

NEW JERSEY COURT OF ERRORS AND APPEALS.

IN THE MATTER OF THE ESTATE	}	APPEAL, FROM
OF ELIZABETH WALSH, de-		PREROGATIVE
ceased.		COURT.
APPEAL OF IDA E. WAGNER.		

BRIEF OF APPELLANT.

Elizabeth Walsh died December 25, 1904, leaving her surviving four children, to wit, Ida E. Wagner, Clara J. Chadwick, Ellen M. Fennimore and Emma L. Deegan, and a grandchild Dora Meister, who is the daughter of a deceased child.

She left a will in which she gave all her property to these five representatives, share and share alike. Ida E. Wagner is the executrix under this will.

On December 20, 1907, Ida E. Wagner, executrix, filed an account in the Camden Orphans' Court. No citations were issued and no notice given to the various parties in interest.

On December 27, 1907, two of the five parties in interest, to wit, Ellen M. Fennimore and Emma L. Deegan, filed exceptions to this account. As to the other three parties there has never been any issue framed and no

hearing as to their rights. The reasons given by the Orphans' Court for deciding as it did would not apply to the parties who did not except to the account, and would have caused the Court, if exceptions had been or should be filed by them, to decide in favor of the accountant.

Notwithstanding this the Orphans Court finds, not the amount due the exceptants, but adjudges that the accountant has \$8,200.16 to be distributed according to law.

Decisions adverse to the executrix were given as to three items of discharge in the account. The principal item is represented by Voucher Exhibit P2 (page 159), and is a claim by Ida E. Wagner for furnishing a home to her mother, the testatrix, from February, 1904, to the date of her death, pursuant to contract and agreement made with the testatrix. We appeal from each of these decisions and from the finding of the amount to be distributed.

The Orphans' Court refused to consider the merits as to any of these matters, upon the assumption that the question had been settled adversely to accountant in the case of Fennimore vs. Wagner and was *res judicata*.

THE ACCOUNTANT WAS NOT A PARTY TO AND CANNOT BE BOUND BY THE FORMER JUDGMENT.

It is true Ida E. Wagner as an individual is made defendant in the original suit. (Case, page 8, line 21).

This cannot make the judgment conclusive as to her when accounting as executrix.

Gibson vs. Willis (Tenn.), 36 S. W., 154.

Matter of Yetter, 61 N. Y. Supp., 175-180.

AS TO THE EXCEPTANT, PHILIP J. DEEGAN, ADMINISTRATOR, THE ACCOUNTANT IS NOT CONCLUDED BY THE CHANCERY DECREE.

As to the exceptant, Philip J. Deegan, administrator of Emma L. Deegan, accountant cannot be concluded, for he was never a party to that suit.

It is no answer to say he was a party as an individual. Pending the suit the complainant, Emma L. Deegan, died. The only order which could be construed as a revival of the suit appears on page 181 of the state of the case. It merely inserts Philip J. Deegan as a complainant.

In order that a judgment may work an estoppel it is necessary that the parties be brought in, in the same character or capacity. They are not bound where in one judgment they sue or defend in an individual capacity, and in the other as executor or administrator.

Gibson vs. Willis (Tenn.), 36 S. W., 154.

Matter of Yetter, 61 N. Y. Supp., 175-180.

Hall vs. Richardson, 22 Hun., 444.

Sutton vs. Read, 176 Ill., 69; 51 N. E., 801.

Polluck vs. Cox, 108 Ga., 430; 34 S. E., 213.

THERE WAS NO EVIDENCE FROM WHICH THE ORPHANS' COURT COULD LAWFULLY DETERMINE THAT THE QUESTIONS PRESENTED IN THIS CASE WERE ADJUDICATED BY THE COURT OF CHANCERY.

The record of the Court of Chancery (the bill, plea and decree) will not show it. It shows merely that the defendant failed to prove the consideration pleaded. It

does not even show that the question of compensation for services was considered by the court. The testatrix might well be indebted to her daughter and yet that not be the consideration for the transfer.

Exceptant offered the record in the Chancery case (page 156, lines 30 to bottom) but did not offer testimony as to what the proofs were nor what the Court considered in that case.

The rule originally was that in determining to what extent a judgment is an estoppel the Court must look to the *record alone*.

2 Black on Judgments, Sec. 623.

This has been modified so that the rule is now stated as follows: "The record must show that the same matter might have come in question on the former trial, and then the fact that it did come in question may be shown by extrinsic proof."

2 Black on Judgments, Sec. 624.

The opinion of the Chief Justice, although no part of the record, indicates that the decree rests upon the ground that the consideration proven, although it might be perfectly good as to some of the assignments, did not apply to the furniture nor the \$1,000 in money.

Fennimore vs. Wagner, 68 Atl., 230.

There is no evidence from which the Court can find that it rests on any other ground.

The burden of proving the identity of the questions determined is on the exceptant.

Russell vs. Place, 94 U. S., 606.

He has absolutely failed to do this.

EVEN IF WE GO BEYOND THE RECORD AND PROOF, IT CANNOT BE SAID THAT THE QUESTIONS HERE PRESENTED HAVE BEEN ADJUDICATED ADVERSELY TO ACCOUNTANT.

The most that could have happened in the Chancery suit is that Mrs. Wagner would have been required to file an account in that Court.

Page 32, lines 29 to bottom.

In such an account Mrs. Wagner would have been allowed all just credits and allowances.

An executor, by submitting to account, does not lose his right to retain for an indebtedness due him from the estate.

Campbell vs. Campbell, L. R., 16 Ch. Div., 198-201.

An account is defined to be a detailed statement of mutual demands in the matter of debt and credit between parties, arising out of contracts or some fiduciary relation.

McWilliams vs. Allen, 45 Mo., 573-4.

Preston Bank vs. Pacific Co., 102 Mich., 462.

Madison County vs. Collier, 79 Miss., 220.

Chancellor McGill said: "An executor's account where there is an estate and allowances are expected must show both debits and expected credits."

Maxwell vs. McCreery, 57 N. J. Eq., 287-290.

The Court of Chancery nowhere finds or decrees that no contract existed or that Mrs. Wagner is entitled to nothing for her services. The most that is there decreed is that technically on the record before it the assignments were not made for a valuable consideration. They are

set aside and Mrs. Wagner is directed to account for them. That she has done.

An examination of the opinion of the Chief Justice (68 *Atl.*, 230) will show that this decree was affirmed not because the Court thought or even suspected that no contract existed between Mrs. Wagner and her mother.

The plea alleged that there was a good and valuable consideration for these transfers without stating what it was.

The Court finds that the evidence offered of consideration failed to establish the plea. The consideration proven did not apply to the \$1,000 or the furniture. The plea being broader than the proof, the defendant technically fails.

The testimony in the previous suit, although printed, is no part of the record, was not properly before the Court below and would not justify any decree based thereon.

A reading of that testimony, however, will show that no evidence appeared before the Court of Chancery of the acceptance by Mrs. Wagner of her mother's offer. It clearly appears in the testimony here.

The most the Court did or could decree was that Mrs. Wagner account. In so doing she may properly claim credit for anything to which she is legally or equitably entitled.

THE CLAIM FOR SERVICES IS CLEARLY PROVEN AND ITS MERITS NOT DISPUTED.

An executor has the right to retain a debt due to him individually.

Personette vs. Personette, 35 N. J. Eq., 472.

Kinnan vs. Wright, 39 N. J. Eq., 501-506.

In an action against an estate the uncontradicted testimony of one witness is sufficient to establish the claim.

Berry vs. Ballard, 3 Ky., L. Rep., *58.

It must be remembered that this is not a suit against an executor on a disputed claim, but an exception to a claim allowed and reported by the executor.

Where an item of disbursement is excepted to, the executor establishes a *prima facie* case by producing the voucher.

Burkheim vs. Wardell, 42 N. J. Eq., 337-343.

Exhibit P2 (page 159) establishes the claim of the executor and casts upon the exceptant the burden of showing that the contract, as there stated and sworn to, was never made. This the exceptant has not attempted to prove.

In addition to this the accountant has clearly proven by testimony, much of which was not objected to, that the statements contained in the claim are absolutely true.

Testimony, page 66, lines 2 to 19.

Testimony, pages 30 and 51.

Testimony, page 88, lines 23 to bottom.

Testimony, page 100, lines 22 to bottom.

Testimony, page 89, lines 14 and 16.

Testimony, page 97, bottom and 98 top.

Part of this testimony was presented by respondents in cross-examining Henry Wagner. No question concerning this contract was asked him on direct examination.

Page 88, lines 23 to bottom.

Such a contract between parent and child is perfectly good.

Collins vs. Collins, 45 N. J. Eq., 813-820.

MRS. WAGNER IS ENTITLED TO FAIR COMPENSATION FOR HER SERVICES.

This is true entirely aside from any question as to the value of the securities.

Where decedent fails for any reason to make a promised conveyance, the promisee may recover against the estate the value of the services.

Richie vs. Bennett, 54 N. Y. Supp., 379.

Reported also in 35 N. Y. App. Div., 68.

Chancellor McGill, speaking for this Court, states the law to be that the members of a family may recover for services rendered to deceased in a suit against the administrator when they prove either an express contract for remuneration or "that the circumstances under which the services were rendered were such as exhibit a reasonable and proper expectation that there would be compensation."

Disbrow s. Durand, 54 N. J. L., 343-5.

In *DeCamp vs. Wilson*, where the proof was not nearly so strong as in the present case, Chancellor Runyon, sitting as Ordinary, awarded a reasonable compensation to the daughter for care and attendance upon the mother on the ground that it was evident the daughter expected to receive compensation for her services and the mother intended to make it.

There, as in the present case, the mother made an abortive attempt to pay the daughter in her lifetime. She directed an agent or attorney to turn over to the daughter certain moneys which he failed to do.

The Chancellor considered the nature and extent of her services and allowed the claim for the amount claimed by the daughter.

DeCamp vs. Wilson, 31 N. J. Eq., 656.

Here Mrs. Walsh made a will dated February 25, 1904, in which she directed that all her just debts should be paid. She gave her husband one of her houses and directed that the rest of her estate be divided among her four children and the daughter of a deceased child equally.

The will complains of "the ill-treatment of my present husband, Joseph Walsh, who has, because of such treatment, forfeited consideration in this my will to any greater extent than I have herein given."

Shortly after making the will she went to live with her daughter, Ida E. Wagner. She came on the twenty-seventh day of February, 1904 (page 21, lines 29 to 31; page 110, lines 28 and 29), and continued to live there till the time of her death, December 25, 1904. (Page 1, lines 19 and 20; page 62, lines 19 to 22; page 66, lines 18 and 19; page 114, lines 28 and 29; 110, lines 26 and 27.)

Mrs. Walsh came to Wagner's without a dollar.

Page 83, line 30.

Her family had robbed her of everything she had. She hadn't clothes to put on.

Page 138, lines 10 and 11.

Her children, the exceptants and respondents, had been continually borrowing money from her and had rented and were living in her houses without paying their rent.

Page 143.

She was in her 78th year.

Page 115, line 22.

Before going to Wagner's she told John K. Esler: "I can't stand the way things are going, and I have got to break up my home." * * * "I think I will go down and live with Ida." * * * "There was a time that I hated Hen. Wagner worse than a rattlesnake, but he is the only friend I have got."

Page 65, lines 2 to 8.

"She was very poorly when she first came, but she gained health afterward, got along very nicely."

Page 105, lines 16 and 17.

She paid no board and nothing for nursing or servants. Mrs. Wagner was the servant all the time.

Page 115, lines 14 to 19.

At times there were several others helping.

Page 86, lines 14 to 16.

After being there about two weeks she told John K. Esler: "I ought to have been here a year ago." * * * "I feel better than I have felt for the last year or two." * * * "I have not had a home for years till now."

Page 65, lines 27 to 31.

She told John J. Walsh that Mrs. Wagner "was always good to her; took care of her."

Page 63, line 26.

She told him also that "Ida was the only one that was good to her, took care of her when she was sick, looked after her interests, took in her rents, and she said that the others did nothing but insult and abuse her."

Page 62, lines 13 to 16.

Mrs. Wagner agreed to furnish her mother a home the rest of her days, be it a long or short time.

Page 89, lines 14 and 15.

Page 97, bottom and 98 top.

Page 160, lines 1 to 4.

It is submitted that in fixing the compensation the Court should consider not so much what the services actually performed were worth as what the contract was worth to keep her the rest of her days.

It so happened that she lived less than ten months after the contract was made, but she might have lived twenty years. A person of that advanced age would require a great deal of attention.

It is submitted that the amount of \$6,920 claimed (page 159) by Mrs. Wagner would be only a fair compensation for such an undertaking at the time Mrs. Wagner undertook it.

THE COMPENSATION OFFERED BY TESTATRIX WAS REASONABLE.

Testatrix told Catharine Black that in consideration of Mrs. Wagner furnishing her a home she intended to leave Mrs. Wagner what she had. She didn't mention what property she had.

Page 100, lines 22 to bottom.

Certainly, if the other children had already had their share of her property and were ill-treating her, it would be only a fair agreement to offer Mrs. Wagner all the property left to keep her the rest of her days.

The Orphans' Court refused to allow us to prove that the amounts borrowed from her by her other children or given to them by her were as much as they should expect to get from her estate.

Page 68, lines 16 to 22.

Page 143, lines 19 to bottom.

It did appear, however, without objection, that these children had been living in her houses without paying rent or she was paying rent for them, and that she had been continually giving them money.

Page 143, lines 7 to 18.

She told Mrs. Wood that her other children had gotten enough; that she did not want them to have her property.

Page 154, lines 34 to 35.

She told John J. Welsh that Ida was the "only one that was good to her, took care of her when she was sick, looked after her interests, took in her rents, and she said that the others did nothing but insult and abuse her."

Page 62, lines 13 to 16.

It is submitted that the reasonableness of this compensation as against respondents is proven as it is, and the Court erred in not allowing us to produce full proof.

IT IS NOT NECESSARY FOR MRS. WAGNER TO CLAIM THROUGH OR UNDER THE ASSIGNMENTS.

It matters not whether or not valid assignments were ever made.

A contract is established entirely apart from the assignments.

Mrs. Walsh told Justice Baldwin that Mrs. Wagner would be paid for furnishing her a home.

Page 100, lines 1 and 2.

She told Catharine Black that she was going to make her home with Mrs. Wagner for her lifetime, and that she was going to leave Mrs. Wagner what she had. She didn't mention what property she had.

Page 100, lines 28 to 35.

THE ISSUES RAISED BY THE EXCEPTIONS SHOULD HAVE BEEN DECIDED IN FAVOR OF ACCOUNTANT.

Exceptions raise an issue similar to a pleading in a common law court.

The Court shall then "proceed to hear the proofs and allegations."

Laws of 1898, page 760, par. 124.

Laws of 1905, page 300.

The exceptions must be in writing, and must state specifically the item or items and particulars objected to and the reasons therefor.

Orphans Court, Rule 7.

A general exception is not good.

Holcomb vs. Holcomb, 11 N. J. Eq., 287-293.

Judged by these rules the accountant is entitled to judgment on the *first exception*.

It alleges that accountant obtained \$1,000 "by fraudulent means," without stating the facts from which the fraud may be inferred. Such an exception is bad.

Hurlbut vs. Hutton, 44 N. J. Eq., 302-7.

It clearly appears by the proofs that she never received this money.

Testimony of Henry Wagner, page 71.

Testimony of Ida E. Wagner, page 139, lines 14 to 16.

It was inserted on the debit side by inadvertence.

The decree does not direct her to account for this.

Decree, page 34.

If for any reason the Court cannot allow it on the credit side of the account, we ask leave to strike it out from the debit side. (Page 40, bottom.)

On the *second exception* we are entitled to judgment.

The sole ground of the exception is "because said executrix *never in fact paid* any such sum to the said Elizabeth Walsh in her lifetime."

That is the only issue and the proof is conclusive.

Henry Wagner says he saw the money paid.

Page 70, lines 1 to 20.

Mrs. Wagner says she turned over to her mother all moneys which came into her hands.

Page 135, lines 1 to 9.

This item is also supported by Exhibit P1.

Page 158.

The exceptant offers no proof as to this.

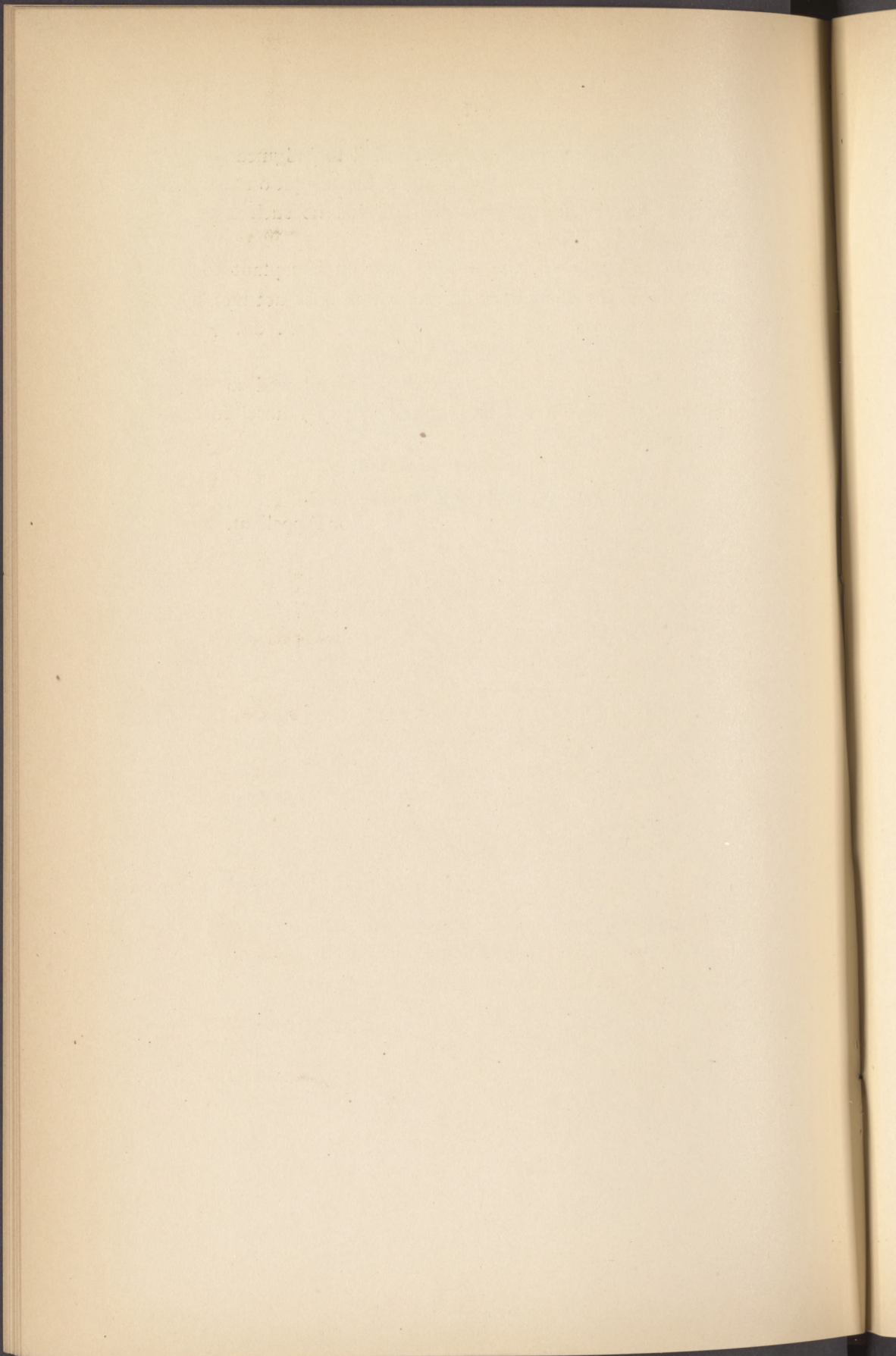
On the *third exception* we are entitled to judgment.

That exception rests entirely upon the allegation that in the Chancery suit "it was decreed that no such contract had ever existed."

As already shown, the burden was on exceptant to prove this. He offered the decree, which does not mention the contract, and offered no proof which did or could show that the decree had this effect.

We claim also that accountant should be allowed commissions and should not be required to pay counsel for exceptants.

JOSEPH KAIGHN,
FRENCH & RICHARDS,
For Appellant.



NEW JERSEY COURT OF ERRORS AND APPEALS.

In the matter of the

ESTATE OF ELIZABETH WALSH,

Deceased.

} On Appeal of

} IDA E. WAGNER.

BRIEF OF RESPONDENTS.

The principal matter here in dispute has already been passed upon by four courts in this State and the litigation, which has been a great hardship upon the respondents, has lasted nearly five years.

Fennimore vs. Wagner, 64 *Atlan.* 698 (opinion page 28 of the state of the case).

Same case on appeal to Court of Errors, 68 *Atlan.* 230.

Camden County Orphans' Court (opinion page 161, state of case).

New Jersey Prerogative Court (opinion page 176, state of case).

Elizabeth Walsh, testatrix, had owned certain mortgages, insurance stock and moneys, all of which had been transferred by her to appellant, Ida E. Wagner, her daughter, while Mrs. Walsh was making her home with Mrs. Wagner, during the last year of her life. After the death of Mrs. Walsh, Mrs. Wagner refused to account for this property as part of the estate of her mother, and a bill was filed by

the respondents, other children and legatees, in which they charged that she had obtained this property from Mrs. Walsh by fraud and undue influence, and without any consideration. The bill also mentioned mental incapacity on the part of Mrs. Walsh. To this bill a plea was filed setting up the fact that the transfer was founded upon a valuable consideration.

In the case above first cited the Court of Chancery held that the plea was not sustained and a decree was entered in accordance with the prayer of the bill, requiring appellant to account in the Orphans' Court of Camden County.

After this decree had been affirmed by the Court of Errors in the case secondly cited above, appellant filed an account in the Orphans' Court of Camden County, which appears upon pages 40 and 41 of the state of the case, in which she charges herself with all of the property which the Court of Chancery had decreed that she should account for. She then prayed allowance as indicated on page 41 for the cash, by saying that she had no knowledge of it (item No. 2); for the proceeds of the sale of a mortgage that she had paid it to Elizabeth Walsh in her life time (item No. 3); that she has a claim for \$6,920, with interest, for furnishing a home to Elizabeth Walsh according to contract (No. 4); and she further claims commissions (item No. 8).

Exceptions to items Nos. 2, 3 and 4 were sustained on the ground that the matter was *res adjudicata*.

It is submitted that the decision of the Orphans' Court was correctly made.

City of Patterson vs. Baker, 6 Dick. 57.

Mershon vs. Williams, 34 Vroom 398.

Thompson vs. Williamson, 1 Rob. 212.

As to items Nos. 2 and 3, she admitted in the Chancery suit that she had them and in that suit claimed the right to retain them as having been acquired for a valuable consideration. The Court of Chancery decreed that they were in her possession, were part of the estate of Elizabeth Walsh, deceased, and must be accounted for. How could she in the Orphans' Court be heard to say that she had no knowledge of item No. 2, or that she returned the moneys mentioned in item No. 3 to Elizabeth Walsh during her life time?

As to item No. 4 wherein the accountant claims compensation for furnishing Elizabeth Walsh with a home the rest of her days, to the amount of \$6,920 under a contract, the Orphans' Court's decision was that this matter was res adjudicata. In the Court of Chancery under a plea stating that the mortgages were transferred by Elizabeth Walsh to her for valuable consideration, she attempted to prove this same agreement and failed (Jos. Kaighn's testimony in the Court of Chancery (page 14), and the same witness's testimony (pages Nos. 50, 54, 55) in the Orphans' Court). It is significant to note that in the Orphans' Court the sum of \$6,920 claimed is the total value of the mortgages and fire insurance stock set up in the bill of complainant. It seems too plain for argument that this claim in the Orphans' Court raised "the same question substantially" (which is the language used in the above case of *Patterson vs. Baker*) as that litigated in the Court of Chancery.

The only matter in dispute in the Orphans' Court, which had not already been passed upon and which was decided against the accountant, was the matter of commission; which the Court very properly refused to allow to Mrs. Wagner. No Court, seeking to do justice, could have allowed accountant commissions. She had first denied that there was

any will (pages Nos. 146-7). She then bought off the co-executrix, who had filed a bill against her in the Court of Chancery (page No. 147). She has continuously fought to retain all of the personal property as her own in this litigation and has failed to charge herself in her account with the receipt of any interest or income from the property so held by her.

Commissions are allowed only for faithful discharge of duty.

Fluck vs. Lake, 9 Dick. 638.

From the decree of the Orphans' Court the appeal was taken to the Prerogative Court and there affirmed (page 176 of the state of the case). The contention was then made that there was a grand-daughter, Dora Meister, who was not a party to the suit in the Court of Chancery and therefore that that decision could not be regarded as *res adjudicata* in the proceedings in the Orphans' Court. But Dora Meister was benefitted by both decrees and was not represented by counsel and made no objection in either Court, nor is she now here to protest against receiving such benefit. This contention simply goes to show to what length appellant has gone in an effort to prolong this litigation and exhaust the resources of respondents.

It is respectfully submitted not only that the decree of the Prerogative Court should be affirmed on this appeal but that it should be affirmed at once in order that a prompt termination may be made to proceedings evidently had for the purpose of harassing respondents, and keeping respondents out of their just rights for the longest possible time.

GREY & ARCHER,
F. A. REX,
Solicitors for Respondents.

Bill filed November 10th, 1905.

IN CHANCERY OF NEW JERSEY.

*To the Honorable William J. Magie, Chancellor of the
State of New Jersey:*

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Humbly complaining, shows unto your Honor your oratrices, Ellen M. Fennimore and Emma L. Deegan, residents of the city of Camden, State of New Jersey, that they are the daughters of Elizabeth Walsh, now deceased, and that the defendants, Ida E. Wagner and Clara J. Chadwick, are executrices under the will of the said Elizabeth Walsh, deceased, as hereinafter set forth.

And your oratrices further show, that the said Elizabeth Walsh, being then a resident of the city of Camden, State of New Jersey, departed this life, in said city, on the twenty-fifth day of December, A. D. nineteen hundred and four, having first made and executed her last will and testament, bearing date the twenty-fifth day of February, A. D. nineteen hundred and four, wherein and whereby she did appoint her daughters, Ida E. Wagner and Clara J. Chadwick, the defendants, to be the executrices of said will; and after devising a certain property situate in the city of Camden to her husband, one Joseph Walsh, did give, devise and bequeath all of the rest, residue and remainder of her estate, both real and personal, unto her children, Ida E. Wagner and Clara J. Chadwick, the defendants herein, and Ellen M. Fennimore and Emma L. Deegan, the complainants herein, and unto her granddaughter, Dora Meister, to be held by them in fee simple, share and share alike.

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And your oratrices further show, that said last will and testament was duly proved before the Surrogate of the said county of Camden, on the thirteenth day of January,

A. D. nineteen hundred and five, and letters testamentary granted thereon by said Surrogate unto the said defendants, Ida E. Wagner and Clara J. Chadwick; that the said Elizabeth Walsh was in her lifetime possessed of certain bonds and mortgages securing the same upon premises situate in said city of Camden, to wit:

10 Bond and mortgage of eight hundred dollars bearing date the sixth day of December, A. D. 1899, recorded in the office of the Register of Deeds of Camden county, in Book 81 of Mortgages, page 233, &c., made and executed by Winfield Stetser, et ux., to said Elizabeth Walsh.

Bond and mortgage of eight hundred dollars bearing date the twenty-fifth day of January, A. D. 1902, recorded in the office of the Register of Deeds of Camden county, in Book 58 of Mortgages, page 513, &c., made and executed by Abigail F. Hugg, to said Elizabeth Walsh.

20 Bond and mortgage of twelve hundred dollars bearing date the twentieth day of January, A. D. 1892, recorded in the office of the Register of Deeds of Camden county, in Book 87 of Mortgages, page 177, &c., made and executed by Edwin T. Anthony to said Elizabeth Walsh.

Bond and mortgage of twelve hundred dollars bearing date the twenty-fifth day of April, A. D. 1903, recorded in the office of the Register of Deeds of Camden county, in Book 91 of Mortgages, page 165, &c., made and executed by Anna C. Marshall, et al., to said Elizabeth Walsh.

30 Bond and mortgage of fifteen hundred dollars bearing date the twenty-ninth day of August, A. D. 1900, recorded in the office of the Register of Deeds of Camden county, in Book 89 of Mortgages, page 169, &c., made and executed by Catherine Neutze to said Elizabeth Walsh.

Bond and mortgage of seven hundred dollars bearing date the nineteenth day of August, A. D. 1895, recorded in the office of the Register of Deeds of Camden county, in Book 69 of Mortgages, page 603, &c., made and executed by John Baxter, et ux., to said Elizabeth Walsh;

said mortgages conveying the premises in the same described, to secure the payment of the said bonds respectively.

And your oratrices further show, that the said Elizabeth Walsh was in her lifetime also possessed of seventy-two shares of the capital stock of the Camden Fire Insurance Company, a corporation organized under the laws of the State of New Jersey, the same being of the value of eight hundred and sixty-four dollars.

And your oratrices further show, that the said Elizabeth Walsh was in her lifetime possessed of the sum of about one thousand dollars in cash, and of household furniture of the value of two hundred dollars. 10

And your oratrices further show, that the said Elizabeth Walsh was a woman of advanced years, of the age of seventy-seven, in feeble health and of weakened mental capacity, and not expected long to live; and while in such condition was induced by the said defendant Ida E. Wagner to go to live with her daughter, the said Ida E. Wagner, in the said city of Camden, in the latter part of February, in the year nineteen hundred and four, having 20
on or about the same time made and executed her last will, wherein she divided her estate equally between her four children and one grandchild, as above set forth and as in said will appears, and continued to live with her daughter, the said Ida E. Wagner, as aforesaid, until her death.

