF APPEAL

the said Robert H. McAdams guardian of the said Catherine Morrissey, a lunatic.

6. Your petitioners complain and allege that the whole and every part of the said order appointing Robert H. McAdams guardian as aforesaid, is erroneous, improper and contrary to law, and that your petitioners are aggrieved thereby. 10

7. Your petitioners allege, for grounds of appeal, as follows:

a. Your petitioners are the nearest of kin to the said Catherine Morrissey, and their preference and nomination of a guardian should not have been disregarded by the Court.

b. Your petitioners had not renounced their right to the guardianship, and they were therefore entitled to the guardianship. 20

c. No notice of the application for the appointment of a guardian was given by the said Annie Flemming, Frank J. O'Brien and Leonard O'Brien.

d. The objections to the appointment of Robert H. McAdams as guardian showed that he was an improper person to be appointed guardian under the circumstances. 30

e. The Court abused its discretion in appointing the said McAdams as guardian, in view of the objections of your petitioners.

Your petitioners therefore pray that the said order may be reversed, set aside and for nothing holden, and that one of your petitioners or one of the persons or the trust company nominated by your petitioners, be appointed guardian of the said Catherine Morrissey, a lunatic; and that your petitioners 40

PETITION OF APPEAL

may have such other relief as to this Honorable Court shall seem meet.

MARGARET McCAHILL,
ELIZABETH M. BROWN,
FLORENCE J. SPRINGER,
JOSEPH R. HUGHES.

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HERBERT CLARK GILSON,
Proctor and of Counsel with Appellants.

MARY A. KELLY,
MICHAEL J. KELLY,
THOMAS F. KELLY,
By HERBERT CLARK GILSON,
Proctor,

Due and legal service of the within petition is
acknowledged this 27th day of November, 1917.

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W. D. WOLFSKEIL,
Proctor of Annie Flemming, Frank J. O'Brien
and Leonard O'Brien.

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ANSWER TO PETITION OF APPEAL.

Filed December 10, 1917.

PREROGATIVE COURT OF NEW JERSEY.

IN THE MATTER OF THE APPEAL FROM THE ORDER OF THE OR- PHAN'S COURT OF THE COUNTY OF UNION, APPOINTING ROBERT H. MCADAMS, GUARDIAN OF CATHERINE MORRISEY, A LUNATIC.	}	<i>On Petition of Appeal.</i>	10
	}	<i>Answer to Pe- tition of Ap- peal.</i>	

The answer of Annie Flemming, Frank J. O'Brien and Leonard O'Brien, respondents, to the petition of Margaret McCahill, Mary A. Kelly, Michael J. Kelly, Thomas F. Kelly, Elizabeth M. Brown, Florence Springer and Joseph Hughes, appellants. 20

1. These respondents, answering, say that they admit the allegations contained in paragraph 1 of the petition of appeal filed herein.

2. They admit the allegations contained in paragraph 2.

3. They admit that a petition was presented to the Union County Orphans' Court by the appellants as alleged in paragraph 3 of the petition of appeal, but charge that it was unconditionally withdrawn. 30

4. For answer to paragraph 4 of the petition of appeal, they say that on October 19th, 1917, in the Union County Orphans' Court, when the proctor for the appellants withdrew the petition for the appointment of a guardian for Catherine Morrisey, a lunatic, theretofore filed by the appellants, the proctor for these respondents gave notice in open Court, in the presence and hearing of said proctor 40

ANSWER TO PETITION OF APPEAL

for the appellants, that a petition would be filed by these respondents and that application would be made to said Court on October 26th, 1917, for the appointment of a guardian for said Catherine Morrisey, a lunatic.

10 On October 20, 1917, a petition was filed in the Surrogate's Office of Union County by these respondents, in accordance with said notice, and on October 26th, 1917, a hearing was had thereon by the Union County Orphans' Court.

At the same time the proctor for the appellants who was then and there in attendance, submitted a petition to the Court on behalf of the appellants, which petition was taken under advisement by the Court, but was subsequently withheld from the files
20 for scandal and impertinence.

At the hearing held on the petition submitted by the respondents in the Union County Orphans' Court on October 26th, 1917, Robert H. McAdams was nominated for guardian by these respondents, and the proctor for the appellants on their behalf, after objecting to the appointment of said Robert H. McAdams, submitted several other nominations.

30 Thereupon, the Court reserving decision, notified the parties in interest that a decision would be announced at the session of the Court to be held on November 2nd, 1917.

On that date, in the presence of the proctors for the appellants and respondents, the Court announced the appointment of said Robert H. McAdams as guardian of said Catherine Morrisey, a lunatic.

40 On November 9th, 1917, the said Court signed an order appointing said Robert H. McAdams guardian of said Catherine Morrisey, a lunatic, upon his giv-

ANSWER TO PETITION OF APPEAL

ing a bond to the Ordinary of this State in the sum of \$35,000.00.

A bond for such sum was subsequently, on November 12, 1917, approved by the Honorable James C. Connolly, Judge of the Union County Orphans' Court, and filed in the office of the Surrogate of the County of Union, and said Robert H. McAdams then took upon himself the performance of his duties as guardian of said Catherine Morrissey, a lunatic.

10

5. They admit the allegations contained in paragraph 5.

6. These respondents are advised, believe and submit that said order is just and in accordance with law, and deny that said order or any part thereof is erroneous, improper or illegal, but on the contrary allege that said order in every part thereof is legal, proper and correct.

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They therefore pray that the said order may be in all things affirmed with costs to be adjudged to these respondents.

WILLIAM D. WOLFSKEIL,
Proctor for and of Counsel with
Respondents.

Service acknowledged this 7th day of December, 1917.

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HERBERT CLARK GILSON,
Proctor for Appellants.

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