And your oratrices further show, that the said Ida E. Wagner thus securing the custody and physical control of her mother, the said Elizabeth Walsh, who was thereafter until the time of her death in an enfeebled and weakened mental and physical condition, and wholly incapable of resisting the persuasions and entreaties of her daughter, the said Ida E. Wagner, fraudulently induced and unduly influenced her, the said Elizabeth Walsh, on or about the first day of April, A. D. nineteen hundred and four, to assign and transfer unto her, the said Ida E. 30

Wagner, without any consideration therefor, the said several bonds and mortgages, together with the said shares of stock in the Camden Fire Insurance Company, the moneys and household furniture, in the bill of complaint before mentioned, being all the personal property belonging to the said Elizabeth Walsh, and all of the value of about eight thousand three hundred and sixty-four dollars.

- And your oratrices further show, that the said Ida E. Wagner, having thus fraudulently and by means of undue and unfair influences exercised upon the said Elizabeth Walsh obtained the assignments of said bonds, mortgages and shares of stock, and the possession of the said moneys and household furniture, still continues to claim fraudulently the same as her own and withholds them from the proper administration of the estate of said Elizabeth Walsh, deceased, and wholly refuses to assign said bonds, mortgages and shares of stock, or to deliver the possession of the household furniture and money to said estate, or to account for any or all of said bonds, mortgages, shares of stock, household furniture or moneys as part of said estate, or to file an inventory and appraisement of the same as part of said estate.

- And your oratrix further shows, that on the contrary, the said Ida E. Wagner, on or about the eighteenth day of January, A. D. nineteen hundred and five, transferred and assigned to one Abraham Anderson the above mentioned mortgage made by Anna C. Marshall to said Elizabeth Walsh to secure the sum of twelve hundred dollars; and has likewise transferred and assigned to one Frank J. Burr, on or about the tenth day of September, A. D. nineteen hundred and five, the above mentioned mortgage made by Abigail F. Hugg to said Elizabeth Walsh, to secure the sum of eight hundred dollars, and has converted the proceeds of said assignments to her own use and refuses to account therefor to the said estate; that said Ida E. Wagner, in refusing to administer the

said estate, has said to complainants that there is no estate to administer.

And your oratrices further show and charge, that they are entitled to a full and complete discovery of all the said matters and an accounting of all the proceeds derived from the assignments of said mortgages, as well as a surrender of all other securities and personal property still retained by said Ida E. Wagner, individually to said estate.

And your oratrices further show, that the said defendant, Clara J. Chadwick, on or about the day of _____, A. D. nineteen hundred and five, filed a bill in this honorable Court as executrix of the estate of Elizabeth Walsh, deceased, for herself and the complainants in this bill and the other beneficiaries under the will of Elizabeth Walsh, deceased. In said bill the said defendant Clara J. Chadwick charged that the defendant, Ida E. Wagner, by undue influences and without consideration, had assigned to her certain mortgages on real estate in the city of Camden, together with bank stock and moneys, the property of the said Elizabeth Walsh, which said mortgages and personal property are set out in this bill; and the said defendant Clara J. Chadwick also charged that said defendant Ida E. Wagner refuses and neglects to account to the said estate for said personal property; the prayer of the bill as filed by the defendant Clara J. Chadwick being that the said defendant Ida E. Wagner should account for and assign to the estate of said Elizabeth Walsh the said personal property so obtained as aforesaid, that the defendant Clara J. Chadwick and the other beneficiaries under the will might have their equal share in said property. After the filing of said bill the defendant Ida E. Wagner filed a plea. The said defendant Clara J. Chadwick thereupon neglected and refused to prosecute the said bill filed by her, and the complainants are informed and credibly believe that the said defendant Clara J. Chadwick has entered into a

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monetary relation with the other defendant Ida E. Wagner not to prosecute said bill so filed by her, to the prejudice and injury of the complainants' rights; and the said defendant Clara J. Chadwick stated to complainants that she, Clara J. Chadwick, has been satisfied and that the other heirs must take care of themselves.

- And your oratrices well hoped that the said Ida E. Wagner would have given up and yielded to said estate the said bonds and mortgages, shares of stock, moneys
10 and other personal property so held by her, and that she would have released to said estate all pretence of right and title to the same, and would have accounted for the proceeds of the sale thereof, and that for that purpose your oratrices have in a friendly manner applied to the said Ida E. Wagner and requested her so to do; but now so it is, may it please your Honor, that the said Ida E. Wagner, contriving and intending to injure and aggrieve your oratrices, and the other beneficiaries named in the will of said Elizabeth Walsh, deceased, and to defraud
20 them out of the said personal property, which of right belongs to them and the said other beneficiaries, wholly refuses to comply with such reasonable request of your oratrices, as in justice and equity she ought to have done; and to justify such fraudulent and inequitable conduct, said Ida E. Wagner insists upon various untrue and unjust allegations, giving out that the said Elizabeth Walsh voluntarily and without any undue influence or persuasion had given all of said personal property to her, the said Ida E. Wagner; and the said defendants, Ida E. Wagner and Clara J. Chadwick, still refuse to file any account or to assign
30 any property of the said Elizabeth Walsh, deceased, in their possession, to the estate of the said Elizabeth Walsh, deceased. And your oratrices expressly charge that the said assignments and transfers and deliveries of said personal property were obtained by the said defendant Ida E. Wagner by fraud, circumvention and undue influence, and that the said defendant Clara J. Chadwick

has been paid by the said defendant Ida E. Wagner a sum of money, the amount to complainants unknown, not to prosecute the said bill heretofore filed by the said Clara J. Chadwick; all of which things are contrary to equity and good conscience and tend to the manifest injury of your oratrices and the other beneficiaries named in the said will.

In tender consideration whereof and for that your oratrices are remediless in the premises by the strict rules of the common law and can only be adequately relieved in this honorable court, where matters of this nature are properly cognizable; to the end, therefore, that said Ida E. Wagner and Clara J. Chadwick may, without oath, true, full and perfect answer make according to their knowledge, information and belief, to all and singular the matters and things hereinbefore stated, and that as fully and particularly as if the same were here repeated and they and each of them thereunto interrogated, paragraph by paragraph, and that they may answer and set forth whether the said Ida E. Wagner did obtain said assignments of said mortgages, transfers of shares of stock and delivery of said furniture and moneys as hereinbefore described from the said Elizabeth Walsh, and whether she agreed to pay any consideration therefor, and that the said Clara J. Chadwick may answer and set forth, but without oath, what arrangement she has made with the defendant, Ida E. Wagner, not to prosecute the bill filed by her of her own benefit and for the benefit of the complainants, and what consideration the said Ida E. Wagner has agreed to pay to the said defendant, Clara J. Chadwick; and that they, the said defendants, may discover and set forth the particulars and value of said personal estate of the said Elizabeth Walsh; and whether they have sold or otherwise disposed of said personal estate or any part thereof, and to whom and for how much; and that they may account for the proceeds thereof; and that an account may also be had and stated of the moneys

received by the said Ida E. Wagner directly from the said Elizabeth Walsh; and that the said assignments of mortgages, transfers of stock and delivery of moneys and other personal effects by the said Elizabeth Walsh to the said Ida E. Wagner may be decreed to be fraudulent and unduly obtained and therefore void and inoperative as against the complainants and other beneficiaries; and that the same may be set aside and decreed to be canceled, and that said mortgages, shares of stock, 10 moneys and other personal property, be given up to be administered as part of the estate of Elizabeth Walsh, as well as the proceeds of the sales of said personal property received by her from the said Elizabeth Walsh; and that said Ida E. Wagner and Clara J. Chadwick may be decreed to pay to your oratrices the costs and charges to be taxed in this suit; and that your oratrices may have such other and further relief in the premises as the nature and circumstances of this case may require.

May it please your Honor, the premises considered, 20 to grant unto your oratrices the State's writ of subpoena, issuing out of and under the seal of this honorable court, directed to the said Ida E. Wagner and Clara J. Chadwick, thereby commanding them, by a certain day and under a certain penalty to be specified therein, to be and appear before your Honor, in this Honorable Court, then and there to answer all and singular the premises contained in this, your oratrices' bill of complaint, to stand to and abide by such order and decree in the premises as shall seem meet and agreeable to equity and good conscience; and your oratrices, as in duty bound, will ever 30 pray, &c.

FRED'K A. REX,
Solicitor for and of Counsel with Complainants.

Filed December 21, 1906.

IN CHANCERY OF NEW JERSEY.

Between

ELLEN M. FENNIMORE, ET AL.,

Complainants,

and

IDA E. WAGNER, ET AL.,

Defendants.

ON BILL, &C.

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PLEA.

The plea of Ida E. Wagner to the bill of complaint of Ellen M. Fennimore and Emma L. Deegan, complainants.

This defendant, by protestation, not confessing or acknowledging the matters and things in and by said bill set forth, and alleged to be true, in such manner and form as the same are thereby and therein set forth and alleged, for plea to the whole of said bill, says that for the assignment and transfer by Elizabeth Walsh to this defendant of the bonds, mortgages, shares of stock and other personal property in the bill mentioned, good and valuable consideration passed from this defendant to said Elizabeth Walsh.

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All which matters and things this defendant doth aver to be true and she pleads the same in bar to the said complainants' bill, and prays the judgment of this Honorable Court whether she should be compelled to make any other or further answer to the said bill, and prays to be hence dismissed with her costs and charges in this behalf most wrongfully sustained.

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JOSEPH KAIGHN,
Solicitor for Defendant, Ida E. Wagner.

STATE OF NEW JERSEY, }
 COUNTY OF CAMDEN, } ss.

IDA E. WAGNER, of full age, being duly sworn according to law, on her oath says, that the foregoing plea is not interposed for delay, but in good faith for the causes therein set forth.

IDA E. WAGNER.

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Sworn and subscribed to before me this 21st day of December, A. D. 1905.

WM. B. KNIGHT,
 M. C. C. of N. J.

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I certify that I have perused the complainants' bill in the above stated cause, and that the foregoing plea is well founded in point of law.

SAMUEL H. RICHARDS,
 Of Counsel with Defendant.

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Filed January 11, 1906.

IN CHANCERY OF NEW JERSEY.

Between

ELLEN M. FENNIMORE, ET AL.,

Complainants,

and

IDA E. WAGNER, ET AL.,

Defendants.

} ON BILL, &c. 10
 } REPLICATION.

The complainants join issue on the plea of the defendant, Ida E. Wagner.

FRED'K A. REX, 20
 Solicitor for Complainants.

Suggestion upon record of death of Emma L. Deegan and substitution of Philip J. Deegan, administrator, &c., of Emma L. Deegan, deceased, as co-complainant.

JOSEPH KAIGHN, called and affirmed on the part of the defendants, testified as follows:

Direct examination.

By Mr. Richards:

Mr. Rex: I would state that I have noticed the other side to produce the assignments of the mortgages, and I have asked Mr. Richards to allow me to see them. I have never seen them, and he has declined my request. 10

Mr. Richards: They will be submitted in due form; I will offer them in evidence.

Ques. You are an attorney-at-law of this State?

Ans. I am.

Ques. And a Master of this court?

Ans. Yes.

Ques. Have you read a copy of the bill of complaint in this cause? 20

Ans. I have.

Ques. Did you know in her lifetime Elizabeth Walsh, deceased, mentioned in that bill?

Ans. I did.

Ques. Did you have occasion to represent her in a matter?

Ans. I did.

Ques. What was the nature of it?

Ans. The first time, I can't tell the first, because I was working for her; I did some work for her, and then I was down there in reference to the collection of a claim, when she first spoke to me about the assignment of these mortgages. 30

Ques. Who was that claim against?

Ans. I think it was Martha French, but had nothing to do with this matter; it was another matter.

Ques. While engaged in that she did consult you about the mortgages mentioned in the bill of complaint?

Ans. She said she had some things she wanted to turn over to her daughter, Mrs. Wagner, and I asked her what they were, and she said they were some mortgages, and she also said something about some Camden Fire Insurance stock, I believe, and I told her as to the stock I could not take care of that, the Camden Fire would take care of that direct, but the mortgages I would draw the assignments for when she was ready, if she would send them up.

10

Ques. Did she say anything about what the consideration was or why she was doing this?

Ans. She told me—I asked her about that; she told me that she had a good home there and that she intended to stay there the rest of her days, and that she wanted to turn these over to Mrs. Wagner on that account.

Ques. Wanted to know how she could do it?

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Ans. She wanted to know how she could do, and I told her by assignment of mortgage, as far as the mortgage was concerned, and I told her the stock would be transferred by the company, and I would transfer the mortgages, if she wished me to, and to send the mortgages up.

Ques. Did you later receive from her those mortgages?

Ans. I did.

Ques. And they are the mortgages mentioned in the bill of complaint?

Ans. Yes, they are the mortgages. I drew the assignment for them mentioned in the bill of complaint, yes.

30

Ques. I show you three papers purporting to be assignments of mortgages from Elizabeth Walsh to Ida E. Wagner, and ask you if you ever saw those before?

Ans. I have.

Ques. Were they prepared in your office?

Ans. Yes, sir.

Ques. In accordance with the instructions which you have just mentioned?

Ans. Yes.

Ques. Did you take her acknowledgment to them?

Ans. I did not.

Ques. How did that happen?

Ans. As I recollect it, there was an arrangement by which I should be there on a certain evening to take these acknowledgments, and I found that work turned up that I could not be down there at that time, and in order to keep my promise I sent Mr. Low, who does a good deal of work for me, down to take the acknowledgment.

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Ques. He is a Commissioner of Deeds?

Ans. Yes, sir.

Three papers which the witness has just identified are offered in evidence and marked "Exhibits D1, D2, and D3."

Ques. That is all.

Cross-examination.

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By Mr. Rex:

Ques. You are the solicitor of record, are you not, who filed the plea in this case?

Ans. I believe I am.

Ques. You are, are you not?

Ans. Yes.

Ques. Did you make this assignment yourself, or did you have it done in your office?

Ans. What do you mean? I didn't make the assignment.

30

Ques. I mean the physical drafting of the assignments. These appear to be in typewriting?

Ans. Yes, sir.

Ques. Was that done in your office?

Ans. Yes.

Ques. By whom?

Ans. I expect my stenographer. I don't remember that, probably they were.

Ques. You mention in one assignment of mortgage a consideration of \$1,200?

Ans. Yes.

Ques. Where did you get that from?

Ans. That was the amount of the mortgage, I presume; we never drew an assignment for less than the amount.

10

Ques. Where did you get it?

Ans. I presume from the amount of the mortgage.

Ques. You didn't get it from Mrs. Walsh?

Ans. Not the \$1,200.

Ques. You didn't get the amount from her; she didn't tell you what to put in there?

Ans. No.

Ques. I see one is for \$800; she didn't tell you that?

Ans. No, that is true as to all of them.

20

Ques. That is to say, you just copied the mortgages?

Ans. Yes, the amount of the mortgages.

Ques. And that is the supposed consideration, is it?

Ans. No, that was the consideration.

Ques. You say you were representing Mrs. Walsh in some business?

Ans. Yes.

Ques. Did you ever represent her before she went to live with Mrs. Wagner?

Ans. No.

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Ques. You had represented Mrs. Wagner before that?

(Objected to as not-cross-examination. Admitted.)

Ans. I think not.

Ques. Didn't you represent her in a case at Florence; didn't you represent Mr. Wagner?

(Objected to as irrelevant and improper. Admitted.)

Ans. Prior to that time?

Ques. Yes.

Ans. I can't say; I don't know. I have represented Mr. Wagner since.

Ques. I didn't ask you about since.

Ans. I don't know; if you will tell me in what case and when, I will tell you.

Ques. You recollect when these assignments were made?

Ans. About the date; yes.

Ques. Now, prior to that date, didn't you do business for Mr. Wagner and Mrs. Wagner?

Ans. I am not sure whether I did or not; I don't know.

Ques. You were acquainted with them?

Ans. Yes.

Ques. How did you get acquainted with them?

Ans. The first time that I ever met Mr. Wagner was when I did some work for Philip Renger; that is the first time I ever knew Mr. Wagner.

Ques. He was interested in that case?

Ans. I don't think he was.

Ques. Don't you know?

Ans. No; the work was done for Mr. Renger; whether he got any of the proceeds or not, I do not know.

Ques. You got yours first?

Ans. I believe I did.

Ques. Did you ever know Mrs. Walsh?

Ans. Yes; I knew her.

Ques. How?

Ans. By attending to legal matters for her.

Ques. What legal matters did you ever attend to for her?

Ans. In the collection of one or two claims for her.

Ques. Where was she then?

Ans. At Mr. Wagner's house on Broadway.

Ques. You never knew her before she went to Wagner's?

Ans. No; I think not—yes; I think there was one case when she was living with her husband.

Ques. When was that?

Ans. I can't tell you; it was prior to that.

Ques. You say she sent for you?

Ans. Yes.

Ques. Whom did she send?

Ans. I can't tell you that; it was either Mr. or Mrs. Wagner or one of the boys.

10 Ques. What do you mean by "one of the boys"; Wagner's boys?

Ans. Yes, sir; or sometimes Mr. Walsh would come up.

Ques. He was not living there at that time she was living with Mrs. Wagner?

Ans. I can't answer that; I don't know.

Ques. You didn't see him there when you were there?

Ans. No.

Ques. So that it was one of the members of the Wagner family came to see you about this?

20 Ans. Either of Mr. Wagner's family or Mr. Walsh; I think it was Mr. Walsh; I don't remember.

Ques. You say you said to this messenger, whoever he was, you told him to bring the mortgages up?

Ans. No, I didn't.

Ques. What did you tell him?

Ans. I was sent for to come down on the matter of this claim.

Ques. What was the claim?

30 Ans. The claim at that time was a claim against Martha French, but they didn't tell me at that time.

Ques. Who had the claim?

Ans. I had it.

Ques. I mean whose claim was it, Mrs. Wagner's or Mrs. Walsh's?

Ans. It was Mrs. Walsh's claim against Martha French.

Ques. Did Mrs. Walsh send for you?

Ans. Yes.

Ques. How did you know her at that time?

Ans. I think I had been down there once or twice on other matters.

Ques. For whom?

Ans. Mrs. Walsh.

Ques. What was the matter?

Ans. I don't have any recollection of it now, but I knew her at that time.

10

Ques. You are positive of that?

Ans. Yes, sir.

Ques. Did you go down at any time in reference to these mortgages?

Ans. Yes, sir; this was in regard to the claim.

Ques. Did you go down when she sent for you to go down?

Ans. I did.

Ques. How did you know about the transfer of the mortgages?

Ans. When we got through in regard to the claim, she spoke to me about an assignment of these mortgages, about wanting to turn the mortgages over and also the insurance stock.

20

Ques. Mrs. Walsh did?

Ans. Yes, sir.

Ques. Can you fix the date of that?

Ans. No; I can't.

Ques. In whose presence?

Ans. I don't remember whether there was more than the Wagners there or not; I don't know whether the nurse was there or not at that time.

30

Ques. Just tell me who was present; you need not say who was not there; I was not there and you were not.

Ans. Yes, I was.

Ques. Who was there?

Ans. Mr. and Mrs. Wagner.

Ques. That is all you can recollect?

Ans. Yes, sir.

Ques. Did she at that time hand you the mortgages?

Ans. No.

Ques. How did you get them?

Ans. They were afterwards sent up to me. I told her to send them when she was ready to send them.

Ques. Who brought them up?

10 Ans. I don't know; the Wagners, some of them; I can't tell you, because I don't know.

Ques. Did the old lady tell you at the time of this interview what consideration to put in there?

Ans. At the time I was down there in regard to the claim when she first spoke to me about it?

Ques. Yes.

Ans. She told me what the consideration was.

Ques. Did she tell you what consideration to put in the assignments, I asked you?

20 Mr. Richards: He has already answered.

Ans. No; she told me what the consideration was, but she didn't tell me what to put in the assignment.

Ques. So that the assignment consideration you just made from the mortgages themselves?

Ans. Yes, sir; from the principal of the mortgages.

Ques. What did she say the consideration was?

Ans. She told me that she had a good home there and that she intended to stay there the rest of her days, and she wanted to turn these things over to her.

30 Ques. She didn't say anything about the will?

Ans. I don't remember that she did.

Ques. You knew that she had a will?

Ans. No; I didn't at that time.

Ques. She didn't say anything about that at all?

Ans. Not that I recollect.

Ques. You would have recollected it if she had?

Ans. I think I would—oh, I am not sure about it.

Ques. You didn't know her sufficiently well to talk about that, about a will?

Ans. I think if it had been necessary, I knew her sufficiently well to talk about it, but I didn't see any reason for it at that time.

Ques. Was there any agreement made between Mrs. Wagner and Mrs. Walsh that you know of, as to her support?

Ans. Not that I know of.

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Ques. You knew nothing of that?

Ans. No.

Ques. That is all.

HENRY WAGNER, sworn for defendants.

Direct examination.

By Mr. Richards:

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Ques. You live in Camden, New Jersey.

Ans. Yes, sir.

Ques. And are the husband of the defendant, Ida E. Wagner?

Ans. Yes, sir.

Ques. She is the daughter of Elizabeth Walsh, deceased, is she not?

Ans. Yes, sir.

Ques. The bill states that Elizabeth Walsh came to live with your wife in February, 1904; is that correct?

30

Ans. I believe it is.

Ques. Did she continue to live there at the time of her death?

Ans. Yes, sir.

Ques. During that time did or did not your wife feed and care for her?

Ans. Yes, sir.

Ques. Did she pay any board?

Ans. No, sir.

Ques. Did she do any of the house work?

Ans. No, sir.

Ques. Did Mrs. Walsh require any special attention?

Ans. Very much, after she was taken sick.

Ques. What special attention did she require; did she require an attendant or not?

10 . Ans. Did she require an attendant all the time?

Ques. Any of the time.

Ans. Yes, she required an attendant.

Ques. Who was that attendant?

Ans. My wife and Mrs. Wood.

Ques. Who paid for Mrs. Wood's services?

Ans. I don't know that she ever received any pay.

Ques. You don't know whether your wife ever paid her or not?

Ans. I do not.

20 Ques. Was any charge made against Mrs. Walsh for any of these services?

Ans. No, sir; not that I know of.

By the Court:

Ques. When did Mrs. Walsh die?

Ans. I think Christmas, 1904.

Ques. She came there in February, about 11 months?

Ans. Yes, sir.

30 Cross-examination.

By Mr. Rex:

Ques. What is your business?

Ans. I am a weaver.

Ques. What kind of a weaver?

Ans. A carpet weaver.

Ques. A rag carpet weaver?

Ans. Yes, sir; a rag carpet weaver.

Ques. And all the time that the nurse was there and Mrs. Walsh was there, were you making enough money to pay the bills yourself?

Ans. What bills?

Ques. The bills for nursing and medicine and bills for keeping, and whatever Mrs. Walsh required?

Ans. No, sir; I didn't make enough money for that. 10

Ques. Nobody paid them?

Ans. Yes, sir; they were paid.

Ques. Who paid them?

Ans. I believe Mrs. Wagner paid them.

Ques. Where did she get the money from?

Ans. She had money saved up.

Ques. From what?

Ans. From my work and money that I made on the outside.

Ques. At what?

Ans. By selling property and anything that I could make money at, I had it. 20

Ques. You always gave it to her?

Ans. My money that I make?

Ques. Yes.

Ans. Yes, sir; always gave it to my wife.

Ques. What does she do with it?

Ans. Keeps it in the house.

Ques. How much money did she have?

Ans. I don't know.

Ques. Whereabouts in the house did she keep it? 30

Ans. I can't tell you that; I suppose in a drawer.

Ques. How do you know that she keeps it in the house?

Ans. I know whenever I ask for money I get it.

Ques. And you suppose she paid the bills?

Ans. I suppose so; they are paid.

Ques. You don't know anything about it?

Ans. What bills?

Ques. I mean bills for the nurse, medicine, doctor and whatever was required. She was there 11 months.

Ans. The doctor was paid.

Ques. Who paid him?

Ans. Mrs. Wagner paid him?

Ques. From the money you saved?

Ans. I am not positive of that.

10 Ques. Mrs. Walsh was owner of considerable property?

Ans. Yes, sir.

Ques. What became of the rents during this eleven months?

Ans. Returned to Elizabeth Walsh by the agent who collected the rents.

Ques. So she always had money of her own?

Ans. She had money; yes, sir.

Ques. And, therefore, Mrs. Wagner didn't have to pay any of the bills?

20 Ans. When the bills came in—I mean have her paying them when they came in; Mrs. Wagner would present the bills to her mother and get the money.

Ques. Then it was not from your savings?

Ans. So far as family expenses are concerned, it came from my work.

Ques. I didn't ask you that; I asked you who paid her expenses; now you say that the rents were handed over to her and when Mrs. Wagner wanted any money she went to Mrs. Walsh—is that true?

30 Ans. I say when a bill came in.

Ques. Then she went to Mrs. Walsh to get the money?

Ans. I can't say that she went to Mrs. Walsh.

Ques. Did you?

Ans. No, sir.

Ques. Who did?

Ans. If a man came back with a bill for carpenter work or brickwork, we referred him to the old lady.

Ques. And she paid it?

Ans. If she had it; if she hadn't it, we sent her to the agent to get the money, which we have done.

Ques. But it was always Mrs. Walsh's money?

Ans. It was the money of her rents.

Re-direct.

Ques. You have spoken of small bills which Mrs. Walsh paid out of her rent money, and you referred to the bills of carpenter work and other work on her property, did you not?

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(Objected to. Admitted.)

Ans. Yes, sir.

Ques. She didn't pay your store bill, did she?

Ans. No, sir.

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Ques. That is all.

Ans. Could I make an explanation to the Court of the store bills?

Ques. No; that is all.

The Court: You may make an explanation to correct your evidence.

Ans. I have nothing to correct, but you spoke about store bills; I could tell a great deal about store bills.

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The Court: That is all then.

Mr. Richards: I desire to have noted upon the record the fact that the statement was made in the second paragraph of the bill and in numerous other places that the defendant, Ida E. Wagner, is the daughter of Elizabeth

Walsh; the statement is made that Elizabeth died December 25, 1904; in the twelfth paragraph that she went to live with her daughter, Ida Wagner, in February, 1904, and in the same paragraph continued to live with her daughter, Ida E. Wagner, until her death.

In the thirteenth paragraph: "That said Elizabeth Walsh, on or about the first day of April, 1904, assigned and transferred to Ida E. Wagner the mortgages and property in question."

- 10 In the fourteenth paragraph, that Ida E. Wagner obtained the assignment of said mortgages and shares of stock and the possession of said mortgages and household furniture.

In the eighteenth paragraph the complainant charges that the said assignments and transfers and deliveries of the said personal property were obtained by the said defendant, Ida E. Wagner.—

The Court: What is the purpose of this?

- 20 Mr. Richards: Simply, if the Court please, I am reading what Greenleaf on Evidence says.

The Court: State the purpose of reading what you have read.

Mr. Richards: The rule of law, as I understand—

The Court: What is the purpose in having this on the record?

- 30 Mr. Richards: To have it in evidence.

The Court: Whatever is in the bill of complaint, admissions made by the complainant, you don't have to prove.

Mr. Richards: My only reason was, the language stated in Greenleaf, in a court of equity, the bill may be

read in evidence for the defendant, as to any matter directly and positively averred.

The Court: That is admitted. The bill is in evidence and can be read. Anything else?

Mr. Richards: That is all.

Defendants rest.

Mr. Rex: I ask your Honor to make a decree according to the prayer of the bill.

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WALTER FENNIMORE, sworn for complainants.

Direct examination.

By Mr. Rex:

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(After a consultation between counsel for the complainants, the witness was withdrawn.)

Complainants rest.

Case closed.

(The case was then argued.)

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IN CHANCERY OF NEW JERSEY.

Between

ELLEN M. FENNIMORE and EMMA

L. DEEGAN,

Complainants,

10 and

IDA E. WAGNER and CLARA J.

CHADWICK,

Defendants.

ON BILL, &c.

Messrs. FREDERICK A. REX and F. MORSE ARCHER,
for Complainants.

20 Messrs. JOSEPH KAIGHN and SAMUEL A. RICHARDS,
for Defendants.

BERGEN, V. C.:

30 The bill of complaint in this cause charges that Elizabeth Walsh, having made her last will and testament, dated February 25th, 1904, departed this life December 25th, following; that she devised her personal estate to the complainants and defendants, her children, and to a grandchild, who is not a party to this cause, in equal shares; that the defendants were appointed executrices of the will, have probated the same, and accepted their appointments; that about the date of the execution of the will, whether before or after does not appear, the defendant, Ida E. Wagner, induced the testatrix to come and live with her, where she remained until her death;

that having thus obtained the custody and physical control of the testatrix, who was then seventy-seven years of age and "in enfeebled and weakened mental and physical condition and wholly incapable of resisting the persuasions and entreaties of her daughter, the said Ida E. Wagner fraudulently induced and unduly influenced her, the said Elizabeth Walsh, on or about the first day of April, A. D. nineteen hundred and four, to assign and transfer unto her, the said Ida E. Wagner, without any consideration therefor," bonds and mortgages, stock in an insurance company and other personal property of the value of about \$8,000; that the result of these transfers, if sustained, is to exhaust the personal estate and deprive the complainants and other beneficiaries under the will of the whole of their legacies; that the defendant, Ida E. Wagner, has reduced some of these securities to cash and refuses to account for any of them or their proceeds, and the prayer is that the pretended transfers of the securities she yet holds be set aside, and that they, together with the proceeds of those that had been sold, as well as other personal property transferred to her, as set out in the bill of complaint by the testatrix, be declared to be the property and estate of the testatrix at the time of her death, to be accounted for and administered as her estate by the defendants. 10

The defendant Clara J. Chadwick, one of the executors, has not appeared in this cause, and a decree *pro confesso* has been taken against her. 20

The defendant Ida E. Wagner, to whom all of this property was transferred, in utter disregard of its disposition by the will, has not answered, but filed a plea on which the complainants have joined issue by a general replication. The pertinent part of the plea is in the following words, "for a plea to the whole of said bill says that for the assignments and transfer by Elizabeth Walsh to this defendant, of the bonds and mortgages, shares of stock and other personal property in the bill 30

mentioned, good and valuable consideration passed from this defendant to the said Elizabeth Walsh."

The defendant, by her plea, presents but a single issue, and constructively admitting the charges of undue influence and fraudulent inducements charged in the bill, relies alone upon the assertion in the plea that for the property so transferred good and valuable considerations passed from her to the assignor.

- At the trial of the issue so presented the defendant assumed the burden of sustaining her plea. But two witnesses were called on her behalf; one was the solicitor of record in this cause, and the other her husband. The solicitor testified that upon a visit to the testatrix with regard to some other matter, she consulted him with reference to the assignment of the disputed property. What the witness testified to is covered by the following questions and answers: "Q. While engaged in that did she consult you about the mortgages mentioned in the bill of complaint? A. She said she had some things she wanted to turn over to her daughter, Mrs. Wagner, and I asked her what they were, and she said they were some mortgages, and she also said something about some Camden Fire Insurance stock, I believe, and I told her as to the stock I could not take care of that, the Camden Fire Insurance Co. would take care of that direct, but the mortgages I would draw the assignments for when she was ready if she would send them up. Q. Did she say anything about what the consideration was, or why she was doing this? A. She told me that—I asked her about that—she told me that she had a good home there and that she intended to stay there the rest of her days, and that she wanted to turn these over to Mrs. Wagner on that account."

He further testified that, some time after this conversation, the mortgages were brought to his office, where the assignments were prepared according to his instructions, but the execution was acknowledged before another

person. It does not appear that the solicitor ever saw the testatrix after the assignments were sent to her, nor is there the slightest evidence in the cause that they were ever delivered by the testatrix to Mrs. Wagner. The husband testified that Elizabeth Walsh came to live in his family in February, 1904, and remained there until her death; that she did not pay any board or do any house-work; that she required special attention after she was taken sick, but that she had an attendant by the name of Mrs. Wood. While this witness testified at first that his wife paid the bills for the nurse, medicine, doctor and whatever was required, he qualified this, on cross-examination, by saying that Mrs. Walsh always had money, and that when the bills came in his wife would present them to her mother and get the money. 10

On this evidence I find that the defendant has not supported her plea that this \$8,000 of property was transferred to her by the testatrix for a good and valuable consideration.

It distinctly appears in the evidence that so far as these witnesses know there was no agreement between the parties that Mrs. Wagner should keep her mother during her life, and so far as the case shows Mrs. Wagner could have turned off her mother the next day after the transfer was made. The intimation by the husband that the mother required special services was plainly introduced to bolster up a pretended consideration. The relation between these parties was that of mother and daughter, and in the absence of any express promise to pay she could not recover upon any implied promise, nor is there any proof that she rendered any special services such as would justify the transfer of this large amount of property, for it appears that during her illness, when she required special attention, such attentions were rendered and performed by a person employed for that purpose, and, in the absence of all proof on the subject, the presumption is that such services were paid for by the testatrix. Mrs. Walsh was seventy-seven years of age, 20 30

and to support such a transfer of all of her available estate to one daughter with whom she was living, justifies the presumption that she was dominated by the will of that daughter to make an unconscionable bargain, if any such bargain were made, because it must be borne in mind that this defendant does not pretend that it was a gift, but rests her claim entirely upon a good and valuable consideration. The daughter to whom these transfers were made was not offered as a witness, nor any explanation made as to when these transfers came to her hands. Without delivery they would have passed no title, for their execution alone, if retained by the testatrix, would not result in a transfer of the property, and it may be that these papers came to the defendant after the death of her mother and by some act of her own. It has been held by this Court that if the defendant fails in proving the truth of his plea upon the hearing, the plea must be overruled as false and the complainant entitled to a decree according to the case stated by the bill.

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- Miller vs. U. S. Casualty Co.*, 16 Dick., 110-115.
Hunt vs. West Jersey Traction Co., 17 Dick., 225-229.

The defendant having failed to sustain her plea, it will be overruled and a decree advised setting aside the assignments and transfers of the property described in the bill of complaint and the same decreed to be held by the defendants as a part of the estate of the testatrix, to be administered by them as executrices of the last will and testament of Elizabeth Walsh. If all of the parties interested in the fund under the will of Mrs. Walsh were parties to this proceeding, this Court could and perhaps ought to require the accounting to be made here, but as the grandchild, one of the beneficiaries under the will, is not a party, the settlement of the estate can be more conveniently had in the Surrogate's Court of the county where the will was admitted to probate and where the grandchild will be afforded an opportunity to be heard upon the accounting.

Filed October 31, 1906.

IN CHANCERY OF NEW JERSEY.

Between

ELLEN M. FENNIMORE, ET AL.,

Complainants,

and

IDA E. WAGNER, ET AL.,

Defendants.

ON BILL, &C.

10

FINAL DECREE.

This cause coming on to be heard at Chancery Chambers, in the State House, Trenton, on the sixth day of September, nineteen hundred and six, on bill, plea, replication and proofs then taken in the presence of Frederick A. Rex, solicitor for the complainants, and French & Richards, of counsel with Ida E. Wagner, defendant, the complainants' bill having been heretofore taken as confessed against Clara J. Chadwick; and the pleadings and proofs and the arguments of the respective counsel having been heard and considered, and it appearing to the Court that all of the bonds and mortgages, shares of stock, moneys, or the proceeds of the sale of the same, described in the bill of complaint, are assets of the estate of Elizabeth Walsh, deceased, and that they were not transferred and assigned to the said Ida E. Wagner for a good and valuable consideration, and it further appearing that the complainants are entitled to the relief sought and prayed for by them in their bill of complaint:

It is, on this thirtieth day of October, nineteen hundred and six, by William J. Magie, Chancellor of the

State of New Jersey, ordered, adjudged and decreed, and the said Chancellor, by virtue of the power and authority of this Court, doth hereby order, adjudge and decree that the transfer of the shares of the capital stock of the Camden Fire Insurance Company, described in said bill of complaint, made by the said Elizabeth Walsh in her lifetime to the said Ida E. Wagner, were not made for a good and valuable consideration, and that they be set aside, annulled and made void, and that the said
10 moneys and shares of stock be hereby adjudged to be part of the estate of the said Elizabeth Walsh, to be accounted for by the said defendants.

And it is further decreed, that the assignments made by the said Elizabeth Walsh in her lifetime to the said Ida E. Wagner, of the bonds and mortgages made to the said Elizabeth Walsh by Winfield Stetser and wife, by Edwin T. Anthony, by Catharine Neutze and by John Baxter and wife, respectively, as described in the said bill of complaint, were not made for a good and valuable consideration, and that they be likewise set aside and
20 made null and void, and said mortgages are hereby adjudged to be a part of the estate of the said Elizabeth Walsh, deceased, to be reassigned by the said Ida E. Wagner and to be accounted for by the said defendants.

And it is further ordered, adjudged and decreed, that the proceeds of sale of the bonds and mortgages made to the said Elizabeth Walsh in her lifetime by Abigail F. Hugg and by Anna C. Marshall, respectively, assigned by said Elizabeth Walsh in her lifetime to the said Ida E. Wagner, and thereafter assigned by the said Ida E.
30 Wagner to one Abraham Anderson and to one Frank J. Burr, respectively, as alleged in said bill of complaint, which were not transferred and assigned to the said Ida E. Wagner for a good and valuable consideration, be accounted for by the said defendants as part of the said estate of the said Elizabeth Walsh, deceased.

And it is further ordered, adjudged and decreed, that the plea filed by the said defendant, Ida E. Wagner, be overruled with costs.

Respectfully advised.

J. J. BERGEN,
V. C.

W. J. MAGIE,
C.

IN CHANCERY OF NEW JERSEY.

19

Between

ELLEN M. FENNIMORE, ET AL.,

Complainants,

and

IDA E. WAGNER, ET AL.,

Defendants.

ON BILL, &C.

NOTICE OF APPEAL.

20

The defendant, Ida E. Wagner, hereby appeals from the final decree made in this court in the above stated cause from the whole and every part thereof to the Court of Errors and Appeals in the last resort in all causes.

JOSEPH KAIGHN,
Solicitor for Ida E. Wagner.

SAMUEL H. RICHARDS,
Of Counsel.

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

SAMUEL H. RICHARDS,
Of Counsel with Ida E. Wagner.

NEW JERSEY COURT OF ERRORS AND AP-
PEALS.

Between

ELLEN M. FENNIMORE, ET AL.,

Complainants and Respondents,

10

and

IDA E. WAGNER, ET AL.,

Defendants,

IDA E. WAGNER,

Appellant.

APPEAL FROM

CHANCERY.

PETITION OF

APPEAL.

20 *To the Honorable the Court of Errors and Appeals in
the last resort in all causes:*

The petition of Ida E. Wagner, the appellant in the above stated cause, respectfully shows that your petitioner finds herself aggrieved by a final decree made in the Court of Chancery by his Honor William J. Magie, Chancellor of New Jersey, bearing date the thirtieth day of October, nineteen hundred and six, wherein the said Ellen M. Fennimore and others were complainants, and Ida E. Wagner, et al., are defendants, in the following respects, to wit:

30 That the said decree adjudges that it appears to the Court that all of the bonds and mortgages, shares of stock, moneys, or proceeds of the sale of the same, described in the bill of complaint are assets of the estate of Elizabeth Walsh, deceased, when there existed no evidence, pleading or facts upon which such a finding could be based or founded,

That said decree adjudges that said bonds, mortgages, shares of stock, moneys, or the proceeds of the sale of the same were not transferred and assigned to the said Ida E. Wagner for a good and valuable consideration, when by the assignments themselves, under seal, and the uncontradicted testimony, it appeared that a good and valuable consideration passed therefor.

That said decree adjudged that the complainants were entitled to the relief sought and prayed for by them in their bill of complaint, when it did not appear, either by the pleadings or proofs, that complainants were entitled to any relief. 10

That said decree adjudges that the transfer of the shares of the capital stock of the Camden Fire Insurance Company described in said bill of complaint, made by the said Elizabeth Walsh in her lifetime to the said Ida E. Wagner, were not made for a good and valuable consideration, and that they be set aside, annulled and made void, and that the said moneys and shares of stock were thereby adjudged to be part of the estate of the said Elizabeth Walsh, to be accounted for by the said defendants, when by the undisputed testimony it appeared that such transfer was made for a good and valuable consideration and no evidence was offered to show that said shares ever were, are or could be part of the estate of Elizabeth Walsh. 20

That said decree adjudges that the assignments by Elizabeth Walsh in her lifetime to the said Ida E. Wagner of the bonds and mortgages made to the said Elizabeth Walsh by Winfield Stetser and wife, by Edwin T. Anthony, by Catharine Neutze and by John Baxter and wife, respectively, as described in the bill of complaint, were not made for a good and valuable consideration, and that they be set aside and made null and void, and adjudges said mortgages to be a part of the estate of said Elizabeth Walsh, deceased, to be re-assigned by said Ida E. Wagner and to be accounted for 30

by the defendants, when by the deeds of assignment of said mortgages, executed under seal, offered in evidence, a presumption of consideration was raised which was in no way rebutted or disproved, and when by the undisputed testimony it appeared that said assignments were made for a good and valuable consideration, and no evidence was offered to show that said mortgages ever were, are or could be a part of the estate of said Elizabeth Walsh, deceased.

- 10 That said decree adjudges that the proceeds of sale of the bonds and mortgages made to the said Elizabeth Walsh in her lifetime by Abigail F. Hugg and by Anna C. Marshall, respectively, assigned by said Elizabeth Walsh in her lifetime to the said Ida E. Wagner and thereafter assigned by the said Ida E. Wagner to one Abraham Anderson and to one Frank J. Burr, respectively, as alleged in said bill of complaint, which were not transferred and assigned to the said Ida E. Wagner for a good and valuable consideration, be accounted for
- 20 by the said defendants as part of the said estate of the said Elizabeth Walsh, deceased, when it is not proven or admitted that the said Ida E. Wagner sold or assigned any such mortgages or received anything therefor, and when, by the undisputed proofs, it appeared that such bonds and mortgages were assigned to said Ida E. Wagner for a good and valuable consideration.

That said decree adjudges that the plea filed by the defendant be overruled with costs, when such decree should have dismissed the complainants' bill with costs to the defendant, Ida E. Wagner.

- 30 That said decree is contrary to law.

That said decree is inequitable.

That said decree is not in accordance with the practice in equity.

That the Court permitted illegal and improper cross-examination.

That said decree is against the weight of the evidence.

That said decree stands without any evidence to support it.

That the proof offered by the appellant upon the only issue in the case standing alone entitles appellant to a decree in her favor.

That the appellant having offered the assignments under seal, which import a consideration, and offered other evidence of consideration, established a *prima facie* case, and upon the complainant failing to offer any testimony, the appellant was entitled to a decree dismissing the bill with costs. 10

The decree is, in divers other respects, irregular, illegal and contrary to equity and good conscience.

Your petitioner, therefore, prays that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden. And that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

JOSEPH KAIGHN,
Solicitor of Appellant. 20

FRENCH & RICHARDS,
Of Counsel with Appellant.

Severance of appellant from co-defendant in usual form.

Answer to petition of appeal in usual form. 30

For opinion of Court of Errors and appeals see 68 Atl., 230.

THE ACCOUNT OF IDA E. WAGNER, EXECUTRIX, &C., OF
THE ESTATE OF ELIZABETH WALSH, DECEASED.

This accountant chargeth herself as follows:

	Amount of cash received from real estate..	\$12 00
	Amount received from the sale of the Abigail F. Hugg mortgage of \$800. Book No. 58, page 513, &c.	816 80
10	Amount received from sale of Anna C. Mar- shall mortgage of \$1,200. Book No. 91, page 165, &c.	1,242 23
	Amount received from sale of John Baxter mortgage of \$700. Book No. 69, page 603, &c.	733 36
	Principal of Winfield Stetser mortgage. Book 80, page 233, &c.	800 00
	Interest due and collected to date on account of above Stetser mortgage	173 20
20	Principal of Edwin T. Anthony mortgage. Book 87, page 177	1,200 00
	Interest due and collected to date on account of the above Anthony mortgage	216 49
	Principal of Catharine Neutz mortgage. Book 89, page 169	1,500 00
	Interest collected and due to date on the above Neutz mortgage	270 62
	Amount realized from the sale of 72 shares of Camden Fire Insurance Company stock	720 00
30	Household furniture alleged to be in posses- sion of the executrix as part of the estate of Elizabeth Walsh	200 00
	Cash alleged to be in possession of executrix as part of the estate of Elizabeth Walsh..	1,000 00
		\$8,884 70

This accountant prays allowance as follows:

For household furniture alleged to be in possession of executrix, but which the accountant has never received	\$200 00	
For cash alleged to be in possession of executrix of which the accountant has no knowledge.	(*)	
Part of the proceeds from the sale of mortgages advanced and paid by accountant to Elizabeth Walsh, Voucher No. 1.	(*)	10
Claim of Ida E. Wagner for furnishing said Elizabeth Walsh with a home the rest of her days according to contract, \$6,920, interest thereon from May 4, 1904, to December 13, 1907, \$806.18. Total, \$7,726.18, Voucher No. 2	(*)	
Amount paid for premium on bond of executrix, Voucher No. 3	52 50	
Surrogate's bill, Voucher No. 4, and costs on exceptions	132 04	30
Proctor's fees	300 00	
Commissions on \$1,000.00 at 6 per cent. at.....	\$70.00	
Commissions on \$4,000.00 at 4 per cent. at.....	160.00	
Commissions on \$3,884.70 at 3 per cent at.....	116.54	
Total	(*)	
	\$684 54	30
Balance	8,200 16	
	\$8,884 70	

IDA E. WAGNER,
Executrix.

(*) Exceptions sustained.

STATE OF NEW JERSEY, } ss.
COUNTY OF CAMDEN, }

IDA E. WAGNER, the executrix above named, maketh oath that the above account is in all things just and true, both as to the charge and discharge thereof, according to the best of her memory and belief.

IDA E. WAGNER.

10

Sworn and subscribed to before me this thirteenth day of December, A. D. 1907.

S. HOWARD TROTH,
Master in Chancery of New Jersey.

Filed December 20th, A. D. 1907.

HARRY REEVES,
Surrogate.

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30

CAMDEN COUNTY ORPHANS' COURT.

IN THE MATTER OF THE ESTATE	}	EXCEPTIONS TO
OF ELIZABETH WALSH, de-		ACCOUNT OF EX-
ceased.		ECUTRIX.

Ellen M. Fennimore, residuary legatee under the will of Elizabeth Walsh, deceased, and Philip Deegan, administrator of Emma L. Deegan, deceased, residuary legatee under the will of Elizabeth Walsh, deceased, hereby except to the account of Ida E. Wagner, executrix of said estate, for the following reasons: 19

First. To item No. 2, under which the executrix prays allowance for the sum of \$1,000, because said amount came into her possession or was obtained by her from deceased during her lifetime by fraudulent means and diverted to her own use by said executrix, and for which she was held to be accountable under a decree of the Court of Chancery of the State of New Jersey, in a suit wherein Ellen M. Fennimore and others were complainants and the said Ida E. Wagner and another were defendants, which decree was duly affirmed on appeal by the Court of Errors of the State of New Jersey. 20

Second. To Item No. 3, wherein accountant prays allowance for part of the proceeds from the sale of mortgages which proceeds are alleged by accountant to have been paid to Elizabeth Walsh, because said executrix never in fact paid any such sum to the said Elizabeth Walsh in her lifetime. 30

Third. To Item No. 4, wherein the said accountant claims compensation for furnishing the said Elizabeth Walsh with a home according to contract, because in the suit in Chancery above mentioned it was decreed that no such contract had ever existed.

Fourth. To Item No. 5, wherein said accountant prays allowance for premium on her bond, because upon proof furnished to the Court that the assets of the estate were likely to be wasted or misappropriated the said executrix, by order of Court, was compelled to furnish said bond.

10 Fifth. To Item No. 8, wherein the said accountant prays allowance for commissions, because the said accountant claiming ownership to all of the assets herein accounted for prior to the decree above mentioned in the Court of Chancery against her had the beneficial use and control of all of said assets under a claim which was adjudicated in said Chancery proceedings to have been fraudulently made.

Dated Camden, N. J., December 27th, 1907.

FRED'K A. REX,
Proctor for Ellen M. Fennimore.

GREY & ARCHER,
Proctors for Adm. of Emma L. Deegan, deceased.

20

[ENDORSED.]

CAMDEN COUNTY ORPHANS' COURT.

IN THE MATTER OF THE ESTATE OF ELIZABETH WALSH,
DECEASED.

EXCEPTIONS TO ACCOUNT OF EXECUTRIX.

30

FRED'K A. REX,
GREY & ARCHER,
Proctors

Filed December 20, 1907.

HARRY REEVES,
Surrogate,

CAMDEN COUNTY ORPHANS' COURT.

IN THE MATTER OF THE ESTATE)

OF ELIZABETH WALSH, de-)

ceased.

ORDER.

Exceptions having been filed by Ella M. Fennimore, residuary legatee under the will of Elizabeth Walsh, deceased, and Philip J. Deegan, administrator of Emma L. Deegan, deceased, residuary legatee under the will of Elizabeth Walsh, deceased, to the account of Ida E. Wagner, Executrix of the Estate of Elizabeth Walsh, deceased; 10

It is, on this twenty-seventh day of December, nineteen hundred and seven, ordered that said exceptions be set down for hearing before the Orphans' Court of the county of Camden, on Friday, the tenth day of January, nineteen hundred and eight, at ten o'clock in the forenoon. 20

And it is further ordered, that a copy of this order, which may be uncertified, be served within three days from the date hereof upon the said executrix or upon her proctor.

C. V. D. JOLINE,
Judge.

[ENDORSED.]

CAMDEN COUNTY ORPHANS' COURT. 30

IN THE MATTER OF THE ESTATE OF ELIZABETH WALSH,
deceased.

ORDER.

Received Dec. 27, 1907, and recorded in the Surrogate's office of the county of Camden, in Book L, of Minutes, page 397.

HARRY REEVES,
Surrogate.

CAMDEN COUNTY ORPHANS' COURT.

IN THE MATTER OF THE ESTATE OF ELIZABETH WALSH, de- ceased.	}	DECREE ON EX- CEPTIONS TO AC- COUNT.
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10 Exceptions having been filed by Ellen M. Fennimore, residuary legatee under the will of Elizabeth Walsh, deceased, and Philip J. Deegan, Administrator of Emma L. Deegan, deceased, residuary legatee under the will of Elizabeth Walsh, deceased, to the final account of Ida E. Wagner, Executrix of the Estate of said Elizabeth Walsh, deceased, and the proof and allegations of the parties having been heard and considered by the Court;

20 It is, on this fifteenth day of May, nineteen hundred and eight, ordered, adjudged and decreed:

1. That the exception firstly submitted be allowed and that the prayer of allowance of said accountant for one thousand dollars (\$1,000) cash, being item No. 2 of discharge in said account, be denied.

2. That the exception secondly submitted be allowed and that the prayer of allowance of said accountant for eight hundred and sixteen dollars and eighty cents (\$816.80), being Item No. 3 of discharge in said account, be denied.

30 3. That the exception thirdly submitted be allowed and that the prayer of allowance of said accountant for seven thousand seven hundred and twenty-six dollars and eighteen cents (\$7,726.18), being Item No. 4 of discharge in said account, be denied.

4. That the exception fifthly submitted be allowed and that the prayer of allowance of said accountant for commissions in the sum of three hundred and forty-six

dollars and fifty-four cents (\$346.54), being Item No. 8 of discharge in said account, be denied.

And it is further ordered, that the exception fourthly submitted be and the same is hereby overruled, being exception to Item No. 5 of discharge in said account, wherein the accountant prays allowance for premium on bond.

And it is further ordered, that there be allowed to Joseph Kaighn, Esquire, proctor for accountant, a counsel fee of one hundred dollars, and that a counsel fee of one hundred dollars be allowed to Frederick A. Rex, counsel for exceptant Ellen M. Fennimore, and a counsel fee of one hundred dollars be allowed to Grey & Archer, counsel for exceptant Philip J. Deegan, administrator of Emma L. Deegan, deceased, said counsel fees, together with the court's costs and expenses incurred upon the filing and hearing of exceptions to the account, the amount thereof being \$107.62, to be paid out of the said estate. 10

And it is further ordered, adjudged and decreed, that the said account be and the same hereby is in all other things allowed as stated, and that there is a balance in the hands of the said accountant amounting to the sum of eight thousand two hundred dollars and sixteen cents (8,200.16), to be distributed according to law. 20

C. V. D. JOLINE,
Judge.

Dated May 15th, A. D., 1908, account allowed. 30

Filed May 15th, 1908, in Book O of Accounts, page 315, &c.

HARRY REEVES,
Surrogate.

CAMDEN COUNTY ORPHANS' COURT.

IN THE MATTER OF THE ESTATE OF ELIZABETH WALSH, de- ceased.	}	APPEAL FROM ORDER OF MAY 15, 1908.
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- 10** Ida E. Wagner hereby appeals to the Prerogative Court from the decree entered herein on the fifteenth day of May, nineteen hundred and eight, and from each and every part thereof.

Dated May 26th, 1908.

JOSEPH KAIGHN,
Proctor for Appellant.

SAMUEL H. RICHARDS,
Of Counsel with Appellant.

- 20** Received May 27, 1908.

HARRY REEVES,
Surrogate.

STATE OF NEW JERSEY, } ss.
COUNTY OF CAMDEN, }

- 30** I, HARRY REEVES, Surrogate of the county of Camden, do hereby certify that the foregoing is a true copy of the account, exceptions to account, order fixing time for hearing, decree on exceptions and notice of appeal, in the matter of the account of Ida E. Wagner, remaining executrix of the estate of Elizabeth Walsh, deceased, all of which are recorded in the office of the Surrogate, at Camden.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Camden, this tenth day of June, A. D. 1908.

HARRY REEVES,
Surrogate.

[SEAL.]

CAMDEN COUNTY ORPHANS' COURT.

IN THE MATTER OF THE ESTATE }
 OF ELIZABETH WALSH, de- }
 ceased.

CAMDEN, N. J., January 10, 1908.

10

Hearing of the above matter on this date at ten o'clock A. M. Present, JOSEPH KAIGHN and SAMUEL H. RICHARDS, ESQS., for the Accountant; FREDERICK A. REX, ESQ., for the Exceptant, Ellen M. Fennimore, and F. MORSE ARCHER, ESQ., for the Exceptant, Philip J. Deegan, Administrator of Emma L. Deegan, deceased.

JOSEPH KAIGHN, ESQ., affirmed.

20

By Mr. Richards:

Ques. You are an attorney-at-law of this State?

Ans. Yes, sir.

Ques. Did you know in her lifetime Elizabeth Walsh?

Ans. I did.

Ques. Have you seen the account which is on file in this matter, filed by Ida E. Wagner, executrix of the estate of Elizabeth E. Walsh?

30

Ans. I have.

Ques. Have you ever seen the mortgages mentioned in the charging part of that account?

Ans. I have.

Ques. And the insurance company's stock mentioned in the charging part of that account?

Ans. No; I don't think I ever saw that.

Ques. Did you ever have any consultation with Mrs. Walsh in her lifetime concerning those mortgages and that insurance company stock?

Ans. I did.

Ques. Where was Mrs. Walsh living at that time?

Ans. Well, on Broadway, with Mr. and Mrs. Wagner; I don't know the number.

Ques. That is, Ida E. Wagner, the daughter?

10 Ans. Yes, sir.

Ques. Do you know about what time it was the consultation took place?

Ans. Well, I don't know the time of the first consultation; I was down there on other business. She had a claim against Martha E. French which she wanted me to reduce to a judgment, and at that time she spoke to me about assigning these mortgages to Mrs. Wagner; that is, she wanted to turn them over, and asked how she could do it.

20 Ques. Did she say why she wanted to turn them over?

Ans. Yes; she said that she had decided to make her home there and on account of that that these mortgages were to be assigned to Mrs. Wagner.

Ques. Did she say anything about—

Ans. "Turned over to them" I think is the word she used.

Ques. Did she say anything about the kind of a home she had there?

Ans. Well, I am not clear on that; I don't know whether she did or not.

30 Ques. Did she say how long she intended to stay there?

Ans. Yes; she said she expected to make it her home the rest of her life.

Ques. And that she intended to turn over those on that account, those mortgages?

Ans. She intended to turn over those mortgages to Mrs. Wagner on that account?

Ques. How about the fire insurance stock?

Ans. Well, she wanted that turned over, too. I told her as to the mortgages I could draw an assignment of mortgages and turn them over that way, put them in Mrs. Wagner's name, and as to the insurance company stock I told her she would have to go to the Camden Fire Insurance Company and have it assigned there, that I could not do anything in regard to that. I told her when she was ready to do it to either send the mortgages up or bring them and come to see me. That was some time prior to the time they were signed. Then it laid for some little time, I think several weeks, before I heard anything more from her.

10

Ques. Was Mrs. Wagner present at the interview at which the old lady said she wanted to make that her home the rest of her days and intended to turn these mortgages and insurance company stock over to Mrs. Wagner on that account?

Ans. I think she was; I believe she was.

The Court: Well, are you sure she was? You have only said "I think" and "I believe." The evidence might be of importance later on, I can't tell.

20

The Witness: Yes, she was present, and Mrs. Wagner, too.

Ques. Did Mrs. Wagner do anything at that time to show her dissent to that arrangement which her mother had made in your presence?

Ans. No.

30

Ques. I hand you now two papers marked respectively for identification P1 and P2. Can you tell us whether or not they are the papers marked vouchers Nos. 1 and 2 in the account which Mrs. Wagner has filed?

Ans. \$816.80—voucher No. 1. Yes; they are the ones.

The Court: Which is voucher No. 1, P1?

The Witness: P1 is voucher No. 1; you have them marked right.

The Court: Then P2 is voucher No. 2?

The Witness: That is right.

10 Mr. Richards: They are offered in evidence.

The Court: I understand then that each of these papers is a claim which was presented to the executor represented in your account by voucher 1 and voucher 2, respectively.

The Witness: That is correct.

Cross-examination.

20 By Mr. Rex:

Ques. Mr. Kaighn, I understand you have been the attorney for Mrs. Wagner in all these proceedings?

Ans. As far as I know; yes.

Ques. These items that she has charged herself with are the same items which are the subject of a contest in the Court of Errors, or at least the Court of Chancery and the Court of Errors, aren't they?

Ans. The items which she has charged herself with?

30 Ques. Yes.

Ans. Yes.

Ques. And she did not charge herself with them until she was ordered to do so by the Court of Chancery, did she?

Ans. No, sir.

Ques. And that decree was affirmed by the Court of Errors?

Ans. Yes, sir.

Ques. You testify here just the same as you did in the suit in the Court of Chancery, don't you?

Ans. Well, I don't know whether the same questions were asked me; I couldn't answer that. I have told the truth as near as I know it.

Ques. This was your testimony there, wasn't it: "Q. Did she say anything about what the consideration was or why she was doing this? A. She told me, I asked her about that, she told me that she had a good home there and that she intended to stay there the rest of her days and that she wanted to turn these over to Mrs. Wagner on that account." Was that your testimony? 10

Ans. I believe it was.

Ques. And that is all you knew about it then?

Ans. All that I knew about what?

Ques. About the reason why she wanted to turn these over to Mrs. Wagner?

Ans. Yes.

Ques. You drew the assignments, did you? 20

Ans. They were drawn in my office; the stenographer drew them, I suppose; I don't remember just who did draw them; I might have drawn them, but it was done in my office.

Ques. You knew nothing about the consideration further than this, did you?

The Court: Further than what?

Mr. Rex: You knew nothing about the consideration of these assignments but what you swore to there? 30

Ans. I don't just know what you mean yet.

Ques. I mean to say, when you drew the assignments and put \$800 or \$1,200, whatever the amount might have been, you knew nothing about the consideration except she wanted to turn them over; is that right?

Ans. Yes, I knew more about them than that.

Ques. Well, all you knew about it you swore to before the Court of Chancery, didn't you?

Ans. Well, I can't answer that question, because I don't know what the question was in the Court of Chancery.

Ques. Did you conceal anything?

Ans. I did not undertake to; no, sir.

10 Ques. I didn't ask you whether you undertook to; I asked you whether you did conceal anything.

Ans. Not that I know of.

Ques. Therefore you swore to all you knew?

Ans. I can't say that.

Ques. You can't say that you swore to all you knew?

Ans. No; because I don't know what the question was; I can't remember now.

Ques. Well, did you conceal anything?

Ans. No, sir.

Ques. Then you swore to all, did you?

20 (Objected to.)

Ans. I can't say to that.

Ques. Of course, you know nothing about the disbursements of Mrs. Wagner, do you?

Ans. No, sir; except what she has told me.

By Mr. Archer:

30 Ques. In this Chancery suit you were asked on cross-examination this question, on top of page 21 of the printed book used in the Court of Errors and Appeals: "Ques. Was there any agreement made between Mrs. Wagner and Mrs. Walsh that you know of as to her support? A. Not that I know of. Q. You knew nothing of that? A. No. Q. That is all." That is a correct statement of your testimony in answer to that question there?

Ans. It is.

Ques. And you have no knowledge of any agreement existing between Mrs. Walsh and Mrs. Wagner now that you had not at the time you were then asked about it, have you—the situation is unchanged?

Ans. No; I know of no agreement. There was simply a statement made by Mrs. Walsh to her daughter that she was going to turn them over for them, but nothing more than that. I know nothing further than that.

Ques. Will you look at this book please, and see what it is (handing witness book marked for identification Exhibit E1?) 16.

Ans. It is the state of the case in the case of Fennimore vs. Wagner in the Court of Errors and Appeals.

Ques. And is that the state of the case which was printed upon an appeal taken by you and Mr. Richards, representing Mrs. Wagner?

Ans. Yes, sir.

Ques. And used in that proceeding?

Ans. Yes, sir.

20

Mr. Archer: I offer that in evidence.

(Said book is now marked Exhibit E1.)

Ques. Now, Exhibits P1 and P2, entitled "Claims of Ida E. Wagner," are vouchers for the first two disbursements in the account, are they?

The Court: No, they are the claims presented to the executor represented by the vouchers.

30

The Witness: Marked Nos. 1 and 2.

Ques. Where were they prepared?

Ans. They were prepared in my office.

Ques. By you on behalf of Mrs. Wagner?

Ans. Yes, sir.

By Mr. Richards:

Ques. Mr. Kaighn, you have been asked about a decree of the Court of Errors and Appeals in the matter referred to in the book Exhibit E1. Have you ever seen the decree of the Court of Errors and Appeals in that matter?

10 Mr. Rex: I object; a certified copy of the decree is the best evidence, and whether he has seen it or not cannot be evidence.

The Court: He may answer that; he is only asked whether he has ever seen it.

Ans. I have seen a copy of it.

Ques. Are you sure that you ever saw a copy of that—of the decree, not the opinion?

Ans. Not the decree itself; no.

20 Ques. No copy of that has ever been served on you?

Ans. No.

Ques. Did you order a copy of the opinion filed by the Chief Justice in that matter?

Ans. I did.

(Objected to as irrelevant.)

The Court: I cannot tell what the bearing is going to be. What is your purpose, Mr. Richards?

30 Mr. Richards: Well, I want to show the reason, if the Court please—

The Court: Do you want to offer the opinion in evidence; is that it?

Mr. Richards: Yes, sir; I want to offer the opinion in evidence.

Mr. Rex: I have no objection to that at all.

Ques. Is that the opinion you received?

Ans. Yes, sir.

By the Court:

Ques. From whom did you receive it?

Ans. The Secretary of State; it is a certified copy.

(Said paper is now offered in evidence and marked Exhibit P3.) 10

By Mr. Richards:

Ques. Did you receive it before or after the citation was issued in this matter?

Ans. I received it afterward.

By Mr. Rex:

20

Ques. Would it have made any difference to you and counsel for Mrs. Wagner whether this opinion was received before or after you filed this account?

Mr. Richards: I object to that; that can have no bearing on this issue.

(Question withdrawn.)

30

JOHN J. WELSH, sworn.

By Mr. Richards:

Ques. Mr. Welsh, you are a contractor and builder in the city of Camden, aren't you?

Ans. Yes, sir.

Ques. Were you related to Mrs. Elizabeth Walsh, the decedent in this matter?

Ans. Related? No.

Ques. You spell your names differently?

Ans. Yes; she was English and I am Irish; there is a good deal of difference.

Ques. Were you acquainted with Elizabeth Walsh in her lifetime?

10 Ans. I knew her for about twenty years, I guess.

Ques. Do any work for her?

Ans. Yes.

Ques. Did you ever have any conversation with her in which she talked about her intention to make her home with her daughter, Mrs. Wagner?

20 Mr. Rex: I object to that. That is attacking this very decree. Now, that is a settled fact, that there was no contract. I don't care whether she had conversations or what she had, the Court of Errors sustaining the Court of Chancery said there was no contract between Ida Wagner and Mrs. Walsh, that these assignments were made without consideration. Mr. Kaighn was a witness to that effect up above and here also; he knew of no contract. Now, to endeavor by some outsiders to prove a contract which has already been settled in the Court of Errors, it seems to me, is unparalleled, that this Court should allow something to be produced here which will upset a decree of Chancery affirmed by the Court of Errors. I want to make an objection right
30 here to any testimony which may be offered here as to a contract existing between Mrs. Walsh and Mrs. Wagner.

The Court: I will let him answer that, because it does not state what the conversation was. (To the witness.) Now, you can only answer that yes or no—did you have a conversation with her?

The Witness: Yes, sir.

Ques. What was the conversation?

Mr. Rex: I object to any testimony being taken as to conversations between the decedent, Mrs. Walsh, and any person as to matters which might go to prove a contract or some consideration coming from Mrs. Walsh to Mrs. Wagner for board, inasmuch as that point was clearly raised and was the only point raised up above in the Court of Chancery, affirmed by the Court of Errors, the question of board. The Court held that these assignments—they say they were for board—were made without consideration. 10

The Court: Do I understand this to be correct—if I am incorrect, counsel may correct me: A bill was filed in the Court of Chancery to set aside certain assignments of bonds and mortgages which Mrs. Wagner alleged were made to her or bonds given to her by the decedent because of board which she had given the decedent— 20

Mr. Rex: If your Honor will allow me to correct you, a bill was filed in the Court of Chancery by the beneficiaries except one, under the will, asking the Court to decree that these assignments of mortgages and the sale of insurance stock were void, setting up these reasons, undue influence, impaired mental capacity to make any contract and no consideration. There were three points which were made in the bill; now, a plea was filed saying nothing about the board, saying nothing about the mental capacity, saying nothing about the undue influence, but it did say that they were made for a valuable consideration. The Vice Chancellor held that the three other points were conceded by them, that she was unduly influenced, that these were obtained by improper methods, that she had not the mental capacity and the question of 30

consideration was absolutely unproven; there was no consideration, and on all four points the Vice Chancellor upheld the bill, three being admitted by them by reason of not filing any answer.

The Court: Now, was the consideration one that was raised under that plea and heard before the Court, this matter of board?

10 Mr. Archer: It was, yes; the only one.

Mr. Rex: The only one that was raised.

The Court: Have you the final decree of the Court of Errors and Appeals?

Mr. Rex: There is no decree except affirmance. All except the opinion of the Court of Errors and Appeals and the decree of affirmance of that Court is before the Court in the book Exhibit E1.

20 (The decree of affirmance in the Court of Errors and Appeals, which has just been handed the Court, is marked Exhibit E2. The opinion of the Court in that case has heretofore been marked Exhibit P3.)

The Court: I am going to take this testimony with the right to strike it out if in my judgment it relates to a matter which was litigated in the Court of Chancery and affirmed in the Court of Errors and Appeals. Let **30** him answer the question.

Ans. I was passing along Broadway, and Mrs. Walsh was standing outside the door of Mrs. Wagner's house, I think some time in April—what day I can't remember—1904, and she says, "I wish to see you a few moments." I asked her what it was about. She says, "I

am staying here now with Mr. and Mrs. Wagner, and going to make it my home," and she says, "I wish you would do a little errand for me to-day or to-morrow." I said, "What is it?" She said, "I want you to go up to the Camden Fire Association and take this stock up with you and get it assigned to my daughter Ida Wagner." Shall I tell you how I went up?

Ques. Go ahead.

The Court: No; you can only tell what she told you. 10

Mr. Rex: I object to anything he did.

Ans. Well, I went up to the Fire Association, and Mr. Vinton waited on me and he looked over it and said, "This is a wrong name on this; this Fire Association stock is made out in the name of Elizabeth Baxter and John Baxter—she is now married to Mr. Walsh—and you will have to go back and have her sign Elizabeth Walsh." I went back immediately to the house and told her this. She then got a pen and ink and wrote her name down Elizabeth Walsh. 20

Ques. Did she say anything to you about intending to make her home there with Mrs. Wagner the rest of her days?

(Objected to as leading.)

Ans. Yes.

(Objection sustained.) 30

Ques. Did you have any conversation with Mrs. Elizabeth Walsh as to how long she intended to make her home there?

Ans. She said she was going to stay there all her life; make that her home.

Ques. Did she say anything about what she intended to give Mrs. Wagner for that?

(Objected to as leading.)

Ques. Or what the agreement was?

(Objected to.)

The Court: You may state if she said anything to you about what their agreement was.

10

Ans. She told me that she had some mortgages and other assignments that she was going to assign to Ida because Ida was the only one that was good to her, took care of her when she was sick, looked after her interests, took in her rents, and she said the others did nothing but insult and abuse her. That is all she said to me.

Ques. Did you ever see her after that, Mr. Welsh?

Ans. Oh, dozens of times afterward.

Ques. Do you know whether or not she did as a matter of fact make her home with her daughter, Mrs. Wagner, the rest of her days?

20

Ans. Yes, I knew it up to the time of her death.

Ques. Did she ever afterward tell you that she had turned over these mortgages and insurance company stock to her daughter?

(Objected to as leading.)

The Court: Did she ever tell you what she had done with these bonds and mortgages?

30

Ans. She told me that she assigned them over to Ida, her daughter.

Cross-examination.

Mr. Rex: I will cross-examine subject to my objection.

By Mr. Rex:

Ques. Mr. Welsh, you were subpoenaed, weren't you, at the former trial in the Court of Chancery?

Ans. Yes, sir.

Ques. You did not testify?

Ans. They did not call on me; no.

Ques. I say, you did not testify?

Ans. No.

Ques. You knew all these facts?

Ans. Yes.

Ques. You had communicated with the counsel, hadn't you?

Ans. Never communicated to them until this morning, to the counsel.

Ques. Didn't you ever talk to them before this morning?

Ans. Merely passed them by; no, never was in his office until this morning.

Ques. How did he find out you had this conversation?

Ans. I suppose Mrs. Wagner has told him.

Ques. Mrs. Wagner?

Ans. I suppose so; I don't know.

Ques. And the only thing Mrs. Wagner said was that she wanted to give these things to Ida because she was going to make her home there?

Ans. She was always good to her, took care of her.

By Mr. Richards:

Ques. I never talked to you about this matter until this morning, did I?

Ans. No, sir.

JOHN K. ESLER, sworn.

By Mr. Richards:

Ques. You live in the city of Camden?

Ans. Yes, sir.

Ques. Did you know in her life time Elizabeth Walsh?

Ans. I have known her for about 35 or 40 years.

Ques. Lived near her for a while, did you?

Ans. Lived within a square of her 35 or 40 years ago and dealt at her store.

Ques. On what street was that?

Ans. She lived on Seventh street and I lived on
10 Eighth and Sycamore.

Ques. Did you have any talk with her, either previous or shortly after the time of her going to her daughter, Mrs. Wagner's, to live?

Ans. I lived about 75 yards from her cater-cornered across the street; lived there for 14 years, I guess.

Ques. That was before she went to this place?

Ans. That was before she went. I lived there; I have done business with her time and again.

Ques. Prior to her going to Mrs. Wagner's did—

Ans. Yes, prior to her going, often sat on her step
20 and had a talk with her.

Ques. Prior to her going to Mrs. Wagner's, did she ever talk to you about her intending to go there and live?

Ans. Yes; I have heard her say—

Mr. Rex: I object; he is not asked what she said.

The Court: That is all you can answer.

Ques. What did she say.
30

Mr. Rex: I object to that on the same ground as before.

The Court: I am going to take this testimony for the same reason as I did before, and I will strike it out if I find it relates to a subject litigated and determined in the Court of Chancery.

Ques. Go ahead and tell us what she said.

Ans. She has said to me time and again, "I can't stand the way things are going, and I have got to break up my home." I said, "That seems to be hard in your old days." She says, "Yes; I think I will go down and live with Ida," she said. She says, "There was a time that I hated Hen Wagner worse than a rattlesnake, but he is the only friend I have got."

Mr. Rex: Wait a minute; I think his answer should be confined to this case. I don't think it is competent. 10

The Court: I think what she said about Mr. Wagner, having hated him previously but willing now to go and live at his house, is pertinent or relevant to the case.

Ques. Now, go ahead, Mr. Esler; what else did she say?

Ans. Well, we talked about different business matters that don't have no bearing on this case one way or another and about different things. So the first thing I know she was down to Wagner's, she had been there I suppose a couple of weeks before I stopped in there. I had several talks with her about different things, and I suppose she had been there a month, probably a couple of months, and I stopped in there one day and she was sitting by the sewing machine in a sitting-room. I says, "Well, I see you are down here; do you feel any better since you got here?" She said, "I ought to have been here a year ago," she said, and I said, "Is that so?" She said, "Yes, I feel better than I have felt for the last year or two," and she said, "I have not had a home for years until now." Of course, I went out, and that was about all that was said, talking about different things that happened in the neighborhood. 20 30

Ques. Did she at any time tell you how long she expected to stay there?

(Objected to.)

The Court: I will take it for the same reason.

Ans. Why, she says, yes, she says to me one day, "I expect to make my home here, let me live long or short, and she says, "I expect to die here; this will be the last home I will have."

Ques. At any of those conversations did she tell you what she either intended to give or had given Mrs. Wagner for that?

10 Ans. Well, she did not mention any bonds or mortgages or anything like that; she says, "I have give Ida some papers to look after me until I die." That was all she said; she did not say anything about bonds and mortgages or anything; said she had given some papers.

Ques. Do you know whether or not Mrs. Wagner did continue to live there and make it her home the rest of her days—Mrs. Walsh, I mean?

Ans. She lived there until she died and was buried from there.

20 Cross-examination (subject to objection):

By Mr. Rex:

Ques. Were you Mrs. Walsh's man of business?

Ans. Sir?

Ques. Did you attend to her business for her, in other words?

Ans. Who, Mrs. Walsh?

Ques. Yes.

30 Ans. No, sir.

Ques. How came she to consult you about her business affairs?

Ans. Well, me and her had many matters of business together. She has loaned me money and I paid her back, in that way, and being a neighbor for the last 40 years, dealing with her, I suppose she kind of placed a little confidence in me; that is all I can say.

Ques. Therefore she confided these facts to you that she was going there to live?

Ans. Yes; she told me that she was going there to live.

Ques. Now, the first time you speak about, when you saw her, she was not living with Mrs. Wagner, was she?

Ans. No; it might have been six months before; I can't say when.

Ques. She was not living with any of her children, was she?

Ans. No; living at home, in her own house.

Ques. So the unhappiness of her home was not brought about by any of the children?

Ans. I can't say about that.

Ques. She was not living with them?

Ans. No.

Ques. Or they weren't living with her?

Ans. No.

Ques. So then her unhappy home was not produced by any of her children, was it?

Ans. That I can't say; she didn't say it was or wasn't.

Ques. How long did she live with Mrs. Wagner?

Ans. Well, I couldn't say, something about a year; somewhere around there.

Ques. About a year?

Ans. It might have been more or might have been little less, I couldn't say.

Ques. Did she ever consult you about making her will?

Ans. Never said nothing to me about a will.

Ques. You didn't know she made a will, did you?

Ans. No.

Ques. And you didn't know she had given Ida—

Ans. No; she didn't tell me, only told me she had given her some papers.

By Mr. Richards:

Ques. Did Mrs. Walsh, in any of those conversations, tell you anything about her other children having bor-

rowed money of her and got their full share of the estate?

(Objected to as leading.)

The Court: You can only produce testimony of a decedent which is against interest, and would that be a statement against interest, that a person has owed her money and she has loaned money to persons?

- 10** Mr. Richards: Mr. Rex has asked the witness whether or not the action of her other children had anything to do with making her unhappy.

The Court: Well, that does not answer my question, whether this is a declaration against interest.

- 20** Mr. Richards: I think we are entitled to show by this witness statements by the decedent to the effect that her other children had treated her improperly, had borrowed money of her and never repaid it, had rented her properties and never paid her rent for them, and had really obtained their full share of her estate.

The Court: I will sustain the objection.

Ques. Did Mrs. Walsh ever complain to you of the manner in which her other children had treated her?

(Objected to on the same ground.)

- 30** The Court: The objection is sustained. It is not material to the issue in this case.

Ques. Or to the amount of money that they owed her?

(Objected to as before.)

The Court: The objection is sustained for the same reason; it is not material.

HENRY WAGNER, SWORN.

By Mr. Richards:

Ques. Mr. Wagner, you are the husband of Ida E. Wagner, the accountant in this case, aren't you?

Ans. Yes, sir.

Ques. Do you have any knowledge of the Hugg mortgage, the mortgage made by Abigail F. Hugg to Elizabeth Walsh?

10

Mr. Rex: I object; the executrix has already charged herself with that.

The Court: He may answer that question yes, or no.

Ans. Yes, sir.

Ques. Do you know whether or not that mortgage was paid off?

Mr. Rex: I object to that as leading and also as being irrelevant. She has charged herself with it, and she is bound by that.

20

Mr. Richards: I see by the account that she has charged herself with this mortgage, but your Honor will find on the other side of the account that the executrix has paid the money to her mother; that is what I want to show.

The Court: The question may be answered.

30

(Question repeated.)

Ans. Yes, sir; it was paid.

Ques. Did you see anything happen to the proceeds of that mortgage?

Ans. See anything happen to that?

Ques. Yes; what became of the money, do you know?

Ans. The money was given to Mrs. Walsh.

Ques. In your presence?

Ans. Yes, sir.

By the Court:

Ques. All of it?

10 Ans. Yes, sir.

By Mr. Richards:

Ques. Do you mean to say by that "given" that it was paid over to her absolutely?

Ans. It was given to her.

Ques. Absolutely?

Ans. Yes, sir.

Ques. You mean Mrs. Walsh, the decedent in this case?

20 Ans. The mother of my wife; she received the \$816.

Ques. Mr. Wagner, if your wife had received from her mother, Elizabeth Walsh, a thousand dollars, you would have known of it, wouldn't you?

(Objected to.)

The Court: The objection is sustained on the ground that the question is leading, suggesting an answer.

30 Ques. It is claimed, Mr. Wagner, by the other side, that Mrs. Walsh gave to Mrs. Wagner in her lifetime \$1,000. Would it have been possible for Mrs. Wagner to have received as much money as \$1,000 without your knowing of it?

Mr. Rex: I object; this witness has not shown any knowledge of the affairs of his wife.

The Court: I will take the answer. You may cross-examine him upon it when the time comes.

(Question repeated.)

Ans. Do you mean at one time or different times?

Ques. Yes; at one time.

Ans. She never received it.

The Court: You have not answered the question— would it have been possible for her to receive it without your knowing it?

Ans. I am home all the time; if it had been given to her I should have known it, I really believe; I don't go out to work; my work is right in the house.

Mr. Rex: One minute, Mr. Wagner; answer the question; don't volunteer.

By Mr. Richards:

20

Ques. And, therefore, as you have already said, you are positive she never received it?

(Objected to; objection sustained.)

Ques. Did she ever, to your knowledge, receive from her mother \$1,000?

(Objected to.)

30

The Court: He may answer that.

Ans. No, sir.

Ques. Do you remember about when it was Mrs. Walsh came to live with Mrs. Wagner?

Ans. If I remember rightly, in February.

Mr. Rex: What year?

The Witness: 1904.

Ques. How long after that did she live there?

Ans. Until she died.

Cross-examination.

10 Mr. Rex: I cross-examine, your Honor, under the objection which I have already made to this testimony.

By Mr. Rex:

Ques. Mr. Wagner, when was this money paid on this Hugg mortgage?

Ans. On the Hugg mortgage?

Ques. Yes.

Ans. I could not give you the date.

Ques. Well, when?

20

Ans. During 1904.

Ques. Can't you tell the month?

Ans. It might have been May or June.

Ques. What is that?

Ans. It might have been May or June.

Ques. I ask you whether you can tell the date; can you or can't you?

Ans. I cannot.

Ques. Who paid it, the money? Who paid the money?

Ans. To Mrs. Wagner, do you mean?

30

Ques. Yes.

Ans. I believe Mr. Burr.

Ques. Do you know whether it was Mr. Burr or not?

Ans. I believe it was.

Ques. Well, do you know whether it was or not?

Ans. Not positively.

Ques. Where was it paid?

Ans. I believe Mrs. Wagner could answer.

Ques. Now, don't "believe"; tell me, if you know.

Ans. I am telling you what I believe.

Ques. I don't want you to tell me what you believe;
I want you to tell me what you know.

The Court: Give your best knowledge.

The Witness: That is what I am trying to do, your Honor.

The Court: Well, answer the question.

10

(Question repeated.)

Mr. Richards: Now, this is the payment to Mrs. Wagner which is referred to, not the payment to Mrs. Walsh.

Mr. Rex: He understands the question perfectly.

Ans. I was not there when it was paid; I can't say.

Ques. So you didn't see it paid at all?

20

Ans. To Mrs. Wagner?

Ques. Yes.

Ans. I can't say that I did.

Ques. How do you know it ever was paid?

Ans. Because Mrs. Wagner gave the money to her mother.

Ques. But you don't know whether it was on the Hugg mortgage or not, do you?

Ans. Yes, I do.

Ques. How do you know it?

30

Ans. Because my wife said so.

Ques. That is the only way you know it?

Ans. "Here is that money of the Hugg mortgage."

The Court: She said that when she paid it over?

The Witness: To her mother; yes.

Ques. I say, Mrs. Wagner said that?

Ans. Yes.

Ques. And the only way you know it was paid was what Mrs. Wagner said; is that right?

Ans. What other way was there to know?

Ques. I didn't ask you that; I don't want any argument about it. Just answer that question.

Ans. That is right.

10 By the Court:

Ques. Did Mrs. Walsh, when this money was paid over and Mrs. Wagner said it was the money on the Hugg property, dispute that at all?

Ans. Not at all.

By Mr. Rex:

Ques. Where was Mrs. Walsh at that time?

Ans. At our house.

20

Ques. Whereabouts in your house?

Ans. In the sitting-room. That was generally her place, the rocking-chair.

Ques. I am not talking about generally; just answer my question. Where was she when this money was paid?

Ans. As near as I can remember in the sitting-room in her accustomed place.

Ques. Yes; where was that?

Ans. In the rocking-chair in the sitting-room.

Ques. Who was present when it was done?

30

Ans. Who was there?

Ques. Yes.

Ans. I believe Dora Meissner.

Ques. Now, you were present?

Ans. Yes, sir.

Ques. Who else was present?

Ans. Dora Meissner.

Ques. Who else?

Ans. Ida E. Wagner.

Ques. Who else?

Ans. Elizabeth Walsh.

Ques. Who else?

Ans. Nobody.

Ques. Just four of you?

Ans. Yes.

Ques. Now, how was it paid, what sort of money?

Ans. Different denominations.

Ques. It was not by check?

10

Ans. No, sir.

Ques. Can you recollect any of the denominations?

Ans. What we commonly call greenbacks.

Ques. You can't tell the denominations?

Ans. A big bunch.

Ques. And this was paid by some gentleman that you can't recollect who it was?

Ans. What say?

Ques. I say, this was paid by some one whom you don't recollect?

20

The Court: Paid to your wife by some one?

Ans. I haven't said that.

Ques. What did you say?

Ans. I said that Mrs. Wagner gave Mrs. Walsh the money, \$816.

Ques. I say, the money was paid to Mrs. Wagner by some one, you don't know who?

Ans. I haven't said that I know who gave Mrs. Wagner this money.

30

Ques. Oh, I see, you don't know anything about it. Now, what did Mrs. Walsh do with the money?

Ans. \$500 of it went to her husband.

Ques. And the balance?

Ans. The balance, as far as I know, she kept.

Ques. How do you know it went to her husband?

Ans. I took it to him.

Ques. In money?

Ans. Yes, sir.

Ques. Now, can you recollect what sort of money it was you took?

Ans. What kind of money?

Ques. Yes.

Ans. The different denominations, fives and tens, fives, tens, fifties, hundreds, so on; I wouldn't say there was any hundreds; I wouldn't say any of that kind.

10 Ques. When she received this money from Mrs. Wagner, did she count it out?

Ans. Did she count it out herself, you mean?

Ques. Yes.

Ans. Yes, sir.

Ques. How did she count it out, can you tell? Did she go up to her desk, or sitting in the chair or how?

Ans. She generally counted it out—

Ques. I didn't ask you generally.

Ans. She counted this money out on the table.

20 Ques. Then she handed you \$500, did she?

Ans. Yes.

Ques. Right away?

Ans. Right away, immediately.

Ques. How about the balance—you don't know what she did with it?

Ans. Put it in her pocket.

Ques. Do you know what she used it for?

Ans. Paying bills.

Ques. Paying board?

Ans. No, sir.

30 Ques. She paid her bills, did she?

Ans. All her bills she paid.

Ques. Did she keep a bank account that you know of?

Ans. No, sir.

Ques. She did not keep a bank account?

Ans. No, sir; never in her life; she was opposed to it.

Ques. She was opposed to it?

Ans. Yes.

Ques. You mean to say, Mr. Wagner—

Ans. Excuse me, I beg your pardon. I believe at one time she had a few dollars in the bank at Second and the avenue; I think it is called the Camden National Bank.

Ques. That is the only bank you know of, is it?

Ans. That is the only time she ever had a bank account since I knew her, and that has been very nearly 10
40 years.

Ques. So she kept this \$500 right in her pocket in the house, did she?

The Court: \$300.

Ques. Well, whatever it was—\$300.

Ans. Yes.

Ques. She kept this \$300 in her pocket?

Ans. I saw her put it in her pocket; now I can't 20
say any more than that.

Ques. You can't say whether she paid the bills from that money or not?

Ans. Oh, yes, she always took the money out.

Ques. Where did she get the money from, out of her pocket again?

Ans. She never had no other place to keep money.

Ques. So that she got the money every time that she paid these bills out of her pocket, did she?

Ans. Yes, sir.

Ques. You were a witness at the Court of Chancery, 30
weren't you?

Ans. Yes, sir.

Ques. You testified?

Ans. Yes, sir.

Ques. And you told all you knew about the affair, did you?

Ans. All I knew about what affair?

Ques. About the affair of Mrs. Walsh and Mrs. Wagner, these bonds and mortgages, &c?

Ans. I only answered what I was asked.

Ques. So you did not tell all that you knew?

Ans. That is a pretty broad question.

Ques. What say?

Ans. That is broad.

By the Court:

10 Ques. Did you answer all you knew in so far as related to the questions which were asked you?

Ans. Yes, sir.

By Mr. Rex:

Ques. This Hugg mortgage was one of the mortgages mentioned in the bill of complaint, wasn't it?

Ans. I believe so.

20 Ques. Why did you not testify there that that had been paid?

Ans. Because I was not asked.

Ques. And that is the only reason, is it? You knew it was paid, did you?

Ans. Indeed I did; yes, sir.

Ques. But you did not testify to it because you were not asked—is that right?

Ans. I was not asked.

By Mr. Archer:

30 Ques. Mr. Wagner, in regard to that same mortgage this money that was paid to Mrs. Wagner and by Mrs. Wagner to Mrs. Walsh was paid after the time when Mrs. Walsh had assigned it to Mrs. Wagner, wasn't it?

Ans. After the assignments were made?

Ques. Yes.

Ans. Yes, sir.

Ques. Will you kindly explain to the Court why, if Mrs. Wagner already had the assignment of that mortgage, she should have turned these proceeds over to Mrs. Walsh?

Ans. Why she should have done that?

Ques. Why did she?

Ans. Yes, sir; I can answer that.

Ques. I wish you would.

Ans. During Mrs. Walsh's lifetime she was always used to handling what we should call lots of money. When she came to my house she hadn't one dollar, not a penny, and after the assignments were made she said, "Ida, I would like to have some money." Mrs. Wagner says, "Then I will get you some," and that is how the Hugg mortgage was disposed of, because the old lady didn't feel right without having money in her possession after living a great number of years—

Ques. Then as I understand you, when Mrs. Wagner paid the proceeds of that mortgage to Mrs. Walsh, she in turn was making a present of that money to Mrs. Walsh, wasn't she? 20

Ans. I don't know how you—

Ques. It was her money, wasn't it? Whose money was it?

Ans. Do you mean of the two?

Ques. Yes; who owned the money?

The Court: Who owned the Hugg mortgage?

Ans. We believed at that time that Ida E. Wagner owned it because it was assigned to her. 30

Ques. And Ida E. Wagner gave this money then to Mrs. Walsh as a present, did she?

Ans. You can consider it that way.

Ques. Well, I asked you what you considered it?

Ans. I consider that she just gave it to her.

Ques. Presented it to her mother?

Ans. When she handed it to her she presented it to her, yes.

By the Court:

Ques. Were all the other assignments made the same way? Suppose Mrs. Hugg had asked Mrs. Wagner for more money, would Mrs. Wagner have turned all the other moneys over to her the same way?

10 Ans. I believe she would have given her mother anything she asked.

By Mr. Archer:

Ques. Now, Mr. Wagner, you say you don't know anything about the thousand dollars having been put in Mrs. Wagner's possession by Mrs. Walsh; is that right?

Ans. Yes.

Ques. You have no knowledge of any payment of that kind ever having been made?

20 Ans. No; never saw it.

Ques. Had Mrs. Wagner money of her own?

Ans. Always, ever since I married her.

Ques. Where did she get it?

Ans. From me.

Ques. What business were you in?

Ans. The same business that I have been in since I have been 14 years old, the rag carpet weaving business in the city of Camden.

Ques. And in February, 1904, what was your source of income—anything beside the rag carpet business?

30 Ans. That is going a little back.

Ques. Had you any property that brought you an income outside of that business?

Ans. No, sir.

By the Court:

Ques. Had you any income outside of that business?

Ans. No, sir.

By Mr. Archer :

Ques. How much money would you hand over to your wife at a time?

Ans. As much as I made.

Ques. How much was it?

Ans. I couldn't tell.

Ques. What sums did you ever hand to her that you can recollect?

Ques. Every day I handed her money.

10

Ques. How much?

Ans. It might come from five to ten to fifteen dollars, sir.

Ques. How much money did you ever see her have in her possession that you handed to her?

Ans. How much did she ever have?

Ques. How much, what has she accumulated?

Ans. From \$800 to \$1,500.

Ques. And where would she keep it?

Ans. In the house.

Ques. She also would keep as much as \$1,500 about her person and in the house? 20

Ans. I didn't say about her person.

Ques. Well, in the house?

Ans. Yes.

Ques. Did she have a bank account?

Ans. No, sir.

Ques. Did she have it when—

Ans. She has had one here lately, excuse me; I beg your pardon on that. What I mean by a bank account is this, if she got a check, somebody would pay her some money and she would go to the bank and get that money. I don't know much about banking. 30

Ques. But she didn't have any bank account that you know of, did she, in 1904?

Ans. I don't remember in 1904.

Ques. Do you know whether or not Mrs. Wagner ever had a bank account?

Ans. When?

Ques. In 1904.

Ans. I don't know whether she had.

Ques. The money that you gave her she used to keep about her, did she, about the house?

Ans. Always.

Ques. Always did?

Ans. Yes.

Ques. You know that as a fact?

10 Ans. Yes.

Ques. If Mrs. Wagner opened accounts in any of the Camden banks for considerable sums of money in 1904 it was not that money you gave her, was it?

Ans. I couldn't say that.

Ques. You just said a few minutes ago that all the money you gave her she used to keep about, and you saw it, didn't you?

20 Ans. I didn't say I saw it; I said I gave it to her. After I gave it to her she kept it until I had something to pay, then I would say, "Ida, we want so much money."

Ques. What was your income approximately at that time?

Ans. My income has been from three to ten dollars a day.

Ques. Three to ten dollars a day?

Ans. Yes, sir.

Ques. Have you a place of business, a store—did you have at that time?

Ans. I have it yet.

30 Ques. A store?

Ans. Had it before I was married.

Ques. Where is the store located?

Ans. 1028 Broadway.

Ques. In the same house?

Ans. The same house.

Ques. Where you live?

Ans. Yes.

Ques. You own that property?

Ans. Yes, sir.

Ques. Is it clear of incumbrance?

Ans. No, sir.

Ques. How long has the incumbrance been on it?

Ans. There has been one on it ever since it has been built.

Ques. Still on it?

Ans. Yes, sir.

Ques. How much is it?

Ans. \$1,500.

Ques. And that in spite of the fact that your wife would sometimes have as much as \$1,500 about the house that you have given her?

Ans. I said she has had as much.

Ques. But that is during the same period you lived in this house with a \$1,500 incumbrance on it?

Ans. Yes, sir.

Ques. Now, you say that the old lady took this particular \$300 and put it in her pocket, this balance on the Hugg mortgage, didn't you? You saw her put the balance except what she sent to her husband in her pocket?

Ans. Yes, sir.

Ques. She also then kept considerable money about her, didn't she?

Ans. She was in the habit of keeping money with her.

Ques. But when she came to your house, she hadn't any money about her?

Ans. Hadn't a dollar. Now, when I say she hadn't a dollar, I don't want any one to think that I examined her, but she said herself, "I come here without a dollar."

Ques. And after she came to your house, she did have considerable money, didn't she, from time to time about her—did she or didn't she?

Ans. What do you mean by considerable?

Ques. Well, this time you said \$300.

Ans. That was when that mortgage was paid.

10

20

30

Ques. Were there other times when she would have that much money?

Ans. That was the most she ever had.

Ques. How much other money have you known her to have about her?

Ans. No other money, only what was paid by her agent.

Ques. Who was her agent?

Ans. Mr. Ackley, Charles S. Ackley.

10 Ques. She owned quite a number of houses?

Ans. I know she owned about 17 houses.

Ques. And there was considerable income from them every month, wasn't there?

Ans. When the people paid their rents, there was a good income.

Ques. What became of that money? What did she do with it?

Ans. With the money she received from Mr. Ackley?

Ques. Yes, exactly.

Ans. Put it in her pocket.

20 Ques. When she died, how much money did she have in her pocket and about the house?

Ans. That I can't answer.

Ques. Do you know that she had any?

Ans. I have heard Mrs. Wagner say, I believe, one hundred and some odd dollars.

Ques. And that was all?

Ans. That was all.

Ques. What became of this \$300, do you know?

Ans. I did not keep her accounts.

30 Ques. And what became of the rents that were turned over, do you know that?

Ans. As far as I know, it went for expenses. Different men done her work and presented bills and she paid her bills.

Ques. The agent did not pay them before he turned this money over?

Ans. Mr. Ackley?

Ques. Yes.

Ans. He may have paid one or two small bills.

Ques. He did not make a practice of it?

Ans. No.

Ques. Did she spend all the money that the agent handed over in paying the bills relating to her houses?

Ans. There are some people sitting right back there—

Ques. Never mind the people sitting back there; you know whether she did or not?

Ans. You are asking me what she done with this money, aren't you? I am trying to tell you. 10

(Question repeated.)

Ans. No, sir. I will try to get at that another way; no, sir.

Ques. What did she spend her money for?

Ans. She spent her money for this repair work on her property. The property was in very poor condition. When she came to our house, we had a fence put up, that is, she ordered me to order the lumber. Now, this is one instance. I put up a fence; that fence I should judge was from 80 to 100 feet long and 5 feet high, and what we call a double watercloset was built. After it was done she paid for the lumber and so forth, and the fence wanted painting and a man by the name of John Chadwick said he would paint it. Mrs. Walsh gave him \$5, and a few days afterward she said to me, "Harry, go out and see if that is— 20

Mr. Rex: I object to any conversation. Well, I will withdraw the objection. 30

Ques. Which property was it she put this fence on; whose property?

Ans. Her own.

Ques. Where is it located?

Ans. Seventh and Sycamore.

Ques. And that is the property she spent this money on?

Ans. Yes, sir.

Ques. How much did she spend on that?

Ans. I don't know.

Ques. About how much?

Ans. I don't know.

Ques. Mr. Wagner, from February to December, when this old lady died, during the time that she was living
10 with you, did she pay any of the household bills?

Ans. You mean my family expenses?

Ques. Yes; the running expenses of the house?

Ans. No, sir; not to my knowledge.

Ques. Was there a nurse there; a woman there beside Mrs. Wagner?

Ans. Several ladies there helping Mrs. Wagner.

Ques. Did they receive pay for it?

Ans. That I cannot answer.

Ques. You mean you will not or cannot?

Ans. I don't know.
20

Ques. You don't know that they did?

Ans. I don't know that they did; no, sir.

Ques. Did you ever pay them for their services, any of these people?

Ans. Did I pay them?

Ques. Yes.

Ans. No, sir.

Ques. Was there a doctor in attendance during all that time?

Ans. Yes.

Ques. Who was it?
30

Ans. Dr. Harry Jarrett.

Ques. Who paid him?

Ans. Mrs. Wagner.

Ques. Out of her own money?

Ans. I don't know.

Ques. Were there servants in the house—did you have any servants?

Ans. A regular servant, you mean?

Ques. Yes.

Ans. No, sir.

Ques. Who paid the grocer and butcher and those people?

Ans. The grocer and butcher and baker was paid by the Wagner family.

Ques. Who paid them, I say?

Ans. Whoever went after the meat.

Ques. Who would go after the meat ordinarily?

10

Ans. Ordinarily?

Ques. Ordinarily; yes.

Ans. My children.

Ques. And who gave the children the money to pay?

Ans. Mrs. Wagner.

Ques. And whose money was it?

Ans. Mrs. Wagner's.

Ques. Now, what would all this weekly expense, your average weekly expense during that period, amount to?

Ans. I don't know.

Ques. Well, would it amount to—for ten months would it amount to \$8,000?

20

Ans. I don't know.

Ques. Do you mean to say you don't know in answer to that question?

Ans. I have been married thirty-five years, and never been to the store but once.

Ques. Do you mean to say you don't know whether you are paying \$8,000 a year to live or not?

Ans. I know I ain't.

Ques. You know perfectly well it don't cost any such sum of money as that to live there?

30

Ans. I haven't said any such thing; I say I know it don't.

Ques. Was it worth \$7,000 to take care of this old lady from February to December?

Mr. Richards: I object; it can make no difference what it was worth. The old lady might have lived for seventy years or for one year, the contract was to keep her for her life.

Ques. It was sort of like a life insurance company, your plan with the old lady, the compensation end of it?

Ans. My plan?

Ques. Yes; yours and Mrs. Wagner's.

10 Ans. I had no plan.

Ques. Well, who had the plan?

Ans. I didn't know there was any.

Ques. There wasn't any contract, was there, that you ever saw?

Ans. A written contract?

Ques. Yes.

Ans. I never saw a written contract.

Ques. There wasn't any oral contract, was there, that you know about?

20 Ans. There was an agreement.

Ques. A specific agreement?

Ans. What do you mean by a specific agreement?

Ans. An express agreement—did she say, "I will give you everything I have got in this world if you will take care of me the rest of my life"?

Ans. Equivalent to that.

Ques. What was it; just tell us what it was.

Ans. "I am going to live here the balance of my days; I assign this bond and mortgage over to you for the purpose of your keeping it and doing for me. I don't
30 know whether I am going to live one year or ten."

Ques. That is what happened, is it?

Ans. Yes; exactly.

Ques. And when—how long after she came?

Ans. As soon as she got built up and got a little stronger than what she was when she came there; I couldn't tell you exactly.

Ques. Did you say anything like that before the Court of Chancery?

Ans. I wasn't asked.

Ques. Who was present when that occurred?

Ans. I don't know that, who was there.

Ques. Did she say that to herself or some one else?

Ans. She didn't only say that once, but she said that often during different days, "I should have been here ten years ago," she said.

Ques. Did you agree to take care of her for the rest of her life? 10

Ans. I never had any objection to what my wife done with her family.

Ques. Did your wife agree to take care of her for the rest of her life?

Ans. Yes, sir.

Ques. What did she say that you ever heard to the old lady?

Ans. Please repeat that.

Ques. What did Mrs. Wagner ever say to Mrs. Walsh on that subject that you heard? 20

Ans. Just what I have told you.

Ques. You have told us what the old lady said; you haven't told us what Mrs. Wagner said.

Ans. Mrs. Wagner told her one time that she was as welcome as the flowers of May.

Ques. With or without pay?

Ans. With or without pay; it didn't make any difference; if she hadn't had a dollar she would have been just as welcome.

Ques. You didn't take care of the old lady then because of what she said she was going to do, you and your wife, did you? 30

Ans. Mrs. Wagner took—

Ques. Just a minute; just answer the question.

Ans. No, sir; didn't take care of her on account of the money. I want to make myself clear; I want to be understood—

Ques. I think we understand you; I do perfectly. I have no further questions to ask you.

Ans. I don't want to make any mistake in my answers; I want to be as near the truth as possible.

(By consent of counsel Mr. Rex is allowed to continue his cross-examination.)

By Mr. Rex:

10

Ques. Mr. Wagner, you have said, in answer to Mr. Archer, that Mrs. Walsh owned 17 houses; is that right?

Ans. I said about.

Ques. She also owned 8 or 10 mortgages and some fire insurance stock, didn't she?

Ans. Yes.

Ques. They were all productive, weren't they?

Ans. Yes.

Ques. Do you know what her income was?

Ans. I do not.

20

Ques. But moneys were coming in all the time to her, weren't they?

Ans. Always money coming in.

Ques. And she kept that all in the house, did she?

Ans. Do you mean now all the money that came in, that she always kept it in the house?

Ques. Yes.

Ans. No, sir.

Ques. What did she do with it?

Ans. Put it out again.

30

Ques. Where?

Ans. Whoever wanted to borrow it.

Ques. Re-invested it?

Ans. Re-invested it.

Ques. She did not re-invest it the minute she got it, did she?

Ans. As soon as ever she found a customer.

Ques. That required some time to make the searches, &c.?

Ans. Sometimes there were people waiting, and sometimes she was waiting.

Ques. When did Mrs. Walsh, as far as your knowledge goes, first get money when she came to live with you?

Ans. From the real estate agent.

Ques. I didn't ask you from what source, but at what time did she first get money? 10

Ans. I cannot answer that.

Ques. Soon after she came?

Ans. I don't know.

Ques. These repairs that you speak of, were they from her income?

Ans. Were the repairs from her income?

Ques. Yes; from her income.

Ans. Do you mean were the repairs paid from her income? 20

Ques. Yes, exactly.

Ans. Yes.

Ques. From what portion of her income, do you know?

Ans. There wasn't any other income but rents.

Ques. Wasn't there? What became of the interest on these mortgages and bank stock?

Ans. Was there any due?

Ques. I didn't ask you that, sir; I asked you what became of the money which arose from interest on the mortgages and dividends on the insurance company stock. 30

Ans. That was paid to Mrs. Wagner.

Ques. By whom?

Ans. By the people that owed it.

Ques. Did they pay it to Mrs. Wagner?

Ans. Yes.

By the Court:

Ques. But before Mrs. Walsh's death, to whom was that paid?

Ans. To Mrs. Wagner.

Ques. Paid to her at all times, was it?

Ans. After the assignments.

By Mr. Rex:

10

Ques. You say that the repairs to these houses came partly from the insurance or at least the insurance money and the interest on these bonds?

Ans. I haven't said so.

Ques. Well, I ask you whether it did or not?

Ans. Sir?

Ques. I ask you now whether they were taken from that fund?

Ans. That would have been then Mrs. Wagner paying them.

20

Ques. Now, don't you argue the case at all.

Ans. Well, as I understand the question—

(Question repeated.)

Ans. I have said that Mrs. Walsh paid for those repairs.

Ques. From what fund?

Ans. From her own fund.

Ques. From the interest on these bonds?

30

Ans. She did not receive any of that money.

Ques. Mrs. Wagner kept that all, did she?

Ans. Certainly.

Ques. Before the assignments?

Ans. She didn't receive any before the assignments.

Ques. How do you know?

Ans. There wasn't any due.

Ques. That is the only way you know of it, is it, that there was nothing paid before the assignment? But there was one mortgage paid after the assignment, was there?

Ans. That is the Hugg mortgage?

Ques. Yes.

Ans. Yes, sir.

Ques. And that Mrs. Wagner got but gave to Mrs. Walsh as a gift?

Ans. That is right.

Ques. You recollect testifying, don't you, before in this case up at Trenton?

Ans. Yes, sir.

Ques. See if this is right—page 24: “Ques. Mrs. Walsh was the owner of considerable property? Ans. Yes, sir.” You made that answer, didn't you?

Ans. I believe I did; yes.

Ques. “Ques. What became of the rents during these eleven months? Ans. Returned to Elizabeth Walsh by the agent who collected the rents.” You made that answer?

Ans. I believe that is right.

Ques. That is true, is it?

Ans. I say so now.

Ques. You didn't say it was paid to Mrs. Wagner just now, did you?

Ans. The rents?

Mr. Richards: He said the interest was paid to Mrs. Wagner.

The Witness: I believe I remember that question.

Ques. Well, what did you answer? I am speaking now of your questioning here this morning right before his Honor, Judge Joline, whether you did not say that all these moneys were paid to Mrs. Wagner?

Ans. Well, I would like to explain how that was done.

Ques. Now, just answer my question; did you say it or didn't you say it?

Ans. I don't remember.

Ques. So you don't remember what you have testified to at all—is that right?

Ans. Yes, I remember; I want to make an explanation.

Ques. Now, your counsel will allow you do that.

10 “Q. So she always had money of her own? A. She had money, yes, sir. Q. And therefore Mrs. Wagner did not have to pay any of her bills? A. When the bills came in—I mean for her to pay them—when they came in Mrs. Wagner would present the bills to her mother and get the money.” Did you make that answer?

Ans. That is right.

Ques. That is true?

Ans. Yes.

20 Ques. And yet you say Mrs. Walsh kept no bank account?

Ans. I said that and still maintain it.

Ques. And do you still maintain the fact that Mrs. Wagner did not keep a bank account?

Ans. Now, what I meant when I answered that question is this—

Ques. Just answer my question; your counsel will take care of it.

Ans. Well, I would like to make myself clear.

(Question repeated.)

30

Ans. Well, now, I would like to answer that rightly before the Court.

The Court: Can't you answer the question? Do you still maintain that she did not keep a bank account?

The Witness: No; she never had no bank account. I will answer it that way.

Ques. That question referred to Mrs. Wagner, you remember.

Ans. She may have had money in bank three or four days, something like that, but what I mean by a bank account is a business account; that is what I am trying to explain to the Court.

Ques. Now, you have said in your examination, I think, that she would put money in bank sometimes when she would recieve a check, did you? 10

Ans. No; I said she would take it out by the check.

Ques. No, you didn't; I beg your pardon.

Ans. Well, that is what I meant to convey.

Ques. Have you ever seen her take a check to the bank?

Ans. Oh, lots of folks would give us checks; we would take them to the bank and get the money.

Ques. When you say "we"—

Ans. I mean the firm.

Ques. What firm? 20

Ans. Henry Wagner and Ida Wagner.

Ques. Where did you keep that bank account?

Ans. Didn't have any bank account at all.

The Court: What I understood him to say was when they would get a check they would go down to the bank and get the money.

The Witness: That is the idea. 30

Ques. From what source would these checks come?

Ans. During business transactions.

Ques. Are your sales large enough to deal in checks in the rag carpet business?

Ans. My sales are just what I make them.

Ques. I understand that; what are they.

Ans. Bone and muscle and sinew.

The Court: No; he means the amount in money.

Ans. I have answered that once here to-day, that they have been from three to ten dollars a day.

Ques. So you would get a check for about three or ten dollars—is that right?

Ans. Well, I have had a check as low as \$1.50.

10 Ques. And was that to you or to Ida or to the firm?

Ans. That was to Henry.

Ques. Now, where did Ida get any checks from?

Ans. I can't answer that.

Ques. You don't know?

Ans. I don't remember, but I know she has had them.

Ques. She had checks?

Ans. Yes.

Ques. Has she any investments that you know of?

Ans. No, sir.

Ques. She had no investments whatever?

20

Ans. Not that I know of.

Ques. And so that all the checks that she would get would be from the business; is that right?

Ans. If I took out a check, I would say, "Here, go get this cashed," and put my name on the back of it, and she would go get the money.

Ques. That would be from three to ten dollars?

Ans. I would not say that; I wouldn't bind myself on that, you know.

30 The Court: Mr. Rex, he said that was for his day's work.

By Mr. Richards:

Ques. Mr. Wagner, you were stopped by Mr. Archer when you attempted to say what became of Mrs. Walsh's money. What did become of it?

Ans. I don't know what you mean.

(Question repeated.)

Ans. What money do you mean?

Ques. Any money. Mr. Archer called your attention to various moneys which had come in to Mrs. Walsh from rents and one thing or other, and showed that some of it went out in the form of bills for repairs and other incidental bills that came from the property. Where did the rest of it go, do you know?

10

Ans. After the repairs?

Ques. Yes.

Ans. After the money was spent for repairs on the property?

Ques. Yes.

Ans. Well, some of her children came there constantly borrowing, and she never refused them.

Ques. Mrs. Wagner never borrowed any, however, to your knowledge?

Ans. Never had any occasion.

20

By Mr. Archer:

Ques. She didn't have to, did she?

Ans. No, sir; not while I am living.

By Mr. Richards:

Ques. Did you ever hear Mrs. Wagner say to her mother in your presence that she would furnish her mother with a home the rest of her days?

30

Mr. Rex: I object to that as a very leading question, and I don't think anything could be given in testimony here of the decedent.

Mr. Richards: It is a mere explanation of a question which Mr. Archer asked and did not complete.

The Court: You may answer.

Ans. Often.

Mr. Archer: I object to that as not proper re-direct examination.

The Court: That objection comes too late, Mr. Archer.

10 Ques. When you were speaking as to rents and interest and were trying to draw a distinction between rents and interest, you asked for the privilege of making an explanation. I ask you what it was you wanted to say.

Ans. I don't quite understand that question.

(Question repeated.)

Ans. Do you mean the money that came in from the rents?

20 Ques. No; I want to know what you wanted to say when you told counsel when he was cross-examining you that you wanted to make an explanation and he would not permit it—now, I ask you what was the explanation you wanted to make?

Ans. I don't remember what I did want to say.

Ques. There is nothing then you want to add at present?

Ans. No.

30 CHARLES M. BALDWIN, SWORN.

By Mr. Richards:

Ques. Mr. Baldwin, you are a practicing Justice of the Peace in the city of Camden?

Ans. Yes, sir.

Ques. Did you know Elizabeth Walsh in her lifetime?

Ans. Yes, sir.

Ques. Did you ever have any talk with Mrs. Walsh as to her making her home with Mrs. Wagner and why?

(Objected to as before.)

The Court: I will take the evidence subject to my right to rule this out if I am satisfied it is irrelevant.

Ans. Only this way. I was over to Mr. Wagner's house one day and Mrs. Walsh was there, and she told me that she was going to make her home there permanently, that she was alone where she was, and that Mr. and Mrs. Wagner were going to take care of her the balance of her life, and she was going to make her home there. 10

Ques. Did she say anything about the other children or why or anything?

(Objected to.)

20

Ans. No, sir; she never said anything about any trouble.

(Objection withdrawn.)

Ques. At any of those conversations that you had with Mrs. Walsh, was there anything said about what Mrs. Wagner would get for furnishing her mother with a home?

Mr. Rex: I object to that on the ground that it suggests an answer, and also on the first ground, that it is *res adjudicata*. 30

The Court: I cannot see that it suggests an answer; it may be *res adjudicata* and in that event is subject to my previous ruling. I will take the answer subject to my right to overrule the evidence.

Ans. Only said that she would be well paid for it; she says, "Ida will be paid for it."

Ques. Do you know whether or not as a matter of fact she did stay there the rest of her days?

Ans. To the best of my knowledge she did.

Ques. She never had any talk with you as to whether or not she would or had turned over any securities to Mrs. Wagner?

Ans. Never.

10

No cross-examination.

CATHARINE BLACK, sworn.

By Mr. Richards:

20 Ques. Mrs. Black, did you know Mrs. Elizabeth Walsh in her lifetime?

Ans. Yes, sir; ever since I have been a child.

Ques. Did you ever have any conversation with her about making her home at Mrs. Wagner's?

Ans. Yes, sir.

Ques. What was that conversation?

(Objected to as before; same ruling.)

30 Ans. Why, she said she was going to make her home with Mrs. Wagner for her lifetime.

Ques. Did she say what she would give Mrs. Wagner for that?

Ans. She didn't say exactly what she had, but she said what she did have she was going to leave to her, in fact gave it to her.

Ques. She told you she had given it to her?

Ans. Yes, sir.

Ques. She never specifically mentioned mortgages or insurance stock?

Ans. She didn't say exactly what.

(Objected to; objection withdrawn.)

Cross-examination.

By Mr. Rex:

Ques. Mrs. Black, when did this conversation take place? **10**

Ans. Why, I couldn't tell you just exactly. I was quite a frequent visitor there, have been always, all my life.

Ques. Can't you fix the year?

Ans. No; I couldn't tell you exactly when.

Ques. You can't even get as close to it as a year?

Ans. No, sir; I couldn't tell you that.

By Mr. Richards: **20**

Ques. But it was while Mrs. Walsh was living at Mrs. Wagner's?

(Objected to.)

Ans. Yes, sir; and had been at her own home and also Mrs. Wagner's, 711 Walnut, and also 1028 Broadway.

Ques. But this conversation—

Ans. Was when she came to Mrs. Wagner's. **30**

Ques. That was after she had come to Mrs. Wagner's?

Ans. Yes.

By Mr. Rex:

Ques. When did Mrs. Walsh come to Wagner's, do you know?

Ans. I couldn't tell you that exactly, either. I made no memorandum of any of it.

Ques. Just come as near to it as you can.

Ans. I couldn't tell you exactly.

Ques. Well, can't you come anywhere near it?

Ans. No, sir, I cannot.

Ques. But you do know that this conversation—

Ans. I knew when I came there.

Ques. You do know that this conversation took place
10 after she came there?

Ans. Yes, sir.

Ques. How long after?

Ans. I can't tell you that.

Ques. You simply know it took place—

Ans. I just simply know I was there.

Ques. Who was present when the conversation was
had?

Ans. I couldn't tell you that exactly.

Ques. You can't even remember that?

20 Ans. No, sir; I don't.

Ques. Can you remember where it was?

Ans. Yes.

Ques. Where?

Ans. 1028 Broadway.

Ques. What room?

Ans. Sitting in their living room.

Ques. Talking to Mrs. Walsh?

Ans. Mrs. Walsh; yes, sir.

Ques. Mrs. Wagner?

Ans. Had I been talking to her?

30 Ques. Was she there?

Ans. I couldn't just tell you whether she was there or not; I know mother and I were there together.

Ques. Then Mrs. Walsh and you were together?

Ans. I was spending the afternoon.

Ques. But you can't recollect if anybody else was
there?

Ans. No, sir.

Ques. Just that one fact, that she was there?

Ans. Yes, sir.

Ques. And you can't tell when it was?

Ans. No, sir; couldn't tell you.

Ques. What time of the day was it; can you recollect that?

Ans. In the afternoon.

Ques. How late or early, do you know?

Ans. Well, in the afternoon after lunch.

Ques. Now, you spoke of a conversation that you had with Mrs. Walsh before she went to live with Mrs. Wagner, did you?

Ans. I have always visited them from childhood.

Ques. I didn't ask you that; just answer my questions. Didn't you have a conversation with Mrs. Walsh before she came to the Wagners'?

Ans. Yes; before and after both.

Ques. Before and after both?

Ans. Yes.

Ques. Now, before she came to Wagner's in a conversation you had with her she said she had given Ida these things, didn't she?

Ans. She said she was going to give them to Ida; that she would lose nothing by taking care of her.

Ques. Didn't you say that she said she had already given them to her?

Ans. She said then she was going to give it to her, which I expected she had given it to her.

Ques. Please listen to my question. Didn't you say that she said to you that she had given them to her?

Ans. Yes, sir.

Ques. That was before she went to live there?

Ans. When she came there.

Ques. What say?

Ans. After she came to live there.

Ques. You don't know how long?

10

20

30

Ans. No, sir; I couldn't tell you that.

Ques. And you don't know what they were?

Ans. No, sir.

Ques. You don't know anything about it at all except the one fact that she said she had given them to Ida?

Ans. I know she intended to give them to her.

Ques. You don't know what they were at all?

Ans. What she was going to give to her?

Ques. Yes.

10 Ans. Money and bonds and mortgages.

Ques. How did you get that idea?

Ans. Oh, she was telling me about it.

Ques. She did tell it, did she?

Ans. Yes.

Ques. Did she say anything about real estate to you?

Ans. That I don't remember.

Ques. You don't recollect anything about that?

Ans. No, sir; I don't remember.

By Mr. Archer:

20

Ques. Did she say anything about having made a will?

Ans. No, sir.

Ques. Did you know that she had made a will at that time?

Ans. No, sir.

Ques. You were a frequent visitor?

Ans. Yes; ever since childhood.

30 Ques. Yes, but during the time she was living at Wagner's were you a frequent visitor there?

Ans. Yes, sir; I would go there every week; make a habit of going there most every Friday.

Ques. Did you ever see her elsewhere, or was it always at Wagner's during that time?

Ans. At Mrs. Wagner's only and her own home.

Ques. No; I mean during the time she was living at Wagner's did you ever see her at other places than Wagner's?

Ans. At Mrs. Wagner's.

Ques. Any other place, I say, beside that during that time?

Ans. No, sir.

Ques. Did the old lady go out a great deal?

Ans. That I couldn't say.

Ques. Well, was she in good health?

Ans. Mrs. Wagner?

Ques. No; not Mrs. Wagner.

Ans. Oh, Mrs. Walsh?

10

Ques. Yes.

Ans. Well, I couldn't just say. Of course, her age was against her.

Ques. Her age was very advanced, wasn't it ?

Ans. She gained health after she was there; of course, she was very poorly when she first came, but she gained health afterward, got along very nicely.

Ques. Well, she was as a matter of fact a lady of very advanced age at that time?

Ans. Yes, sir; I guess she was.

Ques. How old do you judge she was?

20

Ans. That I couldn't say, how old Mrs. Walsh was.

Ques. In the seventies?

Ans. I couldn't say.

Accountants rest.

At this point the further hearing of this matter was adjourned until Wednesday, January 15, 1908, at ten o'clock A. M.

30

CAMDEN COUNTY ORPHANS' COURT.

IN THE MATTER OF THE ESTATE
 OF ELIZABETH WALSH, DE-
 CEASED..

- 10** Hearing on exceptions to the account of Ida E. Wagner, executrix.

CAMDEN, N. J., January 15th, 1908.

Hearing on the above matter on this date resumed in the presence of Messrs. Kaighn and Richards for accountant and Messrs. F. A. Rex and F. Morse Archer, Esqs., for exceptants.

- 20** Mr. Rex: We reserve the right to examine Mrs. Wagner not as our witness but as the executrix of the estate.

CHARLES S. ACKLEY, a witness for the exceptants, sworn.

By Mr. Rex:

- 30** Ques. Mr. Ackley, where do you live?
 Ans. 1008 Linden avenue, Camden.
 Ques. What is your business?
 Ans. Real estate and insurance.
 Ques. Did you have among your items of collection the rents of Elizabeth Walsh, now deceased?
 Ans. I did at one time.

Ques. From what date to what date?

Ans. From March to December.

Ques. March of what year?

Ans. 1904.

Ques. Did you know Elizabeth Walsh in her lifetime?

Ans. What did you say?

Ques. Did you know Elizabeth Walsh in her lifetime?

Ans. Not personally; that is, not well acquainted. I knew of her when I saw her.

Ques. Yes?

10

Ans. I done some business with her.

Ques. To whom did you pay the rents of her houses?

Ans. Mostly to Mrs. Wagner or some member of the family.

Ques. What member of the family besides Mrs. Walsh?

Ans. Sometimes to the son, sometimes to Mr. Wagner.

Ques. But always to the Wagners, one of the Wagners?

Ans. Yes.

Ques. How did you pay them?

20

Ans. Mostly in cash.

Ques. Well, was that your custom or not?

Ans. Well, if I send checks, that is, send statements away by mail, it has to be check.

Ques. No, no; I mean as to this one item, the Wagner item or Walsh; how did you generally pay it?

Ans. I almost always paid by check but by request paid by cash.

Ques. At whose request did you pay the cash?

Ans. I think Mrs. Wagner.

Ques. Have you any of those checks which you paid? 30

Ans. I have one check for the May payments. All the rest were by cash.

Ques. Let me see it will you please?

By the Court:

Ques. May payment of what year?

Ans. 1904.

(Check marked for identification Exhibit E4.)

By Mr. Rex:

Ques. Have you any other checks, Mr. Ackley?

Ans. I have not.

Ques. Then when you say that you sent checks, that is the only one, is it?

Ans. That is the only one.

10 Ques. That was for the first payment?

Ans. That was the second payment.

Ques. Second payment?

Ans. Yes.

Ques. Now, how were the other payments made?

Ans. By cash.

Ques. Why did you not continue sending checks, as was your usual custom with other clients?

Ans. They requested me to pay the cash on account of saving some complications of getting the signature of Mrs. Walsh.

20 Ques. Who made that request?

Ans. I think they were—I am not positive whether it was Mrs. Wagner or Mr. Wagner.

Ques. One or the other?

Ans. One of the two.

Ques. And thereafter you paid in cash, did you?

Ans. I did.

Ques. That is your check is it, Mr. Ackley?

Ans. Yes, sir.

30 Ques. Are you familiar with the signature, or were you familiar with the signature of Mrs. Walsh, Elizabeth Walsh?

Ans. I was not.

Ques. Did you ever see her sign her name?

Ans. I did not.

Ques. You don't know at that time whether she was able to sign her name or not, do you?

Ans. No, I don't.

Ques. Did you say why you did not pay any further moneys in checks; I think you did?

Ans. I did. I made that statement there, I think, to save complications I think I said.

Ques. Mr. Ackley, didn't you say to me this morning—I only want to refresh your memory whether you did say or not—that they asked payment in cash because Mrs. Walsh was not able to sign her name on the check?

Ans. That was the understanding I had why cash was paid afterwards; that on account of her sickness. **10**

Ques. She was not able to sign?

Ans. Yes.

Mr. Rex: I offer this check in evidence, your Honor.

Ques. During the time that you had charge of these houses, how much money did you pay to Mrs. Wagner in all?

Ans. Including the check, \$416.88. **20**

The Court: But the check was not paid to Mrs. Wagner; that was paid to Mrs. Walsh.

Mrs. Rex: That is all right. It appears so.

Ques. That was while Mrs. Walsh was living, was it not?

Ans. Yes.

By the Court: **30**

Ques. Was this while Mrs. Walsh was living with Mrs. Wagner?

Ans. Yes.

No cross-examination,

Mr. Archer: I ask leave of the Court, on behalf of the exceptant whom I represent; I ask leave of the Court for the privilege of examining this executrix on certain items of this account. I understand she is in court. I base my application on the provision of the Orphans' Court Act; I think it is Section 126.

10 The Court: Is there any objection on the other side to Mrs. Wagner being examined, pursuant to the provisions of this section?

Mr. Richards: Certainly not.

MRS. IDA E. WAGNER, SWORN.

Examination by Mr. Archer:

20 Ques. Mrs. Wagner, you were one of the daughters of Elizabeth Walsh, were you not?

Ans. I was.

Ques. And at the time of her decease Mrs. Walsh was living at your house?

Ans. Yes, sir.

Ques. And she died when?

Ans. The 25th day of December, 1904.

Ques. And when did she go to live with you?

Ans. She come in the same year, February, the 27th day of February.

30 Ques. 1904?

Ans. 1904.

Ques. When Mrs. Walsh came to your house to live did she bring anything with her beside her personal affects, such as clothing?

Ans. She did not bring anything at all only what she had on; nothing at all.

Ques. She had no money?

Ans. Not a dollar.

Ques. She brought with her, however, did she not, certain securities such as bonds, mortgages and a certain certificate of stock?

Ans. No, sir; it was sent to her.

Ques. After she came?

Ans. After she came to my house it was sent to her.

Ques. And after these securities were sent to her, where did she keep them?

10

Ans. Where did she keep them?

Ques. Yes.

Ans. She kept them in a tin box in my front room closet up-stairs.

Ques. The room which she occupied?

Ans. The room which she occupied.

Ques. And did these securities consist of the various items with which you have charged yourself on this last account?

Ans. They did.

20

Ques. That is, these bonds and mortgages?

Ans. Yes, sir.

Ques. And was the certificate of stock there?

Ans. Yes, sir.

Ques. Did any cash come with these papers?

Ans. No, sir.

Ques. None at all?

Ans. Not a dollar; not one penny.

Ques. During the time that Mrs. Walsh lived with you, did she receive any moneys?

30

Ans. Oh, yes, yes.

Ques. What sources of income had she, to your knowledge?

Ans. Her rents.

Ques. From houses?

Ans. From houses; yes.

Ques. Do you know how much rent was received from houses during the time she was living with you?

Ans. Well, no, I don't. I could tell you; I have a kind of memorandum at home, but the exact amount I could not tell you.

Ques. They were paid by Mr. Charles S. Ackley, were they not?

Ans. They were; yes.

Ques. Entirely?

Ans. Yes.

Ques. To whom were they paid?

10 Ans. Well, very often, mostly all the time, it was paid to me.

Ques. And what did you do with the money?

Ans. Took it in the house and gave it to my mother and told her here were the rents.

Ques. And what did she do with it?

Ans. Put it in her pocket.

Ques. What did she have, have a pocketbook?

Ans. Have a pocketbook; yes.

Ques. And so she kept it about her person generally?

20 Ans. Always kept it about her person; yes. Generally she would put it in her bosom.

Ques. Did she get possession of much cash during the time that she was living with you in that way?

Ans. Well, yes; she got all the rents that was coming in; whatever was paid she got.

Ques. But you turned all the money over to her that came into your hands from that source?

Ans. Sir?

30 Ques. Were there any moneys paid by way of interest on these bonds or mortgages or any dividend paid on this stock?

Ans. No.

Mr. Richards: I object, if the Court please, to any interest paid on these mortgages or dividends paid on the stock Mrs. Wagner has charged herself with. It is entirely irrelevant and immaterial and it seems to me it is not necessary and improper for the Court to go into that.

The Court: I think that under the 126th section of the Orphans' Court Act the Court has a right to allow this matter to be inquired into. The act says that everything touching the fairness, the truth and fairness of the account or of any particular item thereof may be inquired into.

(Accountant's objection overruled; exception for accountant.)

By Mr. Archer:

10

Ques. Mrs. Wagner, did you keep any book of any accounts for this old lady of receipts or disbursements during the time she was living with you?

Ans. No, it was not needed. Mr. Ackley kept the account.

Ques. That is, for the house rents?

Ans. Yes, and what rents was received Mr. Ackley had that account; there was no need of me keeping any.

Ques. Now she did receive monthly from Mr. Ackley certain moneys?

20

Ans. Yes.

Ques. Now she also had other sources of income had she not?

Ans. Only her rents; that is all.

Ques. No; but from her personal property?

Ans. She had nothing, that is, after the time that she made these assignments.

Ques. To you?

Ans. Yes.

Ques. And when was that?

30

Ans. Why, on the 3d of May, as near as I can remember. It was in May sometime.

By the Court:

Ques. Which year?

Ans. 1904.

By Mr. Archer:

Ques. Do I understand then, Mrs. Wagner, that in filing this account you have charged yourself with the interest to the dates of the assignment of these mortgages?

Ans. To the present time; up to date; up to date to the present time; I have received the interest from the time of the assignments up to the present time.

10 Ques. And you charge yourself with the interest before the assignments were made?

Ans. No, no, sir; the interest that belonged to my mother was paid my mother.

Ques. Yes, then the old lady had a source of income from the time when she came to live with you, which was in February?

Ans. Yes.

Ques. Until the date of these assignments in this personal property did she not?

Ans. Yes.

20 Ques. Did she receive that money?

Ans. She did.

Ques. From these mortgages?

Ans. Yes.

Ques. And you paid it to her did you?

Ans. I did.

Ques. Did it go through your hands?

Ans. It did. It always has done.

Ques. She continued to live with you up until the time she died?

30 Ans. Yes.

Ques. And she kept the money which came to her from these sources in her pocketbook on her person?

Ans. Yes.

Ques. How much money did she accumulate?

Ans. Oh, I could not tell you that. She did not accumulate but a very, very little.

Ques. Very little?

Ans. Very little.

Ques. So that how much money did she have at the time she died?

Ans. At the time she died?

Ques. Yes.

Ans. She did not have any; I had to go to Mr. Ackley for money.

Ques. She had no money?

Ans. No money at all.

Ques. Well, was she paying the expenses there that time?

Ans. Expenses, what do you mean?

Ques. Was she paying board?

Ans. No.

Ques. Well, house servants, nurses?

Ans. No.

Ques. She was not during that time?

Ans. No, she was not. I was the servant.

Ques. How old was she?

Ans. How old?

Ques. Yes; when she died?

Ans. She was in her seventy-eighth year.

Ques. I see that in this account you have made no mention of any such expenses as funeral expenses?

Ans. No; none whatever.

Ques. Who paid them?

Ans. Mr. Ackley; well I suppose the Court paid it. It came out of the rents that Mr. Ackley had collected from the time my mother died until there was a settlement. I don't know who paid, whether Mr. Kaighn paid it or Mr. Lloyd.

Ques. You did not?

Ans. I did not; no.

Ques. After the old lady died you had possession of these papers, did you not?

Ans. Yes.

10

20

30

Ques. What papers were there there?

Ans. What papers do you mean?

Ques. That the old lady kept in this front room?

Ans. She had no papers; my mother kept no papers there; they were mine.

Ques. What is that?

Ans. I kept them; they were mine.

Ques. Before they had been assigned to you?

Ans. They had been assigned to me. I kept them.

10 Ques. Were there any papers there at all?

Ans. Belonging to my mother?

Ques. Yes.

Ans. Yes; there were two papers.

Ques. What were they?

Ans. They were two deeds to the cemetery lot.

Ques. What became of the will?

Ans. What became of the will? Why, it is up here somewhere.

Ques. No; but at that time?

20 Ans. What became of it?

Ques. Yes.

Ans. I had that Mr.—

Ques. Had it from the time she died?

Ans. From the time she died. I had it from the time it was made until the time she died.

Ques. When was the will offered for probate?

Ans. I think about ten or eleven days after she died; I won't be positive which.

Ques. Did you know of the existence of the will?

Ans. I did.

30 Ques. And its contents?

Ans. I did.

Ques. Do you recollect any one calling upon you to produce the will?

Ans. No, sir.

Ques. Did you stand ready to produce the will after the old lady died?

Ans. I did.

Ques. Do you remember getting several letters from Mr. Rex on this subject?

Ans. Oh, yes. I think there was some letters come there; I don't remember; there has been so many come, I don't know what has come to our house.

Ques. Do you recollect saying to Mrs. Chadwick, your sister, that there was no will?

Ans. No, sir; I never said that.

Ques. Did you say it to her or any one else?

10

Ans. No, sir.

Ques. Never did?

Ans. No; I could not say that.

Ques. Well, when you finally qualified as executrix, that is, came up to Court and had yourself appointed executrix of this estate, you filed an account, did you not?

Ans. Yes; I guess I did.

Ques. And in that account you showed total receipts?

Mr. Richards: I object. If there is an account it will speak for itself and it is unfair to ask this witness to speak from memory. 20

(Question withdrawn.)

Ques. Wasn't there an inventory filed, Mrs. Wagner?

Mr. Richards: I object because the records of this Court will speak for themselves as to anything of that sort, and besides it relates entirely to the charge part of the account, and no exception has been filed to that. 30

The Court: The inventory, if there was one, will speak for itself.

Mr. Archer: There doesn't seem to be any in these papers here. The witness is shown paper endorsed

"Final account in the matter of the estate of Elizabeth Walsh, deceased, filed January 26th, 1906, Harry Reeves, Surrogate," and is asked whether that is her signature to the account and also to the affidavit which is annexed to it?

Ans. That is my signature.

10. Ques. In this account, Mrs. Wagner, you say that you charge yourself as follows: To the amount of goods, chattels, rights and credits, moneys and effects of Elizabeth Walsh, deceased, received by accountants. Deficiency, \$12. Does the item carried out there, \$12, relate to the word deficiency?

Mr. Richards: Now, if the Court please, I object to that because there is no exception to the charging part of the present account, and it is not rebuttal testimony. It is incompetent, irrelevant and immaterial.

20. (Accountant's objection overruled.)

(Exception for accountant.)

By Mr. Archer:

Ques. Will you answer the question please; does the item of \$12 relate to the word deficiency?

Ans. Now, this thing—what do you want me to say—say where I got that \$12—how it got there?

30. Ques. I am coming to that. (Question re-read.)

In this account, Mrs. Wagner, you say that you charge yourself as follows: To the amount of goods, chattels, rights and credits, moneys and effects of Elizabeth Walsh, deceased, received by accountants. Deficiency, \$12. Does the item carried out there, \$12, relate to the word deficiency?

Mr. Richards: I further object to that, if the Court please, on the ground that it is a construction by a witness of a written document which it is for the Court itself to construe and it seems to me it is improper on that ground.

The Court: I cannot regard this a question for the Court to construe. The witness filed this paper and she must have known what she meant.

Ans. That was the amount of money that belonged to this estate. Mr. Ackley turned that \$12 over; that was the balance from the December rents; that is in the year that my mother died. You see there was no settlement made until after she died and that was the balance that Mr. Ackley turned over to me.

Ques. Was that at the time when you filed that account and swore to it?

The Court: This is the account filed January 26th, 1906. 20

By Mr. Archer:

Ques. Your statement was that the personal estate of Elizabeth Walsh consisted of \$12 in cash?

Ans. Yes.

Ques. And this is the same \$12 in cash which appears in the account filed within the last two weeks.

Mr. Richards: I object to this also for the same reason. 30

Ques. December 20th, 1907; is that the same \$12 as the item here?

Mr. Richards: I object to the question on the same ground.

The Court: The Court's ruling that it will hear this evidence is based on that part of Section 126 of the Orphans' Court act which gives the Court the right to examine an executor touching the fairness or truth of any account or item thereof. The Court will overrule the objection.

(Exception for accountant.)

10

Ans. Well, that is the same \$12.

By Mr. Archer:

Ques. Now, the reason that you did not acknowledge receipt of any other moneys or other assets in this estate was because of the fact that you were then claiming to be the owner of all of these bonds and mortgages and of the shares of stock and whatever cash there was other than that belonging to your mother; is that not so?

20

Mr. Richards: Objected to for the same reason.

(Accountant's objection overruled.)

(Exception for accountant.)

Ans. No, that is not so, because there was no cash belonged to my mother; this \$12 I had turned—

Ques. Well, let me modify my question then. You were claiming at the time when you filed this account of January 26th, 1906, that you were the owner of the bonds and mortgages and shares of stock which now appear
30 in this account?

Ans. Yes.

Ques. That is true, isn't it?

Ans. Yes; that is true.

The Court: Which now appear in the account of December 20th, 1907?

Mr. Archer: Yes.

By Mr. Archer:

Ques. Mrs. Chadwick is your sister, isn't she?

Ans. Yes, yes.

Ques. She was the executrix named in your mother's will with you?

Ans. Yes.

Ques. After your mother died and while you were claiming that these bonds and mortgages were yours, Mrs. Chadwick, as co-executrix, filed a bill against you, did she not, in the Court of Chancery for an accounting? 10

Mr. Richards: I object. If such bill was filed of record it will speak for itself.

The Court: The record in that case is the best evidence. Therefore I will sustain the objection.

By Mr. Archer: 20

Ques. Mrs. Wagner, isn't it a fact that you told Mrs. Chadwick in a number of conversations that if she would withdraw the suit in the Court of Chancery which she had brought against you for an accounting that you would give her part of the assets of this estate?

Mr. Richards: I object, on the ground that the question is incompetent, irrelevant and immaterial, and it does not apply to any of the exceptions filed and is not rebuttal testimony. 30

(Accountant's objection overruled.)

(Exception for accountant.)

Ans. No, sir; I never did.

Ques. Did you not say to her, if not in that language, that if she would withdraw such suit you would take care of her under the circumstances?

Mr. Richards: Objected to for the same reason.

(Accountant's objection overruled.)

(Exception for accountant.)

20

Ans. No, sir.

Ques. And wasn't, in fact, such suit withdrawn?

Mr. Richards: Objected to because the witness is now attempting again to prove what action was taken in the Court of Chancery, which must be proved by the record itself?

20 The Court: Is it your purpose to offer in evidence the record of the Court of Chancery. If you will say that you will offer the record in evidence I may rule differently from what I would otherwise rule.

Mr. Archer: All right, sir; I will then say to the Court, if permitted to examine this witness on the record case, I will offer the record of suit having been instituted by Clara J. Chadwick and subsequently discontinued against this defendant.

20 The Court: I will then say that upon the statement of reputable counsel that he will offer the record in evidence, and upon the facts set out upon page 5 in Exhibit E1, I will allow counsel to examine upon this point.

(Accountant's objection overruled.)

(Exception for accountant.)

By Mr. Archer :

Ques. Mrs. Wagner, do you mean to say that you don't remember that such a suit as I have described was brought against you in the Court of Chancery by Mrs. Chadwick for an accounting?

Mr. French: That is objected to as incompetent, irrelevant and immaterial, and not the proper way to get at the facts concerning such a suit. This witness can have no possible knowledge of the records of the Court of Chancery and probably has never seen them. It seems to me that no record having been offered, to assume that a layman knows the contents of the record of the Court of Chancery and what is pending in it is assuming a great deal and that it is not proper testimony. 10

The Court: The objection is overruled for the same reason.

(Exception for accountant.) 20

Ans. I cannot understand; what do you mean? Accounting for what?

By Mr. Archer :

Ques. For the property of this estate?

Ans. Well, hasn't it been filed? Haven't I filed my account?

Ques. The question is now, Mrs. Wagner, whether you do not recollect that a bill was filed against you by Mrs. Chadwick to compel you to make an accounting of this estate? 30

Mr. French: Objected to on the ground that no layman can know whether or not a bill is filed against them.

The Court: The subpoena issued in the case informs them of that. The objection is overruled for the same reason.

(Exception for accountant.)

By Mr. Archer:

Ques. Don't you know it?

- 10 Ans. I don't know, I have been sued so much by those people; I don't know what I have been sued for. Why, I could not get my dinner one-half of the time for there was notices running in and out of the house. I don't know what I have been sued for. I have been sued for everything.

Ques. You say you don't know whether or not you were sued by Mrs. Chadwick for the accounting as a co-executrix in this matter; do you know or do you not know?

- 20 Ans. Yes, I know I have been sued for something, but what I don't know what it is.

Ques. By Mrs. Chadwick?

Ans. Yes, I have been sued by Mrs. Chadwick.

Ques. And that suit was discontinued; wasn't it stopped?

Ans. Yes, it was stopped.

Ques. Under what circumstances?

Ans. Why, because she come to me and told me she had no money and if I would give her \$800 she would withdraw this charge.

- 30 Ques. Did you do it?

Ans. No, sir; I did not. I told her I had no money; that is why it was withdrawn.

Ques. Well, if you did not pay her the \$800 or pay her anything for withdrawing the other suit, why was it withdrawn; do you know?

Ans. Why was it?

Ques. Yes.

Ans. Because she wanted to, I suppose. I cannot tell anything else.

Ques. You say that she made a demand of you that she should be paid some money and then would withdraw the suit?

Ans. Yes.

Ques. And then proceeded to withdraw the suit although you did not pay her anything?

Ans. I did not pay her anything.

10

Ques. And you refused to do it?

Ans. I refused to do it.

Ques. The fact is that such a suit as that was withdrawn, was it not?

Ans. Some kind of a suit, I don't know what it was. It was something or other.

Ques. It was also while you were still making the claim as the owner of this property that you were required to give the bond as executrix, was it not?

Mr. French: Objected to as entirely immaterial, incompetent and irrelevant and it does not relate to any of the exceptions filed in this case and is not proper rebuttal testimony. 20

(Accountant's objection overruled; exception for accountant.)

Ans. Yes.

Ques. Now, Mrs. Wagner, relating to the item of commissions of \$346.54 which you claim for administering this estate, did you not from the time when your mother died until the Court of Chancery made a decree against you consistently and repeatedly claim that you were the owner of all of that property? 30

Ans. Yes.

Ques. And you never filed any account for the property until you were compelled to by the Court, did you,

outside of this little account which showed a balance of \$12?

Ans. Not as I remember.

Ques. What services have you rendered this estate on which you base a claim for commissions?

Ans. What services?

Ques. Yes, as executrix.

Ans. Why in every service that was needed. Anywhere there was any services required I did it.

10 Ques. State it what it is. Describe it to the Court?

Mr. Richards: Objected to on the ground that the account speaks for itself for what the accountant prays allowance.

(Accountant's objection overruled; exception for accountant.)

Ques. State some services that you have rendered to the estate.

20 Ans. State some?

Ques. State some for which you are claiming commissions?

Ans. Well, don't you think that I am entitled to it as an executor? Isn't that lawful? Don't the law entitle me to the commission?

30 Ques. I would rather you would answer my questions than to have you ask them of me. What services have you ever rendered; name some of them. If you have rendered services so that you are entitled to commissions tell us what you have done?

Ans. I don't just remember all what I have done. In the first place—

The Court: Madam, the law is that the Court shall allow you commissions with reference to your actual pains and trouble and risk in settling such an estate rather than with respect to the quantum of the estate

and an exception has been filed to allowance of any commissions and counsel has a right to ask you the question which has been propounded to you.

Ans. Well, if these bonds and mortgages as you claim belongs to the estate, I collected the interest from it. As far as the estate went I collected the interest. Until the property was sold I looked after the rents.

By Mr. Archer:

10

Ques. I am not speaking of any real estate.

Ans. Now, what else was there?

Ques. I am speaking only of this personal property?

Ans. That was all they was to do.

Mr. Richards: Mr. Archer has already showed that she charged herself with moneys received from the real estate.

Mr. Archer: It was rent that accrued before this old lady died. 11

By Mr. Archer:

Ques. Who were the proctors?

Ans. On my side?

Ques. Yes.

Ans. Mr. Kaighn.

Ques. I notice one item here, proctor's fees; is that Mr. Kaighn? 12

Ans. That is Mr. Kaighn.

Ques. And what services has Mr. Kaighn rendered as proctor to this estate on which you as the accountant think that he should receive a proctor's fee?

Ans. Anything at all that I have asked him to do. He has been my legal adviser. I have consulted with him in everything.

Ques. As your personal counsel?

Ans. Yes.

Ques. Not as executrix of this estate; isn't that so?

Ans. Who?

Ques. Mr. Kaighn.

Ans. No; he is not any executrix; I was the one.

Ques. Was he your counsel as executrix of this estate?

Ans. He was.

Ques. And what did he do?

10 Ans. Whatever there was needed to be done.

Ques. What did he do; say something; name something?

Ans. Well, he attended to all my affairs; all that there was to do or be done.

Ques. He and Mr. Richards represented you in your contest in the Court of Chancery, did they not, in which you were claiming to be the owner individually of all this property; isn't that a fact?

Ans. Yes; that is a fact.

20 Ques. And that is about all they have done, isn't it?

Ans. Well, they can best tell themselves what else they have done. I have not bothered myself at all.

Ques. And this bond that you paid, this premium that you paid for the bond, was because you had to give a bond under the Court's order, was it not?

Ans. I don't know whose order it was. I had to give a bond.

Ques. Now, Mrs. Wagner, where are these securities now?

30 Mr. French: Objected to. The witness has charged herself with them. It can make no difference, absolutely none, where they are.

(Accountant's objection overruled.)

(Exception for accountant.)

Ques. Now, where are these bonds and mortgages?

Ans. In the Security Trust Company.

Ques. Are they deposited there?

Ans. They are deposited there; yes.

Ques. As collateral security to your company for having furnished the bond, aren't they?

Ans. Yes.

Ques. Is there any cash there?

Ans. A small amount.

Ques. How much?

Ans. I don't just exactly know.

Ques. Have you an account there as executrix of this estate?

Ans. No, sir.

Ques. Where is your account as an executrix of this estate?

Ans. I haven't any.

Ques. Where is this \$12?

Ans. Where is that \$12?

Ques. Yes.

Ans. Mrs. Chadwick had it to buy coal.

Ques. Have you an account as executrix of this estate?

Ans. Have I an account?

Ques. Yes.

Ans. No; I have no bank account.

The Court: What bearing has that upon her account, Mr. Archer?

Mr. Archer: I think your Honor will see in a moment or two.

Ans. I have no bank account.

Ques. Have you ever had a bank account?

Ans. I have.

Ques. As executrix?

Ans. No.

The Court: This woman has given a material bond as I understand it and no objection is made to the bond.

Mr. Archer: I am not going any further than that.

Ques. Have you ever had any of the moneys of this estate in your possession at all?

Ans. What do you mean?

Ques. Any money?

10 Ans. From the estate?

Ques. Belonging to Elizabeth Walsh; belonging to this estate?

Ans. No; I never had.

Ques. No money?

Ans. Only that—only \$12.

Ques. Where are the moneys which constitute the interest items?

Ans. Where is it?

Ques. Yes.

20 Ans. I have it.

Ques. Where do you keep it?

Ans. Where do I keep it?

(Objected to by Mr. Richards.)

I don't think you ought to know where I keep my money. That is my business. People always has places to put money that they don't want anybody to know.

30 The Court: She has given ample bond, Mr. Archer, and you don't deny the amounts, do you?

Mr. Archer: If your Honor please, I think we have a right to know whether she is properly handling this estate on this question of commissions, and she is certainly not properly handling the estate if she has never kept an account of the estate with the moneys of the estate in it.

Ans. Mr. Archer, I told you I hadn't any.

Mr. Archer: Here are a large number of items here, interest items, which she charges herself with. She does not charge herself with any interest on this money.

The Court: Your point is that she does not charge herself with interest on the interest which she has received.

Mr. Archer: The point is this: That she could have deposited that interest as she received it in some bank where it would have drawn interest at three per cent. at least, and we allege that she has not done that, and if she has failed to do that she has not administered the estate properly, and therefore should not be entitled to commissions.

19

The Court: I think on that ground I will admit the question.

20

(Exception for accountant.)

Ques. Where do you keep it?

Ans. Where do I keep it; in my pocket.

Ques. You mean you carried the money which is in here in your account as items of interest in your pocket?

Mr. Richards: Now, if this money was not put in the bank it can make no possible difference whether it was in the parlor, sitting-room or where about the house to anything that is in this case. I object.

30

The Court: It is just the same question asked over again.

(Accountant's objection overruled.)

(Exception for accountant.)

Ans. No, sir; I did not carry it in my pocket.

By Mr. Archer:

Ques. Now, Mrs. Wagner, let me be absolutely specific. Here are 1, 2, 3, 4 items of interest; one is \$173.20, another for \$216.49, a third for \$270.62 and a fourth, which is from the sale of 72 shares of Camden Fire Insurance stock, \$720?

10 Ans. Yes.

Ques. Now, I ask you where is that money?

Ans. Well, that \$720 Fire Insurance stock was sold and disposed of in my mother's lifetime.

Ques. Where is the money, this \$720?

Mr. French: Objected to for the same reason as the last.

Ques. Where are these moneys; I assume that it was sold, but where is the money?

20 Ans. Well, I cannot answer where that \$700 is. That \$700 was spent during my mother's lifetime.

Ques. You just said a few moments ago, as I understand, that you had not cash for this estate?

Ans. I did not say so; I said I did have-cash.

Ques. Have you cash?

Ans. I have.

Ques. How much?

Ans. I don't know.

30 Mr. French: Objected to as irrelevant, immaterial and incompetent.

Ques. Where is the cash you have?

Ans. Do you want me to tell you?

Ques. I certainly do.

The Court: This line of examination is allowed solely on the basis of the statement of counsel that it is urged

for the purpose of preventing the accountant from receiving commissions.

Mr. Archer: That is exactly it. We have been on that for a long time.

(Exception for accountant.)

By Mr. Archer:

10

Ques. Where is such cash as you have?

Ans. Well, to make a long story short, if you go to my house, in the front room there is a closet; inside of that closet there is a tin box about that long (indicating) and inside of that box you will find what money, cash, that I have.

Ques. About how much is it?

Ans. I don't know; I have never counted it for some time.

Ques. Can you say; is there as much as these four items, \$173, \$216, \$270 and \$720; that would be over \$1,000? 20

Ans. Yes.

Ques. There is?

Ans. There is.

The Court: It would be nearly \$1,300 and something; about \$1,300.

Ques. Is that kept separate from any funds of your own?

Ans. It is.

30

Ques. In a box by itself?

Ans. Well, I have more besides that in that box, but I generally keep that in a bag that my mother used to use.

Ques. To keep money in it?

Ans. To keep her own money in it. I put that in there. I thought maybe I would have good luck.

Ques. That is in the box, too, but in the bag?

Ans. Yes; but understand, Mr. Archer, from the time the Court of Chancery decided that these bonds and mortgages should go back to the estate the interest from these bonds and mortgages has been deposited and there is interest being paid on that, but until then I claim that they were mine and I do yet.

By the Court:

10 Ques. You say that since the time the Court of Chancery declared that the bonds and mortgages and the stock belonging to the estate, the interest that has been paid on these has been deposited in bank?

Ans. Yes.

Ques. And this has been drawing interest?

Ans. Yes.

Ques. Where do you charge yourself with that interest, madam, in here?

Ans. Well, I have never charged myself with the interest of it at all, I don't suppose.

2 Ques. Well, how much interest has that interest been drawing in bank?

Ans. Well, that has been there a year just as it comes in from a year in September, wasn't it; when was that there, Mr. Kaighn; wasn't it September?

Ques. I think, madam, you will have to charge yourself with that as I at present view the law.

Ans. Of course I deposited the money.

25 Mr. Kaighn: I would like to make the statement, with permission of counsel and the Court, that since the decision in the Court of Chancery all interest by my direction was deposited with the Security Trust Company, but whether it draws interest or not I don't know. The bank book has not been settled and if it has drawn interest, of course I will see that that is accounted for. That is right, isn't it,

By Mr. Archer:

Ques. Mrs. Wagner, just a few more questions. To go back to the time when your mother was living with you—all moneys, as I understood you a little while ago, which came to your hands which belonged to your mother you turned over to her?

Ans. All that belonged to my mother I turned over to her.

Ques. And she kept them in the house?

10

Ans. She kept them in the house.

Ques. Did you keep moneys of your own in the house, too?

Ans. Sure; I always do.

Ques. And did you have moneys of your own there at that time?

Ans. I did.

Ques. And at the time she died?

Ans. Yes.

Ques. How much money of your own did you have at that time?

11

Ans. How much money of my own?

Ques. In the house; yes?

Ans. I don't remember.

Ques. About?

Ans. I don't know.

(Objected to by Mr. Richards.)

I never counted it. When I have \$5 or \$10 I put it with what I want to use.

12

Ques. Did your mother have a bank account during that time?

Ans. No, sir.

Ques. Was there any bank account that she had at the time she died?

Ans. No.

Ques. Did you have a bank account during that time?

Ans. At the time my mother died?

Ques. No; while she was living there with you?

Ans. No.

Ques. Not at all?

Ans. No.

Ques. Quite sure?

10 Ans. No; I don't really remember but I have had so many bank accounts first one time and then another that I don't just remember when and where I have had bank accounts. Sometimes if I have had money in the house and wanted to go away I would leave it in the bank until I come home and wanted to take it out.

Ques. Your husband, Mr. Wagner, last week said that you could not have received the sum of \$1,000 which is charged there in the account without his knowing it, and he also said that you never during that time had a bank account because he would have known if you had?

20 Ans. Oh, no, he don't know everything that I know.

Ques. You might have received money without his knowing it, haven't you?

Ans. No, I could not receive money without him knowing, but I could have saved money that he did not know it, but I could not receive any money without he knowing.

Ques. What was the largest sum that you ever had about the house during that time?

Ans. I don't know.

30

Mr. French: Objected to as prying into this witness's private affairs, which counsel has no right to do.

(Accountant's objection overruled; exception for accountant.)

Ques. What was the largest sum that you ever had about the house during that time?

Ans. During that time I have had as high as \$2,500 before my mother ever came to that house.

Ques. In cash?

Ans. In cash.

Ques. In the house?

Ans. In the house.

Ques. And that continued to be the state of affairs while she was there?

Ans. We was using money backwards and forth all the time.

Ques. What was the source of income from any such sale as that; how did you get it?

Ans. My husband made money.

Ques. In his business?

Ans. He was buying and transferring property.

Ques. Real estate.

Ans. Yes.

Ques. Where, in Camden?

Ans. In Camden.

Ques. Conveying to him and buying from him?

Ans. Yes.

Ques. Are they on the record here?

Ans. I suppose they are.

Ques. During this time?

Ans. Before my mother came there. Before my mother came there.

Ques. And during the time she was there you had some of these moneys in your possession?

Ans. I had.

Ques. It was not from the carpet business, then, that this money came?

Ans. Yes; I had a good living from the carpet business.

Ques. But not such sums as that?

Ans. Not such sums as that, but I have had a thousand and twelve to fifteen hundred dollars.

Ques. And whatever moneys were in the house at the time this old lady died, then, were yours?

Ans. Were mine; yes.

Ques. And came from sources of income other than from her?

Ans. Yes.

Ques. In spite of the fact you say that during the time she was there she had sources of income and had not any expense?

10 Ans. She had her doctor's bill; she paid her repairing; she had her repairing to do; she had other unnecessary things. Her family robbed her of everything she had. She hadn't the clothes to put on. She had to buy clothes. Was I supposed to do that?

Cross-examination.

By Mr. Richards:

Ques. Mrs. Wagner, it was your custom for about ten years to look after your mother's affairs for her?

20 Ans. Twenty-five years.

Ques. Yes?

Ans. Ever since, Mr. Richards, the death of my father.

Ques. It was not the custom of your mother to keep money usually in banks, was it?

Ans. Never.

Ques. And you followed largely in the same custom?

Ans. What is that?

Ques. And you followed largely the same custom of not putting money in banks?

Ans. Yes, yes; I am my own bank.

30 Ques. These rents that you collected on your mother's property after her death were largely used, were they not, under an amicable agreement for the payment of funeral expenses?

(Objected to by Mr. Rex.)

(Exceptant's objection overruled.)

Ans. I did not collect any rents after her death.

Ques. Weren't there some moneys that you received from Mr. Ackley that were used to pay funeral expenses—well, certain rents collected by Mr. Ackley from these properties after your mother's death were used under an amicable agreement among all the heirs for the payment of the funeral expenses, were they not, Mrs. Wagner?

Ans. Yes.

The Court: The purpose of that is to show why the funeral expenses are not in the account. 10

Mr. Richards: Yes, sir.

Ques. Did you ever, Mrs. Wagner, receive from your mother a thousand dollars in money?

Ans. No, sir; I never did. My mother did not have it.

Ques. That item of \$12 mentioned in your account is the only item outside of the mortgages and stock, is it?

Ans. That is all.

Ques. It has been testified to that your mother, in your presence and in the presence of Mr. Kaighn, stated that she wanted to make her home at your house the rest of her days and intended that you should have these bonds and mortgages and insurance stock mentioned in your account filed? Did you or did you not ever assent to that arrangement and tell your mother that you would keep her the rest of your days? 20

Mr. Rex: I object to that. There is no evidence of any arrangement. 30

Mr. Archer: This is the direct testimony of this witness of a transaction with a deceased person.

(Exceptants' objection sustained.)

(Exception for accountant.)

Ques. After your mother came to your house to live and the matter of turning over mortgages and insurance stocks to you was mentioned by her, did you or did you not promise your mother to furnish her with a home the rest of her days for the consideration of those mortgages and fire insurance stock?

Mr. Rex: I object to that, your Honor.

10 (Exceptants' objection sustained.)

(Exception for accountant.)

Ques. It has been mentioned, Mrs. Wagner, that your mother received certain moneys from rents upon her real estate, also interest money before the assignments of the mortgages to you; that was the nature of her properties; did they require much in the way of repairs?

Ans. Oh, yes; they was in bad condition; very bad.

Ques. Did they get repairs?

20 Ans. What did you say?

Ques. Were repairs made upon them?

Ans. Oh, yes; yes.

Ques. And did that money come out of the rents and interest money paid your mother?

Ans. Yes; came out of the rents what was paid to her.

Ques. Did or did not the other children—to your knowledge—borrow money of your mother from time to time after she came to live at your place?

30 Mr. Rex: I object to that as immaterial.

The Court: You may answer that question, madam.

(Question re-read.)

Ques. Did or did not the other children, to your knowledge, borrow money of your mother from time to time after she came to live at your place?

Ans. Yes, sir.

Ques. Often?

Ans. Very often.

Ques. I show you a paper; did you ever see that before?

(Paper marked for identification Exhibit A4.)

Ans. Yes.

Ques. Where did you first see that paper?

Ans. This paper? (indicating Exhibit A4.)

10

Ques. Yes.

Ans. It came to my house with a little boy.

Ques. Who was the boy? Did you know him?

Ans. I did not know who he was.

Ques. Are you acquainted with the signature at the bottom of that paper?

Ans. No; I could not tell you who wrote it.

Mr. Archer: I do not object to that being put in; if that is all it is I do not object.

20

By Mr. Richards:

Ques. Have you a sister Clara?

Ans. Yes, sir.

Ques. Do you know whether or not that is her signature to that paper?

Ans. No, I don't know; I could not tell you. I know she got the loan.

Ques. How do you know it?

Ans. How do I know it?

30

By the Court:

Ques. Yes; how do you know it?

Ans. Why, because I told my mother and showed her the note, and my mother put her hand in her pocket and took the \$10 and gave it to her.

Ques. Gave it to her?

Ans. To the boy to take to her.

By Mr. Richards:

Ques. While you and your mother were talking about this, did you have any talk as to who was meant by Clara?

10 Mr. Rex: I object to any conversation with the decedent.

Ques. What, if anything, was said as to who was meant by Clara?

Mr. Rex: I object.

(Exceptant's objection sustained.)

20 Ques. Did your mother say at that time to whom she was lending the \$10?

Mr. Rex: I object.

(Exceptant's objection sustained.)

Ques. Do you know of any other instance in which Mrs. Chadwick or any of your sisters borrowed money of your mother while she was living at your house?

30 Mr. Rex: I object. It is immaterial whether she did or not.

The Court: No, Mr. Rex, it is not immaterial. You claim that this executrix has money on hand that belongs to this estate; money that was received by her mother. You claim that she received large amounts and that she had no expenses; now, then, this lady has a right to show

that during that time her mother did lend her own moneys or give to her relatives.

(Exceptant's objection overruled.)

(Exception for exceptant.)

Ans. Yes; they all came to my mother for money with the exception of one. There was one that did not come.

Ques. Would they receive moneys at these times when they requested it, Mrs. Wagner?

10

Ans. Always; she never refused them.

Ques. Were or were not some of them living in her houses?

Ans. They were all living in her houses but one, and that one she paid rent for the biggest part of the time.

Ques. And those that were living in her houses, did they pay her rent regularly?

Ans. No; they did not. Mrs. Chadwick never paid any rents. Mrs. Deegan did occasionally.

Ques. Did your mother ever say anything in your presence to the effect that these other children had already received all they were entitled to of her estate?

20

(Objected to by Mr. Rex.)

(Exceptant's objection sustained.)

(Exception for accountant.)

Ques. Did or did not your mother, in your presence, after she came to live at your house, say anything to indicate whether or not, in her judgment, the amounts borrowed from her by her other children or given to them by her were as much as they should expect to get from her estate.

30

(Objected to by Mr. Rex.)

(Exceptant's objection sustained.)

The Court: I cannot understand why counsel persist in asking questions of that sort when the Court has previously ruled upon that.

(Exception for accountant.)

10 Ques. You have mentioned the fact, Mrs. Wagner, that your husband has been interested in real estate transactions. It was not always property that he took in his own name, was it? Was he not interested as agent for others?

Mr. Rex: I object to that as leading.

The Court: Objection sustained on that ground.

Ques. Did or not, Mrs. Wagner, to your knowledge, your husband ever represent others in real estate deals?

Ans. He did.

20 Ques. Do you know whether or not he received any commission or profit from such enterprises?

Ans. Yes; he did.

MRS. CLARA J. CHADWICK, sworn.

Examination by Mr. Rex:

30 Ques. What is your first name, Mrs. Chadwick?

Ans. Clara.

Ques. You are a daughter of Mrs. Elizabeth Walsh, are you not?

Ans. Yes, sir.

Ques. And sister of Mrs. Ida Wagner?

Ans. Yes.

Ques. Do you recollect the night of your mother's death?

Ans. Yes, sir.

Ques. When was that?

Ans. The 25th of December.

Ques. What year?

Ans. 1905.

Ques. Sure of that?

Ans. 1904 or 1905.

Ques. Now, which is it, if you recollect; if you don't recollect, why say so?

Ans. 1905. 1904. That is right.

10

Ques. That is right?

Ans. Yes.

Ques. You are positive of that, are you?

Ans. Yes.

Ques. Where was she living?

Ans. On Broadway; Mrs. Wagner's.

Ques. Did you go to the house the night she died?

Ans. Yes, sir; I went to the house.

Ques. Who did you see?

Ans. I seen Mrs. Wagner and Mr. Wagner and my mother and sometimes the children was there.

20

Ques. Did you have a conversation with Mrs. Wagner?

Ans. Down-stairs in her room in her house.

Ques. Did she on that occasion—

Ans. Did she do what?

Ques. Can you hear me?

Ans. Yes.

Ques. Did she on that occasion say to you that your mother left no will?

30

Mr. Richards: I object to that as leading.

The Court: I think, Mr. Rex, you had better ask this lady what Mrs. Wagner said with regard to her mother leaving a will.

By Mr. Rex:

Ques. Mrs. Chadwick, on that night, what did Mrs. Wagner say to you, if anything, about a will which her mother left?

10 Mr. Richards: That is objected to on the ground that it is attempting to contradict counsel's own witness and is not relevant to any of the issues of this case and is entirely incompetent and immaterial.

(Accountant's objection overruled.)

Ans. She says there was no will and no money.

Ques. You are one of the executrices are you not?

Ans. Yes, sir.

Ques. There was a will was there not?

Ans. Yes, sir.

20 Ques. And you went to the Court House to the Surrogate's office and helped prove it?

Ans. Yes, sir.

Ques. When was the fact disclosed that there was a will.

Mr. Richards: I object on the same ground.

Ans. How did I know?

Ques. How do you know there was a will?

Ans. Because I saw the will.

30 Ques. I mean after Mrs. Wagner had said there was no will, how did you find out that there was a will?

Ans. Because we went to Mr. Lloyd, and Mr. Lloyd was the man that made the will, and of course we went to Mr. Lloyd to get this will.

Ques. Well, did Mr. Lloyd have it?

Ans. What did you say?

Ques. Well, did Mr. Lloyd have it?

Ans. No, sir.

Ques. Who had the will?

Ans. Mrs. Wagner had the will.

Ques. How do you know that?

Ans. Because she showed me the will.

Ques. Did you subsequently have a suit against her in the Court of Chancery?

Mr. Richards: Objected to as contradicting his own witness and as being an improper method of proving a record in the Court of Chancery and being otherwise incompetent and irrelevant. **19**

The Court: Upon the grounds upon which I admitted the question propounded to Mrs. Wagner I will admit this.

(Exception for accountant.)

Ans. Yes, sir.

Ques. Why was that suit withdrawn? **20**

Ans. Why was that?

Ques. That suit which you had against Ida Wagner withdrawn?

Ans. Why, Mrs. Wagner was the cause of it.

Ques. Why did you?

Ans. She told me; she come to me and told me if I would withdraw the charge—

Mr. Richards: I object. **30**

from Mr. Lloyd she would pay my expenses, my lawyer's fees and do what was right and I trusted her to that effect, and she did not do it.

Ques. Did she say anything to you about the other heirs?

Ans. What did you say?

Ques. Did she say anything at all about the other heirs?

Ans. No.

Ques. Your sisters?

Ans. No, not particularly; no.

Ques. Did she caution you about talking about it to the other heirs?

Ans. What did you say?

- 10 Mr. Richards: I want to preserve my right to object to every one of these questions but I do not want to unnecessarily encumber the record. It is understood that we object to all these questions on the grounds which I have heretofore stated to his Honor.

(Ques re-read.)

Ques. Did she caution you about talking about it to the other heirs?

- 20 (Objected to by counsel for accountant; accountant's objection overruled; exception for accountant.)

Ans. No, she did not mention the heirs.

Cross-examination.

By Mr. Richards:

Ques. Mrs. Chadwick, did you ever see that paper before?

- 30 Ans. I cannot see it. I have no glasses. (Witness shown Exhibit A4.) I have no glasses, I cannot see.

By the Court:

Ques. Where are your glasses?

Ans. I left them home; I did not think that I would need them.

By Mr. Richards:

Ques. Do you remember about the time of the trial at Trenton before Vice Chancellor Bergen in this matter.

Mr. Rex: I object. It is not cross-examination.

(Exceptant's objection overruled.)

Ans. I did not go to Trenton; I was not there; I remember the trial being there but I was not there.

10

Ques. After the parties came home you went to see Mrs. Wagner, did you not?

Mr. Rex: I object.

Ans. No, sir; I did not.

Ques. And after the parties came back from Trenton did you not say to Mrs. Wagner; did you not request Mrs. Wagner to put some money somewhere where you could steal it?

20

Mr. Rex: I object to that, your Honor. That is not cross-examination. It is leading?

(Exceptant's objection sustained.)

Ques. Didn't Mrs. Wagner indignantly refuse your request?

30

Mr. Rex: I object.

(Exceptant's objection sustained.)

REBUTTAL.

MRS. EMMA L. WOOD, sworn.

By Mr. Richards:

Ques. Mrs. Wood, were you present at the house of Mrs. Wagner at the time of the death of Mrs. Walsh?

10 Ans. I was.

Ques. And the night of the funeral?

Ans. I was.

Ques. Do you remember Mrs. Chadwick being there?

Ans. She was.

Ques. And did you or did you not hear the conversation that took place between Mrs. Chadwick and Mrs. Wagner?

Ans. I did not.

20 Ques. Were you in the room all the time while Mrs. Chadwick was there?

Ans. I had occasion to go out a few minutes but I came back.

Ques. How long were you out?

Ans. Just a few minutes.

Ques. Was anything said about the will while you were present?

Ans. When I came back there; yes, sir.

Ques. What was said?

30 By the Court:

Ques. Who said it?

Ans. Who said it?

Ques. Yes.

Ans. Why, Mrs. Chadwick and Mrs. Wagner were talking together in the room there and they seemed right

much—Mrs. Chadwick seemed right much worried over something and I don't know what, and I sat still and listened and I could not exactly catch on what they did say.

By Mr. Richards:

Ques. You did not hear Mrs. Wagner say there was no will, did you?

Mr. Rex: I object.

10

(Exceptant's objection sustained.)

Ques. Did Mrs. Walsh say anything about the bonds and mortgages at that time?

The Court: Mrs. Walsh, she was dead.

Ques. Pardon me, not at that time. Did you ever hear Mrs. Walsh say what her arrangement with Mrs. Wagner was as to her being furnished with a home?

20

Ans. I did.

Ques. What did she say?

Mr. Rex: I object to that as an irrelevant question and I also object on the ground that it is not rebuttal. It is all *res adjudicata* and on those three points I object.

The Court: It surely is not rebuttal. Will counsel state why this evidence was not produced at the previous hearing. Wasn't the witness present?

30

Mr. Richards: She was not in Court at that time.

The Court: Was counsel aware of this witness's testimony at that time or was it newly discovered evidence.

Mr. Richards: I did not understand that this lady knew just what she does know about it.

The Court: I will take this testimony, this answer, subject to my right to rule upon it after I hear what the answer is.

(Exception for exceptants.)

- 10 Mr. Archer: I understand it is also objectionable along the line of their whole examination which was admitted subject to our objection, namely, the *res adjudicata* objection.

The Court: Yes, of course, subject to that. I understand that.

(Question re-read.)

- 20 Ques. What did she say?
Ans. What did Mrs. Walsh say to me?

Ques. Yes.

Ans. Mrs. Walsh told me that she had made an assignment and she had left everything to Ida to take care of her and provide a home for her as long as she lived, and I was there from the time Mrs. Walsh went to Mrs. Wagner's to live and continually with them every evening.

- 30 By Mr. Richards:

Ques. Do you know whether Mrs. Walsh did remain there the rest of her days?

Ans. I do.

Ques. Did she?

Ans. She did. I stayed there from the seventh of November until after the funeral; she died the twenty-fifth of December.

By the Court:

Ques. When did you go there, madam?

Ans. The seventh day of November at night.

Ques. When did she say this to you?

Ans. Well, she said it to me, I think it was—I cannot exactly tell the date when she told me, but she told me that she made—

Ques. How long before her death?

Ans. Well, I cannot exactly tell, but she told me that she had— **10**

Ques. Well, you have answered; you have stated that part of it.

Ans. Yes, sir.

By Mr. Richards:

Ques. Did you ever hear Mrs. Wagner say to her mother whether or not she would furnish her a home for the rest of her days? **20**

Mr. Rex: I object.

(Exceptant's objection sustained.)

(Exception for accountant.)

Ques. Did you ever hear Mrs. Wagner have any conversation with her mother about the matter of furnishing a home? **30**

Mr. Rex: I object.

The Court: Just answer yes or no, madam.

Ans. Yes, sir.

Ques. What was the conversation?

Mr. Rex: I object.

The Court: I will admit the answer to this question subject to my previous rulings, pending that being *res adjudicata*.

Mr. Rex: I want a further objection there that it is not rebuttal.

The Court: I will take the answer subject as aforesaid.

10

(Exception for exceptants.)

Ques. Will you tell us what that conversation was, please, Mrs.—

Ans. Tell you what the conversation was between Mrs. Walsh and her mother?

Ques. Yes, Mrs. Wagner; about her furnishing her a home?

20

Ans. Yes; she told me that she had signed everything over to Mrs. Wagner for to provide a home for her and take care of her as long as she lived.

Ques. What did Mrs. Wagner say?

Ans. I don't exactly know what Mrs. Wagner said to her then, but then Madam Baxter turned to her.

Ques. Her previous name was Baxter?

Ans. Yes.

By the Court:

Ques. Mrs. Walsh?

30

Ans. Mrs. Walsh.

Ques. Turned to her, then Mrs. Walsh said?

Ans. Yes; Mrs. Walsh went on to say that she wanted Mrs. Wagner to have it as long as she lived, that the balance of them had gotten enough, that she did not want them to have it.

Mr. Rex: I object to that.

Ans. She said she did not want them to have it; that she did not care about them.

The Court: That has no bearing upon the case at all.

By Mr. Richards:

Ques. Did Mrs. Wagner say anything to Mrs. Walsh on that line as to what she would do; what Mrs. Wagner would do? 10

Ans. No.

Ques. You don't recollect?

Ans. No.

Ques. While you were present at any time, did any of the other children come there to borrow money?

Ans. Yes, sir.

Ques. Did they get it?

Ans. Yes, sir.

No cross-examination. 20

MRS. IDA WAGNER, recalled.

By Mr. Richards:

Ques. This was objected to before and the Court over-ruled it and I think possibly it might have been because it was not proper cross-examination. Mrs. Wagner, did you or did you not tell your mother at about the time of the transfer of these mortgages and insurance company stock to you that in consideration of that transfer you would keep her the balance of her days; you would provide her with a home the balance of her days? 30

Mr. Rex: I object to that.

(Exceptant's objection sustained.)

(Exception for accountant.)

Mr. Richards: We rest.

Mr. Rex: I offer in evidence the will.

10 The Court: Which will?

Mr. Rex: The will of Elizabeth Walsh, deceased, whose estate we are now settling up or trying to.

Mr. Archer: I offer in evidence the record in the Court of Chancery in the suit commenced by Clara J. Chadwick, executrix, against Ida E. Wagner, executrix, on a bill for an accounting.

20 Mr. Richards: I object to the introduction of that record upon the ground that the record does not bear upon the issue in this case to any of the questions raised by the exceptants in this case, and is irrelevant, incompetent and immaterial, but do not object because the original record is not produced here.

The Court: I overrule the objection and of course the record is admitted, subject to the objection. The Court will examine that record before the Court decides upon this case.

30 Mr. Archer: I also offer in evidence, if the Court please, the original record in the suit of Ellen N. Fennimore, complainant, against Ida E. Wagner and others on a bill for an accounting in the Court of Chancery of New Jersey, the entire record under the same circumstances as the Chadwick suit. I am not satisfied with that paper book.

Mr. Richards: And we consent, as we have already consented, that the paper book marked Exhibit E1, heretofore offered by counsel and not objected to, may be used in the place and stead of the record.

Mr. Rex: How about the will, your Honor?

Mr. Richards: I am perfectly willing that the will should be considered in evidence without the production of the original from the office of the Secretary of State, at Trenton, and that the record thereof in the Surrogate's office shall be used. Of course, we want it understood that it is admitted under the objection that it had no bearing upon the exceptions filed in this case and is irrelevant and immaterial. 10

Mr. Archer: There is one other paper I should like to have in evidence and that was the petition requiring the executrix to furnish security and the order that was then made. The reason for that is evidence and we are contesting one of these items, namely, the commissions, and the upper Court should know in a definite way that that application had to be made to this Court and this Court felt obliged to make the order of that kind at an earlier stand of this suit. 20

The Court: My judgment is that the entire record of this suit is in. Gentlemen, I understand the entire record is in evidence anyway, and when it comes to printing the book counsel can agree which parts shall be admitted. 30

Meeting adjourned to Wednesday, January 22d, 1908, at 10 A. M. for argument.

Filed December 13, 1907.

EXHIBIT PI.

To Ida E. Wagner, executrix, &c., of Elizabeth Walsh, deceased:

- 10 Ida E. Wagner claims that there is due to her from the estate of Elizabeth Walsh the sum of eight hundred and sixteen dollars and eighty cents, being part of the proceeds of the sale and transfer of mortgages assigned April first, nineteen hundred and four, by said Elizabeth Walsh to Ida E. Wagner, which moneys above mentioned were advanced and given by said Ida E. Wagner to said Elizabeth Walsh.

-
- 20 STATE OF NEW JERSEY, }
COUNTY OF CAMDEN, } ss.

IDA E. WAGNER, of full age, being duly sworn according to law, on her oath says, she is the creditor above named, and that the sum of eight hundred and sixteen dollars and eighty cents, above claimed, is due and owing to her from the estate of said Elizabeth Walsh, deceased.

IDA E. WAGNER.

- 30 Sworn and subscribed to before me this thirteenth day of December, A. D. 1907.

S. HOWARD TROTH,
Master in Chancery of New Jersey.

Filed December 13, 1907.

EXHIBIT P2.

To Ida E. Wagner, executrix, &c., of Elizabeth Walsh, deceased:

Ida E. Wagner claims that there is due to her from the estate of Elizabeth Walsh, deceased, the sum of six thousand nine hundred and twenty dollars, for furnishing a home to said Elizabeth Walsh, from the month of February, nineteen hundred and four, all the rest of the days of said Elizabeth Walsh, to the time of the death of said Elizabeth Walsh, pursuant to contract and agreement made with said Elizabeth Walsh, together with interest on the said sum of six thousand nine hundred and twenty dollars, from the fifth day of May, nineteen hundred and four, amounting to the sum of eight hundred and six dollars and eighteen cents.

10

20

STATE OF NEW JERSEY, }
COUNTY OF CAMDEN, } ss.

IDA E. WAGNER, of full age, being duly sworn according to law, on her oath says, I am the creditor above named and am a daughter of Elizabeth Walsh, deceased. My mother came to live at my home in Camden, New Jersey, in the month of February, nineteen hundred and four. Shortly after that she offered and promised to give me six mortgages of the value of six thousand two hundred dollars and some stock in Camden Fire Insurance Association of the value of seven hundred and twen-

30

ty dollars, if I would furnish her with a home the rest of her days. Not knowing whether her life would be long or short, I consented and agreed to this and did accordingly furnish my mother with a home the rest of her days, for which the sum of six thousand nine hundred and twenty dollars, together with interest thereon from the fifth day of May, nineteen hundred and four, amounting to eight hundred and six dollars and eighteen cents above claimed, is justly due and owing to me from the estate of said Elizabeth Walsh, deceased.

10

IDA E. WAGNER.

Sworn and subscribed before me this thirteenth day of December, A. D. 1907.

S. HOWARD TROTH,
Master in Chancery of New Jersey.

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30

CAMDEN COUNTY ORPHANS' COURT.

IN THE MATTER OF THE ESTATE	}	ON EXCEPTION TO
OF ELIZABETH WALSH, de-		FINAL ACCOUNT.
ceased.		OPINION.

The matters in controversy are contained in exceptions to the allowance of five items in the final account of Ida E. Wagner, executrix of the estate of Elizabeth Walsh, deceased. 10

Elizabeth Walsh, who was the mother of the executrix, died upon the twenty-fifth day of December, 1904, having first made her last will and testament, dated February 25th, 1904, in and by which she left her personal property to her children, Ida E. Wagner, Clara J. Chadwick, Ellen M. Fennimore, Emma L. Deegan, and to a grandchild, Dora Meister. This will was admitted to probate on the thirteenth day of January, 1905, by the Surrogate of the county of Camden, and letters testamentary were granted to said Ida E. Wagner and Clara J. Chadwick, who were named as executrices. 20

At the time of her death the testatrix was living with her daughter, Ida E. Wagner, and the latter had possession of the will. Shortly after her mother's death she denied to Clara J. Chadwick, her sister and so-executrix, that there was a will or any money, but she subsequently admitted the existence of the will, and, as heretofore stated, it was probated. She still denied that there was any estate. Clara J. Chadwick thereupon instituted a suit against Ida E. Wagner in the Court of Chancery of this State for the purpose of setting aside certain assignments of mortgages, securities and property made by the testatrix to said Ida E. Wagner. By reason of promises, designed I am satisfied for ulterior purposes, made 30

by the latter to the complainant, said suit was not prosecuted. Thereupon Ellen M. Fennimore and Emma L. Deegan, two of the legatees named in Mrs. Walsh's will, filed a bill in the Court of Chancery against the above named executrices. It set out the death of Mrs. Walsh, the execution and probate of her will and the issuance of the letters thereon. It then alleged that the testatrix was, at the time of her death, the owner of certain securities, moneys and furniture, the same as those set out in the final account in this proceeding; that because of advanced age, of feeble health and weakened mental condition and with slight expectation of life, she was induced by said Ida E. Wagner to go and live with her, and that the daughter, having secured the custody and physical control of the testatrix, who was wholly incapable of resisting the persuasions and entreaties of said daughter, the latter was fraudulently induced and unduly influenced, on or about the first day of April, 1904, to assign and transfer unto said daughter, Ida E. Wagner, without any consideration, all of the above specified personal property. It further alleged that said daughter had reduced certain of the securities to cash and that she refused to account for any of them. The prayer of the bill was that these assignments should be set aside, and that they, together with the rest of said personal property, be declared to be the property of and a part of the estate of the said testatrix at the time of her death, to be duly accounted for and administered. A decree *pro confesso* was taken against Clara J. Chadwick, but Ida E. Wagner filed a plea which alleged that for the assignment and transfer of all of said bonds and mortgages, shares of stock and other personal property in the bill mentioned, good and valuable consideration passed from the said defendant to the said Elizabeth Walsh. Issue was joined and the cause went to a hearing. It will be observed that the sole question at issue was the legality of the consideration, and that it related to all of the property

named in the bill of complaint, it being the same property as that named in the final account in this proceeding. An examination of the testimony of Mr. Kaighn in the Chancery suit discloses the fact that the testatrix wanted to assign this property to Mrs. Wagner, because "she had a good home there and that she intended to stay there the rest of her days, and that she wanted to turn these over to Mrs. Wagner on that account." Henry Wagner, the husband of Ida, attempted to show that the testatrix continued to live and be cared for by Mrs. Wagner until the time of her death, but his testimony seems to have made no impression other than that it "was plainly introduced to bolster up a pretended consideration." These were the only witnesses and the Vice Chancellor who heard the case held that the defendant had failed to sustain her plea, and that a decree would be advised setting aside the assignments and transfers of the property described in the bill of complaint and the same decree to be held by the defendants as part of the estate of the testatrix to be administered by them as executrices. He intimated that, but for the fact that one party to the fund was not a party in the Chancery proceedings, the accounting would have been required to be made in that Court. (*Fennimore vs. Wagner*, 64 Atl. Rep., 698.) The final decree, although holding that the complainants were entitled to the relief sought and prayed for by them in their bill of complaint, does not specifically mention the sum of one thousand dollars. It is, however, apparent that it was a part of the subject matter in controversy, for it is named in the bill and the plea distinctly includes it in the words "and other personal property in the bill mentioned." The plea, therefore, admits the possession of and claims the ownership of all of the bonds, mortgages, shares of stock and other personal property in the bill mentioned, and the right of Ida E. Wagner thereto was the single question in issue.

On appeal the decree of the Court of Chancery was affirmed, and Chief Justice Gummere, who wrote the opin-

ion, said that "We concur in the view expressed in the opinion of the Vice Chancellor that the proofs therein specified do not sustain the plea." (*Fennimore vs. Wagner*, 68 *Atl. Rep.*, 230.) For technical reasons an attempt was made to reverse the decree, but they were held of no avail because of the failure to prove the entire plea.

- Ida E. Wagner, in her account, the said Clara J. Chadwick having been discharged as an executrix, charges herself with the proceeds of the sale of three of said
- 10 mortgages, with the principal and interest of three others, with the amount realized from the sale of the stock of the Camden Fire Insurance Company, with household furniture valued at \$200, alleged to be in her possession, and with cash amounting to \$1,000, alleged to be in her possession. She prays allowance for said household furniture, claiming that she had never received it; for said cash, claiming that she had no knowledge of it; for part of the proceeds from the sale of mortgages advanced and paid by her to the testatrix, amounting to \$816.80. This
- 20 is the Abigail F. Hugg mortgage with which she had charged herself. She further prays allowance for claim of Ida E. Wagner for furnishing said testatrix with a home the rest of her days according to contract, \$6,920, with interest from May 4, 1904, to December 13, 1907, \$806.18; total, \$7,726.18. The other allowances prayed for are the amount paid for premium on executrix's bond, for proctor's fee and for commissions. The amount with which the accountant charges herself is \$8,884.70, while the amount for which she prays allowance, exclusive of proctor's fee, is \$10,166.44, thus leaving a deficit in the
- 30 sum of \$1,281.74.

To all of the items for which allowance is prayed, except that for the household furniture, that for Surrogate's bill, and that for proctor's fee, exceptions were filed by Ellen M. Fennimore and the administrator of Emma L. Deegan, deceased; said Ellen M. Fennimore and Emma L. Deegan in her lifetime being the complainants in the

suit in Chancery hereinbefore referred to. When the account first came on for hearing objection was made to the introduction of any testimony upon the first three items excepted to for the reason that they were part of the subject matter controverted in the Chancery suit and therefor *res adjudicata*. It was agreed, however, that the evidence should be heard and the matter disposed of upon final hearing. The doctrine of *res adjudicata* has been clearly defined in this State, and it is the law "that the judgment of a Court of competent jurisdiction on a question of law or fact, or on a question of mixed law and fact, once litigated and determined, is, so long as it remains unreversed, conclusive upon the parties and their privies, not only as to the particular property involved in the suit in which it is pronounced, but as to all future litigation between the same parties or their privies, touching the subject matter, though the property involved in the subsequent litigation is different from that which was involved in the first. "All that is required in cases where the prior and subsequent litigations involve different things, to render the judgment in the first conclusive upon the parties in the subsequent, is that there shall be *substantial identity* in the subject matter of the two, and that must always be the case as is obvious where the judgment in the first rests on a decision of the *same question substantially* which is presented for decision by the subsequent." *City of Paterson vs Baker*, 6 Dick, 57: "All that is necessary is that the right to relief in the one suit shall rest upon the same point or question which *in essence and substance* was litigated and determined in the first suit, and in such a case the parties and those in privity with them are concluded, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose." *Idem*. P. 53, *Cromwell vs. Sac County*, 94 U. S., 351-352.

Where the second action is upon a different claim or demand but between the same parties the judgment in

the prior action operates as an estoppel only as to those matters in issue or points controverted upon the determination of which the finding or verdict was rendered. *City of Paterson vs. Baker*, 6 Dick., 54. See also *Mershon vs. Williams*, 34 Vr., 401; *Clark Thread Company vs. William Clark Co.*, 10 Dick, 662; *Mercer County Traction Company vs. U. R. R. & Co.*, 19 Dick., 594. The judgment is final between the parties as to all defenses which were or could have been set up in the earlier suit. *Thompson vs. Williamson*, 1 Rob., 212-214. "It is not necessary that the action in which the judgment is found, and that in which it is relied on as an estoppel should be of the same kind, or for the same cause of action." *Sawyer vs. Woodbury*, 7 Gray, 502; *City of Paterson vs. Baker*, 6 Dick., 54.

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The doctrine is not a mere rule of procedure, but a rule of justice unlimited in its operation, which must be enforced whenever its enforcement is necessary for the protection and security of rights and for the preservation of the repose of society. *City of Paterson vs. Baker*, 6 Dick., 59; *Putnam vs Clark*, 7 Stew., 540.

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It is a rule of law based upon two grounds, the first, that there should be an end to litigation, and the second, that a person should not be twice vexed for the same cause. 24 Am. and Eng. Ency of Law, second edition, pp. 713, 714 and cases cited.

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Referring now to the exceptions, it will be seen that the first is to the prayer for allowance of \$1,000, and that the second is to the prayer for allowance of the proceeds of a mortgage claimed to have been advanced to the deceased, amounting to \$816.80. This is the Abigail F. Hugg mortgage, with the proceeds of the sale of which the accountant charges herself. The conclusion which I have reached with regard to these items is that they are *res adjudicata*. An examination of the record in the Chancery suit will show that each was included in the bill of complaint and that the plea makes no exception, but

alleges that all of the said bonds, *mortgages*, shares of stock, and *other personal property* in the bill of complaint mentioned, passed to the said Ida E. Wagner for a good and valuable consideration. The decision of the Court was unquestionably adverse to this contention and necessarily included everything named in the plea. The defendant adopted a certain procedure, the legal affect whereof was an admission that she had in possession as owner, certain things including these two items excepted to, and the Court rendered a decision, the legal effect whereof was that she did not own said mortgages, and said money of which she admitted that she had possession, and that she should turn them over to the estate of the testatrix. If they had not been in her possession would she have adopted a procedure which admitted possession? After having alleged in the Chancery suit that she had them in possession, and having submitted the ownership thereof to the decision of that Court, she should not now be allowed to play fast and loose with Courts, and with the administration of justice and be permitted to deny that which she admitted in the previous suit. Otherwise, we would strike at the basic principle of the doctrine of *res adjudicata*, would justify trifling with legal procedure and with the stability of legal decisions. Lord Rosedale once said that it was more important that an end should be put to litigation than that justice should be done in every case. *Beteman vs. Willoe, Sch. & Lefroy*, 201; *Dunham vs. Downer*, 31 *Vt.*, 250-256; *Schuman vs. Weatherhead*, 1 *East.*, 537; *Clageett vs. Simes*, 25 *N. H.*, 402.

The third exception is to the item wherein the accountant claims compensation for furnishing Elizabeth Walsh with a home for the rest of her days according to contract. The amount claimed is \$6,920, with interest from May 4, 1904, to December 13, 1907, amounting to \$806.18, making a total of \$7,726.18. The amount claimed less the interest is the aggregate amount of the mort-

gages and of the Camden Fire Insurance stock set out in the bill of complaint. In this claim there is included the Abigail F. Hugg mortgage, which is the subject of the second exception, and with which the accountant charges herself and for which she claims allowance twice, once in the third item of her prayer for allowance, and once as a part of the fourth item.

- 10 In the Chancery suit the defendant claimed each of said mortgages and said stock upon an assignment made by the decedent based upon a good and valuable consideration, the same being substantially an agreement to keep her mother during the rest of her days. She offered very little evidence in support of the alleged consideration, and the determination of the Court was as follows: "On this evidence I find that the defendant has not supported her plea that this \$8,000 of property was transferred to her by the testatrix for a good and valuable consideration." Proof of the assignment of three of the mortgages only was offered. On appeal the defendant
- 20 based her contention for a reversal upon legal grounds which were not tenable because of her failure to prove her entire plea. She had the right and the opportunity to prove it, and could have produced all of the witnesses offered in this matter, but did not even attempt to. The decisions of the Court is against her upon the entire plea, and the rule is that a judgment is final between the parties as to all defenses which were or could have been set up in the earlier suit, provided the later suit involves substantially the same matters between the same parties.
- 30 The contention of the accountant (the defendant in the Chancery suit) is that her present claim is different from that in the Chancery suit, and that in the latter she claimed the assignment of certain property because of an agreement upon which the assignment was founded, while she now claims not this property but the value thereof because of the consummation of said agreement, and that it must be enforced even though it be unconscionable.

Each is founded upon the same contract, namely, the agreement to care for and keep the decedent the rest of her days. The voucher for this prayer of allowance has attached to it an affidavit made by Mrs. Wagner to the effect that her mother came to live at her, Mrs. Wagner's, home in the month of February, 1904, and that shortly after that she offered and promised to give her six mortgages of the value of \$6,200 and some stock of the Camden Fire Insurance Association of the value of \$720 if she would furnish her with a home for the rest of her days; that not knowing whether her life would be long or short she consented and agreed to this, and did accordingly furnish her with a home for the rest of her days, for which the sum of \$6,920, with interest thereon from the 5th day of May, 1904, amounting to \$806.18, is justly due and owing to her from the estate of said decedent. 10

It will be seen that the foundation for this claim is the same as that in the Chancery suit for the assignment of the mortgages and other property, namely, the agreement to care for the mother. 20

It was decided that it did not furnish a good consideration therefor, and I think that that decision is *res adjudicata* as to the present proceeding, where, upon the same agreement, the defendants in the preceding suit claim not the mortgages and other property, but the proceeds thereof. The present claim is not based upon the *quantum meruit* for services rendered. The subject matter in the two suits is substantially the same, in the one certain personal property, in the other the proceeds thereof; the main question in each is the same; the alleged agreement and the contending parties are the same, the only difference being that since the ending of the Chancery suit one of the complainants has died and in this proceeding she is represented by her administrator. 30

The fourth exception is the claim of the accountant for the premium of \$52 paid for her bond. It is true that

she was ordered by the Court to give a bond, the alternative being her discharge as executrix. I think that she should be allowed this charge. The security was demanded by the very parties who now except to the expense occasioned by their actions, and if the executrix had failed to furnish the bond and had been discharged the substituted administrator would have been obliged to furnish one, incurring in all probability the same expense.

10 On the allowance side of the account there is a space left for proctor's fees. A fair allowance should be made for services rendered to the accountant by her proctor, but it cannot include any allowance for services rendered in the Chancery suit, or in this procedure in support of the items for which Ida E. Wagner advances a claim. With respect to said suit and to those items she personally must compensate her counsel. I will hear counsel as to a proper allowance.

20 The fifth exception is to the claim for commissions. Full commissions are claimed even on the sum of \$200 for household furniture, for which allowance is prayed and not excepted to. The rule is that allowance shall be made with reference to the actual pains, trouble and risk in settling the estate, rather than in respect to the quantum of estate, and that it shall not exceed certain rates. (L. 1898, p. 762, 128, 129). There was slight trouble and no risk incident to the settlement of this estate. The moneys were well invested and there seem to have been no debts. The entire duty of the executrix consisted in keeping the estate intact, in collecting the income, in attending to the few matters required by
30 law to be done, such as probating the will, making and filing an inventory and appraisement, taking the necessary rules to bar creditors, filing a final account and distributing the balance in her hands.

It cannot be said that the conduct of the executrix, Ida E. Wagner, exhibited sincerity and candor. After her mother's death she denied that there was a will or any

estate. She later admitted that there was a will, but denied that there was any estate. When a suit was commenced by Mrs. Chadwick, in Chancery, to have the property in her custody declared the property of the estate, she induced her in some way not to prosecute it, and it was only after being cited to do so that she filed the final account now under consideration. She knew that her right to the property left by her mother was disputed by the heirs, and, even after she induced Mrs. Chadwick not to proceed against her, she knew when the bill was filed by Ellen M. Fennimore and Emma L. Deegan on November 10, 1905, that such dispute still existed. Knowing this and knowing that the case might be decided against her, it was her duty to conserve the estate, and if she disposed of any portion of it to invest the moneys. Instead of doing this she charges herself only with the amount realized from the sale of certain of the securities as follows:

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Hugg mortgage of \$800.00.....	\$816 80
Baxter mortgage of \$1,200.00.....	1,242 23
Baxter mortgage of \$700.00.....	733 36
Camden Fire Insurance Co. stock (72 shares)	720 00

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The mother died on December 25, 1904. It was not proved when the Chadwick suit was commenced, but the Fennimore suit was commenced in November, 1905, and the file in this Court shows that steps were taken prior to that to bring Mrs. Wagner to account. She knew therefore that her right to this property was seriously disputed, and she should have treated the entire property, both principal and interest, as possibly belonging to the estate of her mother, and as such it was her duty to keep it invested. She appears not to have done this with regard to the above items. They aggregate \$3,420. They had been and probably were invested, and at 5 per cent. per annum, the income would have been about \$171 a year,

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and for two years alone, \$342, nearly the amount of the commissions. The executrix charges herself on these sums above the principal with only \$92.39, for I assume that, as there were 72 shares of the stock of the Insurance Company and as it sold for \$720 the price per share was \$10.00, and that no part of the \$720 represents interest. As a fact the executrix had this property from the time of her mother's death, and the income amounted to far more than her commissions.

- 10 She took the risk of selling it pending the disputes as to her ownership, and is chargeable with the result. It is true that no exception has been filed asking that she be surcharged with this interest, but I think it should be considered in determining her right to commissions, and in doing so I have reached the conclusion that commissions should not be allowed.

- 20 Commissions are allowed as compensation for the faithful discharge of duty, and I fail to see how an executrix, who, pending a dispute which may be decided adversely to her, not only disposes of securities, but allows funds to lie idle, has done her duty. The estate is a loser by reason of her management. *Frey vs. DeMarest*, 2 C. E. Gr., 71; *McKnight vs. Walsh*, 8 C. E. Gr., 136, 9 C. E. Gr., 598; *Hetfield vs. Debaud*, 9 Dick, 371; *Fluke vs. Lake*, 9 Dick., 644; *Blauvelt vs. Ackerman*, 8 C. E. Gr., 495, 10 C. E. Gr., 570; *in re Booth*, 26 N. J. L. J., 76.

- 30 The conclusion reached is that the first, second, third and fifth exceptions should be sustained, and that the fourth exception should be dismissed. This determination having been reached upon the application of the above principles of law, it is unnecessary that the evidence adduced should be further considered.

NEW JERSEY PREROGATIVE COURT.

IN THE MATTER OF THE ESTATE	}	PETITION OF AP- PEAL.
OF ELIZABETH WALSH, DE-		
CEASED.		

The petition of appeal of Ida E. Wagner, of the city 10
and county of Camden, in the State of New Jersey, shows
that your petitioner finds herself aggrieved by a decree
made by Honorable Charles V. D. Joline, in the Cam-
den County Orphans' Court, dated the fifteenth day of
May, nineteen hundred and eight, in the matter of the
estate of Elizabeth Walsh, deceased, in that said decree
adjudges that the exception firstly submitted be allowed
and that the prayer of allowance of said accountant for
one thousand (\$1,000) dollars cash, being item No. 2
of discharge in said account, be denied.

Also in that said decree adjudges that the exception 20
secondly submitted be allowed and that the prayer of al-
lowance of said accountant for eight hundred and sixteen
dollars and eighty cents (\$816.80), being item No. 3
of discharge in said account be denied.

Also in that said decree adjudges that the exception
thirdly submitted be allowed and that the prayer of al-
lowance of said accountant for seven thousand seven hun-
dred and twenty-six dollars and eighteen cents (\$7,726,-
18), being item No. 4 of discharge in said account be 30
denied.

Also in that said decree adjudges that the exception
fifthly submitted be allowed and that the prayer of al-
lowance of said accountant for commissions in the sum
of three hundred and forty-six dollars and fifty-four
cents (\$346.54), being item No. 8 of discharge in said
account be denied.

Also in that said decree adjudges that a counsel fee of one hundred dollars be allowed to Frederick A. Rex, counsel for exceptant, Ellen M. Fennimore, and a counsel fee of one hundred dollars be allowed to Grey & Archer, counsel for exceptant Philip J. Bergen, administrator of Emma L. Deegan, deceased, to be paid out of the said estate.

10 Also in that said decree adjudges that there is a balance in the hands of accountant amounting to the sum of eight thousand two hundred dollars and sixteen cents to be distributed according to law.

And your petitioner appeals from the parts of said decree, which decree as aforesaid, upon the ground that the same are erroneous, for that each and every of the exceptions aforesaid which were allowed should have been disallowed; that Items Nos. 2, 3, 4 and 8 of discharge in said account should have been allowed; that no counsel fee should have been allowed to counsel for exceptants and that it should have been decreed that there
20 is no balance to be distributed.

She, therefore, prays that the said decree may be in the particulars aforesaid, reversed, set aside and for nothing holden, and that she may have such relief as may be just.

JOSEPH KAIGHN,
Proctor for Appellant.

SAMUEL H. RICHARDS,
Of Counsel with Appellant.

NEW JERSEY PREROGATIVE COURT.

IN THE MATTER OF THE ESTATE }
OF ELIZABETH WALSH, DE- } ANSWER TO PETI-
CEASED. } TION OF APPEAL.

The answer of Philip J. Deegan, administrator of Emma L. Deegan, deceased, and Ellen M. Fennimore, respondents, to the petition of appeal of Ida E. Wagner, appellant. These respondents, not acknowledging all or any of the matters which in said petition of appeal are contained to be true, for answer thereto say and admit that a decree was made by Camden County Orphans' Court, on the 15th day of May, 1908, in the above cause, as in said petition stated, but as to the substance and form thereof, these respondents pray to refer thereto when the same shall be produced; and these respondents are advised and believe, that the said decree is agreeable to equity, and pray that the same may be affirmed with costs to be adjudged to these respondents.

GREY & ARCHER,
F. A. REX,

Solicitors for and of Counsel with Respondents.

Filed October 17, 1908.

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New Jersey State Library

NEW JERSEY PREROGATIVE COURT.

IN THE MATTER OF THE ESTATE OF ELIZABETH WALSH, DE- CEASED.	}	ON APPEAL FROM CAMDEN OR- PHANS' COURT. MEMORANDUM.
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MR. JOSEPH KAIGHN AND MESSRS. FRENCH AND RICHARDS, for Appellant.

MR. FREDERICK A. REX AND MESSRS. GREY AND ARCHER, for Respondents.

WALKER, VICE ORDINARY:

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This is an appeal from a decree of the Camden County Orphans' Court on exceptions to the account of the executrix of the estate of Elizabeth Walsh, deceased. The matter was argued orally on behalf of the respondents and upon brief submitted on behalf of the appellant. My consideration of the case has led me to the conclusion that the decree appealed from should be affirmed for the reasons given in the court below.

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One of the points made by counsel for the appellant I hardly understand. They say that the decree of the Court of Chancery, which the Orphans' Court held was *res judicata* of the matters in controversy, does not bind Dora Meister, one of the heirs of Mrs. Walsh. They do not represent Mrs. Meister. She receives a benefit as a result of the decree in Chancery, although not a party to that suit, and she also receives a benefit by virtue of the decision of the Orphans' Court. She is not here claiming a right to litigate any matter. Mrs. Wagner, the accountant, was condemned as a defendant in the Chancery suit, and, certainly, the Chancery decree precludes her here.

NEW JERSEY PREROGATIVE COURT.

IN THE MATTER OF THE ESTATE OF ELIZABETH WALSH, DE- CEASED.	}	ON APPEAL OF IDA WAGNER FROM CAMDEN COUNTY ORPHANS' COURT. DECREE.	10
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This cause having been brought to a hearing on an appeal from the Camden County Orphans' Court by Ida E. Wagner, executrix, and French and Richards and Joseph Kaighn, of counsel with the appellant, and Frederick A. Rex and Grey and Archer, of counsel with the respondents, having been heard and the questions brought up by said appeal having been duly considered;

It is, on this thirtieth day of October, nineteen hundred and eight, on motion of counsel for the respondents, ordered, adjudged and decreed that the decree of the Orphans' Court of the county of Camden, made on the fifteenth day of May, nineteen hundred and eight, which is appealed from by the appellant, be and the same is hereby in all things confirmed, with costs of appeal to be paid by the appellant, and that the petition of appeal be dismissed. 20

And it is further ordered, that the record be remitted to the Orphans' Court of the county of Camden, to proceed further thereon according to law and the practice of said Court. 30

Respectfully advised,
 MAHLON PITNEY,

E. R. WALKER, O.
 V. O.

Notice of appeal in usual form.

NEW JERSEY COURT OF ERRORS AND APPEALS.

10	IN THE MATTER OF THE ESTATE OF ELIZABETH WALSH, DE- CEASED; IDA E. WAGNER, Appellant, PHILIP J. DEEGAN, ET AL., Respondents.	{	APPEAL FROM PREROGATIVE COURT. PETITION OF APPEAL.
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To the Honorable the Court of Errors and Appeals in the last resort in all causes:

20 The petition of Ida E. Wagner, the appellant in the above stated cause, respectfully shows that your petitioner finds herself aggrieved by a decree made in the New Jersey Prerogative Court by his Honor, Mahlon Pitney, Ordinary of the State of New Jersey, bearing date the thirtieth day of October, nineteen hundred and eight, in the matter of the estate of Elizabeth Walsh, deceased, on the appeal of your petitioner, in this respect, to wit, that the said decree adjudges that the decree of the Orphans' Court of the county of Camden, made on the fifteenth day of May, nineteen hundred and

30 eight, which was appealed from by your petitioner, be and the same was thereby in all things affirmed with costs of appeal to be paid by the appellant and that the petition of appeal be dismissed and that the record be remitted to the Orphans' Court of the county of Camden to proceed further thereby according to law and the practice of said Court; and your petitioner humbly

appeals from that part of the decree of the Ordinary which decrees as aforesaid upon the ground that the same is erroneous for that the said Ordinary should have reversed the decree of said Orphans' Court and sustained the appeal of your petitioner and should have retained the record in said Prerogative Court to be there proceeded on according to law and the practice of said Prerogative Court and also because said Ordinary should have decreed that the exception first submitted to the account of Ida E. Wagner, executrix, should have been overruled and the amount of said item, being Item No. 2 of discharge in said account, be allowed, and also should have decreed that the exception secondly submitted to the third item of said account should have been overruled and the amount of said item, being Item No. 3 of discharge in said account, be allowed; and should have decreed that the exception thirdly submitted to the fourth item of discharge in said account should have been overruled and the amount of said item, being Item No. 4 of discharge in said account, be allowed, and should have decreed that the exception fifthly submitted to the eighth item of discharge in said account should have been overruled and the amount of said item, being Item No. 8 of discharge in said account, be allowed and should have ordered that the counsel fee allowed to exceptant be overruled so far as the same is made chargeable upon the estate and should have reversed and overruled the finding of said Orphans' Court that there was a balance of eight thousand two hundred dollars and sixteen cents or any other sum in the hands of said accountant. That said decree is unlawful, contrary to the principles of equity and contrary to the rules and practice in the Prerogative Court.

Your petitioner therefore prays that the decree of the Ordinary may be, in the particulars aforesaid, re-

versed, set aside, and for nothing holden, and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

JOSEPH KAIGHN,
Proctor for Appellant.
SAMUEL H. RICHARDS,
Of Counsel with Appellant.

Service acknowledged.

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FRED'K A. REX,
Proctor for Ellen M. Fennimore.
GREY & ARCHER,
Proctors for Philip J. Deegan.

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IN CHANCERY OF NEW JERSEY.

Between

ELLEN M. FENNIMORE, ET AL.,

Complainants,

AND

IDA E. WAGNER, ET AL.,

Defendants.

ON BILL, &c.

ORDER.

It appearing by affidavit that Emma L. Deegan, one of the complainants in this suit, has died intestate, and Philip J. Deegan has been duly appointed administrator of her estate.

It is on this sixteenth day of April, nineteen hundred and six, on motion of Frederick A. Rex, solicitor for Philip J. Deegan, ordered that said Philip J. Deegan be inserted as a complainant herein.

W. J. MAGIE,
C.

Respectfully advised.

LINDLEY M. GARRISON,
V. C.

No order was made that the suit stand revived. No order was made admitting anyone as the administrator of Emma L. Deegan. No amendment was made to the bill setting up the rights of the personal representative. No order was made on defendant to answer.

